

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.

Outagamie County

Submitted by Amanda Skorr

Disclaimer: All my answers are in regards to normal juvenile proceedings held in connection with chapter 938. Truancy Court cases are an entirely separate matter and would bring about a variety of different responses, and therefore, any attorney handling a truancy court case should not rely on these answers.

The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
 - Once a referral is sent over from the police, we have a juvenile intake division in Youth and Family Services that looks over the reports. They then schedule an intake conference with the juvenile and the parents if they are unsure about whether or not to proceed with a formal delinquency referral. (If the charges are considered too serious, a letter just gets sent to the family stating a referral for a delinquency petition has been forwarded to the district attorney's office). Intake then decides whether to go informal or send it to the DA.
- ❖ 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?
 - Yes. We refer to them as Juvenile Intake.
- ❖ 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.?
 - Almost always yes.
- ❖ Are Deferred Prosecution Agreements (DPA) often used in your county?
 - They are not uncommon. It is possible to ask a judge to overrule the DA/Social workers and force a DPA in the best interest of justice/the juvenile. We have been occasionally successful with this. See Wis. Stat. 938.21 (7).
- ❖ Are defense attorneys ever involved in negotiating DPAs prior to the filing of a formal petition?
 - Not that I am aware of. If they are, it's private counsel.

- ❖ Are you ever successful at negotiating DPAs once a formal petition has been filed? Does this happen often?
 - Yes this happens. Not as often as it should, but it does happen. The key is getting the social worker on board. A worker is always assigned even before the juvenile is adjudicated, so it is important to know who that person is and talk to them about DPA/ Consent Decrees, or even what their recommendations would be a dispo to better make decisions and prepare your clients.

Temporary Physical Custody Hearings

- ❖ Do your clients appear personally at these hearings or does your jurisdiction utilize video conferencing?
 - Personal appearance.
- ❖ Are your custody hearings before a court commissioner or a judge?
 - Court Commissioner at 3:00 p.m. Monday through Friday.
- ❖ Is a petition normally filed by the time of/at the hearing?
 - No.
- ❖ Is there every sworn testimony taken at custody hearings?
 - Rarely. The Social Workers will prepare a TPC report that they give defense counsel and the juvenile before court (right before) and give to the Commissioner, outlining their arguments for the request, reasonable efforts and their placement recommendation.
- ❖ 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?
 - DeNovo review to the Circuit Court Judge.
- ❖ Is a request to review ongoing custody status ever made by someone other than defense counsel?

- Yes. If a juvenile is in secure custody, the Judges will address placement at every hearing. Social workers, via the state, will also ask to review ongoing custody status if necessary. It is rare for this to be necessary, however.
- ❖ What is the average length of stay in detention?
 - The average length of stay in 2012 was 6.7 days.
- ❖ Where is the detention facility for your county?
 - On the 3rd floor of the Outagamie County Jail.
- ❖ At a custody hearing, besides detention what placement options are available for kids?
 - Placement back at home, or home of the other parent (if two parents involved who are not living together).
 - Relative Placement
 - Foster Home
 - Treatment Foster Home
 - Shelter Care (which is located not too far from the Courthouse on 5th Street)
 - Placed at home on Electronic Monitoring
- ❖ 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?
 - Motion to review filed with the Court Commissioner or Circuit Court Judge (Remembering it is the Court Commissioner who placed the kid in the first place, so your best chance at getting this changed is probably with the Judge hearing the motion).
- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?
 - Yes. Electronic Monitoring bracelets are available, but limited in number.

Competency to Stand Trial

- ❖ How is the question of competency raised in your jurisdiction?
 - By defense counsel.
- ❖ 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—generally the statement, “Based on my conversations and interactions with the juvenile, I do not believe he/she is competent to proceed, and am requesting an evaluation be conducted.” If I believe it will not harm my client or violate attorney/client privilege, I have elaborated circumstances at times (e.g., my client is in the LD classroom at school, and mom informs me he functions at a first-grade level, etc.).
- ❖ Do parties generally stipulate to the evaluator's finding on present competency? How about on the likelihood of attaining competency within the statutory period?
 - We generally stipulate to the finding on competency, however, I did have the DA object once. A contested hearing was scheduled, but the DA’s office changed their mind before then and stipulated, so an evidentiary hearing was not required.
 - I have, on a number of occasions, contested the likelihood of regaining issue. Sometimes successfully, sometimes not. Sometimes just the threat of contesting has convinced the DA to just go forward with the JIPS petition instead.
- ❖ Is your county good about periodically reevaluating clients after he or she has been found incompetent, but likely to attain competency?
 - Yes
- ❖ What competency training is provided in your county?
 - An outpatient program through Winnebago Mental Health Institute.

