

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.

Winnebago County

Submitted by: **Brianne Patzer**

The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
 - There are a few intake social workers. They do an initial assessment for those out of custody. In that assessment they determine whether to do a formal petition or DPA. DPAs are only done for first time offenders. If juveniles or parents fail to come to the intake assessment meeting, they almost always refer for formal petition. If in custody, it seems that they just leave it up to the DA, but make a verbal recommendation off the record to the DA at the TPC hearing.
 - One issue we have been having with our intake process is that they wait until they have the formal reports from the police department before they consider a “referral.” So, if the officer sits on the paperwork for weeks, the intake office will consider the charges referred once they receive it, even if the police department notes in the reports that they contacted the DA while they were investigating. We have challenged it in court here and judges have not granted our motions to dismiss on it.

- ❖ 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?
 - There is a specific group of social workers that does this 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.?
 - Yes, up until this year, I would say the juvenile DA always agreed with the social worker’s decision. However, we have had some changes in our DA’s office and I am finding a few of the DA’s disagreeing with the social workers a bit.

- ❖ Are Deferred Prosecution Agreements (DPA) often used in your county?
 - Yes, as long as the juvenile and the parents, when the juvenile is a first time offender, appear for the intake assessment meeting.

- ❖ Are defense attorneys ever involved in negotiating DPAs prior to the filing of a formal petition?
 - No due to the fact that we are not appointed prior to a formal petition being filed. However, again, with the change in DA's, we have been contacted on one occasion but it does not appear that will be the normal process.
- ❖ Are you ever successful at negotiating DPAs once a formal petition has been filed? Does this happen often?
 - Not often. One attorney in our office has successfully had the judge agree to send it back for a DPA once it was formally filed.

Temporary Physical Custody Hearings

- ❖ Do your clients appear personally at these hearings or does your jurisdiction utilize video conferencing?
 - Our clients almost exclusively appear personally for these hearings. I personally have not had any cases where they have appeared by video.
- ❖ Are your custody hearings before a court commissioner or a judge?
 - Court commissioner
- ❖ Is a petition normally filed by the time of/at the hearing?
 - No
- ❖ Is there ever sworn testimony taken at custody hearings?
 - No. Generally, the DA, social worker, parents, and defense attorneys, etc. speak directly to the court about what his or her 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?
 - Not that I have seen.
- ❖ What is the process for “appealing” the initial custody determination?
 - If the commissioner makes a custody decision that we wish to appeal, we can request de novo review before the client's judge.

- ❖ Is a request to review ongoing custody status ever made by someone other than defense counsel?
 - We can request to have a review- there is no time limit that the court enforces, but we have to be able to have juvenile intake present and generally they will need at least 24 hours. If the social worker has a plan, they will request the review.

- ❖ What is the average length of stay in detention?
 - Because we use a portion of another county's detention facility and we have a very limited number of beds there, usually we only see a stay of between 3 to 5 days.

- ❖ Where is the detention facility for your county?
 - Our county contracts to use I believe 8 bed spaces in the Outagamie County secure detention facility, which is located in a portion of the adult jail.

- ❖ At a custody hearing, besides detention what placement options are available for kids?
 - Shelter care located in our county is often used. On occasion electronic monitoring is used. Otherwise the kids will usually be returned home. On rare occasions they go to another family member's home, but usually only in cases of sex assault involving a family member.

- ❖ 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?
 - Refer to the question above about review hearing. We can request the custody placement to be reviewed but need to have enough time for juvenile intake to be able to be present.

- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?
 - We do have an electronic monitoring program- not that I would call it much of a program. It is essentially just a bracelet- there are certain social workers who run the program but there is not much involved outside of wearing the bracelet.

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 first 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 anyone else to raise competency.

- ❖ Once raised, does the Court require some sort of affirmative showing, offer of proof, other evidence before ordering an evaluation?
 - We do not really ever encounter much of an inquiry when raising competency.

- ❖ Do parties generally stipulate to the evaluator's finding on present competency? How about on the likelihood of attaining competency within the statutory period?
 - For the most part, the parties will agree with findings by the doctor for both areas above.

- ❖ Is your county good about periodically reevaluating clients after he or she has been found incompetent, but likely to attain competency?
 - Yes, they seem to always reevaluate appropriately

- ❖ What competency training is provided in your county?
 - For adults, they have an inpatient program that is always used. We do not often have findings of not competent so there is not a standard place I know of that they send them to.

Waiver to Adult Court

- ❖ Do the District Attorneys in your county file waiver frequently?
 - No. It is rarely seen and when done, usually older kids with very serious charges.

- ❖ Do the judges in your county often waive kids into adult court?

