

# **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.

# Waukesha County

Submitted by: Maura McMahon

## The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
  - The family receives a notice in the mail, some workers will follow up with a phone call to confirm attendance. If the family wants a lawyer to be with them we attend, the Department is good about giving our number and suggesting people call us they will also reschedule if the intake date does not work with our schedule.
  
- ❖ Do you use the term probation officer or social worker or something else to describe the county representative from human services?
  - Social worker, most are offended by being called a probation officer.
  
- ❖ 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.?
  - Depends. We've just had a switch in juvenile prosecutors. The most recent one we had experience with would override on sexual assault or drug charges but often would then offer a consent decree often on an amended charge.
  
- ❖ Are Deferred Prosecution Agreements (DPA) often used in your county?
  - Yes, if the juvenile admits to the allegations or when there are clear factual issues
  
- ❖ Are defense attorneys ever involved in negotiating DPAs prior to the filing of a formal petition?
  - Yes
  
- ❖ Are you ever successful at negotiating DPAs once a formal petition has been filed? Does this happen often?
  - No

## Temporary Physical Custody Hearings

- ❖ Do your clients appear personally at these hearings or does your jurisdiction utilize video conferencing?
  - Generally in person unless it is a female in secure detention. Our girls are housed in Washington County and they generally appear at TPC hearings by video.

- ❖ Are your custody hearings before a court commissioner or a judge?
  - Court Commissioner unless Judge has decided he must hear the matter.
- ❖ Is a petition normally filed by the time of/at the hearing?
  - No
- ❖ Is there ever sworn testimony taken at custody hearings?
  - Not very often
- ❖ 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?
  - Yes for school, work, community service very similar to adult huber
- ❖ What is the process for “appealing” the initial custody determination?
  - Set a review hearing very quickly or file a de novo depending on which strategically makes more sense. Usually a review with the commissioner can happen within 24 hours and is effective.
- ❖ Is a request to review ongoing custody status ever made by someone other than defense counsel?
  - Yes. The Department often and the Prosecutor very infrequently.
- ❖ What is the average length of stay in detention?
  - In 2015 so far the average stay is 5.84 days in secure and 4.93 in shelter. In 2014 it was 6.85 days in secure and 5.26 in shelter.
- ❖ Where is the detention facility for your county?
  - The Detention facility is currently attached to our Juvenile Court Center. It has a shelter and a secure facility. However we only house boys in our secure facility and all shelter is being outsourced to Lad Lake as of July 1. Girls in secure are housed in West Bend. So we will have a 30-40 minute drive to see our kids in shelter in about a week and we do have an hour ride to see our girls in secure detention.
- ❖ At a custody hearing, besides detention what placement options are available for kids?
  - Through the county only shelter care or secure. The commissioners are open to relative and family friends that department checks out as options. Sometimes the Department proposes these other times we do.
- ❖ 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?
  - We just have to ask and it happens. No formal motion necessary, it’s nice if we send a letter but a phone call will do.

- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?
  - Yes strict and non-strict homebound detention

### **Competency to Stand Trial**

- ❖ How is the question of competency raised in your jurisdiction?
  - At any hearing by defense. If the social worker has concerns they contact us and ask us to raise it.
- ❖ 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?
  - Usually
- ❖ Is your county good about periodically reevaluating clients after he or she has been found incompetent, but likely to attain competency?
  - Yes. Our judge orders reevaluations to occur every 3 months in the first order.
- ❖ What competency training is provided in your county?
  - The Department has created a competency restoration program. The curriculum was drafted in collaboration between Corp Counsel, Public Defender and D.A.

### **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
- ❖ 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?
  - Depends on the case

- ❖ How often are waivers contested?
  - Always
- ❖ If a waiver is contested, how does the State typically prove prosecutive merit?
  - Generally Judge takes note of the petition on rare occasions they call investigating officers.
- ❖ What sort of witnesses does the State typically call in support of waiver?
  - Social worker, cop, very rare circumstances the victim.
- ❖ What sort of witnesses does the defense usually call?
  - Psychologist, parents, previous therapist, current therapist, school personnel, teachers, social worker.
- ❖ 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?
  - It depends on the worker
- ❖ 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 they are often resolved. The Department fills out the State form. Yes the State usually requires a plea but in many cases will reduce the charge to which the child is pleading.
- ❖ Are there "standard rules of supervision" that are in all delinquency dispositions?
  - Yes
- ❖ Does the State typically agree with the Department's recommendations?
  - Depends on the worker and the d.a.. As we have a new prosecutor it's hard to tell at this moment.
- ❖ Does your jurisdiction have an intensive supervision program?
  - Yes
- ❖ Does your jurisdiction have a specialized "wraparound" program?
  - Not specifically
- ❖ Does your jurisdiction have a community service/restitution program?

- There is a program through WCS additionally we are working on a committee to provide additional community service options
- ❖ Which Residential Treatment Centers are used by your county?
  - Norris, Lad Lake, St. Aemilian's, Homme Home, Northwest Passages, Milwaukee Academy, Eau Claire Academy
- ❖ Does your county allow for a dispositional 365 day placement in detention?
  - No
- ❖ 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?
  - Judge will override the County's recommendation for in-home placement when he feels it is harmful to the child.
- ❖ 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?
  - No not often, usually a last resort but at least once recently was ill advisedly used to send a message.
- ❖ 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?
  - Judge generally defers the decision and has a hearing at near the end of supervision. I am not aware of him ordering any child to register.

### **Services in your county**

- ❖ What are common treatment programs used in your county for juveniles? Anger management programs? AODA?
  - Yes and lots of trauma informed treatment
- ❖ Is Day Treatment available in your county? If so, what are the names of the specific day treatment programs?
  - Not labeled day treatment but there is IOP at Human Services and Rosecrance as well as partial hospitalization through Rogers though often at their West Allis and Brown Deer campuses.
- ❖ 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?
  - There is a specific team at Human Services called the F.I.T. team and private therapists that work with various clients.
- ❖ 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?
  - Often
- ❖ If there is not a stipulation to the violations, how does the State/Department typically attempt to prove the basis?
  - They set a hearing date and call witnesses.
- ❖ What sanctions are most often imposed in your county?
  - Weekend shelter care however if the child follows their order for the week they don't need to sit
- ❖ Does your county utilize stayed days in detention as a sanction?
  - Yes
- ❖ Has a particular sanction worked well for your clients in your opinion?
  - Judge has stayed secure and or shelter to allow kids to complete a writing assignment or community service. If they do he permanently stays the time

## **Miscellaneous**

- ❖ What are common acronyms and their meanings in your county?
  - FITTeam(see sex offender treatment) TPC(temporary physical custody hearings)
- ❖ Who are experts you have used in juvenile cases and would you recommend them?
  - Jurek, Lodel yes to both.