

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 in the hopes 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 hope 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.

Washington County

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The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
 - Depends. Most often the intake worker determines whether to do a DPA or refer to the DA's office. If a DPA is on the table, but the juvenile and their family does not attend a meeting with the social worker, then they will refer the case to the DA's office and petition will be filed. The DA's office ultimately decides whether to file a petition, but may ask the social worker for their opinion. The same applies for juveniles already on supervision.

- ❖ 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?
 - Currently, there are two intake workers who conduct the inquiry, but there have been some staff changes so it may go back to one intake worker as was previously done. If the juvenile is on supervision, then their social worker will usually be the one to conduct the intake inquiry unless there was the need for a detention hearing.

- ❖ 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.?
 - It really just depends on the case. There is one DA in charge of juvenile cases. There are times when she might suggest a consent decree and the social worker might not be for it, but she will still push for it and/or might send it back for a DPA. As for not charging, the DA is pretty good about not charging stuff if she doesn't feel it's necessary and will say as much.

- ❖ Are Deferred Prosecution Agreements (DPA) often used in your county?
 - I think it may be more commonly used than we know about since we are not getting contacted about those cases. I would say that it is possible to get a petition referred back to the intake worker on a DPA, but is not a common practice.

- ❖ Are defense attorneys ever involved in negotiating DPAs prior to the filing of a formal petition?
 - Kids are not assigned a lawyer until a petition is filed so normally defense lawyers are not involved in negotiating DPAs. However, sometimes if a kid or family does not participate in the intake process, because they do not know about the meeting or for some reason choose not to participate, a DPA can still be an option even if a petition is filed. In these cases, a petition is filed and a lawyer is appointed. In negotiations with the DA, the DA may still be open to referring the case back for a DPA, but will consult with the social worker first.

- ❖ Are you ever successful at negotiating DPAs once a formal petition has been filed? Does this happen often?
 - If the intake social worker has not met with the family earlier, then often both the social worker and the DA are willing to consider a DPA if the kid seems pretty well adjusted and the charge is not super serious. Except in cases of very serious charges, if a kid has not been in trouble before, and seems like they can do what the need to do to be successful going forward, it is definitely worth asking for a DPA.

Temporary Physical Custody Hearings

- ❖ Do your clients appear personally at these hearings or does your jurisdiction utilize video conferencing?
 - Clients appear in person for custody hearings. If juveniles are in secure detention or shelter, attorneys normally will see the juvenile in person or speak to the juvenile by phone. Attorneys also can speak to juveniles who are not in custody prior to the hearing. There is a new policy that social workers cannot speak about the case with SPD attorneys until the juvenile has signed a release, therefore, we normally will not receive information about placement options before the hearing or will find out the recommendation just before walking into the hearing. Attorneys don't always receive the parents contact info so contact with the parents is usually limited.

- ❖ Are your custody hearings before a court commissioner or a judge?
 - Most of the time custody hearings are before a court commissioner, but in rare occasions can take place before the judge (usually due to scheduling conflicts).

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

- The petition is not usually ready at the time of the hearing. The State usually asks for 48 hours to file the petition.
- ❖ Is there ever sworn testimony taken at custody hearings?
 - No. Generally, the DA, social worker, parents, and defense attorneys speak directly to the court about what their recommendation is regarding custody.
- ❖ 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. In some instances, transfer of placement of the juvenile from secure to a non-secure placement is authorized by giving “discretion to HSD.”
- ❖ What is the process for “appealing” the initial custody determination?
 - This is usually determined at the next hearing. Also, a motion can be brought on this particular issue as well and will be heard before a judge.
- ❖ Is a request to review ongoing custody status ever made by someone other than defense counsel?
 - No and usually custody reviews are not done because most of the time the “discretion to change placement” is given to the social worker at the first hearing if it is something that the social worker is already looking into. The social worker will just write a letter to the court letting the court know that HSD moved the juvenile per the custody order.
 - If a juvenile is violating their conditions of non-secure then most of the time, the social worker will request a detention hearing since they will be referring new charges.
- ❖ What is the average length of stay in detention?
 - It depends on the severity of the case and placement options in the community. If juvenile remains in custody after a TPC/detention hearing then the court will set the plea hearing within 10 days, discovery will be provided to defense counsel ASAP, and defense counsel will have the opportunity to speak with the DA by phone or in person as to an offer/recommendation on the juvenile’s case. The DA will also confer with the social worker, as will defense counsel. The DA and social worker may say that the plan is to release the juvenile to non-secure custody, and, in that case, at the next plea hearing defense counsel will ask for a new plea hearing date. If the plan is for the juvenile to remain in secure, at the plea hearing, the juvenile will enter a denial and set for a fact-finding hearing or an admission based on negotiations and then the case is set for a dispositional hearing with recommendations that

may put the juvenile back in the community or in continued secure/correctional setting.

