

# **Pennsylvania Juvenile Delinquency Benchbook**



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# Foreword

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## Juvenile Delinquency Benchbook

The 2018 Juvenile Delinquency Benchbook is a completely rewritten version authored by members of the Benchbook Committee who dedicated countless hours to discussion, writing, revision and editing. The original Benchbook was written in 2003 and later revised in 2006.

The goal of our Committee was to provide both experienced and newer juvenile court judges, as well as other professionals working in the field of juvenile justice, with a practical resource containing identified best practices. The Juvenile Justice Academy events chaired by Judge John Cleland and facilitated by Judge Rea Boylan in 2013 and 2015 provided the foundation for topics that were further developed by our Committee for inclusion in this Benchbook.

Thanks go to each member of the Committee and to Patrick Griffin who served as our editor. A special thank you goes to the Edit Team including Richard Steele and Susan Blackburn of the Juvenile Court Judges' Commission, and James Anderson whose historical perspective, keen intellect and attention to detail were invaluable in both the writing and editing process.

We hope that you each find value in this resource as you work to make our communities safer, impose accountability and develop competencies in the youth that we serve.

Judge Carol Van Horn  
Chair  
2018 Benchbook Committee

# Acknowledgements

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The Pennsylvania Juvenile Delinquency Benchbook 2018 revisions benefited from the assistance of many individuals. We would especially like to thank the Honorable Carol L. Van Horn President Judge of Franklin and Fulton Counties as Chairperson of the Juvenile Delinquency Benchbook Committee and all the members of the Committee for their time, dedication and superb guidance over the many months of this publication's development.

Our gratitude is also extended to Ms. Kathleen A. McGrath, Chief Juvenile Probation Officer of Franklin County and Ms. Teresa Wilcox, Chief Juvenile Probation Officer of McKean County who contributed their expertise in the development of Chapter Four (4) of this Benchbook.

A special acknowledgment to the Honorable John M. Cleland, Senior Judge of McKean County who shares his valuable perspective in the Introductory Chapter of the Benchbook.

And finally, special thanks to Ms. Chris Heberlig and Ms. Monica Iskric of the Center for Juvenile Justice Training and Research who provided ongoing administrative support for this project.

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# Juvenile Delinquency

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# Introduction

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## *Judge John Cleland*<sup>1</sup>

This new edition of the Juvenile Delinquency Benchbook contains the introduction to the original Benchbook written by Judge Emmanuel Cassimatis, a mentor to many juvenile court judges. His advice and wise words are as true today as when he wrote them in 2003. Little can, or needs to be, added to his guidance.

I have been asked to provide a different perspective – a more personal account of my experience as a juvenile court judge. In doing so, I am acutely aware that mine is only one perspective; no more valid, and perhaps less valid, than many other juvenile court judges for whom I have such respect. But I trust that the collective experience of all who have contributed so much time, effort and especially expertise to preparing this Benchbook will be of benefit not only to judges but ultimately to the children who appear in our courts.

Experience shapes perspective. We know, for example, that psychologists have documented the stages of judicial development: being overwhelmed for the first couple of years; developing competence and confidence over the ensuing five years or so; and toward the final third of the first ten-year term developing strong views about the law, procedures, administration and the range of social and political issues that come before the court.

And then an interesting thing begins to happen. Sometime after year ten, while judges continue to be competent, even expert, in their work, they increasingly become less certain about the efficacy and effectiveness of those legal positions, procedures, and administrative practices they felt so strongly about only a few years before. But, at the same time, they develop a deepening loyalty to the purposes of the institution of the courts and the importance of the rule of law to the preservation of our democracy.

This has, in fact, tracked my own experience precisely. I came to the bench in the fall of 1984, at the age of 36. I was fully aware, as every neophyte should be, I hope, of how little I knew about the complexities of the law. In retrospect, however, I see that I also lacked the kind of awareness of the complexities of life that can only come from time and experience.

When I was about half way through my first term I was asked to give a speech on the role of the judge. I titled the speech “What Are Judges For?” Looking back on it, I was actually foolish enough to pose an answer to the question. The speech was written with all the self-assurance and self-delusion that only a neophyte could muster.

Now, thirty plus years into the job, I still ask myself the question, but I am less and less sure I know the answer.

An old dairy farmer up our way once said of his veterinarian: “He don’t know much, and what he does know, he don’t know for certain.” I am afraid that I have become much like that veterinarian. What I think I know I am not at all sure I know for certain.

And so, it follows, that I approach the task of working in the juvenile court with some considerable humility and sense of the limits of my awareness and understanding.

Justice Oliver Wendell Holmes made the point in his usual memorable way: “I would not give a fig,” he said, “for the simplicity this side of complexity, but I would give my life for the simplicity on the other side of complexity.”

As we begin to move, as hopefully we all do, to the other side of complexity, and as we think about the role of the juvenile court judge, we must begin with, and never stray too far from, the purposes of the Juvenile Act.

In summary, the purpose of the Juvenile Act is:

- to preserve the unity of the family, or provide a substitute alternative;
- to provide for the care, protection, safety, and wholesome mental and physical development of the child;
- to provide supervision, care and rehabilitation with balanced attention to the child, the victim and the community;
- to separate the child from the child’s parents only when necessary;
- to employ evidence-based practices;
- to use the least restrictive intervention;
- to impose confinement only when necessary and for the minimum time; and
- to ensure a fair hearing that protects constitutional and other legal rights.

In shorthand, of course, we refer to those purposes as “balanced and restorative justice.” It is the goal to give balanced attention to youth redemption, victim restoration, and community protection; to consider always, in other words, the child, the victim, and the community.

As I think about the three pieces of our juvenile justice system – youth redemption,

community protection, and victim restoration – it seems to me that we do a pretty good job these days on the community protection and victim restoration pieces. It is with some sad irony, however, that I have come to the view that we have strayed from the one of the key objectives, the underlying purpose of the juvenile court in the first place, youth redemption.

At common law children were chattels of the family unit, and subject to the absolute right of parents to control and discipline them, a status that lasted well into the 19<sup>th</sup> century.

The common law also did not recognize a legal status of “juvenile delinquent.” Law breakers were either “children” or “adults.” Those under 7 years of age were conclusively presumed to be incapable of forming criminal intent because what was called “felonious discretion” was thought to be an “impossibility of nature” for a young child. Children over 14 were prosecuted as adults; and those between 7 and 14 could be prosecuted as an adult if the infancy defense was rebutted by the prosecution.

As the industrial revolution intensified in the 19<sup>th</sup> century and the abuses of child labor began to receive attention, the story of a ten-year old little girl named Mary Ellen McCormack, who lived in the Hell’s Kitchen section of New York City, came to the public’s attention. Neighbors, alarmed at the physical abuse and neglect of the child, alerted the Department of Public Charities and Correction. The investigator was powerless to protect Mary Ellen because of the lack of any child-protection laws. So the investigator took Mary Ellen McCormack into the shelter of the American Society for the Prevention of Cruelty of Animals, the ASPCA. The founder of the ASPCA likened Mary Ellen to the horses he routinely saved from violent stable owners – a little girl who was just another vulnerable member of the animal kingdom and who needed the protection of the state.

By 1899, Cook County, Illinois – Chicago – established what is generally considered to be the first juvenile court. The language and structure of that court is startlingly similar to the language and structure we use even today. It sought to regulate the treatment of “dependent, neglected and delinquent children” and directed that “as far as practical they shall be treated not as criminals but as children in need of aid, encouragement, and guidance.” The “care, custody and discipline of a child” should approximate “as nearly as may be that given by its parents.”

This idea of judge as parent, of course, also has deep roots in the common law. The English Court of Chancery applied the doctrine of *parens patriae*, which required a judge acting on behalf of the state to protect a child and to do “what is best for the interest of the child...and to put himself in the position of wise, affectionate, and careful parent and provision for the child accordingly.”

We might keep that ancient standard in mind today as we consider what the statute and

rules mean when they instruct a juvenile court judge to protect the child's best interests.

Fast forward to 1995. This was a time involving serious concern about crime all over the country. Legislatures throughout the nation outdid themselves getting tough on lawbreakers, juveniles included. On the day after his inauguration, newly elected governor Tom Ridge called a Special Session of the Pennsylvania Legislature to focus exclusively on the issue of crime.

Unlike other states Pennsylvania adopted a juvenile justice system rooted in the philosophy of restorative justice. True, children who committed crime had to be held accountable; true, citizens had the right to live in safe and secure communities; but also true, and equally true, juveniles who came within the jurisdiction of Pennsylvania's juvenile justice system should leave the system more capable of being responsible and productive members of the community.

The enactment of restorative justice principles into Pennsylvania law, in that environment, is to the lasting credit of the Juvenile Court Judges' Commission and to James Anderson, then its Executive Director.

These principles of balanced and restorative justice drive our system as we seek to give attention to the victims of crime, juveniles who commit crimes and to the communities in which we all live.

That little bit of legal history demonstrates that the juvenile court is not just a watered-down version of the adult criminal courts. Juvenile court is not just different from adult criminal court in degree; the two are different in kind. The purposes clause of the Juvenile Act is worlds apart in language and tone from the purposes clause of the Crimes Code. However, while we may understand intellectually that this distinction exists, our actions do not always follow our intellectual understanding.

Consider our vocabulary, for instance. How often do we read that in adjudicating a child "delinquent" the judge found the child "guilty?" Or a "hearing" is referred to as a "trial." Or a "disposition" is described as a "sentence."

But it is only in the juvenile court that we can speak seriously about balanced and restorative justice, about genuinely helping children and their parents, about restoring the bonds of community in some meaningful way, and about guiding children through the throes of adolescence and into responsible adulthood.

Nevertheless, over the years I have become increasingly concerned about the criminalization of the juvenile justice system and the consequences of that trend.

When I was admitted to the Bar in 1972 it was assumed that adults – judges, prosecutors, defense attorneys – had the moral responsibility to protect children, and often to protect children from themselves. That understanding simply carried forward the basic tenets of the common law and underlay the philosophical origins of the juvenile court movement of the 1890s.

In the mid-1980s and up to the time of the Special Session on Crime in 1995, it was not unusual to adjudicate a dependent child as a delinquent child if there was a better treatment option in the delinquency system than in the dependency system. The adjudication of delinquency occurred with an understanding among the court, the prosecutor, defense counsel and the family that it was being done for the benefit of the child and that the juvenile adjudication would be expunged when the services were completed. That could likely never happen in today's environment.

Over time, slowly but surely, the juvenile justice system has become infected with many of the tensions and related direct and collateral consequences of the adversarial system in the adult criminal courts.

I understand how we got started down that road, logical step by logical step. But we must always be asking whether we are on the right road.

We must always be asking whether as judges we are meeting our overriding moral responsibility as adults to protect children and to care for their well-being; or whether we have unwittingly become accomplices to policies that unnecessarily drag children into the juvenile justice system, with all the pitfalls for children and their families that this entails.

I am reminded of Justice Robert H. Jackson's tribute to Mary Willard, his influential high school teacher. Of her, he wrote: "She had no belief that we were simply walking bundles of original sin. She accepted youth as wholesome, its errors due to lack of guidance more than lack of right intent."

How do each of us as juvenile court judges look at these kids? Do we see them as youth whose errors may result from lack of guidance more than lack of right intent? Or do we see them as walking bundles of original sin?

I understand I am treading here on near sacred dogma. We hear prosecutors say over and over that prosecuting juveniles teaches them accountability; and we hear defense attorneys say over and over that protecting a child's legal interests equates with protecting the child's best interests. But sooner or later we must lay aside theory and look reality in the face to ask whether as adults we are meeting our moral responsibility to exercise our judgment to protect children.

The criminal court judge sits, for the most part, as a neutral arbiter. But the juvenile court judge has an affirmative duty under some circumstances to protect the “best interest” of the child. What is “best interest?” And how does a judge protect it? While a criminal court judge decides facts, a juvenile court judge may have a duty to develop facts. How and when does a judge do that? In a variety of ways, the differences that mark the juvenile court imply a different set of judicial responsibilities.

How is it, exactly, that we go about meeting those responsibilities?

We begin, standing on this side of complexity, by applying the Juvenile Act and the Rules of Juvenile Procedure. It takes no great insight or expertise, in the routine case at least, to do that.

Nevertheless, we have seen that sloppiness, laziness, inattention, or merely being in a hurry causes some judges to cut corners, or ignore corners all together, and plow straight ahead in cavalier disregard of the statute and the rules, not to mention any notion of best practice.

Continuing education can help solve that problem. It involves the ongoing process of explaining not only what we must do, but why we must do it.

Developing this Benchbook, and the checklists, bench cards, and case law resources that it contains, is invaluable in helping us do our jobs competently and consistently.

When we start to move through complexity, and hopefully emerge at the other side, we must also begin to think about and apply “evidence-based practice” -- the application of the results of social science research to guide decisions and increase the chances that a child will benefit from effective services.

No child should ever be reduced to a data point on a graph, or thought of as an absolute number on a standardized test; and no judge should ever yield to the temptation to supplant judicial judgment with social science. On the other hand, it would be irresponsible to fail to use tools that can help us identify those programs that are most likely to be effective with any particular child. And for any one of us to think that our experience, our judgment, or our superior wisdom should not be polluted with social science assistance is hubris enriched with folly.

Nevertheless, it cannot be denied that social science research on juvenile antisocial behavior is still in its infancy. While the research shows much promise in helping us match the particular problems of a child with the particular program than can be effective, it is not exact by any means. We are talking about probabilities based on large samples of children.

Even acknowledging that this social science research is in its infancy, we still need to use

the results of this research where appropriate; to ensure that screening instruments are being properly administered, that the results are being properly analyzed, and that the conclusions are used for their intended purposes by judges, probation officers, and treatment providers; and to monitor how effective the tests and data are, given the unique cultural and criminogenic factors affecting the children that appear before us.

As judges we have a responsibility to take the lead to educate our fellow judges, the Bar, our probation staff, school administrators and teachers, service providers, and the public. It is from us they should hear the language of balanced and restorative justice and evidence-based practice.

I believe in the principles of balanced and restorative justice and the value of evidence-based practice. Nevertheless, I have concluded, after many years of hearing cases involving children, that I can say with assurance only two things:

I know that whether a child can weather the storms of life is not merely the result of the effectiveness of any given program, or the affirmation of a juvenile court judge, or the structure of a sound probation program. It is, instead, whether any or all those things in some mysterious way fosters a meaningful relationship between the child and a caring adult.

And I also know that we cannot reform children. We can coerce their compliance but we cannot compel them to change. The best we can do is to create, somehow, an environment, an atmosphere, in which a child chooses to reform himself.

Midway through my second term, then-Chief Justice John Flaherty gave me a book of essays about the judicial mind. An interesting book and meaningful gift, to be sure; but not as meaningful as the note from him that accompanied it. He wrote "I would have given you this book sooner, but you hadn't been a judge long enough to understand it."

I have learned since that the longer I have been a judge, the harder the job has become. The complexities have only become more complex, and the simplicity on the other side of that complexity harder to grasp. Experience has forced me to come to terms with the reality that understanding is elusive, and that, at best, we see through a glass, darkly.

And so, decades into this work, I continue to ask myself the question "what are judges for?" And especially I ask that question in the context of those young lives over whom we exercise such power, for good or ill.

That is, in the end, a question each judge must answer for him or herself, and only after searching both heart and head. We can only know for sure that, for a judge, patience and kindness are essential, and that, in the words of the poet, we must "walk softly in a world

where the lights are dim, and the very stars wander” and then trust that our devotion to “the least of these” makes us worthy to be called a judge of the juvenile court.

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<sup>1</sup> Hon. John M. Cleland is among Pennsylvania’s most highly respected judges. He was appointed to the McKean County Court of Common Pleas in 1984, subsequently elected in 1985, and reelected in 1995 and 2005. He served as President Judge in McKean County until 2008, when he was appointed to the Superior Court of Pennsylvania, where he served through 2010. He then returned to the trial court as a senior judge. Judge Cleland served as a member of the Juvenile Court Judges’ Commission (JCJC) for twelve years, having been initially appointed by Governor Rendell in 2005, and subsequently reappointed by Governor Rendell, and twice by Governor Corbett. Judge Cleland has been a strong proponent of judicial education and was the leading force behind the creation of the Juvenile Justice Academies offered by the JCJC in partnership with the Administrative Office of Pennsylvania Courts.

Judge Cleland served as co-chair of the Education Committee of the Pennsylvania Conference of State Trial Judges for eight years and also served as President of the Conference’s Juvenile Court Section. In 2009, he was appointed by the Chief Justice of Pennsylvania to chair the Interbranch Commission on Juvenile Justice, which was charged with investigating the judicial corruption leading to the breakdown of the juvenile justice system in Luzerne County that came to be known as the “Kids for Cash” scandal.

The many awards received by Judge Cleland throughout his distinguished career include the Heavy Lifting Award from the Pennsylvania Conference of State Trial Judges in 2012, the Robert I. Shadle Legal Excellence and Professionalism Award from the Herbert B. Cohen Chapter of the American Inn of Courts in York in 2010, the Golden Crowbar Award from the Pennsylvania Conference of State Trial Judges in 2003, the Clarity in Writing Award from the Pennsylvania Bar Association Plain English Committee in 2001, and the President’s Distinguished Service Award from the Pennsylvania Conference of State Trial Judges in 2000.

# Chapter 1

## The Juvenile Court Judge

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### *Prologue*

*If we are very fortunate in our lifetime, we have the opportunity to know, admire, and learn from a man like Judge Emanuel Cassimatis. Throughout his career, Mike was a leading advocate for children, serving as a member and Chair of the Juvenile Court Judges' Commission, President of the Pennsylvania Conference of State Trial Judges and of the Conference's Juvenile Court Section, member of the Pennsylvania Permanency Planning Task Force, chair of the Ad hoc Committee on the Mental Health Needs of Children, and Convener of Pennsylvania's Juvenile Justice Policy Group. In his home of York County, he established the Court Appointed Special Advocate (CASA) Program and the Earn-It program, which enables youth to earn money to pay for the damages caused by their offenses. Internationally, he was selected as one of five jurists worldwide to serve on the International Tribunal for Children's Rights to conduct hearings on war-affected children.*

*Upon his passing in November 2009, his fellow citizens of York County captured the essence of who Mike was, saying:*

*"The world seemed brighter when talking with Mike Cassimatis.....a brilliant and learned man who could have easily been a college professor.....that he loved people and the law came through all the time.....one of the most decent human beings to ever grace the court.....his deeds have touched the lives of untold thousands, and there could be no finer example than he.....he was always prepared, he worked diligently, and he cared greatly.....he was the model of judicial temperament".*

*Mike served as a member of the first Juvenile Delinquency Benchbook Committee and wrote the definitive treatise on what it means to be a juvenile court judge. The message it conveys is Mike's continuing message to all of us. The words of Judge Emanuel Cassimatis that follow continue to stand the test of time as the epitome of what we all aspire to be as juvenile court judges.*

Judge Art Grim  
Chair  
2003 and 2006 Benchbook Committees

## The Juvenile Court Judge

### *Judge Emanuel Cassimatis*<sup>1</sup>

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

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

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

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

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

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

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

**Commitment** is the dedication of oneself to doing the best possible job as a juvenile court judge, and, even more, a commitment to excellence. It is both general and specific.

