

# **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.

# Crawford County

Submitted by: Amanda Tisdale

## The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
  - The social worker receives the information regarding the referral and then meets with the kid and family to determine whether a DPA is appropriate or if a referral is warranted to the DA. If the child is already on supervision then they may just seek a sanction under that order for the new conduct rather than proceeding with a new charge. This is generally done if there is not restitution.
- ❖ 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?
  - Normally it is whoever the intake worker is on call that day. Often though the two workers are Maura Garrity and Bruce Elvert. The Juvenile Court worker is Kathy Quamme.
- ❖ 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
- ❖ Are Deferred Prosecution Agreements (DPA) often used in your county?
  - They are used for first offenses
- ❖ 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. The lawyer can help facilitate a meeting between the client and social worker. Often the social worker is still open to a DPA,

and after having the court report from the social worker, the DAs will often be open to a DPA if the social worker feels one is appropriate.

- ❖ Are you ever successful at negotiating DPAs once a formal petition has been filed? Does this happen often?
  - It is rare but does happen. 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. Sometimes the intake social workers will recommend a DPA, and the DA will decide to charge anyway, and in those cases, the DA may still consider a DPA, but with specific conditions that the intake social worker may not have included. 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?
  - Normally if the kid is in secure detention they appear via telephone for the TPC hearing. I do not believe that the secure detention facility in LaCrosse has video conferencing capabilities, but I may be wrong. If they are in custody in a foster home that is local, then they will appear in person.
- ❖ Are your custody hearings before a court commissioner or a judge?
  - Judge unless he is on vacation or in a different county, then it would be a court commissioner
- ❖ Is a petition normally filed by the time of/at the hearing?
  - The petition is rarely filed at the TPC hearing, normally the DA asks for a separate date for filing.
- ❖ Is there ever sworn testimony taken at custody hearings?
  - On a very rare occasion and in the case of only certain DAs will sworn testimony be taken. Generally, the DA, social worker, detention representative or person from our temporary shelter (if kid is placed there), 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
- ❖ What is the process for “appealing” the initial custody determination?
  - No specific process, if the initial custody determination is unsatisfactory, we can review them at future proceedings based on an oral motion. I’m sure the best practice would even be a written motion regarding the decision to be heard separately from future proceedings.
- ❖ Is a request to review ongoing custody status ever made by someone other than defense counsel?
  - Generally it is defense counsel. Sometimes the social worker will have a different plan or a place that is less restrictive that was not initially available at the first hearing. If that is the case, the social worker will request the change of placement/ review of the placement.
- ❖ What is the average length of stay in detention?
  - Normally not long- 2 weeks unless a very serious charge which is very rare in our county.
- ❖ Where is the detention facility for your county?
  - LaCrosse Secure Detention and Unsecure Detention- about an hour away in another county.
- ❖ At a custody hearing, besides detention what placement options are available for kids?
  - Foster homes, group homes, family placements, sometimes they are TPC’d back to the home with restrictions, curfew, and other restrictions.
- ❖ 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?
  - Can ask for review at the time of initial or plea orally on the record. But it is probably best practice to file a motion for a review.
- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?

- Not really other than the social workers.

## **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 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 in Crawford County 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 competent 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. The judges are likely to want to try competency education if the evaluator believes it could be helpful. That may not be the case though if the client still has not become competent after receiving education, and the evaluator continues to believe that competency may be attained. 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.

- ❖ 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 DA's stipulate
- ❖ Is your county good about periodically reevaluating clients after he or she has been found incompetent, but likely to attain competency?
  - Every 3 months it is reviewed.
- ❖ What competency training is provided in your county?
  - Don't know

