

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.

Kenosha County

Submitted by: MacKenzie Renner

The Intake Process

- ❖ How does the 40-day intake process under Wis. Stat. § 938.24 work in your county?
 - In Kenosha, Juvenile Intake will get a referral and review it for a possible DPA. If a DPA is a possibility (no significant history of referrals, no need for formal detention), a letter is sent to the family with a date to meet with a representative of JI. At that meeting, the juvenile is required to admit guilt before a DPA is considered. If this occurs, and the family is considered appropriate, a DPA will be offered. We see these most in first-offense situations, unless it is a sexual assault case or a drugs-in-school case. Our DAs have made it very clear that any DPA in these situations will be overruled. Additionally, cases where a juvenile is detained out of home will lead to a petition instead of a DPA.
- ❖ Do you use the term probation officer or social worker or something else to describe the county representative from human services?
 - Social Worker
- ❖ Is there a specific social worker/probation officer or group of social workers/probation officers who conduct the intake inquiry?
 - Juvenile Intake has three workers who conduct intake inquiries. DCFS does not get involved with the DPA process. Those three workers are Mary Beier, Jeanine Reiss and Dawn Weiss. Typically Dawn and Jeanine work with the DPAs.
- ❖ 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.?
 - Typically the DAs will agree, except in sexual assault and drugs-in-school situations. Those are overruled consistently.
- ❖ 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?

- Typically no, but it is not unheard of when a family hires private counsel. A child being considered for a DPA will not be referred to the public defender's office until a decision is made to reject a DPA and file a petition, or if a DPA is revoked.
- ❖ Are you ever successful at negotiating DPAs once a formal petition has been filed? Does this happen often?
 - Yes, we can and have successfully negotiated DPAs after the filing of a formal petition. It happens more often with children who did not appear for the original meeting with Juvenile Intake regarding the DPA, or if the juvenile originally denies the offense but later decides he/she will admit the facts to the Juvenile Intake worker. If the juvenile has a prior DPA or has previously been on supervision, DPAs will typically be rejected by the DAs.

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?
 - Pre-disposition: Commissioner
 - Post-disposition: Judge
- ❖ Is a petition normally filed by the time of/at the hearing?
 - In delinquency cases, a petition is often filed at the detention hearing. In CHIPS/JIPS cases, a detention review hearing is set within 48 or 72 hours for the filing of a petition.
- ❖ Is there ever sworn testimony taken at custody hearings?
 - No. Juvenile Intake will appear and give the basis for the decision to detain, but will not be sworn.
- ❖ 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
- ❖ What is the process for “appealing” the initial custody determination?

- At each hearing, placement is reviewed. Typically a juvenile held in secure custody will have a pretrial hearing before the court commissioner within a week of the original detention, where custodial status is reviewed. The court trial status date will offer another opportunity to argue placement. If defense counsel requests that the Judge review custodial status prior to a scheduled hearing (such as the court trial, which must be held within 20 days), a written motion must be brought to the court and the Judge will schedule a hearing.
- ❖ Is a request to review ongoing custody status ever made by someone other than defense counsel?
 - At many hearings where a child is held in secure detention, DCFS will make a recommendation to change placement to a less restrictive placement. The Court, whenever a juvenile is in custody, will ask for recommendations on continued placement at each and every hearing.
- ❖ What is the average length of stay in detention?
 - 12 days as of November 2012.
- ❖ Where is the detention facility for your county?
 - Kenosha County utilizes the Washington County Juvenile Detention Center in West Bend, WI for most detention stays. We recently began using the Racine County Juvenile Detention facility for an alternative to corrections program (ACE-180), but this is only authorized post-disposition.
- ❖ At a custody hearing, besides detention what placement options are available for kids?
 - Shelter Care
 - At home with or without services
 1. Available Services:
 - Monitored Home Detention (a worker checking in daily to ensure compliance with pretrial orders – written reports of each contact provided to the court at each hearing)
 - House Arrest
 - GPS monitoring
 - Relative Care with or without services
- ❖ 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?
 - It will automatically be reviewed at each hearing.