It is general in the sense of seeing to it that there are allocated to administering juvenile justice cases in the county sufficient resources including judicial time, adequate court and hearing rooms, trained and committed juvenile probation officers, district attorneys, public defenders, and victim witness service providers, and an adequate array of dispositional alternatives from which the judge can make a positive dispositional choice, and not the best of the offering of bad choices.

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

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

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

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

There are three roles to play. The first is as a judge presiding over assigned cases. Here the judge will not only determine whether the charges against the youngster have been proven,

but will also have to set in motion and supervise the program of “supervision, care and rehabilitation which provide[s] balanced attention to the protection of the community, the imposition of accountability for offenses committed, and the development of competencies to enable [the juvenile] to become [a] responsible and productive [member] of the community.”

The second role is the responsibility for operations of the juvenile probation department. (In counties where there is more than one judge assigned to juvenile court, this responsibility may be that of the assigned administrative judge of juvenile court.) In this role, the judge may be as active a participant as he or she wishes. Where there is an outstanding Chief Juvenile Probation Officer and a well-functioning department, there will be much less demand on the time and attention of the judge than where these strengths are lacking. In the latter case, the judge will have to be very actively involved in the operations, morale and improvement of the functioning of the department. In either situation, the judge must make every effort to see to it that there are sufficient monetary resources available to hire, train, and keep highly motivated staff and sufficient well-trained and functioning support staff. The judge must assure well-trained, highly motivated and functioning prosecutors (district attorney staff) and defense counsel (public defenders or specially appointed counsel) are in place. Emphasis will have to be placed on obtaining adequate technology and the training required for its use; constant updating on the latest proven and successful techniques on supervision of clients; and awareness of various proven and new treatment programs that must be provided. Adequate space within which the juvenile justice department functions must also be provided. Excellence must be demonstrated by the way the judge does his/her job and the judge’s expectation, indeed demand, that all who interact with the judge do their job in the same manner.

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

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

can simply depend upon law enforcement and juvenile court to keep the community safe from and successfully deal with juvenile offenders.

The community that wants to deal successfully with juvenile offenders must become actively involved in all aspects of the community's juvenile world. Initially, it involves the community identifying the risk behaviors and protective factors in the community (Communities That Care)<sup>2</sup>. Emphasis should be placed on prevention programs, which must begin in the earliest school, and even pre-school, years. There should be wholesome activities for the youth that will attract and keep them actively involved developing prosocial values and outlets; diversionary programs that will enable neighborhoods to deal with youthful offenders' early non-life-threatening misdeeds and redirect them to positive, law abiding lives. Schools must provide a learning opportunity that will attract and keep students in school until graduation.

The business and industrial community can provide jobs that will prepare youthful offenders to learn how to become job-ready and get and keep a job while they are earning money to pay their restitution to the victims they have wronged and caused a loss. Community service will permit the juvenile to repay the community he/she has wronged where there is no monetary loss caused by his/her transgression. The community can provide community-based programs that will offer needed services to juveniles and their families instead of sending such juveniles out of the community into program placements that are not only costly but less effective in dealing with the juvenile and the family and neighborhood because of the juvenile's separation from the community. Engaging the schools, religious institutions, character building organizations, service clubs, and neighborhoods to become actively involved in identifying, helping, mentoring and socializing juvenile offenders is critical to success. Also important, the community must establish an environment in which the youth will grow that will instill in them by example mutual respect for the personhood of every one regardless of race, color, creed, national origin, or gender. This is not an all-inclusive list. There are more that a creative judge can identify with an engaged community.

The initial challenge to the judge is how to engage the community. A judge who has been an active member of the community prior to the election to the bench can build on the numerous contacts developed during that time. The judge who was not so actively involved will find that it is not that difficult to reach out. Initially, the community respects enormously the position of judge. The engagement can begin by speaking to various groups, educating them to the principles of balanced and restorative justice and the community's role in implementing them; for example, the Chamber of Commerce,

Manufacturers Association, Council of Churches, PTAs, service clubs and other community, civic, educational, and religious organizations. The Chief Juvenile Probation Officer can be a big help in suggesting to the judge the type of community initiatives that could provide a good beginning, such as neighborhood youth panels and community group conferencing programs.

After the initial contact, the judge will find it easier to continue the engagement, to lead the community to accept a role, and, indeed, responsibility in carrying out the principles of the balanced approach. Staff support will be needed. Funding for the community meetings, services input and program operations will be required. Grants are readily available.<sup>3</sup> The Chief Juvenile Probation Officer will have to draft the proposal. The judge will give the direction and enlist the needed support of the County Commissioners for the grant proposal.

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

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

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

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

Media reporters may, of course, attend juvenile hearings that are open to the public. But there is no reason why they should not also be permitted to attend and report about closed hearings, so long as they do not report in a way that would disclose the identity of the juvenile involved. If the judge conducts the hearing in a way that all the participants, juveniles, parents, attorneys, victims and other interested parties, clearly understand what

is happening and why, there will be no need for any additional explanation to the media reporters. This process can promote the public's understanding of the operation the juvenile justice in their community by having access to news reports by reporters who personally covered the hearing. Of course, there is no guarantee that such reports will be written in a way we would have written such reports, but they most likely will be written in a way that lifts a little higher the veil of secrecy and lack of understanding of juvenile justice.

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

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

Finally, and perhaps of paramount importance, the culture of juvenile justice in the community is critical. The juvenile and his/her family, the victim, school, police, neighbors, and service providers must come away from their experience in juvenile court with respect for juvenile justice as an institution. The court's involvement must produce an aura that promotes this respect and, is it too much to expect, reverence for juvenile justice. The personal appearance and involvement of the judge as distinguished from masters, lends significantly to this aura; that is, that juvenile justice is so important that it requires the judge's personal involvement and not just an attorney/master. Of course, there will be the

need for masters<sup>4</sup> where the judge simply does not have and cannot make sufficient time to preside at detention hearings and other situations covered in the Juvenile Court Judges' Commission's Standards Governing the Use of Juvenile Court Masters (see discussion at § 11-3). But, we must recognize that the non-presence of the judge in any court appearance/hearing sends a powerful message to all involved that this is not that important to require the actual presence of a judge. The district attorneys and public defenders or other assigned defense counsel must carry out their roles in a way that promotes respect for juvenile justice.

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

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

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

### **DO's**

1. Approach each case with enthusiasm and as an opportunity as well as a duty to achieve the mission of the juvenile justice system: community protection, victim restoration and youth redemption.
2. In scheduling cases, allow sufficient time for each case without rushing through or even appearing to do so. Bring the hearing to an unrushed conclusion and not an abrupt stop when the time allotted for the case has expired.
3. Articulate clearly the court's expectations of all involved: the juvenile, parents/family, juvenile probation officer, counsel, school, victims' services, and resource providers.
4. Hold all involved in the case accountable for accomplishing their specific goals/ assignments. Review interim reports, monitor to make sure everyone is on track to reach their goals in a timely manner.

5. Treat everyone with respect and courtesy and insist all involved do the same.
6. Treat each contact with the juvenile and family as an opportunity to enable the child to advance in his/her program of supervision, care, and rehabilitation.
7. Treat each contact with a crime victim as an opportunity to affirm the importance of his or her input and participation throughout the juvenile justice process.
8. Create and maintain a culture in the community that informs the community of its role in carrying out the principles of balanced and restorative justice and enables and leads the community in doing so. This includes special attention to establishing a close liaison with school authorities that enables coordination of policies and programs.
9. Join with other juvenile court judges in constantly striving to improve juvenile justice in Pennsylvania; for example, attending and actively participating in meetings of the Juvenile Court Section of the Pennsylvania Conference of State Trial Judges and The Pennsylvania Conference on Juvenile Justice
10. Be informed on all new developments in the law and treatment programs/resources in juvenile justice. Help to create new programs where needed, especially in the community.
11. Create and maintain or enable the creation and maintenance in juvenile court of an aura of the majesty of the law that instills the respect of all involved.

#### **DON'Ts**

1. Undertake the duties of a juvenile court judge with less than a 100% passionate commitment to demanding excellence of yourself and all those involved in working with juvenile and family; i.e., the attorneys, juvenile probation officers, victim and other service providers and school personnel.
2. Always assume the juvenile is the root cause of the problem that brings this juvenile into court. Rather, always consider the role of the family, school, and community as both a contributor to the cause of the juvenile's actions as well as resources for accomplishing community protection, victim restoration and youth redemption.
3. Go into a case unprepared or allow others involved to do so.

4. Overlook the importance of positive feedback not only to the juvenile and family but to others involved as well; i.e., the juvenile probation officer, attorneys, victim, and school and resource personnel.
5. Miss any opportunity to communicate with the community about their role in the juvenile justice process.
6. Overlook shortcomings or failures in performance of their roles by the various players in juvenile justice. Rather, inform them, privately at first, of their shortcomings and failures and importance of improvement to the overall juvenile justice system.
7. Feel any one person/program is indispensable in working with the juvenile and family. All, including the judge, are replaceable. Training and foresight will assure successful succession. This should not be an excuse for unnecessary and avoidable staff turnover of those involved in the case.
8. Expect feedback, especially positive. Learn to have confidence in how you are doing your job.
9. Expect a perfect outcome in all cases, but do not give up trying.
10. Expect to rotate out of a juvenile court assignment in less than two years or preferably in less than 5 years.

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<sup>1</sup> The Honorable Emanuel A. "Mike" Cassimatis (December 2, 1926 - November 4, 2009) served as a member of the Juvenile Court Judges' Commission (JCJC) from 1989-1998 and as JCJC Chairman from 1989-1994. Judge Cassimatis understood that the key to addressing major issues in state government lies in developing effective working relationships with other people and agencies. The leadership provided by Judge Cassimatis during his four years as JCJC's Chairman was truly exceptional, and there are countless examples of the quality and effectiveness of his leadership. Suffice it to say that it was the consensus of the other members of the Juvenile Court Judges' Commission present at the JCJC's meeting in July of 1994 when he concluded his term as Chairman, that no chairman, in the history of the Juvenile Court Judges' Commission, had given of himself so fully as did Judge Cassimatis during his term of office.

Judge Cassimatis served as Judge of the Court of Common Pleas in York County from 1978 to 1996 and as a Senior Judge from 1996 to 2006. Regarded as one of Pennsylvania's finest judges, he was active as an officer in the Pennsylvania Conference of State Trial Judges and its Juvenile Court Section, both of which he served as President. Following the 1995 amendments to the Juvenile Act, which established a new statutory mission for Pennsylvania's juvenile justice system based on the principles of balanced and restorative justice, Judge Cassimatis led the Juvenile Advisory Committee of the Pennsylvania Commission on Crime and Delinquency through the process of developing the mission statement for the system of "Community Protection; Victim Restoration; and Youth Redemption." Judge Cassimatis became one of Pennsylvania's most eloquent advocates for the principles of balanced and restorative justice.

<sup>2</sup> <https://www.communitiesthatcare.net/>

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<sup>3</sup> The Pennsylvania Commission on Crime and Delinquency (PCCD). <http://www.pccd.pa.gov/pages/default.aspx> may have funding available.

<sup>4</sup> In 2017 the Rules of Juvenile Court Procedure were amended to replace the term “master” with the term “juvenile court hearing officer”. The definition of the term “juvenile court hearing officer” at Pa.R.J.C.P. 120 explains that the term has the same meaning as term “master” as used in the Juvenile Act.



## Chapter 2

# The Charge for Pennsylvania's Juvenile Justice System

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In the 1990s, nearly every state in the nation enacted harsh new measures against juvenile crime. Faced with an apparent epidemic of serious and violent juvenile offending—with juvenile arrests for Violent Crime Index offenses climbing steeply from 1988 through 1994, the year the wave finally peaked and began to fall away<sup>1</sup>— most states responded by curtailing juvenile court jurisdiction over serious crimes, sweeping younger and younger offenders into criminal courts and adult prisons,<sup>2</sup> and dismantling confidentiality and other protections traditionally afforded to young people in trouble with the law.<sup>3</sup>

Pennsylvania approached the problem differently. Act 33, enacted in Special Session No. 1 of 1995, did effectively redraw the jurisdictional boundaries between the juvenile and criminal courts, placing a number of violent felonies committed by juveniles age 15 and older within the original jurisdiction of the criminal courts.

(See the discussion at § 4-5.) But unlike its counterparts in other states, Act 33 made a more fundamental and thoughtful change—reorienting the juvenile justice system itself, expanding the circle of clients whose interests it serves, and broadening its stated purposes to include more comprehensive goals. Why do we have juvenile courts? What are they for? Act 33 provided a whole new answer: *“Consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.”*

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

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

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

The new purpose for Pennsylvania’s juvenile justice system envisioned new roles and responsibilities for judges, juvenile justice system professionals, crime victims, and communities, in addition to juvenile offenders.

In 1997, the Juvenile Advisory Committee (JAC) of the Pennsylvania Commission on Crime and Delinquency (PCCD) adopted a mission statement and guiding principles for Pennsylvania’s juvenile justice system to guide the operation and shape the policy of the system. In 2001, Act 30 renamed the JAC as the Juvenile Justice and Delinquency Prevention Committee (JJJPC) and charged with committee with expanded duties for planning and coordination within Pennsylvania’s juvenile justice system.<sup>4</sup> That year, in conjunction with the development of a strategic plan for Pennsylvania’s juvenile justice system, the JJJPC reaffirmed its commitment to the 1997 mission statement, and strengthened the definitions of the terms comprising this mission statement as the accompanying guiding principles.

This mission statement which, in the words of former JAC member Judge Emanuel A. Cassimatis, describes the purpose of Pennsylvania’s juvenile justice system “briefly, and yet completely”<sup>5</sup> continues to be the philosophical foundation upon which Pennsylvania’s juvenile justice system reform efforts are based.

### ***Pennsylvania’s Juvenile Justice Mission Statement***



***“Juvenile Justice:***

***Community Protection;***

***Victim Restoration;***

***Youth Redemption”***

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

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

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

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

In conjunction with the development of the Mission Statement, the JJDPCC endorsed a set of “Guiding Principles for Pennsylvania’s Juvenile Justice System”, which continue to be relevant in setting forth the goals of the system related to “Community Protection”, “Victim Restoration”, “Youth Redemption” and “Juvenile Justice System Operations.”<sup>6</sup>

Pennsylvania’s strong commitment to its statutory balanced and restorative justice mission solidified its status as leader in juvenile justice policy and practice. And as a result of this commitment, a series of amendments to the Juvenile Act, and the ongoing modification of the Pennsylvania Rules of Juvenile Court Procedure, the system has continued to evolve and garner national attention.

### **Pennsylvania’s Juvenile Justice System Enhancement Strategy**

In 2004, The John D. and Catherine T. MacArthur Foundation selected Pennsylvania as the first state to participate in its *Models for Change* juvenile justice reform initiative. According to the MacArthur Foundation, “Pennsylvania was chosen because it is considered a ‘bellwether’ state in juvenile justice, it has a favorable reform climate, and it seems poised to become an exemplary system. There are strong partnerships among Pennsylvania’s stakeholders – judges, district attorneys, public defenders, probation departments, community leaders, and city, county, and state officials – and considerable consensus about the strengths and weaknesses of the state’s juvenile justice system.”<sup>7</sup>

Pennsylvania’s five-year *Models for Change* partnership with the MacArthur Foundation focused on three targeted areas of improvement: (1) the system of *aftercare* services and

supports, (2) the coordination of *mental health services* for juvenile justice-involved youth, and (3) *disproportionate minority contact* with the juvenile justice system.

*Models for Change* accelerated the pace of Pennsylvania's efforts at reform at both the state and local levels, and supported a series of evidence-based practices, including the introduction of screening and assessment instruments and targeted evidence-based interventions.<sup>8</sup>

In June 2010, with the Commonwealth's *Models for Change* partnership with the MacArthur Foundation drawing to a close, the Executive Committee of the Pennsylvania Council of Chief Juvenile Probation Officers and Juvenile Court Judges' Commission (JCJC) staff concluded that it was essential to develop a strategy to consolidate the various *Models for Change*-related initiatives "under one roof," and to sustain and enhance the gains of the previous five years. Following an intensive review of the impact of and the many lessons learned through this partnership, it was agreed that the JCJC and Pennsylvania Council of Chief Juvenile Probation Officers would work together with PCCD and other system partners to develop and implement a comprehensive "**Juvenile Justice System Enhancement Strategy**" (JJSES) as the means to achieve this goal.

In November 2010, the Juvenile Court Judges' Commission (JCJC) unanimously endorsed the following Statement of Purpose as the foundation for Pennsylvania's Juvenile Justice System Enhancement Strategy:

### ***JJSES Statement of Purpose***

**We dedicate ourselves to working in partnership to enhance the capacity of Pennsylvania's juvenile justice system to achieve its balanced and restorative justice mission by:**

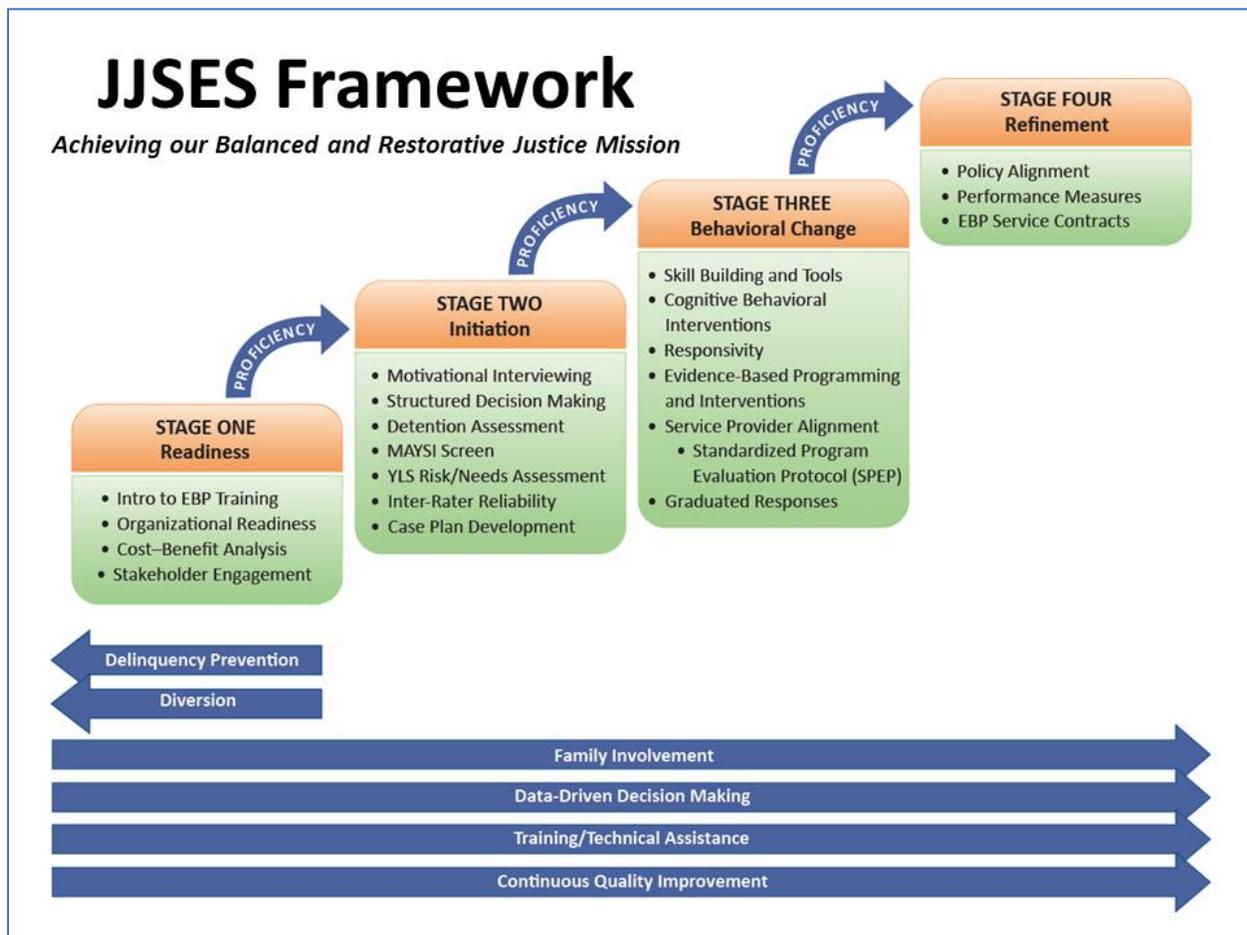
- **employing evidence-based practices, with fidelity, at every stage of the juvenile justice process;**
- **collecting and analyzing the data necessary to measure the results of these efforts; and, with this knowledge,**
- **striving to continuously improve the quality of our decisions, services and programs.**

The JJSES Statement of Purpose has been strongly endorsed throughout the juvenile justice system, and the JCJC is coordinating the implementation of the JJSES with the assistance of the JJSES Leadership Team, comprised of key leaders from the Pennsylvania Council of

Chief Juvenile Probation Officers, PCCD’s Office of Juvenile Justice and Delinquency Prevention, and the JCJC.