- ❖ Where is the detention facility for your county?
 - In West Bend. It is a separate section of the Washington County Jail. Attached to the sheriff's department and the courthouse.
- ❖ At a custody hearing, besides detention what placement options are available for kids?
 - Shelter care, home detention, parent placement, or relative placement. In rare occasions, they may be placed with friends, but only if HSD has had time to evaluate this placement. Lots of discretion to change placement put in HSD's hands, too.
- ❖ 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?
 - Not something that usually comes up much. If the juvenile request modification of placement, then we'd file a motion and it'd be set for a hearing before the judge. It would not be unusual to raise the issue of placement at any plea hearings.
- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?
 - Juveniles can be placed on home-detention with a GPS ankle monitor. Their social worker will check in with the provider for locations every once in awhile in order to make sure the juvenile is in compliance. The social worker will report any violations to the DA's office, defense counsel, and the court. If there are violations, the social worker may request violation of non-secure charges.

Competency to Stand Trial

- ❖ How is the question of competency raised in your jurisdiction?
 - Normally, defense counsel will raise competency and request an evaluation at the next hearing for the client when defense counsel suspects that the client is not competent. Defense counsel can also raise competency in writing and request an evaluation prior to a hearing.
- ❖ Is it common for someone other than defense counsel to raise competency?

- It is not common for someone else to raise competency. However, social workers will sometimes talk to defense counsel about concerns related to competency, and sometimes detention staff or shelter home staff will talk to defense counsel about concerns related to competency for particular kids.
- ❖ Once raised, does the Court require some sort of affirmative showing, offer of proof, other evidence before ordering an evaluation?
 - Generally, the court commissioners and judges will order a competency evaluation with very little information as to the concerns related to competency, which keeps defense counsel from having to divulge information that may be confidential.
- ❖ 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, the DAs stipulate to the evaluator's finding on present competency. However, there are times when either the DA or defense counsel may ask for another evaluation if there is some reason to be concerned with the original evaluation. Generally, I believe that defense counsel will challenge a finding of competency by an evaluator if after several meetings there are still concerns about a client's understanding and ability to assist in his/her defense. Also, I believe that the parties usually stipulate to the finding that the client may attain competency at least after the initial evaluation. There are times when the DAs believe a kid is competent and will challenge an evaluator's finding of incompetence at a contested hearing, but this is not very common.
 - Most of the time if a juvenile is found not competent, the DA will recommend conversion of the delinquency case into a JIPS.
- ❖ Is your county good about periodically reevaluating clients after he or she has been found incompetent, but likely to attain competency?
 - This is not a scenario that comes up very often. Usually the case is converted to a JIPS unless the competency eval says the juvenile would attain competency in short order.
- ❖ What competency training is provided in your county?
 - Not sure exactly. Generally, there are tutorials done with the juvenile dependent on the juvenile's needs.

Waiver to Adult Court

- ❖ Do the District Attorneys in your county file waiver frequently?

- No. No waivers since at least July 2012.
- ❖ Do the judges in your county often waive kids into adult court?
 - No, but they have made comments that in some cases they would have waived the juvenile into adult court if the issue would have been before them at a waiver hearing.
- ❖ 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?
 - Not applicable.
- ❖ How often are waivers contested?
 - Not applicable.
- ❖ If a waiver is contested, how does the State typically prove prosecutive merit?
 - Not applicable.
- ❖ What sort of witnesses does the State typically call in support of waiver?
 - Not applicable.
- ❖ What sort of witnesses does the defense usually call?
 - Not applicable.
- ❖ Is it at all common for a juvenile to initiate waiver proceedings?
 - Not applicable.
- ❖ Are you aware of any instances in your jurisdiction of the Court initiating proceedings?
 - Not applicable.

Disposition

- ❖ How closely are the social worker's recommendations followed?

- In our county, generally the social worker's recommendations are adopted with some tweaking and it will be one year of supervision. We have a lot of standard conditions of supervision that go into pretty much all of our orders. Here are the conditions that are likely to be in a standard order:
 - a) Obey the reasonable rules of the parents, school and 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 by the parent or social worker.
 - e) Not to use or possess any weapons.
 - f) Engage in no aggressive behaviors
 - g) Advise the social worker immediately of any police contacts.
 - h) Participate in the Errors in Thinking and/or Carey Guides.
 - i) Attend school regularly with no unexcused absences.
 - j) Successfully complete counseling to address issues of anger management as recommended by the social worker.
 - k) Successfully complete family therapy as requested by the social worker.
 - l) Complete an AODA evaluation (already ordered).
 - m) Successfully complete AODA treatment as recommended by the social worker or as recommended by an AODA evaluation.
 - n) Successfully complete any additional services as recommended by the social worker
 - o) Stayed secure detention time (usually 30 days)
 - p) Community Service for restitution
 - q) No aggressive behaviors
- . The parents shall comply with the following conditions:
 - a) Participate in services as requested by the social worker or service providers.
 - b) Sign all requested releases within 72 hours of request
 - b) Advise the social worker immediately of any changes in residence or telephone number.
 - c) \$100/mo supervision fee

- ❖ 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?
 - Consent decrees are used to resolve cases frequently. The social worker drafts the consent decree and copies are sent to the DA and defense counsel for review.
- ❖ Are there "standard rules of supervision" that are in all delinquency dispositions?
 - Yes, see above.
- ❖ Does the State typically agree with the Department's recommendations?

