

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.

Adams County

Submitted by: Jason Lockery

The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
 - I'm not that privy to this process to be honest. We receive very few juvenile referrals in our county. Adams is a small, rural county, with few resources, so much of the juvenile referrals are disposed of during this period with counseling and family intervention. The only reason I'm even made aware of a juvenile referral at its inception would be if there is a TPC recommendation for in-custody or out-of-home placement (which is in itself a rarity).

- ❖ Do you use the term probation officer or social worker or something else to describe the county representative from human services?
 - We refer to them simply as "workers" or by their name (again, we're very small here, so we often refer to each other by our first names). As of this writing, all of our delinquency referrals are handled by Social Worker Emma Williams.

- ❖ Is there a specific social worker/probation officer or group of social workers/probation officers who conduct the intake inquiry?
 - Generally, all juvenile intake proceedings are handled by Emma Williams of the Adams County DHHS.

- ❖ 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, albeit sometimes grudgingly (of course), the DA usually follows the recommendation of the social worker, re: charging and disposition.

- ❖ Are Deferred Prosecution Agreements (DPA) often used in your county?
 - Yes, but more often we will enter into a Consent Decree.

- ❖ Are defense attorneys ever involved in negotiating DPAs prior to the filing of a formal petition?
 - I have not personally been involved that early in the process, although, again, we are a small and therefore responsive county, so if a defense attorney *knew* that process was occurring, he or she could more than likely enter those negotiations. If anyone reading this requires assistance re: contact information, you can contact the Adams County DHHS at (608) 339-4205 or email me personally at lockeryj@opd.wi.gov.

- ❖ Are you ever successful at negotiating DPAs once a formal petition has been filed? Does this happen often?
 - Yes. Again, we don't handle many juvenile referrals for formal delinquency proceedings in Adams (most are disposed of by some sort of diversion during

the intake process), but if a petition is filed, you can negotiate whatever settlement you feel is appropriate. Based on my personal experience, I wouldn't say it occurs "often," but that's only because I handle so few juvenile delinquency petitions overall.

Temporary Physical Custody Hearings

- ❖ Do your clients appear personally at these hearings or does your jurisdiction utilize video conferencing?
 - Due to their youth and inherent competency issues, we almost always have the juvenile appear personally in court. However, there have been occasions when a juvenile client has appeared by AV means. Adams does have a modern AV system.
- ❖ Are your custody hearings before a court commissioner or a judge?
 - Always the circuit court judge unless for some reason he is not available.
- ❖ Is a petition normally filed by the time of/at the hearing?
 - Usually, but sometimes the county requests time to file within statutory limits.
- ❖ Is there ever sworn testimony taken at custody hearings?
 - Rarely. It's uncommon that we don't reach some sort of agreed-upon placement prior to the hearing, so formal testimony is usually unnecessary.
- ❖ 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 really. I have successfully argued for placement in a "shelter care" facility in Appleton however.
- ❖ What is the process for "appealing" the initial custody determination?
 - Schedule a hearing in front of the circuit court judge. One caveat at the time of this writing: Judge Pollex just retired and we are literally just entering the Judge Dan Wood era. Judge Pollex was very sensitive to the issue of juveniles being incarcerated in jail and was generally always open to an appeal to place the juvenile elsewhere. Judge Wood's willingness to hear appeals of his earlier TPC rulings is unknown at this time.
- ❖ Is a request to review ongoing custody status ever made by someone other than defense counsel?
 - Yes; I've seen a particular situation where the guardians of a juvenile brought an alternative placement plan before the court for their ward.
- ❖ What is the average length of stay in detention?

- It's very unusual for Adams County to put a juvenile in SD. Therefore, if it does occur, it is generally for as long as it takes to find an appropriate out-of-home placement with an extended family member or foster care.
- ❖ Where is the detention facility for your county?
 - The Portage County Jail in Stevens Point, WI.
- ❖ At a custody hearing, besides detention what placement options are available for kids?
 - Extended family ("kinship") placement following review for fitness; or foster care.
- ❖ 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?
 - Request a hearing before the court.
- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?
 - Yes; the social workers at the Adams County DHHS will monitor the progress of the juvenile.

Competency to Stand Trial

- ❖ How is the question of competency raised in your jurisdiction?
 - As soon as possible – either orally at hearing or by motion.
- ❖ Is it common for someone other than defense counsel to raise competency?
 - Not sure. I can imagine the court raising the issue if for whatever reason defense counsel didn't do so already and the issue is apparent.
- ❖ Once raised, does the Court require some sort of affirmative showing, offer of proof, other evidence before ordering an evaluation?
 - In my experience so far, no, not really. I raise the issue almost matter-of-factly if my client is 13 or younger. I've never had a judge deny a request for a legal competency evaluation with very young juveniles (or require more proof than my simple request).
- ❖ Do parties generally stipulate to the evaluator's finding on present competency? How about on the likelihood of attaining competency within the statutory period?
 - Yes. Not very likely if the juvenile is quite young and suffers a cognitive issue.
- ❖ Is your county good about periodically reevaluating clients after he or she has been found incompetent, but likely to attain competency?
 - It's handled like an adult competency review – i.e., every 90 days.

