

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.

Racine County

Submitted by: Janice Pasaba

The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
 - Referrals can sit on police desks for as long as they want. This means we occasionally get a referral that is several months old. Once it goes to HSD, it depends on the worker whether the referral is timely processed, but it usually is. Workers will sometimes do a counsel and release rather than refer. They can also send a case to Community Panels, comprised of volunteer panelists. If a case is sent to Community Panels, the child must admit and follow up with consequences, but the case is diverted from the D.A. It can be forwarded if the child does not complete the consequences, but the admission is not held against the child.
 - After the 40 days pass, the D.A.'s have the usual twenty days to issue or refer back and start the process a second time.
 - If the D.A.'s miss the filing deadline, the attorney can protest to no avail about the missed deadline. Good cause has been found for such lame excuses as the secretary was on vacation, the paperwork got lost on the D.A.'s desk, etc.
 - If the charges are considered serious enough, the child will be held in detention almost immediately. Virtually all felonies will be held at once as will juveniles with a longer record and new misdemeanors.

- ❖ Do you use the term probation officer or social worker or something else to describe the county representative from human services?
 - The official term in Racine County is case manager. Social worker is also used. I am using the term probation officer much more than in the past because I believe that it gives more realistic expectations to child and parent. (We used to have almost double the number of case managers; there is a movement here to restrict the wages of the case managers and there is some belief that the county would like to contract out the case management function as a cost saving measure.)

- ❖ Is there a specific social worker/probation officer or group of social workers/probation officers who conduct the intake inquiry?
 - Our county usually has one worker, on rotating assignments, doing intake duty on a given day. If the child is on orders, the regular worker will be contacted about decisions if possible.

- ❖ 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.?

- Often, but not always.
- ❖ Are Deferred Prosecution Agreements (DPA) often used in your county?
 - Fairly rarely.
- ❖ Are defense attorneys ever involved in negotiating DPAs prior to the filing of a formal petition?
 - Only the private bar because the PD's are not notified of cases until after they are charged. Rarely, the child's parent know enough to contact us prior to charging; this happens when the case is serious enough for the child to be detained. In some cases a parent will hire private counsel if they can afford it because they recognize the seriousness of the case before charging, e.g. recently, parents hired when the child was being accused of sexual assault. We learned of the case at the Initial Appearance at detention and private counsel was already engaged.
- ❖ Are you ever successful at negotiating DPAs once a formal petition has been filed? Does this happen often?
 - Sometimes, but it is not something that our DA's do often. Sometimes consent decrees can be arranged and the DA's prefer those to DPA's—because they require an admission.

Temporary Physical Custody Hearings

- ❖ Do your clients appear personally at these hearings or does your jurisdiction utilize video conferencing?
 - Both. Usually these hearings are at the juvenile detention center. Every Thursday, our court commissioner conducts walk-in first appearances in our law enforcement center, but also does the TPC and initial appearances at the detention center by video. The two facilities are about three miles apart.
- ❖ Are your custody hearings before a court commissioner or a judge?
 - Both. Currently, they are usually done by a judge four days a week and by a court commissioner one day a week as outlined above.
- ❖ Is a petition normally filed by the time of/at the hearing?
 - We normally get the petition at the hearing which is held at 1:30 daily, M-F.. If petitions are completed, the DA will FAX them to our secretarial staff

between 11:00 and 11:30 a.m. On busy days, we may receive some by FAX and get the rest when the D.A. shows up at detention between 1:00 and 1:30 (depending on the DA).

- ❖ Is there ever sworn testimony taken at custody hearings?
 - No.
- ❖ 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?
 - Most often, children who are released are placed on a secure contract (for which the parents pay a daily fee). The contract terms usually include that the child cannot leave the county without court permission. Parent and child often are required to report every time they leave or return home outside of usual school hours. Other specific restrictions may be included. Detained children can sometimes get furloughs for medical and psychiatric evaluations, funerals, and in recent years, we can get some furloughs for holidays for some kids (about three hours).
- ❖ What is the process for “appealing” the initial custody determination?
 - If a court commissioner made the decision, one can file for a review by the judge. If the judge made the decision, the judge may review it if you can come up with new information. They will rarely review it before the pre-trial conference. This has forced us into asking for pre-trials within two or three business days in most cases when we renew the request for release. If that is denied, the child usually sits until disposition.
- ❖ Is a request to review ongoing custody status ever made by someone other than defense counsel?
 - Parents occasionally ask and the court tells them to talk to defense counsel.
- ❖ What is the average length of stay in detention?
 - It varies.
- ❖ Where is the detention facility for your county?
 - It is the fourth floor of a county building that also houses the Human Services Dept., a Mental Health program and the Workforce Development Center. The detention facility is on the fourth floor. It can house over 100 kids and takes inmates from nearby counties. There is also a juvenile courtroom, four conference cells, a glassed-in visiting area with parents and kids

