

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.

Milwaukee County

Submitted by: Paul Rifelj

The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
 - In Milwaukee, the Probation Officer reviews incoming cases to determine if charges are recommended and whether an individual should be held pending a hearing. In the vast majority of cases, when charges are recommended they are eventually filed by the District Attorney.
 - It can be difficult to achieve an effective remedy even if the time limits are not complied with, as the Juvenile Justice Code grants a wide array of flexibility to the judge in that regard.
- ❖ Do you use the term probation officer or social worker or something else to describe the county representative from human services?
 - Recently, the distinction between Intake Workers and Probation Officers was basically eliminated in Milwaukee County. The PO who is assigned to the case pre-disposition now supervises after disposition as well.
- ❖ Is there a specific social worker/probation officer or group of social workers/probation officers who conduct the intake inquiry?
 - See above
- ❖ 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.?
 - With regard to charging, the DA and probation officers usually agree. There are often times when they are on opposite sides of an issue when it comes to Deferred Prosecution Agreements.
- ❖ Are Deferred Prosecution Agreements (DPA) often used in your county?
 - Yes
- ❖ Are defense attorneys ever involved in negotiating DPAs prior to the filing of a formal petition?
 - It is possible but unusual.

- ❖ Are you ever successful at negotiating DPAs once a formal petition has been filed? Does this happen often?
 - Yes, it is a common motion to make per 938.21(7) and if the circumstances support such a request, the chances of success are decent.

Temporary Physical Custody Hearings

- ❖ Do your clients appear personally at these hearings or does your jurisdiction utilize video conferencing?
 - They appear
- ❖ Are your custody hearings before a court commissioner or a judge?
 - A commissioner
- ❖ Is a petition normally filed by the time of/at the hearing?
 - Unless the case is serious and complicated, a petition is usually filed by the time of the hearing
- ❖ Is there ever sworn testimony taken at custody hearings?
 - No
- ❖ 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 – if the secure findings are made, they are held. Very unusual circumstances such as a family emergency or death may give rise to a furlough.
- ❖ What is the process for “appealing” the initial custody determination?
 - You must seek a de novo review in front of a judge to appeal the commissioner’s decision. This usually involves going to the judge’s court, asking for a review, getting notice to the parties, and hopefully getting the case called the same day or the next.
- ❖ 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 depends on the seriousness of the charge.
- ❖ Where is the detention facility for your county?
 - In the basement of the Children's Court Center
- ❖ At a custody hearing, besides detention what placement options are available for kids?
 - Beside Detention or going home, the other main option is Temporary Shelter
- ❖ 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?
 - You should ask for a review date at the court hearing where your client was initially detained. Also, custody is reviewed at each subsequent hearing.
- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?
 - Level 2 is a monitoring program that will perform phone and face to face tracks of kids who are returned home with some sort of court ordered curfew.

Competency to Stand Trial

- ❖ How is the question of competency raised in your jurisdiction?
 - Almost always by defense counsel
- ❖ Is it common for someone other than defense counsel to raise competency?
 - No
- ❖ Once raised, does the Court require some sort of affirmative showing, offer of proof, other evidence before ordering an evaluation?
 - Not usually. If an attorney asserts that they have spoken with their client and feel compelled to raise competency as an issue, it rarely goes beyond that.
- ❖ Do parties generally stipulate to the evaluator's finding on present competency? How about on the likelihood of attaining competency within the statutory period?

- They can usually be obtained within the time limits for an out of custody case. Often times DA's will object to the initial report if it finds that a client is incompetent. In that case, they may ask the court to order a second evaluation.
- ❖ Is your county good about periodically reevaluating clients after he or she has been found incompetent, but likely to attain competency?
 - Yes – it happens regularly
- ❖ What competency training is provided in your county?
 - It mainly focuses on the court processes. Kids will see the competency restoration specialist multiple times, and written reports on their progress are then provided to the court. If the reports indicate that significant progress is being made, then the court may order a fresh competency evaluation to be done.

