

Juvenile Practice County By County (Delinquency)

Dodge County

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The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
 - The District Attorney's office has requested that they review all referrals that go to the juvenile human services unit. Usually the intake worker will attempt to meet with the child and the parents, and if they do not show to the initial appointment they refer to the DA's office for charges. If the child goes to the initial appointment and it is their first offense there is usually a deferred agreement that is entered into. There have been times where the DA's office jumps human services' decision and files charges. There is specific attention to drug and pill cases, and there appears to be an unwritten policy that the social worker cannot enter into a DPA without consulting with the DA. If a kid is already on supervision, his or her current social worker makes the recommendation to the DA about whether any new offense should be charged. If a kid is held in custody, then a social work does a quick assessment and intake, but normally the DA's office chooses to file a petition and the social worker agrees with that decision.
- ❖ Do you use the term probation officer or social worker or something else to describe the county representative from human services?
 - Social worker – however when reviewing terms of supervision to the juvenile I do explain that the role of the social worker is sometimes like a probation agent.
- ❖ Is there a specific social worker/probation officer or group of social workers/probation officers who conduct the intake inquiry?
 - Yes – there are the intake workers who, once they receive the juvenile/case, stay on that case until disposition. Upon disposition the case is assigned to an ongoing social worker.
- ❖ 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.?
 - The District Attorney (not the ADAs) is the only one who decides to jump human services' original decision. Once that has happened and charges have been made the only person usually pitching the DPA as a way to resolve the case is myself – the social worker doesn't usually push for it first.
- ❖ Are Deferred Prosecution Agreements (DPA) often used in your county?

- I would say they are fairly common as an initial disposition for juveniles who go through the intake process. However, once the case is charged there are very few DPAs that are attained. Most of these are obtained after a motion hearing in front of the judge.
- ❖ Are defense attorneys ever involved in negotiating DPAs prior to the filing of a formal petition?
 - Because an attorney is not assigned prior to the petition being filed the only time I have specifically been able to negotiate a DPA prior to filing was when I appeared at a temporary physical custody hearing for the juvenile and was able to discuss that with the DA and the social worker.
- ❖ Are you ever successful at negotiating DPAs once a formal petition has been filed? Does this happen often?
 - If the social worker's only reason for asking for a petition to be filed was because the family did not show for the intake appointment, the ADAs will usually be willing to pursue a DPA. However, in other circumstances the DPA is usually obtained by filing a motion to dismiss and refer back to intake.

Temporary Physical Custody Hearings

- ❖ Do your clients appear personally at these hearings or does your jurisdiction utilize video conferencing?
 - These are in-person. Generally the DA's office sends me an email notifying me if a juvenile is going to need a TPC hearing that day. The transportation staff from secure detention (we use Washington County's facility) or the social worker will generally have the juvenile there a half hour for me to meet with them and discuss the process and options.
- ❖ Are your custody hearings before a court commissioner or a judge?
 - A judge. Each judge is on a rotation, and if the juvenile appears for a TPC hearing on that judge's week then the case will stay with that judge. (i.e. the first and third week are branches 1 and 2, the second and fourth week of the month are branches 3 and 4.)
- ❖ Is a petition normally filed by the time of/at the hearing?

- The DA’s office always asks for 48 hours to file the petition. (I hold them to that.)
- ❖ Is there ever sworn testimony taken at custody hearings?
 - If the placement is contested the DA will call the social worker and possibly a parent, and I will call whoever I have available that is consistent with what placement we wish to have.
- ❖ 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?
 - While I have requested this – it has never been granted in this county. The choices are usually secure detention, LSS Group Home, at home on electronic monitoring, or at a relative’s home. Sometimes I have had luck when I provide a written “rules” form to the Judge when I am requesting non-secure custody, non-electronic monitoring. (I refer to these as “strict” and “non-strict” non-secure placements. I have taken this idea from my time in Waukesha County.)
- ❖ What is the process for “appealing” the initial custody determination?
 - Generally if the Judge places the juvenile in a type of custody we disagree with I will be given a “TPC review” hearing after the petition has been filed.
- ❖ Is a request to review ongoing custody status ever made by someone other than defense counsel?
 - No.
- ❖ 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?
 - The secure detention facility is actually in Washington County, and our Group Home is in Beaver Dam, WI.

- ❖ At a custody hearing, besides detention what placement options are available for kids?
 - LSS Group Home, electronic monitoring, at home, or with a relative. Sometimes, if the social worker does not have to complete any of the paperwork and we take care of it all, we are able to advocate for a juvenile to go to a neighboring county's group home if our group home is full so they do not have to go to secure detention.
- ❖ 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?
 - I request a hearing for a review of their placement at the TPC hearing and we generally schedule a hearing within 72 hours. If that is not granted I request that we review at the scheduled plea hearing. In addition, if new information comes to light I file a motion to review placement prior to the hearing.
- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?
 - Dodge county uses an electronic monitoring program which essentially places them on "the bracelet" and requires they stay physically in their home unless there are pre-scheduled appointments.
 - I have started pushing for "strict" and "non-strict" home placement as I had witnessed as an intern in Waukesha county, so far this has only worked with select 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, our office has a good relationship with the social workers and the officers at secure detention and they give us a heads up if they have concerns.
- ❖ 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 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.