communicating via telephone, a waiting area, and several offices for detention staff. Rooms in the facility also house the ACE program, which is our local, in-custody version of Lincoln Hills School.

- ❖ At a custody hearing, besides detention what placement options are available for kids?
 - Home or relatives only if they appear at the hearing and are willing to take the child. Non-biological relatives are not considered, even if they are there and willing although we get “step” parents sometimes if they are in the home. Shelter homes may also be used, but are rarely available for delinquents although they seem to exist for CHIPS kids.

- ❖ 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?
 - In secure custody, either file paperwork or ask for a review. We do not have a county group home unless a child is placed there by dispositional order. Then we usually have to get the agreement of the county that the child is ready for the return home or they will stay in the group home.

- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?
 - I think you mean what we call the secure contract. This is administered by Professional Services Group. They use to require a landline, but now a cell phone seems acceptable. The group monitors compliance and can notify the case manager of violations which usually results in a return to court. In essence, I tell kids that the contract part is that the judge will give them a chance to follow strict rules at home, the secure part is a return to secure detention if they do not. One of the less desirable features of this is that we are forced to ask for secure contracts without much chance to explain them to parents. Parents then continually grouse that their freedom is restricted, that there are job consequences, and are dismayed by the costs. I can dampen that by pointing out that detention costs more (\$35.00 per day to an upper limit of \$1200 per year for a given child.)

Competency to Stand Trial

- ❖ How is the question of competency raised in your jurisdiction?
 - The defense counsel usually raises it. Sometimes we are alerted by a case manager about competency concerns. Parents will also raise the issue to 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?
 - Not usually, but we often try to outline a minimal basis for the concern.
- ❖ Do parties generally stipulate to the evaluator's finding on present competency? How about on the likelihood of attaining competency within the statutory period?
 - Most of the time although I recently had a DA challenge and ask for a fifth competency exam within the space of a year for a 15 year old. I guess four findings of incompetency weren't enough.
- ❖ Is your county good about periodically reevaluating clients after he or she has been found incompetent, but likely to attain competency?
 - It is done sometimes now, but usually a finding of incompetency results in a JIPS order.
- ❖ What competency training is provided in your county?
 - None that I know of unless a psychologist does it as part of treatment.

Waiver to Adult Court

- ❖ Do the District Attorneys in your county file waiver frequently?
 - Does the sun come up in the morning? Our county is consistently #1 or #2 in the state for the number of kids waived and they file a lot of petitions where we win or work out a deal.
- ❖ Do the judges in your county often waive kids into adult court?
 - It depends on the judge, but it is not infrequent. The last statistics I am aware of for our county were that 30 kids were waived in 2011. Waivers happen so often that kids are aware of the process and very often we have to try to persuade kids to contest. We often have kids who request waiver even though no petition has been filed. We have, on very rare occasions, even filed a petition on behalf of the child. (Child coming in on a DC, about to turn 17, who would face a year long order with frequent detentions/sanctions, and who would get a fine and a slap on the hand in 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?
 - They are seeking waiver. In our county the policy is that if you reach about 15 ½ and have a serious prior record or are over sixteen and have no record, but a serious charge, a waiver petition is filed.
- ❖ How often are waivers contested?
 - Most of the time unless the D.A. caves in.
- ❖ If a waiver is contested, how does the State typically prove prosecutive merit?
 - Unless there are factual issues such as the age of the child, the state relies on In the Interest of P.A.K. and the four-corners of the petition and the courts accept that.
- ❖ What sort of witnesses does the State typically call in support of waiver?
 - Usually only the case manager who prepares the waiver report. If the waiver study does not recommend waiver, then it is usually withdrawn although I have seen rare occasions where the D.A. will try to use the case manager as a witness even though the recommendation is against waiver. I have also had occasions where the D.A. has called in a probation agent to extol the wonderful adult services available and sometimes persons at the late Ethan Allen or Southern Oaks Schools who had dealt with the juvenile previously. Those, however, were rare.
- ❖ What sort of witnesses does the defense usually call?
 - Parents, in the past, CSS folks, but our worker no longer has a social work degree, clergy persons, school authorities if we can find a favorable one, other relatives, the juvenile, etc. may all be resources.
- ❖ Is it at all common for a juvenile to initiate waiver proceedings?
 - Not common, but I have done it. A petition must be filed before the initial appearance and it is rare that we know about the case before initial appearance. More often, I have to persuade fifteen year olds that they don't want to go to the jail because they are eager to go; they know that "you can buy Doritos at the jail" and one is surprised to learn that "you can sign yourself out of the jail."
- ❖ Are you aware of any instances in your jurisdiction of the Court initiating proceedings?

