

Pennsylvania Juvenile Delinquency Benchbook



COMMONWEALTH OF PENNSYLVANIA
Juvenile Court Judges' Commission

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Foreword

This revised version of the Pennsylvania Juvenile Delinquency Benchbook, which incorporates the recently adopted Rules of Juvenile Court Procedure for Delinquency Matters, is intended to serve as a practical tool for working judges throughout this Commonwealth, offering them convenient access to all the information they need to effectuate the underlying purposes of the Juvenile Act: “Consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.”

To the extent that the revised Benchbook fulfills its intended purpose, thanks go to principal author Patrick Griffin of the National Center for Juvenile Justice and all of the members of the Juvenile Delinquency Benchbook Committee who have helped to make it a reality.

This is your book – please use it often!

Judge Arthur Grim



Acknowledgments

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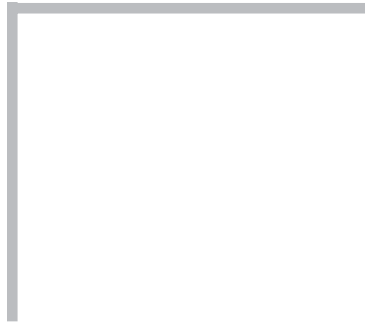
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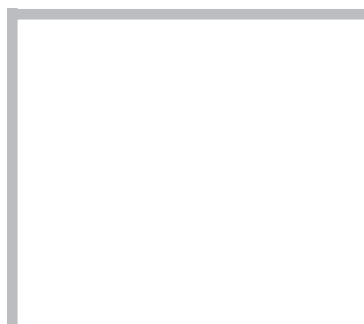
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The Juvenile Court Judge

Judge Emanuel Cassimatis

1

So you are a Juvenile Court Judge. How did that come about? Are you a judge in a one-judge county, so you have to preside over all the cases that come before the court? Perhaps you are a judge in a multi-judge county and you have been assigned to handle juvenile court cases. Maybe this assignment is for several years and you will be rotated out with another judge replacing you in the rotation process. Then, again, you may have been handling juvenile court cases by request and choice, with the intention of remaining in juvenile court for at least five years.

Regardless how you have come to preside over juvenile cases, you are going to be responsible for presiding over cases and, perhaps, also overseeing the entire juvenile delinquency program and operations in your county.

A juvenile court judge must bring passion, commitment and skills to the job.

One thing is clear. There is nothing you will be doing that will be more important than your juvenile court assignment. The opportunity and challenge to you is to do the best possible job you can. How you will do your job will largely determine not only the processing of the juvenile delinquency cases in your county, but how well the juvenile probation department does its job; and, most importantly, whether the intervention of juvenile court in the lives of the juveniles who come before you will promote community safety, victim restoration, and youth redemption, the overarching mission of juvenile justice in Pennsylvania.

To sum up. In the final analysis, how you came to this assignment does not matter. But, how you do your job *will* matter – a great deal.

We hope you will find the suggestions and ideas in this chapter helpful to you in your assignment. A good place to begin would be to look at the basic qualities a juvenile court judge should have and cultivate. They are: **passion, commitment** and **skills**. These are the attributes of a successful juvenile court judge.

Passion involves an intense emotional drive and enthusiasm for working in juvenile justice. This is more innate, but can be learned as one gains understanding of the promise and opportunities of a balanced and restorative juvenile justice system.

Commitment is the dedication of oneself to doing the best possible job as a juvenile court judge, and, even more, a commitment to excellence. It is both *general* and *specific*. It is *general* in the sense of seeing to it that there are allocated to administering juvenile justice cases in the county sufficient resources including judicial time, adequate court and

hearing rooms, trained and committed juvenile probation officers, district attorneys, public defenders, and victim witness service providers, and an adequate array of dispositional alternatives from which the judge can make a positive dispositional choice, and not the best of the offering of bad choices.

It is *specific* in that the judge must be certain that there is devoted to each case before him or her enough time and information so that the judge can do his or her job unhurried, thoughtfully, and engaging all involved in a positive way as partners in achieving successful outcomes.

Skills refers to the judicial court judge gaining proficiency and expertise in all of the matters touching upon juvenile justice, and it is an ongoing, never completely achieved goal. This is learned, and not innate. It, of course, involves the provision of due process, a knowledge of criminal law, and constitutional safeguards, and proper decision-making in hearing juvenile complaints. But it means more: how to relate to the juvenile, his/her parents, and other person(s) acting in the role of parents to the juvenile; the victim, the involuntary and hurt participant in the system; police and other witnesses; juvenile probation staff; the school system; and service providers. All must be engaged in a positive way that will motivate and enable them to understand their role and the juvenile justice system's expectation—if not demand—that they play out their role competently and with integrity, enthusiasm and commitment.

The judge must also be constantly alert to improving his or her ability to relate to others to engage them in a way that promotes and enables their enthusiastic support, as well as to learning the vast array of dispositional alternatives, including placement resources and community based services. The latter would include individual and family counseling, victim assistance and counseling, including mediation, and mental health and mental retardation, drug and alcohol, school, and mentoring services. If there are gaps in the offering of these services in the community, the judge should learn how to engage and lead the community to undertake the establishment and provision of such needed services.

Thus the judge needs to be engaged in the ongoing process of developing skills which, when coupled with passion and commitment, will enable the judge to carry out his or her responsibilities.

There are three roles to play. The first is as a judge presiding over assigned cases. Here the judge will not only determine whether the charges against the youngster have been proven, but will also have to set in motion and supervise the program of “supervision, care and rehabilitation which provide[s] balanced attention to the protection of the community, the imposition of accountability for offenses committed, and the development of competencies to enable [the juvenile] to become [a] responsible and productive [member] of the community.”

The second role is the responsibility for operations of the juvenile probation department. (In counties where there is more than one judge assigned to juvenile court, this responsibility may be that of the assigned administrative judge of juvenile court.) In this role, the judge may be as active a participant as he or she wishes. Where there is an outstanding Chief Juvenile Probation Officer and a well functioning department, there will be much less demand on the time and attention of the judge than where these strengths are lacking. In the latter case, the judge will have to be very actively involved in the operations, morale and improvement of the

functioning of the department. In either situation, the judge must bend every effort to see to it that there are sufficient monetary resources available to hire, train, and keep highly motivated staff and sufficient well-trained and functioning support staff. The judge must assure well-trained, highly motivated and functioning prosecutors (district attorney staff) and defense counsel (public defenders or specially appointed counsel) are in place. Emphasis will have to be placed on obtaining adequate technology and the training required for its use; constant updating on the latest proven and successful techniques on supervision of clients; and awareness of various proven and new treatment programs that must be provided. Adequate space within which the juvenile justice department functions must also be provided. Excellence must be demonstrated by the way the judge does his/her job and the judge's expectation, indeed demand, all who interact with the judge do their job in the same manner.

Finally, but not the least, the judge must assure that all the players in the juvenile justice system, as well as those coming in contact with it, are treated with courtesy, respect and civility, both in and outside the courtroom.

The third, and perhaps most difficult, role the judge will have to play is that of a community energizer and enabler. The principles of balanced and restorative justice require the community to play a larger role throughout the juvenile justice process. It was not too long ago that the community role was simply, passive, to expect the safety of the public and perhaps to insist that law enforcement, the police, and the juvenile court authorities did their job to assure public safety. There was, however, no offer or expectation that the community had a much larger role to play, an active role. We now know that no community can simply depend upon law enforcement and juvenile court to keep the community safe from and successfully deal with juvenile offenders.

The community that wants to deal successfully with juvenile offenders must become actively involved in all aspects of the community's juvenile world. Initially, it involves the community identifying the risk behaviors and protective factors in the community (Communities that Care). Emphasis should be placed on prevention programs, which must begin in the earliest school, and even pre-school, years. There should be wholesome activities for the youth that will attract and keep them actively involved developing prosocial values and outlets; diversionary programs that will enable neighborhoods to deal with youthful offenders' early non-life threatening misdeeds and redirect them to positive, law abiding lives. Schools must provide a learning opportunity that will attract and keep students in school until graduation. The business and industrial community can provide jobs that will prepare youthful offenders to learn how to become job-ready and get and keep a job while they are earning money to pay their restitution to the victims they have wronged and caused a loss. Community service will permit the juvenile to repay the community he/she has wronged where there is no monetary loss caused by his/her transgression. The community can provide community based programs that will offer needed services to juveniles and their families instead of sending such juveniles out of the community into program placements that are not only costly but less effective in dealing with the juvenile and the family and neighborhood because of the juvenile's separation from the community. Engaging the schools, religious institutions, character building organizations, service clubs, and neighborhoods to become actively involved in identifying, helping, mentoring and socializing juvenile offenders is critical to success. Also important, the community must establish an environment in which the youth will grow that will instill in them by example mutual respect for the personhood of every one

regardless of race, color, creed, national origin, or gender. This is not an all-inclusive list. There are more that a creative judge can identify with an engaged community.

The initial challenge to the judge is how to engage the community. A judge who has been an active member of the community prior to the election to the bench can build on the numerous contacts developed during that time. The judge who was not so actively involved will find that it is not that difficult to reach out. Initially, the community respects enormously the position of judge. The engagement can begin by speaking to various groups, educating them to the principles of balanced and restorative justice and the community's role in implementing them; for example, the Chamber of Commerce, Manufacturers Association, Council of Churches, PTAs, service clubs and other community, civic, educational, and religious organizations. The Chief Juvenile Officer can be a big help in suggesting to the judge the type of community initiatives that could provide a good beginning, such as neighborhood youth panels and community group conferencing programs.

After the initial contact, the judge will find it easier to continue the engagement, to lead the community to accept a role, and, indeed, responsibility in carrying out the principles of the balanced approach. Staff support will be needed. Funding for the community meetings, services input and program operations will be required. Grants are readily available. The Chief Juvenile Probation Officer will have to draft the proposal. The judge will give the direction and enlist the needed support of the County Commissioners for the grant proposal.

A community that is involved in deciding what the role of the community should be and what programs should be created or maintained will much more easily provide the support and get the approval of the County Commissioners for such initiatives. Community involvement leads to community ownership. Meaningful community involvement leads to meaningful community ownership.

The judge can make this happen. Indeed, he or she is probably the only one who can make it happen.

The judge should not overlook the importance of being certain the media, print, radio, and television, know and understand the general principles of the Juvenile Act and especially the goals of balanced and restorative justice. With this understanding their reporting about the functioning of juvenile justice, generally, or in a specific case, will be related in a way that is likely to promote a positive attitude to the functioning of juvenile justice in the community.

Two ways the judge can go about this are: media reporters attending juvenile hearings and the judge meeting with media personnel individually, or preferably, regular background meetings with media personnel discussing the issues of juvenile justice that are important for them and the larger community to understand.

Media reporters may, of course, attend juvenile hearings that are open to the public. But there is no reason why they should not also be permitted to attend and report about closed hearings, so long as they do not report in a way that would disclose the identity of the juvenile involved. If the judge conducts the hearing in a way that all the participants, juveniles, parents, attorneys, victims and other interested parties, clearly understand what is happening and why, there will be no need for any additional explanation to the media reporters. This process can promote the public's understanding of the operation the juvenile justice in their community by

having access to news reports by reporters who personally covered the hearing. Of course there is no guarantee that such reports will be written in a way we would have written such reports, but they most likely will be written in a way that lifts a little higher the veil of secrecy and lack of understanding of juvenile justice.

Background meetings with media representatives can be arranged by the judge monthly, bi-monthly, or some other regular basis. These could be “Dutch treat” luncheon or dinner meetings. The judge can present over a series of meetings the various significant provisions of the Juvenile Act that they and the community should be sure to understand. Other topics could and should include: the principles of balanced and restorative justice; the roles of the family, the community, and the juvenile justice system; the availability or lack of adequate facilities, personnel, and time to enable juvenile justice system to do its job well; the importance of prevention; adequate community based programs that serve the needs of the juvenile, pre-and post-delinquency adjudication; the new emphasis on the restoration and understanding of the victim; the need for the schools to be able and willing to play their part in both prevention and treatment; and the new role the community must play for the balanced approach to work. The judge can expand this list according to the specific needs of the community.

The media representatives should be encouraged at these background meetings to ask questions and bring up topics for discussion at future meetings. These meetings should be “off the record.” This would not prevent reporters from reporting in a story or series on any of the subjects discussed at the background meetings. It is important that the editorial writers and city editors also attend. With such attendance will come an increased understanding of juvenile justice and related matters that will be reflected in their news stories as well as editorials and columns.

Finally, and perhaps of paramount importance, the culture of juvenile justice in the community is critical. The juvenile and his/her family, the victim, school, police, neighbors, and service providers must come away from their experience in juvenile court with respect for juvenile justice as an institution. The court’s involvement must produce an aura that promotes this respect and, is it too much to expect, reverence for juvenile justice. The personal appearance and involvement of the judge as distinguished from masters, lends significantly to this aura; that is, that juvenile justice is so important that it requires the judge’s personal involvement and not just an attorney/master. Of course, there will be the need for masters where the judge simply does not have and cannot make sufficient time to preside at detention hearings and other situations covered in the Juvenile Court Judges’ Commission’s Standards Governing the Use of Juvenile Court Masters (see discussion at § 10-2). But, we must recognize that the non-presence of the judge in any court appearance/hearing sends a powerful message to all involved that this is not that important to require the actual presence of a judge. The district attorneys and public defenders or other assigned defense counsel must carry out their roles in a way that promotes respect for juvenile justice.

The hearing rooms and facilities allocated for juvenile court use must be adequate. If they aren’t, this lack or deficiency again delivers a powerful message to those involved, that is, juvenile justice is not that important; it gets second class status on the allocation and use of judicial facilities. Not only the courtrooms must be adequate, but victim/witness waiting rooms and interview rooms must be reasonably adequate.

In short, the majesty of the law of juvenile justice must be instilled in all involved. If it is, the promotion of the principles of balanced and restorative justice will be greatly facilitated. If it isn't, it will be difficult to overcome the impression that our conduct, that is the lack of priority of judicial time, staff, and facilities, speaks louder than all our protestations that the involvement of the juvenile and his family and others is of top priority in the dispensing of juvenile justice by our courts.

In conclusion, here are a few do's and don'ts that express the role of the judge.

DO's

1. Approach each case with enthusiasm and as an opportunity as well as a duty to achieve the mission of the juvenile justice system: community protection, victim restoration and youth redemption.
2. In scheduling cases, allow sufficient time for each case without rushing through or even appearing to do so. Bring the hearing to an unrushed conclusion and not an abrupt stop when the time allotted for the case has expired.
3. Articulate clearly the court's expectations of all involved: the juvenile, parents/family, juvenile probation officer, counsel, school, victims' services, and resource providers.
4. Hold all involved in the case accountable for accomplishing their specific goals/ assignments. Review interim reports, monitor to make sure everyone is on track to reach their goals in a timely manner.
5. Treat everyone with respect and courtesy and insist all involved do the same.
6. Treat each contact with the juvenile and family as an opportunity to enable the child to advance in his/her program of supervision, care, and rehabilitation.
7. Treat each contact with a crime victim as an opportunity to affirm the importance of his or her input and participation throughout the juvenile justice process .
8. Create and maintain a culture in the community that informs the community of its role in carrying out the principles of balanced and restorative justice and enables and leads the community in doing so. This includes special attention to establishing a close liaison with school authorities that enables coordination of policies and programs.
9. Join with other juvenile court judges in constantly striving to improve juvenile justice in Pennsylvania; for example, attending and actively participating in meetings of the Juvenile Court Section of the Pennsylvania Conference of State Trial Judges and The Pennsylvania Conference on Juvenile Justice
10. Be informed on all new developments in the law and treatment programs/resources in juvenile justice. Help to create new programs where needed, especially in the community.
11. Create and maintain or enable the creation and maintenance in juvenile court of an aura of the majesty of the law that instills the respect of all involved.

DON'Ts

1. Undertake the duties of a juvenile court judge with less than a 100% passionate commitment to demanding excellence of yourself and all those involved in working with juvenile and family; i.e., the attorneys, juvenile probation officers, victim and other service providers and school personnel.
2. Always assume the juvenile is the root cause of the problem that brings this juvenile into court. Rather, always consider the role of the family, school, and community as both a contributor to the cause of the juvenile's actions as well as resources for accomplishing community protection, victim restoration and youth redemption.
3. Go into a case unprepared or allow others involved to do so.
4. Overlook the importance of positive feedback not only to the juvenile and family but to others involved as well; i.e., the juvenile probation officer, attorneys, victim, and school and resource personnel.
5. Miss any opportunity to communicate with the community about their role in the juvenile justice process.
6. Overlook shortcomings or failures in performance of their roles by the various players in juvenile justice. Rather, inform them, privately at first, of their shortcomings and failures and importance of improvement to the overall juvenile justice system.
7. Feel any one person/program is indispensable in working with the juvenile and family. All, including the judge, are replaceable. Training and foresight will assure successful succession. This should not be an excuse for unnecessary and avoidable staff turnover of those involved in the case.
8. Expect feedback, especially positive. Learn to have confidence in how you are doing your job.
9. Expect a perfect outcome in all cases, but do not give up trying.
10. Expect to rotate out of a juvenile court assignment in less than two years or preferably in less than 5 years.

The Charge for Pennsylvania's Juvenile Justice System



In the 1990s, nearly every state in the nation enacted harsh new measures against juvenile crime. Faced with an apparent epidemic of serious and violent juvenile offending—with juvenile arrests for Violent Crime Index offenses climbing steeply from 1988 through 1994, the year the wave finally peaked and began to fall away¹—states responded by curtailing juvenile court jurisdiction over serious crimes, sweeping younger and younger offenders into criminal courts and adult prisons,² and dismantling confidentiality and other protections traditionally afforded to young people in trouble with the law.³

Pennsylvania's Juvenile Act purpose clause is rooted in the philosophy of restorative justice.

Pennsylvania approached the problem differently. Act 33, enacted in Special Session No. 1 of 1995, did effectively redraw the jurisdictional boundaries between the juvenile and criminal courts, placing a number of violent felonies on the criminal side of the line. (See the discussion at § 4-4.) But unlike its counterparts in other states, Act 33 made a more fundamental and thoughtful change—reorienting the juvenile justice system itself, expanding the circle of clients whose interests it serves, and broadening its stated purposes to include more comprehensive goals. Why do we have juvenile courts? What are they for? Act 33 provided a whole new answer: *“Consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.”*

This purpose clause in the Juvenile Act is rooted in the philosophy of “restorative justice,” which gives priority to repairing the harm done to crime victims and communities, and which defines offender accountability in terms of assuming responsibility and taking action to repair harm. The “balanced attention” mandates in The Juvenile Act provide the framework for implementing restorative justice in Pennsylvania’s juvenile justice system.

Also at the foundation of this mandate is the concept that crime victims and the community, as well as juvenile offenders, should receive balanced attention and gain tangible benefits from their interactions with Pennsylvania’s juvenile justice system.

***BALANCED AND RESTORATIVE JUSTICE
FOUNDATION PRINCIPLES***

Community Protection

The citizens of Pennsylvania have a right to safe and secure communities.

Accountability

In Pennsylvania, when a crime is committed by a juvenile, an obligation to the victim and community is incurred.

Competency Development

Juveniles who come within the jurisdiction of Pennsylvania's juvenile justice system should leave the system more capable of being responsible and productive members of their community.

Individualization

Each case referred to Pennsylvania's juvenile justice system presents unique circumstances and the response by the system must therefore be individualized and based upon an assessment of all relevant information and factors.

Balance

As appropriate to the individual circumstances of each case, Pennsylvania's juvenile justice system should provide balanced attention to the protection of the community, the imposition for accountability for offenses committed, and the development of competencies to enable juveniles to become responsible and productive members of their communities. Victims of crime, the community, and the juvenile offenders should, as well, receive balanced attention from the juvenile justice system and each should gain tangible benefits from their interactions with the system.

The new purpose for Pennsylvania's juvenile justice system envisioned new roles and responsibilities for judges, juvenile justice system professionals, crime victims, and communities, in addition to juvenile offenders. Subsequently, other significant events included:

- In 1997, the Juvenile Advisory Committee of the Pennsylvania Commission on Crime and Delinquency adopted a mission statement and guiding principles for Pennsylvania's juvenile justice system in order to guide the operation and shape the policy of the system.
- In 2000, Pennsylvania's Crime Victims Act was amended to expand the Victim's Bill of Rights to include provisions relating to victims of juvenile offenders. As a result, the Crime Victims Act now requires that victims of crimes committed by juvenile offenders have the opportunity to actively participate in the juvenile justice process. Through the passage of the amendments contained in Act 33 of Special Session No. 1 of 1995 and the 2000 amendments to the Crime Victims Act, Pennsylvania's juvenile justice system has dramatically strengthened its response to juvenile crime.
- In 2001, the Juvenile Advisory Committee was renamed the Juvenile Justice and Delinquency Prevention Committee and was charged with expanded duties for planning and coordination within Pennsylvania's juvenile justice system. In conjunction with the development of a strategic plan for Pennsylvania's juvenile justice system, the Committee reaffirmed its commitment to the 1997 mission statement and strengthened the definitions of the terms comprising this mission statement as well as the accompanying guiding principles.

Given their importance in helping judges understand the values underlying Pennsylvania's juvenile justice system, the Mission Statement and Guiding Principles adopted by the Juvenile Justice and Delinquency Prevention Committee are set forth in their entirety on the following pages.

Judges are encouraged to refer to them in all aspects of their work in Juvenile Court. These concepts are an invaluable frame of reference for a Juvenile Court Judge; whether in the courtroom, in evaluating the effectiveness of a juvenile probation department, or in efforts to provide leadership in the community.

Pennsylvania's Juvenile Justice
Mission Statement



Community Protection refers to the right of all Pennsylvania citizens to be and feel safe from crime.

Victim Restoration emphasizes that, in Pennsylvania, a juvenile who commits a crime harms the victim of the crime and the community, and thereby incurs an obligation to repair that harm to the greatest extent possible.

Youth Redemption embodies the belief that juvenile offenders in Pennsylvania have strengths, are capable of change, can earn redemption, and can become responsible and productive members of their communities.

Furthermore, all of the services designed and implemented to achieve this mission and all hearings and decisions under the Juvenile Act—indeed all aspects of the juvenile justice system—must be provided in a fair and unbiased manner. The United States and Pennsylvania Constitutions guarantee rights and privileges to all citizens, regardless of race, color, creed, gender, national origin or handicap.

GUIDING PRINCIPLE #1 – COMMUNITY PROTECTION

Our Belief:

The citizens of Pennsylvania have a right to be and feel safe from crime.

Guiding Principles:

Pennsylvania's juvenile justice system shall:

- Protect the community from known juvenile offenders — with a particular emphasis on protecting their victims — through a wide range of prevention, treatment, supervision and control options that correspond to the risks presented by individual juvenile offenders, and which include a continuum of sanctions, incentives and consequences that are developmentally appropriate and best suited to the needs of the offender.
- Reduce recidivism by juvenile offenders.
- Assist juvenile offenders in developing the capacity to act lawfully and responsibly.
- Structure juvenile offenders' time in productive activities that benefit the community and/or provide opportunities for competency development.
- Remove from the community those offenders who pose risks that cannot be managed effectively in a community setting.
- Assist parents and guardians of juvenile offenders in setting clear expectations for, and in monitoring the behavior of, their children.
- Encourage and support informal systems of social control—including families, schools, neighborhoods, faith communities and youth-serving organizations—in setting clear expectations for, and in monitoring the behavior of, children.
- Increase feelings of citizen safety and confidence in the juvenile justice system.

GUIDING PRINCIPLE #2 – VICTIM RESTORATION

Our Belief:

In Pennsylvania, a juvenile who commits a crime harms the victim of the crime and the community, and thereby incurs an obligation to repair that harm to the greatest extent possible.

Guiding Principles:

Pennsylvania's juvenile justice system shall:

- Ensure that the harm to the crime victim and the community is understood and considered by the decision makers throughout the juvenile justice process.
- Inform crime victims about their rights, their cases, and the juvenile justice process.
- Provide crime victims with access to a wide range of support and services and/or enable crime victims to actively participate in their cases.
- Require that community service performed by juvenile offenders is of value to crime victims and communities.
- Operate the juvenile justice system so that victims of juvenile crime regard the system as responsive, fair and just.
- Ensure that juvenile offenders understand that crimes have consequences.
- Ensure that juvenile offenders understand the impact of their crimes on their victims and their communities.
- Hold juvenile offenders accountable for restoration of crime victims and communities to their pre-crime status, to the greatest extent possible.
- Ensure that parents and guardians understand the impact of crimes committed by their children.
- Require juvenile offenders, their parents and guardians to fulfill legal obligations to crime victims, the community and the juvenile justice system.

GUIDING PRINCIPLE #3 – YOUTH REDEMPTION

Our Belief:

Juvenile offenders have strengths, are capable of change, can earn redemption, and can become responsible and productive members of their communities.

Guiding Principles:

Pennsylvania's juvenile justice system shall:

- Assess the strengths, needs, interests and skills of juvenile offenders.
- Identify or provide resources to build on those strengths, interests and skills and to address those needs.
- Engage juvenile offenders in activities that develop measurable competencies designed to enable them to become responsible and productive members of their communities and provide the support and assistance necessary to enable juvenile offenders to successfully complete these activities.
- Assist parents and guardians of juvenile offenders in involving their children in activities that develop measurable competencies and/or which make a positive contribution to the community.
- Enlist employers, educators and others to provide juvenile offenders with opportunities for competency development.
- Enable juvenile offenders to demonstrate competencies.
- Engage juvenile offenders in activities that are of value to crime victims and communities.
- Increase opportunities for juvenile offenders to interact with positive adult role models.
- Operate a system that accused and adjudicated juvenile offenders regard as responsive, fair and just.

GUIDING PRINCIPLE #4 – JUVENILE JUSTICE SYSTEM OPERATIONS

Our Belief:

Pennsylvania's juvenile justice system shall be driven by its mission, focused on outcomes, and measured by its performance.

Guiding Principles:

Pennsylvania's juvenile justice system shall:

- The juvenile justice system must provide developmentally appropriate and effective prevention, intervention and treatment programs.
- Every decision made—and every service offered—by the juvenile justice system must be designed to provide balanced attention to the needs of the community, the victim and the offender in an unbiased and fair manner.
- The juvenile justice system must have sufficient capacity, in terms of staffing and program resources, to achieve its mission.
- The juvenile justice system must have strong and responsible leadership.
- The juvenile justice system must have a stable and sufficient funding base that supports all aspects of service delivery. In turn, the system must be held accountable for the responsible expenditure of funds.
- Local communities provide the greatest resource in both preventing and responding to juvenile crime. The participation of community members and organizations in all aspects of juvenile justice must be encouraged and community members must be provided with basic information on the function of the juvenile justice system, its mission and guiding principles.
- The juvenile justice system must be part of a strong and integrated network of service systems, since neither the juvenile justice system—nor any other system—can address all the needs of victims, offenders, at-risk juveniles and the community.
- Educational failure often shapes and contributes to delinquent behavior. The juvenile justice system must work to meet the educational needs of all juvenile offenders, with a particular emphasis on providing year-round education and training opportunities for youths in residential placement and a successful transition to the community.

continued...

- The juvenile justice system must make placement decisions based on an assessment of the juvenile offender, input from the crime victim, considerations of community safety and the “least restrictive alternative” principle. When out-of-home placement for juvenile offenders is warranted, placements should be made to treatment facilities that—when and as appropriate—provide for the continued involvement of the family in the treatment process.
- The juvenile justice system must provide effective aftercare for every juvenile offender in residential placement. Aftercare planning and services must begin when the juvenile enters placement and must include ongoing contact with the juvenile, his or her family, and community resources while the juvenile is in placement and following release.
- Timely and accurate information enhances the quality of decision-making and is crucial to an effective juvenile justice system.
- Sufficient data collection, data management and research capabilities are critical to system coordination, program monitoring, evaluation and proactive planning to meet the needs of the future.
- The juvenile justice system must continually increase the effectiveness of programs.
- The juvenile justice system must emphasize the development of comprehensive approaches to reduce the disproportionate representation of minority youths in Pennsylvania’s juvenile justice system and as crime victims.
- Juvenile offenders and their families, crime victims and the community must be served by highly trained, competent and caring staff who are prepared to respond appropriately with sensitivity to individual and cultural differences and who treat all clients with respect, courtesy and dignity.
- All juvenile justice professionals—who serve crime victims, the community, juvenile offenders and their families—must be treated with respect and dignity, have clearly established expectations and standards for performance, be evaluated regularly and be compensated appropriately and fairly for their work.

ENDNOTES

¹ Snyder, Howard. (2002). "Juvenile Arrests 2000." *OJJDP Juvenile Justice Bulletin*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

² Griffin, P., Torbet, P., and Szymanski, L. (1998). *Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

³ Torbet, P., and Szymanski, L. (1998). "State Legislative Responses to Violent Juvenile Crime: 1996-97 Update." *OJJDP Juvenile Justice Bulletin*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

Overview of Pennsylvania's Juvenile Justice System

3

Summary of Contents

This chapter will provide a kind of diagram of Pennsylvania's juvenile justice system, with a brief account of its beginnings and the way it has changed over the years; a look at how the system's different elements are organized, administered, and funded; and a statistical overview of delinquency case processing in the state, based on recent arrest, disposition, and residential placement data.

- § 3-1. The Origins and Development of Pennsylvania Juvenile Courts
- § 3-2. Basic Juvenile Justice Structure and Funding
- § 3-3. Statistical Overview of Case Processing

§ 3-1 The Origins and Development of Pennsylvania Juvenile Courts

Prior to the establishment of juvenile courts in Pennsylvania and elsewhere, the common law recognized no such category as “juvenile delinquents,” but divided all law-breakers into “infants” and adults. Children under 7 were conclusively presumed incapable of forming the intent to commit a crime—“felonious discretion” at such an age being considered “an impossibility in nature.”¹ This “infancy defense” was also available to children between 7 and 14, but in their case it was rebuttable. Prosecutors could and did present evidence to show that individual children in this age group were capable of criminal intent. And children over 14 could not use the infancy defense at all; they were always prosecuted and punished just like adult criminals.²

Widespread dissatisfaction with this approach during the 19th century sparked a number of local reforms intended to deal with young criminals more effectively and humanely, and in particular to isolate them from adults. Philadelphia saw the creation of one of the nation's first “Houses of Refuge” for children in 1826, and separate correctional institutions for

Pennsylvania's juvenile courts are over a century old.

children convicted of crimes, vagrancy, and “incurability” became common in subsequent years.³ By 1893, Pennsylvania law already required separate trials and trial dockets for children, and prohibited their confinement with alleged or convicted adult criminals.⁴

In 1899, Illinois established what is now generally regarded as the world's first juvenile court, in Cook County. The court used broad powers and informal procedures to deal with law-breaking children in an entirely new way—so that, as the new court's enabling legislation put it, “as far as practical they shall be treated not as criminals but as children in need of aid, encouragement, and guidance.”⁵ Most states followed suit soon afterwards. Pennsylvania passed its first Juvenile Court Act, modeled on the Illinois law, in 1901. While the 1901 law did not survive an initial constitutional challenge, an amended Juvenile Court Act of 1903 was immediately enacted and upheld by the Pennsylvania Supreme Court.

Originally, the juvenile court's jurisdiction in Pennsylvania extended only to minor crimes. The Juvenile Court Law of 1933, besides giving the court new authority to deal with “ungovernable” behavior and truancy, expanded the court's jurisdiction to cover all crimes except murder committed by children under 16. A 1939 amendment gave the court jurisdiction over children up to age 18.

While the juvenile court movement caught on quickly, it was not without critics. Despite the professed benevolence of the courts' intentions, their failure to afford basic due process safeguards to juveniles was regarded by many as unfair and inconsistent with our traditions. Eventually, the U.S. Supreme Court came to agree, concluding in a series of decisions, beginning with *Kent v. United States* in 1966, *In re Gault* in 1967, and *In re Winship* in 1970, that juveniles accused of delinquent acts were entitled to many of the basic rights enjoyed by adults accused of crimes.

In Pennsylvania, the legislature responded with the passage of the Juvenile Act of 1972. Based on the Uniform Juvenile Court Act, a model law developed by the National Conference of Commissioners on Uniform State Laws, the 1972 Act codified the rights of accused juveniles to receive written notice of charges against them, to be assisted by counsel, to confront accusers, and to be convicted only upon proof beyond a reasonable doubt.

Significant amendments to the Juvenile Act of 1972 were enacted in 1977, 1980, 1981, 1986 and 1989:

- The 1977 change established 10 as the minimum age at which a child could be considered delinquent, and deleted “ungovernable behavior” from the definition of “delinquent acts”—so that from then on courts would deal with cases of ungovernability as “dependency” rather than delinquency matters.
- A 1980 law authorized fingerprinting and photographing of juveniles and required that district attorneys receive notice before juveniles in secure custody could be stepped down to a less secure facility.
- In 1981, and again in 1986 and 1989, the Juvenile Act was amended to relax confidentiality restrictions related to the records of some categories of juvenile offenders.
- The 1986 amendments also for the first time gave victims and their counsel and supporters the right to attend juvenile hearings, and prohibited the entry of a consent decree without the district attorney's assent.

Pennsylvania's Juvenile Act took what is essentially its present shape in 1995, when the legislature acted to restrict the juvenile court's jurisdiction over a number of serious felonies (see § 4-4 for a listing of excluded offenses) and also redefined the court's basic mission to incorporate “balanced and restorative justice” principles (see discussion in Chapter 2, above).

§ 3-2 Basic Juvenile Justice Structure and Funding

Especially in comparison with most other states, Pennsylvania's is a highly decentralized juvenile justice system, characterized by an unusual amount of local control and experimentation and a very diverse mix of private delinquency service providers to supplement the public services network. There are states in which a single “Department of Juvenile Justice,” answerable to the governor, is responsible for everything. Pennsylvania isn't one of them. Here the state provides leadership, but the local juvenile courts run the probation departments. For the most part, the counties operate the detention centers. Judges decide where local juveniles will be committed, and relatively few end up in state-operated facilities. Even youth that are placed outside the home are far more likely to go to private institutions

Pennsylvania's county-based, public/private approach to delinquency has produced a model system.

than public ones. And wherever they go, they remain subject to local court custody and supervision.

This diversified approach has some weaknesses, but it has many more strengths, and Pennsylvania's juvenile justice system is generally considered a model for the nation. So, for example, as a widely acknowledged “bellwether” on juvenile justice issues, Pennsylvania was the first state chosen to participate in the John D. and Catherine T. MacArthur Foundation's Models for Change initiative, a long-term effort to create successful and replicable models of juvenile justice system reform through targeted investments in key states.⁶

Basic Elements of the System

The basic elements of the Pennsylvania juvenile justice system are the following:⁷

- *Juvenile Courts.* The Pennsylvania Constitution gives the Courts of Common Pleas in each of the state's 67 counties “unlimited original jurisdiction in all cases except as may otherwise be provided by law.”⁸ This general grant of authority extends to juvenile delinquency matters, among many others. Some counties have established permanent “juvenile divisions” of their Courts of Common Pleas, while others merely hold regularly scheduled “juvenile days.” By custom, however, whenever a Court of Common Pleas is hearing a juvenile matter, it is referred to as a “juvenile court,” and this usage will be observed throughout this work.
- *Court Administration.* In most counties, the administrative direction of the juvenile court is entrusted to an administrative judge designated by the president judge of the county. (In Philadelphia and Allegheny Counties, however, the administrative judge is appointed by the Supreme Court.) In a number of jurisdictions, the president judge functions as the administrative judge of the juvenile court. A chief juvenile probation officer is appointed by the court to oversee the county's juvenile probation department.
- *Juvenile Probation.* County juvenile probation officers in Pennsylvania are the juvenile court's foot soldiers, serving as the primary points of contact with court-involved youth from intake through case termination. They are responsible for initial screening, predisposition investigation, probation supervision, and “aftercare” or post-commitment supervision. In some counties, they play a role in victim services as well. Juvenile probation officers in Pennsylvania tend to be experienced, educated, and well-trained. To be hired, a juvenile probation officer must have a bachelor's degree with at least 18 credits in the social sciences, but about a quarter of all juvenile probation officers statewide hold graduate degrees. The annual turnover rate is about 10%.⁹ The Juvenile Court Judges' Commission offers an optional 40-hour orientation for new officers through its Center for Juvenile Justice Training and Research at Shippensburg University, and mandates 40 hours of continuing training annually. The JCJC also underwrites tuition for probation officers who complete a two-year weekend master's program at Shippensburg University that was developed especially for juvenile probation officers.
- *Detention.* There are a total of 22 secure juvenile detention facilities in operation in Pennsylvania—3 private facilities and 19 that are owned and operated by individual counties or several counties—accepting temporary custody of juveniles awaiting

adjudication, disposition or placement. Some house only youth from their own counties, and others serve regional catchment areas. With a combined total of approximately 780 beds, these facilities accept as many as 20,000 admissions in a typical year.¹⁰ The median length of stay in detention tends to be about 10 days.¹¹ Facility utilization rates (average daily population divided by bed capacity) tend to range from a low of about 40% to a high of about 150%.¹²

- *State-Operated Institutions.* The Bureau of Juvenile Justice Services (BJJ) within the Department of Public Welfare's Office of Children, Youth and Families (OCYF) administers and manages a network of Youth Development Centers, Youth Forestry Camps, and Secure Treatment Units. There are a total of 12 such state-operated facilities, one of which is operated for the state by a private contractor, with an overall capacity of 618 beds (365 secure and 253 non-secure, including a 16-bed community re-entry program and a 30-bed facility for females). Specialized programs serve sex offenders, substance abusers, emotionally disturbed offenders, developmentally delayed offenders, and dually-diagnosed offenders.
- *Private Providers.* Pennsylvania's array of private sector delinquency service providers is arguably the best in the nation. There are well over 500 separate programs for delinquent youth in Pennsylvania, including secure placement programs, group homes, day treatment programs, alternative schools, wilderness programs, shelter and foster care programs, and specialized mental health, drug and alcohol, and sex offender treatment programs, all privately run but inspected and approved by the Department of Public Welfare. Many have long and distinguished histories, and some—such as the Glen Mills Schools in Concordville and George Junior Republic in Grove City—have been in the business of rehabilitating young people since before there were juvenile courts.

State Leadership Organizations

Key state agencies and organizations with juvenile justice responsibilities in Pennsylvania include the following:

- *Department of Public Welfare.* The Department of Public Welfare, through its Office of Children, Youth and Families, runs the state's delinquency institutions, advises the courts regarding institutional placement decisions, and approves and licenses many local and private institutions for juveniles. The DPW also fixes each county's "needs-based budget" for purposes of state reimbursement of county-purchased services for juveniles (see discussion of "Act 148," below), and administers the state's "placement maintenance" program for juveniles placed outside their homes (see sidebar, "Title IV-E Reimbursement Under the Social Security Act").
- *The Pennsylvania Commission on Crime and Delinquency.* The Pennsylvania Commission on Crime and Delinquency is the agency responsible for statewide criminal and juvenile justice system planning, coordination, and policy analysis. The PCCD provides data analysis, research, and legislative recommendations to the Governor's Office and the General Assembly, and administers and supports a number of important juvenile justice grant funding initiatives that benefit local governments. The state's Victim/Witness Assistance Program and its Crime Victims' Compensation Fund are overseen by the PCCD as well. The PCCD's expenditure of federal and state juvenile

justice funds is guided by a formal advisory group of service providers and other professionals that sits as the *Juvenile Justice and Delinquency Prevention Committee*.

- *The Juvenile Court Judges' Commission.* The Juvenile Court Judges' Commission is a statutorily created body that collects and disseminates Pennsylvania juvenile court statistics, establishes administrative and procedural standards for juvenile courts, and sets personnel practices and employment standards for juvenile probation departments. Local juvenile probation departments benefit from JCJC grants intended to improve probation practice and promote various kinds of specialized probation (including school-based, community-based, intensive, and aftercare probation), and receive training, continuing education and graduate education through the JCJC's *Center for Juvenile Justice Training and Research* at Shippensburg University. The JCJC's nine judge-members are nominated by the Chief Justice of the Pennsylvania Supreme Court and appointed by the Governor for three-year terms, and are served by a permanent staff in Harrisburg and at Shippensburg University.
- *The Pennsylvania Council of Chief Juvenile Probation Officers.* The “Chiefs' Council” is a membership organization of chief probation officers, deputy chiefs, supervisors, and probation staff that sponsors and responds to proposed juvenile justice legislation, and works with the Juvenile Court Judges' Commission on probation training, education, and planning issues.

Juvenile Justice Funding

Pennsylvania juvenile justice system costs—including the costs of housing, supervising, treating, and otherwise meeting the needs of youth in the system—may be paid for out of private,¹³ federal, state and county funds. In general, Pennsylvania law¹⁴ provides that no state or local funds may be expended on behalf of a juvenile until all available federal and private funds for which the juvenile is eligible have been exhausted. Costs not otherwise covered by federal or private sources are shared by the state and county. Their respective shares are determined by means of a detailed schedule of state reimbursements laid out in the Public Welfare Code.¹⁵ As is discussed more fully below (see “Act 148 Funds”), the state covers a higher proportion of some kinds of costs than of other kinds. But state reimbursement is “capped” rather than unlimited: each county is allocated a finite amount, determined through the “unified needs-based budgeting process,” to draw upon each year for services to dependent and delinquent children and youth. The county itself is liable for actual expenditures that exceed the cap.

The principal sources of funding for juvenile justice in Pennsylvania are as follows:

Federal

- *Title IV-E.* Established under Title IV-E of the federal Social Security Act, the Title IV-E Placement Maintenance program reimburses Pennsylvania counties for a substantial portion (about 53%) of the costs of maintaining eligible juveniles in court-ordered placements. (See sidebar, “Title IV-E Reimbursement Under the Social Security Act.”)

TITLE IV-E REIMBURSEMENT UNDER THE SOCIAL SECURITY ACT

Title IV-E is an open-ended entitlement program, administered since 1980 by the Children's Bureau of the U.S. Department of Health and Human Services, which provides funds to help cover the expenses of maintaining needy children in foster homes and child care institutions. Under Sec. 472(a) of the Social Security Act, 42 U.S.C. §672, a juvenile who has been removed from the home-whether it is in connection with a dependency or a delinquency case-is "IV-E eligible" if (1) the juvenile or the juvenile's family meets AFDC financial need and other tests and (2) the removing court has examined the facts and determined that removal from the family home was necessary and could not reasonably have been avoided. Basically, Title IV-E placement assistance is available in delinquency cases if courts make the same determinations regarding such issues as child safety, permanency and well-being that they are required by law to make in dependency cases. The Juvenile Court Judges' Commission has Model Petitions and Court Orders specifically designed to help Pennsylvania courts comply with these requirements. The forms are available online at www.jcjc.state.pa.us.