- When it is raised, judges will many times waive. However, it is rarely raised
- ❖ 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?
 - It does not seem to be a bargaining chip here. It seems to be reserved for the few cases the DAs feel need to be in adult court, so there does not seem to be much room for negotiation.
- ❖ How often are waivers contested?
 - The issue is not often raised but when it is, it is often contested as the waivers are reserved for the most serious cases.
- ❖ If a waiver is contested, how does the State typically prove prosecutive merit?
 - Prosecutive merit is usually proven through the petition itself.
- ❖ What sort of witnesses does the State typically call in support of waiver?
 - Usually just the social worker
- ❖ What sort of witnesses does the defense usually call?
 - Treatment providers or experts if any are used.
- ❖ 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?
 - Not that I am aware of.

Disposition

- ❖ How closely are the social worker's recommendations followed?
 - The social worker's recommendations are almost always exactly followed. The conditions of supervision are pretty standard. On occasion a judge will strike one of the standard conditions if they feel it is not appropriate or tweak the conditions and add extra conditions. The majority of time, the social worker's recommendation is followed with no change.

- ❖ 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?
 - A fair amount receive consent decrees, if they have no priors and if they are cooperating with the intake assessment. The DA drafts the consent decree and almost always require a plea. On one occasion I had a pre-admission consent decree and the judge actually almost did not accept it. They are not favored in this county.

- ❖ Are there "standard rules of supervision" that are in all delinquency dispositions?
 - There are standard rules. They include AODA, no sleepovers, curfew, community service, no new law violations, random UAs, no alcohol or drugs, let parents know of whereabouts and friends, etc.

- ❖ Does the State typically agree with the Department's recommendations?
 - The State almost always agrees with the Department's recommendations.

- ❖ Does your jurisdiction have an intensive supervision program?
 - Not that I am aware of.

- ❖ Does your jurisdiction have a specialized "wraparound" program?
 - There are a few services that are somewhat considered as wraparounds- a family services program and family training program.

- ❖ Does your jurisdiction have a community service/restitution program?
 - Yes. This is always used for kids in making up for restitution.

- ❖ Which Residential Treatment Centers are used by your county?
 - Silvercrest Group home and several foster treatment homes are used. Nothing that is a large facility but mostly smaller facilities or even specific foster parents who take in those with treatment needs.

- ❖ Does your county allow for a dispositional 180 day placement in detention?
 - It is allowed, but has not been used or even referenced yet that I or anyone in my office has seen.

- ❖ 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 are not quick to remove from the home. The Court commissioner however, at detention hearings has come to increasingly remove from the home even against the social worker's recommendation.
- ❖ 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?
 - It is used as a last resort. It is not used or even recommended unless it is a last resort or appropriate.
- ❖ 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?
 - Yes. They usually stay and do so immediately. However, as of recently, they stay with very vague conditions recommended by the State and the Department that have to be completed for it to not be lifted. We have been fighting these new conditions with limited success. Conditions include performance on assessment tools and cooperation with sex offender treatment.

Services in your county

- ❖ What are common treatment programs used in your county for juveniles? Anger management programs? AODA?
 - Options outpatient is used for AODA along with a county based Juvenile Treatment Court. WAIT program is used for anger management. Libertas is sometimes used as in-patient out of Green bay.
- ❖ Is Day Treatment available in your county? If so, what are the names of the specific day treatment programs?
 - Options outpatient is the most commonly used.
- ❖ 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?
 - The program used here is the Tri-County Juvenile Sex Offender Program and they do have a team of therapists that are specifically used for treatment.
- ❖ What programs do you have in your county that are gender-specific?
 - None that I am aware of.

Sanctions

- ❖ How often is there a stipulation as to the basis for sanctions?
 - There is often a basis. They seem to only use limited instances for sanctions, so often we do not have much room to argue and if we did argue, there could likely be found to be more violations.
- ❖ If there is not a stipulation to the violations, how does the State/Department typically attempt to prove the basis?
 - If there is no stipulation, the Department will just argue off of the sanctions motion and not bring evidence. The social worker is usually not even called to testify.
- ❖ What sanctions are most often imposed in your county?
 - Shelter care is used most often, closely followed by secure detention.
- ❖ Does your county utilize stayed days in detention as a sanction?
 - Most times yes. If the juvenile has been doing fairly well, they occasionally will not stay any time but the majority of cases they will stay days in detention.
- ❖ Has a particular sanction worked well for your clients in your opinion?
 - I think shelter care works fairly effectively as they can continue to go to school. I have also had luck arguing for community service in lieu of shelter care and had that work.

Miscellaneous

- ❖ What are common acronyms and their meanings in your county?
 - We don't really have many or any that are used.
- ❖ Who are experts you have used in juvenile cases and would you recommend them?
 - We use Dr. Allen Hauer for competency and NGI and would recommend him.