

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.

Rock County

Submitted by: Eric Nelson and Barb Gerber

The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
 - Pretty much the way it is set forth in the statute.
- ❖ Do you use the term probation officer or social worker or something else to describe the county representative from human services?
 - I think they settle on something like “youth services specialist” recently, but most people still refer to them as juvenile probation.
- ❖ Is there a specific social worker/probation officer or group of social workers/probation officers who conduct the intake inquiry?
 - Recently this shifted from juvenile probation to the staff at the “youth services center” (detention center), presumably to avoid paying overtime to probation officers. The YSC is a 24 hour operation, so someone is always on duty.
- ❖ 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.?
 - Not always, the ADA who does virtually all the juvenile work reportedly thought they were no-actioning too many referrals and now reviews them all and apparently will overrule them fairly often.
- ❖ Are Deferred Prosecution Agreements (DPA) often used in your county?
 - Yes, if a child has not been in trouble before and the case is not extremely serious.
- ❖ Are defense attorneys ever involved in negotiating DPAs prior to the filing of a formal petition?
 - Rarely.
- ❖ Are you ever successful at negotiating DPAs once a formal petition has been filed? Does this happen often?
 - Yes to both.

Temporary Physical Custody Hearings

- ❖ Do your clients appear personally at these hearings or does your jurisdiction utilize video conferencing?
 - Video
- ❖ Are your custody hearings before a court commissioner or a judge?
 - Judge, almost always.
- ❖ Is a petition normally filed by the time of/at the hearing?
 - No.
- ❖ Is there every sworn testimony taken at custody hearings?
 - Rarely.
- ❖ 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?
 - None, but the case is ordinarily called again for filing of a petition after 48 working hours and custody can be reviewed then.
- ❖ Is a request to review ongoing custody status ever made by someone other than defense counsel?
 - Not that I can think of.
- ❖ What is the average length of stay in detention?
 - Don’t know. All but the most serious of charges will generally result in release, although sometimes that is on home detention with or without electronic monitoring.
- ❖ Where is the detention facility for your county?
 - Near the jail north of Janesville at Hwys 14 and 51.
- ❖ At a custody hearing, besides detention what placement options are available for kids?

- Home detention, with or without electronic monitoring.
- ❖ 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?
 - Call the clerk and ask that it be put on the calendar and then email the prosecutor and
- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?
 - Two kinds of electronic monitors. One requires a phone land-line in the home.

Competency to Stand Trial

- ❖ How is the question of competency raised in your jurisdiction?
 - Simply inform the court there is an issue.
- ❖ 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?
 - No.
- ❖ Do parties generally stipulate to the evaluator's finding on present competency? How about on the likelihood of attaining competency within the statutory period?
 - The prosecutor will usually stipulate to the evaluator's finding. We do not usually see cases where the likelihood of attaining competency.
- ❖ Is your county good about periodically reevaluating clients after he or she has been found incompetent, but likely to attain competency?
 - They usually are found unlikely to attain competency so this has not really been in issue.
- ❖ What competency training is provided in your county?

- This has not been an issue due to the usual finding of unlikely to attain competency.

Waiver to Adult Court

- ❖ Do the District Attorneys in your county file waiver frequently?
 - It is fairly rare. If it is a serious charge and the child is approaching 17 years old or has been in the juvenile system a long time, in some cases, they may file a waiver request. We used to lead the state with as many as 70 or more waiver requests in a year, but the philosophy has thankfully changed and the number is much, much lower these days.
- ❖ Do the judges in your county often waive kids into adult court?
 - He is not quick to waive.
- ❖ 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 sometimes truly seeking waiver, but sometimes are willing to negotiate for a juvenile disposition.
- ❖ How often are waivers contested?
 - As often as the client will let us. Unfortunately, clients are often short-sighted and would rather have adult probation than a more restrictive disposition that the DA would ask for if the case remained in juvenile court (such as corrections or residential treatment).
- ❖ If a waiver is contested, how does the State typically prove prosecutive merit?
 - With the facts in the petition.
- ❖ What sort of witnesses does the State typically call in support of waiver?
 - Juvenile probation agent.
- ❖ What sort of witnesses does the defense usually call?
 - CSS, parent, client.
- ❖ 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 the ADA, child and social worker are all recommending the same disposition and the court rarely deviates from that recommendation.

❖ 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. The ADA. Yes.

❖ 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, probation has a program.

❖ Which Residential Treatment Centers are used by your county?

- Norris, St. A's, Northwest Passage, Eau Claire Academy

❖ Does your county allow for a dispositional 365 day placement in detention?

- Yes, but we do not use it very often. They can be there for 180 days. It is called the Action Program. There are only a handful of openings & for a while the social worker was not available.
- ❖ 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 judge tries to keep them in the home if the home safe.
- ❖ 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?
 - Very, very few are sent to corrections compared with years gone by. It is totally financially driven. Corrections has priced itself out of the market. The county has developed other options, including a supposed residential treatment program housed in our detention center to avoid sending kids to corrections and attendant \$300 plus per day cost.
- ❖ 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?
 - Often we can get sex offenses reduced so that registry is not an issue. However, in the cases where it is an issue, generally it is stayed.

Services in your county

- ❖ What are common treatment programs used in your county for juveniles? Anger management programs? AODA?
 - Probation offers several programs within their department to divert kids from possible placement in detention from Sanctions. They do not specific names.
- ❖ Is Day Treatment available in your county? If so, what are the names of the specific day treatment programs?
 - Yes. Crossroads has one, and Mercy may, as well.
- ❖ 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?
 - Probation usually refers to the STOP program for sex offender treatment.
- ❖ What programs do you have in your county that our gender-specific?

- Divas group through probation.

Sanctions

- ❖ How often is there a stipulation as to the basis for sanctions?
 - Usually.
- ❖ If there is not a stipulation to the violations, how does the State/Department typically attempt to prove the basis?
 - Probation testifies.
- ❖ What sanctions are most often imposed in your county?
 - Home detention with electronic monitoring, up to 10 days in detention, sometimes served on consecutive weekends.
- ❖ Does your county utilize stayed days in detention as a sanction?
 - Yes.
- ❖ Has a particular sanction worked well for your clients in your opinion?
 - Don't know. The threat of stayed days sometimes works.

Miscellaneous

- ❖ What are common acronyms and their meanings in your county?
 - YSC—Youth Services Center, aka detention center.
 - EM – Electronic Monitoring
 - HD – Home Detention
- ❖ Who are experts you have used in juvenile cases and would you recommend them?
 - None specific to juvenile cases really come to mind right now.