Under 42 U.S.C. §671 and 45 CFR 1356.21, a county can access Title IV-E financial support only if its courts make detailed, timely, and clearly documented findings on three issues in the cases of juveniles who require out-of-home placement:

- *Necessity of removal.* The court authorizing a juvenile's removal from the home must make a fact-based determination that "continuation in the home would be contrary to the welfare" of the juvenile-because he poses a threat to himself if left at large, for example, or needs out-of-home treatment, or will otherwise continue offending and thereby risk injuries or further penalties. Moreover, the court must do so in the *first* order that sanctions the juvenile's removal, even temporarily. So, for example, in a delinquency case that commences with a juvenile's being taken into custody and placed in detention, the court must make a "contrary to the welfare" finding at the time of the detention hearing-even though detention is not a "placement" qualifying for IV-E funding. Failure to do so means that the costs of any subsequent placement-even in a qualifying institution-will not be reimbursable.
- *Efforts to prevent removal.* Within 60 days of removal, the court must find that "reasonable efforts" were made to prevent removal-or that, under the circumstances, a failure to make advance efforts to prevent removal was "reasonable."
- *Efforts to finalize permanency.* Within 12 months of the date that the juvenile enters IV-E eligible foster care-generally at a special "permanency hearing" that is required for juveniles who have remained that long in placement-the court must find that "reasonable efforts have been made to finalize a permanent placement for the child."

Title IV-E placement assistance helps cover the costs of "24-hour substitute care" in "licensed or approved" foster homes or child care institutions that fall within the federal definition of "foster care." Detention centers, training schools, forestry camps, and other facilities "operated primarily for the detention of children who are determined to be delinquent" are specifically disqualified. But even physically secure facilities may qualify if the restrictions imposed on residents are intended for treatment rather than detention.

- *Medicaid.* The costs of a wide variety of medically necessary in-patient and out-patient services for eligible juveniles are reimbursable under Pennsylvania's federally funded Medical Assistance program. The DPW implemented its Integrated Children's Services Initiative—often referred to as “Medicaid Realignment”—to maximize the use of federal Medical Assistance funding for “medically necessary” treatment services to dependent and delinquent youth. Through this initiative, DPW identified behavioral health treatment services across the state that could be funded through the Medical Assistance program. This was a complex process requiring agencies and services to adhere to licensing and accreditation standards, some of which are difficult to meet, particularly for some small or rural county services. Child welfare and juvenile justice services (including court ordered services) that do not fall under “medical necessity” continue to be paid for with state and local funds through the Needs-Based Budgeting mechanism (described below).

State

- *“Act 148” Funds.* After all other available funding sources have been tapped, including all available federal funding and funding from the parents of delinquent and dependent children, so-called “Act 148” funds from the state may be drawn on. Under 62 P.S. §704.1 of the Public Welfare Code, as amended by Act 148 of 1976 as well as other laws, the state provides reimbursement for some of the costs of county-purchased services for juveniles, including day treatment, counseling, foster and institutional care, and detention. Act 148 reimbursement varies from 50% to more than 80% of covered costs, with the remaining costs covered by local matching funds. For instance, in-home and community-based services that the state wishes to encourage (such as counseling, referral, and day treatment services) are generally 80%-reimbursed, while reimbursement rates are deliberately set lower for secure detention (50%), secure residential (60%), and non-community-based residential services (60%). But the total annual amount a county may receive from this source is limited. Every year a finite state allocation is set for each county, determined by the Department of Public Welfare on the basis of the county's “Children and Youth Services Plan and Budget Estimate” for dependent and delinquent youth, which is submitted jointly by the juvenile court and the local children and youth agency. The plan/budget must take into account the county's previous spending, the number of juveniles entering the system, projected trends, needed services, and so on, and must be arrived at with the participation of juvenile court judges as well as juvenile probation departments. To ensure that the judiciary has had input into the process and an opportunity to determine that the proposed budget estimate accurately reflects the needs of juveniles served by the court, judges are required to “sign off” on these estimates before they are submitted.
- *Special grants.* In addition to the above, the Pennsylvania Commission on Crime and Delinquency administers a number of grant programs that fund local juvenile justice agencies,¹⁶ and the Juvenile Court Judges' Commission administers a state-funded grant-in-aid program that supports staff positions in virtually all county juvenile probation departments.¹⁷ Many of these grants require the county to pay for some portion of the expense covered by the grant with its own matching funds.

Local

- *County budgets.* County tax dollars pay for everything that is not funded by the above sources, including juvenile court support staff, most probation staff, building and operating costs, local dollar matches required for state and federal grants, and amounts that exceed the Act 148 reimbursement cap.

§ 3-3 Statistical Overview of Case Processing

A quick look at statistical information available from a variety of sources will convey a broad sense of the kinds of cases the juvenile courts normally handle and how they dispose of them:

- *Overall volume.* Pennsylvania law enforcement authorities make more than 100,000 arrests a year involving persons under 18.¹⁸ Most of these arrests do not involve serious crimes—in fact, more than nine out of ten are for nonviolent offenses. But about a third of juvenile arrests result in referrals to juvenile courts. Pennsylvania juvenile courts and probation departments dispose of more than 40,000 delinquency referrals a year, about three-quarters of them from police sources.
- Probation is by far the most common judicial response to juvenile offending in Pennsylvania.***
- *Typical offenses.* The most common offenses disposed of in a typical year are thefts, burglaries, assaults, and drug offenses.¹⁹
 - *Formal v. informal handling.* About a third of all referrals are typically handled without petitioning, while the remaining two-thirds are petitioned.²⁰
 - *Dispositions.* Probation is the court's most frequent formal response to juvenile offending in Pennsylvania. Nearly one in five referrals receives a formal probation disposition. When you add in consent decrees and informal adjustments—each of which usually involves a mandated period of probation supervision as well—as many as half of all cases referred to the juvenile court in a typical year might result in probation. By contrast, only about one in ten dispositions involves court-ordered placement in a residential facility.²¹ And following the 1995 Juvenile Act amendments excluding a number of serious offenses from juvenile court jurisdiction (see § 6-1), judicial transfers to criminal court have become extremely rare also, with fewer than one in a hundred referrals resulting in transfer in a typical year.²²
 - *Types of placements.* Of the relatively small number of youth who receive placement dispositions in Pennsylvania, about a third go to private nonsecure institutions. Fewer than one in ten go to the most secure public institutions—the Youth Development Centers operated by the state DPW.²³

MANAGING THE INTERSTATE MOVEMENT OF JUVENILES

U.S. states have formally cooperated for more than half a century in managing the movement of juvenile delinquents and status offenders across state lines—including juveniles who run away, abscond or escape to other states, commit crimes while away from their home states, or need institutional or other services that are not available in their home states. The first Interstate Compact on Juveniles was concluded in 1955. Essentially a 50-state treaty governing the interstate movement of an estimated 20,000 to 30,000 juveniles annually, the Interstate Compact provided mechanisms for the return of interstate runaways; made it possible for juveniles under court supervision to travel or move between states, and for committed juveniles to receive institutional care or specialized services in other states; and served as a kind of extradition arrangement with respect to juvenile offenders, including absconders and escapees.

Since its creation in 1955, the existing Compact has been severely compromised due to the incomplete adoption of three subsequent amendments to the Compact and by the individual actions of states. Only Pennsylvania and six other states had adopted the original 1955 Compact and the three subsequent amendments. Consequently, judges should be aware that there is substantial inconsistency in the interpretation and application of the existing Compact. Essentially, common agreement among states concerning what types of juveniles can be sent to other states for supervision does not exist, and there is no authority to hold states accountable for following Compact rules.

The states are currently in the process of adopting an improved version of the Interstate Compact. Known as the “Interstate Compact for Juveniles,” the new agreement is the result of a nationwide effort begun in 2000 as a joint initiative of the Council of State Governments, the federal Office of Juvenile Justice and Delinquency Prevention, and the Association of Juvenile Compact Administrators. It makes various needed changes to the original Compact, establishing an independent operating authority to administer ongoing Compact activity, providing for better funding and sanctioning systems to support essential Compact operations, and mandating the collection of standardized information. When effective and operational, the new Compact should be a major improvement over the existing agreement.

The existing Compact will be repealed when the new Compact, adopted in Pennsylvania by Act 54 of 2004 (see text at 11 P.S. §§890.1-890.6), becomes effective and operative between Pennsylvania and any other state. The effective date of the new Compact will be when the 35th jurisdiction enacts the Compact into law. As of September 2006, 30 states had enacted the necessary legislation. In addition to the states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas islands are eligible to become "Compacting states."

- *Case processing times.* The amount of time it takes to bring a formal delinquency case to disposition varies considerably from county to county, from as few as four or five weeks to as many as twenty. In most years the statewide median for formally handled cases is about ten to twelve weeks. Processing times for informally handled cases range even more widely, but the statewide median is generally about six weeks.²⁴

ENDNOTES

- ¹ Blackstone, Sir William. *Commentaries on the Laws of England*.
- ² McCarthy, Pa. Juvenile Delinquency Prac. & Proc. (4th Ed.), § 1-2.
- ³ Bremner, R. (1971). *Children and Youth in America: A Documentary History*, Vols. 1 and 2. Cambridge, MA: Harvard University Press.
- ⁴ See Anderson, J. (March 1999). "Pennsylvania's Juvenile Justice System: A Rich Heritage, Clear Mission, and Bright Future." *Pennsylvania Juvenile Justice* 8(3). Shippensburg, PA: Center for Juvenile Justice Training & Research. Except where otherwise noted, all subsequent material on the history of the Pennsylvania juvenile courts is taken from Anderson.
- ⁵ "An Act to Regulate the Treatment and Control of Dependent, Neglected and Delinquent Children," *Revised Statutes of the State of Illinois*, 1899, quoted in Trattner, W. (1999). *From Poor Law to Welfare State*. New York, NY: The Free Press.
- ⁶ Models for Change is a multi-state project that seeks to accelerate movement toward a more effective, fair, and developmentally sound juvenile justice system. More information is available at <http://www.jlc.org/mfc/>.
- ⁷ Except where otherwise noted, information in this section is taken from National Center for Juvenile Justice. (2002). "Pennsylvania." *State Juvenile Justice Profiles*. Pittsburgh, PA: NCJJ. Available online at <http://www.ncjj.org/stateprofiles/>.
- ⁸ Article V, Section 5, Pennsylvania Constitution.
- ⁹ Anderson, J. (March 1999). "Pennsylvania's Juvenile Justice System: A Rich Heritage, Clear Mission, and Bright Future." *Pennsylvania Juvenile Justice* 8(3). Shippensburg, PA: Center for Juvenile Justice Training & Research.
- ¹⁰ With a combined total of 763 beds, these facilities accepted 18,968 admissions in 2005. The Secure Detention Monitoring Project. (2005). *Federal Audit Report*. With a combined total of 763 beds, these facilities accepted 18,968 admissions in 2005.
- ¹¹ See Juvenile Court Judges' Commission. *Pennsylvania Juvenile Court Dispositions 2004*. Center for Juvenile Justice Training and Research: Shippensburg, PA. Note that the median length of stay reported here does not reflect data from Philadelphia's Youth Study Center. Current statistics are available from the JCJC website (<http://www.jcjc.state.pa.us/jcjc/site/default.asp>).
- ¹² See Juvenile Court Judges' Commission. *Pennsylvania Juvenile Court Dispositions 2004*. Center for Juvenile Justice Training and Research: Shippensburg, PA. Four detention centers exceeded their licensed bed capacities on an average day during the year 2004—which was a significant improvement from previous years.
- ¹³ For example, 62 P.S. §704.1(e) authorizes courts to order financially able parents to pay all or part of the cost of services to their minor children, in fulfillment of their general support obligations under 23 Pa.C.S. §4321.
- ¹⁴ 62 P.S. §704.2.
- ¹⁵ 62 P.S. §704.1.
- ¹⁶ Funding streams administered by the PCCD are described in the "Grants" section of the Commission's website at <http://www.pccd.state.pa.us/>.
- ¹⁷ The JCJC administers grants for a variety of specialized probation services, including aftercare, community-based, intensive, school-based, and intensive and aftercare probation for drug and alcohol offenders.
- ¹⁸ Unless otherwise noted, the source of arrest and offense information summarized in this part is Pennsylvania State Police Uniform Crime Reporting data analyzed in the Pennsylvania Electronic

Juvenile Justice Databook (discussed more fully at §11-1, below), while the source of disposition information is the Juvenile Court Judges' Commission's *Pennsylvania Juvenile Court Dispositions* series. The most up-to-date statistics are always available from the Databook website (<http://ncjj.servehttp.com/padatabook/>) and from the JCJC website (<http://www.jcjc.state.pa.us/jcjc/site/default.asp>). In the year 2004, Pennsylvania law enforcement authorities recorded almost 109,000 arrests involving persons under 18—out of a total under-18 population of about 2.8 million and a juvenile delinquency age (10-17) population of about 1.3 million. Note that the total juvenile arrest figure does not reflect the total number of juveniles arrested, since a single juvenile may be arrested multiple times. Likewise, a single youth may be involved in a number of dispositions during a calendar year, or may be referred to the court on more than one occasion and receive a single disposition.

¹⁹ For example, of all the cases disposed of in 2000, 61% involved one or another of these as the most serious charge.

²⁰ In 2004, about 70% of the cases handled were petitioned. The remaining 30% were disposed of without petitioning. Zawacki, Susanna. (Forthcoming). *Tracking the Trends: Crime and Court Involvement of Pennsylvania's Youth*. Pittsburgh, PA: National Center for Juvenile Justice.

²¹ In 2004, probation accounted for about 18.7% of all juvenile court dispositions, consent decrees for 17.5%, and informal adjustments for 15.7%. Court-ordered placements made up 10.4% of dispositions, counting both original dispositions and disposition reviews.

²² Only 172 transfers occurred in the whole state in 2004, accounting for less than half a percent of the total juvenile court dispositions

²³ In 2004, 32.1% of placements were to private nonsecure institutions, while 6.2% were to public secure facilities.

²⁴ For formally handled cases, the median number of days from referral to disposition varied in 2004 from a low of 33 days in one county to a high of 130 days in another. The statewide median for formally handled cases was 75 days. Counties' median processing times for informally handled cases ranged all the way from a low of 3 days to a high of 597 days; the statewide median was 41 days.

Commencement of Proceedings, Intake and Informal Adjustment

Summary of Contents

This chapter examines the process by which complaints against juveniles in Pennsylvania are received, screened, and either petitioned or diverted out of the system.

- § 4-1. Judicial Authority Over the Juvenile Court’s “Front Door”
- § 4-2. Commencing Proceedings: Written Allegation Procedures
- § 4-3. Outline of the Intake Screening Process
- § 4-4. The Boundaries of Delinquency Jurisdiction
- § 4-5. Venue in Delinquency Cases
- § 4-6. Intake Conferences
- § 4-7. Informal Adjustment

Key Statutes

- 42 Pa.C.S. §6302 (definitions of “child,” “delinquent act,” “delinquent child”)
- 42 Pa.C.S. §6304 (powers and duties of probation officers)
- 42 Pa.C.S. §6321 (commencement of proceedings)
- 42 Pa.C.S. §6323 (informal adjustment)
- 18 P.S. §§11.201, 11.216 (victim notice & comment rights prior to diversion)

Rules

- Rule 200, Pa.R.J.C.P. (commencing proceedings)
- Rules 210, Pa.R.J.C.P. (arrest warrants)
- Rules 231-233, Pa.R.J.C.P. (written allegation procedures)
- Rules 300-302, Pa.R.J.C.P. (venue)
- Rules 310-313, Pa.R.J.C.P. (intake and informal adjustment)

JCJC Standards

- Juvenile Court Intake
- Inter-County Transfer of Delinquency Cases
- Juvenile Court Jurisdictional Procedures
- Juvenile Court-Police Procedures

§ 4-1 Judicial Authority Over the Juvenile Court's "Front Door"

Much of what the juvenile justice system does, for good or ill, it does at the "front door." The initial decisions made with regard to the processing of complaints of alleged juvenile misconduct, and the way they are made—the values and priorities that are reflected, the factors that are weighed, the views and interests that are considered—have enormous

Juvenile court judges are ultimately responsible for ensuring that their courts' intake practices are consistent with the purposes of the Juvenile Act and the Juvenile Court Rules.

consequences for the safety of the community, for crime victims, and for the young people whose futures are in the balance. Although the District Attorney in any Pennsylvania county may require the initial receipt and approval of written allegations by an attorney for the Commonwealth, these initial decisions are largely entrusted to juvenile probation departments, which are empowered to "receive and examine complaints and charges of delinquency or dependency of a child for the purpose of considering the

commencement of proceedings...."¹ But it is juvenile court judges who are ultimately responsible for ensuring that both the intake/diversion process and its results are fair, rational, and consistent with the purposes of the Juvenile Act. Judges cannot ignore this responsibility—in effect, "taking what comes" into their courtrooms—without neglecting a significant part of their jobs.

In fulfilling their intake oversight responsibilities, juvenile court judges exercise three basic kinds of leadership:

- *Direct administrative leadership.* Judges who administer their courts have a strong voice in the framing of overall intake/diversion policy and the setting of specific guidelines governing case screening and investigation, criteria for dismissal/diversion, and the contents and enforcement of diversion agreements.
- *Bench leadership.* Judges also have considerable indirect authority to shape intake and diversion policy from the bench—for example, by questioning the need for formal proceedings in cases that seem to have been inappropriately petitioned, or suggesting diversion options that may have been overlooked by the parties.
- *Community leadership.* As teachers and leaders in the community, judges have opportunities to educate people regarding the benefits of diversion in appropriate cases, to advocate for a broader range of community diversion options, and to recruit community members into the work of diversion.

§ 4-2 Commencing Proceedings: Written Allegation Procedures

The Rules of Juvenile Court Procedure for Delinquency Matters, which were adopted in 2005, provide that, except for cases that are transferred from one court to another, every delinquency proceeding must be commenced by (1) the submission of a written allegation, (2) a warrantless arrest followed promptly by the submission of a written allegation, or (3) a certification to the court that a juvenile has failed to comply with a lawful sentence imposed for a summary offense.² The written allegation is not a petition, in that it does not necessarily lead to formal court action. But it sets in motion the process of determining whether the court has jurisdiction over the matter, and if so whether formal proceedings are warranted.

The written allegation is the document that initiates delinquency proceedings.

Although written allegations may in some instances originate from private citizens (see below), they are for the most part submitted by law enforcement. The content requirements for written allegations loosely track those for petitions, in part to facilitate the common practice of drawing up petitions based on written allegations. Every written allegation must contain all of the following:

- The name of the person making the allegation, together with a verification and signature;
- The name, date of birth, and address of the juvenile, if known;
- The time and place the alleged offense was committed, the names and ages of any co-conspirators, and either “a summary of the facts sufficient to advise the juvenile of the nature of the offense alleged,” together with the provision of law violated, or else a certification that the juvenile has failed to comply with a sentence imposed for a summary offense; and
- Statements that the acts alleged were “against the peace and dignity of the Commonwealth” or in violation of a local ordinance, that proceedings in the matter are “in the best interest of the juvenile and the public,” and that “the juvenile is in need of treatment, supervision, or rehabilitation.”³

Responsibility for initial receipt and review of written allegations varies from county to county. Generally, they are received in the first instance by a juvenile probation officer, with copies forwarded to the attorney for the Commonwealth. But a county District Attorney may elect to require that an attorney for the Commonwealth initially receive and approve written allegations (including those made in connection with arrest warrant applications), either in all cases or in a designated category of cases, as specified in a formal certification of election filed with the local Court of Common Pleas.⁴ In such counties, the juvenile probation department is notified and receives a copy of the written allegation only after the approval or disapproval of the attorney for the Commonwealth.

Private written allegations

A written allegation submitted by a non-law enforcement source must be approved or disapproved (by a juvenile probation officer or the attorney for the Commonwealth, depending on the county's written allegation review arrangement) “without unnecessary delay.”⁵ If the written allegation is disapproved, the person submitting the allegation is entitled to a written statement of reasons, and may file a motion with the Court of Common Pleas for review of the decision. If the court overturns the disapproval of a written allegation, it should direct the decision-maker to proceed to a consideration of whether informal adjustment or petitioning is warranted in the case.

§ 4-3 Outline of the Intake Screening Process

Following the receipt of a written allegation, the juvenile probation officer entrusted with intake decisions must determine whether the matter described in the written allegation should become the subject of formal court action. Initially, the intake officer must answer two basic questions:

- Are the allegations within the jurisdiction of the juvenile court?
- If so, is it appropriate to schedule an intake conference to determine what further action, if any, should be taken?⁶

Following an intake conference, the intake officer must determine whether the matter should be dismissed, informally adjusted, or petitioned.

Determining the appropriate handling of a delinquency allegation is both a legal and a policy decision.

Intake screening and decision-making should be guided by explicit criteria and directed toward clearly understood and articulated goals. Juvenile court judges in Pennsylvania should make use of their oversight authority to ensure that the process serves the larger purposes of the state's juvenile

justice system—that is, that it generates intake decisions that will protect the community, impose accountability for offenses committed, repair the harm done to victims to the extent possible, and help juveniles develop the strengths and skills they need to become law-abiding and productive.

The JCJC Standards Governing Juvenile Court Intake require that the intake screening process be structured by comprehensive guidelines, policies, and procedures established by the administrative judge⁷ and the chief juvenile probation officer. Intake recommendations should likewise be based on written criteria that have been developed by the administrative judge and the chief juvenile probation officer and are consistent with the fundamental purposes of the Juvenile Act. The recommendations themselves, along with the basis for them, should be reduced to writing, and should be subject to review and approval by the administrative judge or a designee. And the administrative judge and the chief juvenile probation officer should meet regularly to review intake operations and assure their consistency and compliance with law, policies, and procedures.

§ 4-4 The Boundaries of Delinquency Jurisdiction

At intake, the first question that must be answered regarding a written allegation of delinquency is whether the juvenile court has jurisdiction over the matter alleged.⁸ The jurisdictional determination is based primarily on a review of the allegation itself, supplemented by some verification and examination of the evidence.

Age limits

In Pennsylvania, juvenile courts have jurisdiction over any “child” who is “alleged to be delinquent.”⁹ These terms imply both lower and upper age limits to delinquency jurisdiction, since a “child” must generally be under 18 while a “delinquent child” must be at least 10:¹⁰

- *Child.* For purposes of delinquency jurisdiction, a “child” is anyone who is “under the age of 18 years” or “under the age of 21 years who committed an act of delinquency before reaching the age of 18 years.”
- *Delinquent child.* “A child ten years of age or older whom the court has found to have committed a delinquent act and is in need of treatment, supervision or rehabilitation.”

The Juvenile Act imposes upper and lower age and offense limits on juvenile court jurisdiction.

In general, an intake officer making an initial jurisdictional determination should verify the juvenile's age, rather than simply accept the age listed on the arrest report.

Offense limits

Intake decision-makers must also determine whether the conduct alleged in the complaint falls within the delinquency jurisdiction of the juvenile court—that is, whether it constitutes a “delinquent act.” The general definition is as follows:

- *Delinquent act.* “The term means an act designated a crime under the law of this Commonwealth, or of another state if the act occurred in that state, or under Federal law, or under local ordinances or an act which constitutes indirect criminal contempt under 23 Pa.C.S. Ch. 61 (relating to protection from abuse).”¹¹

However, the same Juvenile Act provision excludes five basic categories of offenses from the definition of “delinquent act” for purposes of juvenile court jurisdiction. A case in which an excluded offense is alleged must be processed in criminal court—at least initially; as is discussed more fully at §6-6, *infra*, criminal courts are given some discretion under 42 Pa.C.S. §6322 to transfer such cases back to juvenile court. The following offense categories are excluded:

- *Murder.* The juvenile court has no original jurisdiction over a juvenile accused of murder.

- *Selected offenses involving the use of deadly weapons.* A number of enumerated offenses are initially excluded from juvenile court jurisdiction when they are committed by 15-, 16-, or 17-year-olds using deadly weapons:¹²
 - Voluntary manslaughter
 - Rape
 - Involuntary deviate sexual intercourse
 - First degree felony aggravated assault
 - Aggravated indecent assault
 - First degree felony robbery
 - Robbery of a motor vehicle
 - Kidnapping
 - Any attempt, conspiracy, or solicitation to commit murder or any of these offenses.

- *Selected repeat offenses.* The definition of “delinquent act” also initially excludes selected offenses (the same as those listed above, with the exception of aggravated assault) committed by 15-, 16-, or 17-year-olds who have previously been adjudicated delinquent for any of the offenses on the list:
 - Voluntary manslaughter
 - Rape
 - Involuntary deviate sexual intercourse
 - Aggravated indecent assault
 - First degree felony robbery
 - Robbery of a motor vehicle
 - Kidnapping
 - Any attempt, conspiracy, or solicitation to commit murder or any of these offenses.

- *Offenses committed by juveniles who have previously been found guilty of crimes.* Once a juvenile has been found guilty of a non-summary offense in a criminal proceeding, subsequent offenses committed by the same juvenile are excluded from the definition of “delinquent act” for jurisdictional purposes.

- *Summary offenses.* A summary offense is not in itself considered a delinquent act for jurisdictional purposes. However, juvenile courts may exercise delinquency jurisdiction over summary offenses in two situations: (1) where the juvenile has failed to comply with a lawful sentence imposed for the summary offense or (2) where the summary offense arose out of “the same episode or transaction” as a delinquent act. In the latter case, the summary offense must be specified in the petition.

For details regarding age and offense categories that, while not excluded from juvenile court jurisdiction, are eligible for discretionary transfer out of juvenile court, see Chapter 6.

§ 4-5 Venue in Delinquency Cases

Any proceeding under the Juvenile Act may be heard in “the county in which the child resides”; in addition, a delinquency case may be heard in “the county in which the acts constituting the alleged delinquency occurred.”¹³ In cases in which these are different counties, intake decision-makers may be called upon to weigh the appropriateness of alternative venues.

The JCJC Standards Governing the Inter-County Transfer of Delinquency Cases provide that in a case in which a delinquent act is alleged to have been committed in a county other than the juvenile's county of residence, “adjudicatory proceedings should normally be conducted in the county in which the delinquent act occurred, unless a specific arrangement to the contrary has been agreed to by the attorneys for the Commonwealth in both jurisdictions.”¹⁴ (Unless the juvenile has been emancipated, the juvenile's county of residence would be the county in which the custodial parents or other guardians or custodians reside.) However, the juvenile probation department presented with delinquency allegations against a nonresident child must promptly “initiate contact with the juvenile probation department in the county of residence to discuss the matter and jointly determine the most appropriate manner for processing the case.” Local district attorneys should be notified and involved in these discussions as well.

There are some good reasons for processing a delinquency case involving a nonresident juvenile in the county in which the alleged delinquent acts occurred. Presumably this will be the more convenient forum in which to weigh evidence and hear witnesses regarding the delinquent acts themselves. More importantly, this is the forum in which active victim participation in the resolution of the matter is most likely, and intake policy regarding venue determinations should take this into account.

Fact-finding in delinquency cases should normally be conducted in the county in which the alleged delinquent act occurred.

On the other hand, the Standards acknowledge that “[i]n certain cases, it may be appropriate to transfer a matter to the county of residence immediately following the intake conference.”¹⁵ The county of residence has the more substantial stake in the accused juvenile's future, after all. So in a case in which a formal adjudication calling for witness testimony is unlikely, for instance, there may be no reason not to transfer the matter. The same may be true in a case in which the court in the juvenile's county of residence happens to be closer to the victim or others involved in the case. But the decision to transfer the matter following the intake conference should be jointly made by the juvenile probation departments and the attorneys for the Commonwealth in the two jurisdictions. If the attorney for the Commonwealth in the county conducting the intake conference objects to a proposed transfer, the case should be transferred only after a court hearing. (As is explained more fully in the following section, Rule 311, Pa.R.J.C.P., provides for hearings on motions to review probation decisions made following intake conferences.)

Wherever the fact-finding hearing occurs, the juvenile's county of residence is ordinarily the appropriate forum for disposition. Once a fact-finding hearing has been conducted in the county where the delinquent act occurred, and it has been determined that a nonresidential juvenile in fact committed the act charged, the court may enter the finding on the record and

then transfer the case-along with certified copies of all documents, reports, and summaries in the juvenile's court file-to the county of residence for a determination of the juvenile's need for treatment, supervision or rehabilitation.¹⁶ The JCJC Standards recommend that the transferring court in such a case specify the amount of any restitution that should be paid, and the person to whom it is owed, as part of its finding. But the court receiving the transferred case and ordering the final disposition is responsible for implementing it, including costs associated with placement and collection of fines, costs and restitution.

In all inter-county transfer cases, including those involving “courtesy supervision” transfers following disposition, the court should make every effort to ensure that a victim impact statement is collected and forwarded along with other relevant papers, and that the probation departments in the respective counties work together to ensure that victims receive the notice of hearings and other “significant actions and proceedings” to which the Crime Victims Act entitles them.¹⁷

§ 4-6 Intake Conferences

The Rules of Juvenile Court Procedure for Delinquency Matters provide that an intake conference must be scheduled “within a reasonable time” of the receipt of a written allegation, and that the juvenile probation officer scheduling the conference must “make all reasonable efforts to provide actual notice” of the conference to the juvenile and the juvenile's guardian.¹⁸ At the start of the conference, the juvenile, the juvenile's guardian, and the juvenile's attorney, if present, must be provided with a copy of the written allegation, and the juvenile must be informed of the right to remain silent and the right to have an attorney present.¹⁹ JCJC Standards Governing Juvenile Court Intake recommend that the administrative judge and the chief juvenile probation officer develop a standardized form and procedures for explaining these rights. If refusal to participate in an intake interview precludes dismissal or diversion of the complaint, the intake interviewer should make this clear as well.

The immediate purpose of the intake conference is to gather the information needed to apply intake decision-making guidelines.

In substance, a thorough intake conference should gather (1) basic demographic information, (2) incident information (the juvenile's account of the incident and his own role in it, whether he admits guilt or involvement, whether he appears to understand what he has done and to accept responsibility for it, and his overall attitude, maturity and understanding), and (3) pertinent family information (the attitude of the parents/guardians, whether they had knowledge of the offense, whether they have taken steps to correct or address the juvenile's misconduct, and whether they would be willing to cooperate in a diversion arrangement).

In addition to information gathered directly at the intake conference, intake decision-making should take into account the nature and number of the juvenile's prior contacts with the court and the results of those contacts. In most cases, either with the written consent of the juvenile and his parents or by court order, school, child welfare, and other agency records should be accessed and considered.

The JCJC Standards provide that the basis of any intake recommendation must be recorded in writing. Because information gathered during the preliminary investigation may form the foundation for subsequent assessments, eventually helping to inform decisions regarding disposition and case planning, it should be accurately, systematically, and legibly recorded.

Victim Input at Intake

While the Crime Victims Act does not give victims the right to participate in intake conferences, intake decision-making must be informed by the victim's point of view. The Rules of Juvenile Court Procedure for Delinquency Matters provide that, prior to the intake conference in a case in which informal adjustment is being considered, the victim must be given a chance “to offer prior comment on the disposition of the case.”²⁰ It is clear that in any case involving an identifiable victim, the victim's account of the emotional as well as physical and economic impact of the offense—and what would be required to repair the harm—are essential pieces of information at intake. In cases involving generalized harm to the community rather than to any individual victim, the intake decision-maker should make an effort to assess and give weight to the community interest, and to explore means of reconciling the offender with the community.

Intake Recommendations

As noted above, the JCJC Standards Governing Juvenile Court Intake require that the administrative judge and the chief juvenile probation officer “establish written criteria to be used by Juvenile Court intake in developing recommendations for intake decisions,” as well as “written guidelines for use by Juvenile Court intake concerning final intake recommendations.” Ideally, these criteria and guidelines should be explicit and detailed enough to give structure to decision-making, but flexible enough to preserve discretion in individual cases.

In general, intake decision-making guidelines should be designed to protect the community, to hold youth accountable, and to address the needs of the victims of juvenile crime while helping juvenile offenders to grow into law-abiding and productive adults. They should be concrete enough to yield consistent results overall, even while allowing for departures in individual cases. But they should not be set in stone: intake decision-making criteria should be assessed periodically for fairness and consistency and otherwise subject to review, criticism, and comment from others, including members of the community, victims, and their representatives and advocates.

The JCJC Standards lay out four basic recommendation options:

- *Warning and dismissal.* The option of dismissing legally sufficient allegations of delinquency at intake should ordinarily be reserved for cases involving juveniles who are accused of minor offenses, who have no prior record or pattern of offending, who either have no apparent need for services or are receiving adequate services already, whose families are providing needed supervision, and whose victims are not inclined to pursue the matter further. (These are essentially the same cases in which, under the JCJC Standards Governing Juvenile Court-Police Procedures, dismissal without a referral on the part of the police would have been appropriate.) Like other intake

recommendations, a dismissal recommendation must be recorded in writing, along with the basis for making the recommendation.

- *Informal adjustment.* Informal adjustments in lieu of petitioning are negotiated by the parties and recorded in a standardized informal adjustment agreement form that has been developed by the administrative judge and the chief juvenile probation officer. An informal adjustment may or may not involve referrals to outside agencies for services. Informal adjustment is available to juveniles who are alleged to be “ungovernable” as well as those alleged to be delinquent. However, as is discussed more fully in the following section, victims must be notified and allowed to submit comment prior to the informal adjustment of certain delinquency matters; see § 4-7.
- *Consent decree.* In appropriate cases, and “according to local policy,” the JCJC Standards allow for a recommendation that a delinquency petition be filed but that proceedings be suspended and the case continued under a consent decree. Resolution by consent decree may be appropriate in cases in which formal adjudication is not necessary, but the coercive power of the court is needed to ensure good conduct, satisfy the victim's interests, or hold the juvenile accountable. Unlike an informal adjustment, a consent decree requires the acquiescence of the district attorney as well as the court. Consent decrees are discussed more fully below, at § 8-6.
- *Formal petitioning/adjudication.* Formal petitioning and adjudication should generally be reserved for serious or disputed cases. The JCJC Standards specify that “denial by the child of the allegations of delinquency and/or a request by the child for a hearing shall be compelling reasons for filing a petition.” More generally, formal handling should be recommended when services or corrective measures are required to resolve the matter and the juvenile and his parents are unwilling to accept them voluntarily; when the juvenile has had several prior referrals to court; or when the seriousness of the offense, the threat posed to the public, and/or the nature and extent of harm to the victim or the community rule out informal handling.

While the Rules of Juvenile Court Procedure for Delinquency Matters require that a petition be filed within 24 hours (or on the next court business day) after a detention hearing if the juvenile is detained,²¹ no statute or rule governs the timing of petition filings in cases that do not involve detention. Nevertheless, petitions must be filed without unreasonable delay.²² Most standards-setting agencies prescribe that intake decisions be finalized within 30 days of the receipt of the complaint.²³

§ 4-7 Informal Adjustment

The Juvenile Act authorizes a juvenile probation officer presented with allegations of delinquency to “refer the child and his parents to an agency for assisting in the matter” and to “give counsel and advice to the parties with a view to an informal adjustment” in lieu of filing a petition.²⁴ Resolving allegations of delinquency through informal adjustment without a petition is permissible only when the arrangement “would be in the best interest of the public

and the child” and “the child and his parents, guardian, or other custodian consent thereto with knowledge that consent is not obligatory.”²⁵

While the informal adjustment provision in its current form was not enacted until 1972, Pennsylvania’s juvenile courts have been empowered to adjust individual cases of delinquency informally—that is, to address them through the use of social service and supervisory resources rather than formal, coercive powers—since the passage of the Juvenile Act of 1933. Diversion of this kind is not a sideline—it is central to the juvenile court’s historic mission. Indeed, in appropriate cases, diversion does a better job of accomplishing the court’s primary goals than formal judicial processing:

Informal adjustment and other forms of diversion should be considered before a petition is filed.

- *Community protection.* Obviously, diverting the cases of juveniles who do not pose a threat to the community’s safety makes it possible to reallocate court and probation resources to more dangerous offenders. Diversion is a sensible approach to cooperative, “entry-level” offenders who—assuming their cases are not mishandled—are statistically unlikely ever to wind up in juvenile court again.²⁶ But even if it were possible to process all offenses formally, the public’s long-term safety interest might be better served by measured, informal responses to minor offending—particularly if they are designed to strengthen and promote community bonds and attachments by engaging community members in the work of holding young people accountable.
- *Accountability to victims.* Diversion can and should seek to redress wrongs suffered by victims—by calling on offenders to apologize, by requiring the payment of restitution, and by arranging restorative conferencing in appropriate cases. Moreover, informal diversion programs can often make room for victims to a degree that is difficult for courts, giving them a voice, a role in the process, and a sense that their needs and interests have not been ignored.
- *Competency development.* Diversion programs can target a juvenile’s competency development needs as well, through immediate treatment, training and services, while avoiding the significant and often needless harm to his prospects that could result from a formal delinquency adjudication.²⁷

Limits on Informal Adjustment

Pennsylvania law and the Rules of Juvenile Court Procedure for Delinquency Matters impose five specific limitations on the use of pre-petition informal adjustment:

- *Jurisdictional facts admitted.* If a probation officer is to give “counsel and advice”—in other words, if the informal adjustment will involve a period of counseling and supervision by a probation officer—the law requires that “the admitted facts bring the case within the jurisdiction of the court.”²⁸ The case of a juvenile who does not admit the offense, or at least *some* offense, can only be dismissed, with or without a referral for services, or petitioned.

- *Time limits.* Likewise, a period of probation supervision pursuant to an informal adjustment may not last more than six months, unless extended by court order for an additional period of no more than three months.²⁹ In other words, even if the juvenile is willing to agree otherwise, the law imposes a maximum of nine months' supervision by a probation officer without the filing of a formal petition.
- *No detention authorized.* A juvenile cannot agree to be detained as part of an informal adjustment.³⁰
- *Privilege against self-incrimination.* Incriminating statements made by a participant in the informal adjustment process—including any “discussions or conferences incident thereto”— “shall not be used against the declarant” in any subsequent juvenile or criminal proceeding.³¹
- *Victim notice and input.* As is discussed below, victims have the right to receive notice and submit comment prior to the informal adjustment of delinquency allegations.³² Providing notice is generally a juvenile probation responsibility.³³

Victim Input into Diversion Decision-Making

Under the Rules of Juvenile Court Procedure for Delinquency Matters, the victim must be afforded “the opportunity to offer prior comment on the disposition of the case if informal adjustment or an alternative resolution of the case is being considered.”³⁴

Victims should be informed whenever diversion is a possibility, and given a chance to register their views regarding diversion as part of the intake consultation. And although a victim's opposition and/or unwillingness to participate should not by itself rule out diversion in an otherwise appropriate case, the victim's viewpoint and desires should be carefully weighed in diversion decision-making, and taken into account in routine reviews of intake decisions.

Law Enforcement Input

Often, arresting officers also have pertinent information, either about the youth himself or the circumstances of the offense, which should be taken into account in diversion decision-making. Where possible, it is a good practice to go behind incident reports to determine the actual views of arresting officers regarding the appropriateness of informal adjustment in individual cases.

Diversion Agreements

As noted above, an informal adjustment is based on the consent of the parties, embodied in a diversion agreement recorded on a standardized form developed by the administrative judge and the chief juvenile probation officer. The form agreement should contain all of the following:

- *Basic framework.* The agreement should state that juvenile court intake is withholding the filing of a petition in exchange for certain commitments from the juvenile and his family.

- *Informed consent.* The agreement should acknowledge that the juvenile and his parents were notified of their right to refuse informal adjustment and to insist upon an adjudication hearing, as well as their right to terminate the agreement at any time and request an adjudication hearing.
- *Clear, specific conditions.* Vague, disputable, or unenforceable obligations (“show respect”) should be avoided, in favor of clear and measurable objectives (deadlines, work hours, sums of money).
- *Active commitments.* To be effective and hold youth accountable, diversion should call for activity, not just passivity, from juveniles. Beyond simply staying out of trouble, diversion agreements should obligate youth to do things—for example, perform community service, pay restitution, attend special classes, participate in mentoring or tutoring programs, engage in community activities, cooperate in treatment.
- *Termination.* A diversion agreement should have a definite duration (usually six months) and a termination date. The filing of a petition based on the events leading to the original referral should be permitted only for failure to comply with the agreement during its duration.

Diversion Programs

Every juvenile court should have available a continuum of diversion programs that is adequate to meet local needs. Juvenile court judges should take the lead in enlisting broad support from police, prosecutors, schools, social service agencies, businesses, churches, and victims’ organizations for the development of a complete diversion continuum. Judges should also look for opportunities, both on and off the bench, to educate members of the public regarding the purpose and value of diversion and to encourage their involvement in the work of diversion.

Elements of a complete diversion continuum will vary from community to community, but should generally include something like the following range of options:

- *Work service/restitution programs.* Community service and restitution are among the juvenile justice system’s most basic “teaching tools.” By working to pay in some way for the damage they have done, juvenile offenders learn to understand and accept responsibility for the consequences of their wrongdoing. All Pennsylvania juvenile courts should establish restitution and community service programs, and develop policies that ensure that reasonable restitution obligations are imposed on juveniles whenever feasible, that private sector and/or subsidized employment is available to enable indigent juveniles to pay restitution, and that a system is in place to track and report individual and aggregate data on restitution ordered and collected annually. Courts should also develop guidelines to determine the amount of community service that should be imposed in individual cases, and collect and report individual and aggregate data on community service required and performed annually.
- *Victim-offender mediation and victim awareness programs.* An apology addressed to the victim, either personally or in writing, or participation in a conference with the victim under the direction of a trained mediator, may serve to deepen the offender’s

- understanding and empathy while helping the victim to recover and move on. Even where direct dialogue with the victim is not feasible, juveniles may be required to attend victim awareness classes or listen to a presentation on the human consequences of crime from a victim impact panel.
- *Community-based dispute resolution programs.* Youth Aid Panels and other alternative dispute resolution boards engage ordinary citizens in the process of reconciling juvenile offenders with their victims and communities.
 - *Offense-specific education programs.* Many jurisdictions have established diversion programs especially designed for particular categories of offenders, such as shoplifters, vandals, truants, juveniles with anger management problems, and substance-abusers.
 - *Competency development programs.* Programs designed to address juveniles' skill deficits and build on their strengths might include tutoring, mentoring, counseling and treatment programs.
 - *Restorative group conferencing.* Restorative group conferencing involves the juvenile and his family and supporters, the victim or a representative of the victim, and the victim's family and supporters in a process aimed at healing and making amends for the harm caused by minor or moderately serious juvenile offending. A facilitator leads the discussion, in which information is shared about the offense, how it has affected the victim, why the offender committed the crime, etc. This information is used to decide on a mutually agreed-upon plan for how best to deal with the offending and how reparations will be made.

ENDNOTES

¹ 42 Pa.C.S. §6304.

² Rule 200, Pa.R.J.C.P.

³ Rule 232, Pa.R.J.C.P.

⁴ Rules 210 and 231, Pa.R.J.C.P.

⁵ Rule 233, Pa.R.J.C.P.

⁶ Rule 310, Pa.R.J.C.P.

⁷ In counties in which the president judge normally takes responsibility for setting policy, the term "administrative judge" should be understood to designate the president judge.

⁸ Rule 310, Pa.R.J.C.P.

⁹ 42 Pa.C.S. §6303.

¹⁰ 42 Pa.C.S. §6302.

¹¹ 42 Pa.C.S. §6302.

¹² "Deadly weapon" is defined in 18 Pa.C.S. §2301: "Any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or serious bodily injury, or any other device or instrumentality which, in the manner in which it is used or intended to be used, is calculated or likely to produce death or serious bodily injury."

¹³ 42 Pa.C.S. §6321(b)(1) and (2). See also Rule 300, Pa.R.J.C.P.

¹⁴ 37 Pa. Code §200.702.