- ❖ What competency training is provided in your county?
 - I'm not sure.

Waiver to Adult Court

- ❖ Do the District Attorneys in your county file waiver frequently?
 - No. I've never had to deal with a waiver to adult court in Adams County. Of course, that's really more a reflection of the overall lack of referrals, period. If a juvenile were accused of a very serious offense, he or she would likely face a waiver attempt.
- ❖ Do the judges in your county often waive kids into adult court?
 - I cannot say based on my experience.
- ❖ 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?
 - n/a
- ❖ How often are waivers contested?
 - n/a
- ❖ If a waiver is contested, how does the State typically prove prosecutive merit?
 - n/a
- ❖ What sort of witnesses does the State typically call in support of waiver?
 - n/a
- ❖ What sort of witnesses does the defense usually call?
 - n/a
- ❖ Is it at all common for a juvenile to initiate waiver proceedings?
 - n/a
- ❖ Are you aware of any instances in your jurisdiction of the Court initiating proceedings?
 - n/a

Disposition

- ❖ How closely are the social worker's recommendations followed?
 - Very much so, in my experience.

- ❖ 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, it is rather common. The DA will ask the DHS to draft the conditions of the CD once we have settled on whether a plea will be necessary prior to the entering of the CD.

- ❖ Are there "standard rules of supervision" that are in all delinquency dispositions?
 - Yes, often the list is boilerplate with a "X" checked next to the rules that are applicable to the particular circumstances of the juvenile and his/her family

- ❖ Does the State typically agree with the Department's recommendations?
 - Yes.

- ❖ Does your jurisdiction have an intensive supervision program?
 - That depends on the definition of "intensive." DHS will supervise the juvenile and depending on the nature of the offense, etc., the level of that supervision can be pretty intense.

- ❖ Does your jurisdiction have a specialized "wraparound" program?
 - I guess not because I have no idea what that means.

- ❖ Does your jurisdiction have a community service/restitution program?
 - Yes it does. It's supervised by Carrie Allard. She can be reached at (608) 339-4544.

- ❖ Which Residential Treatment Centers are used by your county?
 - I'm not exactly sure off the top of my head. Adams is a very under-resourced community. However, because of that lack of local resources, DHS is open to suggestions regarding out-of-county placements (financial issues notwithstanding).

- ❖ Does your county allow for a dispositional 365 day placement in detention?
 - I have no idea what this means.

- ❖ 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 tend to keep the juvenile in his/her home as we do not have a great deal of local foster placement options.

- ❖ 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?
 - Definitely "last resort." I've been practicing here for 2.5 years and I've never represented a juvenile who's been sent to corrections. I know it has happened to one particular female juvenile who exhausted every other resource unfortunately.

- ❖ 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, if the juvenile complies with court-ordered sex offender treatment/counseling , any sort of SORP order is stayed pending successful completion of the dispositional order.

Services in your county

- ❖ What are common treatment programs used in your county for juveniles? Anger management programs? AODA?
 - I'm not exactly sure with any detail. DHS provides the juvenile with outpatient counseling on any number of issues.
- ❖ Is Day Treatment available in your county? If so, what are the names of the specific day treatment programs?
 - I don't know.
- ❖ 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?
 - Of the juveniles I have represented with sex offense charges, a pre-dispositional psychosexual evaluation will be conducted regarding the juvenile's particular issues and risk to re-offend. The disposition of the referral/petition will largely be determined by the recommendation of this evaluator. Most of my kids participate in a degree of counseling dependent on the juvenile's needs (e.g., intensive, one-on-one counseling for the more troubled juveniles; group counseling on "age appropriate" behavior for the juveniles who are acting out sexually but otherwise are relatively healthy).
- ❖ What programs do you have in your county that are gender-specific?
 - I'm not sure.

Sanctions

- ❖ How often is there a stipulation as to the basis for sanctions?
 - If reasonable, we would stipulate to a sanction. Because I don't handle that much juvenile work in Adams, I have experienced even less post-dispositional sanctions. Overall, in the few times I have had to negotiate a settlement regarding a violation, DHS has been reasonable about sanctions, so we have mostly worked out a stipulated settlement of the infraction.

- ❖ If there is not a stipulation to the violations, how does the State/Department typically attempt to prove the basis?
 - Sworn testimony in court; documentary evidence; etc.
- ❖ What sanctions are most often imposed in your county?
 - Probably a short period of secure detention is the most common (i.e., 1-5 days).
- ❖ Does your county utilize stayed days in detention as a sanction?
 - Yes; that can be an option for a first serious violation; i.e., a final warning to the juvenile to correct his/her behavior.
- ❖ Has a particular sanction worked well for your clients in your opinion?
 - I'm not really qualified to answer this.

Miscellaneous

- ❖ What are common acronyms and their meanings in your county?
- ❖ Who are experts you have used in juvenile cases and would you recommend them?