### **Waiver to Adult Court**

- ❖ Do the District Attorneys in your county file waiver frequently?
  - Waiver is not very frequent in Crawford County. It is usually reserved for very serious offenses and for kids who are very close to 17 years old.
- ❖ Do the judges in your county often waive kids into adult court?
  - No- but that is probably because there are so very few attempts at waiver & once there is a waiver it is unknown if the judge will waive them or not.
- ❖ 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 truly seeking waiver
- ❖ How often are waivers contested?
  - Contested waivers are rare, because the cases can often be resolved with some sort of deal in juvenile court and/or unfortunately, kids will choose not to contest a waiver on a misdemeanor charge if he or she believe that they may go to corrections or be placed out of county in the juvenile system and could instead opt for probation in the adult system. However, there are times when it is necessary to contest waiver, and these are very involved hearings.
- ❖ 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?
  - Social workers, cops
- ❖ What sort of witnesses does the defense usually call?
  - Parents, treatment professionals, etc
- ❖ Is it at all common for a juvenile to initiate waiver proceedings?
  - No, but sometimes the juvenile does not contest the waiver because they think their sentence would be better in adult court (probation)
- ❖ Are you aware of any instances in your jurisdiction of the Court initiating proceedings?
  - No.

## **Disposition**

- ❖ How closely are the social worker's recommendations followed?
  - Normally they are always followed plus the court has JD-1 and JD-2 which are the standard preprinted court orders for the juvenile and the parent.
- ❖ 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 very rare in this county. Probably because the prosecutor does not file many juvenile petitions and the ones he does file, he firmly believes they need to be under a formal order.
- ❖ Are there "standard rules of supervision" that are in all delinquency dispositions?
  - Yes, we have two different sets of rules depending on the circumstances of the case. (see attached)
- ❖ Does the State typically agree with the Department's recommendations?
  - Yes, but there are exceptions.

- ❖ Does your jurisdiction have an intensive supervision program?
  - Yes
- ❖ Does your jurisdiction have a specialized "wraparound" program?
  - No.
- ❖ Does your jurisdiction have a community service/restitution program?
  - Yes, it is organized on Saturday mornings- the register in probate normally helps organize the kids and jobs.
- ❖ Which Residential Treatment Centers are used by your county?
  - Northwest Passage, Lad Lake, Homme Home, sometimes Wyalusing
- ❖ Does your county allow for a dispositional 365 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?
  - 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?
  - Don't know. Of recent memory there has not been a juvenile petition alleging a sex offense.

## **Services in your county**

- ❖ What are common treatment programs used in your county for juveniles? Anger management programs? AODA?
  - In home family treatment, individual counseling, parent to parent group, AODA services through the Villa Success
- ❖ 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?
  - None that I know of- maybe they would use Great Rivers in Lacrosse, but as I said earlier juvenile sex offenses are very rare in this county.
- ❖ What programs do you have in your county that are gender-specific?
  - None that I know of

## **Sanctions**

- ❖ How often is there a stipulation as to the basis for sanctions?
  - Often it is common to stipulate
- ❖ If there is not a stipulation to the violations, how does the State/Department typically attempt to prove the basis?
  - Social worker or parent will testify
- ❖ What sanctions are most often imposed in your county?
  - Usually, kids are sanctioned to detention or the Dane County Shelter home. The judges usually do not use the full ten days right off the bat, but just give kids a taste of detention. Shelter home is often used if a change of placement is being considered and the judge wants to see how the kid will do with the structure of the shelter home, but sometimes they will go to Secure or Non-secure in LaCrosse

- ❖ Does your county utilize stayed days in detention as a sanction?
  - Sometimes, the judge will consider it for sure
- ❖ Has a particular sanction worked well for your clients in your opinion?
  - Same as Dane- stayed days seem effective and give the social worker some room as well as specific/ intensive treatment for addiction issues. Sometimes just taking the juvenile out of the environment and placing them somewhere else for a day or so seems to be effective as well.

### **Miscellaneous**

- ❖ What are common acronyms and their meanings in your county?
  - JDI & JD2 are the standard rules of supervision for juveniles and parents (see attached)
- ❖ Who are experts you have used in juvenile cases and would you recommend them?
  - Dr. Caldwell has been used in the past, also Dr. VanDyke for NGI evals, recently I have used Dr. Schoenecker for NGI evals for adults and plan to use him for Juveniles as well.