¹⁵ 37 Pa. Code §200.702

¹⁶ Rule 302, Pa.R.J.C.P.

¹⁷ 18 P.S. §11.201.

¹⁸ Rule 310, Pa.R.J.C.P.

¹⁹ Rule 311, Pa.R.J.C.P.

²⁰ Rule 311(B)(3), Pa.R.J.C.P.

²¹ Rule 242(D), Pa.R.J.C.P.

²² *Commonwealth v. Dallenbach*, 729 A.2d 1218 (Pa. Super. Ct. 1999).

²³ See, e.g., The National Advisory Committee for Juvenile Justice and Delinquency Prevention. (July 1980) *Standards for the Administration of Juvenile Justice*. Institute of Judicial Administration/American Bar Association. (1980) *Juvenile Justice Standards Series*.

²⁴ 42 Pa.C.S. §6323.

²⁵ 42 Pa.C.S. §6323(b)(1) and (2).

²⁶ See Snyder, H., and Sickmund, M. (2006). *Juvenile Offenders and Victims: 2006 National Report*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

²⁷ For a more thorough discussion of the use of diversion as an alternative to formal court processing, see Griffin, P. and Torbet, P. (2002). *Desktop Guide to Good Juvenile Probation Practice*. Pittsburgh, PA: National Center for Juvenile Justice.

²⁸ 42 Pa.C.S. §6323(b)(3).

²⁹ 42 Pa.C.S. §6323(c).

³⁰ 42 Pa.C.S. §6323(d).

³¹ 42 Pa.C.S. §6323(e).

³² Rule 311(B)(3), Pa.R.J.C.P.

³³ See 18 P.S. §11.216.

³⁴ Rule 311(B)(3), Pa.R.J.C.P.

Detention

5

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JCJC Standards

- The Use of Secure Detention Under the Juvenile Act
- Hearings and Administrative Reviews for Children Held in Secure Detention
- Use of Masters

§ 5-1 The Purpose and Place of Secure Juvenile Detention in Pennsylvania

The Juvenile Act authorizes the secure pre- and post-adjudication detention of juveniles for brief periods, under narrowly defined circumstances, and for strictly limited purposes. Secure detention in Pennsylvania delinquency cases is further restricted by Juvenile Court Judges' Commission standards developed to guide detention usage and decision-making throughout the Commonwealth.¹ Juvenile court judges are responsible for ensuring that the use of detention in their jurisdictions is kept within the limits prescribed by the law and applicable standards, that it is reserved for cases in which it is not only permissible but necessary and appropriate, and that it actually serves its intended purposes. Fulfilling this responsibility calls

In general, juveniles taken into custody must be released unless they cannot be released.

for the exercise of each of the three basic kinds of authority—bench authority, administrative authority, and community authority—entrusted to juvenile court judges. Whether they are actually presiding over detention hearings in individual cases or overseeing the detention intake process as administrators of their courts, juvenile court judges are in a position to assure that detain-or-

release decision-making is fair, consistent, based on pertinent information, structured by appropriately drawn guidelines, and adequately documented. And as community leaders, judges can take an active role in promoting solutions to the problems associated with overuse of detention, including expansion of detention alternatives as well as screening and services for juveniles who are currently being detained.

Before examining specific criteria for detention admissions, it is worth noting that Pennsylvania law establishes a general rule that juveniles taken into custody *must* be released unless they *cannot* be released. This rule can be inferred broadly from the general purpose clause² of the Juvenile Act—to “preserve the unity of the family whenever possible,” “separating the child from parents only when necessary for his welfare, safety or health or in the interests of public safety”—and from the narrower language of the detention provisions themselves,³ which are framed as release mandates qualified by limited exceptions (“A child taken into custody shall not be detained...unless...”; “A person taking a child into custody, with all reasonable speed and without first taking the child elsewhere, shall...release the child to his parents...unless...”; “If a child is brought before the court or delivered to a detention or shelter care facility designated by the court, the intake or other authorized officer of the court shall immediately make an investigation and release the child unless...”). When detention is necessary, the Juvenile Act and the Rules of Juvenile Court Procedure for Delinquency

Matters clearly require that it be as brief as possible, setting up a kind of emergency timetable—a detention hearing within 72 hours, petition filing within 24 hours of the detention hearing, an adjudication hearing or a mandatory release within 10 days—to ensure that end.

Despite these statutory restrictions—as well as a state detention funding scheme (more fully described at § 3-2, above) that is deliberately structured to discourage unnecessary and inappropriate detention usage—overcrowding in juvenile detention facilities has been a historic problem in some parts of Pennsylvania, often leading to unhealthy and dangerous conditions. (In the year 2004, for example, at least 4 of the state’s 23 juvenile detention facilities had average daily populations that exceeded their licensed capacities.)⁴ Litigation arising from these conditions led to the development of more specific, extra-statutory standards to guide decision-making on admissions to detention facilities. Originally embodied in a statewide consent decree that resolved the case of *Coleman v. Stanziani* in 1986,⁵ they eventually became the basis for the JCJC Standards Governing the Use of Secure Detention Under the Juvenile Act.⁶

Although the JCJC detention standards do restrict eligibility for detention, as will be seen in the sections that follow, their real thrust is not so much to discourage detention in individual cases as to discourage its routine, thoughtless, unnecessary use. What the standards require above all else is that the *thought processes* leading up to the detention decision—the factors weighed, the consideration of alternatives, the grounds upon which an order to detain is ultimately based—be adequately documented.

While the JCJC detention standards have now outlived the consent decree on which they were based, compliance with them is mandatory if the county is to continue participating in the JCJC’s grant-in-aid program.

§ 5-2 Pre-Hearing Detention in General

Pennsylvania law⁷ provides that—except for very brief periods of police detention for purposes of investigation, processing, transfer, or release—no juvenile may be securely detained prior to an adjudication of delinquency unless one of the following conditions applies:

- *Detention required to protect persons/property.* A juvenile in custody may be detained pending a hearing on a delinquency petition if such detention “is required to protect the person or property of others ...” However, JCJC detention standards require that such preventive detention be restricted to juveniles charged with certain enumerated offenses or those with certain offense histories.⁸ (See §5-6, “Detention to Protect the Community.”)
- Pennsylvania law and JCJC detention standards permit secure detention only in narrowly defined circumstances.***
- *Detention required to protect the juvenile.* Detention may also be permitted if “required to protect the person or property...of the child.” Such detention is permissible under JCJC standards only at the written request of the juvenile or his attorney.⁹

- *Detention required to ensure attendance at hearing.* The law authorizes detention when it is “required...because the child may abscond or be removed from the jurisdiction of the court or because he has no parent, guardian, or custodian or other person able to provide supervision and care for him and return him to the court when required...” In general, if detention is asserted to be necessary to assure attendance at a subsequent hearing, JCJC detention standards require a showing of actual past instances of absconding or failing to appear at hearings on the juvenile’s part.¹⁰ (See §5-7, “Detention to Ensure Attendance at Hearings.”) However, the standards make it clear that, if a juvenile cannot be released solely because there is no parent or other responsible adult to ensure his appearance at a subsequent hearing, then shelter care may be authorized, but not secure detention.¹¹ (See §5-5, “Alternatives to Secure Detention.”)
- *Other court-ordered detention.* A juvenile may also be detained if “an order for his detention...has been made by the court...” While this language holds out the possibility that pre-hearing detention may be permissible even when it is not necessary to safeguard the community or the juvenile or ensure the juvenile’s appearance at subsequent hearings, JCJC detention standards indicate that such detention will be justified only by “extraordinary and exceptional circumstances.”¹² (See § 5-8, “Extraordinary and Exceptional Circumstances Justifying Detention.”)

In all of these situations, detention is not allowed unless there has been a formal judicial finding of probable cause or, in the case of a preliminary detention admission by a juvenile probation officer, a determination that there is reasonable basis for believing that the juvenile committed the acts alleged and is within the juvenile court’s jurisdiction.

More importantly, in all of these situations, juveniles should only be considered *eligible* for secure detention. The detention standards provide that “in every situation in which secure detention is to be considered, forms of control short of secure detention which could substantially reduce the risk of flight or danger to the child or the community shall be given preference.”¹³

§ 5-3 Detention Intake and Informal Hearings

When a juvenile in custody is brought before juvenile court or detention intake, the Juvenile Act provides that “the intake or other authorized officer of the court shall immediately make an investigation and release the child unless it appears that his detention or shelter care is warranted or required” under the law governing the pre-hearing detention of children.¹⁴ If the intake officer makes a preliminary decision to place the juvenile in detention or shelter care, an informal detention hearing must be held before a judge or a master within 72 hours of admission.¹⁵ (Under the Crime Victims Act, the victim of the alleged delinquent act is entitled to know whether the juvenile was detained or released following arrest and whether a petition alleging delinquency has been filed.)¹⁶

Notice of the detention hearing, including its date, time, place and purpose, must be provided to the juvenile and the juvenile’s parents/guardians and attorney, although in view of the tight timelines the notice may be oral.¹⁷ If the juvenile’s parent, guardian or other custodian is not

notified and does not appear or waive appearance at the hearing, and thereafter files an affidavit swearing to these facts, the matter must be reheard within 72 hours of the filing of the affidavit.¹⁸ The court may also grant a rehearing at the request of any party, or on its own motion. Generally, unless the case is assigned to a master, the rehearing must be heard by the judge who presided over the original detention hearing or adopted the findings of the master who presided.

The juvenile must be present at the detention hearing.¹⁹ At the start of the hearing, the judge or master must (1) provide a copy of the written allegation to the juvenile and the juvenile's guardian, if present, and (2) inform them of the right to remain silent as to the delinquency allegations and the right to counsel (including appointed counsel if the family is indigent).²⁰ Although the proceeding is designated an "informal hearing," to be held on short notice and focused on the narrow issue of the need for detention, the parties may apply for subpoenas to compel the attendance of witness or the production of papers.²¹ They may also request that the hearing be recorded, in which case it must be recorded "by appropriate means"; otherwise, minutes of the hearing must be kept.²² Evidentiary standards in detention hearings are similar to those applicable in disposition hearings: any evidence that is "helpful in determining the questions presented" may be admitted and relied upon "to the extent of its probative value."²³ This includes written reports, although opposing parties must be afforded an opportunity to examine and dispute any reports received in evidence.

Detaining a juvenile calls for a documented judgment that detention is both authorized by law and necessary in fact.

Detention Decision-making Criteria

Whether the detention decision is being made by an intake officer as a preliminary matter, or by a judge or master at a subsequent informal detention hearing, the basic criteria for decision-making are the same. JCJC detention standards require that detention decision-making procedures feature all of the following:

- *Jurisdictional findings.* An intake decision-maker may not authorize detention without finding a "reasonable basis to believe that the child has committed the act for which he is being detained" and "that he is not excluded from the jurisdiction of Juvenile Court by age or any other reason."²⁴ Likewise, a juvenile court judge or master presiding at a detention hearing may not order an alleged delinquent detained without a formal finding that the allegations are supported by probable cause and within the juvenile court's jurisdiction.²⁵ In some counties, probable cause findings are made on the basis of police reports, while in others the direct testimony of arresting officers is required.
- *Eligibility findings.* The detention decision-maker—whether a probation officer making a detention intake decision or a judge or master presiding at an detention hearing—must apply the minimum eligibility criteria in the JCJC detention standards to determine whether the case meets the thresholds for detention specified there.
- *Priority consideration for non-secure alternatives.* Even if the juvenile is eligible for secure detention under the standards, the decision-maker must consider and give

preference to available “non-secure alternatives which could reduce the risk of flight or danger to the child or community.”²⁶

- *Documentation of basis for decisions.* Finally, all detention decisions must be accompanied by “a contemporaneous written statement of facts and reasons” that covers jurisdictional findings, eligibility for detention, detention alternatives that were considered and rejected, and “the reason or reasons why secure detention is required and alternatives are not appropriate.”²⁷

As is more fully explained in Ch. 3, above, under certain conditions, federal Title IV-E program funds are available to cover costs associated with maintaining delinquent juveniles in qualifying out-of-home placements, so long as—in the *first judicial order sanctioning the juvenile’s removal from the home*—the court formally determined that it would be “contrary to the welfare” of the juvenile to leave him at home, and that the failure to provide services to enable the juvenile to remain at home (as would ordinarily be done in a child abuse or neglect case) “was reasonable due to the emergency nature of the situation, safety considerations, and circumstances of the family.” This is true even though IV-E funds cannot be used to offset the cost of secure detention itself—the failure to make the required findings in the detention order is a kind of “irreversible error” that cannot be corrected after the fact. Accordingly, whenever a judge or master determines that a juvenile must be detained following an informal hearing, the secure detention order should contain formal findings to this effect.²⁸

§ 5-4 Detention Facilities

Every juvenile court judge should be familiar with the detention facility used to house juveniles locally, including its capacity and utilization, its average length of stay, the quality and range of educational, medical, assessment and other services available, and the overall conditions that prevail there.

In general, the Juvenile Act authorizes the secure detention of juveniles only in facilities approved for that purpose by the Department of Public Welfare.²⁹ Such facilities—there are currently 22 statewide, almost all county-operated, ranging in size from 8 to 130 beds—are subject to state regulations setting minimum standards of care, security, and services.

Juvenile court judges should be thoroughly familiar with the problems and possibilities of local juvenile detention centers.

In addition, except for very brief periods of temporary detention in police lock-ups for the purpose of identification, investigation, processing, transfer or release of juveniles just taken into custody,³⁰ the Juvenile Act specifically prohibits (1) detaining any juvenile in a jail or other facility with adults, unless he has been charged with or convicted of an offense (other than a summary

offense) that is excluded from juvenile court jurisdiction, or transferred there following a waiver of juvenile court jurisdiction; (2) placing a juvenile in any facility where he “is apt to be abused by other children”; and (3) placing a juvenile who is merely alleged to be dependent in a secure detention facility for delinquents.³¹

Finally, judges should be aware that the federal Juvenile Justice and Delinquency Prevention Act of 1974 imposes certain secure custody restrictions on states, including Pennsylvania, that participate in federal formula grant programs. Among others, these include prohibitions on holding mere status offenders in secure detention or correctional facilities and on detaining juveniles with incarcerated adults.³²

§ 5-5 Alternatives to Secure Detention

The preamble to the JCJC Standards Governing the Use of Secure Detention Under the Juvenile Act declares that “decisions regarding admissions to secure detention facilities must be based on a commitment to utilize the most appropriate level of care consistent with the circumstances of the individual case. When the admission of a child to a secure detention facility is being considered by a judge, master, or juvenile probation officer, preference should be given to non-secure alternatives which could reduce the risk of flight or danger to the child or community.”³³

Available alternatives to secure detention will vary from community to community. Judges and other detention decision-makers should be able to choose from a range of custody and supervision options, each calibrated to a different level of risk, and all designed to safeguard the community and/or ensure the juvenile’s appearance at subsequent hearings without resort to detention in a locked facility. But jurisdictions with a wide range of detention alternative options should resist the temptation to “widen the net” of social control unnecessarily, so as to catch up juveniles who can safely be released pending hearings.

Judges should work to expand the range of useful alternatives to detention.

Detention alternatives should include options along the following continuum:

- *Unconditional release to parents/guardians.* The option of entrusting the juvenile to the care and supervision of his family is clearly preferred by the Juvenile Act as a general rule, and should always be considered first.
- *Home detention/monitoring/supervision programs.* This set of alternative programs allows juveniles to live at home and work or attend school while awaiting hearings, but subject to intensive face-to-face supervision, curfews and other restrictions, and sometimes special conditions such as electronic monitoring. Unannounced visits and random telephone calls may be used to check compliance with program conditions. The intensity of supervision and levels of restriction can be adjusted in response to the youth’s record of compliance. Under the JCJC Advisory Standards Governing the Use of Alternatives to Secure Detention, in-home detention pending adjudication may not last longer than 30 days. Juveniles placed on in-home detention status must be notified of their right to counsel and provided with written in-home detention conditions within 24 hours. Unless electronic monitoring is used to ensure compliance, the probation officer in an in-home detention case is required to have daily contact with the juvenile

or his custodian, and a minimum of one personal contact with the juvenile every 48 hours until the adjudication hearing. The standards also provide that in-home detention cases are entitled to scheduling priority over cases in which juveniles have been released pending hearings.

- *Day/evening reporting centers.* For juveniles who need more oversight than a home detention program can provide, or who have already failed in home detention, reporting centers can provide safe, structured, staff-supervised activities on a daily basis—typically during high-crime after-school and evening hours. Although this sort of program typically costs more to operate, a bonus is that it is capable of providing services (tutoring, counseling, vocational training, etc.) to juveniles that need them.
- *Shelter care, foster care, other licensed facilities.* In appropriate cases, other alternatives to detention might include placement with relatives or in facilities designed primarily for dependent children. In some areas, specialized foster care in a single-family setting is available for troubled juveniles. And staff-secure residential facilities provide 24-hour supervision—and often structured activity and services, as in a reporting center—in a group-home setting that is more wholesome than that of a secure detention center.
- *Alternative sanctioning programs for probation violators.* Crowding in juvenile detention centers is often exacerbated by the presence of large numbers of juveniles who are not awaiting hearings or placements but being sanctioned for probation violations. While the use of detention as a short-term sanction in such cases may not be precluded by law, it is not the best use of limited detention space. Accordingly, some Pennsylvania counties have developed alternative means of sanctioning such youths, reserving detention beds for those who really need them. For instance, one county program houses probation violators in a weekend residential camp, where they are required to perform community service.

Judges should not passively accept the existing range of alternatives to detention. The JCJC Advisory Standards Governing the Use of Alternatives to Secure Detention require a juvenile court’s administrative judge to “determine whether alternatives to secure detention are available to the county to meet the needs of children referred to the Court.” If such alternatives are lacking or inadequate—in other words, if local youths are being securely detained unnecessarily, solely because less restrictive means are unavailable—juvenile court judges have a responsibility to work with the community to develop programs and services to meet the need. This may involve taking measures to ensure that the Department of Public Welfare meets its statutory responsibility to develop “in each county” programs to provide shelter care for alleged or adjudicated delinquents taken into custody.³⁴

§ 5-6 Detention to Protect the Community

In cases in which secure detention is being considered “to protect the person or property of others,”³⁵ JCJC Standards Governing the Use of Secure Detention Under the Juvenile Act impose a minimum offense/offense history threshold that must be met.³⁶ In other words, in

order to reach the issue of whether detention is necessary to protect persons or property, the decision-maker must first determine that the alleged offense—or the offense in combination with the juvenile’s past history—qualifies the case for public safety detention consideration. The purpose of setting an eligibility threshold for detention is not to make detention automatic for cases that meet the threshold, but to eliminate the possibility of secure detention—at least on community safety grounds—for cases that do not.

JCJC standards set a strict eligibility threshold for detention sought on public safety grounds.

Violent Offenses

Detention to protect the persons or property of others may be authorized, first, in cases in which the juvenile is alleged to have committed any one of a long list of serious offenses:³⁷

- Murder, voluntary manslaughter, or involuntary manslaughter
- Rape
- Robbery
- Robbery of a motor vehicle
- Aggravated assault
- Statutory sexual assault
- Involuntary deviate sexual intercourse
- Sexual assault
- Aggravated indecent assault
- Kidnapping
- Arson
- Burglary of a structure that is actually occupied or adapted for overnight accommodation
- Terroristic threats
- Stalking
- Causing or risking catastrophe
- Riot
- Drug felonies
- Felonious intimidation of or retaliation against victims or witnesses
- Any offense involving the use or possession of a firearm, explosive, or other deadly weapon

Other Offenses

Public safety detention may also be authorized in cases involving juveniles charged with less serious offenses, if they have certain kinds of court involvement histories:

- *Repeat offenders.* A juvenile who is alleged to have committed a felony that is not enumerated above may nevertheless be detained if he (1) is currently on probation, being supervised under a consent decree, or is otherwise under court supervision following a delinquency adjudication or (2) has been adjudicated delinquent some time in the preceding 18 months.³⁸

- *Violators of alternative conditions.* A juvenile who is in violation of conditions imposed as an alternative to secure detention (including house arrest, in-home detention, electronic monitoring, or a shelter care placement) may be detained regardless of the nature of the offense charged.³⁹
- *Probation violators.* A juvenile who is on probation or other court supervision following a delinquency adjudication based on a felony may be detained if alleged to have committed (1) any delinquent act or (2) two technical violations of the conditions of his probation or other supervision.⁴⁰ (However, it should be noted that, as the detention standards make clear elsewhere, “preadjudication detention may never be imposed as a means of punishment or to apply sanctions.”)⁴¹

Again, the above criteria merely indicate which cases are eligible for detention. JCJC detention standards provide that non-secure alternatives to detention must still be considered in detention-eligible cases, and wherever possible “preference should be given to non-secure alternatives which could reduce the risk of flight or danger to the child or community.”⁴²

§ 5-7 Detention to Ensure Attendance at Hearings

In a case in which secure detention is being considered on the ground that “the child may abscond or be removed from the jurisdiction of the court,”⁴³ JCJC detention standards require a showing that the juvenile actually is an absconder or fugitive, has a documented history of absconding or failing to appear for hearings, or else presents extraordinary circumstances that make absconding likely.⁴⁴

A juvenile detained to ensure attendance at hearings must generally have a documented history of absconding.

Specifically, in order to qualify for secure detention to ensure attendance at hearings, a juvenile must:

- *Willfully fail to appear for adjudication.* Willful failure to respond to a summons or court order to appear at the adjudication hearing in the current case will authorize detention.⁴⁵
- *Have a record of failing to appear at previous juvenile court hearings.* A “recent demonstrable record” of willful failure to appear at hearings in other cases will also authorize detention.⁴⁶
- *Be an absconder or have absconded previously.* A juvenile may be detained if he is currently an absconder from a placement to which he was committed following an adjudication of delinquency, or if he has in the past absconded from secure detention or a non-secure alternative to detention while awaiting a hearing or placement.⁴⁷
- *Be a fugitive from another jurisdiction.* A verified fugitive may be detained following a request from an official of the jurisdiction seeking his return.⁴⁸

- *Present extraordinary circumstances.* Extraordinary circumstances that could otherwise authorize detention to prevent absconding “may include, but are not limited to, the child’s age, character, mental condition, ties to the community, the nature of the child’s family relationships, drug or alcohol addiction or substance abuse.”⁴⁹

§ 5-8 Extraordinary and Exceptional Circumstances Justifying Detention

JCJC detention standards allow for the possibility that secure detention that is not otherwise specifically authorized may be justified under “extraordinary and exceptional circumstances.”⁵⁰ The statement of reasons justifying such detention “must include an explanation of why an exception was warranted and why non-secure options were rejected.”

While the standards do not indicate what these circumstances might be, they do mention two commonly encountered situations that do *not* qualify as extraordinary and exceptional circumstances authorizing detention:

Secure detention that is not otherwise authorized by JCJC detention standards is permissible only in exceptional cases.

- *Lack of non-secure alternatives.* The status quo cannot be considered “extraordinary and exceptional.” A jurisdiction that simply lacks an adequate continuum of alternatives to secure detention cannot detain juveniles routinely under this exception.⁵¹
- *No parent or other responsible guardian.* Likewise, the detention standards make it clear that secure detention cannot be authorized solely on the ground that there is no parent or other adult guardian to take responsibility for the juvenile. In such a case, only shelter care or other non-secure temporary placements may be considered.⁵²

§ 5-9 Post-Adjudication Detention

Once a juvenile has been found to have in fact committed delinquent acts, and is awaiting disposition, placement, or post-disposition review, JCJC detention standards give juvenile court judges somewhat more flexibility to detain, as long as secure detention is actually necessary rather than merely convenient.

A juvenile who has been adjudicated but is still awaiting disposition,⁵³ or one who has been ordered into placement but is awaiting an opening,⁵⁴ may be detained in the meantime if one of the following applies:

Judges have somewhat more flexibility to detain juveniles who have already been found to have committed the offenses alleged.

- *Offense eligible for public safety detention.* If the offense substantiated at the adjudication hearing was one that would have met the threshold for pre-hearing

detention on public safety grounds—even if the juvenile was not in fact detained—post-hearing detention is authorized.⁵³

- *Risk of flight.* If the juvenile was or could have been detained to ensure attendance prior to adjudication, or would have been considered eligible in light of more recent information, post-hearing detention is authorized if the court determines it is necessary.⁵⁶
- *Other factors.* If placement outside the home has already been ordered or will likely be a part of the disposition, detention may be authorized if the court finds it necessary after considering factors bearing on the strength of the juvenile’s ties to the community and the likelihood that he will flee the jurisdiction, including but not limited to:
 - The nature of the offense substantiated
 - Job/school status
 - Family relationships
 - Past and present residences
 - Age, character, mental condition, previous record, and drug or alcohol addiction or abuse
 - Whether the juvenile has previously appeared for court proceedings as required.⁵⁷

In addition, any juvenile who has already been ordered into a secure residential program may be detained while awaiting placement.⁵⁸

Standards governing detention before and after disposition review hearings prohibit detention except where the juvenile:

- Is already in, or awaiting transfer to, a secure residential placement;
- Has been returned from placement for failure to adjust; or
- Otherwise qualifies for detention on the basis of a consideration of the above enumerated factors bearing on his ties to the community and flight risk.⁵⁹

When a juvenile has been newly placed in detention following a probation violation or a failure to adjust in a non-secure placement, an informal detention hearing is required within 72 hours; see the discussion under “Duration of Detention,” § 5-10.

§ 5-10 Duration of Detention

The Juvenile Act, the Rules of Juvenile Court Procedure for Delinquency Matters and the JCJC Standards Governing Hearings and Administrative Reviews for Children Held in Secure Detention impose absolute durational limits on pre-adjudication detention of juveniles, as well as strict hearing timetables in all cases involving pre- or post-adjudication detention.

Pre-Adjudication Detention

Under the Juvenile Act, accused delinquents held in detention must either be formally adjudicated or released within a relatively short time.⁶⁰ As has already been described, the filing of a formal petition in the case of a detained juvenile must occur “within 24 hours or the next court business day” following the detention hearing.⁶¹ The adjudication hearing must then be held (or notice of request for transfer submitted—see below) within ten days of the filing of the petition, or else the juvenile must be released from detention.⁶² There are only two exceptions to this adjudicate-or-release rule:

Secure detention of juveniles is a kind of emergency measure that is allowed only for brief periods.

- *Additional detention to procure temporarily unavailable evidence.* A juvenile may be held in detention beyond the usual deadline if the court finds that material evidence is currently unavailable despite the exercise of due diligence to obtain it, but that there are reasonable grounds to believe the evidence will become available “at a later date.”⁶³ In such a case, the court may authorize “a single period not to exceed ten days” of additional detention pending the delayed adjudication hearing, but only if it finds by clear and convincing evidence that release would otherwise expose the community to “a specific danger,” endanger the life of the juvenile himself, or result in his absconding or being removed from the court’s jurisdiction.⁶⁴
- *Additional detention necessitated by juvenile’s own delay.* A juvenile’s detention may also be continued beyond the usual ten-day limit if a scheduled adjudication hearing is delayed at the request or by the conduct of the juvenile or his attorney.⁶⁵ This exception applies if the adjudication hearing (1) is continued at the request of the juvenile or his attorney, (2) must be postponed due to the unavailability of the juvenile or his attorney, or (3) cannot be held because “conduct by or on behalf of” the juvenile has caused a witness to become unavailable. In such a case, the court must state on the record that the scheduled adjudication hearing is not being held due to the juvenile, and authorize continued detention for an additional period not to exceed ten days; thereafter the detention “may be continued by the court for successive ten-day intervals” for as long as the juvenile continues to delay the adjudication.

Detention in Transfer Cases

A special rule allows somewhat longer periods of detention in cases involving requests for transfer to criminal proceedings.⁶⁶ Because preparing for a transfer hearing can be a complicated undertaking, it was thought that the attorney for the Commonwealth should be given more time to consult with the juvenile probation officer and others regarding the proposed step.⁶⁷ Accordingly, the Rules of Juvenile Court Procedure for Delinquency Matters provide that while the juvenile may be detained initially for up to ten days, the attorney for the Commonwealth has until the tenth day to file a notice of intent to transfer the case. In effect, the filing of this notice “resets” the ten-day clock. After the filing of the notice, the juvenile will ordinarily be entitled to a transfer hearing within the *next* ten days. Again, however, a single period of extended detention of up to ten days is allowed to procure temporarily unavailable evidence (including a psychological or psychiatric evaluation), meaning that a total of 30 days of detention may be permissible before the transfer hearing.

(In addition, successive ten-day extensions are allowed when the hearing delay has been caused by the juvenile.)

Detention Pending Disposition

The Juvenile Act requires that a disposition hearing for a detained juvenile be held no more than 20 days after the finding that the juvenile committed the delinquent acts alleged, and specifies that this deadline may only be extended by agreement of the parties; however, it also provides that “failure to comply with the time limitations... shall not be grounds for discharging the child or dismissing the proceeding.”⁶⁸ Under the Rules of Juvenile Court Procedure for Delinquency Matters, the dispositional hearing may be continued repeatedly, but each continuance must be for no more than 20 days.⁶⁹ Following a continuance, the court should review the juvenile’s case every 20 days until there is a final disposition order.⁷⁰

Detention Pending Placement

Neither the Juvenile Act nor the Rules of Juvenile Court Procedure for Delinquency Matters impose explicit limits on the amount of time a juvenile may be held in detention while awaiting a court-ordered placement. As a matter of fact, many of the beds in a typical secure detention facility are filled by adjudicated juveniles waiting—often for long periods—for placement beds to become available. However, JCJC Standards Governing Hearings and Administrative Reviews for Children Held in Secure Detention require frequent reviews of such pre-placement detention, including court hearings every 30 days and administrative reviews at ten-day intervals in between (that is, on the 10th and 20th day following the most recent court proceeding), until the juvenile is finally placed or released.⁷¹ Hearings should “review the status of the case and determine the need for continued secure detention.” Administrative reviews of the case of a juvenile in pre-placement detention may be conducted by the court or a designee, without the juvenile in attendance, on the basis of information provided by the chief juvenile probation officer, and are intended “to minimize delays in the release or transfer of a child by helping to ensure that individuals are carrying out their respective responsibilities related to the child’s case.”⁷² Reviews should focus broadly on “why the child is being held in secure detention, whether secure detention services or an alternative thereto continue to be required, and what must occur to enable the child to be released or transferred to another facility.”⁷³ Documentation of each review should include an anticipated release or transfer date, the scheduled date of the next hearing or review, and any action that is to be taken in the meantime.

Detention in Connection with Disposition Modification or Probation Revocation

A juvenile may also be detained in connection with the filing (or anticipated filing within 24 hours) of a motion for modification of a dispositional order, or the filing of a motion alleging a violation of probation.⁷⁴ In such a case, a detention hearing must be held within 72 hours, and a hearing on the proposed disposition modification or probation revocation must be held within ten days, unless one of the standard exceptions applies (i.e. an extension of up to ten days to procure temporarily unavailable evidence or additional ten-day extensions for delays caused by the juvenile).⁷⁵

ENDNOTES

¹ JCJC Standards Governing the Use of Secure Detention Under the Juvenile Act (37 Pa. Code §§200.1 through 200.9) and Standards Governing Hearings and Administrative Reviews for Children Held in Secure Detention (37 Pa. Code §§200.101 through 200.107) must be met if the county is to participate in the JCJC grant-in-aid program.

² 42 Pa.C.S. §6301(b).

³ 42 Pa.C.S. §§6325—6332.

⁴ Juvenile Court Judges' Commission. *Pennsylvania Juvenile Court Dispositions 2004*. Shippensburg, PA: Juvenile Court Judges' Commission.

⁵ Civ. A. No. 81-2215 (E.D. Pa. 1985). The consent decree in this case had the force of law through most of the Commonwealth (Philadelphia being affected by separate litigation) from 1986 through 1996.

⁶ 37 Pa. Code Ch. 200, Subchapters A and B.

⁷ 42 Pa.C.S. §6325.

⁸ 37 Pa. Code §200.3.

⁹ 37 Pa. Code §200.3(6).

¹⁰ 37 Pa. Code §200.4.

¹¹ 37 Pa. Code §§200.1(d), 200.5.

¹² 37 Pa. Code §200.9.

¹³ 37 Pa. Code §200.1(b).

¹⁴ 42 Pa.C.S. §6331. See also Rule 240, Pa.R.J.C.P.

¹⁵ 42 Pa.C.S. §6332. See also Rule 242, Pa.R.J.C.P.

¹⁶ 18 P.S. § 11.201.

¹⁷ Rule 241, Pa.R.J.C.P.

¹⁸ Rule 243, Pa.R.J.C.P.

¹⁹ Rule 242(B)(4), Pa.R.J.C.P.

²⁰ See 42 Pa.C.S. §6333 and Rule 242, Pa.R.J.C.P.

²¹ 42 Pa.C.S. §6333.

²² Rule 242, Pa.R.J.C.P.

²³ Rule 242(B)(3), Pa.R.J.C.P.

²⁴ 37 Pa. Code §200.2.

²⁵ 42 Pa.C.S. §6332.

²⁶ 37 Pa. Code §200.1.

²⁷ 37 Pa. Code §200.2.

²⁸ See JCJC Model Secure Detention Order: Alleged/Adjudicated Delinquent Child, JCJC/ASFA-Del-2 (2/02). Available online at http://sites.state.pa.us/PA_Exec/JCJC/.

²⁹ 42 Pa.C.S. §6327.

³⁰ 42 Pa.C.S. §6326 and Rule 221, Pa.R.J.C.P.

³¹ 42 Pa.C.S. §6327(c)—(e).

³² Snyder, H., and Sickmund, M. (2006) *Juvenile Offenders and Victims: 2006 National Report*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

³³ 37 Pa. Code Ch. 200, Subchapter A, Preamble.

³⁴ 42 Pa.C.S. §6327(f). For more information on detention reform and alternatives to detention, see the *Pathways to Juvenile Detention Reform* series, produced in 1999 by the Juvenile Detention Alternatives Initiative. All 13 monographs in the series are available free from the Annie E. Casey Foundation, 701 Paul Street, Baltimore, MD 21202, (410) 547-6600, www.aecf.org.

³⁵ 42 Pa.C.S. §6325.

³⁶ 37 Pa. Code §200.3.

³⁷ 37 Pa. Code §200.3(1)—(2).

³⁸ 37 Pa. Code §200.3(3).

³⁹ 37 Pa. Code §200.3(4).

⁴⁰ 37 Pa. Code §200.3(5).

⁴¹ 37 Pa. Code §200.1(c).

- ⁴² 37 Pa. Code Ch. 200, Subchapter A, Preamble.
- ⁴³ 42 Pa.C.S. §6325.
- ⁴⁴ 37 Pa. Code §200.4.
- ⁴⁵ 37 Pa. Code §200.4(2).
- ⁴⁶ 37 Pa. Code §200.4(3).
- ⁴⁷ 37 Pa. Code §200.4(1) and (5).
- ⁴⁸ 37 Pa. Code §200.4(4).
- ⁴⁹ 37 Pa. Code §200.4(6).
- ⁵⁰ 37 Pa. Code §200.9.
- ⁵¹ 37 Pa. Code §200.9(b).
- ⁵² 37 Pa. Code §200.9(c).
- ⁵³ 37 Pa. Code §200.6.
- ⁵⁴ 37 Pa. Code §200.7.
- ⁵⁵ 37 Pa. Code §§200.6(1) and 200.7(1).
- ⁵⁶ 37 Pa. Code §§200.6(2) and 200.7(2).
- ⁵⁷ 37 Pa. Code §§200.6(3) and 200.7(4).
- ⁵⁸ 37 Pa. Code §200.7(3).
- ⁵⁹ 37 Pa. Code §200.8.
- ⁶⁰ 42 Pa.C.S. §6335.
- ⁶¹ Rule 242, Pa.R.J.C.P.
- ⁶² 42 Pa.C.S. §6335(a) and Rule 240(D), Pa.R.J.C.P.
- ⁶³ 42 Pa.C.S. §6335(a)(1).
- ⁶⁴ 42 Pa.C.S. §6335(a)(2).
- ⁶⁵ 42 Pa.C.S. §6335(f).
- ⁶⁶ Rule 391, Pa.R.J.C.P.
- ⁶⁷ *Explanatory Report*, Rule 391, Pa.R.J.C.P.
- ⁶⁸ 42 Pa.C.S. §6341(b). See also Rules 409(B)(1) and 510(A), Pa.R.J.C.P.
- ⁶⁹ Rule 510(B), Pa.R.J.C.P.
- ⁷⁰ *Comment*, Rule 510, Pa.R.J.C.P.
- ⁷¹ 37 Pa. Code §200.103.
- ⁷² 37 Pa. Code §200.107.
- ⁷³ 37 Pa. Code §200.107(b).
- ⁷⁴ Rule 605, Pa.R.J.C.P.
- ⁷⁵ Rules 605(B), 610(B), and 612(B), Pa.R.J.C.P.

6

Transfer To and From Criminal Proceedings

Summary of Contents

This chapter examines issues to be considered and factors to be weighed in proceedings to determine whether or not juveniles should be tried as adults.

- § 6-1. Transfer to Criminal Proceedings in General
- § 6-2. Statutory Requirements for Discretionary Transfers
- § 6-3. Transfer Hearings
- § 6-4. Transfer at the Juvenile's Request
- § 6-5. Consequences of Transfer
- § 6-6. Transfer from Criminal Proceedings

Key Statutes

- 42 Pa.C.S. § 6322 (transfer from criminal proceedings)
- 42 Pa.C.S. § 6355 (transfer to criminal proceedings)

Rules

- Rules 390-396, Pa.R.J.C.P. (transfer to criminal prosecution)

§ 6-1 Transfer to Criminal Proceedings in General

In addition to excluding a number of offenses from initial juvenile court jurisdiction, the Juvenile Act gives juvenile court judges discretion to transfer some other petitioned delinquency cases for criminal prosecution if “the public interest” would be served thereby.

Transferring juveniles to criminal proceedings should be considered appropriate only in exceptional cases.

Before turning to a detailed examination of the statutory requirements for discretionary transfer and the specific issues that must be resolved in transfer proceedings, it may be worthwhile to explore the broader considerations that ought to influence a decision of this kind.

First, for a variety of reasons, including the structure and history of the Juvenile Act itself, transfer of juveniles for criminal prosecution should be considered appropriate only in exceptional cases. Before 1995, when juvenile courts in Pennsylvania exercised original jurisdiction over all offenses committed by juveniles, with the sole exception of murder, discretionary case-by-case judicial transfer was the only possible mechanism for disposing of difficult cases involving serious offenders who could neither benefit from services nor be held accountable by sanctions available to the juvenile court. That is not the case today. As was explained more fully in a previous section (see “The Boundaries of Delinquency Jurisdiction,” § 4-4), the border between juvenile and criminal jurisdiction has since been redrawn, so as to place a number of the most serious juvenile offenses on the criminal side of the line. In effect, the legislature has already “transferred” many of the difficult cases. Consequently, judicial transfers are much more rare following the 1995 amendments to the Juvenile Act.¹

Consideration of the public interest should also induce juvenile court judges to exercise extraordinary caution in granting requests for transfer. While the transfer law enumerates no fewer than 15 factors and sub-factors to be taken into account in determining the public interest in transfer proceedings (see the discussion under “Transfer Hearings,” § 6-3), the Pennsylvania Supreme Court has made it clear that in a broader sense “the purpose of the amended [Juvenile] Act itself provides guidance as to the meaning of ‘public interest.’”² Given the very limited opportunities for appropriate treatment, rehabilitation, learning and growth in the adult criminal justice system, a juvenile court judge focusing on the primary system goal of youth redemption should be extremely reluctant to transfer a juvenile for criminal proceedings. Arguably, this will sometimes be unavoidable, if a juvenile is to be held accountable for serious offenses. But real accountability—in the sense that involves acknowledging responsibility for wrongdoing and making amends for it—may often be more readily imposed by a juvenile court with a flexible array of victim- and community-oriented sanctions, than by a criminal court with only prison terms to hand down. And if the net effect of criminal processing and incarceration of juveniles is simply to produce untreated, unrehabilitated, but younger and more able-bodied ex-convicts, then even the apparent public safety benefits of transfer may prove illusory as well.

§ 6-2 Statutory Requirements for Discretionary Transfers

After the filing of a delinquency petition but before any hearing on the merits, the Juvenile Act authorizes the discretionary transfer of the case for prosecution in a criminal proceeding if the court finds all of the following:³

- *Age.* The juvenile must have been at least 14 at the time of the alleged offense.
- *Offense level.* The offense alleged must be one that would be considered a felony if committed by an adult.
- *Prima facie case.* There must be a prima facie case that the juvenile committed the alleged offense.
- *Absence of mental health/retardation issues requiring commitment.* The court must find “reasonable grounds to believe that the child is not committable to an institution for the mentally retarded or mentally ill.”⁴
- *Public interest.* The court must also find “reasonable grounds to believe that the public interest is served by the transfer,”⁵ following mandatory consideration of fifteen enumerated factors and sub-factors (see discussion under “Transfer Hearings,” § 6-3).

Courts are authorized to consider “public interest” transfers of juveniles accused of felonies.

Written notice of a request for transfer must be served at least three days in advance of the transfer hearing.⁶ Filing and service of a notice of a request for transfer must ordinarily occur after the filing of the petition but before the first scheduled adjudicatory hearing. Those entitled to notice of a request for transfer include the juvenile, the juvenile’s guardian, the juvenile’s attorney, the juvenile probation department, and the attorney for the Commonwealth.⁷

§ 6-3 Transfer Hearings

Before a juvenile may be transferred for criminal proceedings, the Juvenile Act calls for a hearing, which—in view of the stakes as well as the variety of issues that must be considered—is often a lengthy and wide-ranging one.⁸ A transfer hearing must be presided over by a juvenile court judge—not a master.⁹ Although the Juvenile Act does not go into detail regarding the prescribed conduct of transfer hearings, a juvenile facing transfer is entitled as a matter of constitutional law to “the essentials of due process and fair treatment.”¹⁰ These essentials include the right to counsel and to “access by the child’s counsel to the social records of the child,” but apparently not to immunity from prosecution based on testimony at the transfer hearing.¹¹

Transfer hearings call for detailed inquiry into the juvenile’s amenability to treatment in the juvenile system.

Prior to the transfer hearing, the court may order that a social study and report be prepared and submitted “concerning the child, his family, his environment, and other matters relevant to disposition of the case.”¹²

Factors to be Considered in Public Interest Determinations

Apart from determining whether the Commonwealth has established a prima facie felony case against the juvenile and ruling out the necessity of a mental health or mental retardation commitment, the main business of the transfer hearing is to decide whether “the public interest is served” by a transfer. The law directs the court to consider 15 enumerated factors and sub-factors in making its determination regarding the public’s interest in the transfer decision.¹³ The seven primary factors to be weighed are the following:

- The offense’s impact on the victim(s)
- The offense’s impact on the community
- The threat posed by the juvenile to the safety of the community or any individual
- The nature and circumstances of the offense
- The juvenile’s degree of culpability
- The “adequacy and duration” of available juvenile dispositional alternatives in comparison with criminal sentencing options
- The degree to which the juvenile is “amenable to treatment, supervision or rehabilitation as a juvenile.”

