

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.

Walworth County

Submitted by: Travis Schwantes

The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
 - An intake worker will be assigned to review the case. For first time offenders and minor offenses the intake worker will take the 40 days to attempt to meet with the juvenile and parents to get to know them and discuss options, such as a DPA. If the juvenile or parents are not cooperative, if the juvenile has a history, or if the case is serious, the intake worker will usually recommend before the 40 days that charges be filed. On some occasions where a DPA is being attempted, but later fails I have seen the intake worker request an extension beyond the 40 days.
- ❖ 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, there are specific social workers who conduct the intake inquiry.
- ❖ 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.?
 - Not always. There have been times where the social worker thought no charges were necessary or that a DPA should be offered, but the DA has charged anyways. However, with the social worker's support this information can be used to argue for a consent decree. I always be sure to look at the intake sheet(s) in the discovery to see what the intake worker recommended and why.
- ❖ Are Deferred Prosecution Agreements (DPA) often used in your county?
 - Since these happen without our involvement it is hard to gauge how common these are in Walworth County.
- ❖ Are defense attorneys ever involved in negotiating DPAs prior to the filing of a formal petition?
 - No, we are not involved. If a juvenile is offered a DPA we usually do not know anything about it at the time.

- ❖ Are you ever successful at negotiating DPAs once a formal petition has been filed? Does this happen often?
 - No, it would be rare for a DA to agree to a DPA after charges have been filed. What our DA's may consider instead would be a consent decree. For first offenders with more minor offenses this can be common.

Temporary Physical Custody Hearings

- ❖ Do your clients appear personally at these hearings or does your jurisdiction utilize video conferencing?
 - Video conferencing.
- ❖ Are your custody hearings before a court commissioner or a judge?
 - The assigned juvenile court judge will hold the hearing.
- ❖ Is a petition normally filed by the time of/at the hearing?
 - No. The DA usually requests 48 hours to file a petition.
- ❖ Is there ever sworn testimony taken at custody hearings?
 - No. Generally the social worker, parents, and defense attorney just make recommendations to the judge.
- ❖ 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, we do not have anything like this in Walworth County. A juvenile is either ordered to be in secure detention or shelter care, or on a nonsecure custody order when placed outside the home.
- ❖ What is the process for “appealing” the initial custody determination?
 - Since the assigned judge holds the custody hearings, there is no real “appeal” process other than to ask for a review of the custody status at a later date.
- ❖ Is a request to review ongoing custody status ever made by someone other than defense counsel?
 - In Walworth County, generally defense counsel will make the request for a custody review if the kid is in detention. However, in some cases, the social worker may come up with a plan for release and may request the review.

- ❖ What is the average length of stay in detention?
 - It is hard to give an average. Generally, if kids are going to have a community plan at disposition, they are not held very long in detention. Social workers, judges and DAs all want to see how they will do while on a custody order in the community. However, if kids are likely to go to corrections, residential treatment centers or other placements, it can sometimes take a while to resolve the case and a kid could spend several weeks or more in the detention facility.
- ❖ Where is the detention facility for your county?
 - We have no detention facility in Walworth County. Our juveniles are held in either, Rock County, Racine County, or Waukesha County depending on availability of space and the individual circumstances of the juvenile, such as whether they may have negative contacts in a particular facility.
- ❖ At a custody hearing, besides detention what placement options are available for kids?
 - Both of the detention centers in Rock and Waukesha County have shelter care options, which are unlocked portions of those facilities. Walworth County also offers an electronic monitoring program where the juveniles wear GPS ankle monitors that allow the Department of Health and Human Services to monitor them. Juveniles can be returned home, placed in foster care, or put in shelter care with or without the bracelet.
- ❖ 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?
 - The defense attorney needs to make a request for a review. That request can be made orally at the time of the TPC hearing or at any subsequent hearings.
- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?
 - Yes, the electronic monitoring program. The juveniles must wear a GPS ankle monitor that they must keep charged. The Department must know the juvenile's schedule including the time and locations where the juvenile will be. If a juvenile does not have permission to be somewhere they can be returned to secure.

Competency to Stand Trial

- ❖ How is the question of competency raised in your jurisdiction?

- Defense counsel raises the issue of competency. This can be done in court at any time that defense counsel suspects it may be a problem.
- ❖ Is it common for someone other than defense counsel to raise competency?
 - It is not common.
- ❖ Once raised, does the Court require some sort of affirmative showing, offer of proof, other evidence before ordering an evaluation?
 - The commissioner usually wants some degree of information to find that there is probable cause for the evaluation, but the commissioner is usually pretty accepting and most of the time will order an evaluation.
- ❖ Do parties generally stipulate to the evaluator's finding on present competency? How about on the likelihood of attaining competency within the statutory period?
 - In most cases there is a stipulation by all parties to the evaluator's findings. It is not common for the DA or defense counsel to challenge the evaluator's findings.
- ❖ 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?
 -

Waiver to Adult Court

- ❖ Do the District Attorneys in your county file waiver frequently?
 - Waiver is not very frequent and happens only for very serious offenses, kids close to 17, or kids with serious records.
- ❖ Do the judges in your county often waive kids into adult court?
 - When the DA does file a waiver, the judge is likely to waive the juvenile 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?

