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Commencement of Proceedings, Intake and Informal Adjustment

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

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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)
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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.

