

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.

Lafayette County

Submitted by: Jane Bucher

The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
 - Juveniles are contacted by the intake worker, she sets up an intake meeting, after the intake meeting she usually either refers it or does a DPA. They have been pretty consistent in following the time lines.

- ❖ Do you use the term probation officer or social worker or something else to describe the county representative from human services?
 - I usually call them “case workers” but I usually explain them to my clients as similar to probation officers.

- ❖ Is there a specific social worker/probation officer or group of social workers/probation officers who conduct the intake inquiry?
 - We have a court-attached intake worker.

- ❖ 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 they tend to agree and rarely deviate with regards to filing a referral, however, the DA will still consider a consent decree or other alternatives to adjudication even if the client is alleged to have failed a DPA.

- ❖ Are Deferred Prosecution Agreements (DPA) often used in your county?
 - Yes, but they are also frequently revoked for fairly minor violations. From what I’ve seen, the DPAs seem to be “zero tolerance” whereas when clients are on Consent Decrees they are rarely revoked unless the violations alleged are serious and/or continuing.

- ❖ Are defense attorneys ever involved in negotiating DPAs prior to the filing of a formal petition?
 - No.

- ❖ Are you ever successful at negotiating DPAs once a formal petition has been filed? Does this happen often?
 - I have had limited success with this but I find that the concept meets with resistance especially on cases where there have been prior services. We also

run up against the local court policy which basically dictates that the juvenile intake worker must automatically refer cases if the juvenile has had a prior referral.

Temporary Physical Custody Hearings

- ❖ Do your clients appear personally at these hearings or does your jurisdiction utilize video conferencing?
 - Usually the clients are brought in person.
- ❖ Are your custody hearings before a court commissioner or a judge?
 - Before a judge.
- ❖ Is a petition normally filed by the time of/at the hearing?
 - Yes.
- ❖ Is there ever sworn testimony taken at custody hearings?
 - Yes, almost always.
- ❖ 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?
 - Thus far I have only requested a review hearing to revisit the issue of custody. I have not formally appealed one.
- ❖ Is a request to review ongoing custody status ever made by someone other than defense counsel?
 - It has been a joint request in the past.
- ❖ What is the average length of stay in detention?
 - Pre-trial detention on delinquencies is fairly rare in Lafayette County. We see it more on JIPS cases and ME cases where the juveniles are held in treatment facilities b/c their parents won't take them. Usually if the parents are willing to have them back home we can get them placed at home.

- ❖ Where is the detention facility for your county?
 - Lafayette County uses Rock, Dane, or LaCrosse. They used to use Wyalusing before it was closed.
- ❖ At a custody hearing, besides detention what placement options are available for kids?
 - Unfortunately, I have not seen many other options offered other than being placed at home while in custody and subject to house arrest rules. I've been told that the new electronic monitoring bracelets operate off of cell service and cell service is fairly spotty in Lafayette County so we are having some problems with that option. I am told that there are few treatment foster homes. Usually, the only other option is the home of a relative and that is usually something that Defense Counsel would research and offer as an option.
- ❖ 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?
 - We would request a hearing and it would likely be granted. If someone is kept in secured I usually ask to schedule a review hearing during the first hearing.
- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?
 - Nothing formal, I think the case worker assigned to the case would check in on them.

Competency to Stand Trial

- ❖ How is the question of competency raised in your jurisdiction?
 - I have not had this issue recently in Lafayette. Usually if there are competency issues the DA is pretty reasonable about referring to Corp Counsel for a JIPS or CHIPS.
- ❖ Is it common for someone other than defense counsel to raise competency?
 - No, but it is common for someone other than defense counsel to request a psych eval.
- ❖ Once raised, does the Court require some sort of affirmative showing, offer of proof, other evidence before ordering an evaluation?
 - No, psych evals are ordered very easily and perhaps a little too frequently.

- ❖ Do parties generally stipulate to the evaluator's finding on present competency? How about on the likelihood of attaining competency within the statutory period?
 - I haven't had an issue with this. Most of my psych evals have been on cases that either started as JIPS or were changed to JIPS because of competency concerns.
- ❖ Is your county good about periodically reevaluating clients after he or she has been found incompetent, but likely to attain competency?
 - I haven't seen this issue because they usually get referred for JIPS without a formal competency finding.
- ❖ What competency training is provided in your county?
 - Unknown.

