

# **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.

# Sheboygan County

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## The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
  - Sheboygan County has “intake” social workers who handle all new referrals. They decide whether to place a kid on a deferred prosecution agreement, or whether to request a petition from the District Attorney’s office. If the kid is already on a court order, their own social worker (the “ongoing” workers is the one who makes any new referrals.
- ❖ Do you use the term probation officer or social worker or something else to describe the county representative from human services?
  - Social workers
- ❖ Is there a specific social worker/probation officer or group of social workers/probation officers who conduct the intake inquiry?
  - There is a group of social workers (“intake” workers who handle all referrals for new kids. “Ongoing” workers are assigned post-disposition and handle any referrals for kids on their caseloads.
- ❖ 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 vast majority of the time, yes. The Deputy District Attorney in Sheboygan is the only one who handles juvenile cases, and he defers to the workers for most decisions.
- ❖ Are Deferred Prosecution Agreements (DPA) often used in your county?
  - Yes. Sometimes they are used before a case is ever filed, and sometimes a Social Worker will ask to dismiss a petition and refer a case back for a DPA. This usually tends to happen when the kid and/or their parents did not show up for their first meeting with the social worker, but then become more active after a petition is filed and have little need for services.
- ❖ Are defense attorneys ever involved in negotiating DPAs prior to the filing of a formal petition?
  - No, but as stated above, an attorney can negotiate for a DPA after a case has been filed. These are used with kids with no prior referrals.

- ❖ Are you ever successful at negotiating DPAs once a formal petition has been filed? Does this happen often?
  - Yes, but not frequently. This only happens with first time offenders where the worker has not previously met with the family. A negotiation for a Consent Decree is much more common.

### **Temporary Physical Custody Hearings**

- ❖ Do your clients appear personally at these hearings or does your jurisdiction utilize video conferencing?
  - The clients appear in person. If a juvenile is held at the detention center, the attorney will meet with them in the jail prior to the court hearing. If a juvenile is held at Shelter Care, an attorney will meet with them only if they request one ahead of the hearing.
- ❖ Are your custody hearings before a court commissioner or a judge?
  - TPC hearings are before a judge.
- ❖ Is a petition normally filed by the time of/at the hearing?
  - No, it is standard practice for the DA's office to request 48 hours to file a petition. A summary of the basis for the request is typically in the TPC request.
- ❖ Is there every sworn testimony taken at custody hearings?
  - Usually there will be testimony if the hearing is contested. If there is an agreement, there is usually not testimony. Some judges require some testimony every time a request for secure custody is made, even if the juvenile agrees with the request.
- ❖ 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, although it is common for a social worker to be granted the discretion to move a kid home or to shelter care without another hearing.
- ❖ What is the process for "appealing" the initial custody determination?

- Our TPC hearings are before a judge to begin with, so “appeals” are rare, but if there is some sort of change in circumstances, a request to be reheard is not uncommon.
- ❖ Is a request to review ongoing custody status ever made by someone other than defense counsel?
  - Defense counsel is typically the only party to ever request a step-down to a less restrictive custody status, but social workers and/or the DA’s office will sometimes make a request for a more restrictive status if the kid is not doing well.
- ❖ What is the average length of stay in detention?
  - The vast majority of cases in Sheboygan County result in at-home or some other community placement, and kids are only in secure for a few weeks. Cases where placement is a larger issue can wind up staying in secure custody for longer, but there aren’t too many of these.
- ❖ Where is the detention facility for your county?
  - The detention facility is the building directly next to the courthouse (above the Sheriff’s Department § about a mile from the SPD office). Kids from Manitowoc County are held there as well.
- ❖ At a custody hearing, besides detention what placement options are available for kids?
  - The Shelter Care facility in Sheboygan and at-home placement (on “non-secure status”) are the most common. Occasionally a judge will approve placement with a close relative, but not often.
- ❖ 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?
  - Typically, a motion must be filed requesting a review. TPC hearings are held daily at 11:15 so a request to review is typically set at that time the day after it is filed.
- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?
  - No formal program exists. The assigned social worker monitors to ensure that the rules of a kid’s non-secure status are being followed.

## **Competency to Stand Trial**

- ❖ How is the question of competency raised in your jurisdiction?
  - Typically, by defense counsel through a written motion and affidavit. Occasionally it may be raised orally at another hearing.
- ❖ Is it common for someone other than defense counsel to raise competency?
  - Rarely, a judge or the DA will raise the issue.
- ❖ Once raised, does the Court require some sort of affirmative showing, offer of proof, other evidence before ordering an evaluation?
  - Defense counsel typically will file a very basic affidavit outlining general concerns. Most judges do not ask many questions before ordering an evaluation.
- ❖ 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 DA's office almost always stipulates to an evaluator's findings.
- ❖ Is your county good about periodically reevaluating clients after he or she has been found incompetent, but likely to attain competency?
  - Competency is not raised often in juvenile cases, but Sheboygan is pretty good with reviewing these types of cases.
- ❖ What competency training is provided in your county?
  - I'm not aware of what training is provided with juvenile clients.