**ORDER APPLICABLE TO PARENTS  
of Delinquents and Juveniles in Need of Protection or Services**

The Court orders the juvenile's parent, guardian, or legal custodian to comply with the following conditions determined by the Court to be necessary for the juvenile's welfare:

- 1) You shall meet with the caseworker as requested for scheduled and unscheduled appointments. You shall report the juvenile's contacts with law enforcement officers within 72 hours of becoming aware of them. Runaways shall be immediately reported to the caseworker.
- 2) You shall sign a release of information form and provide information as requested by the caseworker.
- 3) During the first two weeks of supervision, you shall consult with the caseworker and establish written rules of the home for the juvenile.
- 4) You shall participate and cooperate in the education program provided by the school district. You shall cause the juvenile to attend every class or session unless he/she has a written medical excuse. You shall attend all parent-teacher conferences. You shall provide any special help for the juvenile, such as tutoring or the After Hours Program, as requested by the caseworker.
- 5) You shall attend, participate and cooperate in individual and/or family counseling, support groups, or mediation, as requested by the caseworker. This includes, but is not limited to, evaluation, treatment, and education in the areas of mental health, alcohol and drug abuse, corrective thinking, victim offender mediation, and Attention Deficit Disorder.
- 6) You shall attend, participate, and complete parenting activities and/or education as recommended by the caseworker.
- 7) You shall provide or arrange for any transportation, which is necessary in order for your child to comply with the conditions of supervision.
- 8) You are responsible to contribute to the cost of services to the juvenile in an amount set by the Court, payable to the Juvenile Court Clerk, due on the first day of each month that the juvenile is on supervision. You may receive a separate billing for public defender fees, guardian ad litem fees, victim/witness fees, and secure/nonsecure detention costs.
- 9) You are also responsible to pay any restitution or forfeiture ordered by the Court if you are a parent with custody rights. This shall be in accordance with your ability to pay; you may request a hearing on this matter.
- 10) You shall not change your child's residence from Crawford County without Court approval.

ANY PERSON WHO FAILS TO COMPLY WITH THIS ORDER MAY BE PROCEEDED AGAINST FOR CONTEMPT OF COURT. Sec. 938.45 Wis. Stats.

## **CONDITIONS OF SUPERVISION**

### **For Delinquents and Juveniles in Need of Protection or Services**

The following rules of conduct are designed and ordered by the Court for your physical, mental, and moral well-being and behavior:

- 1) **OBEY THE LAW.** You shall avoid all conduct which violates State or municipal laws. You are to follow the rules of your home(s) and caseworker restrictions on appearance, dress, firearms, motor vehicles, computers, TV and video games.
- 2) **REPORT AS DIRECTED.** You shall meet with your caseworker as directed for scheduled and unscheduled appointments. Report all contacts with law enforcement officers within 72 hours.
- 3) **TELL THE TRUTH.** You shall provide true and correct information verbally and in writing in response to questions by your caseworker.
- 4) **OBTAIN YOUR EDUCATION.** You shall participate and cooperate in the education program provided by the school district. You shall attend each and every class or session unless you have a written medical excuse. You shall make satisfactory grades or progress in accordance with your ability. You shall be respectful of, and accept discipline from school authorities.
- 5) **BE INVOLVED IN THE COMMUNITY.** You shall actively participate on a regular basis in at least two approved school or community group activities. Examples include Scouting, 4H, church groups and after school activities such as sports or clubs.
- 6) **GET COUNSELING.** You shall attend, participate and cooperate in individual and/or family counseling, support groups or mediation, as directed by your caseworker. This includes evaluation, treatment and education in the areas of mental health, alcohol and drug abuse, corrective thinking, victim offender mediation and Attention Deficit Disorder.
- 7) **PERFORM VOLUNTEER WORK.** You shall perform community service work as assigned by the judge or by your caseworker. All work shall be performed in a satisfactory manner at such times and places as directed by the work supervisor.
- 8) **BE ALCOHOL AND DRUG FREE.** You shall not possess or consume alcohol beverages or controlled substances. In addition, you may not even be present where there is underage drinking or where drugs are being consumed. You shall submit to alcohol and drug testing when requested by your caseworker.
- 9) **KEEP YOUR CURFEW.** You shall remain in your residence during the curfew set for you by your caseworker. Your caseworker may allow exceptions to your regular curfew. Your caseworker may place you on electronic monitoring at any time.
- 10) **STAY AWAY FROM BAD COMPANY.** You shall not associate with any person who has been convicted of a crime or adjudicated delinquent. Your caseworker may allow exceptions to this rule. In addition, your caseworker may designate other persons with whom you are to have no contact.