Waiver to Adult Court

- ❖ Do the District Attorneys in your county file waiver frequently?
 - No.
- ❖ Do the judges in your county often waive kids into adult court?
 - It’s not a forgone conclusion that just because the waiver petition is filed, the Judge will go along with it.

- ❖ 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?
 - I have seen it used as a bargaining chip. I have even seen the DA file a waiver petition, then do a pre-plea consent decree. If the juvenile violates, they can pursue the waiver. If not, the juvenile stays in juvenile world.

- ❖ How often are waivers contested?
 - Almost always I would hope.

- ❖ If a waiver is contested, how does the State typically prove prosecutive merit?
 - Seriousness of the offense
 - Juvenile's prior record (a.k.a. reasonable efforts by the department and exhaustion of juvenile resources)

- ❖ What sort of witnesses does the State typically call in support of waiver?
 - Social workers
 - Cops
 - Experts (physiologist)

- ❖ What sort of witnesses does the defense usually call?
 - Expert physiologist (Dr. Patty Coffey. Dr. Allen Hauer. Dr. Frank Cummings)
 - CSS worker to research alternative options.
 - I have called people from Lincoln Hills to testify about programming available there, and then called prison representatives to talk about the long wait lists for programming in the adult prisons.
 - Boys and Girls club volunteers familiar with the juvenile.
 - Pastors/ Religious leaders who work with the juvenile.
 - Family members
 - Teachers
 - Employers

- ❖ 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?
 - 99.9% of the time.

- ❖ 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. The social workers draft the consent decrees. Almost all of the time, they are post-admission consent decrees. The only pre-admission consent decrees I am aware of are in lieu of a waiver (to preserve the DA's right to pursue waiver if the juvenile violates).

- ❖ Are there "standard rules of supervision" that are in all delinquency dispositions?
 - Yes. They are as follows for the Juvenile:
 - Have no violations of the law. Report all police contacts to Social Worker within 72 hours.
 - Attend school/approved educational program as required, on being excused by the school for a legitimate reason.
 - Abide by all home rules and curfew
 - Comply with all Social Worker expectations and recommendations. Meet with the assigned worker as requested.
 - Follow the Case Plane established by the Department Social Worker.
 - Complete X number of community service hours and cooperate with the rules and expectations of the Outagamie County Restorative Justice Program. Youth and Parent will schedule appointment with Restorative Justice Coordinator within 30 days to develop a plan for completing community service hours. (Obviously number of hours varies, and not all kids are ordered to do community service, but a good many of them are).
 - Attend individual, parent and/or family counseling as deemed appropriate by the assigned worker.
 - Do not use or possess alcohol or controlled substances.
 - Sign warnings for sanctions
 - Serve 30 days in Shelter Care or secure detention. The sentence is stayed and may be implemented for violations of supervision.
 - Pay Juvenile Delinquency surcharge fee of \$20 per file to the Clerk of Courts within 60 days.
 - Standard conditions for the Parents:
 - Maintain awareness of juvenile's friends, activities and whereabouts at all times.
 - Monitor compliance to rules and enforce consequences
 - Work with school, treatment providers, and human services to meet treatment goals.