## **Waiver to Adult Court**

- ❖ Do the District Attorneys in your county file waiver frequently?
  - No, this is very rare.
- ❖ Do the judges in your county often waive kids into adult court?
  - No, it is rarely requested.
- ❖ 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?

- I have not personally seen a waiver request made in the two years I've been in the office.
- ❖ How often are waivers contested?
  - I have not personally seen a waiver request made in the two years I've been in the office.
- ❖ If a waiver is contested, how does the State typically prove prosecutive merit?
  - I have not personally seen a waiver request made in the two years I've been in the office.
- ❖ What sort of witnesses does the State typically call in support of waiver?
  - I have not personally seen a waiver request made in the two years I've been in the office.
- ❖ What sort of witnesses does the defense usually call?
  - I have not personally seen a waiver request made in the two years I've been in the office.
- ❖ Is it at all common for a juvenile to initiate waiver proceedings?
  - No. I have not seen this occur.
- ❖ 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?
  - Social worker recommendations are followed very closely. Occasionally small changes are made, or minor rules added, but not often (and it can depend on the judge).
- ❖ 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 relatively common, if a kid has demonstrated progress since the time of their referral. The DA's office drafts the consent decree. The juvenile almost always has to enter a plea prior to the consent decree. Almost.
- ❖ Are there "standard rules of supervision" that are in all delinquency dispositions?
  - Yes. Standard rules include: No new criminal or civil law violations, cooperate with all household rules, regular school attendance with good behavior and an effort to complete all assignments, cooperate with any wraparound services, cooperate with attending social worker appointments, cooperate with counseling at the discretion of the social worker, no use or possession of controlled substances, sign waivers necessary to monitor compliance.
- ❖ Does the State typically agree with the Department's recommendations?
  - Yes, typically the State will support the Department's recommendations.
- ❖ Does your jurisdiction have an intensive supervision program?
  - Yes. ISP is a tiered system which involves an electronic monitor (bracelet for the first several levels of the program). It is designed to step-down kids and take at least 6 months.
- ❖ Does your jurisdiction have a specialized "wraparound" program?
  - There are a variety of programs that the Department will lump under this hearing, including Strength Through Leadership, the STARS programs and mentoring.
- ❖ Does your jurisdiction have a community service/restitution program?
  - No formal program, although kids often complete community services through DHS directly or through the school system.
- ❖ Which Residential Treatment Centers are used by your county?
  - The closest facilities are Willow Glen Academy and Friendship House, but other common placements are Northwest Passage, Homme Home or Lad Lake.
- ❖ Does your county allow for a dispositional 365 day placement in detention?
  - This is almost never used – only in circumstances where there are extreme difficulties in locating a placement for a kid.

- ❖ 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?
  - Judges tend to try and keep kids at home whenever possible.
- ❖ 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 does seem to be used only as a last resort. It is not common at all.
- ❖ 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?
  - This seems to happen differently on a case-by-case basis but generally judges seem hesitant to impose sex offender registration.

### **Services in your county**

- ❖ What are common treatment programs used in your county for juveniles? Anger management programs? AODA?
  - Anger management is handled through general counseling. Some AODA issues are as well. Bridgepoint Counseling or Northshore Clinic are common, NOVA is the most common AODA treatment program – it can be inpatient or outpatient.
- ❖ Is Day Treatment available in your county? If so, what are the names of the specific day treatment programs?
  - Outpatient treatment is common. More intensive day long treatment is not usually used.
- ❖ 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?
  - Dynamic Family Solutions does most juvenile sex offender treatment.
- ❖ What programs do you have in your county that are gender-specific?
  - Some of the mentoring services are gender specific, but not much else.

## **Sanctions**

They are not super common, but it is used.

- ❖ How often is there a stipulation as to the basis for sanctions?
  - Frequently, because the DA's office is quick to request TPC in secure detention when a sanction is filed.
- ❖ If there is not a stipulation to the violations, how does the State/Department typically attempt to prove the basis?
  - Typically the social worker is called to testify.
- ❖ What sanctions are most often imposed in your county?
  - In less serious sanctions with kids who have not been to secure detention, Shelter Care is used as a sanction first, but more common is a sanction to the detention center. A partial stay of a sanction is common as well.
- ❖ Does your county utilize stayed days in detention as a sanction?
  - Yes, frequently. A social worker will typically file a motion to lift stay if there is stayed time available instead of a new sanction motion.
- ❖ Has a particular sanction worked well for your clients in your opinion?
  - Unfortunately, detention and shelter care time is most commonly used, and does not seem to have an effect on kids that are consistently getting in trouble. Changes in placement or services are usually more effective.

## **Miscellaneous**

- ❖ What are common acronyms and their meanings in your county?
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- ❖ Who are experts you have used in juvenile cases and would you recommend them?
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