

# **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.

# Oconto/Marinette County

Submitted by Brad Schraven

## The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
  - Some early rep, but mainly don't see much with this. Oconto – juvenile court workers do look at the cases and decide whether or not it should go further. Detention hearing –petition very rarely filed and then they will do it within 48 hours. Sometimes if the kid is already on supervision, sometimes they will just release the kid and won't necessarily charge.
- ❖ 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?
  - Marinette – intake social worker – court report writer (very thoughtful, but can give into the job – DA will override her in this county, and will not except DPA recommendations)
  - Oconto – juvenile court workers → rotating duty to do intake, 3 ongoing workers that deal mainly with the kids on supervision.
- ❖ 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.?
  - Marinette – sometimes the DAs will override the social worker.
  - Oconto – The DAs hardly ever override the social worker, but the DA will sometimes get excited about specific cases and talk more to the social worker about what should happen.
- ❖ Are Deferred Prosecution Agreements (DPA) often used in your county?
  - DPA – never after it has already been charged, but they are doing a lot of them before charging, and they do consent decrees without pleas. In Marinette, consent decrees are rare, but pretty prevalent in Oconto.
- ❖ Are defense attorneys ever involved in negotiating DPAs prior to the filing of a formal petition?
  - No – very rare early rep so no.

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

- Never happens

### Temporary Physical Custody Hearings

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

- Oconto – custodies are supposed to be at 1 pm. Release the kids if there isn't an attorney because they were sued in the past.
- Marinette – the public defender doesn't represent kids in custody hearings. They do the hearings whenever they want.
- Very rare that they send kids to secure custody (closest now in Green Bay). Kids don't have an attorney in Marinette sometimes. Statute conflicting. Kids don't have representation in marinette sometimes and might not have another hearing for 10 days.

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

- Judge

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

- In Oconto county, they usually take the extra 48 hours. In Marinette, they usually do have the petition at the custody hearing, but a lot of times the kid are not even represented. Usually the PD is called if the kid is going to be in secure, but nonsecure, they don't really bother. Crossroads group home is usually where kids go in Marinette

❖ Is there ever sworn testimony taken at custody hearings?

- Yes, in Oconto, sworn testimony is taken unless there is a stipulation.

❖ 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?

- Nothing formal

❖ What is the process for “appealing” the initial custody determination?

- Ask for a rehearing. In both Marinette and Oconto county, placement is addressed at every hearing.
- ❖ Is a request to review ongoing custody status ever made by someone other than defense counsel?
  - As custody is addressed at every hearing, sometimes the social worker or DA will support a change at specific hearing..
- ❖ What is the average length of stay in detention?
  - Kids often remain in secure until disposition in both counties.
- ❖ Where is the detention facility for your county?
  - Brown County
- ❖ At a custody hearing, besides detention what placement options are available for kids?
  - Marinette – parents’ home, relatives, Crossroads GH
  - Oconto – parents’ home, relatives, foster homes
- ❖ 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?
  - Informal – they don’t necessarily need to file anything, it can just be held. 48 hours can get new hearing if they want to file a motion.
  - Intake – plea hearings are held every other week and someone is assigned. – Marinette
- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?
  - Intake worker – parent can call and let the intake worker know if there are issues. The TPC order will say monitor with the rigor of actual supervision and threat of secure custody.

### **Competency to Stand Trial**

- ❖ How is the question of competency raised in your jurisdiction?
  - The defense lawyer just asks for a competency evaluation.
- ❖ Is it common for someone other than defense counsel to raise competency?

- DA will sometimes raise competency in Marinette, usually they tell us and then we can raise it, but in some adult cases they actually raise it.
- ❖ Once raised, does the Court require some sort of affirmative showing, offer of proof, other evidence before ordering an evaluation?
  - Just ask for competency eval – no offer of proof.
- ❖ Do parties generally stipulate to the evaluator's finding on present competency? How about on the likelihood of attaining competency within the statutory period?
  - Usually, there is a stipulation to the evaluator's opinion
- ❖ Is your county good about periodically reevaluating clients after he or she has been found incompetent, but likely to attain competency?
  - Oconto – just convert to JIPS and don't reevaluate
  - Marinette – keep them open for a long time, and keep checking to see if they have become competent. Maturity – waiting to see.
- ❖ What competency training is provided in your county?
  - None

### **Waiver to Adult Court**

- ❖ Do the District Attorneys in your county file waiver frequently?
  - No, Oconto and Marinette both had 0 in 2010. When they do file waiver, it is usually for a very serious offense.
- ❖ Do the judges in your county often waive kids into adult court?
  - If it is filed, it is usually serious and the judge will waive.
- ❖ 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 want waiver.
- ❖ How often are waivers contested?
  - Waivers are contested.