While no specific weights are assigned to the above factors, and none is singled out as determinative, it is clear that a particularly detailed inquiry into the juvenile’s amenability to treatment, supervision or rehabilitation is called for, since the law specifies no fewer than eight sub-factors that must be considered in the course of this amenability determination. Moreover, the part of the transfer law dealing with burdens of proof (see below) appears to allocate a *distinct* burden of proof for the amenability issue—that is, separate from the overall consideration of the public interest—which may suggest an intention to permit discretionary transfers only of such juveniles as are *not* amenable to treatment, supervision or rehabilitation as juveniles. In any case, the sub-factors that must be considered as bearing on the juvenile’s amenability include, but are not limited to:

- The juvenile’s age
- The juvenile’s mental capacity
- The juvenile’s maturity
- The juvenile’s degree of criminal sophistication
- The juvenile’s previous record as a delinquent

- The “nature and extent” of the juvenile’s court history and whether previous rehabilitation attempts have succeeded or failed
- Whether the juvenile’s rehabilitation is possible in the time left before juvenile court jurisdiction over him expires, and
- Any probation or institutional reports regarding the juvenile.

Burden of Proof

Generally, the Commonwealth must bear “the burden of establishing by a preponderance of evidence that the public interest is served by the transfer of the case to criminal court *and* that the child is not amenable to treatment, supervision or rehabilitation as a juvenile” (italics added).¹⁴ However, the burden on these issues is shifted to the juvenile in certain cases that come close to meeting criteria for statutory exclusion from juvenile jurisdiction.¹⁵ Specifically, the burden shifts when a prima facie case is made that the juvenile has committed one of a long list of enumerated felonies and either (1) was 14-years old and used a deadly weapon¹⁶ or (2) was at least 15 and had previously been adjudicated delinquent for any felony-grade offense. The enumerated felonies are the following:

- Attempted murder
- Voluntary manslaughter
- Rape
- Involuntary deviate sexual intercourse
- First degree felony aggravated assault
- Aggravated indecent assault
- First degree felony robbery
- Robbery of a motor vehicle
- Kidnapping
- Any attempt, conspiracy, or solicitation to commit any of these offenses.

Victim and Community Interests in Transfer Decisions

As noted above, in making its “public interest” determination in a transfer proceeding, the court is required to give careful consideration to victim impact evidence. The extent to which the victim has been harmed by the offense is one basic measure of its seriousness. Moreover, the degree of harm suffered by the victim should have considerable bearing on the court’s assessment of the adequacy of a juvenile disposition to meet the case. Accordingly, in the course of the transfer hearing, the court should insist that evidence be presented on the physical, emotional, and financial impact of the offense on the victim, and weigh that evidence appropriately in its decision-making. Where necessary, as in a disposition hearing, the court should make its own inquiries regarding the victim’s feelings, concerns, and wishes regarding transfer.

On the other hand, the court should avoid the simplistic assumption that cases involving serious harm to victims can only be resolved in the criminal justice system. Accountability to victims and victim restoration are among the Pennsylvania juvenile justice system’s primary goals. If anything, balanced attention to victim interests may be more likely in the juvenile system than outside it, particularly for victims who are willing to participate fully in the disposition process.

It is true that a victim will sometimes favor transfer anyway, and may be disappointed by a decision to keep the case in the juvenile justice system. Under these circumstances, the court has a responsibility to make use of the opportunity presented by the transfer hearing to educate the victim regarding the true basis of the transfer decision. If possible, the transfer ruling should be made from the bench while the victim is in the courtroom. Time should be taken not only to solicit the victim's views during the hearing, but to explain the reasons for a difficult decision at its conclusion. Above all, if the court has decided to keep the case, the victim should be made to understand that it is at least in part out of a determination to *address* the harm suffered by the victim, and not to overlook or minimize it.

Some of these same general considerations apply to the community interest in transfer proceedings as well. The law requires the court, in weighing a request for transfer, to take into account any impact the offense has had on the community and any threat to the community's safety that may be posed by the juvenile. Especially in high-profile cases, community sentiment in favor of transfer may be intense—and the general public cannot ordinarily be excluded from hearings involving juveniles subject to discretionary transfer.¹⁷ Here the court's responsibility must be to give due weight to the legitimate community interest in the case, without simply surrendering to public clamor.¹⁸ In difficult cases, the best course is to use the hearing to educate the public regarding the transfer issue, and to explain the grounds for the transfer decision.

Transfer Orders

If the court finds that transfer is not warranted, it must schedule an adjudicatory hearing on the delinquency petition. Otherwise, it must “transfer the case to the division or a judge of the court assigned to conduct criminal proceedings for prosecution.”¹⁹

While the Juvenile Act is silent concerning the written findings that must accompany and support a transfer order, as a matter of constitutional law the juvenile is entitled to “a statement of reasons or considerations” for transfer that is “sufficient to demonstrate that . . . the question [of certification] has received the careful consideration” of the court, and that sets forth the basis for the order “with sufficient specificity to permit meaningful review.”²⁰ The court need not provide “detailed or intricate explanations of the rationale for certification,” and its statement of reasons need not contain conventional findings of fact.²¹ However, supporting a transfer order with a mere “bald reference” to the juvenile's file is clearly inadequate.²²

§ 6-4 Transfer at the Juvenile's Request

Although transfers for criminal prosecution are generally requested by the Commonwealth, the Juvenile Act permits transfers at the request of juveniles as well.²³ While some courts apparently grant such requests as a matter of course, there is nothing in the law to suggest that juvenile requests for transfer should be handled differently from other such requests. The better practice is to assume that the legislature, having defined a narrow category of transfer-eligible cases, intended to place all others under juvenile court jurisdiction, regardless

of the forum preferences of the juveniles themselves.²⁴ Thus, juvenile court judges should deny transfer requests in cases that do not meet the statutory requirements for transfer outlined above. That is, even a juvenile who is willing to be transferred—presumably for strategic reasons of some kind—should meet age and offense requirements for transfer, and the case should otherwise be one in which transfer will serve the public interest. A request for transfer involving a youth who was under 14 at the time of the offense, or one who is not accused of a felony, should not be granted.

Juveniles who request transfer for criminal prosecution should be required to satisfy basic transfer requirements.

§ 6-5 Consequences of Transfer

An order of transfer not only “terminates the applicability” of the Juvenile Act with respect to the offenses alleged in the petition,²⁵ opening the way for a criminal trial of the juvenile, it also sweeps away confidentiality protections that would otherwise be applied to the juvenile’s records and files,²⁶ and permits him to be detained “in accordance with the law governing the detention of persons charged with crime.”²⁷ At the conclusion of the transfer hearing, the juvenile court judge “shall determine bail for the juvenile,” under the ordinary bail rules applicable to adults.²⁸ Because the transfer hearing serves as the “preliminary hearing” required under the Pennsylvania Rules of Criminal Procedure, the attorney for the Commonwealth may file an information as soon as the transfer order is issued.²⁹

An order of transfer to criminal proceedings will have far-reaching implications.

If the juvenile is found guilty of a non-summary offense in a criminal proceeding following transfer, the juvenile court will have no jurisdiction over him in the future for crimes that would otherwise be considered delinquent acts. In connection with any subsequent allegations, regardless of their nature, the juvenile will be charged, detained, and tried as an adult.³⁰

§ 6-6 Transfer from Criminal Proceedings

A juvenile who has been charged with murder or another excluded offense in a criminal proceeding may request a discretionary transfer to juvenile court.³¹ In such a case, the issue to be decided in the hearing on the motion is the same as in a conventional transfer hearing—whether “the transfer will serve the public interest,” taking into consideration the juvenile’s amenability to treatment and the other factors enumerated in the Juvenile Act provision governing transfer to criminal court—except that the juvenile must bear the burden of

establishing by a preponderance of the evidence that transfer is in the public interest.³² If the court finds that the child has met this burden, the Juvenile Act requires that the court make findings of fact, including specific references to the evidence, and conclusions of law in the transfer order. And since the basic issue is the same, what has been said above regarding the importance of victim notification and input in transfer proceedings (see § 6-3) applies with equal force here.

Requests for transfer from criminal to juvenile court should be heard by judges with broad knowledge of the juvenile system.

The statute providing for transfers from criminal proceedings—sometimes referred to as “reverse” transfers or “decertifications”—states that requests for transfer are to be heard by “the court in a criminal proceeding.”³³ However, as a practical matter, the public interest determination called for cannot be properly made by a judge who is unfamiliar with the juvenile justice system,

its available services and dispositional alternatives, and the juveniles’ rehabilitative prospects within it. Accordingly, where possible, the best practice would be to entrust reverse transfer decisions to experienced juvenile court judges sitting in criminal court for that purpose.

In any event, motions requesting the transfer of a case from criminal proceedings must be dealt with quickly. Because the juvenile is being detained among adult criminals pending a “decertification hearing,” the mere passage of time may severely compromise his rehabilitative prospects in the juvenile system. It should also be noted that if the court does not make its finding regarding whether a child has met the burden of establishing that the transfer from criminal proceedings would serve the public interest within 20 days of the hearing on the petition to transfer, the law provides that a juvenile’s transfer request is automatically denied.³⁴

ENDNOTES

¹ In fact, transfers of juvenile cases to criminal courts have declined considerably since 1996. In 2004, Pennsylvania juvenile courts transferred only 172 juvenile cases, accounting for just 0.4% of the year’s juvenile court dispositions. Juvenile Court Judges’ Commission. *Pennsylvania Juvenile Court Dispositions 2004*. Shippensburg, PA: Juvenile Court Judges’ Commission.

² *Commonwealth v. Cotto*, 562 Pa. 32, 753 A.2d 217 (2000).

³ 42 Pa.C.S. §6355.

⁴ 42 Pa.C.S. §6355(a)(4)(iv).

⁵ 42 Pa.C.S. §6355(a)(4)(iii).

⁶ 42 Pa.C.S. §6355(a)(3). Given the breadth and importance of the issues to be determined at the transfer hearing, the statutory three days’ notice hardly seems adequate. See McCarthy, *Pa. Juvenile Delinquency Prac. & Proc.* (4th Ed.), § 10-3.

⁷ Rule 390, Pa.R.J.C.P.

⁸ 42 Pa.C.S. §6355(a)(2).

⁹ Rule 187(B), Pa.R.J.C.P.

¹⁰ *Kent v. United States*, 383 U.S. 541, 86 S. Ct. 1045 (1966).

¹¹ See McCarthy, *Pa. Juvenile Delinquency Prac. & Proc.* (4th Ed.), § 10-3.

¹² 42 Pa.C.S. §6339.

¹³ Many of these factors are loosely based on those suggested by the United States Supreme Court for determinations of this kind in *Kent v. United States*, 383 U.S. 541, 86 S. Ct. 1045 (1966).

¹⁴ 42 Pa.C.S. §6355(g).

¹⁵ In a case that actually *meets* statutory criteria for exclusion—that is, one in which the petition alleges murder or other acts excluded from juvenile court jurisdiction—transfer is mandatory under 42 Pa.C.S. §6355(e), unless a criminal court has already considered the matter and transferred the case to juvenile court pursuant to 42 Pa.C.S. §6322.

¹⁶ “Deadly weapon” is defined in 18 Pa.C.S. §2301: “Any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or serious bodily injury, or any other device or instrumentality which, in the manner in which it is used or intended to be used, is calculated or likely to produce death or serious bodily injury.”

¹⁷ See 42 Pa.C.S. §6336(E), which among other things requires open hearings in proceedings involving 14-year-olds accused of felonies—a provision that by itself covers all juveniles eligible for discretionary transfer.

¹⁸ See Code of Judicial Conduct, Canon 3: “A judge should be...unswayed by partisan interests, public clamor, or fear of criticism.”

¹⁹ Rule 394, Pa.R.J.C.P.

²⁰ *Kent v. United States*, 383 U.S. 541, 86 S. Ct. 1045 (1966), cited in *Commonwealth v. Broome*, 317 Pa. Super. 1, 463 A. 2d 1053 (1983). Cf. 42 Pa.C.S. §6322(b), which requires a court ordering a transfer *from* a criminal proceeding to “make findings of fact, including specific references to the evidence, and conclusions of law in support of the transfer order.”

²¹ *Commonwealth v. McDonald*, 399 Pa. Super. 250, 582 A.2d 328 (1990).

²² *Commonwealth v. Broome*, 317 Pa. Super. 1, 463 A. 2d 1053 (1983).

²³ 42 Pa.C.S. §6355(c).

²⁴ See McCarthy, *Pa. Juvenile Delinquency Prac. & Proc.* (4th Ed.), § 10-4.

²⁵ 42 Pa.C.S. §6355(b).

²⁶ 42 Pa.C.S. §6308.

²⁷ 42 Pa.C.S. §6327(d).

²⁸ Rule 396, Pa.R.J.C.P.

²⁹ Rule 395, Pa.R.J.C.P.

³⁰ 42 Pa.C.S. §6302.

³¹ 42 Pa.C.S. §6322.

³² 42 Pa.C.S. §6322.

³³ 42 Pa.C.S. §6322(a).

³⁴ 42 Pa.C.S. §6322(b).

Pre-Adjudicatory Procedures

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Summary of Contents

This chapter explores a variety of preliminary matters that must be addressed prior to adjudication hearings, including petition filing and content requirements, the appointment of counsel, discovery, summons and notices, and motions procedures.

- § 7-1. Petitions
- § 7-2. Attorney Representation
- § 7-3. Discovery
- § 7-4. Motion Procedures
- § 7-5. Summonses, Notices, and Subpoenas
- § 7-6. Preservation of Testimony

Key Statutes

- 42 Pa.C.S. §6333 (subpoenas)
- 42 Pa.C.S. §6334 (petitions)
- 42 Pa.C.S. §6337 (right to counsel)
- 42 Pa.C.S. §6338 (other basic rights)

Rules

- Rule 123, Pa.R.J.C.P. (subpoenas)
- Rules 150-152, Pa.R.J.C.P. (counsel)
- Rules 330-336, Pa.R.J.C.P. (petitions)
- Rules 340-41, Pa.R.J.C.P. (procedures following filing of petition)
- Rules 344-353, Pa.R.J.C.P. (motion procedures)
- Rules 360-364, Pa.R.J.C.P. (adjudicatory summons and notice)
- Rules 380-381, Pa.R.J.C.P. (preservation of testimony and evidence)

JCJC Standards

- Hearing Procedures

§ 7-1 Petitions

The hearing process is formally initiated by the filing of a verified petition. The required contents of a petition track those applicable to written allegations (see § 4-2), including the following:¹

- The name of the petitioner, together with a verification and signature.
- The juvenile's name, age, and address.
- The time and place the alleged offense was committed, the names and ages of any co-conspirators, and either "a summary of the facts sufficient to advise the juvenile of the nature of the offense alleged," together with the provision of law violated, or else a certification that the juvenile has failed to comply with a sentence imposed for a summary offense.
- Statements that the acts alleged were "against the peace and dignity of the Commonwealth" or in violation of a local ordinance, that proceedings in the matter are "in the best interest of the juvenile and the public," and that "the juvenile is in need of treatment, supervision, or rehabilitation."

In addition to the above requirements, a petition must contain three additional items of information:

- The name and address of the juvenile's parent or guardian. If the whereabouts of the juvenile's parents, guardian, or custodian are unknown, or if they reside out of state, the name and address of any known adult relative residing within the county (or, failing this, nearest the court) may be substituted.²
- If the juvenile is presently in custody, the petition must provide place and time information so as to permit the scheduling of an expedited adjudication hearing.³
- An averment as to whether the case is eligible for limited public information pursuant to 42 Pa.C.S. §6307(b)(1)(i).⁴

Only a juvenile probation officer or an attorney for the Commonwealth may file a formal delinquency petition.

Multiple offenses alleged to have been committed by the same juvenile within the same judicial district may be included in one petition, as long as they are described separately. If all the offenses arose from the same delinquent episode, they must be combined in a single petition.⁵ However, if more than one juvenile is alleged to have

participated in an offense, a separate petition must be filed for each juvenile.⁶

Filing and Service of Petitions

While a private citizen may file a written allegation of delinquency, only a juvenile probation officer or an attorney for the Commonwealth may file a formal delinquency petition. A county District Attorney may opt to require that petitions be filed only by attorneys for the Commonwealth, either in all delinquency cases or in a defined class of cases, by filing a certification to that effect with the Court of Common Pleas.⁷

Promptly after filing, a copy of the petition must be served in person or by first-class mail on the juvenile and the juvenile's parent or guardian.⁸ Copies must also be served on the juvenile's attorney, the attorney for the Commonwealth, and juvenile probation, but this service may be by alternative means (such as fax or e-mail) if the individuals agree.

§ 7-2 Attorney Representation

Juveniles are entitled to representation by counsel at every stage of a delinquency proceeding; those who are “without financial resources or otherwise unable to employ counsel” are entitled to court-appointed counsel.⁹ The first time a juvenile appears before the court unrepresented, the judge must inform him of these rights in plain language.¹⁰ It should be remembered that not all juveniles understand the term “counsel,” or even “attorney,” and that even apparently sophisticated ones may not fully grasp the need for an advisor and advocate in the situation in which they are placed. The basic points to be impressed upon each juvenile are that having a lawyer in court (1) is expected, (2) is free, and (3) helps the system function as it should. The court may continue proceedings at any time to enable an unrepresented juvenile to obtain counsel.

If an attorney is to be assigned, the assignment must occur prior to the detention hearing if the juvenile is detained, or otherwise prior to the adjudication hearing.¹¹ Once an attorney has been assigned or has entered an appearance on behalf of a juvenile, representation continues until court supervision is terminated and the case closed, unless the attorney is permitted to withdraw (see below).¹²

Waiver of Counsel

A juvenile may waive the right to counsel, but only if the waiver is knowing, intelligent and voluntary and the court has tested its basis by means of an on-the-record colloquy with the juvenile (see sidebar “A Recommended Waiver Colloquy”).¹³

In general, as a matter both of law and of fundamental fairness, the court should be extremely reluctant to accept a juvenile's waiver of the right to counsel. The JCJC Standards Governing Hearing Procedures provide that a juvenile may not waive his right to counsel “unless he has had the opportunity to consult with an interested and informed adult” who is “primarily interested in the welfare” of the juvenile and aware of the rights guaranteed to him under the constitution.¹⁴

Judges should be extremely reluctant to accept a juvenile's waiver of the right to counsel.

Judges should not only be skeptical regarding attempts to waive the right to counsel, but alert to the possibility of interfamilial conflicts of interest in this area. The right to counsel is a personal one, and may be waived only by the juvenile, not by the juvenile’s family.¹⁵ Where there is reason to believe that a parent’s interests may be in conflict with the juvenile’s, and that the juvenile has been induced to waive his right in the service of a parental interest, it may be necessary to conduct separate colloquies regarding the positions of the family members—with the juvenile’s occurring out of the hearing of his parents.

The court may assign “stand-by counsel” whenever a juvenile waives representation. In any case, the waiver applies only to the hearing for which it is made. Not only may it be revoked at any time, but the court must inform the juvenile of the right to counsel again at each subsequent hearing in the case.¹⁶

Withdrawal of Counsel

Under the Rules of Juvenile Court Procedure for Delinquency Matters, once an appearance has been entered or an assignment made, an attorney’s obligation to represent a juvenile extends until the case is closed or a motion to withdraw is granted.¹⁷ A motion to withdraw may be made orally in open court in the presence of the juvenile, or filed with the clerk of courts, with a copy to be served on the attorney for the Commonwealth as well as the juvenile. Unless new counsel for the juvenile has already entered an appearance, a motion to withdraw may be granted only if good cause is shown.¹⁸

§ 7-3 Discovery

The Pennsylvania Rules of Juvenile Court Procedure for Delinquency Matters provide detailed rules and procedures for the pre-trial exchange of evidence in juvenile delinquency cases.¹⁹ Based generally on the discovery provisions of the Pennsylvania Rules of Criminal Procedure,²⁰ they list items that must be disclosed on request, provide for additional disclosure orders at the court’s discretion, and prescribe remedies for a party’s failure to comply with the duty to disclose.

Attorneys are expected to resolve discovery issues informally.

Discovery is intended to be an informal process. Attorneys in delinquency proceedings are required to make good faith efforts to resolve discovery issues informally before resorting to motions to compel disclosure.²¹ If a discovery motion becomes necessary, it must be made, either orally or in writing, “as soon as possible prior to the

adjudicatory hearing.” Pending resolution of the motion, the parties should disclose all material about which there is no dispute.

A RECOMMENDED WAIVER COLLOQUY

It is recommended that, at a minimum, the court ask questions to elicit the following information in determining a knowing, intelligent, and voluntary waiver of counsel:

- Whether the juvenile understands the right to be represented by counsel;
- Whether the juvenile understands the nature of the allegations and the elements of each of those allegations;
- Whether the juvenile is aware of the dispositions, community service, or fines that may be imposed by the court;
- Whether the juvenile understands that if he or she waives the right to counsel, he or she will still be bound by all the normal rules of procedure and that counsel would be familiar with these rules;
- Whether the juvenile understands that there are possible defenses to these allegations that counsel might be aware of, and if these defenses are not raised at the adjudicatory hearing, they may be lost permanently;
- Whether the juvenile understands that, in addition to defenses, the juvenile has many rights that, if not timely asserted, may be lost permanently; and if errors occur and are not timely objected to, or otherwise timely raised by the juvenile, these errors may be lost permanently;
- Whether the juvenile knows the whereabouts of absent guardians and if they understand they should be present; and
- Whether the juvenile has had the opportunity to consult with his or her guardian about this decision.

Source: Comment, Rule 152, Pa.R.J.C.P.

Mandatory Disclosure by the Commonwealth

The Commonwealth is required to provide the juvenile or the juvenile's attorney with all of the following upon request:²²

- Evidence favorable to the juvenile that is material either to adjudication or disposition and that is within the possession or control of the attorney for the Commonwealth.
- Any written confession or inculpatory statement in the possession or control of the attorney for the Commonwealth, or the substance of any oral confession or inculpatory statement, and the identity of the person to whom the confession or inculpatory statement was made.
- The circumstances and results of any identification of the juvenile by voice, photograph, or in-person identification.
- Any results or reports of scientific tests, expert opinions, and written or recorded reports of polygraph examinations or other physical or mental examinations of the juvenile that are within the possession or control of the attorney for the Commonwealth.
- Any tangible objects, including documents, photographs, fingerprints, or other tangible evidence.
- The transcripts and recordings of any electronic surveillance, and the authority by which the said transcripts and recordings were obtained.

With respect to all of the above items, the duty to disclose is continuing. That is, upon the discovery of previously requested evidence, material or witness identities coming within the mandatory disclosure rule, at any time prior to the end of the adjudicatory hearing, the attorney for the Commonwealth must promptly notify the court and the juvenile's attorney.²³

Additional Disclosure Orders

In addition to the mandatory disclosure items listed above, the court may also order either party to disclose additional materials "upon a showing that they are material to the preparation of the case and that the request is reasonable."²⁴ Such a discovery order is specifically made subject to the juvenile's right against self-incrimination. The Comment accompanying this provision lists the following examples of evidence that may be material to the preparation of the case:

- Names and contact information for any eyewitnesses.
- All written or recorded statements, and substantially verbatim oral statements, of eyewitnesses.
- All written and recorded statements, and substantially verbatim oral statements, made by the juvenile, or by co-conspirators or accomplices, whether such individuals have been charged or not.

- Any other evidence specifically identified, provided the requesting party can also establish that its disclosure would be in the interests of justice, including details regarding any person involved in the case who has received or been promised valuable consideration in exchange for information.

As is the case with mandatory disclosures, a party subject to a discovery order has a continuing duty to disclose additional evidence, material or witness identities coming within the order.²⁵

Remedies for Noncompliance

Whenever it appears that the Commonwealth has failed to make a mandatory disclosure or that either party has failed to comply with a discovery order, the court may (1) order the party to permit discovery/inspection, (2) grant a continuance, (3) prohibit the introduction of the evidence not disclosed (assuming it is evidence other than the testimony of the juvenile), or (4) make any other order it deems appropriate.²⁶

Limits on Discovery

Discovery of attorney work product—legal research or documents containing “opinions, theories, or conclusions” of the attorneys on either side or their legal staffs—is not permitted.²⁷ In addition, either party may apply for a protective order denying, restricting, or deferring discovery, which the court may grant “upon a sufficient showing.”²⁸ The court may permit this showing to be made wholly or partly in the form of “a written statement to be inspected by the court.” If the motion for a protective order is granted, the written showing must be preserved under seal for appeal purposes.

Disclosure of Alibi Defense

At least two days in advance of the adjudicatory hearing, a juvenile who intends to offer an alibi defense must provide notice to the attorney for the Commonwealth, indicating the place where the juvenile claims to have been at the time of the offense, the names of all witnesses who will be called in support of the alibi, and contact information for each.²⁹ In the event of the juvenile’s failure to comply, the court may (1) exclude all alibi evidence (except for the juvenile’s own testimony), (2) exclude only the testimony of witnesses who were not identified in advance, (3) grant a continuance to enable the Commonwealth to investigate the alibi, or (4) make any other order that the interests of justice may require.³⁰

While the juvenile cannot be prevented from testifying as to an alibi claim, the Commonwealth may cross-examine the juvenile concerning discrepancies between the alibi claimed at the hearing and any alibi notice given.³¹

Following receipt of an alibi notice but prior to the adjudicatory hearing, the attorney for the Commonwealth must disclose the names of any witnesses who will be called to disprove or discredit the alibi claim, and provide contact information for each.³² Otherwise, the court may (1) exclude all evidence offered to disprove the alibi, (2) exclude only the testimony of witnesses who were not identified in advance, (3) grant a continuance to enable the juvenile to investigate, or (4) make any other order that the interests of justice may require.³³

§ 7-4 Motion Procedures

Motions practice in delinquency cases is governed by Rules 344 through 353 of the Pennsylvania Rules of Juvenile Court Procedure for Delinquency Matters. Motions may be oral or written, but if time permits, written motions are preferred.³⁴ They must state with particularity the grounds, any supporting facts, and the relief or order requested. If written, they must be signed; any factual basis not already on the record must be verified to be true and correct to the personal knowledge, information, or belief of the person making the motion.³⁵ Answers are not generally required, but written answers are subject to signature and verification requirements similar to those applicable to motions.³⁶

A party's pre-hearing requests for relief must generally be included in one omnibus motion.

Generally, unless the “interests of justice” require otherwise, all pre-adjudicatory requests for relief must be included in one omnibus motion, to be made “as soon as practical” before the adjudicatory hearing, but in any case prior to the calling of the first witness.³⁷ Types of relief to be included in an omnibus motion include requests for

continuance, for joint or separate hearings, for suppression of evidence, for psychiatric examination, for dismissal of a petition, for disqualification of a judge, for appointment of an investigator, and for a pre-hearing conference.³⁸ The court should generally dispose of omnibus motions prior to the adjudicatory hearing, postponing the hearing if necessary.³⁹

Suppression of Evidence

A motion to suppress evidence obtained in violation of the juvenile’s rights⁴⁰ must normally be contained in the juvenile’s omnibus motion for relief. If not, the suppression issue will be deemed waived, unless the opportunity to seek suppression “did not previously exist, or the interests of justice otherwise require.”⁴¹ Following a motion to suppress, the court must make formal findings of fact and conclusions of law regarding whether the evidence in question was illegally seized, and issue an order granting or denying relief. If the court denies the motion, the decision is “final and binding” for purposes of the subsequent adjudication hearing, and the evidence will be admitted unless the juvenile can make a showing of new evidence in favor of suppression that was unavailable at the time the original motion was resolved.⁴²

A motion for suppression of evidence may be joined with a motion for the return of property illegally seized.⁴³

Motions for Joint or Separate Hearings

Separate petitions involving one juvenile may be resolved in a single adjudicatory hearing if (1) evidence of each of the offenses alleged would be admissible in a hearing on the other offenses or (2) all of the offenses alleged are based on the same act or transaction. When offenses are alleged in separate petitions involving different juveniles, a single hearing may be held if all the juveniles are alleged to have participated in the same act or transaction or the same series of acts or transactions.⁴⁴ Oral or written notice of consolidation must be provided to the juvenile(s) prior to any joint hearing.⁴⁵

When a consolidated hearing is planned, any party may move for separate hearings. Conversely, any party may request consolidation of hearings. Either type of request should ordinarily be included in an omnibus motion. If the above requirements for joint hearings are not met, the court must order separate adjudicatory hearings. But even if consolidation would otherwise be proper under the rules, the court may order separate hearings (or “other appropriate relief”) if any party would be prejudiced by a joint hearing.²⁸

§ 7-5. Summonses, Notices, and Subpoenas

A written summons compelling attendance at the adjudication hearing, together with a copy of the petition, must be issued by the court and served on the juvenile and the juvenile’s parents/guardians at least 14 days in advance of the hearing (or 7 days if the juvenile is detained).⁴⁷ The summons must specify the date, time and place of the hearing, inform the juvenile of the right to counsel (and to assigned counsel if necessary), and contain a warning that failure to appear may result in arrest.⁴⁸ Service must be made in person or by first-class mail.⁴⁹

The attorney for the Commonwealth, the juvenile’s attorney, and the juvenile probation office are all entitled to written notice of an adjudication hearing as well. Like the summons, the notice must be served in person or by first-class mail at least 14 days in advance of the hearing (or 7 days if the juvenile is detained).⁵⁰

Victims must be notified of the date, time, and place of the adjudication hearing.

In addition, victims of juvenile offenders are entitled to receive notice of all “significant actions and proceedings” in delinquency cases, which would obviously include adjudication hearings.⁵¹ Responsibility for notifying victims rests with the attorney for the Commonwealth in some counties, and with juvenile probations in others.

Subpoenas

At the request of the juvenile, the juvenile’s parents, a probation officer or district attorney, or any other party, or on the court’s own motion, the court or the court clerk may issue a subpoena requiring the attendance of a witness or the production of papers at the hearing.⁵² The subpoena must identify and provide the address and telephone number of the person who applied for it, and state on whose behalf the witness is being ordered to testify.⁵³ It may be served via first-class mail as well as in person or by registered or certified mail, return receipt requested. However, only a completed return receipt, signed receipt of personal delivery, or a process-server’s signed affidavit of in-person delivery constitute *prima facie* evidence of service.

Bench Warrants

The court may issue a bench warrant for the arrest of a person who fails to appear in response to a summons or subpoena, but in either case the warrant must be supported by a finding that sufficient notice was given.⁵⁴

§ 7-6. Preservation of Testimony

Following the commencement of a delinquency proceeding, the testimony of a witness who may be unavailable for a later hearing may be taken and preserved, either pursuant to a court order or by agreement of the parties.⁵⁵

Any party may request the court to order the preservation of testimony.⁵⁶ After notice and hearing, the court may order a witness's testimony to be taken and preserved if it appears that the witness may later become unavailable (by dying, becoming incompetent, or leaving the jurisdiction, for example), or if, "due to exceptional circumstances," the interests of justice

The rules provide a procedure for preserving testimony for a later hearing, either by court order or by agreement.

require it. The judge must state on the record the grounds for an order to take and preserve testimony, and the order itself must specify the time and place at which the testimony will be taken and the manner in which it will be recorded, preserved, and safeguarded until the hearing.

Testimony that is to be preserved pursuant to a court order, unless the order specifies otherwise, is taken in the presence of the judge as well as the juvenile, the juvenile's attorney and the attorney for the Commonwealth, who are given full opportunity to examine and cross-examine the witness and to raise objections.⁵⁷ However, the court need not make rulings on admissibility until the testimony is offered into evidence at the later hearing.

The parties may also agree to take and preserve a witness's testimony, conducting what amounts to a deposition.⁵⁸ The parties' agreement must be reduced to writing and filed with the clerk, and must contain the same specifics as a court order for the preservation of testimony—that is, the time, the place, and the manner of recording, preserving and keeping the testimony until the hearing. Testimony to be preserved by agreement should be taken in the presence of the juvenile, the juvenile's attorney, and the attorney for the Commonwealth, unless the parties agree otherwise. As when the testimony is presided over by the court, the parties have full opportunity to examine, cross-examine, and raise objections. The court must rule on admissibility when the testimony is later offered into evidence.

The court may order or the parties may agree to the recording of testimony by any means, but if the testimony is to be recorded on video, it must be simultaneously taken down by a stenographer, and certain basic technical requirements must be met.⁵⁹ For example, the recording must begin with detailed identifying statements, must show the swearing-in of the witness, and must be timed throughout by an on-camera digital clock. All objections and their grounds must be made on the recording. If the testimony is recorded without the court presiding, a log must be kept of each objection, showing the time it was made, in order to facilitate later admissibility rulings; in making its rulings on objections, the court may either read the stenographic transcript or view pertinent sections of the video with the aid of the log.⁶⁰

ENDNOTES

- ¹ 42 Pa.C.S. §6334 and Rule 330, Pa.R.J.C.P.
- ² 42 Pa.C.S. §6334(a)(3).
- ³ 42 Pa.C.S. §6334(a)(4) and Rule 330, Pa.R.J.C.P.
- ⁴ Rule 330, Pa.R.J.C.P.
- ⁵ Rule 332, Pa.R.J.C.P.
- ⁶ Rule 333, Pa.R.J.C.P.
- ⁷ Rule 330(A), Pa.R.J.C.P.
- ⁸ Rule 331, Pa.R.J.C.P.
- ⁹ 42 Pa.C.S. §6337.
- ¹⁰ Rule 151(A), Pa.R.J.C.P.
- ¹¹ Rule 151(B), Pa.R.J.C.P.
- ¹² Rule 150(B), Pa.R.J.C.P. The language of the rule—that “counsel shall represent the juvenile until final judgment”—should be understood to mean until the court’s supervision is terminated and the case closed.
- ¹³ Rule 152, Pa.R.J.C.P.
- ¹⁴ 37 Pa. Code §200.326.
- ¹⁵ See Comment to Rule 152, Pa.R.J.C.P. Prior to the adoption of the Rules of Juvenile Court Procedure for Delinquency Cases, a juvenile’s parent or guardian was allowed to waive the juvenile’s right to counsel under 42 Pa.C.S. §6337, but that provision has been superseded by Rule 152.
- ¹⁶ Rule 152, Pa.R.J.C.P.
- ¹⁷ Rule 150(B), Pa.R.J.C.P.
- ¹⁸ Rule 150(C), Pa.R.J.C.P.
- ¹⁹ See Rules 340-341, Pa.R.J.C.P.
- ²⁰ Rule 573, Pa.R.Crim.P. (Pretrial Discovery and Inspection).
- ²¹ Rule 340(A), Pa.R.J.C.P.
- ²² Rule 340(B), Pa.R.J.C.P. As the Comment to Rule 340 notes, the rule is not “intended to limit in any way disclosure of evidence constitutionally required to be disclosed.” Accordingly, any exculpatory evidence coming within the rule of *Brady v. Maryland*, whether or not listed in Rule 340(B), must be disclosed.
- ²³ Rule 340(D), Pa.R.J.C.P.
- ²⁴ Rule 340(C), Pa.R.J.C.P.
- ²⁵ Rule 340(D), Pa.R.J.C.P.
- ²⁶ Rule 340(E), Pa.R.J.C.P.
- ²⁷ Rule 341(G), Pa.R.J.C.P.
- ²⁸ Rule 341(F), Pa.R.J.C.P.
- ²⁹ Rule 341(A), Pa.R.J.C.P.
- ³⁰ Rule 341(B), Pa.R.J.C.P.
- ³¹ Rule 341(C), Pa.R.J.C.P.
- ³² Rule 341(D), Pa.R.J.C.P.
- ³³ Rule 341(E), Pa.R.J.C.P.
- ³⁴ See Official Comment, Rule 344, Pa.R.J.C.P.
- ³⁵ Rule 344(C), Pa.R.J.C.P.
- ³⁶ Rule 344(D), Pa.R.J.C.P.
- ³⁷ Rules 346 and 347, Pa.R.J.C.P.
- ³⁸ Comment, Rule 346, Pa.R.J.C.P.
- ³⁹ Rule 348, Pa.R.J.C.P.
- ⁴⁰ See 42 Pa.C.S. §6338(b): “An extrajudicial statement, if obtained in the course of violation of this chapter or which could be constitutionally inadmissible in a criminal proceeding, shall not be used against him. Evidence illegally seized or obtained shall not be received over objection to establish the allegations made against him.”
- ⁴¹ Rule 350, Pa.R.J.C.P.
- ⁴² Rule 350(D), Pa.R.J.C.P.

- ⁴³ Rule 353, Pa.R.J.C.P.
- ⁴⁴ Rule 351(A), Pa.R.J.C.P.
- ⁴⁵ Rule 351(B), Pa.R.J.C.P.
- ⁴⁶ Rule 352, Pa.R.J.C.P.
- ⁴⁷ Rules 360, 362, and 363, Pa.R.J.C.P.
- ⁴⁸ Rule 362, Pa.R.J.C.P.
- ⁴⁹ Rule 363, Pa.R.J.C.P.
- ⁵⁰ Rules 360 and 363, Pa.R.J.C.P.
- ⁵¹ 18 P.S. §11.201.
- ⁵² 42 Pa.C.S. §6333.
- ⁵³ Rule 123, Pa.R.J.C.P.
- ⁵⁴ Rules 123 and 364, Pa.R.J.C.P.
- ⁵⁵ Rule 380, Pa.R.J.C.P.
- ⁵⁶ Rule 380(A), Pa.R.J.C.P.
- ⁵⁷ See Comment, Rule 380, Pa.R.J.C.P.
- ⁵⁸ Rule 380(B), Pa.R.J.C.P.
- ⁵⁹ Rule 381, Pa.R.J.C.P.
- ⁶⁰ See Comment, Rule 381, Pa.R.J.C.P.

The Adjudication Hearing

8

Summary of Contents

This chapter explores the requirements for “informal but orderly” adjudication hearings under the Juvenile Act.

- § 8-1. Timing of Hearings
- § 8-2. General Conduct of Hearings
- § 8-3. Public Attendance at Hearings
- § 8-4. Hearing Procedures
- § 8-5. Admissions
- § 8-6. Consent Decrees
- § 8-7. The Victim’s Place
- § 8-8. Accommodating Young Witnesses

Key Statutes

- 42 Pa.C.S. §6310 (parental participation)
- 42 Pa.C.S. §6335 (timing of hearing)
- 42 Pa.C.S. §6336 (conduct of hearing)
- 42 Pa.C.S. §6338 (other basic rights)
- 42 Pa.C.S. §6339 (investigation and report)
- 42 Pa.C.S. §6340 (consent decree)
- 42 Pa.C.S. §6341 (adjudication)
- 18 P.S. §11.201 (victim attendance rights)

Rules

- Rule 122, Pa.R.J.C.P. (continuances)
- Rule 127, Pa.R.J.C.P. (recording of hearings)
- Rule 131, Pa.R.J.C.P. (guardian’s presence)
- Rule 132, Pa.R.J.C.P. (victim’s presence)
- Rules 370-373, Pa.R.J.C.P. (consent decrees)
- Rules 401-409, Pa.R.J.C.P. (adjudicatory hearing)

JCJC Standards

- Hearing Procedures
- Development of the Social Study

§ 8-1 Timing of Hearings

Generally, if the juvenile is being detained or held in shelter care pending the adjudication hearing, the Juvenile Act requires that the court schedule the hearing for no later than ten days from the date of the filing of the petition.¹ As is discussed more fully in the chapter on detention, under certain circumstances this ten-day deadline may be extended by court order for a single additional ten-day period in order to secure evidence. In case of failure to hold a hearing within the ten- or twenty-day timetable, the juvenile must be released, unless the delay was occasioned by the actions of the juvenile or the juvenile's attorney.²

The Juvenile Act imposes no explicit deadline for holding adjudication hearings in cases in which juveniles are not detained or held in shelter care, and the Rules of Juvenile Court Procedure for Delinquency Matters only require that the adjudicatory hearing "be held within a reasonable time."³ However, it seems clear that at some point, a delay in bringing a juvenile to adjudication may work a denial of "the essentials of due process and fair treatment" required by the constitution. As the Superior Court has pointed out,

in its protective role the state must consider the importance of time in a developing child's life in attempting to fashion a successful rehabilitation program for each juvenile. As the juvenile years are marked with significant changes and rapid development, children experience an acceleration in the passage of time so that, to a juvenile, one year may seem to be five. To ensure successful rehabilitation, the reformation program...must commence within a reasonable time of the child's delinquent act so that the child can comprehend the consequences of his act and the need for reform. As a result, the concept of 'fundamental fairness' in juvenile proceedings would seem to require that at least some limit be placed on the length of time between the delinquent act and the case disposition....⁴

As a matter of good practice, JCJC Standards Governing Hearing Procedures provide that priority in scheduling hearings must be given to cases involving juveniles waiting in detention or shelter care, but that an adjudication hearing for a juvenile who is not in detention must be held within 90 days after the filing of the petition. The 90-day timetable is to be extended only for a specific period of time, and then only (1) by agreement of the parties or (2) for reasonable cause shown.⁵

§ 8-2 General Conduct of Hearings

One of the most important responsibilities of a juvenile court judge is that of establishing and maintaining the appropriate atmosphere in delinquency hearings. The Juvenile Act calls for “informal but orderly” hearings in delinquency matters.⁶ According to the JCJC Standards Governing Hearing Procedures:

The atmosphere of the hearing should encourage the maximum participation of all concerned. It should be evident that it is the intent of the judge to determine the facts of the case and provide for a forum that is consistent with the public interest and is intended to arrive at a disposition that provides balanced attention to the protection of the community, imposition of accountability for offenses committed and development of competencies to enable the child to become a responsible and productive member of the community.⁷

What sorts of hearing practices set the tone called for here? What concrete steps must be taken to “encourage the maximum participation of all concerned” in delinquency hearings? How can a juvenile court judge help to ensure that interests and points of view that are important to the proper resolution of delinquency matters are adequately represented in hearings?

Judges ought to consider how a typical delinquency hearing looks from the gallery, rather than the bench.

For most judges, a useful first step might be to try to imagine how things look from the gallery, rather than the bench. To outsiders, delinquency hearings can sometimes seem rushed, perfunctory, bewildering. Particularly in busy courtrooms, those in the rear may have no idea what those in the front are doing, or even which team is which. They have been formally “summoned” here, perhaps, but it is not clear what their role is, or how their presence is necessary. And often the whole thing is over—admissions have been accepted, a sheriff’s deputy is literally shooing them into the hall—before they know what’s happened, or why.