Waiver to Adult Court

I have not had a waiver nor known of a waiver in Green or Lafayette County in the three years that I've been practicing in these counties.

- ❖ Do the District Attorneys in your county file waiver frequently?
- ❖ Do the judges in your county often waive kids into adult court?
- ❖ 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?
- ❖ How often are waivers contested?
- ❖ If a waiver is contested, how does the State typically prove prosecutive merit?
- ❖ What sort of witnesses does the State typically call in support of waiver?
- ❖ What sort of witnesses does the defense usually call?
- ❖ Is it at all common for a juvenile to initiate waiver proceedings?
- ❖ Are you aware of any instances in your jurisdiction of the Court initiating proceedings?

Disposition

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

- Almost always.
- ❖ 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?
 - We do consent decrees with pleas and without pleas. I would say they are more common with pleas. Usually the social worker who would supervise the juvenile drafts the rules and the DA then attaches that to the court form. I have assisted in drafting them in the past.
- ❖ Are there "standard rules of supervision" that are in all delinquency dispositions?
 - Yes, there are standard rules that are extremely broad. Sometimes they will leave one or two of the standard rules out but usually they just give them all the rules and then say they will amend them later if the juvenile is doing well.
- ❖ Does the State typically agree with the Department's recommendations?
 - Yes, the State usually offers a plea agreement for whatever the Department is requesting. That is typically the starting point and if we want something different we usually have to convince the DA and the social worker.
- ❖ Does your jurisdiction have an intensive supervision program?
 - No.
- ❖ Does your jurisdiction have a specialized "wraparound" program?
 - Not that I know of.
- ❖ Does your jurisdiction have a community service/restitution program?
 - I think that juveniles are expected to come up with their own community service plan.
- ❖ Which Residential Treatment Centers are used by your county?
 - St. Aemelian's, Eau Claire Academy, Northwest Passage
- ❖ Does your county allow for a dispositional 180 day placement in detention?
 - I have not seen this thus far.
- ❖ 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?

- I think it is rare that kids end up out of home
- ❖ 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?
 - Thus far I have not seen a juvenile sent to corrections in Lafayette County.
- ❖ 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 have not had a case where registration was on the table in Lafayette County.

Services in your county

- ❖ What are common treatment programs used in your county for juveniles? Anger management programs? AODA?
 - I believe both anger management and AODA are offered exclusively through Human Services either in groups or as individual counseling.
- ❖ Is Day Treatment available in your county? If so, what are the names of the specific day treatment programs?
 - I do not know of any day treatment programs.
- ❖ 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?
 - I have not had a juvenile sex offense in this county. I'm guessing that the juvenile would have to travel out of county to get that type of treatment.
- ❖ What programs do you have in your county that are gender-specific?
 - I do not know of any.

Sanctions

- ❖ How often is there a stipulation as to the basis for sanctions?
 - I would say 60% of the time but usually only if we have received some consideration for waiving the sanction hearing.

- ❖ If there is not a stipulation to the violations, how does the State/Department typically attempt to prove the basis?
 - They usually call the social worker to testify or the investigating officer.
- ❖ What sanctions are most often imposed in your county?
 - Usually secure detention or the bracelet. We don't see that many sanction hearings b/c the case workers do a lot of 72 hour holds as sanctions.
- ❖ Does your county utilize stayed days in detention as a sanction?
 - I think I saw this happen once.
- ❖ Has a particular sanction worked well for your clients in your opinion?
 - The only time when I would say that a sanction worked well was when it was stipulated that the client would be released from the dispositional order after completing the sanctions.

Miscellaneous

- ❖ What are common acronyms and their meanings in your county?
 - The only acronyms I can think of off-hand are DPA (Deferred Prosecution Agreement), ASFA (Adoption and Safe Families Act), RAD (Reactive Attachment Disorder), ADD/ADHD (Attention Deficit Disorder/Attention Deficit/Hyperactivity Disorder), and IEP (Individualized Education Program).
- ❖ Who are experts you have used in juvenile cases and would you recommend them?
 - I would recommend Dr. Kent Berney or Dr. Jeffrey Marcus as experts for psychiatric/psychological evaluations. Frequently if the juvenile is already seeing a psychiatrist I will try to get a favorable opinion from that person.