- ❖ If a waiver is contested, how does the State typically prove prosecutive merit?
  - Call police officers.
- ❖ What sort of witnesses does the State typically call in support of waiver?
  - Police officers and social workers, in one case, a parent was pushing it and thus, that parent testified. Parents called even if they don't want waiver to show how parents can't control.
- ❖ What sort of witnesses does the defense usually call?
  - Social worker, parents if they are supportive, teachers, placement providers or other service providers.
- ❖ 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?
  - This hasn't happened at all.

### **Disposition**

- ❖ How closely are the social worker's recommendations followed?
  - In both counties, 98% of the time the social worker's recommendations are followed. Cost is meaningful to the judges and the social worker's know this.
- ❖ 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?
  - They are not super common, but when they are resolved that way usually a plea is not required up front.
- ❖ Are there "standard rules of supervision" that are in all delinquency dispositions?
  - Yes, they are standard.
- ❖ Does the State typically agree with the Department's recommendations?
  - Yes

- ❖ Does your jurisdiction have an intensive supervision program?
  - Oconto – It is called intensive supervision, electronic monitoring for 30 days and daily contact with a social worker.
  - Marinette – not a specific program, but they will have more services for certain kids.
  
- ❖ Does your jurisdiction have a specialized "wraparound" program?
  - No specific program
  
- ❖ Does your jurisdiction have a community service/restitution program?
  - Marinette has a restitution program and this is almost in everyone's order. Oconto has a program, but it is not used as much as in Marinette.
  
- ❖ Which Residential Treatment Centers are used by your county?
  - Oconto – Family Services in Green Bay, Northwest Passage, Homme Home, Rawhide, Eau Claire Academy. Most often for 30 day assessments, but also used for long term cases when necessary.
  - Marinette – rarely uses RCCs. They usually use Crossroads.
  
- ❖ Does your county allow for a dispositional 365 day placement in detention?
  - Both counties use these types of placement in detention – sometimes forthwith (usually only 30 days) and sometimes impose and stay time. Before Marinette sometimes would put the kids in for 90 days, even before the law was changed. 3 petitions – put the kid in detention for 30 days for each case consequence. If imposed and stayed, there needs to be a hearing to put them in.
  
- ❖ 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?
  - Marinette doesn't use foster homes much so judges try to keep them at home.
  - Oconto uses more foster homes, but it isn't usually the case when both the kids and parents want the kid at 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?
  - Not used very often. They rarely use SJO, and Corrections is usually used for frequent flyers in felony cases like burglary. Marinette exhausts Crossroads before resorting to Corrections. It usually happens on COP that a kid would

be placed there rather than at the original dispositional hearing. We also do not normally use Type II status.

- ❖ 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?
  - They usually stay sex offender registration at the dispositional hearing.

### **Services in your county**

- ❖ What are common treatment programs used in your county for juveniles? Anger management programs? AODA?
  - Brick program – scared straight (Bring kids to Green Bay correctional) (Oconto)
  - ADAPT – Human service programs that offer anger management and programming (Marinette) – counseling arm of human services.
  - Oconto County Human Services.
- ❖ 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?
  - Todd Holman treats sex offender in Marinette (DAs and judges like him)
  - Oconto – Jim Drake does psychosexual evaluations and also provides sex offender treatment. Less serious SOs go to human services.
- ❖ 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?
  - About 50% of the time.
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- ❖ If there is not a stipulation to the violations, how does the State/Department typically attempt to prove the basis?



- Social worker testifies
- ❖ What sanctions are most often imposed in your county?
  - 10 days secure detention. 72 hour holds are used a lot in both these counties. They get credit for the 3 days.
- ❖ Does your county utilize stayed days in detention as a sanction?
  - The Stayed days are used from the 365 day orders, but the kid comes back to court before the time can be imposed.
- ❖ Has a particular sanction worked well for your clients in your opinion?
  - Community service or house arrest can work.

### **Miscellaneous**

- ❖ What are common acronyms and their meanings in your county?
  - None.
- ❖ Who are experts you have used in juvenile cases and would you recommend them?
  - Jim Drake is ok for psychosexual evaluations.
  - Dr. Kevin Miller