The recognition that change is a long-term process requiring strategic and careful planning is the foundation of the JJSES Framework (See below). The framework depicts and summarizes the stages of JJSES implementation (Readiness, Initiation, Behavioral Change and Refinement) and underlying principles and practices that are essential elements of an evidence-based juvenile justice system. The publication commonly known as the “JJSES Monograph”<sup>9</sup> contains a detailed explanation of the JJSES, including the activities and practices that comprise the stages of the framework.

The juvenile court judge should be knowledgeable about the JJSES and the status of evidence-based policy and practice at the local level. The JJSES Framework guides judges in leading and supporting these efforts.



Essential to the philosophy of the JJSES is the concept that juvenile justice interventions and programs are considered effective when they reduce a juvenile’s risk to reoffend and

that the application of evidence-based practices will enhance public safety. As explained in the JJSES Monograph, “**Evidence-based practice’ simply means applying what we know in terms of research to what we do in our work with youth, their families, and the communities in which we live. It is the progressive, organizational use of direct, current scientific evidence to guide and inform efficient and effective services.**” <sup>10</sup>

The JJSES promotes the utilization of actuarial assessments to identify *criminogenic needs* (dynamic risk factors) which, when addressed through evidence-based juvenile justice practices, reduce recidivism. Pennsylvania selected the **Youth Level of Service/Case Management Inventory (YLS/CMI)** risk/needs assessment to identify these criminogenic needs and pinpoint the skill areas requiring development. (See “The Use of Evidence-Based Practices” at §9-3)

The criminogenic needs assessed by the **YLS/CMI** are:

- attitudes/orientation,
- personality/behavior,
- peer relations,
- family circumstances/parenting,
- substance abuse,
- education/employment, and
- leisure/recreation.

The principles of *risk*, *need*, and *responsivity* are identified through the administration of the YLS/CMI and form the foundation of evidenced-based juvenile justice practices. The *risk principle* helps identify *who* should receive juvenile justice interventions and treatment. The *need principle* focuses on *what* about the young person must be addressed. The *responsivity principle* underscores the importance of *how* treatment should be delivered, with behavioral and cognitive behavioral skill-building techniques being the most effective.<sup>11</sup>

- ***From a criminogenic risk perspective:*** the evidence is clear that low-risk juveniles should be given the least amount of attention because they are already largely connected to prosocial communities and are likely to be self-correcting. Juvenile justice intervention beyond arrest and prosecution will likely only increase the probability of reoffense for this population. Medium and high-risk youth are much more likely to respond positively to interventions, if administered correctly. The

intensity of treatment programs should be matched to each juvenile's risk level, with higher dosages, lengths, and intensities applied to higher-risk offenders.

Therefore, in terms of supervision and treatment, the juvenile justice system should:

- **Use minimal intervention with low-risk juveniles.** Supervision staff should manage the risk of re-offense but avoid vigorously applying juvenile justice system interventions to low-risk juveniles unless individual traits change, resulting in a youth's increased risk level. Interventions should be the least restrictive in nature.
  - **Focus programs and services specifically on medium and high-risk juveniles.** Levels of risk can especially be reduced for medium and high-risk juveniles by applying appropriately matched services and supervision. These youths' risk levels can be reduced through the strategic application of interventions that match their risk levels (with more intensive interventions being reserved for higher-risk cases), criminogenic needs, and responsivity traits (e.g., learning disabilities, mental health, gender).
  - **Maximize external control and monitoring with extremely high-risk juveniles.** Employ techniques such as surveillance, electronic monitoring, curfew, and police-probation partnerships to control the risk. These youths' risk levels can also be reduced through interventions that match their risk, criminogenic need and responsivity traits, but they may need external control until these interventions take hold.
- ***From a criminogenic need perspective:*** Traits that contribute to delinquency and are changeable should be targeted for intervention. Attention to non-criminogenic needs will not yield positive recidivism results and may even do harm.
- ***From a responsivity perspective:*** Interventions should be closely matched to each individual's unique qualities and attempts should be made to increase the youth's intrinsic motivation to engage in behavior change. The most effective interventions create a match between a youth's traits, the characteristics of treatment, and the counselor/facilitator's attributes, and acknowledge the youth's current stage of change.<sup>12</sup>

It is through the use of research evidence and the demonstration of outcomes that judges can best ensure that the juvenile justice system mission of ***community protection; victim***

**restoration; and youth redemption** can be achieved for the juveniles who come within the jurisdiction of the court.

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

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

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

<sup>4</sup><http://www.legis.state.pa.us/cfdocs/Legis/LI/uconsCheck.cfm?txtType=HTM&yr=2001&sessInd=0&smthLwInd=0&act=30>

<sup>5</sup> Presentation to Governor Tom Ridge of the "Mission Statement for Pennsylvania's Juvenile Justice System" on July 21, 1997 in conjunction with the Juvenile Advisory Committee's 1997 Strategic Plan.

<sup>6</sup> <http://www.jcjc.pa.gov/Publications/Documents/Mission%20Guiding%20Principles.pdf>

<sup>7</sup> Youth Law Center, *Keystones for Reform: Promising Juvenile Justice System Policies and Practices in Pennsylvania*, 2005. pp. 1-2.

<sup>8</sup> 2017 Pennsylvania Juvenile Justice and Delinquency Prevention Plan prepared for Governor Tom Wolf, Juvenile Justice and Delinquency Prevention Committee on behalf of the Pennsylvania Commission on Crime and Delinquency, January 2017. P.18.

<sup>9</sup> *Pennsylvania's Juvenile Justice System Enhancement Strategy-Achieving Our Balanced and Restorative Justice Mission Through Evidence-based Policy and Practice* (Juvenile Court Judges' Commission and Pennsylvania Council of Chief Juvenile Probation Officers, April 2012).

<sup>10</sup> *Ibid.*, p.5.

<sup>11</sup> *Ibid.*, p.8.

<sup>12</sup> *Ibid.*, pp.9-10.

# Chapter 3

## Overview of Pennsylvania's Juvenile Justice System

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### Summary of Contents

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

- § 3-1. The Origins and Development of Pennsylvania Juvenile Courts
- § 3-2. Basic Juvenile Justice Structure and Funding
- § 3-3. Statistical Overview of Case Processing
- § 3-4. Managing the Interstate Movement of Juveniles

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

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

Widespread dissatisfaction with this approach during the 19th century sparked a number of local reforms intended to deal with young criminals more effectively and humanely, and in particular to isolate them from adults. Philadelphia saw the creation of one of the nation's first "Houses of Refuge" for children in 1826, and separate correctional institutions for children convicted of crimes, vagrancy, and "incurability" became common in subsequent years.<sup>3</sup> By 1893, Pennsylvania law already required separate trials and trial

dockets for children, and prohibited their confinement with alleged or convicted adult criminals.<sup>4</sup>

In 1899, Illinois established what is now generally regarded as the world's first juvenile court, in Cook County. The court used broad powers and informal procedures to deal with law-breaking children in an

***Pennsylvania's juvenile courts are over a century old.***

entirely new way—so that, as the new court's enabling legislation put it, “as far as practical they shall be treated not as criminals but as children in need of aid, encouragement, and guidance.”<sup>5</sup> Most states followed suit soon afterwards. Pennsylvania passed its first Juvenile Court Act, modeled on the Illinois law, in 1901. While the 1901 law did not survive an initial constitutional challenge, an amended Juvenile Court Act of 1903 was immediately enacted and upheld by the Pennsylvania Supreme Court.

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

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

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

Significant amendments to the Juvenile Act of 1972 were enacted in 1977, 1980, 1981, 1986, 1989, 1995 and 2000:

- The 1977 change established 10 as the minimum age at which a child could be considered delinquent, and deleted “ungovernable behavior” from the definition

of “delinquent acts” –so that from then on courts would deal with cases of ungovernability as “dependency” rather than delinquency matters.

- A 1980 law authorized fingerprinting and photographing of juveniles and required that district attorneys receive notice before juveniles in secure custody could be stepped down to a less secure facility.
- In 1981, and again in 1986 and 1989, the Juvenile Act was amended to relax confidentiality restrictions related to the records of some categories of juvenile offenders.
- The 1986 amendments also for the first time gave victims and their counsel and supporters the right to attend juvenile hearings, and prohibited the entry of a consent decree without the district attorney's assent.
- Pennsylvania's Juvenile Act took what is essentially its present shape in 1995, when the legislature redefined the court's mission in juvenile delinquency cases to incorporate the principles of “balanced and restorative justice” (see discussion in Chapter 2) and acted to restrict the juvenile court's initial jurisdiction over a number of serious felonies (see § 4-5 for a listing of excluded offenses).
- In 2000, the Crime Victims Act was amended to give basic rights to victims of juvenile crime. While these amendments represented a critical first step in recognizing victims as clients of the justice system, they extended many of the most important rights only to victims of personal injury crimes. The Rules of Juvenile Court Procedure for Delinquency Matters expanded these rights to ALL victims of crimes committed by juveniles.
- Pennsylvania's juvenile justice system has long been regarded as a model for the nation, and this status has been further enhanced by the dramatic strengthening of due process protections for juveniles in response to the recommendations of the Interbranch Commission on Juvenile Justice<sup>6</sup> and the system-wide commitment to evidence-based policy and practice that is at the foundation of the Juvenile justice System Enhancement Strategy (JJSES) (see discussion in Chapter 2).

### **§ 3-2 Basic Juvenile Justice Structure and Funding**

Especially in comparison with most other states, Pennsylvania's is a highly decentralized juvenile justice system, characterized by an unusual amount of local control and

experimentation and a very diverse mix of private delinquency service providers to supplement the public services network. There are states in which a single “Department of Juvenile Justice,” answerable to the governor, is responsible for everything. Pennsylvania isn't one of them. Here the state provides leadership, but the local juvenile courts administer the probation departments. Most juvenile detention centers are operated by counties. Judges decide where local juveniles will be

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

committed, and relatively few end up in state-operated facilities. Even youth that are placed outside the home are far more likely to go to private facilities than public ones. And wherever they go, they remain subject to local court custody and supervision.

This diversified approach has some weaknesses, but it has many more strengths, and Pennsylvania has long been regarded as a national leader in juvenile justice policy and practice.

### ***Basic Elements of the System***

The basic elements of the Pennsylvania juvenile justice system are the following:<sup>7</sup>

- ***Juvenile Courts.*** The Pennsylvania Constitution gives the Courts of Common Pleas in each of the state's 67 counties “unlimited original jurisdiction in all cases except as may otherwise be provided by law.”<sup>8</sup> This general grant of authority extends to juvenile delinquency matters, among many others. Some counties have established permanent “juvenile divisions” of their Courts of Common Pleas, while others merely hold regularly scheduled “juvenile days.” By custom, however, whenever a Court of Common Pleas is hearing a juvenile matter, it is referred to as a “juvenile court,” and this usage will be observed throughout this work.
- ***Court Administration.*** In most counties, the administrative direction of the juvenile court is entrusted to an administrative judge designated by the president judge of the county. (In Philadelphia and Allegheny Counties, however, the administrative judge of the Family Court is appointed by the Supreme Court.) In a number of jurisdictions, the president judge functions as the administrative judge of the juvenile court. A chief juvenile probation officer is appointed by the court to oversee the county's juvenile probation department.

- **Juvenile Probation.** County juvenile probation officers in Pennsylvania are the juvenile court's foot soldiers, serving as the primary points of contact with court-involved youth from intake through case termination. They are responsible for initial screening, predisposition investigation, probation supervision, and “aftercare” or post-commitment supervision. In some counties, they play a role in victim services as well. Juvenile probation officers in Pennsylvania tend to be experienced, educated, and well- trained. To be hired, a juvenile probation officer must have a bachelor's degree with at least 18 credits in the social sciences, but about a quarter of all juvenile probation officers statewide hold graduate degrees. The annual turnover rate has historically been less than 10%.<sup>9</sup> The Juvenile Court Judges' Commission offers an optional 40-hour orientation for new officers through its Center for Juvenile Justice Training and Research at Shippensburg University, and mandates 40 hours of continuing training annually. The JCJC also underwrites tuition for probation officers who complete a two-year weekend master's program at Shippensburg University that was developed especially for juvenile probation officers.
- **Detention.** There are a total of 14 secure juvenile detention facilities in operation in Pennsylvania—2 private facilities and 12 that are owned and operated by individual counties or several counties—accepting temporary custody of juveniles awaiting adjudication, disposition or placement. Some house only youth from their own counties and others serve multiple counties. With a combined total of approximately 714 beds, these facilities accept as many as 9,000 admissions in a typical year.<sup>10</sup> The median length of stay in detention tends to be about 9 days.<sup>11</sup> Facility utilization rates (average daily population divided by bed capacity) tend to range from a low of about 28% to a high of about 72%.<sup>12</sup> Between 2006 and 2017, 10 secure juvenile centers ceased operations in Pennsylvania.<sup>13</sup>
- **State-Operated Facilities.** The Bureau of Juvenile Justice Services (BJJS) within the Department of Human Services, Office of Children, Youth and Families (OCYF) administers and manages a network of Youth Development Centers and Youth Forestry Camps. There are a total of 5 such state-operated facilities, with an overall capacity of 351 beds (252-secure and 99 non-secure, including a 48-bed facility for females). Specialized programs serve sex offenders, substance abusers, emotionally disturbed youth, developmentally delayed youth, and dually-diagnosed youth. As with the secure juvenile detention centers, the number and bed capacity of state-operated facilities has decreased significantly in the past decade.

- **Private Providers.** Pennsylvania's array of private sector delinquency service providers is arguably the best in the nation. There are well over 500 separate programs for delinquent youth in Pennsylvania, including secure placement programs, group homes, day treatment programs, alternative schools, wilderness programs, shelter and foster care programs, and specialized mental health, drug and alcohol, and sex offender treatment programs, all privately run but inspected and approved by the Department of Human Services.

### ***State Leadership Organizations***

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

- **The Juvenile Court Judges' Commission.** The Juvenile Court Judges' Commission (JCJC) is a valuable resource for all juvenile court judges. The JCJC is a statutorily created body that is mandated to advise juvenile court judges on all matters relating to the proper care of both dependent and delinquent children. The JCJC also collects and disseminates Pennsylvania juvenile court statistics, establishes administrative and procedural standards for juvenile courts, and sets personnel practices and employment standards for juvenile probation departments. Local juvenile probation departments benefit from JCJC grants intended to improve probation practice and promote various kinds of specialized probation (including school-based, community-based, intensive, and aftercare probation), and receive training, continuing education and graduate education through the JCJC's Center for Juvenile Justice Training and Research at Shippensburg University. The JCJC's nine judge-members are nominated by the Chief Justice of the Pennsylvania Supreme Court and appointed by the Governor for three-year terms, and are served by a permanent staff in Harrisburg and at Shippensburg University. In 2012, Act 42 of 2012 amended the enabling legislation of the Juvenile Court Judges' Commission at 42 Pa.C.S. § 6373 (4) to provide that the Commission shall have the power and is required to "collect and analyze data to identify trends and to determine the effectiveness of programs and practices to ensure the reasonable and efficient administration of the juvenile court system; make recommendations concerning evidence-based programs and practices to judges, the Administrative Office of Pennsylvania Courts and other appropriate entities; and post related information on the commission's publicly accessible Internet website."

- ***Department of Human Services.*** The Department of Human Services (DHS) through its Office of Children, Youth and Families, operates the state's delinquency institutions, and approves and licenses many local and private institutions for juveniles. The DHS also fixes each county's "needs-based budget" for purposes of state reimbursement of county-purchased services for juveniles (see discussion of "Needs-Based/Act 148," below), and administers the state's "placement maintenance" program for juveniles placed outside their homes (see sidebar, "Title IV-E Reimbursement Under the Social Security Act").
- ***The Pennsylvania Commission on Crime and Delinquency.*** The Pennsylvania Commission on Crime and Delinquency (PCCD) is the agency responsible for statewide criminal and juvenile justice system planning, coordination, and policy analysis. The PCCD provides data analysis, research, and legislative recommendations to the Governor's Office and the General Assembly, and administers and supports a number of important juvenile justice grant funding initiatives that benefit local governments. The state's Victim/Witness Assistance Program and its Crime Victims' Compensation Fund are overseen by the PCCD as well. The PCCD's expenditure of federal and state juvenile justice funds is guided by a formal advisory group of service providers and other professionals that sits as the Juvenile Justice and Delinquency Prevention Committee.
- ***The Pennsylvania Council of Chief Juvenile Probation Officers.*** The "Chiefs' Council" is a highly regarded membership organization of chief probation officers, deputy chiefs, supervisors, and probation staff that works closely with the Juvenile Court Judges' Commission on probation training, education, and system planning, and legislative issues. The Council also works closely with all other juvenile justice system stakeholders, is well represented on the JJSES Leadership Team, and has been critically important to the successful implementation of this initiative.

### ***Juvenile Justice Funding***

Pennsylvania juvenile justice system costs—including the costs of housing, supervising, treating, and otherwise meeting the needs of youth in the system—may be paid for out of private,<sup>14</sup> federal, state and county funds. In general, Pennsylvania law<sup>15</sup> provides that no state or local funds may be expended on behalf of a juvenile until all available federal and private funds for which the juvenile is eligible have been exhausted. Allowable costs not otherwise covered by federal or private sources are shared by the state and county. Their

respective shares are determined by means of a detailed schedule of state reimbursements laid out in the Human Services Code.<sup>16</sup> As is discussed more fully below (see “Needs-Based/Act 148 Funds”), the state reimbursement rates vary between 50% and 100% based on the type of service. State Act 148 reimbursement is “capped” meaning that each county is allocated a certain amount of funds that cannot be exceeded regardless of whether the expenses are allowable. Funding levels are determined through a statutorily defined needs-based budgeting process to determine yearly funding made available for services to dependent and delinquent children and youth. The county itself is liable for actual expenditures that exceed the cap.