- Not directly, but on occasion I have seen the judge suggest that Human Services Dept. may wish to look at that issue, i.e. “I’m not telling you what to do, but. . .”
- Our current judge will waive kids, but is pretty good about not waiving when presented with the right arguments. However, I could see him initiating proceedings in the right instance.

Disposition

- ❖ How closely are the social worker's recommendations followed?
 - Our current judge follows some and deletes or substitutes others. He does not usually ask the workers for comments at disposition unlike most previous judges. Previous judges have followed the recommendations most of the time. They even follow the wording which I believe is needlessly complicated for kids. His most frequent addition is a requirement to attend 20-30 AA or NA meetings; he makes no bones about the fact that his parents were alcoholics and he is a huge believer in twelve step programs.
- ❖ 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?
 - Not frequently. The DA’s draft them and they do require a plea. At times, we can negotiate language in the specific terms, but one has to be proactive on this. It is my perception that DA’s are more willing to do consent decrees for private attorneys with private pay clients than they are with PD’s and PD appointments. The DA’s also contend that the court cannot issue a consent decree unless they agree with it. I have seen two judges ignore this and order them to do a consent decree.
- ❖ 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-some case managers impose more severe conditions on certain cases. They can do this through the standard order that says “juvenile shall follow the rules of home, community, and school, including curfew, as established by parents and/or HSD.” It is probably financial considerations that limit this rule more than any other reason.

- ❖ Does your jurisdiction have a specialized "wraparound" program?
 - Yes, Children Come First.

- ❖ Does your jurisdiction have a community service/restitution program?
 - No but restitution is regularly required and DA's will even ask for insurance payouts to be repaid if the listed victim requests it. The insurance company doesn't have to request it or be present as long as the victim complains that their rate may go up if it isn't repaid.

- ❖ Which Residential Treatment Centers are used by your county?
 - Milwaukee Academy, Homme Home, Norris Adolescent Treatment Center, St. Aemilian's, and rarely Rawhide. They have used numerous other facilities in the past, but now they are pretty much relying on our residential ACE program at our detention center, the Racine county version of the field of dreams. Almost all of our local group homes have closed due to lack of residents.

- ❖ Does your county allow for a dispositional 365 day placement in detention?
 - Our county invented it; I tried to fight ACE from the very first meeting when it was introduced. I have, in the past, even convinced kids to turn it down and to go to DOC because they would receive better services at that time. I no longer have to do that.

- ❖ 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 will remove them when necessary, but in recent years I sense that they are under political and financial pressures from the county to cut costs.

- ❖ 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?
 - I practiced in front of 12 judges in juvenile court so this answer could be all over the place. Currently, our judge believes in graduated consequences so if you get to your fourth batch of court orders, you will likely be waived or sent to corrections. You will probably get an easy disposition on the first. While I think this judge is sending kids to corrections sooner than other kids (he expects changes to come at once), I cannot say that he is sending kids who should not go. I think this judge is ignoring financial pressures that are being exerted on him and sending kids to DOC anyway. This judge believes that

you give kids a chance, but you don't give them more than one or two unless there is a very good reason.

- ❖ 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 am only aware of a few cases since he rotated in. I believe that he and the other judge will likely defer it and review the issue after the completion of treatment. However, there is some perception that they do not have the power to defer the requirement. We can often negotiate this with the DA's, but they are currently demanding psychosexual evaluations as part of the dispositional requirements and usually the parent must pay for it.