Judges who wish to change this picture—to create a forum that is both orderly and inclusive—should consider the following steps:

- *Enlarge the courtroom, at least in your mind.* Delinquency hearings in Pennsylvania are not intended to be for professionals only. The people who don’t sit at the counsel table—victims, witnesses, family members, their supporters and friends—matter too. Their views, their comprehension of the process and its purposes, their understanding and acceptance of its outcomes, all matter. Simply bearing this in mind could significantly change a judge’s approach and attitude, and ultimately be reflected in the way hearings are routinely conducted.
- *Slow down.* Especially in busy courts, it can be tempting to aspire to merely mechanical case-processing efficiency—to want to cycle through a crowded docket as rapidly as possible and to treat everything that slows the process down as an obstacle or a distraction. What often gets overlooked in this sort of haste are the real purposes of delinquency hearings. It may be that the problem lies elsewhere—too many

- hearings scheduled for the same day, too little time allocated to each one, too few judges and masters assigned to delinquency cases, etc. But it all has to stop—or rather slow down—here.
- *Identify the players.* Who are all those people in the back? Too many judges take no trouble to find out. As a result, in the course of the hearing, they miss opportunities both to learn and to teach. The people in the back, of course, are equally at a loss, since the routine participants in delinquency hearings—the prosecutor, the probation officer, the public defender, the clerk, the recorder, the tipstaff—are well-known to one another and rarely identify themselves. The result is a kind of wall of incomprehension separating the insiders from the outsiders, requiring everyone to guess at everyone else’s identity. Fortunately, it isn’t hard to break through. In some courtrooms, for example, there are sign-in sheets for those attending hearings. The clerk may read out the names of those present at the start of the hearing, or the sheet may be kept on the bench to be consulted by the judge throughout.
 - *Explain, articulate, translate.* If the nonprofessionals attending delinquency hearings are to understand and participate in the proceedings, they will from time to time need guidance, if not a translation. It is largely up to the judge to explain what is happening and why for the benefit of those unfamiliar with the court process—and not only to describe the mechanics of the system but to articulate the principles behind it. But judges can also encourage probation officers, attorneys and others routinely involved in delinquency hearings to express their thoughts and assumptions clearly, and to steer away from lingo, acronyms, and other unfamiliar forms of shorthand that have the effect of keeping outsiders out.
 - *Observe some formalities.* Many of those in the courtroom will have just this one experience of the juvenile justice system. What sort of impression will they take with them? The informality and lack of solemnity with which delinquency hearings in some jurisdictions were conducted may have suggested—to victims, to community members, and perhaps most disastrously to juveniles and their families—that delinquency matters were not taken seriously. A judge can do something to counteract this impression simply by insisting that everyone in the courtroom show proper respect for the occasion.
 - *Remember courtesies.* Judges should not leave it to others to extend common courtesies to those in attendance at hearings—such as the courtesy of acknowledging them directly, of welcoming them, of thanking them for their time, and of apologizing for long waits, crowded conditions, and so on. (Of course, if the court’s facilities or scheduling practices are such that apologies are *always* in order, the judge has a responsibility to advocate for concrete changes as well.) Even more importantly, when a delinquency matter is unexpectedly continued, or witnesses are dismissed because their testimony is not needed, or an offer of admissions eliminates the need for an adjudication hearing, the judge should not neglect to say something by way of explanation and apology to those who have been inconvenienced.

§ 8-3 Public Attendance at Hearings

The Juvenile Act provides for varying degrees of openness in hearings on delinquency petitions:⁸

- *In camera hearings.* The general rule is that juvenile hearings are closed to all except “the parties, their counsel, witnesses, the victim and counsel for the victim, other persons accompanying a party or a victim for his or her assistance, and any other person as the court finds have [sic] a proper interest in the proceeding or in the work of the court.”⁹ The juvenile’s parent or guardian will normally be present, as persons assisting a party, and can in fact be compelled to attend where it is in the best interests of the juvenile.¹⁰ From this list it will be seen that even a so-called “closed” hearing may be attended by quite a crowd, particularly if the court construes operative terms (such as “proper interest”) liberally.
- Public attendance at delinquency hearings can provide valuable teaching opportunities.*
- *Hearings closed by agreement.* The juvenile and the attorney for the Commonwealth may agree to close a hearing, though not presumably to “the parties, their counsel, witnesses, the victim,” and the other categories listed above.¹¹
 - *Open hearings in certain serious cases.* Except by agreement of the parties, the public cannot be excluded from delinquency hearings involving (1) any felony allegedly committed by a juvenile of at least 14 or (2) certain enumerated felonies allegedly committed by a juvenile of 12 or 13.¹² The enumerated felonies are roughly the same as those that are excluded from juvenile court jurisdiction when committed by a juvenile of sufficient age using a deadly weapon (see table and discussion at § 6-3). They include:
 - Murder
 - Voluntary manslaughter
 - First degree felony aggravated assault
 - First degree felony arson
 - Involuntary deviate sexual intercourse
 - Kidnapping
 - Rape
 - First degree felony robbery
 - Robbery of a motor vehicle
 - Any attempt, conspiracy, or solicitation to commit any of these offenses.

Judges in a number of jurisdictions have found that inviting, encouraging and facilitating the attendance of the media and interested members of the public can be of great benefit to the work of the court. When the local media understand the unique mission of the juvenile court and the operations of the juvenile justice system, community support for court programs can be enhanced and balanced news coverage in high profile cases is more likely to result. Except in jurisdictions where the relationship between the news media and the court would make such invitations ill-advised, judges are encouraged to consider this approach. However, there are limits, and the judge must draw the line where an atmosphere of intimidation or

disorder would result from public and media attendance. Pre-hearing meetings to set confidentiality ground rules are good practice in any case in which members of the public will be attending. And where necessary, judges are given discretion to close portions of hearings or take other action to safeguard the confidentiality of mental health and medical information as well as institutional and probation reports.¹³

§ 8-4 Hearing Procedures

Adjudicating a youth “delinquent”—that is, determining that he or she has committed a delinquent act within the court’s jurisdiction *and* is in need of treatment, supervision or rehabilitation¹⁴—involves four distinct steps:

- *Jurisdictional determination.* According to JCJC Standards Governing Hearing Procedures, an adjudication hearing should commence with a determination that the juvenile court has jurisdiction over the matter petitioned.¹⁵ (For a discussion of the exact boundaries of Pennsylvania delinquency jurisdiction, see § 4-4.)
- *Fact-finding.* If the court determines that it has jurisdiction to hear the matter, “and has assured that the child is fully aware of all constitutional rights,” it may proceed to hear evidence (or accept admissions) on whether the juvenile committed the delinquent acts alleged in the petition.¹⁶ Under the Juvenile Act, the accused is “entitled to the opportunity to introduce evidence and otherwise be heard in his own behalf and to cross-examine witnesses”¹⁷ as well as to be represented by counsel.¹⁸ JCJC Standards Governing Hearing Procedures specify that “the district attorney shall represent the Commonwealth” in these proceedings.¹⁹
- *Ruling on offenses.* Within seven days of hearing the evidence or accepting admissions, the court must enter a finding specifying which if any of the offenses alleged in the petition the juvenile has been proven beyond a reasonable doubt to have committed.²⁰ For each delinquent act proven or admitted, the court must specify the grading and counts. If the court dismisses the allegations as unproven, it must also release a juvenile who has been detained, unless there are other grounds for detention,²¹ and order the destruction of fingerprints and photographs.²²
- *Adjudication of delinquency.* If the court has found beyond a reasonable doubt that the juvenile committed any delinquent act,²³ it must proceed—either immediately or at a postponed hearing—to hear evidence regarding whether the juvenile is “in need of treatment, supervision or rehabilitation” and therefore delinquent.²⁴

The fact-finding phase of a delinquency proceeding is subject to strict constitutional and statutory safeguards.

Record Requirements

Under the Rules of Juvenile Court Procedure, all adjudication hearings must be recorded. The recording must be transcribed whenever (1) a party requests it, (2) an appeal is taken, or (3) the court otherwise orders transcription.²⁵

Evidence

Traditionally, the juvenile court's "therapeutic" mission was thought to justify the consideration of all sorts of evidence in a delinquency hearing that would not have been admissible in a criminal one.²⁶ Now that it is well-established that accused juveniles have the right to confront and cross-examine witnesses against them,²⁷ as well as to exclude illegally obtained evidence and extrajudicial statements that would be inadmissible in criminal proceedings,²⁸ the juvenile court must obviously be more selective in admitting evidence. In general, while the court is engaged in determining whether or not the juvenile committed the acts alleged in the petition, evidence that would not be competent in a criminal proceeding should not be admitted. It is only at subsequent hearing phases—in which the issue is whether the juvenile needs treatment, supervision or rehabilitation, or what form of disposition is appropriate—that evidence rules, particularly technical rules that have nothing to do with basic fairness, may be relaxed.

The court must take care to avoid prematurely considering evidence that bears only on the question of appropriate dispositions. At a disposition hearing, evidence from social reports "may be received by the court and relied upon to the extent of its probative value even though not otherwise competent in the hearing on the petition."²⁹ But prior to that phase it is likely to be both irrelevant and highly prejudicial. Accordingly, the Juvenile Act as well as JCJC Standards specifically rule out the once-common practice of allowing information from a social study of the juvenile to be disclosed to the judge during the fact-finding phase. The Juvenile Act actually prohibits the court from ordering even the *preparation* of a social report in a contested case involving a juvenile who has not yet been found to have committed a delinquent act.³⁰ In practice, however, unless the juvenile objects, the routine in many counties is not to wait, but to begin assembling social report information before any fact-finding has occurred. In any case, the JCJC Standards Governing the Development of the Social Study provide that "adequate precautions must be taken to assure that information from the social study report will not be disclosed to the Court prior to adjudication."

Required Findings

Within seven days of hearing the factual evidence on a delinquency petition, "the court shall make and file its findings whether the acts ascribed to the child were committed by him."³¹ The seven-day deadline may be extended only by agreement of the parties, but failure to meet it is not grounds for dismissal or discharge. In any case, the best practice is to make the factual finding, if at all possible, at the conclusion of the fact-finding hearing.

Again, the court's finding that the juvenile committed a delinquent act is not the equivalent of a finding of delinquency. The latter requires a separate finding—that the juvenile is *currently* "in need of treatment, supervision or rehabilitation"—which can be and often is made at a separate disposition hearing, especially where the allegations of delinquency were not admitted by the juvenile. (See the following chapter on "Delinquency and Disposition Determinations.") In theory, a court may find that the juvenile committed the acts alleged in the petition, but further conclude that no treatment, supervision, or rehabilitation is needed—in which case a dismissal and discharge are warranted. However, the Juvenile Act provides that, even without further proof, the fact that the juvenile has committed an act constituting a felony is sufficient to sustain a finding of a need for treatment, supervision, or rehabilitation.³²

§ 8-5 Admissions

At any time after a petition is filed, the Rules of Juvenile Procedure for Delinquency Matters allow the juvenile to tender an admission (1) acknowledging facts, (2) accepting an adjudication of delinquency, and/or (3) agreeing to a particular disposition.³³ Before accepting an admission, the court must confirm that it is knowing and voluntary by getting answers to the following questions:

- Does the juvenile understand the nature of the allegations admitted?
- Is there a factual basis for the admission?
- Does the juvenile understand that he or she has the right to a hearing before the judge, and is presumed innocent until found delinquent?
- Is the juvenile aware of the dispositions that could be imposed?
- Does the juvenile know that the court is not bound by the terms of any agreement unless it is accepted?
- Has the juvenile consulted with an attorney or validly waived the right to counsel?
- Has the juvenile consulted with a guardian about the decision to admit?
- Does the juvenile have any questions?

Note that the court must either ask these questions and get answers on the record, or else elicit the same information from the juvenile in written form. If the latter procedure is used, the court must at least ask questions on the record that serve to authenticate the juvenile's completion of the form, understanding of its contents, and agreement with the statements made.

Good Practice in Accepting Admissions

Particularly in busy courtrooms, a substantial proportion of the cases scheduled for adjudication hearings—including those in which victims, witnesses, family members and supporters are assembled and ready—move on to formal fact-finding and dispositional issues without ever fully examining the events that gave rise to the petition.

Judges must ensure that case resolutions involving admissions do not ignore victim and community interests.

Juvenile court judges bear the ultimate responsibility for assuring that case resolutions involving admissions or negotiated settlements serve purposes beyond the immediate convenience of the parties. In particular, judges have an obligation to take steps to ensure that such resolutions do not slight the interests of victims and the community, ignore the real needs

of juveniles, fail to impose accountability for offenses committed, or otherwise sweep away unresolved problems:

- *Get the facts.* Busy prosecutors can sometimes be content with very general admissions that dispose of the case without settling key factual issues. A judge should not be, particularly when the means of clarifying the issues are right in the courtroom. A juvenile may admit to attempted credit card fraud, but how did he come by the credit card—by happenstance or by theft? If the prosecutor’s summary of the Commonwealth’s case passes over a point like this, the judge should inquire. The idea is not to stir up factual disputes for their own sake. But what if the credit card-holder is right in the gallery? Delinquency adjudications, and the dispositions based on them, should as far as possible reflect reality—and not the incomplete, ambiguous version of reality that too often emerges when factual issues are not put to the test of an evidentiary hearing.
- *Address the gallery.* In too many courtrooms, victims, witnesses, family members and others are assembled for adjudication hearings, detained for a time, and dismissed without explanation or apology when admissions make their testimony unnecessary. As was noted earlier (see “General Conduct of Hearings,” § 8-2, above), a better procedure is for the judge to address them directly, to explain what is happening and why, to thank them for taking time to contribute to the resolution of the matter, and to apologize for having inconvenienced them.
- *Engage the victim of the crime.* Judges should not focus so narrowly on the business being transacted in front of the bench that they forget that the hearing is for the victim, too. (See “The Victim’s Place,” § 8-7, below.)
- *Call upon the juvenile.* Generally, a judge should not accept an admission of facts without inviting the juvenile to say something for himself. One kind of accountability—and not the least important kind—is simply accountability for explanations, if not apologies. That form of accountability can be severely undercut by a proceeding in which the juvenile never feels called upon to speak, to look anyone in the eye, to face up to anything publicly, or even to acknowledge that he is the person everyone is talking about. A perfunctory “Do you have anything to say?” may elicit nothing, of course. But judges should be aware of tendencies of their own that discourage responses from juveniles—such as the tendency to cut embarrassing pauses short, to suggest answers, to interrupt and scold. (Adults often “listen” to young people by arguing them into silence.) Even a direct, pointed question is unlikely to draw a meaningful response unless the judge is willing to wait—to let the hearing grind to a halt—for what may seem like a long time. And yet, considering the substantial investment that the juvenile justice system makes in arresting, processing, trying, placing, treating, and supervising a typical juvenile offender, doesn’t it make sense for the official overseeing this sprawling project to make some effort—including the effort of waiting through a silence of 10 or 20 seconds—to find out what is going through his mind?

§ 8-6 Consent Decrees

At any time before the court has entered findings and an adjudication order, the parties may move to have the proceedings suspended pursuant to a consent decree imposing negotiated supervision conditions.³⁴ The court may not enter a consent decree over the objection of either the juvenile or the attorney for the Commonwealth.³⁵ On the other hand, the court need not approve a consent decree that is inconsistent with the public interest merely because

Consent decrees must further the purpose of the Juvenile Act.

the parties have agreed to it. Consent decree terms and conditions, like disposition orders, must “provide balanced attention to the protection of the community, accountability for offenses committed and the development of competencies to enable the child to become a responsible and productive member of the community.”³⁶

Moreover, victims are entitled to submit prior comment on the appropriateness of a negotiated consent decree.³⁷ Before approving a consent decree, a judge should always confirm that any required consultation with the victim has in fact occurred. In addition, as was noted in the previous discussion of “Informal Adjustment” (see § 4-7), the views of law enforcement may also shed light on the appropriateness of a proposed consent decree.

Juvenile court judges should ensure that consent decrees are framed in terms that reflect the balanced purposes of the Juvenile Act. In other words, consent decree conditions that are meant to impose accountability for and repair the harm of offenses committed, such as restitution or community service obligations, should be clearly designated “accountability” provisions. Terms and conditions that are intended to protect the public, such as reporting obligations, associational restrictions, and curfews, should be laid out under a “community protection” heading. And provisions that require the juvenile to attend school, cooperate in therapy or counseling, attend groups, or otherwise develop skills or address deficits, should be denominated “competency” provisions. This approach has the virtue of clarifying, for the benefit of the juvenile and his family, the victim, and others interested in the case, what the juvenile justice system intends to accomplish through the consent decree. It also helps to ensure that district attorneys, juvenile probation officers, and others involved in negotiating consent decrees do not overlook essential provisions, and that judges do not approve consent decrees that are incomplete. (For more detailed information on appropriate terms and conditions for diverted cases, see the discussion of “Informal Adjustment” at § 4-7, above.)

Under the Rules of Juvenile Court Procedure for Delinquency Matters, the court is required to explain to the juvenile—“on the record or in writing”—the terms, conditions and duration of the consent decree and the consequences for violating it.³⁸ Although consent decrees in many jurisdictions are submitted on paper and approved routinely, without the appearance or participation of the juvenile, his family, or the victim, valuable opportunities may be lost thereby. The better practice, if possible, is for the interested parties to be present in court for the approval and entry of the consent decree. Only an in-court consent decree procedure makes it possible for the judge to do all the following:

- Articulate both the specific terms and the broader purposes of the consent decree.

- Ensure that the parties, particularly the juvenile and his family, understand what is expected of them, and the consequences of failure to comply.
- Make it clear that the court's own authority is behind the consent decree.
- Call upon the juvenile to explain his conduct and acknowledge responsibility for it.

While one of the primary purposes of the consent decree procedure is to avoid imposing the stigma of delinquency adjudication on juveniles who are willing to accept supervision without it, it should never be employed in a case in which a juvenile is unwilling to admit wrongdoing.

When a juvenile has successfully fulfilled the terms and conditions of a consent decree, he is discharged by the probation office, the original petition is dismissed, and no further proceedings may be brought against him on the basis of the conduct alleged in the original petition.³⁹ On the other hand, if the juvenile violates conditions imposed by the consent decree or has a new delinquency petition filed against him while subject to a consent decree, the attorney for the Commonwealth, following consultation with juvenile probation, may reinstate the original petition.⁴⁰

The consent decree may be for a term of up to six months.⁴¹ However, upon motion, the court may discharge the juvenile earlier, or extend the consent decree for up to an additional six months.

§ 8-7 The Victim's Place

Whether an adjudication hearing is suspended by the entry of a consent decree, is resolved by admissions, or proceeds through the taking of evidence to formal fact-finding, the victim has a right to be acknowledged and included in the process:

- *Groundwork.* Creating a place for victims in juvenile court begins outside the courtroom, of course. As administrators and leaders of their courts, judges should continually monitor the effectiveness and adequacy of local efforts to bring victims into the justice process. Do victims receive consistent, accurate, timely, and sensitive notification regarding court proceedings? Is there an orientation program to help them understand their rights? Is there a separate victim/witness waiting area in the courthouse? Are there victim advocates to accompany them to hearings? Is any effort made to determine their satisfaction with the process afterwards, or to offer them post-disposition advice and guidance?
- *Pre-hearing consultation.* Pennsylvania's Crime Victims Act and the Rules of Juvenile Court Procedure for Delinquency Matters give victims of juvenile offenders the right to be notified and given an opportunity to submit comment prior to several key case processing events.⁴² In general, victims have a right to be heard before cases are

Victims ultimately depend upon judges to enforce and give substance to their participation rights.

- resolved wholly or partially by any sort of agreement. Victims have the right to have their input considered in disposition decision-making as well. While prosecutors and probation offices are given the primary responsibility for soliciting victim input in juvenile cases, victims ultimately depend upon judges to enforce and give substance to their consultation rights. If the judge *always* demands to know what the victim thought about a proposed consent decree or negotiated plea arrangement, or why there is no impact statement in the predisposition report, prosecutors and probation departments will make it their business to find out—and will not come to court until they do.
- *Sequestration.* As a matter of basic due process, a victim who is to be a witness in an adjudication hearing may have to be excluded from the hearing room during some part of the fact-finding phase. However, keeping in mind victims' own hearing attendance rights as well the practical and symbolic value of victim presence and participation in juvenile hearings, judges should take steps to keep these periods of sequestration to an absolute minimum, including requiring prosecutors to present their cases in such a way as to permit victims to return to the courtroom as soon as possible. In any case, judges should make sure that victims understand the purpose and necessity of sequestration.
 - *Participation.* What has been said above about the judge's role in encouraging "maximum participation" in juvenile hearings (see "General Conduct of Hearings," §8-2), applies with special force to encouraging victim participation. Juvenile court judges must be alert for opportunities to acknowledge the victim's presence in the courtroom, to explain the court's methods and procedures, and to articulate the principles they are intended to serve. Once the fact-finding phase is concluded, the judge should take the opportunity afforded by the victim's presence to describe the disposition process, to solicit victim input orally, to gather additional details regarding written victim impact statements (see below), and where appropriate to orchestrate impromptu victim-offender interactions.
 - *Opportunity/encouragement to speak.* No matter what the posture of the case, victims should always be afforded some opportunity to tell the court what they experienced and how it felt. A victim who has been given a chance to speak regarding these matters is more likely to accept the outcome of the judicial process—to feel that something like justice has been done. The victim's account may also help the juvenile to understand the consequences of his wrongdoing more fully. As long as the judge retains control of the situation, even the victim's anger may be good for the juvenile to hear. And it should lead to better disposition decision-making as well, by giving the court a deeper understanding of the harm caused by the juvenile's offense and the steps that must be taken to repair it. But affording victims a meaningful opportunity to speak in court will take groundwork as well—such as a victim advocate's help in the preparation of a statement, as well as an opportunity to speak with and receive support from an advocate after the hearing is over.

§ 8-8 Accommodating Young Witnesses

Witnesses in adjudication hearings must be placed under oath, subject to penalties for perjury, and competent to testify. Since children and young adolescents are often key witnesses in juvenile proceedings, a juvenile court judge must develop techniques for accurately assessing young people's competence, drawing out and interpreting their testimony, monitoring their examination by others, and adapting courtroom procedures to accommodate their needs.

- *Knowing what to look for developmentally.* Proper handling of a very young witness calls first of all for a realistic assessment of the child's current level of development. Basic background materials on the stages of child and adolescent development, including developmental skills typically found among children of various ages, can be found in *Child Development: A Judge's Reference Guide*, which is available from the National Council of Juvenile and Family Court Judges.⁴³
- Courtroom routines and procedures may have to be altered to accommodate young witnesses.***
- *Evaluating competence.* While testimonial competence is ordinarily presumed, courts are required to inquire closely into the mental capacities of witnesses younger than 14 before allowing them to give evidence.⁴⁴ This involves scrutinizing (1) their ability to observe and recall the events about which they will testify, (2) their capacity to understand questions and frame intelligent answers regarding those events, and (3) their consciousness of the duty to testify truthfully.⁴⁵ Confusion about the meaning of the term "oath" or about the purpose of the proceeding is not necessarily an indication of incompetence, as long as a child witness knows the importance of truth-telling.⁴⁶ Even a child who believed it was "good to lie" was found competent, where it appeared she understood that she would be punished if she did so.⁴⁷
 - *Avoiding the wrong questions.* Because judges are responsible for getting at the truth in juvenile proceedings, they must be vigilant regarding confusing, misleading, and otherwise inappropriately phrased questions, both in their own examination of young witnesses and in their monitoring of examinations conducted by attorneys. Children are more likely to give clear, complete, reliable, useful testimony if they are not faced with the following kinds of questions:
 - *Long, grammatically complex, or compound questions.* One authority suggests, as a rule of thumb, "the younger the child, the shorter the question."⁴⁸
 - *Questions containing big, unfamiliar, or legal-technical words.* "Point to" works better than "identify."
 - *Questions that are phrased negatively.* "Did you not," etc.
 - *Questions that abruptly change the subject.* Judges should make sure that young witnesses are not confused by sudden and unexplained transitions in questioning.

- *Repetitive questions.* Again, judges should recognize that children may not understand why the same thing is being asked repeatedly, and either limit or explain the reasons for the repetition.
- *Closed yes-or-no questions.* Child witnesses should not be asked to restrict themselves to one-word answers, unless it's very clear that they understand the questions. The danger of misunderstanding can be partially avoided with open-ended follow-ups, giving them the opportunity to explain what they think their "yes" or "no" meant.
- *Adapting court procedures.* Judges should be flexible in accommodating the special needs of young witnesses in their courtrooms. Common accommodations include the following:
 - *Support persons.* Children are often allowed to have adult supporters with them while they testify, and even at times to sit in their laps while being questioned. Some difficulty is presented when an adult support person is also a witness in the case—as when both a parent and a child have evidence to give regarding the alleged victimization of the child by a third party—or where there is reason to believe the presence of the support person will influence the content of the child's testimony. The former problem at least can be overcome by having the adult supporter testify first, outside of the child's hearing.
 - *Other kinds of support.* Children should by all means be permitted to bring special blankets, stuffed animals, and other comfort objects with them into the courtroom, and to hold them while testifying.
 - *Breaks.* When children have difficulty on the stand, judges should be liberal in granting recesses and allowing attorneys and others to confer with them privately to learn what is the matter.
 - *Clearing courtroom of spectators.* In order to make it easier for a young witness to give testimony, the judge may at any time close the hearing to the general public, although the agreement of the parties may be required in a case designated an "open proceeding" by the Juvenile Act.⁴⁹
 - *Conferring or conducting examinations in chambers.* Likewise, judges should consider taking young witnesses into their chambers where necessary, to explain the proceedings, to put fears about testifying to rest, to assess their competency, or even to conduct the examination itself. In an adjudication hearing in which the child witness is testifying for the Commonwealth, however, a preliminary competency examination may be conducted in chambers, but the testimony itself must be given in the presence of the accused.
 - *Changing physical courtroom arrangements.* There is no reason why the physical layout or seating arrangements in the courtroom cannot be temporarily changed to help put a young witness at ease (although, again,

during the adjudication phase the court must be cautious about compromising the juvenile's confrontation rights).

- *Other courtroom changes.* Many experienced juvenile court judges have developed their own “tricks of the trade” for supporting, encouraging, and alleviating the stress of children giving evidence in their courtrooms. These may involve changing their usual tone of voice or terminology, raising ice-breaking topics to establish rapport and open up communication, and even using toys, puppets, and similar devices to relax and focus the child.

ENDNOTES

¹ 42 Pa.C.S. §6335(a) and Rule 240(D), Pa.R.J.C.P.

² 42 Pa.C.S. §6335(f).

³ Rule 404, Pa.R.J.C.P.

⁴ *Commonwealth v. Dallenbach*, 1999 Pa. Super. 101, 729 A.2d 1218 (1999).

⁵ 37 Pa. Code §200.305. Note that the National Council of Juvenile and Family Court Judges' *Juvenile Delinquency Guidelines* call for even tighter timelines for adjudicatory hearings. According to the Guidelines, an adjudicatory hearing for a youth who is not in detention should be scheduled for no more than twenty business days from the initial hearing, unless the nature of the case is such that longer preparation time is required.

⁶ 42 Pa.C.S. §6336.

⁷ 37 Pa. Code §200.321(b).

⁸ 42 Pa.C.S. §6336.

⁹ 42 Pa.C.S. §6336(d).

¹⁰ See Rule 131, Pa.R.J.C.P.

¹¹ 42 Pa.C.S. §6336(e).

¹² 42 Pa.C.S. §6336(e).

¹³ 42 Pa.C.S. §6336(f).

¹⁴ 42 Pa.C.S. §6302.

¹⁵ 37 Pa. Code §200.342.

¹⁶ 37 Pa. Code §200.343.

¹⁷ 42 Pa.C.S. §6338(a).

¹⁸ 42 Pa.C.S. §6337.

¹⁹ 37 Pa. Code §200.322. Note that this provision is directly at odds with the practice of permitting probation officers to represent the Commonwealth in delinquency hearings.

²⁰ Rule 408, Pa.R.J.C.P.

²¹ Rule 408(B), Pa.R.J.C.P.

²² 42 Pa.C.S. §6341(a).

²³ See Rule 408(C), Pa.R.J.C.P., which specifies that the court must proceed to the adjudication phase if it finds “that the juvenile committed *any* delinquent act...”

²⁴ 42 Pa.C.S. §6341(b).

²⁵ Rule 406(B), Pa.R.J.C.P.

²⁶ See McCarthy, Pa. Juvenile Delinquency Prac. & Proc. (4th Ed.), § 11-9, and Packel, *A Guide to Pennsylvania Delinquency Law*, 21 Vill. L. Rev. 1, 51 (1975).

²⁷ 42 Pa.C.S. §6338(a).

²⁸ 42 Pa.C.S. §6338(b).

²⁹ 42 Pa.C.S. §6341(d). See the discussion of this provision in § 9-2.

³⁰ 42 Pa.C.S. §6339.

³¹ 42 Pa.C.S. §6341(a).

³² 42 Pa.C.S. §6341(b).

³³ Rule 407, Pa.R.J.C.P.

³⁴ 42 Pa.C.S. §6340(a) and Rule 370, Pa.R.J.C.P.

³⁵ 42 Pa.C.S. §6340(b) and Rule 371, Pa.R.J.C.P. However, note that a “deferred adjudication”—in which resolution of the issue of the juvenile’s need for treatment, supervision or rehabilitation is postponed pending his voluntary completion of a program of supervision, sanctions or services—may serve the same functional purpose as a consent decree, without being subject to the same statutory restrictions. See discussion at “Disposition Hearings,” § 9-3.

³⁶ 42 Pa.C.S. §6340(c.1). See also Rule 373(A), Pa.R.J.C.P.

³⁷ See 18 P.S. §11.201(4) and *Comment*, Rule 370, Pa.R.J.C.P. By its terms, the Crime Victims Act provision giving victims the right to submit prior comment on the appropriateness of a consent decree applies only in personal injury or burglary cases. However, the *Comment* to Rule 370 states that “the victim(s) of the offense should be consulted” before a juvenile is placed on consent decree, without mentioning any restrictions as to the type of offense involved, and this is clearly the best practice. In general, the Rules of Juvenile Court Procedure for Delinquency Matters have dispensed with offense restrictions in extending notice and comment rights to victims in juvenile delinquency cases.

³⁸ Rule 370(B), Pa.R.J.C.P.

³⁹ 42 Pa.C.S. §6340(e).

⁴⁰ 42 Pa.C.S. §6340(d).

⁴¹ Rule 373(B), Pa.R.J.C.P.

⁴² 18 P.S. §11.201(4), Rule 311(B), Pa.R.J.C.P., and *Comment*, Rule 370, Pa.R.J.C.P.

⁴³ This 1993 publication can be ordered from the National Council at (775) 784-6012, or online at <http://www.ncjfcj.org>.

⁴⁴ *In the Interest of C.L. and P.G.*, 436 Pa.Super. 630, 648 A.2d 799 (1994).

⁴⁵ *Commonwealth v. Trimble*, 419 Pa.Super. 108, 615 A.2d 48 (1992), quoted in *In the Interest of J.R.*, 436 Pa.Super. 416, 648 A.2d 28 (1994).

⁴⁶ *In the Interest of C.L. and P.G.*, 436 Pa.Super. 630, 648 A.2d 799 (1994).

⁴⁷ *In the Interest of J.R.*, 436 Pa.Super. 416, 648 A.2d 28 (1994).

⁴⁸ This rule of thumb, along with all subsequent text material on questioning and accommodating child witnesses, has been adapted from Matthews, E., and Saywitz, K. “Child Victim Witness Manual.” *California Center for Judicial Education and Research Journal* 12(1), 1992.

⁴⁹ 42 Pa.C.S. §6336(e).

Delinquency and Disposition Determinations

9

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JCJC Standards

- Development of the Social Study
- Disposition of DUI Charges
- Administration of Restitution Funds

§ 9-1 Delinquency Dispositions in General

After finding that a juvenile in fact committed the acts alleged in the delinquency petition, the court must proceed to hear evidence regarding whether the juvenile is “in need of treatment, supervision or rehabilitation,” and if so what form that treatment, supervision or rehabilitation should take.¹

Court-ordered treatment, care and supervision should “provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies.”

Fashioning delinquency dispositions is among the most important responsibilities entrusted to juvenile court judges. In considering what dispositions to impose in individual cases, judges are necessarily given considerable freedom. The wise use of that freedom is at the heart of what is sometimes called the “art” of judging. But in Pennsylvania, all disposition decision-making must be guided by certain broad principles embedded in the Juvenile Act:

- *Individualization.* A juvenile court disposition must be “best suited to the child’s treatment, supervision, rehabilitation, and welfare.”² One-size-fits-all dispositions that simply match the penalty to the crime, without regard to individual juveniles’ needs and circumstances, may dispense a kind of justice—but it is not the kind called for in the Juvenile Act.
- *Restraint.* At least when commitment is part of the disposition, the court is required to “impose the minimum amount of confinement that is consistent with the protection of the public and the rehabilitation needs of the child.”³
- *Balance.* Above all, the disposition must “provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable the child to become a responsible and productive member of the community.”⁴

- *Community protection.* Disposition decision-making should consider immediate and long-term risks to public safety, as well as ways of managing those risks. What specific risk does the juvenile pose? What is the community’s tolerance for this kind of risk? What can the probation department do, in partnership with the juvenile’s family and community, to manage or minimize the risk? Whether or not the juvenile can be safely maintained in the community depends in part on the range and appropriateness of local dispositional alternatives and community supports available. The same juvenile might be “safely maintained” in a community with adequate monitoring resources and effective services, but not in a community that lacked them.
- *Accountability.* What consequences will be necessary in order to hold the juvenile accountable for the offense? Deliberations should focus on the nature of the harm caused to the community and the victim, the current attitude of the offender with regard to his responsibility for these matters, and the steps that would be called for to repair the harm done, restore the losses, and reinforce and deepen the sense of responsibility. Victim impact information—regarding the nature of the offense, the tangible and intangible harm suffered, the amount of restitution required, etc.—will be pertinent here. But the attitude of the offender—his acceptance of responsibility, his awareness and understanding of the consequences of his actions, his remorse—will matter almost as much.
- *Development of competencies.* What measures will enable the juvenile to lead a more law-abiding, pro-social life? The overall goal here is to help the juvenile to acquire “living, learning, working” skills, end destructive behaviors, and improve cognitive/decision-making skills. Accordingly, the court should ask what thinking or decision-making patterns or social, educational or vocational deficits contribute to the risk of persistent or escalating offending. What strengths can be built upon? What opportunities are needed to practice new skills and receive feedback? How can bonding and attachment to pro-social community entities be encouraged? (See sidebar, “Developing Competencies Through Dispositions.”)

Simply crafting delinquency dispositions with these principles in mind, however, is not enough. Juvenile court judges must make it clear to others that they have listened to the evidence and weighed the considerations called for in the law, and must do their best to explain and articulate the reasons for their dispositional choices, so that juveniles, victims, their families, and others interested in the case can understand and accept those reasons. They must actively follow up on their disposition decisions in individual cases, making it their business to know when things go wrong and why. And they must educate themselves regarding the methods, approaches, track records and availability of dispositional programs for juveniles that come before them, and take steps to expand the range of options where necessary.

DEVELOPING COMPETENCIES THROUGH DISPOSITIONS

Whatever the disposition imposed at the conclusion of a delinquency case, one of its primary purposes must be—in the oft-quoted words of the Juvenile Act—“the development of competencies to enable children to become responsible and productive members of the community.” A focus group of state and local juvenile justice practitioners convened by the Juvenile Justice and Delinquency Prevention Committee of the Pennsylvania Commission on Crime and Delinquency clarified this broad goal of disposition-making by dividing competency development into five concrete domains, each with its own distinct skills and goals:

Domain	Skills	Goal
Pro-Social	Interaction, problem-solving, impulse control	Better social interactions and problem-solving, reduced conflict
Academic	Basic reading, writing, and math skills as well as general study and learning skills	Catching up with peers in school and advancing to the highest possible level of academic achievement
Workforce	Getting jobs, keeping jobs, achieving promotions, technological skills	Economic self-sufficiency
Independent Living	Budgeting, housing, health insurance, basic living	Self-sufficient living
Moral Reasoning	Understanding how thinking and values affect behavior	Integrating the difference between right and wrong, making the right decisions for the right reasons

Source: Torbet, P. and Thomas, D. (2005) *Advancing Competency Development: A White Paper for Pennsylvania*. Pittsburgh, PA: National Center for Juvenile Justice.

§ 9-2 The Social Study and Other Dispositional Aids

Juvenile court disposition decision-making is generally informed by a social study report on the juvenile and his circumstances, prepared by the juvenile probation department. In addition, the court may order whatever evaluations of the juvenile—including psychological, psychiatric, or drug and alcohol examinations—may be needed to aid decision-making.⁵ Finally, as is discussed in “Victim Input at Disposition,” at §9-4 below, the victim may make or submit an impact statement, which must likewise be accepted and considered by the court in determining disposition.⁶

Judges should insist that social study reports include all the information they need to order complete and balanced dispositions.

Timing of Social Study Investigations

According to JCJC Standards Governing the Development of the Social Study, a social study “shall be required in every case where a juvenile has been adjudicated delinquent,” in order to provide the court with “timely, relevant and accurate data the so that it may select the most appropriate dispositional alternative.”

Under the JCJC Standards, sufficient probation staff and resources should be assigned to social study investigation and report preparation as to enable a department to meet the following reporting deadlines: ten judicial days for cases in which juveniles are detained, three weeks for all other ordinary cases, and five weeks for cases requiring out-of-state investigation. Reports should be submitted far enough in advance of the dispositional hearing to permit thorough review and evaluation. “A minimum of two full days is seen as essential for the Court’s review,” according to the Standards, “but this generalized time frame must be adjusted to judicial schedules and workloads.”

As is discussed more fully below (see “Disposition Hearings,” § 9-3), once a juvenile has been found to have committed the offenses alleged in the petition, the Juvenile Act gives the court the option to “proceed immediately” to consider the need for treatment and appropriate dispositions.⁷ But a separate Juvenile Act provision generally prohibits the court from directing advance preparation of a social study and report in a case in which the juvenile has not admitted or been found to have committed a delinquent act.⁸ Given the informed consent of a juvenile and his family in a factually disputed case, however, there appears to be no prohibition against gathering social study information prior to adjudication. This is in fact the routine practice in many Pennsylvania jurisdictions, where—either to expedite delinquency case processing generally or to minimize periods of detention—probation departments prepare social study reports for juveniles in advance of what are in effect combined hearings, in which the fact-finding stage is followed immediately, or after only a short recess, by the disposition stage. In these situations, according to the JCJC Standards, “adequate precautions must be taken to assure that information from the social study report will not be disclosed to the Court prior to adjudication.” In fact, the judge should take care not only to avoid learning the contents of such a report before making the adjudication decision, but even to avoid perceiving the *size* of the report, which could in some cases be prejudicial.

Contents of Reports

The JCJC Standards Governing the Development of the Social Study provide that every social study report should contain information on the following:

- The significance of the offense or offenses that brought the juvenile before the court
- The juvenile's behavior pattern at home, in school, and in the community
- The physical, intellectual, emotional and social development of the juvenile, with emphasis on how this development bears on the juvenile's current and future behavior
- The attitudes of the juvenile's family, school and community and how these may affect the juvenile's chances for readjustment
- Psychological, psychiatric and medical reports or evaluations where needed
- Job history and prospects
- The probation officer's overall evaluation of the juvenile's rehabilitative potential
- The probation officer's recommendation for a disposition that would simultaneously provide for accountability, protect the community, and help the juvenile acquire the skills and knowledge he needs to become a responsible and productive citizen, together with a proposed supervision plan

In addition to the items listed above, the social study should contain victim impact and community impact information, in light of which the probation officer's disposition recommendation can be assessed.

Using Social Study Information

Juvenile court judges should make the fullest possible use of information contained in social study reports, but avoid taking a passive stance toward those contents. In individual cases, judges should be alert for crucial gaps in information, signs of bias, boiler-plate assessments, and other defects or inadequacies that could negatively affect disposition decision-making. Particularly in counties in which district attorneys essentially bow out of cases after they reach the disposition stage, leaving it to probation departments to press their own recommendations, judges should be aware of the danger that victim and community interests may be slighted or overlooked because they have no forceful or disinterested advocate. (As is discussed more fully below, victims have a right under the Crime Victims Act to have a "written and oral victim impact statement detailing the physical, psychological and economic effects of the crime on the victim and the victim's family" considered as part of the predisposition report; see "Victim Input at Disposition," § 9-4.)

A THOROUGH PRE-DISPOSITION INVESTIGATION

The *Juvenile Delinquency Guidelines* of the National Council of Juvenile and Family Court Judges suggest that pre-disposition investigations should (1) contain only verifiable information that is documented as to source, (2) make use of validated assessment instruments, and (3) be keyed to “a grid that matches youth and family risks, needs, and strengths with disposition alternatives.”

According to the *Guidelines*, a thorough pre-disposition investigation should include all of the following:

- Court record information
- Information regarding abuse and neglect
- Recommendations and perspectives from defense counsel and prosecutor
- Victim information
- School history
- Service history
- Interview information from the youth and the youth’s parents/guardians, covering:
 - Living and work situation of family members
 - Significant individuals influencing youth
 - Health history
 - Trauma history
 - Substance abuse and mental health/retardation issues
 - Talents and prosocial activities
 - Attitudes regarding offense, beliefs regarding its causes, and willingness to change

Source: National Council of Juvenile and Family Court Judges. (2005). *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases*. Reno, NV: National Council of Juvenile and Family Court Judges.

§ 9-3 Disposition Hearings

As was noted above, in Pennsylvania, once the court has found that a juvenile committed the delinquent acts alleged in the petition, it may commence the disposition hearing immediately or schedule a later hearing. In any case, to the extent possible, the same judicial officer who presided over the adjudicatory hearing should preside over the disposition hearing.⁹ Like other hearings in delinquency cases, the disposition hearing must be recorded, and the recording must be transcribed if the court orders it, either party requests it, or there is an appeal.¹⁰

The first issue presented in a disposition hearing is whether the juvenile is “in need of treatment, supervision or rehabilitation” at all.

Generally, unless the parties agree otherwise, the disposition hearing must be held within twenty days of the ruling on offenses if the juvenile is in detention, or otherwise within sixty days.¹¹

Courts are authorized to order detention or other appropriate supervision of juveniles in the meantime, but scheduling priority must be given to

cases in which juveniles are detained or otherwise removed from their homes.¹²

Although the practice of dealing with the disposition issue at a separate, postponed hearing—sometimes referred to as “bifurcation”—is generally preferred by standards-setting agencies, the Juvenile Act does not mandate bifurcated hearings. In fact, there may sometimes be good reasons for proceeding immediately to the disposition issue rather than putting it off—as when the issues are not contested, the court is thoroughly familiar with the background, and all the key parties (including the victim) have already been assembled. Nevertheless, one advantage of bifurcation is that it allows the probation department time to conduct its investigation *after* the juvenile has been found to have committed the delinquent acts alleged, when a social study is clearly necessary, rather than before, when it may not be. Bifurcation serves to protect the privacy of the juvenile and his family from unwarranted intrusions, while effectively eliminating the danger that the adjudication process will be tainted by the sort of unfairly prejudicial information that social studies often uncover.

Although the Juvenile Act does prohibit courts from directing the advance (pre-adjudication) preparation of social studies in disputed cases, probation departments can and do conduct routine pre-adjudication social studies with the informed consent of juveniles and their families. In any such case, the judge must be sure to (1) refrain from looking at the social study report prior to making the finding that the juvenile committed the acts alleged in the petition and (2) allow sufficient time before the commencement of the disposition portion of the hearing to digest the information in the social study report.