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

### **Federal**

- **Title IV-E.** Established under Title IV-E of the federal Social Security Act, the Title IV-E Foster Care Placement Maintenance program reimburses Pennsylvania counties for a substantial portion (ranging between 50 – 54%, depending on Federal Medical Assistance Percentage (FMAP) rate in effect at the time of the service) of the costs of maintaining eligible juveniles placed in federally defined foster care settings (See sidebar, “Title IV-E Reimbursement under the Social Security Act.”) The remaining cost is shared between the state and county governments based on the state reimbursement rates mentioned above.

Title IV-E is an open-ended entitlement program, administered since 1980 by the Children's Bureau of the U.S. Department of Health and Human Services, which provides funds to help cover the expenses of maintaining needy children in foster homes and child care institutions. Under Sec. 472(a) of the Social Security Act, 42 U.S.C. §672, a juvenile who has been removed from the home must meet certain requirements to be eligible for Title IV-E reimbursement. First and foremost, the juvenile must meet the definition of “Child” under the Juvenile Act and be determined to be a “Shared Case Responsibility” case, meaning the youth is served by both the juvenile probation officer for delinquency concerns and the children & youth office for dependency concerns. The youth must also meet financial need as determined by the Aid to Families with Dependent Children (AFDC) criteria established in 1996. The court must make a determination at the initial hearing that placement in out-of-home care is in the juvenile’s best interest and that the removing court has examined the facts and determined that removal from the family home was necessary and could not reasonably have been avoided. Basically, Title IV-E placement assistance is available in delinquency cases if courts make the

determinations regarding such issues as child safety, permanency and well-being that they are required by law to make in dependency cases, and if the juvenile is placed in a federally defined “foster care” setting with eligible costs.

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

- ***Necessity of removal.*** The court authorizing a juvenile's removal from the home must make a fact-based determination that “continuation in the home would be contrary to the welfare” of the juvenile--because he poses a threat to himself if left at large, for example, or needs out-of-home treatment, or will otherwise continue offending and thereby risk injuries or further penalties. (The court can also consider making a finding that the placement in out-of-home care is in the juvenile’s “best interest.”) The court must make the “contrary to welfare/best interest” finding in the first order that sanctions the juvenile's removal, even temporarily. So, for example, in a delinquency case that commences with a juvenile's being taken into custody and placed in detention, the court must make a “contrary to the welfare/best interest” finding at the time of the detention hearing--even though detention is not a “placement” qualifying for IV-E funding. Failure to do so means that the costs of any subsequent placement--even in a qualifying institution--will not be reimbursable.
- ***Efforts to prevent removal.*** Within 60 days of removal, the court must find that “reasonable efforts” were made to prevent removal—or that, under the circumstances, a failure to make advance efforts to prevent removal was “reasonable.”
- ***Efforts to finalize permanency.*** Within 6 months of the date that the juvenile enters IV-E eligible foster care—generally at a “permanency hearing” that is required for juveniles who have remained that long in placement—the court must find that “reasonable efforts have been made to finalize a permanent placement for the child.”

Title IV-E placement assistance helps cover the costs of “24-hour substitute care” in “licensed or approved” foster homes or child care institutions that fall within the federal definition of “foster care.” Detention centers, training schools, forestry

camps, and other facilities “operated primarily for the detention of children who are determined to be delinquent” are specifically disqualified.

- **Medicaid.** The costs of a wide variety of medically necessary in-patient and out-patient services for eligible juveniles are reimbursable under Pennsylvania's federally funded Medical Assistance program. The DHS implemented its Integrated Children's Services Initiative-often referred to as “Medicaid Realignment” –to maximize the use of federal Medical Assistance funding for “medically necessary” treatment services to dependent and delinquent youth. Through this initiative, DHS identified behavioral health treatment services across the state that could be funded through the Medical Assistance program. This was a complex process requiring agencies and services to adhere to licensing and accreditation standards, some of which are difficult to meet, particularly for some small or rural county services. Child welfare and juvenile justice services (including court ordered services) that do not fall under “medical necessity” may be paid for with state and local funds through the needs-based budgeting process (described below) in some instances. If the cost is determined unallowable for state participation, the county supports the expense.
- **TANF.** A portion of Pennsylvania's block grant under the federal Temporary Assistance for Needy Families program established by Title IV-A of the Social Security Act is allocated to the state Office of Children, Youth and Families to support county services for means-eligible youth, including (among many other things) emergency shelter placement services and in-home services for adjudicated delinquents required to participate in community-based programs. Unlike reimbursement under Title IV-E, reimbursement under TANF is for 100% of the eligible county costs.

## State

- **“Needs-Based/Act 148” Funds.** After all other available funding sources have been tapped, including child-generated revenue, like child support and supplemental security income payments, and all applicable federal funding, the county can utilize Act 148 funds to match federal funds, if applicable, and to support costs not supported by federal programs or costs in excess of federal funding allotments. Under 62 P.S. §704.1 of the Human Services Code, the state provides reimbursement through the “County Needs-Based Plan and Budget Process” for most of the costs of county-purchased services for juveniles, including day treatment, counseling, foster and institutional care, and detention. Act 148 reimbursement varies from 50% to 90% of covered costs, with the remaining costs covered by local matching funds. For

instance, in-home and community-based services that the state wishes to encourage (such as counseling, referral, and day treatment services) are generally 80%-reimbursed, while reimbursement rates are deliberately set lower for secure detention (50%), secure residential (60%), and non-community-based residential services (60%). Evidence-based programs are 95% reimbursed and Promising Practices are 90% reimbursed when requested under Special Grants through the Needs-Based Plan and Budget process. The total annual Act 148 amount a county may receive is limited. Every year a finite state allocation is set for each county, determined by the Department of Human Services on the basis of the county's "Needs-Based Plan and Budget Estimate" for dependent and delinquent youth, which is submitted by the local children and youth agency. The plan/budget must take into account the county's previous spending, current spending, the number of dependent and delinquent youth entering/exiting the system, projected trends, needed services, changes in legislation, etc. The plan/budget must be arrived at with the participation of juvenile court judges as well as juvenile probation departments. To ensure that the judiciary has had input into the process and an opportunity to determine that the proposed budget estimate accurately reflects the needs of dependent and delinquent youth served by the court, judges are required to "sign off" on these estimates before they are submitted. (See §11-2)

- **JCJC Juvenile Probation Services Grant.** The Juvenile Court Judges' Commission administers a state-funded grant-in-aid program that supports staff positions and limited operational costs in virtually all county juvenile probation departments. The grants are conditioned upon adherence to certain JCJC Standards and the approval of an annual county Juvenile Justice System Enhancement Strategy implementation plan.<sup>17</sup>
- **Special grants.** In addition to the above, the Pennsylvania Commission on Crime and Delinquency administers a number of grant programs that support local juvenile justice and delinquency prevention services.<sup>18</sup> Many of these grants require the county to pay for some portion of the expense covered by the grant with its own matching funds.

## Local

- **County budgets.** County tax dollars pay for everything that is not funded by the above sources, including juvenile court support staff, most probation staff, building

and operating costs, local dollar matches required for state and federal grants, and amounts that exceed the Act 148 reimbursement cap.

### **Victim Services Funding**

The state's Victim/Witness Assistance Program is administered by PCCD. Funding support for the victim advocates who provide service to victims of juvenile offenders is provided through PCCD's Victims of Juvenile Offenders (VOJO) program. These and other victim services funds are typically awarded by PCCD upon the recommendation of PCCD's Victims Services Advisory Committee (VSAC), which also develops the funding announcements.

- ***Victims of Juvenile Offenders (VOJO) Funding.*** This state appropriation provides financial support, training and technical assistance under the Commonwealth's Crime Victims Act, specifically for victims whose offenders are under the age of 18. PCCD provides grants and technical assistance to District Attorney's Offices, Juvenile Probation offices, and community-based victim service programs to safeguard the statutory rights of victims of juvenile offenders
- ***Rights and Services Act (RASA) Funding.*** The goal of the RASA program is to support the full range of procedural services related to victim rights throughout criminal and juvenile justice proceedings. These funds may only be used to support procedural services as outlined in the Crime Victims Act and Rules of Juvenile Court Procedure.
- ***Victims of Crime Act (VOCA) Funding.*** This federal grant program provides funding for the provision of direct services to victims of crime as well as financial support, via Victims Compensation Assistance, to victims of crime. Victims of Crime Act funding is distributed primarily to community-based victim services agencies, although several programs administered by justice agencies also receive this funding.

### § 3-3 Statistical Overview of Case Processing and Recidivism Rates

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

- **Overall volume.** Pennsylvania law enforcement authorities make more than 50,000 arrests a year involving persons under 18.<sup>19</sup> Most of these arrests do not involve serious crimes—in fact, more than nine out of ten are for nonviolent offenses. But about half of juvenile arrests result in referrals to juvenile courts. Pennsylvania juvenile courts and probation departments dispose of more than 23,000 delinquency referrals a year, about three-quarters of them from police sources.
- **Typical offenses.** The most common offenses disposed of in a typical year are theft-related offenses, assault (simple & aggravated), possession of drugs, robbery, and burglary.
- **Formal v. informal handling.** About 40% of all referrals are handled without petitioning, while the remaining 60% are petitioned.<sup>20</sup>
- **Dispositions.** Consent decrees are the most frequently used formal response to juvenile offending in Pennsylvania, accounting for nearly one in five juvenile court dispositions. When you add cases resolved with probation orders and informal adjustments, over half of all cases referred to the juvenile court in a typical year result in some form of in-home supervision. By contrast, only about 6% of the total dispositions involves court-ordered placement in a residential facility.<sup>21</sup> And following the 1995 Juvenile Act amendments excluding a number of serious offenses from initial juvenile court jurisdiction (see § 6-1), judicial transfers to criminal court have become extremely rare also, with approximately ½ of 1% of statewide referrals resulting in transfer in a typical year.<sup>22</sup>
- **Types of placements.** Of the relatively small number of youth who receive placement dispositions in Pennsylvania, over half go to private non-secure institutions. Fewer than one in ten go to the most secure public institutions—the Youth Development Centers operated by the state DHS.
- **Case processing times.** On average, the amount of time it takes to bring a formal delinquency case to disposition varies considerably from county to county, from as few as four or five weeks to as many as twenty. In most years the statewide median for formally handled cases is about ten to twelve weeks. Processing times for

informally handled cases range even more widely, but the statewide median is generally about ten weeks.

- **Recidivism rates.** Juvenile recidivism in Pennsylvania is defined as a subsequent delinquency adjudication or conviction in criminal court for either a misdemeanor or felony offense within two years of case closure. Under this definition, about 22% of juveniles whose cases were closed in the years 2007-2010 recidivated.<sup>23</sup>

### § 3-4 Managing the Interstate Movement of Juveniles

The Interstate Compact for Juveniles is a contract between the states that regulates the interstate movement of juveniles who are under court supervision or who have run away from home and left their state of residence. States ratifying the compact are bound by federal law to observe the terms of the agreement. The Compact provisions take precedence over conflicting state laws, including conflicting provisions of the Juvenile Act (42 Pa.C.S. §§ 6361-6365). The Compact provides for states' supervision and return of juveniles who have run away from home and left their state of residence; are on probation, parole, or other supervision, or have escaped to another state; and have been accused of an offense in another state. Questions and requests for assistance should be directed to the office Pennsylvania's Compact Administrator in the Department of Human Services: <https://www.juvenilecompact.org/east/pennsylvania>

For further information, see:

Interstate Commission for Juveniles website: <http://www.juvenilecompact.org/>

ICJ Toolkit for Judges:

<http://www.juvenilecompact.org/Legal/Judges/ToolkitforJudges.aspx>

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<sup>1</sup> Blackstone, Sir William. Commentaries on the Laws of England.

<sup>2</sup> McCarthy, Pa. Juvenile Delinquency Prac. & Proc. (4th Ed.), § 1-2.

<sup>3</sup> Bremner, R. (1971). Children and Youth in America: A Documentary History, Vols. 1 and 2. Cambridge, MA: Harvard University Press.

<sup>4</sup> See Anderson, J. (March 1999). "Pennsylvania's Juvenile Justice System: A Rich Heritage, Clear Mission, and Bright Future." Pennsylvania Juvenile Justice 8(3). Shippensburg, PA: Center for Juvenile Justice Training & Research.

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Except where otherwise noted, all subsequent material on the history of the Pennsylvania juvenile courts is taken from Anderson.

<sup>5</sup> “An Act to Regulate the Treatment and Control of Dependent, Neglected and Delinquent Children,” Revised Statutes of the State of Illinois, 1899, quoted in Trattner, W. (1999). *From Poor Law to Welfare State*. New York, NY: The Free Press.

<sup>6</sup> <http://www.pacourts.us/assets/files/setting-2032/file-730.pdf?cb=4beb87>

<sup>7</sup> Except where otherwise noted, information in this section is taken from National Center for Juvenile Justice. (2002). “Pennsylvania.” *State Juvenile Justice Profiles*. Pittsburgh, PA: NCJJ. Available online at <http://www.ncjj.org/stateprofiles/>.

<sup>8</sup> Article V, Section 5, Pennsylvania Constitution.

<sup>9</sup> Juvenile Court Judges’ Commission, 2016 JCJC Juvenile Probation Personnel Report

<sup>10</sup> *2015 Pennsylvania Juvenile Court Dispositions*, Juvenile Court Judges’ Commission, 2016, page 13.([www.jcjc.pa.gov](http://www.jcjc.pa.gov))

<sup>11</sup> *Ibid*, p.14.

<sup>12</sup> *Ibid*, p.16.

<sup>13</sup> 2017 Pennsylvania Juvenile Justice and Delinquency Prevention Plan, Pennsylvania Commission on Crime and Delinquency.

<sup>14</sup> For example, 62 P.S. §704.1(e) authorizes courts to order financially able parents to pay all or part of the cost of services to their minor children, in fulfillment of their general support obligations under 23 Pa.C.S. §4321.

<sup>15</sup> 62 P.S. §704.2.

<sup>16</sup> 62 P.S. §704.1.

<sup>17</sup> The JCJC grant is contingent on an annual appropriation from the General Assembly.

<sup>18</sup> Funding streams administered by the PCCD are described in the “Grants” section of the Commission’s website at <http://www.pccd.state.pa.us/>.

<sup>19</sup> Unless otherwise noted, the source of arrest and offense information summarized in this part is Pennsylvania State Police Uniform Crime Reporting data.

<sup>20</sup> In 2016, about 58% of the cases handled were petitioned. The remaining 42% were disposed of without petitioning.

<sup>21</sup> In 2016, probation accounted for about 17.5% of all juvenile court dispositions, consent decrees for 22.3%, and informal adjustments for 16.7%. Court-ordered placements made up 6.3% of dispositions, counting both original dispositions and disposition reviews.

<sup>22</sup> Only 62 transfers occurred in the whole state in 2016, accounting for less than half a percent of the total juvenile court dispositions

<sup>23</sup> See *The Pennsylvania Juvenile Justice Recidivism Report: Juveniles with Cases Closed in 2007, 2008, 2009, 2010, 2011, and 2012*. Pennsylvania Juvenile Court Judges’ Commission, 2016.



# Chapter 4

## Commencement of Proceedings, Intake, Diversion and Informal Adjustment

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### Summary of Contents

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

- § 4-1. Commencement of Proceedings, Intake, Diversion and Informal Adjustment in General
- § 4-2. Best Practices
- § 4-3. The Principles of Diversion
- § 4-4. Commencing Proceedings: Written Allegation Procedures
- § 4-5. The Boundaries of Delinquency Jurisdiction
- § 4-6. Venue in Delinquency Cases
- § 4-7. Intake Conferences
- § 4-8. Informal Adjustment

### Key Statutes

- 42 Pa.C.S. §1520 (adjudication alternative program)
- 42 Pa.C.S. §6302 (definitions of “child,” “delinquent act,” “delinquent child”)
- 42 Pa.C.S. §6303 (scope of chapter)
- 42 Pa.C.S. §6304 (powers and duties of probation officers)
- 42 Pa.C.S. §6321 (commencement of proceedings)
- 42 Pa.C.S. §6322 (transfer from criminal proceedings)
- 42 Pa.C.S. §6323 (informal adjustment)
- 42 Pa.C.S. §6340 (consent decree)
- 42 Pa.C.S. §6352 (disposition of delinquent child)
- 11 P.S. § 890.1 (Interstate Compact for Juveniles, Act 54 of 2004)
- 18 P.S. §§11.201, 11.216 (victim notice & comment rights prior to diversion)

### Rules<sup>1</sup>

- Rule 132, Pa.R.J.C.P. (victim’s presence)
- Rule 151, Pa.R.J.C.P. (assignment of counsel)
- Rule 200, Pa.R.J.C.P. (commencing proceedings)
- Rule 210, Pa.R.J.C.P. (arrest warrants)
- Rule 231, Pa.R.J.C.P. (written allegation)

- Rule 232, Pa.R.J.C.P. (contents of written allegation)
- Rule 233, Pa.R.J.C.P. (approval of private written allegation)
- Rule 241, Pa.R.J.C.P. (notice of detention hearing)
- Rule 242, Pa.R.J.C.P. (detention hearing)
- Rule 300, Pa.R.J.C.P. (venue)
- Rule 302, Pa.R.J.C.P. (inter-county transfer)
- Rule 310, Pa.R.J.C.P. (pre-intake duties, scheduling, and notice)
- Rule 311, Pa.R.J.C.P. (intake conference)
- Rule 312, Pa.R.J.C.P. (informal adjustment)
- Rule 313, Pa.R.J.C.P. (detention from intake)
- Rule 360, Pa.R.J.C.P. (summons and notice)
- Rule 370, Pa.R.J.C.P. (consent decree)
- Rule 390, Pa.R.J.C.P. (notice of request for transfer to criminal proceedings)
- Rule 409, Pa.R.J.C.P. (adjudication of delinquency)
- Rule 500, Pa.R.J.C.P. (summons and notice of the dispositional hearing)
- Rule 512, Pa.R.J.C.P. (dispositional hearing)
- Rule 513, Pa.R.J.C.P. (aids in disposition)
- Rule 600, Pa.R.J.C.P. (summons and notice of the commitment review, dispositional review, and probation revocation hearing)
- Rule 610, Pa.R.J.C.P. (dispositional and commitment review)
- Rule 631, Pa.R.J.C.P. (termination of court supervision)
- Rule 632, Pa.R.J.C.P. (early termination of court supervision by motion)
- Rule 597, Pa.R.Crim.P. (procedures following the filing of a motion requesting transfer from criminal proceedings to juvenile proceedings)

## JCJC Standards<sup>2</sup>

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

### **§ 4-1 Commencement of Proceedings, Intake, Diversion and Informal Adjustment in General**

Many important decisions are made at the juvenile justice system’s “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 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 that an attorney for the Commonwealth initially receive and approve some or all written allegations, generally these initial decisions are entrusted to juvenile probation officers, who 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....”<sup>3</sup> But it is juvenile court judges who are ultimately responsible for ensuring that both the intake/diversion process and its results are fundamentally 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.

***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.***

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, assessment 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.

Juvenile court judges in Pennsylvania should make use of their oversight authority to ensure that the intake/diversion process serves the larger purposes of the state’s juvenile justice system—that is, that it generates decisions that will protect the community, ensures the juvenile’s attendance at court proceedings, and provides for the diversion of appropriate cases from formal court processing.

