

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.

Polk County

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The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
 - Polk County Human Services decides whether or not to offer a deferred prosecution agreement or recommend that the DA's office file a formal petition. Generally, only first offenders get diversions. If a juvenile 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 juvenile is held in custody, then the DA files a petition. More often than not on most cases made known to the PD's office, there is a petition filed.
- ❖ Do you use the term probation officer or social worker or something else to describe the county representative from human services?
 - Social worker or case worker
- ❖ Is there a specific social worker/probation officer or group of social workers/probation officers who conduct the intake inquiry?
 - Yes
- ❖ 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?
 - No
- ❖ Are defense attorneys ever involved in negotiating DPAs prior to the filing of a formal petition?
 - Very rarely. Juveniles aren't assigned an attorney before a petition is filed.
- ❖ Are you ever successful at negotiating DPAs once a formal petition has been filed? Does this happen often?
 - Very rarely

Temporary Physical Custody Hearings

- ❖ Do your clients appear personally at these hearings or does your jurisdiction utilize video conferencing?
 - In person
- ❖ Are your custody hearings before a court commissioner or a judge?
 - A judge.

- ❖ Is a petition normally filed by the time of/at the hearing?
 - Not always, but most of the time
- ❖ Is there ever sworn testimony taken at custody hearings?
 - If contested, the social worker will testify.
- ❖ 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 there is a determination for secure custody, the Court isn’t going to release that person with the petition pending. Generally, juveniles aren’t kept in secure custody.
- ❖ What is the process for “appealing” the initial custody determination?
 - The attorney can ask for a de novo hearing before the other judge, though this doesn’t really happen.
- ❖ Is a request to review ongoing custody status ever made by someone other than defense counsel?
 - No. If the juvenile is in out-of-home custody, then the social worker and DA are generally in favor of the OOH custody.
- ❖ What is the average length of stay in detention?
 - There isn’t an average stay because it is rare to see juveniles placed in detention.
- ❖ Where is the detention facility for your county?
 - Eau Claire (which isn’t in our county, but that’s the closest).
- ❖ At a custody hearing, besides detention what placement options are available for kids?
 - Foster care, relatives’ homes, group homes, or own home. The juveniles are generally kept in their own homes.
- ❖ 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?
 - An interested party needs to make a request for the Court to hear it.
- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?
 - There is electronic monitoring available. There isn’t some other check-in monitoring place but for the assigned case worker who isn’t going to check in daily.

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?
 - No, but the social worker may raise concerns

- ❖ Once raised, does the Court require some sort of affirmative showing, offer of proof, other evidence before ordering an evaluation?
 - No. Attorney client confidentiality is respected.

- ❖ 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 hasn't happened in Polk Co as far as I know, and most certainly not with the judges in the last several years.

- ❖ What competency training is provided in your county?
 - I don't know that any is.

Waiver to Adult Court

- ❖ Do the District Attorneys in your county file waiver frequently?
 - No
- ❖ Do the judges in your county often waive kids into adult court?
 - No. They have heard waivers but generally keep them in juvenile court.
- ❖ 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?
 - Both.
- ❖ How often are waivers contested?
 - Always. It is known that the Judges aren't interested in waiving, so it would have to be pretty egregious to waive them.
- ❖ If a waiver is contested, how does the State typically prove prosecutive merit?
 - Generally the State relies on the petition and has an officer testify on the police report.
- ❖ What sort of witnesses does the State typically call in support of waiver?
 - The officer and the social worker.
- ❖ What sort of witnesses does the defense usually call?
 - Parents, community members if possible.
- ❖ 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?
 - Usually to the T.
- ❖ 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?
 - Not frequently, but also not unheard of. The DA's office drafts it. Sometimes a plea is required but not always.
- ❖ Are there "standard rules of supervision" that are in all delinquency dispositions?
 - Yes.

- ❖ Does the State typically agree with the Department's recommendations?
 - Yes.
- ❖ 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
- ❖ Which Residential Treatment Centers are used by your county?
 - Northwest Passages I and II.
- ❖ Does your county allow for a dispositional 365 day placement in detention?
 - I haven't seen it.
- ❖ 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?
 - The Judges tend to keep juveniles in home unless the social worker requests that they be removed, in which case the judges will almost always have them removed from the 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?
 - Juveniles aren't sent often. It is a last resort or for severe offenses. I have seen juveniles go for minor offenses, but that is through DHS, not the Court, and they are generally moved elsewhere within days. I don't believe it is financially driven, because it's rare for juveniles to go.
- ❖ 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?
 - The judges generally stay registration at the dispositional hearing or defer the decision. One judge defers, another stays.

Services in your county

- ❖ What are common treatment programs used in your county for juveniles? Anger management programs? AODA?
 - AODA, anger management, and therapy are offered through the County. Sometimes family therapy is offered as well.

- ❖ Is Day Treatment available in your county? If so, what are the names of the specific day treatment programs?
 - Yes, Amery 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?
 - I don't believe there is. They would have to go out of county or wait for enough people who are required to attend for a group to form that they can attend.
- ❖ What programs do you have in your county that are gender-specific?
 - None.

Sanctions

- ❖ How often is there a stipulation as to the basis for sanctions?
 - Not often. There's nothing to lose by contesting.
- ❖ If there is not a stipulation to the violations, how does the State/Department typically attempt to prove the basis?
 - Testimony through the social worker.
- ❖ What sanctions are most often imposed in your county?
 - Electronic monitoring and intensive supervision are written into the order, so there isn't a hearing for that. Those are done most often. Otherwise, requiring a higher level of care (foster care, group home, etc) are done through the Courts. These aren't as frequent. The most frequent sanction is an extension of the order.
- ❖ Does your county utilize stayed days in detention as a sanction?
 - Rarely.
- ❖ Has a particular sanction worked well for your clients in your opinion?
 - Most of the sanctions are just extensions of the order, so that means a longer time for services.

Miscellaneous

- ❖ What are common acronyms and their meanings in your county?
 - NWP (Northwest Passage)
 - DHS or DHFS (Dept of Human Services/Department of Health and Family Services)

- CHIPS
- JIPS

- ❖ Who are experts you have used in juvenile cases and would you recommend them?
 - I haven't seen experts used in juvenile practice.