

# Delinquency and Disposition Determinations

# 9

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## § 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.<sup>1</sup>

*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.”<sup>2</sup> 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.”<sup>3</sup>
- *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.”<sup>4</sup>

- *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.<sup>5</sup> 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.<sup>6</sup>

***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.<sup>7</sup> 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.<sup>8</sup> 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

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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.<sup>9</sup> 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.<sup>10</sup>

*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.<sup>11</sup>

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.<sup>12</sup>

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.”<sup>13</sup> 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.<sup>14</sup>

### ***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.<sup>15</sup>

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.<sup>16</sup>

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.<sup>17</sup> (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.<sup>18</sup>

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 questions<sup>19</sup> 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 person<sup>20</sup> 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.<sup>21</sup>

***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.<sup>22</sup>

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.<sup>23</sup> 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.<sup>24</sup> 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.”<sup>25</sup> 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.<sup>26</sup> 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”<sup>27</sup> (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.<sup>28</sup>

***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...”<sup>29</sup> 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.<sup>30</sup> 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...”<sup>31</sup>

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.<sup>32</sup> 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 Law<sup>33</sup> 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.”<sup>34</sup>

- *Suitability.* The court must “take into consideration the age, physical and mental capacity of the child” in imposing work service as well.<sup>35</sup>
- *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)”<sup>36</sup> —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.<sup>37</sup> 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.<sup>38</sup> 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.<sup>39</sup> 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..."<sup>40</sup> 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:<sup>41</sup>

- *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.<sup>42</sup> 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.<sup>43</sup> 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.”<sup>44</sup> 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.”<sup>45</sup> Moreover, it may not commit a juvenile to a facility “used primarily for the execution of sentences of adults convicted of a crime.”<sup>46</sup> 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.”<sup>47</sup> 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.”<sup>48</sup>

*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.”<sup>49</sup> 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.<sup>50</sup>
- *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.<sup>51</sup> (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' Commission<sup>52</sup> and of the court liaison staff of the Bureau of Juvenile Justice Services in the Department of Public Welfare.<sup>53</sup> 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.<sup>54</sup>

A special Juvenile Act provision<sup>55</sup> authorizes Pennsylvania juvenile courts to resort to the civil commitment procedures of the Mental Health and Mental Retardation Act of 1966<sup>56</sup> or the Mental Health Procedures Act<sup>57</sup> 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.<sup>58</sup> 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.<sup>59</sup>

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.<sup>60</sup> 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.<sup>61</sup>

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,<sup>62</sup> 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:<sup>63</sup>

- *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.<sup>64</sup> 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.<sup>65</sup>

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 law<sup>66</sup> 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 months<sup>67</sup>
- 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](http://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.<sup>68</sup>
- *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.<sup>69</sup> 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.<sup>70</sup>
- *Amenability to treatment.* Overall, juvenile sex offenders are considered more amenable to treatment than adult sex offenders.<sup>71</sup> 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.<sup>72</sup> 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.<sup>73</sup>

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.<sup>74</sup> 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.<sup>75</sup>

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.<sup>76</sup> 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.<sup>77</sup> In Pennsylvania, a special treatment curriculum has been developed to address PTSD in female delinquent PTSD victims in residential placements.<sup>78</sup>

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](mailto: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 16<sup>th</sup> 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.<sup>79</sup> 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.<sup>80</sup> 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.<sup>81</sup> 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**

<sup>1</sup> 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.”

<sup>2</sup> 42 Pa.C.S. §6352(a).

<sup>3</sup> 42 Pa.C.S. §6352(a).

<sup>4</sup> 42 Pa.C.S. §6352(a).

<sup>5</sup> Rule 513(B), Pa.R.J.C.P.

<sup>6</sup> Rule 513(C), Pa.R.J.C.P.

<sup>7</sup> 42 Pa.C.S. §6341(b).

<sup>8</sup> 42 Pa.C.S. §6339(a).

<sup>9</sup> See Comment, Rule 512, Pa.R.J.C.P.

<sup>10</sup> Rule 512(B), Pa.R.J.C.P.

<sup>11</sup> 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.”

<sup>12</sup> 42 Pa.C.S. §6341(e).

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

<sup>14</sup> 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. (4<sup>th</sup> Ed.), § 12-4.

<sup>15</sup> 42 Pa.C.S. §6341(b).

<sup>16</sup> Rule 409(B)(2) and (C), Pa.R.J.C.P.

<sup>17</sup> 42 Pa.C.S. §6351(b).

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

<sup>19</sup> 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.

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

<sup>21</sup> 42 Pa.C.S. §6310.

<sup>22</sup> 23 Pa.C.S. §5501 et seq.

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

<sup>24</sup> 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.

<sup>25</sup> 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.

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

<sup>27</sup> 42 Pa.C.S. §6352(a)(6).

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

<sup>29</sup> 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.

<sup>30</sup> Rule 515, Pa.R.J.C.P.

<sup>31</sup> 42 Pa.C.S. §6352(a)(6).

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

<sup>33</sup> 43 P.S. §41 et seq.

<sup>34</sup> 42 Pa.C.S. §6352(a)(6).

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> 37 Pa. Code §§200.501-200.514.

<sup>38</sup> See 42 Pa.C.S. §9728.

<sup>39</sup> 42 Pa.C.S. §9728(g.1).

<sup>40</sup> 42 Pa.C.S. §6352(a)(6).

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

<sup>42</sup> 42 Pa.C.S. §6352(a)(1).

<sup>43</sup> See 42 Pa.C.S. §6351.

<sup>44</sup> 42 Pa.C.S. §6352(a)(3) and (4).

<sup>45</sup> 42 Pa.C.S. §6352.

<sup>46</sup> 42 Pa.C.S. §6352(b).

<sup>47</sup> 42 Pa.C.S. §6353(a).

<sup>48</sup> 42 Pa.C.S. §6353(a).

<sup>49</sup> 42 Pa.C.S. §6301.

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

<sup>51</sup> 18 P.S. §11.201(8.1).

<sup>52</sup> 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.

<sup>53</sup> 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.

<sup>54</sup> 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.

<sup>55</sup> 42 Pa.C.S. §6356.

<sup>56</sup> 50 P.S. §4101 et seq.

<sup>57</sup> 50 P.S. §7101 et seq.

<sup>58</sup> See 50 P.S. §4406.

<sup>59</sup> See 50 P.S. §7303, 7304.

<sup>60</sup> 42 Pa.C.S. §6339.

<sup>61</sup> 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.

<sup>62</sup> 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.)

<sup>63</sup> 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/>.

<sup>64</sup> 71 P.S. §1690.112a.

<sup>65</sup> 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/>.

<sup>66</sup> 75 Pa.C.S. §3731.

<sup>67</sup> 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.

<sup>68</sup> 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.

<sup>69</sup> 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.

<sup>70</sup> 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.

<sup>71</sup> *Ibid.*

<sup>72</sup> 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.

<sup>73</sup> 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.

<sup>74</sup> 42 Pa.C.S. §§6401-6409.

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

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

<sup>77</sup> 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.

<sup>78</sup> 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.

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

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

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