

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.

Jefferson County

Submitted by: Jeff De La Rosa

The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
 - Jefferson County Human Services has a small group of social workers where an assigned intake 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. 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 and a temporary physical custody hearing is held. If a kid is on supervision, normally the DA’s office chooses to file a petition and the social worker agrees with that decision. Often at the TPC hearing if a new petition for delinquency is decided upon, that new petition is presented at the TPC hearing.

- ❖ 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 is a juvenile intake unit where 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.?
 - For the most part, yes. There are normally two ADA's who have the juvenile delinquency caseload. One of them is more open to DPAs than the other. 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?
 - Sometimes used.

- ❖ Are defense attorneys ever involved in negotiating DPAs prior to the filing of a formal petition?
 - Sometimes; depends on the situation. However, 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?
 - Yes, 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 they 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?
 - Clients appear in person for custody hearings. If kids are placed at a shelter home or another placement, 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. Attorneys will normally also have contact information for the child's parents so contact can be made to gather relevant information.

- ❖ Are your custody hearings before a court commissioner or a judge?
 - Judge.
- ❖ Is a petition normally filed by the time of/at the hearing?
 - Almost always.
- ❖ Is there every sworn testimony taken at custody hearings?
 - Sometimes/rarely most often dependent on whether probable cause is challenged. 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?
 - No.
- ❖ What is the process for “appealing” the initial custody determination?
 - Motion to review the initial decision. The hearing will be before the same judge who made the initial TPC decision.
- ❖ Is a request to review ongoing custody status ever made by someone other than defense counsel?
 - 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. 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. 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.
- ❖ At a custody hearing, besides detention what placement options are available for kids?
 - Return home under various conditions. Rock County Secure Detention Center, Rock County Shelter Care, Waukesha County Juvenile Detention Center, Waukesha County Shelter car, other family members, non-family members if appropriate (rarely used). 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. Jefferson County does not have its own secure custody or shelter care facility.
- ❖ 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?
 - A request for review of the custody order made in writing by human services or an attorney. Normally, notice must be given 24 hours before the time of the hearing. 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?
 - Conditions of return to the home will be in place in the TPC order. Social workers will be allowed to monitor the rules set in place. They will request custody reviews if kids are not complying with the rules or any other conditions specifically set by the court. If a juvenile is taken into custody for violating TPC rules/conditions, the court normally holds a hearing the following day to review the TPC order.

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 secure custody 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, judges 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 prosecutors 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?
 - Yes, through quarterly reviews.
- ❖ What competency training is provided in your county?
 - Depends on the competency findings; often the state will elect to convert to a JIPS proceeding. Otherwise, human services works with DHS to provide training.

Waiver to Adult Court

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

- No, very rare.
- ❖ 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?
 - Truly seeking waiver. When waiver is sought, it 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. But, so few happen in Jefferson County that trends are hard to establish.
- ❖ How often are waivers contested?
 - Often. Because waiver petitions are used when waiver is truly sought, conceding waiver to secure a favorable plea agreement is not common practice; but depending on the situation, this could very well occur.
- ❖ 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.
- ❖ 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 (rare because so few kids on intensive supervision). 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?

- No.
- ❖ Are you aware of any instances in your jurisdiction of the Court initiating proceedings?
 - No. Judges are pretty good about letting the lawyers handle cases as they see fit.

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.
- ❖ 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. Usually, the prosecutors draft the consent decrees. They are rarely done before the initial plea hearing.
- ❖ Are there "standard rules of supervision" that are in all delinquency dispositions?
 - Yes.
- ❖ 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 (rarely) 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, but it is used infrequently.
- ❖ Does your jurisdiction have a specialized "wraparound" program?
 - Yes.
- ❖ Does your jurisdiction have a community service/restitution program?

- No. Human services looks to juveniles and their family to choose a location or agency to complete community service with assistance and input from human services.
- ❖ Which Residential Treatment Centers are used by your county?
 - Northwest Passage, Lad Lake, Norris Adolescent Center, Eau Claire Academy, and Mercy Options.
- ❖ 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?
 - There is a tendency to want to keep kids in the home. However, 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 or other alternate placement. There is a shortage of placement options in Jefferson County so it is very important that juvenile client's be advised to do as much as possible under placement orders in order to avoid negative placement decisions.
- ❖ 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?
 - Our 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. Much of the resistance to corrections use does flow from the reluctance of juvenile prosecutors and social workers lack of desire to use corrections. When corrections placement does occur, it is seen as being the right option as there are no other reasonable options available.
- ❖ 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. It's a toss up regarding staying of registration; we have had some success in staying SOR but the decisions are so fact dependent that no trend can be discerned.

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, cognitive behavioral therapy, STOP (for sex related cases), AODA.
- ❖ Is Day Treatment available in your county? If so, what are the names of the specific day treatment programs?
 - No.
- ❖ 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?
 - Lorrie Roller and others provide sex offender/boundary therapy.
- ❖ What programs do you have in your county that are gender-specific?
 - None.

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?
 - Rock County Shelter Care is often used as is adding of conditions (e.g. electronic monitoring).
- ❖ Does your county utilize stayed days in detention as a sanction?

- No, or at least rarely.
- ❖ Has a particular sanction worked well for your clients in your opinion?
 - 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?
 - NSC – non-secure custody
 - TPC-temporary physical custody
- ❖ Who are experts you have used in juvenile cases and would you recommend them?
 - Dr. Michael Caldwell from the University of Wisconsin.
 - Dr. William Merrick
 - Dr. James Freiburger
 - Dr. Anthony Jurek