## § 4-2 Best Practices

- The juvenile court judge must ensure that the policies and procedures governing intake, diversion and informal adjustment agreements comply with the Rules of Juvenile Court Procedure and the Juvenile Act, and that the Rules and Act are followed by probation officers, attorneys and others involved in the delinquency system.
- Judges should ensure that the submission of the written allegation and the scheduling of the intake conference are timely, in order to provide prompt attention to the risks and needs of juveniles as well as the concerns of crime victims.
- Judges should encourage the development of a range of diversion options, through community partnerships that provide opportunities for low-risk juveniles to be held accountable without the need for formal court processing.
- Judges should make use of their oversight authority to ensure that the intake/diversion process serves the principles of “balanced and restorative justice”.
- The utilization of structured decision-making tools during intake is encouraged, as these tools are designed to help system professionals make consistent, appropriate, effective, and fundamentally fair decisions.<sup>4</sup>
- Judges and related personnel must understand the impact of trauma on children. Children should be screened to identify those who may be in need of specialized services.
- Utilization of the Pennsylvania Detention Risk Assessment Instrument (PaDRAI) is encouraged in all cases where there are new allegations of delinquency and detention is being considered. The decision to place a juvenile in a secure detention center represents one of the most important decisions of juvenile court processing and could be one of the most significant events in a young person’s life. The use of a validated detention risk assessment instrument can help ensure that this decision is structured and consistent, as well as racially and ethnically neutral. (see Chapter 5)
- The juvenile court administrative judge, chief juvenile probation officer, and district attorney should collaborate to develop written policies and procedures delineating victim contact and notification procedures and responsibilities, and laying out how information provided by victims will be used when diversion is being considered.

- Where allegations of delinquency involve non-resident juveniles, the best practice is for the juvenile probation department in the county where the offense occurred to contact the juvenile probation department in the county where the juvenile resides, in order they may jointly determine the most appropriate processing of the allegation. Judges should communicate with their juvenile probation department to ensure that such inter-county transfer cases are processed in a timely manner.

### **§ 4-3 Principles of Diversion**

The Pennsylvania Juvenile Act and Rules of Juvenile Court Procedure endorse the fundamental principle that pre-adjudication diversion is appropriate in certain circumstances, and provide mechanisms to divert youth from formal processing within the juvenile justice system. These include informal adjustment<sup>5</sup> and consent decrees<sup>6</sup>, which are diversion options that are available after the intake process is initiated. However, the diversion of cases can also occur at the law enforcement level through programs such as youth aid panels or youth commissions, or through the minor judiciary<sup>7</sup> in summary offense cases.

Diverting children from formal court processing can prevent the negative long-term consequences of an adjudication of delinquency. However, diversion policies and practices must incorporate safeguards to prevent “net-widening”— subjecting more youth to juvenile justice system intervention than would be the case in the absence of these alternatives. Over-servicing low-risk youth can increase recidivism. Diversion programs must therefore focus on lower-risk youth who would be subject to further system penetration in the absence of these programs. Consideration for diversion should be based on clear eligibility guidelines, which may include such categories as first-time offenders, youth referred for failure to comply with a sentence imposed by a magisterial district judge, or youth referred for less serious offenses occurring in the school or community.

Treatment for juveniles with specialized needs such as behavioral health disorders, substance use issues, or developmental disabilities can be effectively provided in conjunction with a pre-adjudication diversion. Judges can ensure that the treatment needs of these youth will be met by encouraging collaboration among treatment providers and juvenile probation departments.

Diversion should be carefully aligned with the principles of “balanced and restorative justice”, which are the foundation of Pennsylvania’s juvenile justice system. All programmatic protocol and components should address the following principles:

***Community Protection.*** Diversion is a sensible approach to cooperative, “entry-level” offenders who are unlikely ever to wind up in juvenile court again.<sup>8</sup> 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. 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 higher risk offenders.

### ***Accountability***

Youth considered for diversion should be held accountable to the victims of their alleged misconduct. Diversionary activities must seek to redress wrongs suffered by victims. Examples of such activities may include an apology to the victim if requested by the victim, requiring the payment of restitution and arranging restorative practices in appropriate cases. Informal diversion programs can often engage 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. Eligible youth should be helped to understand the harm they have caused, be given the opportunity to learn the impact of their misconduct, and be required to make reparation to the affected victim to the extent possible. Where no individual victim is identified, eligible youth should be assisted in recognizing their “community” as the victim. The juvenile probation officer must include the payment of restitution agreed to be owed to the victim as a condition of successful completion of any diversion or informal adjustment by a juvenile.<sup>9</sup>

### ***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 the juvenile’s prospects that could result from a formal delinquency adjudication.<sup>10</sup> Information should be obtained about the eligible youth, through an interview or assessment process, to ensure that any diversion effort will include youth-specific competency development activities designed to decrease the likelihood of future arrests or referrals to juvenile court.

## ***Diversion Options***

Every juvenile court should have available a continuum of diversion programs that addresses 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 community involvement in the work of diversion.

Elements of an effective diversion continuum will vary from community to community, but must include a range of options. The following examples can operate as stand-alone diversion programming or be used in conjunction with other dispositions such as informal adjustments, consent decrees or a probation disposition following an adjudication of delinquency:

- ***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.
- ***Offense-specific education programs.*** Many jurisdictions have established diversion programs especially designed for particular categories of offenders, such as shoplifters, vandals, truants, lower risk 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 Practices.** Restorative justice practices come in many different forms but are ultimately rooted in core restorative principles. Practices used in Pennsylvania include: restorative group conferencing, victim offender dialogue, community dialogues, victim impact panels, impact of crime classes, apologies, and community justice panels (also referred to as youth aid panels). At their foundation, all these restorative practices require juveniles to understand the harms that were incurred and take steps to make things right. Successful restorative practices encourage collaboration, facilitate relationship-building, and are based on the voluntary participation of all parties.<sup>11</sup>

### ***Victim Input***

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. 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.

***Victims should be informed whenever diversion is a possibility and victims’ views should be carefully weighed in diversion decision-making.***

Before proceeding with an intake conference, a juvenile probation officer is required by the Rules to afford the victim “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.”<sup>12</sup> The Rules provide additional guidance specifically relating to victim notice and input when a written allegation is informally adjusted. (See § 4-8).

### ***Law Enforcement Input***

Often, arresting officers also have pertinent information, either about the youth or the circumstances of the offense, which should be taken into account in diversion decision-making. Where possible, juvenile probation officers should seek input from arresting officers regarding the appropriateness of informal adjustment in individual cases

## § 4-4 Commencing Proceedings

The Rules<sup>13</sup> provide that, except for cases that are transferred from one court to another, every delinquency proceeding must be commenced by one of the following:

- 1) the submission of a written allegation,
- 2) a warrantless arrest followed promptly by the submission of a written allegation,
- 3) the filing of a certification with the court that a juvenile has failed to comply with a lawful sentence imposed for a summary offense,
- 4) transfer of a case from a criminal proceeding,<sup>14</sup>
- 5) the court accepting jurisdiction of a resident juvenile from another state; or
- 6) the court accepting supervision of a juvenile pursuant to another state's order.

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 the formal proceedings are warranted.

### ***Written Allegation Procedures***

Although written allegations may in some instances originate from private citizens, they are for the most part submitted by law enforcement. The content requirements for written allegations

***The written allegation is the document that initiates delinquency proceedings.***

loosely track those for petitions, in part to facilitate the common practice of preparing petitions based on written allegations. Every written allegation must contain all of the following<sup>15</sup>:

- 1) the name of the person making the allegations;
- 2) the name, date of birth, and address, if known, of the juvenile, or if unknown, a description of the juvenile;
- 3) a statement that it is in the best interest of the juvenile and the public that the proceedings be brought, and that the juvenile is in need of treatment, supervision, or rehabilitation;
- 4) the date when the offense is alleged to have been committed (or if the specific date is unknown or the offense is a continuing one, that it was committed on or about any date within the period of limitations);
- 5) the place where the offense is alleged to have been committed;

- 6) a) a summary of the facts sufficient to advise the juvenile of the nature of the offense alleged; and  
b) the official or customary citation of the statute and section, or other provision of law which the juvenile is alleged to have violated, but an error in such citation shall not affect the validity or sufficiency of the written allegation;
- 7) the name and age of any conspirators, if known;
- 8) a statement that the acts were against the peace and dignity of the Commonwealth of Pennsylvania or in violation of an ordinance of a political subdivision;
- 9) a notation indicating whether the juvenile has or has not been fingerprinted and photographed;
- 10) a notation if criminal laboratory services are requested in the case;
- 11) a verification by the person making the allegation that the facts set forth in the written allegation are true and correct to the person's personal knowledge, information, or belief, and that any false statement made is subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;
- 12) the signature of the person making the allegation and the date of execution of the written allegation; and
- 13) the name and address of the juvenile's guardian, or if unknown, the name and address of the nearest adult relative.

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. However, 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.<sup>16</sup> 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."<sup>17</sup> 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.

### ***Warrantless Arrest***

An arrest without a warrant is authorized (1) when the offense is a felony or misdemeanor committed in the presence of the police officer making the arrest; (2) upon probable cause when the offense is a felony; or (3) upon probable cause when the offense is a misdemeanor for which warrantless arrest is specifically authorized by statute.

### ***Failure to Comply with Sentence for a Summary Offense***

Juvenile courts may exercise delinquency jurisdiction when the juvenile has failed to comply with a lawful sentence imposed for the summary offense by a magisterial district judge. In such cases, the magisterial district judge would certify the failure to comply with the juvenile probation office, which may resolve these cases informally by imposing conditions such as community service, referring to educational programming, or collecting outstanding financial obligations. Many juvenile probation departments across the state place any monies collected in these types of cases into restitution funds, which are dedicated exclusively for payments to victims of juvenile offenders.<sup>18</sup>

It is noteworthy that where the summary offense arose out of “the same episode or transaction” as a delinquent act, the summary offense must be specified in the petition.<sup>19</sup>

### ***Transfer from Criminal Proceedings***

A transfer from criminal proceedings, otherwise known as “decertification,” can occur when the criminal court determines that the public interest is best served by transferring a case to juvenile court. Transfer of a criminal case can also occur when the juvenile is found guilty of a crime classified as a misdemeanor and the juvenile and the attorney for the Commonwealth agree to the transfer to juvenile court for disposition.<sup>20</sup> When a case is transferred from a criminal proceeding to juvenile court, the entire case file is to be transferred. The accusatory pleading will initiate the commencement of proceedings in the juvenile court and may serve in lieu of a petition otherwise required, unless the court directs the filing of a petition.<sup>21</sup>

### ***Interstate Compact for Juveniles (ICJ)***

The Interstate Compact for Juveniles (ICJ) is the only legal means to transfer a juvenile’s probation or parole supervision from one state to another and to return juveniles from one

state to another.<sup>22</sup> The administration of the ICJ in Pennsylvania is coordinated by the Office of Children Youth and Families and the Pennsylvania Department of Human Services. To be eligible for services under the Revised ICJ, the juvenile must fulfill all of the following conditions:

- Be classified as a juvenile in the sending state;
- Be an adjudicated delinquent or adjudicated status offender, or have a deferred adjudication in the sending state;
- Be under the jurisdiction of a court or appropriate authority in the sending state;
- Have a plan inclusive of relocating to another state for a period exceeding ninety (90) consecutive days in any twelve (12) month period;
- Have more than ninety (90) days or an indefinite period of supervision remaining at the time the sending state submits the transfer request; and
- Will reside with a legal guardian, relative, non-relative or independently, excluding residential facilities; or be a full-time student at an accredited secondary school, accredited university, college, or licensed specialized training program, and be able to provide proof of acceptance and enrollment.<sup>23</sup>

The ICJ procedures that govern “accepting jurisdiction from another state” include situations when a Pennsylvania juvenile commits a crime in another state and that state wants Pennsylvania to accept the disposition of the juvenile and supervise the juvenile.

The ICJ procedures that govern “accepting supervision of a juvenile pursuant to another state’s order” include situations in which a juvenile lives outside of the Pennsylvania, committed the crime outside of Pennsylvania, and is moving to Pennsylvania, and the other jurisdiction would like Pennsylvania to accept the disposition and supervise the juvenile.

Note that transferring supervision does not transfer the jurisdiction of the case. The transfer of supervision should be viewed as a request from one ICJ member state to another to provide services and supervision in support of the sending state’s dispositional order and the terms of supervision. The jurisdiction of a case remains with the court of the sending state. Violations of the conditions of supervision must be handled by the courts of the sending state upon notice from the receiving state, unless the violations constitute new delinquent acts or status offenses under the laws of the receiving state and that state decides to prosecute.<sup>24</sup>

## § 4-5 The Boundaries of Delinquency Jurisdiction

Upon submission of the written allegation, it must be determined whether the matter falls within the boundaries of delinquency jurisdiction. The jurisdictional determination is based primarily on a review of the allegation itself, supplemented by some verification and examination of the evidence.

Following the receipt of a written allegation, the person entrusted with intake decisions must determine whether the matter described in the written allegation falls within those boundaries.<sup>25</sup> 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?<sup>26</sup>

In addition to these two basic questions, good practice requires that every probation office also complete a Pennsylvania Detention Risk Assessment (PaDRAI), either upon receipt of a written allegation or at the time of the intake conference. (See §§ 4-2, 5-1 and 5-2)

### *Age Limits*

In Pennsylvania, juvenile courts have jurisdiction over any “child” who is “alleged to be delinquent.” 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:<sup>27</sup>

- **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.”

If a child is under the age of ten at the time of the commission of a delinquent act, a dependency petition may be filed.<sup>28</sup> 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).”<sup>29</sup>

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 §6-1, criminal courts are given some discretion to transfer such cases to juvenile court.<sup>30</sup> 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 a juvenile 15, 16, or 17 years of age at the time of the offense using a “deadly weapon” during the commission of the offense:<sup>31</sup>
  - 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 a juvenile 15, 16, or 17 years of age at the time of the offense, who has 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 where the summary offense arose out of “the same episode or transaction” as a delinquent act. In this case, the summary offense must be specified in the petition.

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

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 § 6- 3.

### **§ 4-6 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.”<sup>32</sup> 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.”<sup>33</sup> (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 JCJC Standards governing Inter-County Transfer of Delinquency Cases acknowledge that “in certain cases, it may be appropriate to transfer a matter to the county of residence immediately following the intake conference.”<sup>34</sup> 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.

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.<sup>35</sup> The Inter-County Transfer of Delinquency Cases standard recommends 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 and the Rules entitle them.<sup>36</sup> (See § 8-11 for a detailed description of victim’s rights.)

### § 4-7 Intake Conferences

The Rules 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.<sup>37</sup> At the start of the

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

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.<sup>38</sup> 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.<sup>39</sup> 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 intake stage is the point at which a great deal of information regarding the circumstances of the case and the juvenile first becomes available. At this stage in the

process—when intake officers must decide whether to divert the case, handle it informally, or file a petition—structured decision-making becomes absolutely essential.

The JCJC Standards Governing Juvenile Court Intake require that the intake process be structured by comprehensive guidelines, policies, and procedures established by the administrative judge<sup>40</sup> 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 which 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.

In substance, a thorough intake conference should gather (1) basic demographic information, (2) incident information (the juvenile's account of the incident and the juvenile's own role in it, whether the juvenile admits guilt or involvement, whether the juvenile accepts responsibility, and the juvenile's 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 the juvenile's parents or by court order, school, child welfare, and other agency records should also be accessed and considered.

The **risk**, **need**, and **responsivity** principles are critical to the implementation of evidence-based juvenile justice practice. The **“risk principle”** refers to the probability that a juvenile will re-offend, based on characteristics that are correlated with future delinquency and that are non-changeable, such as the juvenile's current age, age at first arrest and the number of prior arrests. The **“need principle”** defines the juvenile's individual and environmental attributes that are related to delinquency but can be changed (“criminogenic needs”). And the **“responsivity principle”** emphasizes the importance of the juvenile's individual characteristics that influence his or her ability and/or motivation to learn. Determining the risk to reoffend, the criminogenic needs, and the responsivity factors structure how supervision can effectuate positive changes in youth.

The principles of “balanced and restorative justice” emphasize caution in utilizing the juvenile justice system to address cases that can be dealt with informally or more effectively by other social services or community-based programs. Historically, these decisions were often based solely on the seriousness of the charge and delinquent history. Now, Juvenile Justice System Enhancement Strategy (JJSES) tools help probation officers categorize and consider these and other important factors at the intake decision point.

Many Pennsylvania counties have adopted the Massachusetts Youth Screening Instrument (MAYSI-2) to identify youth with possible special mental health or substance use needs at intake. Pennsylvania’s juvenile probation departments also conduct the Youth Level of Service/Case Management Inventory (YLS/CMI) assessment upon receiving a written allegation. The best practice is to administer the YLS/CMI at the juvenile court intake stage. Low-risk cases require minimal supervision or intervention and can be diverted or handled informally with little risk to public safety. Moderate- and high-risk cases often require more formal processing, including the filing of a petition and a hearing before the court. Assessment and planning begins when the allegation of delinquency is received and continues throughout the supervision period. The information gathered at the intake conference is utilized to create an effective case plan that addresses the youth’s risk to reoffend, the specific needs that should be addressed and how best to address those.

An essential function of the probation officer is to gather all relevant information needed to provide balanced attention to the interests of the juvenile, the victim, and the community. Common questions addressed during the intake conference process include:

- What risk does the juvenile pose and what action must be taken, if any, to manage and minimize the risk?
- Is there an identifiable victim?
- What harm has been caused?
- What is necessary to restore the victim?
- What skill development activities are necessary to improve competencies, reduce risk, and increase the juvenile’s decisions to lead a prosocial lifestyle?
- What level of restrictiveness (system penetration) is required?

During the intake process, the information gathered regarding the community protection goal must consider all factors related to managing and minimizing the risk posed. It should encompass the YLS/CMI risk score and level as well as the specific criminogenic risk factors. The information gathered regarding the accountability goal must identify parties affected by the youth’s behavior and the activities required to restore harm to the degree possible. The competency development goal is addressed, in part, by identifying the

specific interventions needed to address the top criminogenic needs where they are most appropriately delivered. In addition, regardless of risk level, this information must include specific academic and/or workforce development activities. The JCJC Standards Governing Juvenile Court Intake 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. The juvenile probation officer is required to inform the attorney for the Commonwealth of the intake decision. The attorney for the Commonwealth may file a motion requesting review by the court of the juvenile probation officer's decision. The court is to conduct a hearing on the motion.<sup>41</sup>

### ***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 provide that, prior to the intake conference in a case in which informal adjustment or an alternative resolution of the case is being considered, the juvenile probation officer is required to afford the victim a chance “to offer prior comment on the disposition of the case”.<sup>42</sup> 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.

Those decisions 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 included in continuous quality improvement processes, should be assessed periodically for fundamental fairness and consistency, and should otherwise be subject to review, criticism, and comment from others, including members of the community, victims, and their representatives and advocates.