- The DA is truly seeking waiver when they file a waiver in Walworth County.
- ❖ How often are waivers contested?
 - Waivers, when filed, are usually contested.
- ❖ If a waiver is contested, how does the State typically prove prosecutive merit?
 - Almost invariably, the state simply relies on the petition to prove prosecutive merit. On relatively few occasions, however, the State has called witnesses, similar to an “old school” prelim.
- ❖ What sort of witnesses does the State typically call in support of waiver?
 - The State always calls the social worker, even if the worker doesn’t support waiver. They will also call cops, especially if there are gang overtones.
- ❖ What sort of witnesses does the defense usually call?
 - We almost always call a parent. If we have client services do work for us, we may call her, especially if the social worker is not friendly to our position. We also sometimes call intensive supervision workers who know the kid. If evaluations have been done, the Court usually allows the report to speak for itself. Also, the Court routinely allows us to file letters of support from teachers, coaches, ministers, etc..., and relies on those without need for the “authors” to appear and formally testify.
- ❖ Is it at all common for a juvenile to initiate waiver proceedings?
 - It is not common at all.
- ❖ Are you aware of any instances in your jurisdiction of the Court initiating proceedings?
 - No I am not aware of any instances.

Disposition

- ❖ How closely are the social worker's recommendations followed?
 - In our county, generally the social worker’s recommendations are adopted. We have a lot of standard conditions of supervision that go into pretty much all of our orders.

- ❖ 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?
 - For first time offenders and minor charges it is frequent to resolve with a consent decree. The social workers usually draft the consent decree. The commissioner requires an admission for acceptance of a consent decree.

- ❖ Are there "standard rules of supervision" that are in all delinquency dispositions?
 - Yes.
 - a) Obey rules at home, school, and with the social worker.
 - b) Commit no further law violations.
 - c) Neither use nor possess any alcohol, or illegal or synthetic drugs.
 - d) Cooperate with UA's as requested.
 - e) Not to use or possess any weapons.
 - f) Advise the social worker immediately of any police contacts.
 - g) Cooperate with electronic monitoring as required by the social worker/
 - h) Attend school regularly with no unexcused absences.
 - i) Successfully complete counseling to address issues of anger management as recommended by the social worker.
 - j) Successfully complete family therapy as requested by the social worker.
 - k) Complete an AODA evaluation as requested by the social worker.
 - l) Successfully complete AODA treatment as recommended by the social worker or as recommended by an AODA evaluation.
 - m) Successfully complete any additional services as recommended by the DCDHS social worker subject to review by the Court at the request of any party.
 - n) Pay court costs.

The parents shall comply with the following conditions:

- a) Participate in services as requested by the social worker or service providers.
- b) Advise the social worker immediately of any changes in residence or telephone number.
- d) Assist your child in fulfilling the terms of the court order.

- ❖ Does the State typically agree with the Department's recommendations?
 - For less serious offenses, generally, the DA goes along with the social workers recommendations. They may want a longer period of time or some no contact that wasn't recommended, but usually, they agree with what the social worker suggests. For more serious offenses, the DA will sometimes ask for a more restrictive placement than the department is recommending, but also frequently accept the recommendation of the department.

- ❖ Does your jurisdiction have an intensive supervision program?
 - No

- ❖ Does your jurisdiction have a specialized "wraparound" program?
 - No
- ❖ Does your jurisdiction have a community service/restitution program?
 - No
- ❖ Which Residential Treatment Centers are used by your county?
 - We use a few different facilities. We often send boys to Northwest Passage II, Lad Lake, and Norris Adolescent Center. We often send girls to Northwest Passage III or Agape House.
- ❖ Does your county allow for a dispositional 180 day placement in detention?
 - No, we do not use detention post-disposition, except for sanctions. We do not have an AODA program or any treatment in our detention facility.
- ❖ 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?
 - If the juvenile is struggling at home the judges do not hesitate to remove them from the 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?
 - Corrections is used as a last resort for kids who have a history of not being able to complete community supervision.
- ❖ 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?
 - The judges here make the decision right away at disposition for the most part. The current juvenile court judge seems to believe registration is needed more often than not. It is something you should prepare your juvenile for and be prepared to contest.

Services in your county

- ❖ What are common treatment programs used in your county for juveniles? Anger management programs? AODA?

- ❖ Is Day Treatment available in your county? If so, what are the names of the specific day treatment programs?
 - There is a day treatment program in Beloit through Mercy Options that has been utilized. There is also a day treatment program available through Rogers Memorial Hospital that has been used by some juveniles as well. However, I believe that most of the juveniles who attended these programs had personal health insurance to cover the programing.

- ❖ 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?
 -

- ❖ What programs do you have in your county that are gender-specific?

Sanctions

- ❖ How often is there a stipulation as to the basis for sanctions?
 - It is common for kids to stipulate to the basis for the request for sanctions. This is especially the case when the basis is due to attendance issues, which can easily be proven by attendance records, and or curfew violations where parents are ready and willing to testify to the issues.

- ❖ If there is not a stipulation to the violations, how does the State/Department typically attempt to prove the basis?
 - The state will often call the social worker to testify and/or the parents.

- ❖ What sanctions are most often imposed in your county?
 - Usually juveniles are given time in detention as recommended by the social worker. However, the judge may stay some of the time requested for juveniles who do not have multiple or repeated violations.

- ❖ Does your county utilize stayed days in detention as a sanction?
 - Yes. See above question.

- ❖ Has a particular sanction worked well for your clients in your opinion?
 - Stayed days can sometimes be effective, but generally, specific treatment for the problem is really the most effective. If the kid has positive UAs, generally time in detention is not going to help. The kid needs AODA treatment. If the kid is not going to school, sometimes the kid needs help reintegrating and getting back on track at school or needs assistance to explore alternative programs.

Miscellaneous

- ❖ What are common acronyms and their meanings in your county?
 - The following are common:
 - EMP – electronic monitoring program
 - FFT – Functional Family Therapy
- ❖ Who are experts you have used in juvenile cases and would you recommend them?
 - Dr. Melissa Westendorf for a sexual assault case. Yes.