- Comply with all Social Worker expectations and recommendations. Meet with the assigned worker as requested
 - Contribute toward the expenses of custody/services in the amount to be determined by OCDHHS, retroactive to date of service.
 - Sign release of Department of Health and Human Services records for case planning, treatment needs, as determined by Social Worker.
- ❖ Does the State typically agree with the Department's recommendations?
- Yes, though sometimes they will up the hours of community service, or even the length of the supervision. (12 months instead of 6 months, etc). That is not common, but does happen.
- ❖ Does your jurisdiction have an intensive supervision program?
- Nothing specified as such.
- ❖ Does your jurisdiction have a specialized "wraparound" program?
- Yes. It's called wraparound 😊
- ❖ Does your jurisdiction have a community service/restitution program?
- Yes. It is run through the Department of Youth and Family services, it's called Restorative Justice Program
- ❖ Which Residential Treatment Centers are used by your county?
- Day Treatment in Brown County. (Mache Village).
 - A variety of treatment foster homes.
 - Options also has a day treatment program.
- ❖ Does your county allow for a dispositional 365 day placement in detention?
- As far as I know, yes. I am not aware of anyone receiving this disposition yet, however. The Department seems generally against the concept (feeling that even a stay at Lincoln is preferred to a lengthy stay in secure detention (where the juveniles are locked up the whole time, without any real programming).
- ❖ 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?

- No, they are not quick to remove kids. It is very expensive to do this, and therefore, the Judge's don't rush to that conclusion. The numbers of out of home placements have been declining over the last decade or so I believe.
- ❖ 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?
 - Last Resort. Again, it's very expensive.
 - Do they send kids that shouldn't be sent...hmmmm...that's a complicated answer. I think if the alternative is waiver into adult court, and then adult prison, Lincoln is better. I think sometimes the mental health issues of some of the juveniles could be better explored and then treated to avoid Lincoln.
- ❖ 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?
 - Our Judges impose and stay the registration. The following is the current language being used in the dispo orders: (It's far from perfect and I have been keeping track of ideas to challenge it. Further, I recommend to juveniles they petition for expungment when they turn 17 to make sure they don't have any future issues. I also advise them to ask the court to issue a permanent stay of the registry after they complete treatment—write a letter to the judge).

New Recommendation for JSO

and his parent(s)/guardian(s) are ordered to cooperatively participate in the **Tri-County Juvenile Sex Offender (JSO) program** assessment and comply with all recommended JSO treatment services. The latter may include individual therapy, family therapy, and group treatment, which may require completion of assignments and activities outside of the formal JSO sessions.

Further, the court orders that the Juvenile must demonstrate a level of risk to reoffend that is sufficiently low enough to indicate that the Juvenile does not pose an ongoing risk to others, as based on the Juvenile's compliance with the following specific conditions:

- a. Demonstrates a high level of cooperation in sex offender treatment services and consistently applies the treatment concepts to maintain a safe environment in all settings;
- b. Demonstrates a clear understanding of and the ability to regulate the interplay between his thoughts, feelings and actions;
- c. Demonstrates a high level of honesty regarding his sexual offense(s) and offending history;
- d. Demonstrates no more than a low level of generalized delinquent acting out;
- e. Demonstrates no inappropriate sexualized behaviors; and
- f. Demonstrates a reduced risk to reoffend based on scores in scales three and four of the juvenile sex offender assessment tool, the J-SOAP-II.

In addition, the court orders that the family's health insurance provider or 3rd-party payer pay for the JSO therapy services in accordance with the terms of the parents'/guardians' or youth's health insurance policy or other 3rd-party payment plan. If they have no insurance, the assessment and treatment services will be provided at a rate based on the family's ability to pay in accordance with the Tri-county service providers' and/or Outagamie County Department of Health and Human Services's established procedures for determining such rates.

New Recommendation for Imposed and Stayed Sex Offender Registry

The court **imposes and stays** that _____ comply with **Sex Offender Registration** requirements under WI SS.301.45 and 301.46. This Stay of Order for registration will provide the Juvenile an opportunity to participate in treatment services and to demonstrate whether his risk to reoffend is sufficiently low enough to indicate that he does not pose an ongoing risk to others. The Court's future determination of whether to impose Sex Offender Registration will be based upon the Juvenile's compliance with the specific conditions to be met as identified in the court ordered condition for the Tri-County Juvenile Sex Offender (JSO) program.