The JCJC Standards Governing Juvenile Court Intake 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 interested in pursuing the matter further. 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. Notably, informal adjustment is available to juveniles who are alleged to be dependent children as well as those alleged to be delinquent. Prior to informally adjusting the written allegation, the juvenile probation officer is to give the victim the opportunity to submit an oral and/or written victim-impact statement.<sup>43</sup>
- ***Consent decree.*** In appropriate cases, and “according to local policy,” the JCJC Standards Governing Juvenile Court Intake 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 based on the results of the intake interview and/or YLS assessment, but the authority of the court is needed to ensure good conduct, address the victim's needs, or hold the juvenile accountable. Unlike an informal adjustment, a consent decree requires the acquiescence of the district attorney as well as the court. (See §8-9.)

- ***Formal petitioning/adjudication.*** Formal petitioning and adjudication should generally be reserved for serious or disputed cases. The JCJC Standards Governing Juvenile Court Intake 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 needs/risk identified by the YLS indicate that interventions and/or therapeutic services are required, and they cannot be addressed or provided pursuant to a consent decree; when the juvenile and the juvenile’s parents are unwilling to accept services voluntarily; when the juvenile has had 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.

### ***§ 4-8 Informal Adjustment***

The Juvenile Act authorizes a juvenile probation officer presented with allegations of delinquency to “refer the child and the juvenile’s 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.<sup>44</sup> 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 the juvenile’s parents, guardian, or other custodian consent thereto with knowledge that consent is not obligatory.”<sup>45</sup>

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 Agreements***

As noted above, an informal adjustment is based on the consent of the parties, embodied in an 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 the juvenile’s family.
- **Informed consent.** The agreement should acknowledge that the juvenile and the juvenile’s 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, amount of restitution/costs/fee obligation and payment plan).
- **Active commitments.** To be effective and hold youth accountable, agreements should call for activity from juveniles. Beyond simply staying out of trouble, agreements should obligate youth to do things—for example, perform community service, pay restitution, contribute to a restitution fund through a supervision fee, attend special classes, write an apology letter, participate in mentoring or tutoring programs, engage in community activities, cooperate in treatment.
- **Termination.** An informal adjustment 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.

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

### ***Limits on Informal Adjustment***

Pennsylvania law and the Rules impose six specific limitations on the use of 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.”<sup>46</sup> The case of a juvenile who does not admit the offense, or at least some offense, cannot be informally adjusted.

- **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.<sup>47</sup> 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.<sup>48</sup>
- **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.<sup>49</sup>
- **Victim notice and input.** Victims have the right to receive notice and submit comment prior to the informal adjustment of delinquency allegations. The Rules provide that before proceeding with an intake conference, a juvenile probation officer is required to afford the victim 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. Moreover, the juvenile probation officer is to give the victim the opportunity to submit an oral and/or written victim-impact statement if the victim so chooses. If the victim is not present when a written allegation is informally adjusted, the victim is to be notified of the final outcome of the proceeding. The responsibility for providing this notification varies from county to county, and may belong either to the attorney for the Commonwealth or to a victim advocate.<sup>50</sup>
- **Payment of restitution.** The juvenile probation officer is to include payment of restitution agreed to be owed to the victim as a condition of successful completion of an informal adjustment by the juvenile.<sup>51</sup>

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<sup>1</sup> <http://www.pacourts.us/courts/supreme-court/committees/rules-committees/juvenile-court-procedural-rules-committee/juvenile-court-committee-rules-and-forms>

<sup>2</sup> <http://www.jcjc.pa.gov/Publications/Pages/JuvenileCourtStandards.aspx>

<sup>3</sup> 42 Pa.C.S. §6304.

<sup>4</sup> Examples of such tools include the Massachusetts Youth Screening Instrument (MAYSI-2) to identify potential mental health and substance abuse needs; and the Youth Level of Service/ Case Management Inventory (YLS/CMI) to determine the risk of recidivating and to identify criminogenic factors for targeted intervention services.

<sup>5</sup> 42 Pa. C.S. §6323 and Pa.R.J.C.P. 312

<sup>6</sup> 42 Pa. C.S. §6340 and Pa.R.J.C.P. 370

<sup>7</sup> 42 Pa. C.S. §1520

<sup>8</sup> See Snyder, H., and Sickmund, M. (2006). *Juvenile Offenders and Victims: 2006 National Report*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention

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<sup>9</sup> Comment to Rule 312, Pa.R.J.C.P.

<sup>10</sup> 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.

<sup>11</sup> See *Crossing Bridges: A Sequel to Building Bridges Between Your Court and Your Community*

[http://www.pachiefprobationofficers.org/docs/Crossing\\_Bridges.pdf](http://www.pachiefprobationofficers.org/docs/Crossing_Bridges.pdf)

<sup>12</sup> Rule 311(B)(3), Pa.R.J.C.P.

<sup>13</sup> Rule 200, Pa.R.J.C.P.

<sup>14</sup> Pa.R.Crim.P.597 and 42 Pa.C.S. § 6322

<sup>15</sup> Rule 232, Pa.R.J.C.P.

<sup>16</sup> Rules 210 and 231, Pa.R.J.C.P.

<sup>17</sup> Rule 233, Pa.R.J.C.P.

<sup>18</sup> 42 Pa.C.S. §6304.1 and §6352 (a)(5)

<sup>19</sup> 42 Pa.C.S. §6303(a)(5)

<sup>20</sup> 42 Pa.C.S. §6322 (e)

<sup>21</sup> 42 Pa.C.S. §6322 (d)

<sup>22</sup> 11 P.S. §890.1

<sup>23</sup> 11 P.S. §890.1, Rule 4-101(2)(f).

<sup>24</sup> 11 P.S. §890.1, Chapter 3.6 Transfer of Supervision

<sup>25</sup> Rule 311, Pa.R.J.C.P.

<sup>26</sup> Rule 310, Pa.R.J.C.P.

<sup>27</sup> 42 Pa.C.S. §6302

<sup>28</sup> Rule 1100 et seq. and 42 Pa.C.S. § 6301 et seq.

<sup>29</sup> 42 Pa.C.S. §6302

<sup>30</sup> 42 Pa.C.S. §6322

<sup>31</sup> “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.”

<sup>32</sup> 42 Pa.C.S. §6321(b)(1) and (2). See also Rule 300, Pa.R.J.C.P.

<sup>33</sup> 37 Pa. Code §200.702.

<sup>34</sup> 37 Pa. Code §200.702

<sup>35</sup> Rule 302, Pa.R.J.C.P.

<sup>36</sup> 18 P.S. §11.201, and Rules 132, 241, 242, 311, 312, 360, 370, 390, 409, 500, 512, 513, 600, 610, 631 and 632 Pa. R.J.C.P.

<sup>37</sup> Rule 310, Pa.R.J.C.P.

<sup>38</sup> Rule 311, Pa.R.J.C.P.

<sup>39</sup> <http://www.jcjc.pa.gov/Publications/Documents/Standards%20Governing%20Juvenile%20Court%20Intake.pdf>

<sup>40</sup> 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.

<sup>41</sup> Rule 311 (E)(1)(2)(3) Pa.R.J.C.P

<sup>42</sup> Rule 311(B)(3), Pa.R.J.C.P.

<sup>43</sup> Comment to Rule 311 (E)(2), Pa.R.J.C.P.

<sup>44</sup> 42 Pa.C.S. §6323.

<sup>45</sup> 42 Pa.C.S. §6323(b)(1) and (2).

<sup>46</sup> 42 Pa.C.S. §6323(b)(3).

<sup>47</sup> 42 Pa.C.S. §6323(c).

<sup>48</sup> 42 Pa.C.S. §6323(d).

<sup>49</sup> 42 Pa.C.S. §6323(e).

<sup>50</sup> Rule 311(B)(3) and Comment to Rule 312 Pa.R.J.C.P.

<sup>51</sup> Comment to Rule 312 Pa.R.J.C.P.



# Chapter 5

## Detention

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### Summary of Contents

This chapter examines the limited purposes of secure detention in Pennsylvania and how detention fits into the broader purposes of the juvenile justice system.

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- § 5-3. Judges as Community Leaders in Matters Relating to Detention
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### Key Statutes

- 42 Pa.C.S. § 6325 (detention of child)
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- 42 Pa.C.S. § 6332 (informal hearing)
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- The Use of Secure Detention Under the Juvenile Act
- Hearings and Administrative Reviews for Children Held in Secure Detention
- Use of Hearing Officers

## **§ 5-1 Detention in General**

### ***The Purpose and Place of Secure Juvenile Detention in Pennsylvania***

“Secure Detention” is defined by Department of Human Services (DHS) regulations as “a type of secure care located in a temporary 24-hour living setting, in which one or more delinquent or alleged delinquent children are detained, generally in a pre-adjudication status.”<sup>1</sup> In general, the Juvenile Act authorizes the secure detention of juveniles only in facilities approved for that purpose by the Department of Human Services (DHS).<sup>2</sup>

Pennsylvania law establishes a general rule that juveniles taken into custody must be released unless they cannot be released. This rule can be inferred broadly from the general purpose clause<sup>3</sup> of the Juvenile Act—to “preserve the unity of the family whenever possible,” “separating the child from parents only when necessary for his welfare, safety or health or in the interests of public safety”—and from the narrower language of the detention provisions themselves,<sup>4</sup> which are framed as release mandates qualified by limited exceptions (“A child taken into custody shall not be detained...unless....”; “A person

taking a child into custody, with all reasonable speed and without first taking the child elsewhere, shall...release the child to his parents...unless...”; “If a child is brought before the court or delivered to a detention or shelter care facility designated by the court, the intake or other authorized officer of the court shall immediately make an investigation and release the child unless...”). When detention is necessary, the Juvenile Act and the Rules of Juvenile Court Procedure for delinquency matters clearly require that it be as brief as possible, setting up a kind of emergency timetable—a detention hearing within **72 hours**, petition filing within **24 hours** of the detention hearing, an adjudication hearing or a mandatory release within **10 days**—to ensure that end.

Except for very brief periods of temporary detention in police lock-ups for the purpose of identification, investigation or processing, the transfer or release of juveniles just taken into custody is mandatory.<sup>5</sup> A juvenile may not be detained in any facility with adults and never in a jail unless the juvenile has been charged as an adult in a criminal proceeding<sup>6</sup> or has been transferred to criminal proceedings.<sup>7</sup> (See § 6-6, “Consequences of Transfer to Criminal Proceedings.”) In addition, the Juvenile Act specifically prohibits placing a juvenile in any facility where he or she “is apt to be abused by other children.”<sup>8</sup>

### ***Detention Decision-Making Criteria***

Whether the detention decision is being made by a juvenile probation officer as a preliminary matter, or by a judge or juvenile court hearing officer at a subsequent informal detention hearing, the basic criteria for decision-making are the same.

The detention decision-making procedures should include all of the following:

- ***Jurisdictional findings.*** An intake decision-maker may not authorize detention without finding a “reasonable basis to believe that the juvenile has committed the act for which he is being detained” and “that the juvenile is not excluded from the jurisdiction of juvenile court by age or another reason.”<sup>9</sup>
- ***Probable Cause.*** A juvenile court judge or hearing officer presiding at a detention hearing may not order an alleged delinquent detained without a formal finding that the allegations are supported by probable cause and within the juvenile court’s jurisdiction.<sup>10</sup> In some counties, probable cause findings are made on the basis of police reports, while in others the direct testimony of arresting officers is required.
- ***Eligibility findings.*** The detention decision-maker—whether a probation officer making a detention intake decision or a judge or juvenile court hearing officer presiding at a detention hearing—must apply the minimum eligibility criteria in the

JCJC Detention Standards to determine whether the case meets the thresholds for detention specified there. In addition, the PaDRAI should be used by juvenile probation officers in conjunction with the JCJC Detention Standards in all cases involving new allegations of delinquency. Although a juvenile may be eligible to be admitted to secure detention under the JCJC Detention Standards, the results of the PaDRAI may well indicate that detention is not warranted.

- ***Priority consideration for non-secure alternatives.*** Even if the juvenile is eligible for secure detention, the decision-maker must consider and give preference to available “non-secure alternatives which could reduce the risk of flight or danger to the juvenile or community.”<sup>11</sup>
- ***Detention alternatives should include options along the following continuum:***
  - ***Unconditional release to parents/guardians, relatives, neighbors, coaches, teachers.*** This is clearly preferred by the Juvenile Act as a general rule, and should always be considered first.
  - ***Home detention/monitoring/supervision programs.*** This set of alternative programs allows juveniles to live at home and work or attend school while awaiting hearings, but subject to intensive face-to-face supervision, curfews and other restrictions, and sometimes special conditions such as electronic monitoring. Unannounced visits and random telephone calls may be used to check compliance with program conditions. The intensity of supervision and levels of restriction can be adjusted in response to the youth’s record of compliance. Under the JCJC Advisory Standards Governing the Use of Alternatives to Secure Detention, in-home detention pending adjudication may not last longer than 30 days. Unless electronic monitoring is used to ensure compliance, the probation officer in an in-home detention case is required to have daily contact with the juvenile or his custodian, and a minimum of one personal contact with the juvenile every 48 hours until the adjudication hearing.
  - ***Day/evening reporting centers.*** For juveniles who need more oversight than a home detention program can provide, or who

have already failed in home detention, reporting centers can provide safe, structured, staff-supervised activities on a daily basis—typically during high-crime after-school and evening hours. Although this sort of program typically costs more to operate, a bonus is that it is capable of providing services (tutoring, counseling, vocational training, etc.) to juveniles that need them.

- ***Shelter care, foster care, and other licensed facilities.*** In appropriate cases, other alternatives to detention might include placement with relatives or in facilities designed primarily for dependent children. In some areas, specialized foster care in a single-family setting is available for troubled juveniles.
- ***Documentation of basis for decisions.*** All detention decisions must be accompanied by “a contemporaneous written statement of facts and reasons” that covers jurisdictional findings, eligibility for detention, detention alternatives that were considered and rejected, and “[t]he reason or reasons why secure detention is required and alternatives are not appropriate.”<sup>12</sup>
- ***Engaging the families.*** It is important to engage families in order to help them understand decisions relating to their children as well as to elicit their input and cooperation in response to these decisions.
- ***Shared Case Responsibility with DHS/Probation.*** CYF and Probation work collaboratively to meet the multiple service needs of children that are simultaneously delinquent and dependent. This effort to meet the full spectrum of needs of youth and families is designed to facilitate better outcomes in family integrity and durable gains for youth.<sup>13</sup>

As is more fully explained in §3-2, under certain conditions, federal Title IV-E program funds are available to cover costs associated with maintaining delinquent juveniles in qualifying out-of-home placements, so long as—in the *first judicial order sanctioning the juvenile’s removal from the home*—the court formally determined that it would be “contrary to the welfare” of the juvenile to leave him at home, and that the failure to provide services to enable the juvenile to remain at home (as would ordinarily be done in a child abuse or neglect case) “was reasonable due to the emergency nature of the situation, safety considerations, and circumstances of the family.” This is true even though IV-E funds

cannot be used to offset the cost of secure detention itself—the failure to make the required findings in the detention order is a kind of “irreversible error” that cannot be corrected after the fact.

Accordingly, whenever a judge or hearing officer determines that a juvenile must be detained following an informal hearing, the secure detention order should contain formal findings to this effect.

Rule 242 requires the court to determine whether there are special needs of the juvenile that have been identified and that the court deems necessary to address while the juvenile is in detention.

### ***Dependent Children***

A child alleged or found *only* to be dependent may be detained only in a DHS licensed foster home or court-approved home, a DHS-licensed child welfare facility or one approved by the court, or any other suitable place approved by the DHS and designated by the Court, and may not be detained in a secure detention facility for delinquents, jail, or other facility with adults.<sup>14</sup> It is important to note that this prohibition applies to youth who are alleged or found to be dependent for “status offenses”, which are non-criminal acts that are considered a violation of the law only because of the youth’s status as a minor. Typical examples of status offenses include truancy, running away from home, violating curfew, and general ungovernability and incorrigibility. Judges should be alert and wary of attempts to pull status offenders into delinquency court. If a youth engages in these types of behaviors, the need for involvement of the county children and youth agency should be explored. Services may be available to assist the family in dealing with problem behaviors exhibited by the youth before dependency court involvement.

### ***“Dually Adjudicated” Youth***

Youth who are alleged to be or have been found to be *both* delinquent and dependent (“dually adjudicated youth”) may be detained in a licensed foster home or court-approved home, a licensed child welfare facility or one approved by the court, or any other suitable place approved by the Department of Human Services and designated by the Court, as well as in a secure detention facility.

In addition to these Pennsylvania statutory restrictions on detention, judges should be aware that the federal Juvenile Justice and Delinquency Prevention Act<sup>15</sup> also imposes secure custody restrictions, which must be observed as a condition of Pennsylvania’s participation in federal formula grant programs. These restrictions include prohibitions on

the practice of holding status offenders in secure detention or correctional facilities and on the use of jails for secure detention.

### ***Secure Detention Facilities***

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

Typically, juvenile detention centers are operated by a county, although the administration of the facility could be provided by a private residential service provider under contract with the county. However, secure juvenile detention services are also offered by a few private agencies who enter into contracts with one or more counties, usually as one component of a range of residential services provided by the agency. These facilities, which typically have internal locks within the building, exterior locks and secure fencing around the perimeter of the building, are subject to DHS regulations setting minimum standards of care, security, and services.<sup>16</sup>

Judges should demand that detention facilities be safe, that they meet all necessary DHS requirements, and that they be utilized only when necessary. Regardless of how juvenile detention services are provided in a county, frequent visits by judges and juvenile probation officers to these facilities should be encouraged to ensure that the quality of care meets, and if possible exceeds, the minimum standards of care required by DHS regulations.

### ***Reducing Subjectivity in Detention Decision-Making***

Juvenile court judges are responsible for ensuring that the use of detention in their jurisdictions is kept within the limits prescribed by the law and applicable standards, that it is reserved for cases in which it is not only permissible but necessary and appropriate, and that the use of detention serves its intended purposes. Fulfilling this responsibility calls for the exercise of each of the three basic kinds of authority—bench authority, administrative authority, and community authority—entrusted to juvenile court judges.

While the Juvenile Act authorizes the secure pre- and post-adjudication detention of juveniles for brief periods, under narrowly defined circumstances, and for strictly limited purposes, secure detention usage in Pennsylvania delinquency cases has been further restricted for many years by the Juvenile Court Judges' Commission (JCJC) Standards

Governing the Use of Secure Detention under the Juvenile Act developed to guide detention decision-making throughout the Commonwealth.<sup>17</sup>

It is now widely accepted that detention decisions should be based on clearly defined, objective criteria and structured by a validated detention risk assessment instrument to ensure that the decisions are consistent as well as racially and ethnically neutral.

Whether they are presiding over detention hearings in individual cases or overseeing the detention intake process as administrators of their courts, juvenile court judges are in a position to assure that detain-or-release decision-making is fair, consistent, based on pertinent information, structured by appropriately drawn guidelines, and adequately documented.

### ***The JCJC Standards Governing the Use of Secure Detention***

The JCJC Detention Standards were originally developed for inclusion in a statewide consent decree that resolved the case of *Coleman v. Stanziani* in 1986,<sup>18</sup> and are now a condition for participation in JCJC's juvenile probation services grant program.<sup>19</sup>

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

### ***The Pennsylvania Detention Risk Assessment Instrument (PaDRAI)***

The Pennsylvania Detention Risk Assessment Instrument (PaDRAI)<sup>20</sup> was adopted in 2016 to be used by trained probation officers at the time of a request for secure detention. It measures the risk to reoffend prior to the next court hearing as well as the risk of the child failing to appear at the next hearing. The instrument uses facts about the alleged new offense, the child's current status, prior adjudications within 18 months, history of warrants for failure to appear, and history of escape from custody. These facts are weighted and scored and a decision is made based on the score.