Evidence

The Juvenile Act provides that in disposition hearings “all evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and relied upon to the extent of its probative value even though not otherwise competent in the hearing on the petition.”¹³ This extremely relaxed evidentiary standard—making “helpfulness” the test of admissibility—is somewhat qualified by the right of “parties or their counsel...to examine and controvert written reports so received and to cross-examine

individuals making the reports.” So, for example, counsel for the juvenile is clearly authorized to demand that the probation officer who authored a social study report submit to questioning regarding the factual basis for statements and conclusions in the report. However, insofar as information gathered by the probation officer was “given in confidence,” the law provides that the original sources “need not be disclosed” and thus cannot be effectively cross-examined. Needless to say, in weighing such information, the court should appropriately discount its probative value to reflect the fact that its origin is undisclosed and untested.¹⁴

Required Findings

The first issue presented in a disposition hearing is whether the juvenile is “in need of treatment, supervision or rehabilitation” at all. It is the court’s finding of a current need for treatment, supervision, or rehabilitation that—coupled with the finding that the juvenile committed a delinquent act—constitutes the finding of delinquency. Without it, there is no disposition to be imposed; the case must be dismissed and the juvenile discharged without restriction. However, a finding that the juvenile committed a felonious act is by itself sufficient to support a finding that he is in need of treatment, supervision, or rehabilitation, in the absence of evidence to the contrary.¹⁵

In cases in which the juvenile is found to have committed a delinquent act, resolution of the issue of his need for treatment, supervision or rehabilitation is sometimes deferred on the strength of his voluntary acceptance of a program of supervision, sanctions or services. Once the juvenile has successfully completed the program, the court may enter a finding that there is no further need for corrective measures, and dismiss the case without a delinquency adjudication. In the past, such “deferred adjudications” have in practice served the same functional purpose as consent decrees, without being subject to the same statutory restrictions—including the requirement that the attorney for the Commonwealth agree (see §8-6). However, under the Rules of Juvenile Court Procedure for Delinquency Matters, such deferrals can no longer last beyond 60 days unless both sides agree to extend the time.¹⁶

In practice, evidence bearing on the juvenile’s need for corrective measures tends also to bear directly on what *kind* of corrective measures are needed. Accordingly, both issues are generally aired at the same time, in the same hearing, and are resolved together at the conclusion of the hearing.

Under Rule 512(C), Pa.R.J.C.P., during the course of the disposition hearing, the court is required to determine on the record that the juvenile has been advised of the right to file a post-dispositional motion; the right to file an appeal; the time limits for a post-dispositional motion and appeal; the time limits within which the post-dispositional motion shall be decided; and that issues before and during the adjudicatory hearing shall be deemed preserved for appeal whether or not the juvenile elects to file a post-dispositional motion.

In conjunction with the disposition hearing, Rule 515, Pa.R.J.C.P., requires the court to determine whether the public is entitled to limited information regarding the case pursuant to the Juvenile Act and the Rules of Juvenile Court Procedure. Every disposition order must include a designation whether the case is eligible pursuant to 42 Pa.C.S. §6307(b)(1)(i) for limited public information.

Note that, in cases involving allegations of dependency as well as delinquency, the court must make additional findings before it can order a juvenile placed outside his home.¹⁷ (See sidebar, “Dependency Dispositions,” §9-9.)

Post-Dispositional Motions

Under Rule 520, Pa.R.J.C.P., parties have the right to make post-dispositional motions within ten days of the imposition of disposition. If no timely post-dispositional motion is filed, a party wishing to appeal must file a notice of appeal within thirty days of the imposition of disposition. Otherwise, a notice of appeal may be filed within thirty days of the entry of an order (1) deciding the post-dispositional motion, (2) denying the motion by operation of law, or (3) memorializing the withdrawal of the motion.

Post-dispositional motions must generally be decided within 30 days, although the time may be extended at the request of a party. A judge’s failure to decide a post-dispositional motion within the allotted time results in a denial of the motion by operation of law, and the entry of an order denying the motion on the part of the clerk of courts. An order denying a post-dispositional motion must include notice of the right to appeal, the right to counsel in the preparation of the appeal, and the time limits within which an appeal must be filed.

§ 9-4 Victim Input at Disposition

Victims of juvenile offenders have both a legal and a moral right to be heard and to have their views considered by the court at disposition. In fact, if the object of the disposition is not simply to punish the offender but to repair the harm done by the offense, the victim will be an indispensable contributor to the process.

Victim input can not only inform dispositions — it can help juveniles to understand the consequences of their actions.

The primary vehicle for victim participation at disposition is the victim impact statement. The Crime Victims Act requires that victims be given opportunities to “offer prior comment on...the disposition of a delinquent child,” and specifically to have a written victim impact statement “detailing the physical, psychological and

economic effects of the crime on the victim and the victim’s family” included in the predisposition report, to submit an oral statement at the hearing as well, and to have these statements considered by the court in determining disposition.¹⁸

Among the primary responsibilities of a juvenile court judge, in a case in which there is an identifiable victim, is to ensure that every effort is made to secure a written victim impact statement before the disposition hearing. Every Pennsylvania county should have a routine procedure for collecting impact statements from victims of juvenile crime. If a victim impact statement is not available at disposition, the judge should make it a point to find out why, and if necessary delay proceedings until one is secured.

If the victim is present in the courtroom, either at the conclusion of the fact-finding or in a separate disposition hearing, the judge should take advantage of the opportunity to convey the importance of victim input in the disposition process, to solicit victim impact evidence orally, and to amplify information that is already in a written victim impact statement. Many victims who are terse or under-responsive on paper are capable of providing much more information orally, in response to sensitive questioning, particularly once they understand the use to which their statement will be put.

The following series of general questions¹⁹ may be used to elicit or amplify oral or written victim impact information:

- How did the offense affect you and those close to you? What psychological effects did it have? What effects has it had on your relationships with others?
- What physical injuries or symptoms have you or those close to you suffered as a result of the offense?
- How did the offense affect you economically? How has your ability to work, earn a living, run a household, go to school, etc., been impacted?
- How do you and those close to you feel about having been victimized?
- What do you think should happen to the juvenile now?
- How could the juvenile help to repair the harm done to you?
- Would you like an opportunity to participate in victim-offender conferencing? (*If available. This question should be accompanied by a description of actual programs offered, and a detailed explanation of what they entail.*)
- Do you have a favorite charity, cause, or community project that you'd like to receive the benefit of the juvenile's community service work? (*If available, the victim may be offered a direct service option as well.*)
- Is there anything else you'd like to tell the court?

This list is not exhaustive, of course. Ideally, probes and follow-up questions should be improvised to fit the circumstances of the case. The victim of a crime involving personal violation, for example, such as an assault or a home burglary, may need to say more regarding the ongoing physical or emotional impact of the offense. An older victim may need to talk about feelings of fear and isolation.

All written victim impact statements should include restitution claim forms, so that victims can itemize direct financial losses.

But victim impact statements can do more than inform the court. They can help juveniles to understand and feel the consequences of their actions. Hearing and thoroughly amplifying victim impact evidence in disposition proceedings—as well as improvising court-led victim-offender interactions involving apologies or explanations—can sometimes help the juvenile as much as the victim.

Judges should bear in mind that these benefits can be had even in hearings from which victims are absent. A judge's simple reading in open court from a victim impact statement can have a profound impact on a juvenile, especially if the judge makes creative use of the text as a teaching tool—pausing for emphasis, asking pointed questions, stressing significant facts or turns of phrase. Even the barest written statement can reveal, sometimes very poignantly, the humanity of its author. This is a vital lesson that juvenile offenders must grasp before it's too late. Judges, as teachers, can help them, and should not waste this opportunity merely to spare them a little embarrassment.

Finally, judges have a responsibility not only to weigh victim input in disposition decision-making, and to choose dispositional options with victim concerns in mind, but to make it clear that they are doing so. Disposition decisions should be explained to the victim. The importance of the victim's evidence, the bearing that it had on the decision, should be explicitly acknowledged. If a disposition suggested by the victim—such as commitment—is not wise or practical, the judge should make an effort to explain why this is so. Above all, the judge must avoid leaving the impression that the harm suffered by the victim was not considered serious enough to merit a serious penalty.

What about when there is no individual victim? As far as possible, the judge in a case involving “only” institutional or communal victimization should nevertheless keep in mind many of the above considerations regarding sensitivity to victims. There may be no one person²⁰ to fill out a statement or assert rights under the Crime Victims Act—but the juvenile still needs to understand that people have suffered as a result of his actions, and the judge still needs to keep those people in mind in fashioning an appropriate disposition.

§ 9-5 Securing Parental Cooperation and Involvement

The Juvenile Act gives juvenile court judges ample power to secure the cooperation and involvement of parents in efforts to treat, supervise and rehabilitate juveniles. A juvenile's parents, guardians or custodians may be ordered to attend all delinquency proceedings related to him, required to participate in community service, restitution, counseling, therapy, educational and other programs ordered for him, and held in contempt if they fail to comply.²¹

Parents should be actively involved in the effort to turn their children around.

A separate statute even empowers juvenile court judges in delinquency proceedings to impose monetary liability directly against the parents of juveniles who commit tortious acts, up to a limit of \$1,000 per person injured or a total of \$2,500 per tortious act.²²

But efforts to bring parents into the adjudication and disposition process should not be limited to forms of compulsion. Often, what the hard-pressed parent of a delinquent juvenile needs is the court's understanding, and some tangible help. Results of one national survey suggested that few juvenile courts make adequate efforts either to encourage parental involvement in delinquency proceedings or to offer parents the help they need.²³ Among the study's recommendations:

- *Educate.* Develop written or audio-visual materials to educate parents about the court process, the importance of their involvement in court proceedings related to their children, and the critical role they play in reducing delinquency.
- *Lay groundwork.* Take affirmative steps to involve parents from the beginning. Some courts make advance phone calls and even home visits to persuade parents to attend initial delinquency hearings, for example. Others schedule telephone or in-person meetings with parents to clarify their responsibilities before or after hearings. Courts may also employ interpreters or court liaison officers to assist parents at hearings, or furnish reception areas with information tables offering brochures, fact sheets, and service referral information targeted at parents of juveniles.
- *Take down barriers.* Remove barriers that may be preventing parents from coming to court—offer help with transportation, meals, child care, etc. Conduct night court sessions so that working parents can more easily attend.
- *Ask for help.* Enlist volunteer help from parents who have cooperated with the court in their own children’s cases, as a way to assist and accommodate parents coming after them.
- *Reach out from the bench.* In hearings, engage parents from the bench—solicit their views, listen to their explanations, impress upon them how critical their cooperation is.
- *Bring in fathers.* Make special efforts to contact and secure the involvement of noncustodial parents—particularly fathers—who may wish to become more active in their children’s lives. Even fathers who have not taken much responsibility for their children in the past may be willing and able to provide help in a crisis—including financial and other support, additional structure and supervision, participation in therapy or counseling, perhaps even an alternative home—and this may be just what some juveniles embarking on delinquent careers need. At the very least, judges in delinquency proceedings should prod their probation departments to explore this avenue in appropriate cases. Information about an absent parent’s attitude, availability and willingness to help the juvenile should be routinely included in social reports, for instance.
- *Establish/expand programs.* Establish or strengthen service referral, family counseling, parent-child communication and parenting education programs. Judges might consider not only ordering parents to attend classes designed to strengthen their parenting skills, but visiting the classes themselves as a way of underscoring the importance the court attaches to parenting education.

§ 9-6 Disposition Options in General

In choosing appropriate dispositions in delinquency cases, a good juvenile court judge does much more than mechanically match offenders with a short list of programs. Every juvenile, every family, every victim, and every offense is in a sense unique. What the Juvenile Act requires at disposition is that judges acknowledge and act upon that uniqueness—that they

seek the appropriately measured judicial response to juvenile wrongdoing in every case. As has been stressed throughout this work, this involves more than anything else a blend of individualization, restraint, and balance: finding the mix of sanctions, conditions, restrictions and services that will do the best job, under all the circumstances, of protecting the

Judges should never lose sight of their ultimate responsibility for the effectiveness of the dispositions they impose.

community, imposing accountability, and addressing and correcting whatever emotional or other problems, skill deficits, or thinking errors have gotten the juvenile into trouble—all at the same time.

Of course, not every jurisdiction has an adequate range of dispositional resources available to it.

And not all available dispositional programs deliver in practice what they promise on paper. The art of disposition-making in the real world necessarily involves improvisation and compromise. But judges should beware of compromising too much, or of losing sight of their ultimate responsibility for the effectiveness of the dispositions they impose. Over time, they have a positive duty to do all of the following:

- *Become familiar with disposition programs.* Judges should familiarize themselves with the methods and approaches of the various programs to which local youth are referred, their goals and philosophies, the funding mechanisms that drive and restrain them, and their actual record of effectiveness with various kinds of offenders. Ideally, judges should visit program sites in person, meet the people that operate them, and ask and answer questions, both in and out of court.²⁴ How well do they seem to understand the youths they are working with here? What sorts of assessments do they rely on? How much contact do the decreed professionals on the letterheads have with the juveniles themselves? If it is not possible for judges to visit programs personally, they should insist that probation staff do so, that they take the same sort of skeptical interest in behind-the-scenes conditions, and that they regularly report on what they see.
- *Learn from dispositional successes and failures.* In reviewing and following up on their own dispositional orders, judges should keep careful track of what has worked and what hasn't, who has thrived in placements and who hasn't, where rehabilitative measures have succeeded and where they've failed, and what has made the difference. For better or worse, every disposition plan is a sort of experiment. Over time, many such experiments will yield advances in useful knowledge—but only to judges who are both curious and humble enough to learn from them.
- *Take the lead in disposition program planning and development.* Judges must also exercise leadership when it appears necessary to change or expand the existing continuum of disposition options—to discard traditional approaches that aren't working and to muster resources, creativity and enthusiasm for new ones. This may call for lots of activity off the bench: speaking out in the community regarding the need for change, looking into the research literature on program effectiveness, monitoring program innovations in other jurisdictions, and participating in the county's planning and budgeting process, among other things.

§ 9-7 Probation

By far the most commonly used disposition option available to Pennsylvania juvenile courts in adjudicated delinquency cases is probation supervision “under conditions and limitations the court prescribes.”²⁵ This is as it should be. Primary reliance on probation and probation officers—to work with the juvenile’s family and community to guide, control, supervise and rehabilitate juvenile offenders at home—has been a distinctive feature of the juvenile court approach to delinquency since the beginning of the juvenile court movement.²⁶ It’s one of the principal reasons we have juvenile courts.

In Pennsylvania, judges are given broad latitude in setting particular conditions, restrictions, and other individualized features of probation dispositions. The Juvenile Act mentions only a few possible conditions of probation—fine/restitution obligations and “participation in a constructive program of service or education”²⁷ (see below)—but there is an almost infinite variety of other possibilities, including curfews, restrictions on travel or association, apology letters, victim awareness classes, drug and alcohol testing, attendance at day or evening reporting centers, and participation in counseling, mentoring, tutoring, and other educational or treatment programs. Judges should make creative use of this flexibility to meet accountability, community protection, and competency development goals.²⁸

Probation conditions should be active, specific, enforceable, and clearly understood.

But this is not to say that judges should pile on the probation conditions. For one thing, extensive laundry lists of conditions tend to create enforcement problems for probation departments. And “standard” conditions and restrictions that are general enough to apply to every juvenile may in practice be meaningless. In any case, if the probation department has not yet had a chance to get a detailed assessment of the youth and his family, it may not be possible for the court to impose precisely targeted conditions at disposition. It may be more practical for judges to attempt to set goals for probationers, leaving it to probation departments to determine how those goals are to be achieved.

In general, probation conditions should be:

- *Active.* Wherever possible, probation should demand *activity* on the part of the juvenile, rather than mere compliance with passive (“thou shalt not”) conditions.
- *Specific.* The probation supervision plan should specify concrete goals and measurable behavioral objectives, with activities and action steps designed to meet them.
- *Enforceable.* The kinds of conditions that are and are not likely to be enforceable are discussed at § 10-2.
- *Clearly understood.* At disposition, judges should use active listening techniques to make sure that juveniles and parents understand both what is expected of them and what will happen in the event of noncompliance.

In a broader sense, of course, it is important that probation dispositions be clearly understood by victims and the community as well. Too often in the past, “probation as usual” has not been recognized as a real sanction for delinquent behavior. Especially for the benefit of victims in attendance at disposition hearings, judges should take care to explain what probation really is, and what purposes it is intended to serve.

§ 9-8 Restitution and Community Service

The Juvenile Act authorizes judges at disposition to order “payment by the child of reasonable amounts of money as fines, costs or restitution...as part of the plan of rehabilitation...”²⁹ A dispositional order imposing restitution must specify the specific amount of restitution to be paid, the person to whom it is to be paid, and any payment schedule determined by the court.³⁰ A separate provision permits an order of probation to “include an appropriate fine

All juvenile courts should have formal restitution and community service programs for juvenile offenders.

considering the nature of the act committed or restitution not in excess of actual damages caused by the child which shall be paid from the earnings of the child received through participation in a constructive program of service or education acceptable to the victim and the court...”³¹

Restitution and community service are the court’s most basic tools for holding juvenile offenders accountable. Requiring offenders to pay in some way for the damage they have done gives them an opportunity to understand the consequences of their wrongdoing and accept and acknowledge responsibility for it. When the payment is made to victims, it helps to compensate them for their losses and assure them of the system’s responsiveness to their needs. When it takes the form of community service, it has the potential not only to benefit the public in tangible ways but to help reconcile the juvenile with the community he has offended.

The law imposes a number of basic limitations on restitution/work service dispositions:

- *Actual damages.* A restitution obligation imposed on a juvenile offender may not exceed the actual damages caused by his acts. Information about victim losses is usually gathered from the victim impact statement.
- *Ability to pay.* Restitution must also be reasonably related to the juvenile’s ability to pay.³² Ideally, the disposition order should address the factors that limit the offender’s ability to pay—for example, requiring an unemployed and unskilled juvenile to participate in training and job readiness programs as well as to pay restitution. But every offender with an identifiable victim can be made to pay something.
- *Hours and wages.* Work service programs must comply with the Child Labor Law³³ and pay no less than the minimum wage.
- *Percentage of earnings.* Work service programs must permit juveniles to keep at least 25% of their earnings “in order to promote positive reinforcement for the work performed.”³⁴

- *Suitability.* The court must “take into consideration the age, physical and mental capacity of the child” in imposing work service as well.³⁵
- *Duration.* The Juvenile Act specifies that any work service order must be “limited in duration consistent with the limitations in section 6353 (relating to limitation on and change in place of commitment)”³⁶ —which appears to rule out service obligations that would last longer than four years or the maximum period of an adult sentence for the same offense, whichever is less.

Victim Compensation and Collection Issues/Restitution Funds

The Juvenile Act provides that, in addition to ordering a delinquent child to make restitution to a crime victim, the court may include contributions by the child to a “restitution fund” established by the president judge. In jurisdictions that have established such programs, crime victims can be reimbursed for financial losses immediately from the “restitution fund” and the delinquent child can then “work off” his obligation over time by completing a particular community or work service obligation. Under the JCJC Standards Governing the Administration of Restitution Funds, any court that collects such “contributions” from juveniles must establish a fund for the deposit of the contributions, with disbursements from the fund only to be made to reimburse crime victims in accordance with written guidelines issued by the President Judge.³⁷ The guidelines must specify that no disbursements from the fund may be made without the signatures of two persons designated by the President Judge. Funds must be audited annually, and an annual report must disclose individual and aggregate data on payments to and disbursement from the fund.

PENNSYLVANIA’S VICTIMS COMPENSATION FUND

Victims of crime in Pennsylvania, including victims of juvenile offenders, may receive compensation under the state’s Victims Compensation Program for medical and funeral expenses, the costs of counseling, and lost earnings or support caused by the crime and not reimbursed by other sources. Payments to victims are made from a restricted revenue account established by state law in 1976, funded in part by penalty assessments against offenders—including at least \$25 from every juvenile who is the subject of a consent decree or an adjudication of delinquency. The maximum award for a single injury is \$35,000, and no compensation is available for pain and suffering or for stolen or damaged property. In general, claims on the Crime Victims Compensation Fund must be filed with the Pennsylvania Commission on Crime and Delinquency’s Victims Compensation Division within one year of the crime, or two years with good cause. For more information, contact:

- *Pennsylvania Commission on Crime and Delinquency*
Office of Victims’ Services
Victims Compensation Division
P.O. Box 1167
Harrisburg, PA 17108
(800) 233-2339
<http://www.pccd.state.pa.us/>

At or around the time restitution obligations are imposed, victims of juvenile offenders should receive a clear explanation of local restitution collection and disbursement timetables and procedures. Victims should also be informed that court-ordered restitution is only one of several sources of compensation that may be available to them, including civil actions for damages and claims on the state's Crime Victims Compensation Fund. (See sidebar, "Pennsylvania's Victims Compensation Fund.")

The Juvenile Act required the court to retain jurisdiction over a juvenile who has been ordered to pay restitution, until it is paid or the juvenile reaches age 21. Unpaid restitution at that time "shall continue to be collectible" as a judgment in favor of the county probation department under the Juvenile Act provision relating to collection of restitution, court costs, fines, and penalties.³⁸ Under the JCJC Standards Governing the Collection and Disbursement of Restitution, each county must have a written policy requiring that judgments for any unpaid restitution be routinely filed when jurisdiction terminates. At least one-half of any amount collected in this manner must be applied to the payment of restitution to the victim, as opposed to fees, costs, fines, and other obligations.³⁹ However, as a matter of good practice, *all* funds collected should be applied to the restitution obligation until it is fully satisfied.

Community Service Programs

When imposing a community service disposition, whether paid or unpaid, the Juvenile Act requires that the court "specify the nature of the work" as well as "the number of hours to be spent performing the assigned tasks..."⁴⁰ Judges would do well to give some thought to the quality as well as the quantity of the work assigned. Community service has enormous potential as a way to teach juveniles valuable lessons while reintegrating them into the community they have offended. But this potential often goes unrealized, in programs that simply impose punitive make-work, without any attempt to expose juveniles to role-models and mentors or to help them acquire the skills and habits they will need to become productive citizens. In contrast, the best community service programs do all of the following:⁴¹

- *Involve community members.* Good community service programs approach actual members of the community, both to find out what work needs to be done and to enlist volunteers. They make efforts to explain and publicize their efforts in the community, through informational brochures, speaker programs, and videos. And rather than put young people to work in back offices stuffing envelopes, they assign them to high-profile work—landscaping projects or graffiti clean-up in neighborhood business districts—with backing and help from community businesses and volunteers, and contact with elder role models.
- *Do work that is valued by community.* Juveniles across Pennsylvania have cut firewood for needy local families, tended community gardens, restored trails and stream beds under the supervision of conservation groups, worked with Habitat for Humanity to build homes—in other words, done needed work, and been seen doing it.
- *Teach skills.* A good community service initiative attempts to teach work habits, routines, and marketable skills that young offenders can bring to other jobs, thereby helping to convert them from community liabilities into community assets.

- *Lead to accomplishment and recognition.* Wherever possible, juveniles performing community service should be allowed to finish what they start, so that they can see, take pride in, and be publicly recognized for what they have accomplished.

§ 9-9 Dependency Dispositions

Where appropriate, a court presiding over a delinquency case may also order any of the dispositions authorized for *dependent* children.⁴² That is, the court may order family support and other services, a transfer of temporary legal custody to a relative, or placement in a foster home, among other dispositions.⁴³ In order for the court to employ a dependency disposition, it is not necessary that the juvenile be found—or even alleged—to be a “dependent child” within the meaning of 42 Pa.C.S. §6302. However, as is discussed more fully elsewhere (see Ch. 3, above), if a juvenile being removed from his home is to qualify for federal benefits for out-of-home foster care under Title IV-E of the Social Security Act, the court must document its determination that (1) it would be contrary to the juvenile’s welfare to allow him to remain at home and (2) reasonable efforts were made to obviate the necessity of removing him from the home.

Courts in delinquency cases have the flexibility to order family support measures, temporary foster care, and other dispositions usually reserved for abused and neglected children.

§ 9-10 Commitment

The Juvenile Act authorizes a court to order an adjudicated delinquent committed to “an institution, youth development center, camp, or other facility for delinquent children operated under the direction or supervision of the court or other public authority and approved by the Department of Public Welfare” or (assuming the juvenile is at least 12) to “an institution operated by the Department of Public Welfare.”⁴⁴ However, in opting for commitment, the court may not impose more than “the minimum amount of confinement that is consistent with the protection of the public and the rehabilitation needs of the child.”⁴⁵ Moreover, it may not commit a juvenile to a facility “used primarily for the execution of sentences of adults convicted of a crime.”⁴⁶ And it may not *initially* commit a juvenile for more than “four years or a period longer than he could have been sentenced by the court if he had been convicted of the same offense as an adult, whichever is less.”⁴⁷ However, the “initial commitment may be extended for a similar period of time, or modified, if the court finds after hearing that the extension or modification will effectuate the original purpose for which the order was entered.”⁴⁸

The Juvenile Act clearly designates commitment a “last resort” disposition.

In weighing the possibility of a disposition involving residential commitment, a juvenile court judge should take into account the following basic principles:

- *Commitment is meant to be a “last resort” disposition.* The Juvenile Act dictates the strongest possible preference for noncustodial dispositions over custodial ones. Among the Act’s stated purposes is to “preserve the unity of the family whenever possible,” and to respond to delinquency through measures that operate “in a family environment whenever possible, separating the child from parents only when necessary for his welfare, safety or health or in the interests of public safety.”⁴⁹ There are good historical, practical, and fiscal reasons for this preference, which is reflected in the fact that only about one in ten original delinquency dispositions in Pennsylvania involves any sort of out-of-home placement.⁵⁰
- *Commitment should be considered only in relatively rare circumstances.* Generally, consideration of commitment is warranted only in cases involving juveniles who have committed very serious offenses, who present a clear danger to themselves or others, who have histories of failure under community supervision, whose home lives are such as to render removal imperative, or whose treatment needs necessitate specialized institutional care.
- *The least restrictive commitments should be preferred.* One of the strengths of Pennsylvania’s juvenile justice system is its exceptionally broad range of public and private residential facilities for adjudicated youth. These include small, private group homes that afford their residents a home-like atmosphere and a chance to remain in the community while working or attending school; larger and more remote residential facilities, both public and private, that provide restricted access, education, and 24-hour direct supervision; and locked, fenced facilities and secure treatment units operated by the Department of Public Welfare’s Bureau of Juvenile Justice Services. In order to make efficient use of this spectrum of options—and in keeping with the general principle behind the Juvenile Act’s specific requirement that delinquency dispositions impose “the minimum amount of confinement” necessary—a court should try to impose not only the briefest but also the least restrictive commitment that is consistent with public safety and the juvenile’s rehabilitative needs. In any case, the victim should be provided with some explanation of the nature of the facility to which the juvenile is being sent as well as the reasons for choosing it.
- *Familiarity with residential programs is indispensable to good disposition decision-making.* As has already been pointed out, juvenile court judges have an ongoing obligation to investigate the methods, programming, and success rates of residential facilities to which local youth are sent, to visit them personally if possible, and to ground all disposition decisions in a realistic view of what these facilities are capable of providing.
- *“Aftercare” or “reentry” planning must begin as soon as the commitment decision is made.* Finally, the moment the court makes a decision to place a juvenile in an institution or other residential setting, it should also set in motion the process of planning and preparing for his return to the community. Juvenile offenders cannot be “sent away” and forgotten; it is up to judges to insist that probation departments stay in close contact with institutionalized juveniles, monitor their progress throughout their

commitments, and work closely with placement facilities on transition/release planning. Neither can victims be forgotten. Under the Crime Victims Act, any personal injury crime victim who requests it is entitled to receive prior notice a juvenile offender's release from placement.⁵¹ (For a more detailed discussion of these issues, see "Monitoring and Planning for the Return of Juveniles in Placement," § 10-4.)

§ 9-11 Dispositions Involving Special Populations

Juvenile court judges are responsible for ensuring that court-involved juveniles who may be mentally ill, drug- or alcohol-dependent, or otherwise in need of therapeutic intervention are adequately screened and identified at the earliest possible point in the system, that their dispositions are based on good clinical assessments, and that providers of court-ordered treatment are held accountable for delivering the services they promise. When fashioning dispositions for juveniles with special needs of this kind, judges should not hesitate to seek the advice and guidance of the Juvenile Court Judges' Commission⁵² and of the court liaison staff of the Bureau of Juvenile Justice Services in the Department of Public Welfare.⁵³ In addition, for more information about the problems and needs of special populations of juveniles, judges may contact the specialized organizations and agencies listed at the end of each of the following sections.

It's up to judges to make sure that juveniles receive the assessment, treatment, and special services they need.

Juveniles Needing Mental Health Treatment

Research suggests that rates of mental illness among young people in the juvenile justice system are at least twice as high as those in the general population. According to one estimate, at least one in five youths who comes in contact with the system has a serious mental health disorder that impairs his functioning and requires professional treatment.⁵⁴

A special Juvenile Act provision⁵⁵ authorizes Pennsylvania juvenile courts to resort to the civil commitment procedures of the Mental Health and Mental Retardation Act of 1966⁵⁶ or the Mental Health Procedures Act⁵⁷ whenever, "at a dispositional hearing of a child found to be a delinquent or at any hearing, the evidence indicates that the child may be subject to commitment or detention under" either of those laws.

Briefly, the Mental Health and Mental Retardation Act authorizes a court, following a hearing on a petition alleging that a person is "in need of care or treatment by reason of...mental disability," to order commitment of a mentally retarded person for care and treatment.⁵⁸ The Mental Health Procedures Act likewise authorizes court-ordered examination and treatment of mentally ill people for periods of various lengths, subject to strict due process safeguards.⁵⁹

Juvenile court judges should be aware of the importance of early identification of juveniles with mental health issues. In individual cases, they are of course authorized to order physical or mental examinations of juveniles at any time during which delinquency proceedings are

pending.⁶⁰ But mental health screening must be a routine practice if it is to identify all juveniles with unmet mental health treatment needs. Fortunately, several inexpensive screening instruments are now available for use at intake, in detention, or as part of pre- or post-disposition assessments, to help identify candidates for further professional evaluation, counseling, investigation or referrals.⁶¹

For more information about the needs of court-involved youth with mental illnesses, contact the following organizations:

- *National Mental Health Association*
1021 Prince Street
Alexandria, VA 22314-2971
(703) 684-7722
(800) 969-NMHA
<http://www.nmha.org>

- *The National GAINS (Gather, Assess, Interpret, Network, Stimulate) Center for People with Co-Occurring Disorders in the Justice System*
Policy Research Associates, Inc.
262 Delaware Avenue
Delmar, NY 12054
(800) 311-4246
<http://www.prainc.com/gains/>

Drug and Alcohol-Dependent Juveniles

Because many juveniles who get into trouble with the law have substantial drug and/or alcohol problems that play a major role in their delinquency,⁶² every juvenile court should have policies providing for preliminary screening of juvenile offenders for alcohol and/or drug problems, comprehensive clinical assessments where they are needed, and effective monitoring and treatment programming. Moreover, individual judges must be alert for and ready to respond to signs of substance abuse in the behavior and backgrounds of the young people referred to them.

In fashioning dispositions for drug- or alcohol-dependent juveniles, judges should make efforts to include the following features wherever possible:⁶³

- *Frequent, random testing.*

- *Regularly-scheduled status checks/hearings.*

- *A “carrot-and-stick” motivational approach* in which good behavior (or compliance with program requirements) is rewarded and bad behavior (noncompliance) results in progressively increasing sanctions and restrictions.

- *Integrated case management* connecting juvenile offenders with the services they need throughout their entire involvement with the juvenile justice system.

- *Continuing supervision* to address the threat of relapse and/or recidivism.

In appropriate cases, Pennsylvania law also authorizes the temporary involuntary commitment of a substance-abusing juvenile without an adjudication of delinquency. Following a hearing on a petition from the parent or guardian of a juvenile who is dependent on drugs or alcohol but unable or unwilling to accept treatment services voluntarily, a juvenile court judge may order an involuntary treatment commitment of up to 45 days.⁶⁴ However, judges should exercise caution in such instances, as unnecessary treatment of casual or experimenting teenage drug and alcohol users tends to make matters worse, not better.⁶⁵

Special considerations apply to dispositions involving juveniles found to have driven under the influence of drugs or alcohol. A consent decree or disposition involving a juvenile who has violated the DUI law⁶⁶ is subject to JCJC Standards Governing an Allegation of Delinquency Involving a Charge of “Driving Under the Influence of Alcohol or Controlled Substance.” All consent decrees in such cases must include at least the following terms and conditions:

- Driver’s license suspension for six months⁶⁷
- Participation in a state-approved alcohol highway safety program (at juvenile’s cost)
- Payment of appropriate financial penalties including restitution
- Probation supervision
- Counseling or treatment where necessary

After an adjudication of delinquency in a DUI case, the probation office must at least recommend—and by implication the court must at least consider—the following as part of the disposition:

- Driver’s license suspension for one year
- Participation in a state-approved alcohol highway safety program (at juvenile’s cost)
- Payment of appropriate financial penalties including restitution
- Six months of probation supervision
- Counseling or treatment where necessary

For more information on substance abuse and young people generally, contact:

- *Substance Abuse and Mental Health Services Administration*
Center for Substance Abuse Treatment (CSAT)
5600 Fishers Lane
Rockville, MD 20857
(301) 443-5700
www.samhsa.gov/CSAT

A special curriculum designed to educate judges on drug abuse issues has been developed by the National Center for State Courts on behalf of the American Judges Association. For availability, contact:

- *National Center for State Courts*
Institute for Court Management
Education Program
300 Newport Avenue
Williamsburg, VA 23185
(800) 616-6164
<http://www.ncsconline.org/>

Juvenile Sex Offenders

Fashioning an appropriate disposition for a juvenile who has committed a sexual offense can be a challenging task. Judges should bear in mind the following:

- *Importance of assessment.* Juvenile sex offenders are not all alike. Individualized clinical assessments are essential for sorting out differences in motivation, level of deviance, and dangerousness, and in order to distinguish severe pathology from youthful exploration.⁶⁸
- *Links between abuse and victimization.* Many juvenile sex offenders report having been sexually abused themselves as children; the younger the age at which they were victimized, the greater their chances of victimizing others.⁶⁹ Accordingly, effective treatment must often address the juvenile's own victimization.
- *Family involvement.* Family therapy may also be a necessary part of treatment for juvenile sex offenders, because it is within the family that many of the offender's attitudes about sexuality, aggression, and gender have been learned.⁷⁰
- *Amenability to treatment.* Overall, juvenile sex offenders are considered more amenable to treatment than adult sex offenders.⁷¹ A significant percentage of juvenile sexual abusers will respond to therapeutic intervention, as long as it addresses more than just the sex-offending—including co-occurring disorders, impulse control problems, and thinking errors.
- *Victim, community protection.* In fashioning dispositions for juvenile sex offenders, juvenile courts must take care not to re-traumatize victims or threaten the safety of the community.⁷² However, they should know that this population tends to have a relatively low recidivism rate when properly treated; when juvenile sex offenders do reoffend, they are likely to commit non-sexual offenses.⁷³

An adjudicated juvenile sex offender who is ordered into placement and remains there at age 20 may be subject to extended involuntary civil commitment as a "sexually violent" person, under special provisions enacted in 2004.⁷⁴ Commitment review procedures applicable in such cases are discussed at §10-4.

For more information on juvenile sex offenders, contact:

- *National Center on Sexual Behavior of Youth
Center on Child Abuse and Neglect*
Department of Pediatrics
University of Oklahoma, Health Sciences Center
PO Box 26901, CHO 3B3406
Oklahoma City, OK 73190
(405) 271-8858
<http://www.ouhsc.edu/>.

- *Center for Sex Offender Management*
c/o Center for Effective Public Policy
8403 Colesville Road, Suite 720
Silver Spring, MD 20910
(301) 589-9383
<http://www.csom.org>

Females

The proportion of girls arrested, detained and processed in juvenile court for all sorts of crimes has been climbing steadily in Pennsylvania since 1994.⁷⁵

Disposition decision-making involving girls should take into account the likelihood that the causes of their delinquent behavior may be distinctively different from those of boys. Research suggests that girls' offending may be closely linked to their own victimization: histories of emotional, physical, and/or sexual abuse, unstable homes, serious physical health problems, and unmet psychological treatment needs are overwhelmingly common among court-involved girls.⁷⁶ In fact, researchers are now attempting to trace a link between delinquency among girls and post-traumatic stress disorder (PTSD), a lasting psychiatric illness that sometimes follows life-threatening events and is associated with impulse control problems, substance abuse, school failure, and other self-destructive behavior patterns.⁷⁷ In Pennsylvania, a special treatment curriculum has been developed to address PTSD in female delinquent PTSD victims in residential placements.⁷⁸

For information about the PTSD treatment curriculum for girls in Pennsylvania's juvenile justice system, contact:

- *Deborah L. Ciocco*
Pennsylvania PTSD Project Coordinator
2771 South Grande Blvd.
Greensburg, PA 15601
(724)830-1815.
dciocco@co.westmoreland.pa.us

Further information about programming for girls in the juvenile justice system is available from:

- *The Gender-Programming Training and Technical Assistance Initiative*
Greene, Peters, & Associates
1018 16th Avenue, North
Nashville TN 37208
(615) 327-0329

Juvenile Fire-Setters

Arson is the only major crime category in which *most* of those arrested are juveniles.⁷⁹ While curiosity and the desire to experiment with fire develop naturally in the majority of normal children, researchers have also uncovered correlations between juvenile fire-setting and stress, family dysfunction, abuse, and chronic neglect.⁸⁰ A judge weighing disposition in a juvenile arson case, especially one involving a repeat offender, must consider the possibility that this is more than a particularly destructive form of vandalism—that the juvenile may be using the power of fire, consciously or unconsciously, as a kind of alarm bell.⁸¹ Accordingly, an essential component of the juvenile justice response to fire-setting should be screening, evaluation and referral for mental health treatment.

Unfortunately, most programs for juveniles—particularly residential ones—will not accept juvenile fire-setters. For help in finding appropriate resources in cases of this kind, contact the Juvenile Court Judges' Commission at (717) 787-6910.

The following organizations can provide further information on the treatment and monitoring of juvenile fire-setters:

- *Federal Emergency Management Agency*
United States Fire Administration
16825 S. Seton Ave.
Emmitsburg, MD 21727
(301) 447-1000
<http://www.usfa.fema.gov/>
- *National Association of State Fire Marshals*
P.O. Box 8778
Albany, NY 12208
(518) 482-5588
(877) 99NASFM
<http://www.firemarshals.org/>

ENDNOTES

¹ 42 Pa.C.S. §6341(b). Technically, as is discussed in the previous chapter, it is the determination that the juvenile has committed a delinquent act *and* is in need of treatment, supervision or rehabilitation that qualifies him as a “delinquent child.”

² 42 Pa.C.S. §6352(a).

³ 42 Pa.C.S. §6352(a).

⁴ 42 Pa.C.S. §6352(a).

⁵ Rule 513(B), Pa.R.J.C.P.

⁶ Rule 513(C), Pa.R.J.C.P.

⁷ 42 Pa.C.S. §6341(b).

⁸ 42 Pa.C.S. §6339(a).

⁹ See Comment, Rule 512, Pa.R.J.C.P.

¹⁰ Rule 512(B), Pa.R.J.C.P.

¹¹ 42 Pa.C.S. §6341(b). Rule 510, Pa.R.J.C.P., allows for continuances beyond this initial twenty-day period, but specifies that, in cases in which the juvenile is detained, any additional continuance granted “shall not exceed twenty days.”

¹² 42 Pa.C.S. §6341(e).

¹³ 42 Pa.C.S. §6341(d). To the same effect, see Rule 512, Pa.R.J.C.P.

¹⁴ One commentator has argued that an *in camera* showing of the actual need for confidentiality should be required in any case in which the Commonwealth attempts to introduce information without disclosing its source. See McCarthy, Pa. Juvenile Delinquency Prac. & Proc. (4th Ed.), § 12-4.

¹⁵ 42 Pa.C.S. §6341(b).

¹⁶ Rule 409(B)(2) and (C), Pa.R.J.C.P.

¹⁷ 42 Pa.C.S. §6351(b).

¹⁸ 18 P.S. §11.201(5). To the same effect, see Rules 512(A)(2) and 513(C), Pa.R.J.C.P.

¹⁹ These questions are adapted from various sources, including *How to be Victim Friendly in Juvenile Court: Obtaining Victim Impact Statements*, one of a series of brochures on victim issues produced by the National Council of Juvenile and Family Court Judges; the National Center for Victims of Crime’s *Impact Statements: A Victim’s Right to Speak, a Nation’s Responsibility to Listen* (available online at <http://www.ojp.usdoj.gov/ovc/>); and the Victim Impact Statement form used by the Juvenile Probation Office of Blair County, Pennsylvania.

²⁰ However, judges should not overlook the possibility that community representatives may be available to present what is in effect “victim impact” evidence.

²¹ 42 Pa.C.S. §6310.

²² 23 Pa.C.S. §5501 et seq.

²³ Davies, H., and Davidson, H. (2002) *Parental Involvement Practices of Juvenile Courts*. Washington, DC: American Bar Association Center on Children and the Law.

²⁴ Juvenile court judges from one Pennsylvania county make nine court-sponsored trips per year to visit and inspect placement facilities used by the county to house delinquent youth.

²⁵ See 42 Pa.C.S. §6352(a)(2). In the year 2004, for example, 18.7% of all original juvenile dispositions ordered in Pennsylvania consisted of straight probation; if you add cases in which probation was likely a central feature of the disposition, such as consent decree (17.5%) and informal adjustment (15.7%) cases, probation dispositions were probably imposed in a majority of juvenile cases that year. See Juvenile Court Judges’ Commission. (2006). *Pennsylvania Juvenile Court Dispositions 2004*. Shippensburg, PA: Juvenile Court Judges’ Commission.

²⁶ Griffin, P., and Torbet, P. (Eds.) (2002). *Desktop Guide to Good Juvenile Probation Practice*. Pittsburgh, PA: National Center for Juvenile Justice.

²⁷ 42 Pa.C.S. §6352(a)(6).

²⁸ In Pennsylvania, many juvenile court judges also have the option of ordering juveniles to be supervised by probation officers right in their schools.

²⁹ 42 Pa.C.S. §6352(a)(5). In addition, 18 P.S. §11.1101 of the Crime Victims Act requires that a juvenile

who is the subject of a consent decree or an adjudication of delinquency “shall pay costs of at least \$25,” all of which must go into the Crime Victims Compensation Fund.

³⁰ Rule 515, Pa.R.J.C.P.

³¹ 42 Pa.C.S. §6352(a)(6).

³² See *Tate v. Short*, 401 U.S. 395, 91 S. Ct. 668, 28 L. Ed. 2d 130 (1971).

³³ 43 P.S. §41 et seq.

³⁴ 42 Pa.C.S. §6352(a)(6).

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ 37 Pa. Code §§200.501-200.514.

³⁸ See 42 Pa.C.S. §9728.

³⁹ 42 Pa.C.S. §9728(g.1).

⁴⁰ 42 Pa.C.S. §6352(a)(6).

⁴¹ Maloney, D., and Bazemore, G. (December 1994) “Making a Difference—Community Service Helps Heal Troubled Youths.” *Corrections Today* 56(7).

⁴² 42 Pa.C.S. §6352(a)(1).

⁴³ See 42 Pa.C.S. §6351.

⁴⁴ 42 Pa.C.S. §6352(a)(3) and (4).

⁴⁵ 42 Pa.C.S. §6352.

⁴⁶ 42 Pa.C.S. §6352(b).

⁴⁷ 42 Pa.C.S. §6353(a).

⁴⁸ 42 Pa.C.S. §6353(a).

⁴⁹ 42 Pa.C.S. §6301.