Services in your county

- ❖ What are common treatment programs used in your county for juveniles? Anger management programs? AODA?
 - Children Come First, Life Skills, anger management, and supposedly mentoring, but I don't hear much about them being able to find mentors. We also have recommendations to AODA-but when the child violates again it often turns out that this was not started or there was a waiting list. We used to get gang diversion a lot, but the money for that seems to have dried up.
- ❖ Is Day Treatment available in your county? If so, what are the names of the specific day treatment programs?
 - We have an Afternoon Reporting Center, but it seems to be a check in and do your homework program.. We also have some kids who are referred to the Rogers mental health day treatment in Kenosha. We have nothing else of significance.
- ❖ 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?
 - There is not a lot of programming available. We are fortunate that Dr. David Thompson runs a juvenile sex offender treatment group in our county which is well respected. It is used both as a treatment while kids are placed in the home or as aftercare for a placement like Norris or Homme or DOC. The difficulty is that it is located in the west end of the county so travel is an issue for city residents; however, the west end seems to be where many of the sex offenses also occur.
- ❖ What programs do you have in your county that are gender-specific?

- The schools have a program called PEPS for pregnant girls; this is not specifically for delinquents, but some qualify.

Sanctions

- ❖ How often is there a stipulation as to the basis for sanctions?
 - More often than not because the violations are usually well-documented; very often we can negotiate a number of days, serve some, stay some.
- ❖ If there is not a stipulation to the violations, how does the State/Department typically attempt to prove the basis?
 - The court usually accepts the testimony of the worker and the records they present. If witnesses are called, it is usually the defense who calls them.
- ❖ What sanctions are most often imposed in your county?
 - Almost exclusively, detention.
- ❖ Does your county utilize stayed days in detention as a sanction?
 - Yes, but usually serve some, stay the balance.
- ❖ Has a particular sanction worked well for your clients in your opinion?
 - No

Miscellaneous

- ❖ What are common acronyms and their meanings in your county?
 - AA-African American
 - ACE or ACE 180-Alternatives to Corrections through Education
 - AODA-Alcohol and other drug abuse
 - A-TR-Absent, truant
 - AWOL-Absent Without Leave
 - Blue slips-Suspensions from school
 - CAC-Child Advocacy Center
 - CCW-Carrying Concealed Weapon
 - CDTP-Criminal Damage to Property
 - DC-Disorderly Conduct
 - DPA-Deferred Prosecution Agreement

- EIL-Excused Ill
- GD-Gangster Disciples
- HA-Hispanic American
- HSD-Human Services Dept.
- ICE-Immigration and Customs Enforcement
- ISS-In-school Suspension
- JDC –Juvenile Detention Center
- JIS-Juvenile Intensive Supervision
- LEC-Law Enforcement Center
- MPPD-Mount Pleasant Police Dept.
- OSS-Out of School Suspension
- OVWOC-Operating Vehicle Without Consent
- PSG-Professional Services Group-the secure contract provider
- PTAC-Party to a Crime
- RCSD-Racine County Sheriff’s Dept.
- RPD-Racine Police Dept.
- RT-Retail Theft
- SAC-Sexual Assault of a Child
- SSMG-Sixteenth Street Money Getters
- T-Tardy
- THC-Weed
- UA-urinalysis
- ZCI-Zimmerman Consulting Inc. (the local test and narc franchise)
- All the usual CCAP abbreviations as well as CHIPs, JIPs, and JV
- We also have some local acronyms that represent the initials of various DA’s e.g. M3 Is Maureen M. Martinez

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

- Yes for the following:
 - Dr. David Thompson. Clinical Psychology Associates, Burlington, WI 262 763-9191
 - Dr. Anthony Jurek. Used to be at Ethan Allen, I believe he works out of home now. 414-328-1338
 - Dr. Melissa Westendorf 262-886-3214
 - Dr. Paula Cooper Fair disclosure: She is my sister so I am biased. I also have not and cannot use her for conflict reasons. She works part time with Dr.Thompson and is both a school psychologist (in IL) and a clinical psychologist. 262-763-9191
- No for the following:
 - Dr. Michelle Iyamah The evaluation was not unfair and it was thorough, but I never could speak with her personally, only support staff. They did not seem to understand the requirements too well, e.g. the need to speak with the

Dr. to get a handle on how much should be asked for in an expert request, whether it was necessary for the Dr. to review police discovery video, etc.