The PaDRAI is used by juvenile probation officers in conjunction with the JCJC Detention Standards to make decisions regarding the use of secure detention and alternatives thereto. It is used primarily to guide detention decision making in cases involving new allegations of delinquency, while the JCJC Detention Standards are applicable at all stages of the juvenile justice process when decisions regarding the use of detention are made. Although a

particular juvenile may be eligible for admission to secure detention under the JCJC Standards, the administration of the PaDRAI may result in a score indicating that detention is not warranted. (See §§ 5-6 through 12)

Judges should strive to reduce subjectivity in detention decision-making by ensuring that the PaDRAI is used, that juvenile probation officers are trained regarding its use, and that local practices conform to JCJC Detention Standards.

## § 5-2 Best Practices

- The judge should ensure that all admissions to secure detention are either authorized by the court at a hearing or, if initially authorized by a juvenile probation officer, result in a hearing.
- The juvenile court judge should be familiar with the detention facility used to house juveniles locally, including its capacity and utilization, its average length of stay, the quality and range of educational, medical, assessment and other services available, and the facility's overall conditions.
- The juvenile court judge and juvenile probation officers should visit the detention facility frequently to ensure the quality of care.
- The juvenile court judge should ensure that probation officers:
  - are trained in the use of the Pennsylvania Detention Risk Assessment Instrument (PaDRAI);
  - complete the PaDRAI for every detention decision involving a new allegation of delinquency; and
  - follow the indicated decision.
- The juvenile court judge should ensure that probation officers look for alternatives to the use of secure detention whenever detention is being considered or recommended and that the results of these efforts are reported to the court.
- If the court determines that a juvenile has special needs (e.g. medications, injuries, allergies, glasses) that must be addressed while a juvenile is in detention, the juvenile probation department should be directed to follow-up with the detention facility to ensure that these needs are addressed.

- The juvenile court judge should lead discussions on a local level to develop sanction and reward policies that ensure consistent decisions by juvenile probation officers, juvenile court hearing officers and judges in responding to violations of probation. In developing these policies, the juvenile court judge should recognize that:
  - Research shows that in general rewards and incentives are more effective than sanctions in motivating offenders to change.
  - Sanctions for juveniles who violate terms of supervision should be administered in accordance with research-informed policy developed to maximize their results.
  - To be effective, sanctions should be certain, swift, and proportionate.

### **§ 5-3 Judges as Community Leaders in Matters Relating to Detention**

Juvenile court judges are uniquely positioned to educate local elected officials, law enforcement, and the community about the role and importance of juvenile detention services within Pennsylvania’s juvenile justice system, and to help ensure that these services and a continuum of alternatives are available to the court. In addition, judges should work to ensure that the detention decision-making process, and specifically the respective roles of the JCJC Detention Standards and the PaDRAI in this process, is understood.

Although juvenile detention services are not under the authority of the court, but rather are operated by the county or, less frequently, by a private service provider under contract with the county, the judge has the responsibility to call attention to any deficiencies in the availability or quality of these essential services. In this regard, juvenile court judges, and juvenile court administrative judges in particular, should review their county’s annual “Needs-Based Plan and Budget Estimate” to ensure that the county has adequately planned for detention services and alternatives. (See §§ 3-2 and 11-2.) In addition, the judge should encourage the active participation of the chief juvenile probation officer in the process leading to the development of this document.

The preamble to the JCJC Standards Governing the Use of Secure Detention Under the Juvenile Act declares that “decisions regarding admissions to secure detention facilities must be based on a commitment to utilize the most appropriate level of care consistent with the circumstances of the individual case. When the admission of a juvenile to a secure detention facility is being considered by a judge, juvenile court hearing officer, or juvenile

probation officer, preference should be given to non-secure alternatives which could reduce the risk of flight or danger to the juvenile or community.”<sup>21</sup>

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

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

Between 2006 and 2017, 10 juvenile detention centers ceased operations in Pennsylvania, and currently, only 14 juvenile detention centers are providing secure detention services within Pennsylvania’s juvenile justice system.<sup>22</sup> This reduction in the number Pennsylvania juvenile detention centers is due to a variety of factors, including the development and implementation of the PaDRAI and other evidence-based practices under the JJSES framework. While considered a positive development generally, the lack of secure detention services can be problematic, particularly in smaller jurisdictions that must rely on facilities in other counties when these services are needed.

Regardless of the size of the jurisdiction, the juvenile court judge is responsible for developing policies for the individual county relating to the use of detention beds to ensure that such detention facilities are used only for those youth requiring secure care and custody.

Judges should not passively accept the existing range of alternatives to detention. The JCJC Advisory Standards Governing the Use of Alternatives to Secure Detention require a juvenile court’s administrative judge to “determine whether alternatives to secure detention are available to the county to meet the needs of children referred to the Court.” If such alternatives are lacking or inadequate—in other words, if local youths are being securely detained unnecessarily, solely because less restrictive means are unavailable—juvenile court judges have a responsibility to work with the community to develop programs and services to meet the need. In addition to utilizing the county’s “Needs-Based Plan and Budget Estimate” to address any unmet needs, this may involve working with local elected officials to ensure that the Department of Human Services meets its statutory

responsibility to develop “in each county” programs to provide shelter care for alleged or adjudicated delinquents taken into custody.<sup>23</sup>

## § 5-4 Duration of Detention

Absolute durational limits and strict hearing timetables are imposed by the Juvenile Act, the Rules of Juvenile Court Procedure and JCJC Standards. It is the judge’s responsibility to ensure that local practice is in compliance with these mandates.

### ***Pre-Adjudication Detention***

The petition must be filed with the clerk of courts within 24 hours or the next court business day if a juvenile remains detained after the informal detention hearing. The adjudication hearing (or filing of notice of request to transfer to criminal proceedings—see below) must be held within **10 days** of the filing of the petition, or the juvenile must be released.

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

***There are only two exceptions to this adjudicate-or-release rule:***

- ***Additional detention to procure temporarily unavailable evidence.*** A juvenile may be held in detention beyond the usual deadline if the court finds that material evidence is currently unavailable despite the exercise of due diligence to obtain it, but that there are reasonable grounds to believe the evidence will become available “at a later date.”<sup>24</sup> In such a case, the court may authorize a single period ***NOT TO EXCEED 10 DAYS*** pending the delayed adjudication hearing, but only if it finds by clear and convincing evidence that release would otherwise expose the community to “a specific danger,” endanger the life of the juvenile himself, or result in his absconding or being removed from the court’s jurisdiction.<sup>25</sup>
- ***Additional detention necessitated by juvenile’s own delay.*** A juvenile’s detention may also be continued beyond the usual ten-day limit if a scheduled adjudication hearing is delayed at the request or by the conduct of the juvenile or his attorney.<sup>26</sup> This exception applies if the adjudication hearing (1) is continued at the request of the juvenile or his attorney, (2) must be postponed due to the unavailability of the juvenile or his attorney, or (3) cannot be held because “conduct by or on behalf of” the juvenile has caused a witness to become unavailable.<sup>27</sup> In such a case, the court

must state on the record that the scheduled adjudication hearing is not being held due to the juvenile, and authorize continued detention for an additional period not to exceed ten days; thereafter the detention “may be continued by the court for successive ten-day intervals” for as long as the juvenile continues to delay the adjudication.<sup>28</sup> The judge shall ensure the necessity of the delay and inquire into the reasons offered when a request is made by the juvenile’s attorney to challenge competency or secure an expert, for example. Further evaluation of the circumstances is necessary to limit delay and afford swift resolution of the allegation brought against the juvenile.

### ***Detention in Transfer Cases***

A special rule allows somewhat longer periods of detention in cases involving requests for transfer to criminal proceedings.<sup>29</sup> Because preparing for a transfer hearing can be a complicated undertaking, it was thought that the attorney for the Commonwealth should be given more time to consult with the juvenile probation officer and others regarding the proposed step.<sup>30</sup> Accordingly, the Rules provide that while the juvenile may be detained initially for up to **10** days, the attorney for the Commonwealth has until the tenth day to file a notice of intent to transfer the case. In effect, the filing of this notice “resets” the ten-day clock. After the filing of the notice, the juvenile will ordinarily be entitled to a transfer hearing within the next ten days.

Again, however, a single period of extended detention of up to **10 days** is allowed to procure temporarily unavailable evidence (including a psychological or psychiatric evaluation), meaning that a total of **30 days** of detention may be permissible before the transfer hearing. (In addition, successive **10-day** extensions are allowed when the hearing delay has been caused by the juvenile.)

### ***Detention Pending Disposition***

The Juvenile Act requires that a disposition hearing for a detained juvenile be held no more than **20 days** after the finding that that the juvenile committed the delinquent acts alleged, and specifies that this deadline may only be extended by agreement of the parties; however, it also provides that “failure to comply with the time limitations...shall not be grounds for discharging the child or dismissing the proceeding.”<sup>31</sup> Under the Rules, the dispositional hearing may be continued repeatedly, but each continuance must be for no more than **20 days**.<sup>32</sup> Following a continuance, “the court should review the juvenile’s case every **20 days** until there is a final disposition order.”<sup>33</sup>

## ***Detention Pending Placement***

Neither the Juvenile Act nor the Rules impose explicit limits on the amount of time a juvenile may be held in detention while awaiting a court-ordered placement. However, JCJC Standards Governing Hearings and Administrative Reviews for Children Held in Secure Detention require frequent reviews of such pre-placement detention, including court hearings every **30 days** and administrative reviews at **10-day** intervals in between (that is, on the 10th and 20th day following the most recent court proceeding), until the juvenile is finally placed or released.<sup>34</sup> Hearings should “review the status of the case and ... determine the need for continued secure detention.”<sup>35</sup> Administrative reviews of the case of a juvenile in pre-placement detention may be conducted by the court or a designee, without the juvenile in attendance, on the basis of information provided by the chief juvenile probation officer, and are intended “to minimize delays in the release or transfer of a juvenile by helping to ensure that individuals are carrying out their respective responsibilities related to the juvenile’s case.”<sup>36</sup> Reviews should focus broadly on “why the juvenile is being held in secure detention, whether secure detention services or an alternative thereto continue to be required and what must occur to enable the juvenile to be released or transferred to another facility.”<sup>37</sup> Documentation of each review should include an anticipated release or transfer date, the scheduled date of the next hearing or review, and any action that is to be taken in the meantime.

## ***Detention in Connection with Disposition Modification or Probation Revocation***

A juvenile may also be detained in connection with the filing (or anticipated filing within **24 hours**) of a motion for modification of a dispositional order, or the filing of a motion alleging a violation of probation.<sup>38</sup> In such a case, a detention hearing must be held within **72 hours**, and a hearing on the proposed disposition modification or probation revocation must be held within **10 days**, unless one of the standard exceptions applies (i.e. an extension of up to **10 days** to procure temporarily unavailable evidence or additional **10-day** extensions for delays caused by the juvenile).<sup>39</sup>

## **§ 5-5 Pre-Hearing Detention in General**

In all situations where pre-hearing detention is being considered, detention is not allowed unless there has been a formal judicial finding of probable cause or, in the case of an initial detention admission by a juvenile probation officer, a determination that there is

reasonable basis for believing that the juvenile committed the acts alleged and is within the juvenile court's jurisdiction.

More importantly, regardless of whether a juvenile is considered "eligible" for secure detention, the PaDRAI should be administered by a juvenile probation officer to determine whether detention should be authorized. The detention standards provide that "[i]n every situation in which secure detention is to be considered, forms of control short of secure detention which could substantially reduce the risk of flight or danger to the juvenile or the community shall be given preference."<sup>40</sup>

Non-secure options that could substantially reduce the risk of flight or danger should always be considered. These options could include electronic home monitoring or GPS, home detention, community programs, placing the juvenile with a relative, and requiring the county children and youth agency to investigate and consider requesting an emergency custody order to move the child to shelter care.

Pennsylvania law<sup>41</sup> provides that—except for very brief periods of police detention for purposes of investigation, processing, transfer, or release—no juvenile may be securely detained prior to an adjudication of delinquency unless one of the following conditions applies:

- ***Detention required to protect persons/property.*** A juvenile in custody may be detained pending a hearing on a delinquency petition if such detention "is required to protect the person or property of others...." However, JCJC Detention Standards require that such preventive detention be restricted to juveniles who are charged with certain enumerated offenses or who have certain offense histories.<sup>42</sup> (See §5-7, "Detention to Protect the Community.")
- ***Juvenile requests Detention.*** Detention may also be permitted if "required to protect the person or property...of the child." Such detention is permissible under JCJC standards only at the written request of the juvenile or his attorney.<sup>43</sup>
- ***Detention required to ensure attendance at hearing.*** The law authorizes detention when it is "required...because the child may abscond or be removed from the jurisdiction of the court or because he has no parent, guardian, or custodian or other person able to provide supervision and care for him and return him to the court when required...." In general, if detention is asserted to be necessary to assure attendance at a subsequent hearing, JCJC Detention Standards require a showing of actual past instances of absconding or failing to appear at hearings on the juvenile's part.<sup>44</sup> (See §5-6, "Detention to Ensure Attendance at Hearings.") However, the

standards make it clear that, if a juvenile cannot be released solely because there is no parent or other responsible adult to ensure his appearance at a subsequent hearing, then shelter care may be authorized, but not secure detention.<sup>45</sup> Moreover, the guidelines governing the administration of the PaDRAI make it clear that the various components of the PaDRAI are not to be considered separately or independently so, even though a particular juvenile would be eligible for detention “because the juvenile may abscond or be removed from the jurisdiction of the court” under the JCJC Standards, the administration of the PaDRAI may well lead to a recommendation for an alternative to detention or release.

- ***Detention in “extraordinary and exceptional circumstances.”*** A juvenile may also be detained if “an order for his detention...has been made by the court....” While this language holds out the possibility that pre-hearing detention may be permissible even when it is not necessary to safeguard the community or the juvenile or ensure the juvenile’s appearance at subsequent hearings, the JCJC Detention Standards make clear that such detention will be justified only by “extraordinary and exceptional circumstances.”<sup>46</sup> As is discussed more fully at §5-9, detention justified by a finding of extraordinary and exceptional circumstances must be accompanied by a “statement of reasons” that includes “an explanation of why an exception was warranted and why non-secure options were rejected.” Such detention “may not be authorized routinely or because non-secure alternatives do not exist in adequate numbers,” and may not be justified “solely because there is no parent, guardian or custodian able to assume responsibility [for] or adequately supervise the juvenile.”.

## § 5-6 Detention Intake and Informal Hearings

### ***Detention Authorization***

When a juvenile in custody is brought before juvenile court or detention intake, the Juvenile Act provides that “the intake or other authorized officer of the court shall immediately make an investigation and release the child unless it appears that his detention or shelter care is warranted or required” under the law governing the pre-hearing detention of children.<sup>47</sup>

## ***Informal Detention Hearing***

If the intake officer or other juvenile probation officer makes a preliminary decision to place the juvenile in detention or shelter care, an informal detention hearing must be held before a judge or a hearing officer within **72 hours** of admission.<sup>48</sup>

### ***Prior to the hearing:***

**Notice to juvenile, parents/guardians and attorney**—Notice of the detention hearing, including its date, time, place and purpose, must be provided to the juvenile and the juvenile’s parents/guardians and attorney, although in view of the tight timelines the notice may be oral.<sup>49</sup> If the juvenile’s parent, guardian or other custodian is not notified and does not appear or waive appearance at the hearing, and thereafter files an affidavit swearing to these facts, the matter must be reheard within **72 hours** of the filing of the affidavit.<sup>50</sup>

**Victim notice**—Rule 241 requires that notice of the detention hearing must also be provided to the victim by the attorney for the Commonwealth or designee.

**Subpoenas**—Although the proceeding is designated an “informal hearing,” to be held on short notice and focused on the narrow issue of the need for detention, the parties may apply for subpoenas to compel the attendance of witness or the production of papers.<sup>51</sup>

### ***At the hearing:***

**Juvenile must be present and represented**—The juvenile must be present at the detention hearing.<sup>52</sup> All juveniles are presumed indigent and shall be provided counsel.

**District attorney must be present**—The Attorney for the Commonwealth must be in attendance and present such evidence as the Commonwealth deems necessary to support the need for detention.<sup>53</sup>

#### ***Ensure that:***

- ✓ ***the written allegation has been provided to the juvenile and the juvenile’s guardian, if present;***
- ✓ ***the juvenile is represented by counsel;***  
***and***
- ✓ ***the juvenile is informed of the right to remain silent.***

**Advanced communication technology (ACT)**—Rule 242 provides that ACT may now be used for a juvenile or witness at a detention hearing unless good cause is shown otherwise.<sup>54</sup> In person attendance is preferred; however, the juvenile may be present by video or phone conference if the circumstances warrant.

**All helpful evidence is admissible**—Evidentiary standards in detention hearings are similar to those applicable in disposition hearings: any evidence that is “helpful in determining the questions presented” may be admitted and relied upon “to the extent of its probative value”.<sup>55</sup> This includes written reports, although opposing parties must be afforded an opportunity to examine and dispute any reports received in evidence.

**Record**—The juvenile or the Commonwealth may request that the hearing be recorded, in which case it must be recorded “by appropriate means”; otherwise, full minutes of the hearing must be kept.<sup>56</sup>

**Findings**—The court must determine whether (1) there is probable cause that a delinquent act was committed by the juvenile; (2) detention of the juvenile is warranted; and (3) there are any special needs of the juvenile that have been identified and that the court deems necessary to address while the juvenile is in detention.

**Court order**—At the conclusion of the hearing, the court must enter a written order, setting forth its findings.

Following an informal detention hearing, the court may also grant a rehearing at the request of any party, or on its own motion.<sup>57</sup> Generally, unless the case is assigned to a juvenile court hearing officer, the rehearing must be heard by the judge who presided over the original detention hearing or adopted the findings of the hearing officer who presided.<sup>58</sup>

## § 5-7 Detention to Protect the Community

In cases in which secure detention is being considered “to protect the person or property of others”,<sup>59</sup> JCJC Standards Governing the Use of Secure Detention Under the Juvenile Act impose a minimum offense/offense history threshold that must be met.<sup>60</sup> In other words, in

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

### ***Serious Alleged Offenses***

Detention to protect the persons or property of others may be authorized, first, in cases in which the juvenile is alleged to have committed any one of a long list of serious offenses:<sup>61</sup>

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

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

Generally, any of the preceding alleged offenses would result in a PaDRAI score that would trigger a “Detain” recommendation.

## ***Other Offenses and Violations***

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

- ***Repeat offenders.*** A juvenile who is alleged to have committed a felony that is not enumerated above may nevertheless be eligible to be detained if he (1) is currently on probation, being supervised under a consent decree, or is otherwise under court supervision following a delinquency adjudication or (2) has been adjudicated delinquent sometime in the preceding 18 months.<sup>62</sup> However, as previously explained, the administration of the PaDRAI may well result in a score leading to a determination that secure detention is not warranted.
- ***Violators of alternative conditions.*** A juvenile who is in violation of conditions imposed as an alternative to secure detention (including house arrest, in-home detention, electronic monitoring, or a shelter care placement) may be detained regardless of the nature of the offense charged.<sup>63</sup>
- ***Probation violators.*** A juvenile who is on probation or other court supervision following a delinquency adjudication based on a felony is eligible for detention under the JCJC Detention Standards if alleged to have committed (1) any delinquent act or (2) two technical violations of the conditions of his probation or other supervision.<sup>64</sup> However, it should be noted that, as the detention standards make clear elsewhere, “preadjudication detention may never be imposed as a means of punishment or to apply sanctions.”<sup>65</sup> (See §5-11 “Detention for Probation Violators.”)