- ❖ Do you have some sort of monitoring program for kids who are returned home on a custody order?
 - Monitored Home Detention (see above)
 - GPS monitoring

Competency to Stand Trial

- ❖ How is the question of competency raised in your jurisdiction?
 - It can be raised orally or by written motion at any time. Typically defense counsel will raise competency, since if the State believes a juvenile to be incompetent they will often dismiss the petition and file a JIPS petition on their own motion.
- ❖ Is it common for someone other than defense counsel to raise competency?
 - No. However, if a social worker has concerns about a juvenile's competency, often they will alert defense counsel to their reasoning.
- ❖ Once raised, does the Court require some sort of affirmative showing, offer of proof, other evidence before ordering an evaluation?
 - No. Competency evaluations will be ordered based upon the opinion of defense counsel with or without any showing, offer of proof, etc.
- ❖ 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 State will typically stipulate to the finding of incompetence and the likelihood of attaining competency. Defense counsel will sometimes ask for an independent evaluation if the first eval comes back with a finding of competency. If a second evaluation is completed and different results are achieved (State's expert says competent, Defense says not competent), our DAs will run the second opinion past their expert. If the State's expert says there could be basis for that finding (which they often will), the State will stipulate to the finding of incompetence.
- ❖ Is your county good about periodically reevaluating clients after he or she has been found incompetent, but likely to attain competency?
 - Not really. In our county, so long as services are being provided through the JIPS petition and there are no further allegations of delinquent behavior, the juveniles will remain on JIPS supervision without much intervention from the DAs or the court.

- ❖ What competency training is provided in your county?
 - There isn't much offered, but we can tap into the resources in Milwaukee County if needed, and some of the psychologists through Professional Services Group can offer some sort of training. Overall, however, general psychiatric and psychological training is given without a focus on competency.

Waiver to Adult Court

- ❖ Do the District Attorneys in your county file waiver frequently?
 - Yes. Any child aged 16.5 will be subject to a waiver petition. If there is a significant history of delinquent acts, no matter the placement history, waiver petitions are expected for even 15-year-olds.
- ❖ Do the judges in your county often waive kids into adult court?
 - Yes
- ❖ 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?
 - Unfortunately, the State tends to seek waiver more often than not. If a favorable report from DCFS is filed with the court, however, that can lead to a negotiated juvenile disposition.
- ❖ How often are waivers contested?
 - Approximately half of all filed waiver petitions result in contested hearings.
- ❖ If a waiver is contested, how does the State typically prove prosecutive merit?
 - The petition.
- ❖ What sort of witnesses does the State typically call in support of waiver?
 - Typically the State will call the social worker who performed the waiver investigation. Sometimes, but not often, the State will call workers from the detention centers, corrections or other placements when the juvenile is doing poorly in these situations.
- ❖ What sort of witnesses does the defense usually call?

- Social workers, teachers, school personnel, Boys and Girls / YMCA supervisors that the juvenile has worked with in the past, service providers, parents.
- ❖ 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. There was one case in recent years where a judge refused to allow the State to withdraw their motion for waiver, and recused himself from the case. The juvenile was eventually waived into adult court by another judge. While the judges initiating waivers is extremely rare, we have had issues with a particular judge insinuating to the State that sanctions motions should be brought. We have filed motions to have this judge recuse himself from such cases, which he does only after receiving our motions.

Disposition

- ❖ How closely are the social worker's recommendations followed?
 - At original dispositions, typically recommendations are followed. However, our judges have, of recent, begun imposing and staying placement and scheduling review hearings on many of our juveniles. These review hearings can be hotly contested, and social workers' recommendations at these review hearings are less likely to be followed.
- ❖ 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 consent decrees are always a possibility. In waiver cases, our DAs will sometimes offer a consent decree that holds open the waiver. If a consent decree is offered in a delinquency/CHIPS/JIPS case, pleas will be required.
- ❖ Are there "standard rules of supervision" that are in all delinquency dispositions?
 - Juvenile will be placed with _____, and follow all household rules.
 - Juvenile will be placed on supervision for ____ months, and will follow all the rules of the Division.
 - Juvenile will attend school regularly, no tardies and no truancies, and work to the best of their ability.

- Juvenile will report all police contacts to their assigned worker within 72 hours.
 - No contact orders with any alleged victim, codefendant.
 - Restitution to be determined by Juvenile Intake.
- ❖ Does the State typically agree with the Department's recommendations?
- Typically yes, but the DAs will often ask for imposed and stayed detention time on top of the Department's recommendations, and for longer periods of supervision than the Department requests.
- ❖ Does your jurisdiction have an intensive supervision program?
- Yes. Youth Competency is our intensive supervision program.
- ❖ Does your jurisdiction have a specialized "wraparound" program?
- Intensive Aftercare Program (IAP) is used as a "wraparound" when children are placed outside their family home, coordinating with the service providers in the placement community, Kenosha DCFS, Kenosha service providers and the family to ensure a smooth transition back to Kenosha. In CHIPS cases, Families First and the permanency planning program through Children's Service Society of Wisconsin are the wraparound programs. These will be utilized in almost every case where a TPR petition is filed.
- ❖ Does your jurisdiction have a community service/restitution program?
- We do, but it is currently out of funds and it appears that funding will not be replenished anytime soon.
- ❖ Which Residential Treatment Centers are used by your county?
- Group Homes & RTCs
 1. Sierra Group Home
 2. Eau Claire Academy
 3. Peace Home
 4. Positive Alternatives Group Home
 5. Washington House
 6. Homme Home
 7. Other group homes can be used, but not often
 8. St. Aemelian's Lakeside
- ❖ Does your county allow for a dispositional 365 day placement in detention?