⁵⁰ Juvenile Court Judges’ Commission. (2006). *Pennsylvania Juvenile Court Dispositions 2004*. Shippensburg, PA: Juvenile Court Judges’ Commission.

⁵¹ 18 P.S. §11.201(8.1).

⁵² Each year, the JCJC publishes an extensive directory of programs and services available to juveniles in Pennsylvania, with capsule descriptions, information on costs and capacities, pre-placement requirements and admission restrictions. To reach the administrative offices of the JCJC in Harrisburg, call (717) 787-6910.

⁵³ The Bureau is located within the Department of Public Welfare’s Office of Children, Youth and Families. Its Harrisburg offices can be contacted at (717) 787-9532.

⁵⁴ Cocozza, J., and Skowrya, K. (April 2000). “Youth with Mental Health Disorders: Issues and Emerging Responses.” *Juvenile Justice* VII (1). Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

⁵⁵ 42 Pa.C.S. §6356.

⁵⁶ 50 P.S. §4101 et seq.

⁵⁷ 50 P.S. §7101 et seq.

⁵⁸ See 50 P.S. §4406.

⁵⁹ See 50 P.S. §7303, 7304.

⁶⁰ 42 Pa.C.S. §6339.

⁶¹ For example, the Massachusetts Youth Screening Instrument-Second Version (MAYSI-2) is a widely used 52-item screen that takes only about ten minutes to administer, but is effective in detecting signs of a range of mental/behavioral problems, including suicidal thinking, potentially abusive alcohol or drug use, anger and short-term aggression risk, depression/anxiety, physical symptoms associated with distress, thought disorders, and exposure to trauma. For more information and technical assistance, contact the National Youth Screening Assistance Project, University of Massachusetts Medical School, 55 Lake Avenue North, Worcester, MA 01655, (508) 856-3625.

⁶² The link between adolescent substance use and juvenile delinquency has been well-documented. For example, drug users between the ages of 12 and 17 are more than 5 times as likely to shoplift, steal, or vandalize property as non-users, 9 times as likely to steal cars or commit armed robbery, and 19 times as likely to break and enter or burglarize. See Menard, S. (1998). *Prevalence and Frequency of Substance Abuse and Delinquent Behavior*. (Paper presented to the Juvenile Justice and Substance Abuse National Planning Meeting, Robert Wood Johnson Foundation, Annapolis, MD.)

⁶³ See VanderWaal, C.J., McBride, D.C., Terry-McElrath, Y.M., and VanBuren, H. (2001). *Breaking the Juvenile Drug-Crime Cycle: A Guide for Practitioners and Policymakers*. Washington, DC: National Institute of Justice. Available online: <http://www.ncjrs.org/>.

⁶⁴ 71 P.S. §1690.112a.

⁶⁵ See National Opinion Research Center. (1998). *Services Research Outcomes Study*. Rockville, MD: Office of Applied Studies, Substance Abuse and Mental Health Services Administration. According to the authors of this large-scale treatment outcome study, “No statistically significant decreases were detected for adolescents in overall use of any illicit drug during the five years after treatment or in the specific use of marijuana, cocaine, and heroin. However, adolescents significantly increased their use of crack after treatment...” (emphasis added). Adolescents examined in the study also did more drinking, the authors found, “showing a 13 percent increase in alcohol abuse...following treatment.” These findings may show the effects of exposure to seriously delinquent peers, widespread use of inappropriate therapies, and the practice of coercing youth into treatment without adequate prior assessment; according to SAMSHA figures, more than half of all adolescents entering substance abuse treatment are not referred there by clinicians, but ordered there by justice and school officials. Office of Applied Studies, Substance Abuse and Mental Health Services Administration. (2001). “Coerced Treatment Among Youths: 1993 to 1998.” *The DASIS Report*. Online at <http://www.drugabusestatistics.samhsa.gov/>.

⁶⁶ 75 Pa.C.S. §3731.

⁶⁷ Although driver’s license suspension is not specifically included among the delinquency disposition options listed in 42 Pa.C.S. §6352, “among the probationary limitations that the court may require would be suspension or modification of motor vehicle operating privileges.” 42 Pa.C.S. §6352, Official Comment.

⁶⁸ Righthand, S., and Welch, C. (March 2001). *Juveniles Who Have Sexually Offended: A Review of the Professional Literature*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

⁶⁹ Kahn, T., and Chambers, H. (1991). “Assessing Reoffense Risk with Juvenile Sexual Offenders: Clinical Characteristics and Treatment Issues.” *Sexual Abuse: A Journal of Research and Treatment* 9:187-9. Ryan, G., Lane, S., Davis, J., and Issac, C. (1987). “Juvenile Sex Offenders: Development and Correction.” *Child Abuse and Neglect* 11:385-95.

⁷⁰ American Academy of Child and Adolescent Psychiatry, Work Group on Quality Issues. (1999). “Practice Parameters for the Assessment and Treatment of Children and Adolescents Who Are Sexually Abusive of Others: AACAP Official Action.” *Journal of the American Academy of Child and Adolescent Psychiatry* 38 (12(Supplements)): 55S-76S.

⁷¹ *Ibid.*

⁷² Center for Sex Offender Management. (2000). *Engaging Advocates and Other Victim Service Providers in the Community Management of Sex Offenders*. Silver Spring, MD: Center for Sex Offender Management.

⁷³ Worley, J., and Curwen, T. (2000). “Adolescent Sexual Offender Recidivism: Success of Specialized Treatment and Implications for Risk Prediction.” *Child Abuse and Neglect: The International Journal* 24:965-982. National Council on Crime and Delinquency. (1996). *Juvenile Sex Offenders: Characteristics, System Response and Recidivism*. Washington, DC: National Council on Crime and Delinquency.

⁷⁴ 42 Pa.C.S. §§6401-6409.

⁷⁵ Zawacki, S. (2005). “Girls’ Involvement in Pennsylvania’s Juvenile Justice System.” *Pennsylvania Juvenile Justice Statistical Bulletin*. Pittsburgh, PA: National Center for Juvenile Justice.

⁷⁶ Acoca, Leslie. (2001). “Investing in Girls: A 21st Century Strategy.” *Juvenile and Family Justice Today* 10(1): 12-19.

⁷⁷ Cauffman, E., Feldman, S., Waterman, J., and Steiner, H. (1998.) “Post-Traumatic Stress Disorder Among Female Juvenile Offenders.” *Journal of the American Academy of Child and Adolescent Psychiatry* 37:1209-1216.

⁷⁸ Griffin, P. (2001). “Painful Secrets: Helping Traumatized Girls in Pennsylvania’s Juvenile Justice System.” *Pennsylvania Progress*. Pittsburgh, PA: National Center for Juvenile Justice. See also Griffin, P. (2002). “The Post-Traumatic Stress Disorder Project...Continued.” *Pennsylvania Progress*. Pittsburgh, PA: National Center for Juvenile Justice.

⁷⁹ Snyder, H. (2005). *Juvenile Arrests 2003*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

⁸⁰ United States Fire Administration. *Arson and Juveniles: Responding to the Violence*. Available online: <http://www.usfa.fema.gov/>.

⁸¹ National Association of State Fire Marshals. (July 2000). *Juvenile Firesetter Intervention Research Project: Final Report*. Available online: <http://www.firemarshals.org/>.

Post-Disposition Review

10

Summary of Contents

This chapter treats disposition follow-up and review procedures, including probation revocations, routine placement reviews, modifications and transfers, home pass authorizations, and case terminations.

- § 10-1. Disposition Review in General
- § 10-2. Probation Enforcement
- § 10-3. Probation Modification and Revocation
- § 10-4. Monitoring and Planning for the Return of Juveniles in Placement
- § 10-5. Termination of Court Supervision

Key Statutes

- 42 Pa.C.S. §6324 (taking into custody for probation violation)
- 42 Pa.C.S. §6351 (permanency hearings)
- 42 Pa.C.S. §6353 (extensions or modifications of commitments, routine commitment reviews, transfers from facilities)
- 42 Pa.C.S. §6401-6409 (court-ordered involuntary treatment of certain sexually violent persons)
- 18 P.S. §11.201 (personal injury victim's right to submit comment or testify at disposition review, right to notice of and opportunity to object to transfers)

Rules

- Rule 600, Pa.R.J.C.P. (summons and notice of the commitment review, dispositional review, and probation revocation hearing)
- Rule 605, Pa.R.J.C.P. (detaining juvenile for modification of the dispositional order or violation of probation)
- Rule 610, Pa.R.J.C.P. (dispositional and commitment review)
- Rule 612, Pa.R.J.C.P. (modification or revocation of probation)
- Rule 613, Pa.R.J.C.P. (termination of court supervision)

JCJC Standards

- Home Passes to Delinquent Children in Placement
- Aftercare Services

§ 10-1 Disposition Review in General

The issuance of a consent decree or disposition order does not terminate a juvenile court judge's responsibility in a delinquency case. If the court has imposed conditions or restrictions on the juvenile, it must stand ready to enforce them. If it has ordered services or treatment to be provided, it must ensure that

Juvenile court judges cannot neglect to follow up on their own disposition orders.

providers actually deliver them. And if it has caused the juvenile to be removed from his home and placed in a residential facility, it must actively oversee the monitoring of his rehabilitative progress and the planning for his successful return. Juvenile court judges cannot neglect to follow up on their own disposition orders without

neglecting their basic mission—to protect the community, to impose accountability for wrongdoing, and to do what is necessary to turn juvenile offenders' lives around.

This may mean giving priority—in scheduling and otherwise—to addressing probation violations. It may mean taking a keener and more skeptical interest in the assessments and reports of service providers regarding individual juveniles—raising more questions, recalling more individual circumstances, probing deeper when provider representatives seem to fall back on the same boilerplate language for youth after youth. It may mean taking the time and trouble to visit placement facilities used by the court, to see first-hand how they are run and what they are like. But in the long run, it must mean being willing to participate in program planning and budgeting and to lead ongoing efforts to evaluate, expand and improve the disposition options available to the court at the local and state level.

Review Procedures

The Pennsylvania Rules of Juvenile Court Procedure for Delinquency Matters prescribe the following uniform procedures for post-disposition proceedings in delinquency cases:

- *Summons and notice.* The content, form and service requirements applicable to summonses and notices generally (see § 7-5) also apply to a summons and notice of a commitment review, dispositional review, or probation revocation hearing.¹ A summons must be issued to the juvenile and the juvenile's guardian before any such hearing, and the court must provide notice to the attorney for the Commonwealth, the juvenile's attorney, the juvenile probation office, and (if applicable) the placement facility. The attorney for the Commonwealth or the juvenile probation office should also notify the victim of the hearing.²

- *Detention pending review.* The Rules authorize the detention of the juvenile in connection with the filing (or anticipated filing within 24 hours) of a motion for modification of a dispositional order or the filing of a motion alleging a probation violation, subject to the general notice, time, and manner of hearing requirements applicable to detention generally (see § 5-3).³ In such a case, a detention hearing—in which the court would be called upon to determine (1) whether there is probable cause for the modification or for the violations of probation alleged and (2) if detention is warranted—must be held within 72 hours.⁴ The disposition review or probation revocation hearing on a juvenile who is detained must be held within ten days, unless a further delay is caused by the juvenile or the juvenile’s attorney or is necessary to secure additional evidence.⁵
- *Review hearings.* The court may schedule a hearing reviewing a disposition “at any time,” but must do so “at least every six months” when the juvenile has been removed from the home.⁶ Following the filing of a motion for modification of the dispositional order, or a discharge from a placement facility (which may include an emergency transfer to a detention facility pending reconsideration of the disposition), the juvenile must be given a statement of reasons for the request or discharge, and a review hearing must be held within twenty days.⁷ If the parties agree, a review hearing for a juvenile in a remote facility may be conducted “by teleconferencing, two-way simultaneous audio-visual communication, or another similar method,” as long as the juvenile and the juvenile’s attorney are able to communicate confidentially prior to and during the hearing.⁸

§ 10-2 Probation Enforcement

If probation is to be an effective disposition—if it is to teach accountability to juveniles under supervision, positively influence the course of their lives, and ensure both the short- and the long-term safety of the community while doing so—it must have “teeth.” There are a number of steps a court can take to help ensure that its probation orders have teeth:

- *Stick to a limited number of firm, enforceable, pertinent conditions.* As has already been noted (see § 9-7), one basic error many courts make is to impose a long list of “standard” conditions and restrictions as part of every probation disposition—inevitably including some that are meaningless, some that are unsuitable, and some that will get no enforcement priority at all. The better practice is to specify concrete, individualized goals related to community protection, accountability, and competency development, and to concentrate on monitoring progress toward those goals.
- *Clearly signal the court’s determination to enforce compliance.* This may mean taking extra time at the conclusion of the disposition hearing to explain the consequences of noncompliance to the juvenile and his family, rather than leaving it to the probation department.

If probation is to be effective and beneficial, it must have “teeth.”

- *Determine sanctions for noncompliance in advance.* Consider specifying suitable sanctions in the probation order itself, both to clarify consequences and to save an enforcement step.
- *Treat noncompliance as a learning/teaching opportunity.* Juveniles who violate probation conditions—missing restitution payments, skipping appointments—may be sending signals; where possible, judges should make some effort to find out what the signals might mean. Likewise, any sanction the court imposes as a consequence will be more effective if its purposes are communicated to the juvenile.
- *Use a graduated approach to sanctioning.* It is not practical or even desirable to respond to every infraction with probation revocation or institutionalization. Every jurisdiction should have a continuum of intermediate sanctions for probation violations—additional community work service, earlier curfews, stricter levels of supervision—that can be gradually increased in intensity as infractions continue.⁹
- *Find creative/flexible ways to respond swiftly to infractions.* One county in Pennsylvania operates an “enforcement court” that effectively diverts probation violators from full-scale revocation proceedings. Enforcement court can deal with alleged probation violations within a few days of their occurrence, and the sanctions it hands out—usually extra community service—can be served immediately. Another county uses probation administration hearings, presided over by the assigned probation officer and a probation supervisor, to send “wake-up calls” to uncooperative probationers. Specific sanctions to be imposed for violating probation conditions—usually attendance at a structured evening program—have been pre-authorized by the court, as part of its disposition order.

§ 10-3 Probation Modification and Revocation

A motion to modify or revoke probation must be filed in accordance with the filing and service requirements applicable to motions in delinquency cases generally (see § 7-4).¹⁰ If the juvenile is detained pending the hearing, it must be held within ten days of the detention hearing (which in turn must have been held within 72 hours of the initial detention).¹¹ Otherwise, the hearing on the proposed modification or revocation must be held “promptly.”¹²

Probation should not be revoked except for serious violations, and then only after a fair hearing.

If the court grants the motion to modify/revoke, it must state the grounds for the modification and issue another dispositional order setting forth the new terms and conditions.¹³

While neither the Juvenile Act nor the Rules contain any further guidance regarding the conduct of modification/revocation hearings, the

U.S. Supreme Court has held that due process requires that the defendant in a probation or parole revocation proceeding be given an opportunity to present evidence, to confront and cross-examine witnesses, and to show that, even if a violation occurred, the circumstances do not warrant revocation.¹⁴

As noted above, a juvenile court should not have to choose between punishing every instance of noncompliance with revocation or ignoring it entirely. An array of swift and certain sanctions, proportional to various offense levels and progressively increasing in seriousness, should be available to choose from—with revocation and institutional commitment at the end of the line.¹⁵

§ 10-4 Monitoring and Planning for the Return of Juveniles in Placement

The Juvenile Act requires that courts keep track of juveniles they have placed in residential facilities primarily by means of routine disposition review hearings of various kinds:

- *Commitment reviews.* As was noted above, although the court has the power to hold hearings to review its dispositions at any time, it must hold disposition review hearings “at least every six months” for a juvenile who has been removed from the home.¹⁶
- *Permanency hearings.* Likewise, permanency hearings are required every six months for *dependent* children in court-ordered placement, and also for delinquent youth in placement to ensure federal funding under title IV-E of the Social Security Act (see discussion below, under “Disposition Review/Permanency Findings Required”).¹⁷
- *Extension/modification hearings.* The court must hold a hearing before extending or modifying a commitment order in order to “effectuate the original purpose for which the order was entered.”¹⁸
- *Facility transfer hearings.* Whenever any institution holding a committed juvenile seeks to transfer him to a *more* secure facility, the committing court must hold a hearing on the proposed transfer.¹⁹ Likewise, when a secure institution gives notice that a juvenile’s progress warrants a transfer to a *less* secure facility, and either the committing court or the attorney for the Commonwealth objects, the court must hold a hearing on the propriety of the transfer. Finally, when any facility seeks over the committing court’s objection to transfer a juvenile to a group home, foster home, or other less secure placement, the court must hold a hearing.

Courts must actively monitor the rehabilitative progress of juveniles in placement.

Well-run courts use opportunities presented by these hearings to measure the rehabilitative progress of the juvenile in placement, review the necessity of continued placement, address any obstacles that may still stand in the way of a return to the community, and ensure that there is a workable reintegration plan in place.

Disposition Review Issues

At disposition review/permanency hearings, juvenile court judges should have basic questions for all of the principal parties:

- *The Juvenile Probation Department.* How closely has the probation officer kept in touch with the juvenile since the last hearing? What contact has been maintained with the juvenile's family? What steps have been taken to prepare them for the juvenile's return? To what extent has the groundwork been laid for the transition? For instance, have there been home passes? Will the juvenile return to school, and if so where? The effect of this sort of questioning over time should be to encourage the probation department to step up monitoring and transition/reentry planning across the board.
- *The Residential Program.* What assessments have been performed on the juvenile, what services has he received, and how has he responded? What has been done to help him acquire skills and correct problem areas? How has he been encouraged to grow, to develop himself, to accept responsibility for his life? Here again, the closer and more searching the questioning, the more incentive providers will have to take active steps in these areas.
- *The Juvenile.* What is the juvenile's own plan? What has he learned in placement? What would he do differently? Why should he be trusted? What would he say to his victim now? A hearing in which the juvenile is present is a golden opportunity for the court to make its own independent (albeit rough) assessment of his progress, as well as to give him a sense of the court's interest in him and concern for his future.

Note that exploring these issues thoroughly takes time. Unfortunately, many courts schedule so little time for disposition review, especially when release is not imminent, that the hearings cannot help but be perfunctory and superficial. Judges should see to it that the scheduling practice is otherwise in their own courts.

Disposition Review/Permanency Findings Required

The Juvenile Act mandates "permanency hearings" every six months for *dependent* juveniles in court-ordered placement, in order to meet statutory requirements for federal reimbursement of foster care expenditures.²⁰ In practice, however, because federal foster care reimbursement funds under Title IV-E also pay for most of the costs of private sector placement services for *delinquent* juveniles in Pennsylvania who are committed to non-Medicaid-reimbursable placement facilities, juvenile courts must meet Title IV-E placement review requirements for all IV-E-eligible juveniles, whether dependent or delinquent. The Juvenile Court Judges' Commission has disseminated model orders for the use of juvenile courts in reviewing delinquency commitments of IV-E-eligible youths. The *Model Disposition Review/Permanency Hearing Determinations and Order (Delinquent Child)*²¹ contemplate that each disposition review hearing involving such a youth will have a permanency component—that is, that it will explore such issues as the continued necessity of out-of-home placement, the appropriateness of the current placement, and the appropriateness and feasibility of the "permanency plan" for the youth.

Formal findings on the following issues must be made at the disposition review/permanency hearing:²²

- *The continued necessity of out-of-home placement.*
- *The appropriateness of the current placement.*
- *The safety of the juvenile.*
- *The juvenile's progress* toward meeting the original goals of the disposition, including:
 - *Community safety.* The extent to which the juvenile has made progress towards meeting goals that were originally set for the protection of the community, and whether such goals need to be revised.
 - *Accountability.* The extent to which the juvenile has made progress towards meeting the original goals related to accepting responsibility for the offense and acting to repair the harm caused by it, and whether such goals need to be revised.
 - *Competency development.* The extent to which the juvenile has made progress towards meeting goals related to the development of skills needed to become a law-abiding, productive adult, and whether such goals need to be revised.
- *Permanency plan findings.* Briefly, the permanency plan is the long-term plan for how/where the juvenile is going to live (independently, with biological parents, with foster or adoptive parents, etc.) when the current court-ordered arrangements come to an end. The juvenile probation department and/or the county Children and Youth agency must devise such a permanency plan for delinquent juveniles whose placement costs are to be reimbursed by the federal government, and the court must make findings that include (1) the plan's current appropriateness and feasibility, (2) the extent to which the plan has been complied with, and (3) the likely date by which the permanency goal will be achieved. In addition, the court is required to consult with the child regarding the permanency plan in a manner appropriate to the child's age and maturity. If the court does not consult personally with the child, the court shall ensure that the views of the child regarding the permanency plan have been ascertained to the fullest extent possible and communicated to the court by the guardian ad litem, the child's counsel, the court-appointed special advocate, or other person as designated by the court.²³ (For further details, see the discussion in Chapter 3.)

Well-run courts take advantage of disposition review hearings to assess rehabilitative progress and step up reentry planning.

Home Passes

The JCJC Standards Governing Home Passes to Delinquent Children in Placement lay out detailed procedures that should be adopted for authorizing and arranging short-term home visits for committed juveniles. Such visits are essential to an orderly transition from institutionalization to freedom and responsibility. However, home passes should be granted

only with due consideration and appropriate safeguards for the public and advance notification to any victim who has requested it.

Victim Input at Disposition Review, Transfer, and Release Hearings

The Crime Victims Act gives victims of personal injury crimes the right to be notified of disposition review hearings at their request, to submit written comment or present oral testimony at such hearings, and to have their views considered by the court.²⁴ The law also guarantees any personal injury crime victim who requests it the right to receive prior notice and submit a written objection whenever the premature step-down or release of the juvenile offender is proposed.²⁵ Here again, as at disposition, the judge is ultimately responsible for ensuring that victims' notice and comment rights have substance and effect. At every disposition review in which a victim does not appear or submit written comments, it is up to the judge to inquire whether the victim requested advance notice of disposition review hearings, and if so whether the required notice was provided, whether efforts were made to solicit written input, whether assistance was offered, etc.²⁶ In passing on proposed releases or step-down transfers, the judge should make the same inquiries regarding the victims' wishes.

At hearings in which victims are present, the judge should welcome them and solicit their full participation using the basic techniques that have already been described in connection with disposition hearings (see "Victim Input at Disposition," § 9-4). And in disposition review decision-making, whether or not the victim has provided special input, the judge must carefully consider the nature of the offense and its impact on the victim in determining what is needed to render the juvenile accountable and what measures may be necessary to protect the safety of the public.

Special Disposition Review Procedures for Sexually Violent Delinquents

Juveniles committed to placement following adjudication for certain sex offenses may be subject to special disposition review procedures, pursuant to a law providing a civil commitment alternative to discharge at age 21 for "sexually violent delinquent children" in need of continued involuntary treatment.²⁷

The procedure applies to any juvenile who (1) has been adjudicated delinquent for an act of sexual violence that, if committed by an adult, would constitute rape, involuntary deviate sexual intercourse, sexual assault, indecent assault, aggravated indecent assault, or incest, (2) was committed to a placement facility as a consequence and remains there upon reaching 20 years of age, and (3) is currently "in need of involuntary treatment due to a mental abnormality or personality disorder which results in serious difficulty in controlling sexually violent behavior that makes the person likely to engage in an act of sexual violence."²⁸ A juvenile who meets the first two criteria is subject to an assessment by the State Sexual Offenders Assessment Board.²⁹ For purposes of the assessment, the Board is entitled to inspect the juvenile court files and records pertaining to the juvenile³⁰ and to have the assistance of the juvenile probation officer in obtaining access to the juvenile.³¹ However, if copies of files are provided to the Board, the substance of any confidential communication from the juvenile to a psychiatrist or licensed psychologist made in the course of treatment should first be redacted.³²

The Board must provide the committing court with the results of its assessment no later than 90 days after the juvenile's 20th birthday.³³ Following receipt of an assessment concluding that the juvenile is need of involuntary treatment, but no later than 180 days before the juvenile's 21st birthday, the court must hold a disposition review hearing to determine whether—considering “the assessment, treatment information and any other relevant information”—a prima facie case has been made that the juvenile is need of involuntary treatment.³⁴ The juvenile's attorney, the juvenile probation officer, the district attorney and the county solicitor or designee are all entitled to copies of the assessment and all must be present at the hearing. If at the conclusion of the hearing the committing court finds that a prima facie case has been made for continued involuntary treatment, it must direct the county solicitor or designee to file a petition for court-ordered involuntary treatment.³⁵

Wherever the juvenile may be in custody, the court having personal jurisdiction for purpose of proceedings under the court-ordered involuntary treatment law is the county Court of Common Pleas that entered the original delinquency commitment order.³⁶ The petition commencing these proceedings must set forth facts constituting reasonable grounds to believe the juvenile comes within the involuntary commitment law's criteria, must include the State Sexual Offenders Assessment Board's assessment, and must be served on the juvenile, the juvenile's attorney in the disposition review hearing, and the county solicitor or designee, along with notice of the hearing on the petition.³⁷ The juvenile and the juvenile's attorney at disposition review must receive written notice of the right to counsel (including appointed counsel if necessary). The juvenile must also be informed that he has a right to be assisted by an independent expert on sexually violent behavior, and that a reasonable fee will be allowed for this purpose if the juvenile cannot afford to engage one.³⁸

A public hearing on the petition must be held within 30 days of the filing of the petition. At the hearing, the juvenile has the right to confront and cross-examine witnesses and to present evidence, but may not be called as a witness without his consent.³⁹ Following the hearing, if the court finds by clear and convincing evidence that the juvenile has “a mental abnormality or personality disorder which results in serious difficulty in controlling sexually violent behavior that makes the person likely to engage in an act of sexual violence,” it must enter an order directing immediate commitment for inpatient treatment in a facility designated by the Department of Public Welfare, the Sexual Responsibility and Treatment Program (SRTP) on the grounds of Torrance State Hospital in Westmoreland County.⁴⁰ Commitment in such a case is for a period of one year, after which the law provides for an annual review hearing procedure, based on a facility evaluation and a new assessment by the State Sexual Offenders Assessment Board.⁴¹

Whenever it appears that the juvenile no longer has serious difficulty controlling sexually violent behavior, the director of the facility or a designee may petition for discharge, with notice to the juvenile, the juvenile's attorney, the Board, the district attorney and the county solicitor.⁴² The Board must conduct a new assessment in such a case, and a hearing must be held within 15 days of the court's receipt of the new assessment. The juvenile may also petition for discharge at any time, and the court “may schedule a hearing” after reviewing the petition.⁴³ Following a hearing on a discharge petition, if the court finds by clear and convincing evidence that the juvenile continues to have serious difficulty controlling sexually violent behavior due to a mental abnormality or personality disorder, it must deny the petition, and the juvenile “shall be subject to the remainder of the period of commitment.”⁴⁴ Otherwise, the court must grant the petition and order a discharge.

Aftercare/Reentry Planning

Aftercare or reentry services for committed juveniles represent an attempt to build a bridge between the institutional and community environments, so as to help assure the successful transition from residential placement to life in the community. While aftercare approaches vary, any well-designed strategy will feature some combination of (1) *preparatory planning* during placement; (2) *transitioning* from the residential facility to the community, perhaps including some testing of the juvenile's readiness through home visits and other brief excursions outside the walls; and (3) *post-release supervision and services* designed to help the juvenile safely adjust and reintegrate into the community.⁴⁵

Pennsylvania is among the very small handful of states that grant local juvenile court judges authority over every phase of the juvenile commitment process, including the initial placement decision, ongoing commitment review, timing and terms of release, and post-release supervision.⁴⁶ Which means the juvenile court judge is the key figure in the aftercare planning process here—setting it in motion at the time of disposition, ensuring that it is on track at subsequent reviews, and verifying at the time of release that the necessary groundwork for a successful reentry has been done.

Specifically, the judge is responsible for all of the following:

- *Being familiar with residential programs and services.* Ideally judges should visit the residential facilities to which the court commits juveniles, and meet the people who operate them. This is, by far, the best practice. However, if it is not possible for judges to visit these programs, judges should insist that probation staff do so, and that they regularly report to the court regarding what they see. Judges must learn from dispositional successes and failures, and keep track of who has thrived in particular placements and who hasn't, and what has made the difference. As necessary, judges should take a leadership role when it appears necessary to change or expand the existing continuum of dispositional options.
- *Setting clear expectations at disposition for the juvenile, the probation department, and the placement facility.* Placement should be seen as a period of intensive preparation for post-placement life in the community. In other words, there is work to be done, and everyone involved must understand this. The juvenile and the juvenile's attorney need to know what the court expects in the way of participation in treatment and counseling, education, restitution, community service, and so on—both the scope of the work and the way it relates to a successful return home. Placement facility staff must be informed of specific conditions and goals the court is setting for the juvenile's placement, as well as ongoing information and reporting responsibilities. Juvenile probation staff must also understand their responsibilities with respect to collaborating with placement staff in planning (see below), maintaining frequent contact with the juvenile during the placement phase, staying in touch with the juvenile's family, and making sure that post-placement services and supports are lined up and ready when the juvenile needs them.

- *Ensuring that the juvenile probation department collaborates with residential treatment staff in planning.* One of the primary targets of Pennsylvania’s efforts to improve aftercare statewide (see sidebar, “17 Principles of a Comprehensive Aftercare System”) is the frequent disconnect between residential treatment programming and aftercare planning. Whenever a youth is ordered into placement, facility staff are required to draw up a written treatment plan for the youth during the first 30 days. Because they often lack input from juvenile probation, however, these plans tend to focus primarily on institutional expectations. Even when they are appropriately individualized, these plans may have very little connection with real-life expectations for the youth upon his return to the community. In order to ensure that the placement phase is as productive a preparation for post-institutional life as possible, the court should use its authority to see that the juvenile probation department is participating in a coordinated planning process—contributing information on the juvenile’s background and needs, making clear what the post-release expectations are, and helping to develop a single joint plan that integrates both institutional treatment and aftercare services, which can be refined as the juvenile nears release.
- *Ensuring that the juvenile probation department visits juveniles in placement regularly.* Again, the court’s authority is needed to enforce the expectation that juvenile probation officers make regular trips to placement facilities, meeting privately with juveniles on their caseloads as well as treatment and program staff, and contributing their views at release staffings. This has always been good probation practice—JCJC Standards Governing Aftercare Services, which spell out what judges should generally expect of probation departments in the way of aftercare planning and services, call for monthly probation officer visits to facilities, both to monitor the juvenile’s progress and to confer with the facility’s staff.⁴⁷
- *Conducting meaningful disposition review hearings.* A detailed, substantive disposition review process is what ultimately drives good aftercare planning. The disposition review hearing is the one forum in which all the parties are assembled and answerable to the court regarding the progress that is being made toward the ultimate goal of successful reintegration. It is essential, in scheduling these cases, that judges allow sufficient time to make the detailed inquiries and determinations that are required. At each disposition review hearing, judges should have basic questions for probation staff, residential treatment staff, and the juvenile in order to assess progress in achieving established goals and the quality of the aftercare plan. Finally, judges must enter court orders that are sufficiently detailed to provide clear direction to probation, residential treatment staff, and the juvenile regarding the aftercare plan and its implementation. A judge who is passive at this stage— who fails to ask questions or press issues, who tolerates rushed and superficial hearings because there is no time for better ones—is neglecting an important duty, and essentially depriving the whole aftercare project of the leadership it needs to function properly.

17 PRINCIPLES OF A COMPREHENSIVE AFTERCARE SYSTEM

A broad-based effort to improve aftercare—featuring enhanced statewide monitoring and technical assistance, policy coordination, and a variety of pilot experiments at the county level—is currently under way in Pennsylvania. With long-term support from the John D. and Catherine T. MacArthur Foundation’s Models for Change initiative, the state aims to establish a comprehensive aftercare system in every Pennsylvania county by the year 2010. As part of this work, the Pennsylvania Commission on Crime and Delinquency, the Juvenile Court Judges’ Commission, the Pennsylvania Council of Chief Juvenile Probation Officers, and the Pennsylvania Departments of Public Welfare and Education have formally committed to the following joint statement of the principles of a comprehensive aftercare system:

- Aftercare begins at disposition and is tailored to the individual needs and capacities of each youth.
- Juvenile probation officers and residential treatment staff collaborate on a single plan, developed within 30 days of placement, that integrates treatment and aftercare services, including appropriate education placements and goals developed in consultation with the appropriate school district.
- Juvenile probation officers, in cooperation with residential treatment staff, host school district representatives and resident school district representatives, refine the plan as youths move closer to leaving the facility to include post-release provisions that establish the services to be provided and planned conditions of supervision.
- There is systematic oversight to ensure that placement facilities link their “supervision, care and rehabilitation” within the facility to the plan for treatment and supervision in the community.
- “Competency development” is a key, well-defined part of residential treatment and of post-placement expectations.
- Juvenile court judges, at disposition review hearings, routinely inquire about a youth’s aftercare plan, and enter court orders, in anticipation of discharge, that are sufficiently detailed to give direction to probation officers or treatment staff.
- Juvenile court judges and juvenile probation officers further the principles set forth in the Juvenile Court Judges’ Commission Standards Governing Aftercare Services.

**17 PRINCIPLES OF A COMPREHENSIVE
AFTERCARE SYSTEM**

- Juvenile defenders and prosecutors attend all disposition review hearings
- Juvenile defenders visit their clients in placement.
- Upon their request, the views of crime victims are invited and considered in aftercare planning and at dispositional review hearings.
- The aftercare plan addresses the youth's activities related to accountability to the victim and community.
- All probation officers have the skills to fulfill their obligations as monitors as well as planners for re-entry and supporters of youth who have left residential care.
- Intensity of supervision is proportionate to the risks and needs of delinquent youth.
- County children and youth agencies keep their doors, and cases open to youths who entered the delinquency system from the child welfare system and who should be receiving foster care and other services as "dependent children" upon release from a residential facility.
- In appropriate cases, county children and youth agencies support the petitions of delinquent youth to be adjudicated dependent children prior to their 18th birthdays.
- Resident school districts promptly enroll all youth who wish to return to public school, working with the host school district and juvenile probation to ensure a seamless transition to an appropriate setting.
- Evidence-based prevention programs, such as the Blueprints for Violence Prevention, are considered for use as post-discharge services.

Source: *Joint Position on Aftercare for Delinquent Youth*, January 1, 2005.

§ 10-5 Termination of Court Supervision

A delinquency case may be closed upon a motion to terminate court supervision, filed by the juvenile probation officer and setting forth that the juvenile has (1) completed the terms of the disposition, (2) paid restitution, fines and costs in full, and (3) not committed any new offenses for which delinquency or criminal proceedings could be commenced.⁴⁸ If these conditions are met and the court is satisfied that the juvenile has carried out the terms of the dispositional order, it may discharge the juvenile from supervision.⁴⁹

The court must retain jurisdiction, until age 21, over a youth who has failed to pay restitution in full.

Any party may object to a motion to terminate court supervision.⁵⁰ The objection must be made within 30 days of receipt of the motion, or it is deemed waived. The court must hold a hearing if an objection is made, but the Rules impose no time limit for the hearing.⁵¹

A case in which a juvenile has outstanding restitution, fines or costs must at least be “administratively” left open until the juvenile attains age 21, although the court may choose to supervise such a case on a different basis than more active cases. As noted above (see §9-8), if restitution remains unpaid when the court’s jurisdiction over a juvenile terminates at age 21, a judgment for unpaid restitution should be filed as a matter of routine.⁵²

ENDNOTES

¹ Rule 600, Pa.R.J.C.P.

² *Comment*, Rule 600, Pa.R.J.C.P.

³ Rule 605, Pa.R.J.C.P.

⁴ Rule 610(B), Pa.R.J.C.P.

⁵ Rules 605(B) and 612(B), Pa.R.J.C.P.

⁶ Rule 610, Pa.R.J.C.P.

⁷ Rule 610(B)(4), Pa.R.J.C.P. Although the Rules are not entirely clear on this point, presumably the general twenty-day time limit for holding disposition modification hearings gives way to the shorter ten-day limit if the juvenile is being detained pending the hearing. According to the *Explanatory Report* of the Juvenile Court Procedural Rules Committee, Rule 605: “The Committee’s intent is that a hearing [for modification of the dispositional order in the case of a youth detained pending the hearing] should be held within ten days unless the requirements of Rule 240(D) [relating to delays caused by the juvenile or necessary for the procurement of additional evidence] are met.”

⁸ Rule 610(C), Pa.R.J.C.P.

⁹ Taxman, F., Soule, D., and Gelb, A. (1999) “Graduated Sanctions: Stepping Into Accountable Systems and Offenders.” *Prison Journal* 79(2). Office of Juvenile Justice and Delinquency Prevention. (1995) *Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders*. Washington, DC: OJJDP.

¹⁰ Rule 612, Pa.R.J.C.P.

¹¹ Rule 612(B)(1), Pa.R.J.C.P.

¹² Rule 612(B)(2), Pa.R.J.C.P.

¹³ Rule 612(C), Pa.R.J.C.P. For form and content requirements applicable to dispositional orders, see Rule 515, Pa.R.J.C.P.

¹⁴ McCarthy, Pa. Juvenile Delinquency Prac. & Proc. (4th Ed.), § 14-2, citing *Morrissey v. Brewer*, 408 U.S. 471, 92 S. Ct. 2593 (1972) and *Gagnon v. Scarpelli*, 411 U.S. 778, 93 S. Ct. 1756 (1973).

¹⁵ Taxman, F., Soule, D., and Gelb, A. (1999) “Graduated Sanctions: Stepping Into Accountable Systems and Offenders.” *Prison Journal* 79(2). Office of Juvenile Justice and Delinquency Prevention. (1995) *Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders*. Washington, DC: OJJDP.

¹⁶ Rule 610(A), Pa.R.J.C.P

¹⁷ 42 Pa.C.S. §6351.

¹⁸ 42 Pa.C.S. §6353(a).

¹⁹ 42 Pa.C.S. §6353(b).

²⁰ 42 Pa.C.S. §6351.

²¹ JCJC/ASFA-Del-8(8/01), available online at http://sites.state.pa.us/PA_Exec/JCJC/.

²² See Juvenile Court Judges’ Commission, *Model Disposition Review/Permanency Hearing Determinations and Order (Delinquent Child)*, JCJC/ASFA-Del-8(8/01), available online at http://sites.state.pa.us/PA_Exec/JCJC/.

²³ 42 Pa.C.S. §6351(e) and (f).

²⁴ 18 P.S. §11.201(5.1). See also *Comment*, Rule 600, Pa.R.J.C.P., which states that the attorney for the Commonwealth or the juvenile probation officer should provide the victim with notice of a pending disposition review, without mentioning any restrictions as to type of offense involved.

²⁵ 18 P.S. §11.201(8.1)(iii).

²⁶ In counties that receive funding from Pennsylvania’s Victims of Juvenile Offenders (VOJO) Program, all of these duties should be entrusted to the Victim/Witness Coordinator. See Pennsylvania Commission on Crime and Delinquency. (2001). *VOJO Program Standards and Procedures Manual*. Harrisburg, PA: Pennsylvania Commission on Crime and Delinquency.

²⁷ 42 Pa.C.S. §§6358, 6401-6409. Throughout this discussion, the term “juvenile” refers to the person committed, although obviously at this stage the person is no longer a minor.

²⁸ 42 Pa.C.S. §6403.

²⁹ Under 42 Pa.C.S. §6358(b), the juvenile probation officer must notify the Board regarding the placement status of a qualifying juvenile ninety days prior to the juvenile’s 20th birthday.

³⁰ 42 Pa.C.S. §6307.

³¹ 42 Pa.C.S. §6358(b).

³² See 42 Pa.C.S. §5944 and *Commonwealth v. Carter*, 821 A.2d 601 (Pa. Superior, 2003).

³³ 42 Pa.C.S. §6358(c). The law contains an exception to the general deadline for assessments, but it is applicable only to committed juveniles who were already 20 years old at the time of the law’s 2004 effective date.

³⁴ 42 Pa.C.S. §6358(e). Again, an exception to the time limit for disposition review hearings applies only to committed juveniles who were already 20 years old at the time the law took effect in 2004.

³⁵ 42 Pa.C.S. §§6358(f), 6403(b)(1).

³⁶ 42 Pa.C.S. § 6408.

³⁷ 42 Pa.C.S. § 6403(b).

³⁸ 42 Pa.C.S. § 6403(b)(3) and (4).

³⁹ 42 Pa.C.S. § 6403(c).

⁴⁰ 42 Pa.C.S. § 6403(d).

⁴¹ 42 Pa.C.S. § 6404.

⁴² 42 Pa.C.S. § 6404(c).

⁴³ 42 Pa.C.S. § 6404(c)(4).

⁴⁴ 42 Pa.C.S. § 6404(c)(3).

⁴⁵ The Center for Delinquency and Crime Policy Studies. (On-line) *Intensive Aftercare Programs*. <http://www.csus.edu/ssis/cdcp/>

⁴⁶ Griffin, P. (2004). *Juvenile Court-Controlled Reentry: Three Practice Models*. Pittsburgh, PA: National Center for Juvenile Justice.

⁴⁷ While the standards are advisory, counties that receive JCJC grant-in-aid funding to support “aftercare officer” positions in their juvenile probation departments must comply with them.

⁴⁸ Rule 613, Pa.R.J.C.P

⁴⁹ Rule 613(D), Pa.R.J.C.P

⁵⁰ Rule 613(B), Pa.R.J.C.P

⁵¹ Rule 613(C), Pa.R.J.C.P

⁵² See 42 Pa.C.S. §9728 and JCJC Standards Governing the Collection and Disbursement of Restitution, 37 Pa. Code Chapter 200.601.

Summary of Contents

This chapter will treat issues relating to the administration of juvenile courts, including judicial rotation and calendaring, the use of masters, the proper management and expungement of juvenile records, and court and probation performance measurement.