Waiver to Adult Court

- ❖ Do the District Attorneys in your county file waiver frequently?
 - They are fairly infrequent
- ❖ Do the judges in your county often waive kids into adult court?
 - No
- ❖ 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 is usually done in a true attempt to waive
- ❖ How often are waivers contested?
 - Almost always
- ❖ If a waiver is contested, how does the State typically prove prosecutive merit?
 - Sometimes by relying on the delinquency petition. Other prosecutors will bring in testimony as though it's a preliminary hearing.
- ❖ What sort of witnesses does the State typically call in support of waiver?
 - Probation Officers, witnesses to the crime charged, past service providers whom the client has irked

- ❖ What sort of witnesses does the defense usually call?
 - Representatives from DOC or other treatment facilities to testify as to the adequacy of juvenile facilities. Psychologists who have evaluated the client and written a report on it. Family members. Friends. Teachers. Anyone who can provide helpful context to the kid's life.
- ❖ 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?
 - No

Disposition

- ❖ How closely are the social worker's recommendations followed?
 - Very closely, especially with regard to placement
- ❖ 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 fairly common. Some DA's prefer to draft them, whereas sometimes they want the defense attorney to do it
- ❖ Are there "standard rules of supervision" that are in all delinquency dispositions?
 - Yes – obey rules of home and community, go to school, no new violations of the law arising to the level of probable cause, no illegal drugs or alcohol. No awol activity. Cooperate with PO and treatment providers.
- ❖ Does the State typically agree with the Department's recommendations?
 - Yes
- ❖ Does your jurisdiction have an intensive supervision program?
 - Yes – it is called Running Rebels which includes tracking of an individual
- ❖ Does your jurisdiction have a specialized "wraparound" program?

- Yes
- ❖ Does your jurisdiction have a community service/restitution program?
 - Kids often rely on their PO to set up community service
- ❖ Which Residential Treatment Centers are used by your county?
 - There are many. Some of them are Norris, Lad Lake, Carmelite, Eau Claire Academy, Milwaukee Academy, St. Rose, and Homme Home.
- ❖ Does your county allow for a dispositional 365 day placement in detention?
 - It's very rare
- ❖ 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
- ❖ 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?
 - Corrections tends to be used as a last resort option in Milwaukee. Often a correctional placement results from either a very serious charge followed by screw ups in a non-correctional setting.
- ❖ 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?
 - They generally defer a ruling on the issue until about 11 months into a supervision order. More often than not, it is stayed.

Services in your county

- ❖ What are common treatment programs used in your county for juveniles? Anger management programs? AODA?
 - Anger Management, Cognitive Intervention, AODA, and Individual Therapy.
- ❖ Is Day Treatment available in your county? If so, what are the names of the specific day treatment programs?
 - Yes, it is available. Project Excel and Ultra are the names of the providers.

- ❖ 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?
 - Family Options is the provider of services for sex offenders who are placed on probation. They write periodic reports to the court to detail the client's progress.

- ❖ What programs do you have in your county that are gender-specific?
 - ??

Sanctions

- ❖ How often is there a stipulation as to the basis for sanctions?
 - Very often

- ❖ If there is not a stipulation to the violations, how does the State/Department typically attempt to prove the basis?
 - Through sworn testimony

- ❖ What sanctions are most often imposed in your county?
 - Detention is almost always the sole sanction.

- ❖ Does your county utilize stayed days in detention as a sanction?
 - Yes – often a sanction will consist of a few days served forthwith and a larger number of days which are stayed and used at the PO's discretion.

- ❖ Has a particular sanction worked well for your clients in your opinion?
 - No

Miscellaneous

- ❖ What are common acronyms and their meanings in your county?
 - MCAP – Milwaukee County Accountability Program

- ❖ Who are experts you have used in juvenile cases and would you recommend them?
 - Psychologist Dr. David Thompson is an excellent Psychologist, as is Dr. Suzanne Lizowski.