Further, at such time that the court imposes Sex Offender Registration, within 10 days of the lift of stay the Juvenile must complete Sex Offender Registration form DCC-1759 (including a list of all internet identifiers used) and send it to the WI Department of Corrections. In addition, once registered, the Juvenile is ordered to report all change(s) in address, employment, volunteer activities, school enrollment, internet identifiers, or vehicle ownership to the Department of Corrections within 10 days of each change. The Juvenile is also ordered to respond to all registration letters mailed to their residence within 10 days of receipt of each letter, and the Juvenile is ordered to make a face-to-face contact with the Department of Corrections Sex Offender Registration Specialist within the first month of being placed on the Sex Offender Registry to have his photograph taken for the registry. The Court also orders the Department of Health and Human Services to release the court dispositional study and order to the State of Wisconsin Sex Offender Registration Specialist.

Services in your county

- ❖ What are common treatment programs used in your county for juveniles? Anger management programs? AODA?
 - Options and Libertas are common AODA programs.
 - ART- Anger Management
 - Baby Think it Over
 - Errors in Thinking
 - Family Training Program
 - Day Report Center (employment help, community service)
 - After-school program
 - Independent Living
 - Mentoring program

- ❖ Is Day Treatment available in your county? If so, what are the names of the specific day treatment programs?
 - Day Treatment is available through Brown County.

- ❖ 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?
 - See above
- ❖ What programs do you have in your county that are gender-specific?
 - Sex offender program is specific for boys.
 - Independent Living Girls Group

Sanctions

- ❖ How often is there a stipulation as to the basis for sanctions?
 - Sanctions are not overly common in our County. However, I'd say about half the time there is a stipulation to the basis.
- ❖ If there is not a stipulation to the violations, how does the State/Department typically attempt to prove the basis?
 - Social worker testimony
 - Police reports if available
- ❖ What sanctions are most often imposed in your county?
 - Electronic Monitoring
 - Nonsecure placement in Shelter care (generally 3-10 days).
 - Secure Detention (generally 3-10 days).
 - Community service hours
- ❖ Does your county utilize stayed days in detention as a sanction?
 - Yes.
- ❖ Has a particular sanction worked well for your clients in your opinion?
 - Community Service seems more valuable than locking them up.

Miscellaneous

- ❖ What are common acronyms and their meanings in your county?
 - The Department means the Department of Youth and Family Services

- Social Study means court report prepared by the Social worker and presented to the Judge for disposition.
- TPC = Temporary Physical Custody
- EM = Electronic Monitoring
- Paper = supervision (or adult probation or extended supervision).
- FTP = Family Training Program
- CAC = Child Advocacy Center, where they interview children (usually alleged sex assault victims).

❖ Who are experts you have used in juvenile cases and would you recommend them?

- Dr. Patty Coffey- Yes.
- Dr. Allen Hauer- Yes.
- Dr. Frank Cummings- Yes.
- Mark Reich (sex offender risk evaluator)- Yes.
- Lincoln Hills Program Director. It was a long time ago, so I'm not sure it's the same person.
- Green Bay Correctional Program Director- Yes.
- Dr. Warner- Yes.
- Dr. Richard Hurlbut. No.
- Kate Damp- Green Bay CSS. Yes.
- Deb Cudworth- Appleton CSS. Yes.
- If there were a contested restitution hearing, I would consider calling the restitution program coordinator to testify about ability to pay issues. (I did this in Winnebago County and it was helpful to the juvenile.)

* In our county, it is very typical for the DA's "offer" to be plead to the charge (charges), open dispo. First, don't be afraid to negotiate that (suggest a consent decree, counter-offer with a plea to the lowest charge, etc). And if there is only one charge, or the state doesn't budge, don't be afraid to take the case to a court trial. (If there are felonies involved, or the case is a sex assault, there are other things to consider, of course.) With the normal run of the mill school/home DC, you'll be surprised how often the witnesses won't show. And even when I've lost the trials, it's helped at dispo because the Judges realize how minor many of these incidents really are. Finally, Outagamie County Judges will not hold it against the kid because they had a trial (in other words, the kid is going to get the same recommendations no matter what—the Judge isn't going to order secure detention or Lincoln just because the kid had a trial). These can be great learning experiences, and practice at cross and direct, making objections, closing arguments, etc.