- For less serious offenses, generally, the DA goes along with the social workers recommendations. Sometimes the DA and social worker will differ on whether to recommend secure time or impose/stay secure time.
- ❖ Does your jurisdiction have an intensive supervision program?
 - Yes. The intensive supervision program (ISP) provide curfew checks and school checks. The ISP worker has contact with the juvenile, in person or by phone, at least once each day. They also meet with the kid and parents on a regular basis to monitor how the kid is doing with the rules of supervision.
- ❖ Does your jurisdiction have a specialized "wraparound" program?
 - No.
- ❖ Does your jurisdiction have a community service/restitution program?
 - Yes, Elevate offers a program for juveniles to complete court ordered community service and in some cases provides subsidized work to help kids pay restitution.
- ❖ Which Residential Treatment Centers are used by your county?
 - We use a lot of different facilities. We often send kids to Northwest Passage II, Lad Lake, Norris Adolescent Center, Homme Home, St. Rose, St. Charles, St. Aemilian's, etc.
- ❖ Does your county allow for a dispositional 365 day placement in detention?
 - Yes, and the term of detention is usually stayed pending progress during supervision.
- ❖ 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?
 - It depends on the judge, but generally, I would say that if kids are really struggling at home, the judges do not hesitate to remove them when there are resources available for group homes or foster homes. Lately, there does seem to be a shortage of placement options, which can be good for kids who want second and third chances to turn things around 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?

- Luckily, our current judges tend to use corrections sparingly. They are open to trying other alternatives that are more focused on treatment rather than rushing to send kids to corrections. Some of our judges do talk about how expensive it is to send our kids to residential programs, but I would not say that any of the judges look to pass the buck to the state.
- ❖ 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 trend is for the judges to withhold making a decision about whether a kid should register until the end of the kid's supervision, and hopefully, after the kid has completed sex offender treatment. Generally, if the kid successfully completes treatment, the judge will stay registration.

Services in your county

- ❖ What are common treatment programs used in your county for juveniles? Anger management programs? AODA?
 - Juveniles are referred to programs through the county unless they have insurance and then they can find programs covered by insurance subject to social worker approval of the program. Social workers will help the juvenile and the family find an appropriate program.
- ❖ 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?
 - Juveniles participate in treatment with a Dr. Bill Drankiewicz with Washington County Mental health.
- ❖ What programs do you have in your county that are gender-specific?
 - Not applicable.

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 if they are not contesting the basis for sanctions.
- ❖ 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, kids are sanctioned to detention, shelter, or home detention on GPS. The judges usually use the full days available right off the bat unless there has been a long lapse between the violation and the sanction hearing, in which case they may not impose any sanction or impose a different sanction than requested.
- ❖ Does your county utilize stayed days in detention as a sanction?
 - Absolutely. Stayed days are used frequently. This is where the judge imposes and stays several days in detention, and then social workers can put the kid in detention if the kid violates the court order again.
- ❖ 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

- ❖ How does the juvenile court process work in Washington County?
 - Juvenile cases in Washington County start by either a TPC/detention hearing or go straight into an initial appearance/plea hearing before a commissioner. In Washington County, the juvenile does not enter a plea (admission or denial) until a time when they are prepared to begin resolution of the case. If at the first or second plea hearing, a juvenile is not prepared to enter a plea, then defense counsel can request an adjourned plea hearing, subject to a waiver of time limits. Defense counsel has to set up a phone call or pre-trial conference with the DA assigned to juveniles (currently Mandy Schepper) prior to the plea hearing to discuss negotiations. The DA may consult with the social worker about the recommendation (especially if it involves a potential consent decree). After the plea hearing, the case is set for a dispositional hearing before a judge. Dispositional hearings are set out to allow for the

worker to complete the report. The Thursday/Friday before the Tuesday dispositional hearing (if juvenile is in custody then hearing will likely be on a different day of the week if time limits were not waived), the social worker will submit a dispositional report with recommendations.

- ❖ What are common acronyms and their meanings in your county?
 - I already mentioned a lot of them above throughout the answers so will just recap and then add a few additions.
 - Secure-Secure Detention
 - HSD/DHS-Human Services Department
 - GPS-Home Detention
 - ISP-Intensive Supervision Program
 - FTP-Family Training Program

- ❖ Who are experts you have used in juvenile cases and would you recommend them?
 - Dr. Michael Caldwell
 - Dr. Patricia Coffey