

# **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.

# Lincoln County

Submitted by: Alec Nocco

**Disclaimer: I am probably on the extreme low end for juvenile cases. I had 13 juvenile cases last year of which a few were just TPC, a few were mental health, and then a few were actually delinquency petitions.**

## The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
  - I would think this is pretty standard compared to other counties. The petitions are processed by social services and sent to the DA's office for charging.
- ❖ Do you use the term probation officer or social worker or something else to describe the county representative from human services?
  - We usually call them "juvenile case workers", "social workers" or "social services" as a collective.
- ❖ Is there a specific social worker/probation officer or group of social workers/probation officers who conduct the intake inquiry?
  - The intake usually goes through the supervisor Kurt Schumacher.
- ❖ 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.?
  - The DA's are relatively disengaged and will almost always follow the recommendation of the social workers. The social workers come to the status conferences to negotiate with us and the DA's do not.
- ❖ Are Deferred Prosecution Agreements (DPA) often used in your county?
  - They are infrequent but do occur.
- ❖ Are defense attorneys ever involved in negotiating DPAs prior to the filing of a formal petition?
  - This generally only happens when there are multiple referrals or new referrals that are not being prosecuted as part of an agreement. We are not involved in an isolated case where a DPA might be considered. Typically the intake social worker meets with the family and decides not to charge without input from a defense attorney unless the family hires one prior to that meeting.

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

- Occasionally but it is rare. This typically only happens if the social worker was considering not charging but can't get the family to meet with him.

### **Temporary Physical Custody Hearings**

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

- Always in person unless extenuating circumstances.

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

- Almost always a judge, court commissioners are rare in our county in all cases and are used only when a judge is unavailable.

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

- I'm not sure I'm in a position to say based on my limited involvement in juveniles cases, but in my experience a relatively low percentage of the time.

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

- In my limited experience I have asked for sworn testimony if they want to keep the kid in custody. If he/she is being allowed to go home (which is fairly common in our county and probably considered the normal course) we do not.

- ❖ 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?

- I don't have any experience with anything like that.

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

- It hasn't happened but there is a review hearing every ten days in our county if the juvenile is in secure custody.

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

- We have hearings every ten days without having to specifically request them. Future hearings are typically set at each hearing unless we have an idea that

the juvenile will be in secure for a longer period of time and then multiple reviews will be calendared out.

- ❖ What is the average length of stay in detention?
  - A few days. Most kids are allowed to go home. If there are arranging alternative placement outside the home, that typically takes less than a week.
- ❖ Where is the detention facility for your county?
  - Wausau, WI
- ❖ At a custody hearing, besides detention what placement options are available for kids?
  - Other than the obvious options (home, family member, etc.), we have the option of Shelter Care (group home) and Homme Home (sex offender group 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?
  - It is reviewed every 10 days until disposition
- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?
  - There is the option of electronic monitoring if they have a land line. They occasionally also require some type of reporting to social services.

### **Competency to Stand Trial**

- ❖ How is the question of competency raised in your jurisdiction?
  - Through motion to the judge.
- ❖ Is it common for someone other than defense counsel to raise competency?
  - I'm not aware of that happening in a juvenile case in Lincoln County.
- ❖ Once raised, does the Court require some sort of affirmative showing, offer of proof, other evidence before ordering an evaluation?
  - No, the court will typically order an eval if competency is raised.

- ❖ Do parties generally stipulate to the evaluator's finding on present competency? How about on the likelihood of attaining competency within the statutory period?
  - Parties generally stipulate to the results of the report.
- ❖ Is your county good about periodically reevaluating clients after he or she has been found incompetent, but likely to attain competency?
  - I don't have any experience with this.
- ❖ What competency training is provided in your county?
  - I don't have any experience with this.

### **Waiver to Adult Court**

- ❖ Do the District Attorneys in your county file waiver frequently?
  - No, very uncommon. There has been one in the last year that I am aware of.
- ❖ Do the judges in your county often waive kids into adult court?
  - No, but we probably have a higher percentage of reverse waivers due to Lincoln Hills.
- ❖ 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?
  - In the one I referenced they are seeking waiver.
- ❖ How often are waivers contested?
  - The one waiver reference is contested. Reverse waivers are often contested by the State.
- ❖ If a waiver is contested, how does the State typically prove prosecutive merit?
  - The State is planning to call the supervisor of social services.
- ❖ What sort of witnesses does the State typically call in support of waiver?
  - For reverse waiver hearings the State calls the head of probation and parole or sometimes the security officer at Lincoln Hills.
- ❖ What sort of witnesses does the defense usually call?

- Our CSS
- ❖ 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?
  - Usually exactly.
- ❖ 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?
  - Occasionally. A plea is not required.
- ❖ 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?
  - Yes.
- ❖ Does your jurisdiction have a specialized "wraparound" program?
  - I do not believe so.
- ❖ Does your jurisdiction have a community service/restitution program?
  - I do not believe so.
- ❖ Which Residential Treatment Centers are used by your county?
  - NCHC

- ❖ Does your county allow for a dispositional 365 day placement in detention?
  - Yes.
- ❖ 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 try to keep them in 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?
  - They are occasionally sent to corrections for short periods of time. I always question whether 5-10 days in corrections has any merit but it is not uncommon. I don't think it is financially driven, although I think sometimes the judges shy away from longer periods because the parents are required to pay such high costs.
- ❖ 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 believe it is often stayed.

### **Services in your county**

- ❖ What are common treatment programs used in your county for juveniles? Anger management programs? AODA?
  - There is a corrective thinking course taught by the supervisor at social services.
  - AODA and other programming is contracted out.
- ❖ 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?
  - Homme Home is in Langlade
- ❖ What programs do you have in your county that are gender-specific?

- None that I am aware of.

## **Sanctions**

- ❖ How often is there a stipulation as to the basis for sanctions?
  - Often
- ❖ If there is not a stipulation to the violations, how does the State/Department typically attempt to prove the basis?
  - Testimony of case workers
- ❖ What sanctions are most often imposed in your county?
  - 30 days of electronic Monitoring
  - a few days in secure detention
- ❖ Does your county utilize stayed days in detention as a sanction?
  - Yes.
- ❖ Has a particular sanction worked well for your clients in your opinion?
  - No.

## **Miscellaneous**

- ❖ What are common acronyms and their meanings in your county?
  - Nothing out of the ordinary
- ❖ Who are experts you have used in juvenile cases and would you recommend them?
  - Our CSS Jennifer Hasse-Rau has been effective.