- § 11-1. The Role of the Administrative Judge
- § 11-2. Making Good Use of Judicial Resources
- § 11-3. Safeguarding Juvenile Records
- § 11-4. Promoting Accountability for Performance and Outcomes
- § 11-5. Sources of Further Information

Key Statutes

- 42 Pa.C.S. §6305 (masters)
- 42 Pa.C.S. §6307 (inspection of court files and records)
- 42 Pa.C.S. §6308 (law enforcement records)
- 42 Pa.C.S. §6309 (juvenile history record information)
- 42 Pa.C.S. §9123 (expungement of juvenile records)

Rules

- Rules 160-167, Pa.R.J.C.P. (records)
- Rules 170-172, Pa.R.J.C.P. (expungement)
- Rules 185-192, Pa.R.J.C.P. (masters)

JCJC Standards

- Administration of Juvenile Court
- Release of Information Contained in Juvenile Court Files and Juvenile Probation Records and Reports

§ 11-1 The Role of the Administrative Judge

The JCJC Standards Governing the Administration of Juvenile Court provide that in each judicial district in Pennsylvania, regardless of size, an administrative judge must be designated

The administrative judge must be a zealous advocate for local children.

to serve as the “one person through whom all administrative direction will be channeled” and to “meet the probation department’s need for one source of administrative authority....” In some jurisdictions, the President Judge functions in this capacity. The administrative judge’s broad duties include the following:

- *Developing and reviewing policy.* The administrative judge, preferably with the involvement of other judges in the district, should oversee the development and review of local juvenile court policies on intake practice, diversion guidelines, detention, probation and aftercare supervision, victim notification and accommodation, and the like.
- *Ensuring the adequacy of services.* “The Administrative Judge of the Juvenile Court shall be concerned with the adequacy of services provided to the Court by outside agencies.” The JCJC Standards make clear that a judge in this position should not passively make do with a situation in which local juveniles are deprived of needed services, but must “become an advocate for children and...insist that the community develop appropriate services according to its means for the use of the Court in its rehabilitative work.”
- *Calling attention to unfilled needs.* “If the services provided to the Court by outside agencies are not adequate, the Administrative Judge of the Juvenile Court shall inform the public.” The Standards suggest press conferences, news releases, and announcements at public meetings as possible ways of keeping the public informed on a regular basis regarding gaps in the continuum of local services for juveniles, from prevention to aftercare.
- *Working with community members.* “The Administrative Judge of the Juvenile Court shall appoint a Juvenile Court Advisory Committee of interested citizens from within the judicial district to help the judge ensure the availability of adequate services.” The citizen advisory group is a means of two-way communication: it helps the court understand the community’s problems and priorities, while enabling the community to understand, appreciate, and support the work of the court.
- *Leading the probation department.* “The Administrative Judge of the Juvenile Court shall appoint and oversee a Chief Juvenile Probation Officer to see that staff carry out the policies and procedures of the Court.” The Standards require the administrative judge and chief probation officer to see that probation department policy and procedures governing such matters as personnel practices, training requirements, work duties and supervisory responsibilities, and rules for the conduct of hearings and the maintenance and control of records are spelled out in a written operations manual.¹

**ACCESSING INFORMATION ON LOCAL NEEDS —
FROM THE PENNSYLVANIA ELECTRONIC
JUVENILE JUSTICE DATABOOK**

Administrative judges who wish to lead local planning, needs-based budgeting, program development, and risk/resource assessment efforts should become familiar with the Pennsylvania Electronic Juvenile Justice Databook—a free, user-friendly, on-line storehouse of current statistical information related to delinquency risk factors and juvenile crime and justice trends at the county level. The Databook gives users instant access to nine categories of county-by-county, year-by-year data on Pennsylvania youth:

- *Population*: County population figures and trends since 1990 are reported here, broken down by gender, by race, and by age group.
- *Health*: A variety of health-related data can be found here for each county, including information on suicide and firearms-related deaths; detailed breakdowns on pregnancies, live births, fetal deaths and abortions by age group; marriage and divorce rates; and even per capita liquor sales.
- *Economy*: This section shows local poverty rates by age group, per capita personal income, percentages of households and/or individuals receiving food stamps and welfare services, and employment figures for selected years.
- *Education*: In addition to various measures of educational attainment, data in this section give a detailed county-level picture of public high school withdrawal trends since 1992—broken down by sex, race, grade, and reason for dropping out.
- *Child Abuse and Neglect*: Look here for total substantiated and unsubstantiated incidents of child abuse and neglect in each county, broken down by the genders and ages of the victims and the perpetrators, the relationships between them, and the types of resulting injuries.
- *Reported Crime*: This section contains county-by-county reporting and clearance statistics on index crimes, as well as both raw numbers and rates for selected violent and property crimes reported to and cleared by law enforcement authorities.
- *Arrests*: An enormous amount of county-level information on arrests in 29 offense categories—from murder to loitering—can be accessed here, with age, sex, and race breakdowns.
- *Juvenile Court Cases*: Data collected by the Juvenile Court Judges' Commission on juvenile court dispositions are available here for each Pennsylvania county. For any year covered you can find out both (1) how many dispositions were handed down in cases involving particular offenses and (2) how many cases resulted in consent decrees, probation, placements, transfers to criminal court, etc. Information of both types can in turn be broken down by age group and by gender.
- *Adult Custody Rates*: Data from the Pennsylvania Department of Corrections give a picture of each county's adult incarceration rate.

The Pennsylvania Electronic Juvenile Justice Databook was developed for the Pennsylvania Commission on Crime and Delinquency by the National Center for Juvenile Justice, and is accessible via a link on the PCCD's home page at www.pccd.state.pa.us. (From the home page, just click on "Links," then "Juvenile Justice Links," then "Pennsylvania Data Book.")

§ 11-2 Making Good Use of Judicial Resources

Among the most important duties of an administrative judge is to advocate for resources for the juvenile court—including a sufficient number of competent and committed judicial officers to handle the court’s workload. When too few experienced judges are assigned to hear delinquency matters, the results are often crowded dockets, long delays, hasty and superficial

Judging in juvenile court takes commitment, maturity, expertise, and time.

hearings, excessive reliance on masters—and ultimately a kind of second-class justice. It is primarily up to the administrative judge in each district to speak out against these evils, and to argue in favor of assignment, rotation, and calendaring policies that give juvenile delinquency and dependency cases the time and attention they deserve.

Judicial Assignment and Rotation

“This is no job for most rookies.”

This statement from Judge Isaac Garb² is based on a career’s worth of experience in the Court of Common Pleas, Bucks County. Now retired, Judge Garb was a long-term member and former Chairman of the Juvenile Court Judges’ Commission. Unfortunately, as Judge Garb points out, in too many jurisdictions the juvenile court bench is considered a place “for the judge to learn his or her trade.” This despite the fact that “the juvenile court is arguably the most important of all the courts within the trial court constellation.” Certainly judges presiding over juvenile courts are entrusted with unusually broad discretion. Their most important decisions are seldom guided by cut-and-dried rules, and often call for considerable wisdom, insight, and knowledge of the world. And while a juvenile court judge’s lapses in attention or errors of judgment may not cost anyone money, they can have devastating consequences for the young people involved, and will not ordinarily be corrected by even the most vigilant appellate courts.

For these reasons, it is essential that judges appointed to the juvenile court have maturity and experience—and that they stay put long enough to bring these qualities to bear. Traditional judicial rotation practices—in which judges may sit in juvenile court for only a few months at a time, before moving on to something else—work against the long-term development of expertise, commitment, and leadership on the bench. As Judge Garb puts it, “juvenile court requires a certain continuum of attention from the judge not only because some youngsters are in the system for extended periods of time, but also because the court is an extremely dynamic one as we continue to learn more and more about the human behavior of children.” Administrative judges should do all they can to limit the practice of rotation, and should make efforts over time to attract and retain veteran judges who are willing to devote their careers to the juvenile court.

Judicial Workload and Calendaring Practices

Administrative judges should also work for the reform of case assignment and calendaring practices that overwhelm judges, discourage deliberation, and create courthouse conditions that are at best chaotic and at worst degrading and unconscionable. So-called “cattle call” scheduling—in which numerous juvenile court hearings are set for the same time in the same courtroom, and parties and their attorneys, victims, witnesses, families and supporters restlessly crowd the lobbies and hallways, waiting for their cases to be heard—is still the rule in too many jurisdictions. Administrative judges should use their authority to move their courts in the direction of manageable judicial caseloads and time-certain scheduling, in which specific time slots are assigned to individual hearings.³ If it is not possible to move all at once to a time-certain system, block scheduling—in which limited numbers of hearings are stacked in one-hour blocks—will capture many of the same benefits.

Use of Masters

The Juvenile Act authorizes courts to “direct that hearings in any case or class of cases be conducted in the first instance” by attorneys appointed as masters, rather than by judges.⁴ Prior to the adoption of the Rules of Juvenile Court Procedure for Delinquency Matters, there were no real limits on the use of masters in delinquency cases. Problems associated with scarce resources, overburdened judges and overbooked juvenile courtrooms eventually led to widespread and arguably excessive reliance on masters to do the work of juvenile court judges. As the Juvenile Court Procedural Rules Committee’s Explanatory Report noted, “Masters were introduced to ease the court docket due to a rapidly increasing number of juvenile cases. Masters were not intended to take over the juvenile system or the judges’ primary responsibilities and duties. In a minority of counties, the judges rarely hear juvenile cases and the master sets forth the ‘judgments’ with the judges’ rubber-stamped order... The Committee wanted to prohibit the master-run systems and ensure the judges performed the important duties they were elected to do. The Committee wanted to stress the importance of juvenile cases and the very serious consequences of a juvenile adjudication.”

Accordingly, Rule 187, Pa.R.J.C.P., which became effective April 1, 2006, severely restricted the use of masters in delinquency cases. Masters may now preside over only the following:

- Detention hearings, detention review hearings, or shelter-care hearings;
- Discovery, pre-adjudicatory, or preliminary proceedings for misdemeanors;
- Any hearing in which the petition alleges only misdemeanors; and
- Uncontested dispositional review hearings and uncontested probation revocation hearings.⁵

Master are specifically prohibited from doing any of the following:

- Conducting transfer hearings;
- Issuing warrants; or
- Hearing requests for writs of habeas corpus.⁶

Prior to the commencement of any master-run proceeding, the master must inform the parties that they have a right to have the matter heard by a judge. If the juvenile or the attorney for the Commonwealth objects to having the matter heard by the master, the case must be heard before a judge.⁷ If the parties do not object, the master must announce findings and recommendations on the record at the conclusion of the hearing, and submit a summary within one business day to the juvenile court judge. Any party may challenge the recommendation by filing an oral or written motion requesting a rehearing within three days.⁸ The judge may accept or reject the master's recommendation, send it back for clarification, or schedule a rehearing within seven days.⁹

§ 11-3 Safeguarding Juvenile Records

Confidentiality has always been one of the core values of the juvenile court system. In order to safeguard a young person's chances of a decent future, it is often necessary to deny or

restrict access to records relating to his past—and sometimes even to bury that past altogether.

Juvenile courts must be guardians and protectors of the privacy of the young people they work with.

Accordingly, Pennsylvania law strictly limits access to court files and records in delinquency proceedings¹⁰ as well as to law enforcement records relating to juveniles,¹¹ and provides procedures for the expungement of juvenile records in appropriate cases.¹²

Limits on Access to Juvenile Records

Court files and records in delinquency cases—including petitions, motions, hearing transcripts, findings and orders as well as social reports and other documents prepared at the court's request—are not open to inspection by the public.¹³ Such records may be examined and copied, without special court authorization, only by the following individuals and agencies:¹⁴

- *Courts.* The court's own judges, officers, and professional staff may inspect juvenile records, as can the Administrative Office of Pennsylvania Courts and the courts of any other jurisdiction needing access to such records in the discharge of their official duties.
- *Parties.* Case files and records may be inspected by parties and their attorneys and representatives, although the court may restrict access to social reports containing the names of confidential sources.

- *Custodial agencies.* Public and private agencies entrusted with supervision or custody of the juvenile may inspect court records.
- *Access for sentencing purposes.* In connection with the preparation of a pre-sentence report in a criminal case, both the officers and staff of the court and the attorney for the defendant may inspect records related to the defendant’s juvenile court career.
- *Limited access for bail-setting purposes.* Likewise, a judge or other official making a bail determination in a criminal case may inspect juvenile court petitions, adjudication and disposition orders, orders resulting from disposition review hearings, and bench warrant and escape histories relating to the accused.
- *Limited adult correctional, parole board and probation access.* Officials of the Department of Corrections or of a state correctional or penal institution housing a former delinquent may inspect records related to the former delinquent, as can an adult parole board, court or county probation official making parole or supervision decisions about a former delinquent, but none of these officials may see social reports containing the names of confidential sources except with court permission.
- *Access for sex offender assessment purposes.* As noted above (see § 10-4), for purposes of an assessment of a committed sex offender by the State Sexual Offenders Assessment Board, the Board is entitled to inspect the juvenile court files and records pertaining to the offender.
- *Special access with leave of court.* Those who can show “a legitimate interest in the proceedings or in the work of the unified judicial system” may inspect juvenile court records with the court’s leave.

Note that similar access restrictions—with similar exceptions—apply to law enforcement agencies’ records and files relating to juveniles.¹⁵ Under JCJC Standards Governing the Release of Information Contained in Juvenile Court Files and Juvenile Probation Records and Reports, the president judge of each court should adopt written policies governing dissemination of juvenile probation records and reports, which should require that juvenile probation staff be present at inspection and responsible for any copying, that a case-specific record of the names and addresses of those to whom copies are provided be maintained, and that all records provided to individuals be accompanied by a statement prohibiting secondary dissemination.¹⁶

Although the above-listed individuals and agencies are the only ones entitled to *inspect* juvenile records without special authorization from the court, there are three additional situations in which the law authorizes limited disclosures of juvenile record information:

- *Publicly available information about certain serious offenders.* The public is entitled to know certain items of information—the juvenile’s name, address, age, charged offenses, substantiated offenses, and case disposition—regarding the following categories of juveniles:¹⁷
 - A juvenile adjudicated delinquent for an act committed at age 14 or above which would have been a felony if committed by an adult;

- A juvenile adjudicated delinquent for an act committed at age 12 or 13 which constituted one of the enumerated felonies that requires open proceedings (see § 8-3).
- A juvenile against whom a petition has been filed alleging an act subject to open proceedings, who has previously been adjudicated delinquent for...
 - an act committed at age 14 or above which would have been a felony if committed by an adult
 - an act committed at age 12 or 13 which constituted one of the enumerated felonies that requires open proceedings.

Under Rules 330 and 515, Pa.R.J.C.P., each delinquency petition must contain an averment as to whether the case is eligible for limited public information pursuant to the Juvenile Act. In addition, every disposition order must include a designation whether the case is eligible for limited public information.

- *Information that must be released to schools.* Whenever a juvenile who is enrolled in school is found delinquent, the juvenile probation department must provide the building principal or designee with the juvenile's name and address, a listing of the delinquent acts the juvenile was found to have committed together with a brief description of them, and the disposition of the case.¹⁸ In the case of a juvenile adjudicated of a felony offense, the probation department must also provide relevant information from the juvenile's probation or treatment reports, supervision plan and prior delinquency history. In addition, the court or juvenile probation department may share any additional information deemed necessary to protect public safety or facilitate the juvenile's appropriate treatment, supervision or rehabilitation. All delinquency information provided to schools must be maintained separately from official school records, and transferred when the juvenile transfers.
- *Information released pursuant to court order.* Finally, the court may authorize release of other information contained in juvenile court files or probation records or reports in response to a request for access in the form of a motion.¹⁹ The motion must specify the information being sought and the purpose for which it will be used. In disposing of the motion, "the court should consider the purpose for which the information will be used, the nature of the information requested, administrative or legislative authority governing the release of the information, the nature of the offense, and the impact that the release of the information would have on the child and the community."²⁰ Any order granting such a motion should prohibit further dissemination of any information disclosed.

Expungement

Pennsylvania law sets out procedures for the expungement of juvenile court records in a variety of situations.²¹ Although it can be regarded as a "remedy"—a form of relief to be requested by juveniles and their families—expungement is also possible on the court's own motion, and should really be a matter of routine in all cases in which juveniles have done what the court expected of them. It is not a special favor handed out to individuals, in other words. It is how the court balances its books. Accordingly, in all cases in which an expungement would be granted if a juvenile were to request it (see below), courts should set in place procedures under which the probation department initiates the expungement process

automatically after the appropriate length of time has elapsed. It is recognized that in cases where the juvenile has been adjudicated delinquent, determining whether the expungement would normally be granted is far more complicated than in cases involving an informal adjustment or consent decree.

Juvenile records may be expunged upon motion. The motion must take the form of a proposed expungement order specifying the juvenile's name, date of birth, and case docket number, the allegations and the law enforcement agency that made the allegations, the date of the arrest, any reference or tracking number that would assist the law enforcement agency in locating the pertinent police report or written allegation, the disposition of the case, the statutory authority for expungement (see below), and the agencies upon which the order is to be served.²² The motion must be served on the chief juvenile probation officer as well as the attorney for the Commonwealth and any other party upon whom service is ordinarily required in a delinquency case. Unless the attorney for the Commonwealth answers in opposition to the motion, it may be disposed of without a hearing.

Except upon cause shown, expungement is required in cases in which the court finds any one of the following:²³

- The complaint was not substantiated or the petition was dismissed.
- The juvenile was successfully discharged from consent decree supervision and six additional months have elapsed without his becoming the subject of a pending action.
- The juvenile completed a period of commitment, probation or other disposition, was discharged, has gone five years without being adjudicated delinquent or convicted of a crime, and is not now the subject of a pending action seeking conviction or adjudication of delinquency.

In addition, with the consent of the attorney for the Commonwealth, the court is authorized to order expungement of the juvenile records of any individual who has reached the age of 18, if it appears advisable in view of the following factors: the type of offense; the individual's age, job history, criminal activity and drug or alcohol problems; any "adverse consequences that the individual may suffer if the records are not expunged;" and whether the public's safety requires retention of the records.²⁴

Destruction of Fingerprints and Photographs

The Juvenile Act authorizes arresting agencies to take fingerprints and photographs of juveniles, and requires that they be taken of juveniles who have been found delinquent.²⁵ The fingerprints and photographs of alleged as well as adjudicated delinquents must be forwarded to a central repository maintained by the Pennsylvania State Police,²⁶ and may be disseminated to federal, state, and local law enforcement agencies for investigative purposes as well,²⁷ although in all instances they must be stored separately from those of adults.²⁸ In any case in which the court finds that the juvenile did not commit the delinquent acts ascribed to him, however, the court must at the time of dismissal direct that the State Police and any other law enforcement agencies with fingerprints and photographs of the juvenile in their possession destroy them immediately.²⁹

§ 11-4 Promoting Accountability for Performance and Outcomes

Accountability is not just for juveniles. The juvenile court must hold itself accountable as well, setting clear goals and measurable objectives, monitoring its ongoing performance, and assessing and publicly reporting its record of success. It is up to the administrative judge to lead this effort, and more broadly to establish firm standards and performance expectations for court and probation programs and personnel.

Historically, our nation's juvenile courts and probation departments have not been good at quantifying what they do, measuring their success at it, or demonstrating that success to the public. Often, the only hard numbers available focused on their *failures*—recidivism rates. Their many accomplishments—instances in which tangible progress is made, lessons learned, harm repaired, communities made safer—literally go uncounted.

Juvenile courts have an obligation to document what they do and measure their results.

Fortunately, Pennsylvania juvenile courts have since 2004 participated in a statewide juvenile justice system outcome measurement program that tracks benchmark indicators of system performance in achieving the primary goals of balanced and restorative justice. Courts submit quarterly outcome data to the Juvenile Court Judges' Commission, which reports them annually

in an aggregate "report card" format. The outcome measures report for 2006 accounted for 17,576 delinquency cases closed during the year, with the following concrete results:

- *Community Protection.* 86.8% of juveniles successfully completed supervision without a new offense.
- *Accountability.* 84.8% of juveniles required to pay restitution satisfied their obligations, while 94.1% of those with assigned community service successfully completed it.
- *Competency Development.* 80.6% of juveniles were employed or engaged in an educational or vocational activity at case closing.³⁰

Measurement and reporting of this kind help to focus juvenile courts and probation departments on what matters, and serve in the long run to strengthen understanding and support for the juvenile justice system's mission among other branches of government and the public at large. They can also provide an invaluable management tool to judges and chief juvenile probation officers. Administrative judges should pay attention to what the data say about the current performance of their own courts and probation departments, and actively promote future efforts to improve performance through outcome measurement.³¹

§ 11-5 Sources of Further Information

The Pennsylvania Juvenile Delinquency Benchbook is intended to be read in combination with current Pennsylvania statutes and case law, all applicable rules and standards, and other sources of information pertinent to Pennsylvania juvenile court and probation practice. Some of the most important sources of further information and support for Pennsylvania juvenile court judges are described below.

Juvenile Court Judges' Commission Standards

Among the Juvenile Court Judges' Commission's most important functions is that of establishing uniform standards governing the administrative practices and judicial procedures used in Pennsylvania juvenile courts and personnel practices and employment standards used in juvenile probation offices. Some JCJC Standards are "mandatory" in the sense that a county must meet them in order to receive *any* JCJC-administered grant-in-aid funding. Others are mandatory only with respect to specialized probation positions (such as aftercare, intensive, school-based, and so on) that are supported by JCJC grant-in-aid funds. "Advisory" standards lay out the minimum requirements of good, professional juvenile court and probation practice.

As of 2006, the JCJC has issued the following standards:

- *Standards Required for Participation in JCJC Grant-in-Aid Program*
 - Operation of a Juvenile Probation Merit System
 - Juvenile Court Intake
 - Secure Detention Under the Juvenile Act
 - Hearings and Administrative Reviews for Children Held in Secure Detention

- *Standards Governing Specialized Probation Services*
 - Aftercare Services
 - Community-Based Probation Services
 - Intensive Probation Services
 - School-Based Probation Services
 - Specialized Intensive Probation Services for Drug and Alcohol Offenders
 - Specialized Intensive Aftercare Services for Drug and Alcohol Offenders

- *Advisory Juvenile Court Standards*
 - Administration of Juvenile Court
 - Use of Juvenile Court Masters
 - Juvenile Court Jurisdictional Procedures
 - Juvenile Court Police Procedures
 - Inter-County Transfer of Delinquency Cases
 - Use of Alternatives to Secure Detention
 - Development of the Social Study
 - Allegation of Delinquency Involving a Charge of DUI or Under a Controlled Substance
 - Home Passes to Delinquent Children in Placement
 - Juvenile Court Policies Regarding the Human Immunodeficiency Virus
 - Qualifications and Training of Court-Appointed Special Advocates
 - Collection and Disbursement of Restitution

Administration of Restitution Funds
Assignment of Community Service in Juvenile Delinquency Cases

All JCJC Standards can be downloaded free at the JCJC's website (www.jcjc.state.pa.us). In addition, print copies can be ordered from:

- *Pennsylvania Juvenile Court Judges' Commission*
Room 401
Finance Building
Harrisburg, PA 17120-0018
(717) 787-6910

Model Petitions and Court Orders
For Use in Juvenile Act Proceedings Involving Dependent and Delinquent Children

Developed jointly by the Juvenile Court Judges' Commission and the Department of Public Welfare, the Model Petitions and Court Orders are intended to help Pennsylvania juvenile courts comply with all federal Title IV-E requirements for placement assistance, and particularly the mandates of the federal Adoption and Safe Families Act (ASFA) of 1997 (P.L. 105-89). (For an explanation of the requirements of Title IV-E of the Social Security Act, see the discussion at § 3-2.) The form orders and petitions are of the fill-in-the-blank type and are designed to be easily modified to conform to local practice. The introduction to each form states its purpose, identifies its key provisions, and explains what sort of document may be acceptable as a substitute if the form is not used.

A "dependency series" of forms pertains to alleged/adjudicated dependent children, while a "delinquency series" covers alleged/adjudicated delinquents. Each series contains an emergency court order, a petition, shelter care orders, orders relating to disposition, and disposition review/permanency petitions, determinations and orders.

All Model Petitions and Court Orders can be downloaded free at the JCJC's website (www.jcjc.state.pa.us). The forms are also available on disk and in print from the Pennsylvania Juvenile Court Judges' Commission.

Achieving Balanced and Restorative Justice in
Pennsylvania's Juvenile Justice System

This 23-minute videotape, produced in 2002 by the Juvenile Court Judges' Commission and the Pennsylvania Council of Chief Juvenile Probation Officers, offers a quick introduction to the balanced and restorative justice philosophy as it is being implemented in Pennsylvania. Narrated by Judge Emanuel Cassimatis of York County, the tape highlights actual examples of innovative court-community programs and practices that are achieving community protection, victim restoration and youth redemption in local Pennsylvania communities. Whether it is shown in courthouse waiting areas, in school settings, or before business and community groups, the tape provides a useful orientation to the juvenile court's basic mission and purposes.

"Achieving Balanced and Restorative Justice in Pennsylvania's Juvenile Justice System" can be ordered from the Pennsylvania Juvenile Court Judges' Commission.

***Pennsylvania Commission on Crime and Delinquency
Victims of Juvenile Offenders Program Standards and Procedures Manual***

In 2001, the Pennsylvania Commission on Crime and Delinquency and its Victims' Services Advisory Committee approved a complete set of program management and service standards for counties receiving Victims of Juvenile Offenders (VOJO) Program funding. The VOJO Program provides local juvenile probation departments and district attorneys' offices with grant funding for victim/witness assistance and other services designed to guarantee victims' rights under the Crime Victims Act, which was amended (by Act 86—2000) to cover victims of juvenile offenders. The VOJO Program Manual spells out basic and enhanced service standards for a whole range of victim services—notification, accompaniment to hearings, courtroom orientation, collection of impact statements, and so on—as well as detailed procedures for implementing them.

To receive a copy of the VOJO Program Standards and Procedures Manual, contact:

- *Pennsylvania Commission on Crime and Delinquency*
Office of Victims' Services
Victim Services Division
P.O. Box 1167
Harrisburg, PA 17108-1167
(717) 783-0551
(800) 692-7292

Pennsylvania Juvenile Delinquency Practice and Procedure (5th Ed.)

This authoritative guide by Professor Francis Barry McCarthy of the University of Pittsburgh School of Law has been relied on by Pennsylvania lawyers for decades and is cited throughout this Benchbook. It thoroughly covers a number of practice issues—including search and seizure, admissibility of confessions, double jeopardy, and the effect of delinquency determinations in future proceedings—that are treated superficially if at all in the present work. To order a copy, contact:

- *West Group*
(800) 344-5008
<http://www.west.thompson.com>.

The Desktop Guide to Good Juvenile Probation Practice

This 200-page guide, thoroughly revised and updated in 2002, explains how to practice “active, collaborative, results-oriented” juvenile probation. Suitable as a training tool for new hires or as a reference book for probation officers and administrators, the Desktop Guide contains chapters on the historical background of juvenile probation, legal issues affecting the profession, and research on delinquency and prevention as well as how-to coverage of juvenile probation practice from intake to aftercare. Individual chapters can be downloaded free at <http://www.ncjj.org/>. To order bound copies, contact:

- *National Center for Juvenile Justice*
3700 S. Water St., Suite 200
Pittsburgh, PA 15203
(412) 227-6950

Juvenile Justice Agencies and Organizations

- *Pennsylvania Juvenile Court Judges' Commission*
Room 401
Finance Building
Harrisburg, PA 17120-0018
(717) 787-6910
www.jcjc.state.pa.us/

- *Pennsylvania Commission on Crime and Delinquency*
P.O. Box 1167
Harrisburg, PA 17108-1167
(800) 692-7292
<http://www.pccd.state.pa.us/>

- *Pennsylvania Department of Public Welfare*
Office of Children, Youth and Families
State Court Liaison Unit
<http://www.dpw.state.pa.us/ocyf/>

East: Family Court Building
1801 Vine Street, Rm. 165M
Philadelphia, PA 19103
(215) 560-1800

Central: Harrisburg State Hospital Administrative Building
P.O. Box 2675
Harrisburg, PA 17105
(717) 705-8242/43

West: New Castle Youth Development Center
RR#6, Box 21A
Frew Mill Road
New Castle, PA 16101
(724) 656-7316/18

- *National Center for Juvenile Justice*
3700 South Water Street, Ste. 200
Pittsburgh, PA 15203
(412) 227-6950
<http://www.ncjj.org/>

ENDNOTES

¹ For more detailed requirements relating to the running of juvenile probation departments, see the Juvenile Court Judges' Commission's Standards Governing the Operation of a Juvenile Probation Merit System. These and all other JCJC Standards are available online at <http://www.jcjc.state.pa.us/jcjc/>.

² Quotations in this section are taken directly from unpublished correspondence of Senior Judge Isaac Garb, Court of Common Pleas, Bucks County, with Jim Anderson, Executive Director, Juvenile Court Judges' Commission.

³ In a time-certain scheduling system, the amount of time that will be needed for each hearing must be estimated on the basis of past experience with similar hearings. Note that some case management information systems are capable of capturing the starting and ending times of hearings, so that data analysis will yield highly accurate scheduling predictions.

⁴ 42 Pa.C.S. §6305. In any hearing before a master, the juvenile must be informed at the outset of the right to a hearing before a judge; either the juvenile or the Commonwealth may insist on a judicial hearing. The master's findings and recommendations become final only when confirmed in writing by the judge, who may order a rehearing "at any time upon cause shown."

⁵ Rule 187(A), Pa.R.J.C.P.

⁶ Rule 187(B), Pa.R.J.C.P.

⁷ Rule 187(C), Pa.R.J.C.P.

⁸ Rule 192, Pa.R.J.C.P.

⁹ Rule 191, Pa.R.J.C.P.

¹⁰ 42 Pa.C.S. §6307.

¹¹ 42 Pa.C.S. §6308.

¹² 18 Pa.C.S. §9123.

¹³ 42 Pa.C.S. §6307.

¹⁴ 42 Pa.C.S. §6307(a)(1)-(7). See also Rule 160, Pa.R.J.C.P., and 37 Pa. Code §200.802.

¹⁵ See 42 Pa.C.S. §6308, which requires law enforcement records relating to juveniles to be kept separate from those of adults, and permits disclosure of their contents only to courts, counsel for the parties, commitment agencies, law enforcement officials from other jurisdictions, etc.

¹⁶ 37 Pa. Code §200.802(c).

¹⁷ 42 Pa.C.S. §6307(b).

¹⁸ 42 Pa.C.S. §6341, Rule 163, Pa.R.J.C.P., and 37 Pa. Code §200.803.

¹⁹ 37 Pa. Code §200.802(b).

²⁰ 37 Pa. Code §200.802(b)(2).

²¹ 18 Pa.C.S. §9123.

²² Rule 170(B), Pa.R.J.C.P. Under Rule 172, Pa.R.J.C.P., an order to expunge must contain all of these items plus the judge's name and signature and the date of the order.

²³ 18 Pa.C.S. §9123(a).

²⁴ 18 Pa.C.S. §9123(a)(4).

²⁵ 42 Pa.C.S. §6308(c).

²⁶ 42 Pa.C.S. §6309(b).

²⁷ 42 Pa.C.S. §6308(c)(2).

²⁸ 42 Pa.C.S. §6308(c)(3).

²⁹ 42 Pa.C.S. §6341(a).

³⁰ Pennsylvania Juvenile Court Judges' Commission. (2007). *Juvenile Justice System Outcomes: Statewide Outcome Measures 2006*. Harrisburg, PA: Juvenile Court Judges' Commission.

³¹ For more information, see Harp, C., Bell, D. Bazemore, G., and Thomas, D. (2006). *Guide to Developing and Implementing Performance Measures for the Juvenile Justice System*. Alexandria, VA: American Prosecutors Research Institute.

Checklists

Detention Hearing

Note: See Chapter Five, 42 Pa.C.S. §6332, and Rule 242, Pa.R.J.C.P., for more complete information on Detention Hearings.

Present:

In all cases:

- Juvenile
- Juvenile's parent, guardian or caretaker
- Attorney for the juvenile
- Attorney for the Commonwealth
- Juvenile probation officer

As necessary:

- Police Officer
- Victim, victim's parent/guardian, victim advocate
- Interpreter

Before Starting the Hearing:

- Appoint counsel, if necessary
- Provide juvenile/guardian/attorney with copy of the written allegation
- Inform juvenile/guardian of the right to remain silent as to delinquency allegations

Issues to be Resolved:

- Is detention required to protect the person or property of others?
 - Does juvenile meet minimum offense threshold for public safety detention? (See § 5-6)
- Is detention required to ensure attendance at hearing?
 - Does juvenile have a recent demonstrable record of willful failure to appear? (See § 5-7)
- Is detention required to protect the juvenile?
 - Has juvenile submitted written request to be detained?
- Do extraordinary and exceptional circumstances justify detention?
- Have alternatives to detention been considered and found unsuitable?

Required Findings:

- Probable cause to believe that the juvenile...
 - has committed the acts alleged
 - is within the court's jurisdiction
- Necessity of detention for public safety reasons, to protect the juvenile, to ensure attendance at hearing, or due to extraordinary circumstances
- IV-E eligibility findings:
 - Contrary to the juvenile's welfare to leave him at home
 - Removal without services was "reasonable due to the emergency nature of the situation, safety considerations, and circumstances of the family."

Things to Remember:

- "When the admission of a child to a secure detention facility is being considered... preference should be given to non-secure alternatives which could reduce the risk of flight or danger to the child or community." (See § 5-5)
- If juvenile is detained after the hearing in a case involving new allegations of delinquency, a petition must be filed within 24 hours or on the next court business day.

Hearing on Transfer to Criminal Proceedings

Note: See Chapter Six, 42 Pa.C.S. §6322, and Rule 394, Pa.R.J.C.P., for more complete information on Transfer Hearings.

Present:

In all cases:

- Juvenile
- Juvenile's parent, guardian or caretaker
- Attorney for the juvenile
- Attorney for the Commonwealth
- Juvenile probation officer
- Victim, victim's parent/guardian, victim advocate

As necessary:

- Police Officer
- Interpreter

Required Findings:

- *Prima facie* showing that the juvenile committed a felony-grade offense
- Juvenile at least 14 at the time
- Required notices given (see § 6-2)
- Reasonable grounds to believe...
 - juvenile is not committable to a mental institution
 - the public interest would be served by transfer

Factors to be Considered in Weighing Public Interest in Transfer:

- Impact on the victim
- Impact on the community
- Threat posed by the juvenile to the safety of the community or any individual
- Nature and circumstances of the offense
- Degree of culpability
- Adequacy and duration of juvenile dispositional alternatives
- Whether juvenile is "amenable to treatment, supervision or rehabilitation as a juvenile," taking into account...
 - age
 - mental capacity
 - maturity
 - degree of criminal sophistication
 - previous record as a delinquent
 - prior court history and success/failure of previous rehabilitation attempts
 - prospect of rehabilitation before juvenile court jurisdiction expires
 - probation or institutional reports



Things to Remember:

- Burden of proof on the “public interest” issue is on the Commonwealth unless a *prima facie* showing is made that the juvenile committed an enumerated felony (see list below) AND (1) was at least fourteen and used a deadly weapon or (2) was at least fifteen and had a previous felony adjudication. Enumerated felonies include...
 - Attempted murder
 - Voluntary manslaughter
 - Rape
 - Involuntary deviate sexual intercourse
 - First degree felony aggravated assault
 - Aggravated indecent assault
 - First degree felony robbery
 - Robbery of a motor vehicle
 - Kidnapping
 - Any attempt, conspiracy, or solicitation to commit any of these offenses.

- An order of transfer to criminal proceedings must be immediately followed by a determination of bail, which is governed by the Pennsylvania Rules of Criminal Procedure (see Rules 520-536, Pa.R.Crim.P.). If the juvenile cannot post bail, the court may order continued detention in a juvenile detention center or issue a commitment order directing that the juvenile be jailed pending trial.

Adjudication Hearing

Note: See Chapter Eight, 42 Pa.C.S. §6336, and Rule 406, Pa.R.J.C.P., for more complete information on Adjudication Hearings.

Present:

In all cases:

- Juvenile
- Juvenile's parent, guardian or caretaker
- Attorney for the juvenile
- Attorney for the Commonwealth
- Juvenile probation officer
- Victim, victim's parent/guardian, victim advocate

As necessary:

- Police Officer
- Interpreter

Preliminary Issues:

- Does the juvenile court have jurisdiction over the matter petitioned?
- Is the juvenile fully aware of constitutional rights/represented by counsel?
 - For recommended attorney waiver colloquy, see § 7-2
- If admissions have been tendered, are they knowing and voluntary?
 - For admissions colloquy, see § 8-5

Required Findings:

- Does the evidence presented prove beyond a reasonable doubt that the juvenile committed any offense alleged in the petition?
 - Avoid prematurely considering evidence that bears only on appropriate dispositions (see § 8-4)
 - Make required factual findings, if possible, at the conclusion of the hearing
 - Ruling on offenses, specifying statutory citation, grading, and counts, due within 7 days
- If offenses substantiated, consider...
 - whether detention/continued detention is necessary pending disposition
- If offenses not substantiated, order ...
 - dismissal
 - release, if detained
 - destruction of fingerprints and photographs

Things to Remember:

- “Juvenile court judges must be alert for opportunities to acknowledge the victim’s presence in the courtroom, to explain the court’s methods and procedures, and to articulate the principles they are intended to serve.” (See § 8-7.)

Disposition Hearing

Note: See Chapter Nine, 42 Pa.C.S. §§6341 and 6352, and Rule 512, Pa.R.J.C.P., for more complete information on Disposition Hearings.

Present:

In all cases:

- Juvenile
- Juvenile's parent, guardian or caretaker
- Attorney for the juvenile
- Attorney for the Commonwealth
- Juvenile probation officer
- Victim, victim's parent/guardian, victim advocate

As necessary:

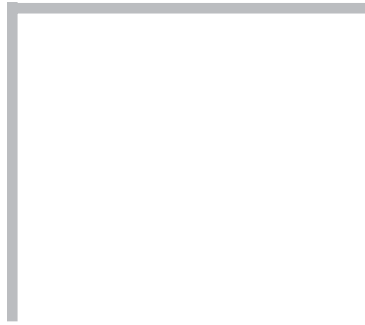
- Police Officer
- Interpreter

Questions to be Answered:

- Is the juvenile currently "in need of treatment, supervision or rehabilitation"?
- If so, what disposition would...
 - be "best suited to the child's treatment, supervision, rehabilitation, and welfare"?
 - "impose the minimum amount of confinement that is consistent with the protection of the public and the rehabilitation needs of the child"?
 - "provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable the child to become a responsible and productive member of the community"?
- Is the juvenile's case eligible for limited public information?

Disposition Types:

- Probation conditions should be...
 - individualized, active, specific, enforceable, and clearly understood (see § 9-7)
- Restitution orders should specify...
 - exact amount to be paid, the payee, and any payment schedule (see § 9-8)
- Commitment should be considered (see § 9-10) only in cases involving juveniles who...
 - have committed very serious offenses
 - present a clear danger to themselves or others
 - have histories of failure under community supervision
 - have home lives that render removal imperative, or
 - have treatment needs requiring specialized institutional care



Things to Remember:

- Victim input in every case should include a written statement detailing the physical, psychological, social and economic effects of the crime as part of the predisposition report. In addition, if the victim is willing, conduct an in-court colloquy (see § 9-4).
- Enter court orders that are sufficiently detailed to provide clear direction to the juvenile probation department, treatment providers, the juvenile, and the juvenile's parent(s)/guardian(s)
- Each disposition order must include a designation whether the case is eligible for limited public information.
- On the record, the court must determine that the juvenile was advised of post-dispositional rights
- At the time of a disposition involving commitment to residential placement, ensure that all parties understand the court's expectations:
 - *The juvenile and his attorney* must understand the court's expectations with respect to connecting placement and post-placement supervision, including...
 - participation in treatment and counseling
 - education
 - restitution and/or community service
 - the achievement of specific community protection, accountability and competency development goals
 - *Juvenile probation staff* must be aware of their responsibilities with respect to developing a single plan that integrates treatment and aftercare services, including...
 - visiting the juvenile in placement
 - maintaining contact with the juvenile's parent(s)/guardian(s)
 - connecting residential treatment with post-placement planning, supervision and services
 - *Residential treatment staff* must be aware of their responsibilities regarding...
 - collaboration with juvenile probation in the development of a single plan that integrates treatment and aftercare services
 - reports to the court and participation in disposition review/permanency hearings
 - any specific conditions or goals established by the court.

Disposition Review Hearing

Note: See Chapter Ten, 42 Pa.C.S. §§6351 and 6353, and Rule 610, Pa.R.J.C.P., for more complete information on Disposition Review Hearings

Present:

In all cases:

- Juvenile
- Juvenile's parent, guardian or caretaker
- Attorney for the juvenile
- Attorney for the Commonwealth
- Juvenile probation officer
- Juvenile's primary counselor or therapist

As necessary:

- Victim, victim's parent/guardian, victim advocate
- Interpreter

Questions to be Answered:

- Is the juvenile making adequate progress in meeting the original goals of the disposition?
- Have the juvenile, the juvenile's family, the probation department, the staff of the placement facility, and/or any other service providers identified in the original disposition order done what the court expected of them?
- Is placement outside the home still necessary?
- Is a modification of the original disposition order needed?
- What steps have been taken to prepare for the juvenile's return to the community?

Permanency Findings:

If review involves a Title IV-E-eligible juvenile for whom federal foster care reimbursement funds support private sector placement services, formal findings must be made regarding...

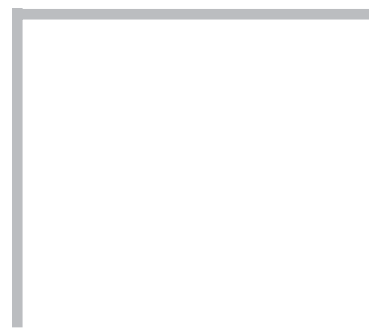
- the continued necessity of out-of-home placement
- the appropriateness of the current placement
- the safety of the juvenile
- the juvenile's progress toward meeting the original community safety, accountability, and competency development goals of the disposition
- the permanency plan's current appropriateness and feasibility
- the extent to which the plan has been complied with
- the likely date by which the permanency goal will be achieved.

Things to Remember:

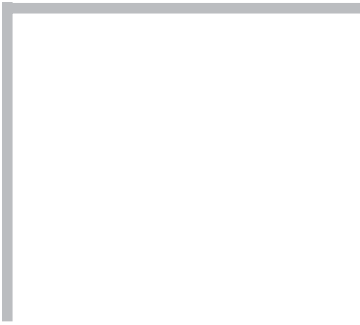
- In scheduling these hearings, allow sufficient time to make the detailed inquiries and determinations that are required.
- Invite and consider input from crime victims at these proceedings.
- At each hearing, have basic questions for probation staff, residential treatment staff, and the juvenile in order to assess progress on achieving established goals and the quality of the aftercare plan.
- At each hearing, the court must either consult with the child regarding the permanency plan or ensure that the child's views on the plan have been otherwise ascertained.
- Enter court orders that are sufficiently detailed to provide clear direction to the juvenile probation department, residential treatment staff, and the juvenile regarding the aftercare plan and its implementation.

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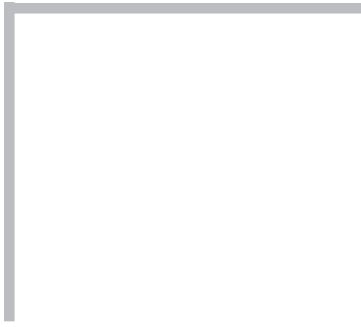


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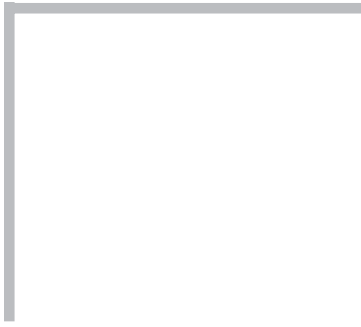
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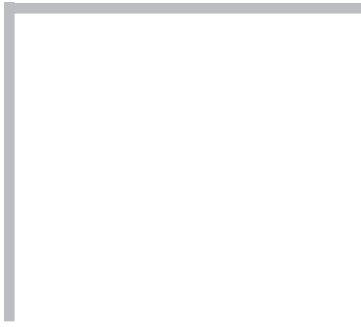
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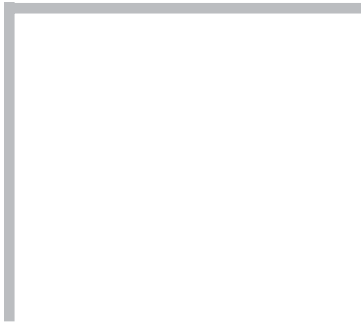
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