- Yes. Kenosha County recently adopted use of the ACE-180 program in Racine Juvenile Detention. This is very new to our county, with our first juveniles being sent to this program within the last month.
- ❖ 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?
 - Typically judges in Kenosha try to keep kids in their homes, and we have seen a slight decrease in the number of kids placed outside their homes in the past 3 years. Unfortunately, our judges are not so hesitant to send kids to detention as a condition of disposition, or as a sanction.
- ❖ 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?
 - Not many kids are sent to corrections in Kenosha County. When it does happen, these are the kids who simply won't comply with treatment in the community and who have significant histories. Corrections is treated as a last resort in Kenosha. In 2011, for example, only 15 youth were sent to corrections. Unfortunately, however, the ACE-180 alternative to corrections program has already been used in cases where it seems inappropriate (habitual runaways who aren't considered high risk).
- ❖ 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?
 - Our judges tend to defer to the request of the DA. As a general rule, if the psychosexual evaluation comes back low to mid-low risk, the State will agree to stay registration. If the juvenile comes back as mid to high risk, the State will ask for registration. Our current juvenile judges seem to go along with whatever the State requests. The decision is made at the original disposition.

Services in your County

- ❖ What are common treatment programs used in your county for juveniles? Anger management programs? AODA?
 - WAIT Program – Anger management
 - PSG – Individual and Group Therapy / Individual or Group AODA Treatment
 - Youth Competency
 - Youth Outreach
 - Teen Parenting

- ❖ Is Day Treatment available in your county? If so, what are the names of the specific day treatment programs?
 - Rogers Day Treatment program
- ❖ 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?
 - One Hope United is used for sex offender specific treatment. They have a few different therapists that work with our juveniles.
- ❖ What programs do you have in your county that are gender-specific?
 - Girl's Circle

Sanctions

- ❖ How often is there a stipulation as to the basis for sanctions?
 - Often there is a stipulation to the basis, but often for fewer violations than DCFS or the State allege.
- ❖ If there is not a stipulation to the violations, how does the State/Department typically attempt to prove the basis?
 - The sanctions hearing is then adjourned to the next judicial rotation and the State will subpoena witnesses for an evidentiary hearing. Otherwise, the social worker or involved service provider may be called to testify regarding violations.
- ❖ What sanctions are most often imposed in your county?
 - Detention - typically some imposed days and a number of stayed days, with a review hearing set within 60 days to determine if the remainder should be imposed.
 - Shelter Care is used as a sanction in truancy cases, but not often in delinquencies.
 - Community Service Work is sometimes imposed, but not as often as detention or shelter care.
- ❖ Does your county utilize stayed days in detention as a sanction?
 - Yes.

- ❖ Has a particular sanction worked well for your clients in your opinion?
 - In my opinion, having imposed and stayed detention days often assists more than simply imposing a sanction. The fear of detention seems to do more than sitting a significant amount of time. Often our judges will impose a weekend in detention (go in on Friday, come out on Sunday), and stay an additional 7 days on a sanction. This seems to work well, as longer periods in detention seem to alleviate the juvenile's fear of detention.

Miscellaneous

- ❖ What are common acronyms and their meanings in your county?
 - IAP – Intensive Aftercare Program
 - MHD – Monitored Home Detention
 - DCFS – Division / Department
 - HA – House Arrest
 - KHDS – Kenosha Human Development Services (also called KYDS, pronounced “Kids”)
 - YO – Youth Outreach
 - YC – Youth Competency
 - WAIT – Washington Aggression Intervention Therapy
 - AODA – Alcohol and Other Drug Abuse
 - UA – Urine analysis
 - WJD – Washington Juvenile Detention
 - RJD – Racine Juvenile Detention
 - SC – Shelter Care
 - PSG – Professional Services Group
 - CIP – Community Intervention Programs
 - CSSW – Children's Service Society of Wisconsin

- ❖ Who are experts you have used in juvenile cases and would you recommend them?
 - Dr. Caroline Palmer – No
 - Dr. James Garbarino – Yes
 - Dr. Jenna Saul – Yes
 - Dr. David Thompson – Yes
 - Dr. Michael Caldwell – Yes
 - Dr. Charles Lodl – Yes