- ❖ Is your county good about periodically reevaluating clients after he or she has been found incompetent, but likely to attain competency?
 - This does not happen very often here so I probably cannot give the best answer.

- ❖ What competency training is provided in your county?
 - Some training our detention center , which is in Washington County.

Waiver to Adult Court (keep in mind these are very infrequent for Dodge County.)

- ❖ Do the District Attorneys in your county file waiver frequently?
 - Waiver is not very here. 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, this is likely because the state does not often file waiver petitions so it is hard to know if the judges would be quick to waive kids if there were more waiver hearings.
- ❖ 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?
 - Often, the DAs are hoping a kid will stipulate to corrections or the serious juvenile offender program in exchange for the waiver withdrawal. However, there are times when the DAs are serious about waiving a kid into adult court. This is usually in the case of very serious offenses, kids who are very close to 17 and have a fairly serious charge, and kids who have already been to corrections.
- ❖ 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?
 - 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?

- Nope
- ❖ 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?
 - There are standard recommendations that are almost always followed – depending on the judge. With some judges we have more success with provisions that are a little more arbitrary or difficult for the juvenile. For example a judge has not followed a social worker's recommendation that the child write an apology letter because that other child was bullying our client and would use it further. Instead the apology in court was sufficient.
 - Furthermore – social workers have lately tried to include in every case that there are 60 days of electronic monitoring included to be used at the discretion of the social worker – we have successfully argued that is unduly burdensome because it circumvents the social worker's need to file a sanction and have a contested hearing on the matter.
- ❖ 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?
 - The District Attorney's office drafts the consent decree and the defense attorney is in charge of obtaining all the signatures. In most situations a plea has been required.
- ❖ Are there "standard rules of supervision" that are in all delinquency dispositions?
 - Yes.
- ❖ Does the State typically agree with the Department's recommendations?
 - Lately the department's recommendations seem to have first gone through the DA before they make them. I have even had social workers go as far as to tell me they agree with my recommendations but will need to speak with the DA first. (It does not seem that they enjoy that but have been told to do that.)
- ❖ Does your jurisdiction have an intensive supervision program?
 - No

- ❖ Does your jurisdiction have a specialized "wraparound" program?
 - Yes
- ❖ Does your jurisdiction have a community service/restitution program?
 - Yes
- ❖ Which Residential Treatment Centers are used by your county?
 - Northwest Passage, Lad Lake, Norris Adolescent Center, Homme Home, Eau Claire Academy, Oconomowoc DTC, Rogers, St. Amelians, Milwaukee Academy.
- ❖ Does your county allow for a dispositional 365 day placement in detention?
 - Dodge allows for dispositional placement of up to the 180 days but it is rare to see a child there post disposition. I have seen on cases that we have appointed counsel outside of our office where the case is closed at dispo and the child remains in secure detention awaiting a residential treatment bed date.
- ❖ 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?
 - Our county is rather quick to remove children from their homes unfortunately. It helps us in CHIPS cases when the child wants out, but not so much in JIPS or Delinquency cases.
- ❖ 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?
 - They are not sent often to corrections, although there are definitely some kids who have been sent there that I don't believe should, and a handful of times is because the county does not want to spend any more.
- ❖ 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?
 - Generally it is stayed at dispo as we will try to have a psychosexual evaluation done early on which allows for the juvenile to be in a bit of treatment and show progress prior to dispo.

Services in your county

- ❖ What are common treatment programs used in your county for juveniles? Anger management programs? AODA?
 - Human services has a program that they use for anger management, otherwise AODA is the primary source of treatment provided, along with wraparound services – unless defense counsel finds something else.
- ❖ Is Day Treatment available in your county? If so, what are the names of the specific day treatment programs?
 - Crossroads and Rogers are generally the main two that I will see juveniles complete day treatment.
- ❖ 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?
 - Unfortunately our county does not even have a juvenile psychotherapist right now, let alone a psycho-sexual so most are required to complete evaluations in Milwaukee and then they complete the treatment via skype.
- ❖ What programs do you have in your county that are gender-specific?
 - None specifically from our county.

Sanctions

- ❖ How often is there a stipulation as to the basis for sanctions?
 - This happens very often. Usually in conjunction with an agreement as to a sanction that is less than what was originally recommended.
- ❖ If there is not a stipulation to the violations, how does the State/Department typically attempt to prove the basis?
 - Yes – they will call the social worker or the school liaison officer.
- ❖ What sanctions are most often imposed in your county?
 - Time at the group home, or a mixture of time at the group home with imposed and stayed secure detention.

- ❖ Does your county utilize stayed days in detention as a sanction?
 - Yes – See above.
- ❖ Has a particular sanction worked well for your clients in your opinion?
 - I believe that being on the bracelet has a great deterrent effect, and stayed time seems to show them that something is serious, especially if they were arrested the evening before and spent “a night” in secure. Otherwise being at the group home generally gets kids to school if truancy is the issue.

Miscellaneous

- ❖ What are common acronyms and their meanings in your county?
 - TPC – Temporary physical custody
 - SD – secure detention
 - NSH – non-secure home
 - EM – Electronic Monitoring
 - NWP – Northwest Passages
- ❖ Who are experts you have used in juvenile cases and would you recommend them?
 - I don't really have any good go-to's right now.