Again, the above criteria merely indicate which cases are eligible for detention. JCJC detention standards provide that non-secure alternatives to detention must still be considered in detention-eligible cases, and wherever possible “preference should be given to non-secure alternatives which could reduce the risk of flight or danger to the juvenile or community.”<sup>66</sup>

### **§ 5-8 Detention to Ensure Attendance at Hearings**

In a case in which secure detention is being considered on the ground that “the child may abscond or be removed from the jurisdiction of the court”,<sup>67</sup> JCJC detention standards require a showing that the juvenile actually is an absconder or fugitive, has a documented

history of absconding or failing to appear for hearings, or else presents extraordinary circumstances that make absconding likely.<sup>68</sup>

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

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

- ***Willfully fail to appear for adjudication.*** Willful failure to respond to a summons or court order to appear at the adjudication hearing in the current case will authorize detention.<sup>69</sup>
- ***Have a record of failing to appear at previous juvenile court hearings.*** A “recent demonstrable record” of willful failure to appear at hearings in other cases will also authorize detention.<sup>70</sup>
- ***Be an absconder or have absconded previously.*** A juvenile may be detained if he is currently an absconder from a placement to which he was committed following an adjudication of delinquency, or if he has in the past absconded from secure detention or a non-secure alternative to detention while awaiting a hearing or placement.<sup>71</sup>
- ***Be a fugitive from another jurisdiction.*** A verified fugitive may be detained following a request from an official of the jurisdiction seeking his return.<sup>72</sup>
- ***Present extraordinary circumstances.*** Extraordinary circumstances that could otherwise authorize detention to prevent absconding “may include, but are not limited to, the juvenile’s age, character, mental condition, ties to the community, the nature of the juvenile’s family relationships, drug or alcohol addiction or substance abuse.”<sup>73</sup>

However, as previously explained, the guidelines governing the administration of the PaDRAI make it clear that the various components of the PaDRAI are not to be considered separately or independently so, even though a particular juvenile would be eligible for detention “because the juvenile may abscond or be removed from the jurisdiction of the court” under the JCJC Standards, the administration of the PaDRAI may well lead to a recommendation for an alternative to detention or release.

## § 5-9 Extraordinary and Exceptional Circumstances Justifying Detention

JCJC Detention standards allow for the possibility that secure detention that is not otherwise specifically authorized may be justified under “extraordinary and exceptional circumstances.”<sup>74</sup> The statement of reasons justifying such detention “must include an explanation of why an exception was warranted and why non-secure options were rejected.”<sup>75</sup>

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

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

- ***Lack of non-secure alternatives***—The status quo cannot be considered “extraordinary and exceptional.” A jurisdiction that simply lacks an adequate continuum of alternatives to secure detention cannot detain juveniles routinely under this exception.<sup>76</sup>
- ***No parent or other responsible guardian***—Likewise, the detention standards make it clear that secure detention cannot be authorized solely on the ground that there is no parent or other adult guardian to take responsibility for the juvenile.<sup>77</sup> In such a case, only shelter care or other non-secure temporary placements may be considered.<sup>78</sup>

Importantly, the juveniles in these situations should only be considered “eligible” for secure detention, and the administration of the PaDRAI by a juvenile probation officer would likely result in a determination that secure detention is not warranted. The Detention Standards provide that “in every situation in which secure detention is to be considered, forms of control short of secure detention which could substantially reduce the risk of flight or danger to the juvenile or the community shall be given preference.” The bottom line is that the authorization of secure detention on the basis of “extraordinary and exceptional circumstances” should be a rare occurrence in any jurisdiction.

## § 5-10 Post-Adjudication Detention

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

A juvenile who has been adjudicated but is still awaiting disposition,<sup>79</sup> or one who has been ordered into placement but is awaiting an opening,<sup>80</sup> may be detained in the meantime if one of the following applies:

- **Detention for an eligible offense**—If the offense substantiated at the adjudication hearing was one that would have met the threshold for pre-hearing detention on public safety grounds—even if the juvenile was not in fact detained—post-hearing detention is authorized.<sup>81</sup>
- **Risk of flight**—If the juvenile was or could have been detained to ensure attendance prior to adjudication, or would have been considered eligible in light of more recent information, post-hearing detention is authorized if the court determines it is necessary.<sup>82</sup>
- **Other factors**—If placement outside the home has already been ordered or will likely be a part of the disposition, detention may be authorized if the court finds it necessary after considering factors bearing on the strength of the juvenile’s ties to the community and the likelihood that he will flee the jurisdiction, including but not limited to:
  - The nature of the offense substantiated
  - Job/school status
  - Family relationships
  - Past and present residences
  - Age, character, mental condition, previous record, and drug or alcohol addiction or abuse
  - Whether the juvenile has previously appeared for court proceedings as required.<sup>83</sup>

In addition, any juvenile who has already been ordered into a secure residential program may be detained while awaiting placement.<sup>84</sup>

## ***Detention and Dispositional Review Hearings***

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

- Is already in, or awaiting transfer to, a secure residential placement;
- Has been returned from placement for failure to adjust; or
- Otherwise qualifies for detention on the basis of a consideration of the above enumerated factors bearing on his ties to the community and flight risk.<sup>85</sup>

When a juvenile has been newly placed in detention following a probation violation or a failure to adjust in a non-secure placement, an informal detention hearing is required within 72 hours.<sup>86</sup>

### **§ 5-11 Detention for Probation Violators<sup>87</sup>**

As has been discussed elsewhere, every juvenile court should develop a sanction and reward policy that ensures consistent decisions by juvenile probation officers, juvenile hearing officers and judges in responding to violations of probation. Before determining that detention is warranted as a sanction for a violation of probation, a court should give careful consideration to what the research shows regarding effective motivation of young offenders.

### ***Promoting Pro-social Behaviors***

Pro-social behaviors are promoted through recognition, acknowledgement and affirmation of identified pro-social behaviors. Research shows that greater use of rewards and incentives as opposed to sanctions is more likely to improve offender motivation to change. Effective rewards include written notes, public praise and acknowledgement as well as lessened control including fewer drug tests or early discharge from supervision.

### ***Sanctions***

Sanctions for juveniles who violate terms of supervision should be administered in accordance with research-informed policy developed to maximize their results. Research shows that overly harsh responses to

#### ***To be effective, sanctions should be***

- ✓ ***Certain***
- ✓ ***Swift***
- ✓ ***Proportionate***

unacceptable behavior can actually be counterproductive to the desired result. An effective graduated sanction policy is one that clearly defines desired behaviors and consequences of behaviors. Delineated sanctions should be administered equitably for greater effect. A structured sanctioning response to behavior also aids in promoting consistency among staff.

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<sup>1</sup> 55 Pa. Code §3800.5

<sup>2</sup> 42 Pa.C.S. §6327.

<sup>3</sup> 42 Pa.C.S. §6301(b).

<sup>4</sup> 42 Pa.C.S. §§6325—6332.

<sup>5</sup> 42 Pa.C.S. §6326 and Rule 221, Pa.R.J.C.P.

<sup>6</sup> 42 Pa.C.S. §6302 exclusions from the definition of “Delinquent Act” (2)(i)-(iii)

<sup>7</sup> 42 Pa.C.S. §6327(d).

<sup>8</sup> 42 Pa.C.S. §6327(a).

<sup>9</sup> 37 Pa. Code §200.2.

<sup>10</sup> 42 Pa.C.S. §6332.

<sup>11</sup> 37 Pa. Code Ch. 200, Subchapter A, Preamble.

<sup>12</sup> 37 Pa. Code §200.2.

<sup>13</sup> See DPW/CYF Bulletin of October 1, 2010 Shared Case Responsibility Policy and Procedures.

<sup>14</sup> 42 Pa.C.S. §6327(e).

<sup>15</sup> 42 U.S.C. 5601et seq. <https://www.ojjdp.gov/about/jidpa2002titlev.pdf>

<sup>16</sup> <https://www.pacode.com/secure/data/055/chapter3800/chap3800toc.html>

<sup>17</sup> JCJC Standards Governing the Use of Secure Detention Under the Juvenile Act (37 Pa. Code §§200.1 through 200.9) <https://www.pacode.com/secure/data/037/chapter200/subchapAtoc.html> and Standards Governing Hearings and Administrative Reviews for Children Held in Secure Detention (37 Pa. Code §§200.101 through 200.107) <https://www.pacode.com/secure/data/037/chapter200/subchapBtoc.html> must be met if the county is to participate in the JCJC grant-in-aid program.

<sup>18</sup> Civ. A. No. 81-2215 (E.D. Pa. 1985). The consent decree in this case had the force of law through most of the Commonwealth (Philadelphia being affected by separate litigation) from 1986 through 1996.

<sup>19</sup> 37 Pa. Code Ch. 200, Subchapter A.

<sup>20</sup> [https://www.pachiefprobationofficers.org/docs/PaDRAI\\_Handbook\\_0318.pdf](https://www.pachiefprobationofficers.org/docs/PaDRAI_Handbook_0318.pdf)

<sup>21</sup> 37 Pa. Code Ch. 200, Subchapter A, Preamble.

<sup>22</sup> 2017 Pennsylvania Juvenile Justice and Delinquency Prevention Plan, pp. 76-77.

<sup>23</sup> 42 Pa.C.S. §6327(f). For more information on detention reform and alternatives to detention, see the Pathways to Juvenile Detention Reform series, produced in 1999 by the Juvenile Detention Alternatives Initiative. All 13 monographs in the series are available free from the Annie E. Casey Foundation, 701 Paul Street, Baltimore, MD 21202, (410) 547-6600, [www.aecf.org](http://www.aecf.org).

<sup>24</sup> 42 Pa.C.S. §6335(a)(1).

<sup>25</sup> 42 Pa.C.S. §6335(a)(2).

<sup>26</sup> 42 Pa.C.S. §6335(f).

<sup>27</sup> 42 Pa.C.S. §6335(f).

<sup>28</sup> 42 Pa.C.S. §6335.

<sup>29</sup> Rule 391, Pa.R.J.C.P.

<sup>30</sup> Explanatory Report, Rule 391, Pa.R.J.C.P.

<sup>31</sup> 42 Pa.C.S. §6341(b). See also Rules 409(B)(1) and 510(A), Pa.R.J.C.P.

<sup>32</sup> Rule 510(B), Pa.R.J.C.P.

<sup>33</sup> Comment, Rule 510, Pa.R.J.C.P.

<sup>34</sup> 37 Pa. Code §200.103.

<sup>35</sup> 37 Pa. Code §200.103(b).

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- <sup>36</sup> 37 Pa. Code §200.107(c).  
<sup>37</sup> 37 Pa. Code §200.107(b).  
<sup>38</sup> Rule 605, Pa.R.J.C.P.  
<sup>39</sup> Rules 605(B), 610(B), and 612(B), Pa.R.J.C.P.  
<sup>40</sup> 37 Pa. Code §200.1(b).  
<sup>41</sup> 42 Pa.C.S. §6325.  
<sup>42</sup> 37 Pa. Code §200.3.  
<sup>43</sup> 37 Pa. Code §200.3(6).  
<sup>44</sup> 37 Pa. Code §200.4.  
<sup>45</sup> 37 Pa. Code §§200.1(d), 200.5.  
<sup>46</sup> 37 Pa. Code §200.9.  
<sup>47</sup> 42 Pa.C.S. §6331. See also Rule 240, Pa.R.J.C.P.  
<sup>48</sup> 42 Pa.C.S. §6332. See also Rule 242, Pa.R.J.C.P.  
<sup>49</sup> Rule 241, Pa.R.J.C.P.  
<sup>50</sup> Rule 243(A), Pa.R.J.C.P.  
<sup>51</sup> 42 Pa.C.S. §6333.  
<sup>52</sup> Rule 242(B)(4), Pa.R.J.C.P.  
<sup>53</sup> Rule 242(B)(1), Pa.R.J.C.P.  
<sup>54</sup> Rule 242(B)(5), Pa.R.J.C.P.  
<sup>55</sup> Rule 242(B)(3), Pa.R.J.C.P.  
<sup>56</sup> Rule 242(B)(2), Pa.R.J.C.P.  
<sup>57</sup> Rule 243(B), Pa.R.J.C.P.  
<sup>58</sup> Rule 243(C), Pa.R.J.C.P.  
<sup>59</sup> 42 Pa.C.S. §6325.  
<sup>60</sup> 37 Pa. Code §200.3.  
<sup>61</sup> 37 Pa. Code §200.3(1) and (2).  
<sup>62</sup> 37 Pa. Code §200.3(3).  
<sup>63</sup> 37 Pa. Code §200.3(4).  
<sup>64</sup> 37 Pa. Code §200.3(5).  
<sup>65</sup> 37 Pa. Code §200.1(c).  
<sup>66</sup> 37 Pa. Code Ch. 200, Subchapter A, Preamble.  
<sup>67</sup> 42 Pa.C.S. §6325.  
<sup>68</sup> 37 Pa. Code §200.4.  
<sup>69</sup> 37 Pa. Code §200.4(2).  
<sup>70</sup> 37 Pa. Code §200.4(3).  
<sup>71</sup> 37 Pa. Code §200.4(1) and (5).  
<sup>72</sup> 37 Pa. Code §200.4(4).  
<sup>73</sup> 37 Pa. Code §200.4(6).  
<sup>74</sup> 37 Pa. Code §200.9.  
<sup>75</sup> 37 Pa. Code §200.9(a)(2). <https://www.pacode.com/secure/data/037/chapter200/s200.9.html>  
<sup>76</sup> 37 Pa. Code §200.9(b).  
<sup>77</sup> 37 Pa. Code §200.9(c).  
<sup>78</sup> 37 Pa. Code §200.1(d).  
<sup>79</sup> 37 Pa. Code §200.6.  
<sup>80</sup> 37 Pa. Code §200.7.  
<sup>81</sup> 37 Pa. Code §§200.6(1) and 200.7(1).  
<sup>82</sup> 37 Pa. Code §§200.6(2) and 200.7(2).  
<sup>83</sup> 37 Pa. Code §§200.6(3) and 200.7(4).  
<sup>84</sup> 37 Pa. Code §200.7(3).  
<sup>85</sup> 37 Pa. Code §200.8.  
<sup>86</sup> See section relating to Probation Violations, above and “Duration of Detention,” § 5-11, below.  
<sup>87</sup> *Pennsylvania’s Juvenile Justice System Enhancement Strategy-Achieving Our Balanced and Restorative Justice Mission Through Evidence-based Policy and Practice* (Juvenile Court Judges’ Commission and Pennsylvania Council of Chief Juvenile Probation Officers, April 2012) p. 29.

# Chapter 6

## Transfer to and from Criminal Proceedings

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### Summary of Contents

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

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

### Key Statutes Governing Transfer to Criminal Proceedings

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

### Key Statutes Governing Transfer from Criminal Proceedings

- 42 Pa.C.S. § 6322 (transfer from criminal proceedings)
- 42 Pa.C.S. § 6327 (place of detention)
- 42 Pa.C.S. § 6355 (transfer to criminal proceedings)

### Rules Governing Transfer to Criminal Proceedings

- Rule 128, Pa.R.J.C.P. (presence at proceedings)
- Rule 129, Pa.R.J.C.P. (appearance by advanced communication technology)
- Rules 390-396, Pa.R.J.C.P. (transfer for criminal prosecution)

### Rules Governing Transfer from Criminal Proceedings

- Pa.R.Crim.P. 595 (mandatory status conference)
- Pa.R.Crim.P. 596 (motion requesting transfer from criminal proceedings to juvenile proceedings)

- Pa.R.Crim.P. 597 (procedures following the filing of a motion requesting transfer from criminal proceedings to juvenile proceedings)
- Pa.R.Crim.P. 598 (place of detention during procedures for transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. §6322)
- Rule 337, Pa.J.C.P. (filing of petition after case has been transferred from criminal proceedings)

## § 6-1 Transfer to and from Criminal Proceedings in General

### *Transfer to Criminal Proceedings*

In addition to excluding a number of offenses from initial juvenile court jurisdiction, the Juvenile Act gives juvenile court judge’s discretion to transfer some other petitioned delinquency cases for criminal prosecution if “the public interest” would be served thereby. Before turning to a detailed examination of the statutory requirements for discretionary transfer and the specific issues that must be resolved in transfer proceedings, it may be worthwhile to explore the broader considerations that ought to influence a decision of this kind.

First, for a variety of reasons, including the structure and history of the Juvenile Act itself, transfer of juveniles for criminal prosecution should be deemed appropriate only after consideration of the extensive body of research that addresses the developmental stages of youth, with attention to brain development and adolescent immaturity.<sup>1</sup> Before 1995, when juvenile courts in Pennsylvania exercised original jurisdiction over all offenses committed by juveniles, with the sole exception of murder, discretionary case-by-case judicial transfer was the only possible mechanism for disposing of difficult cases involving serious offenders who could neither benefit from services nor be held accountable by sanctions available to the juvenile court. That is not the case today. As was explained more fully in a previous section (see “The Boundaries of Delinquency Jurisdiction,” § 4-5), the border between juvenile and criminal jurisdiction has since been redrawn, so as to place a number of the most serious juvenile offenses initially on the criminal side of the line. In effect, the legislature has already “transferred” many of the difficult cases. Consequently, judicial transfers are much rarer following the 1995 amendments to the Juvenile Act.<sup>2</sup>

Consideration of the public interest should also induce juvenile court judges to exercise extraordinary caution in granting requests for transfer to criminal proceedings. While the transfer law enumerates no fewer than 15 factors and sub-factors to be taken into account

in determining the public interest in transfer proceedings (see the discussion under “Hearing on Request for Transfer to Criminal Proceedings,” § 6-4), the Pennsylvania Supreme Court has made it clear that in a broader sense “the purpose of the amended [Juvenile] Act itself provides guidance as to the meaning of ‘public interest.’”<sup>3</sup> Given the very limited opportunities for appropriate treatment, rehabilitation, learning and growth in the adult criminal justice system, a juvenile court judge should be extremely reluctant to transfer a juvenile for criminal proceedings. Arguably, this will sometimes be unavoidable, if a juvenile is to be held accountable for serious offenses. But real accountability—in the sense that involves acknowledging responsibility for wrongdoing and making amends for it—may often be more readily imposed by a juvenile court with a flexible array of victim- and community-oriented sanctions, than by a criminal court with only prison terms to hand down. And if the net effect of criminal processing and incarceration of juveniles is simply to produce untreated, unrehabilitated, but younger and more able-bodied ex-convicts, then even the apparent public safety benefits of transfer may prove illusory as well.

### ***Transfer from Criminal Proceedings***

A juvenile who has been charged with murder or another excluded offense in a criminal proceeding may request a discretionary transfer to juvenile court.<sup>4</sup> In such a case, the issue to be decided in the hearing on the motion is the same as in a hearing requesting transfer to criminal proceedings— whether “the transfer will serve the public interest,” taking into consideration the juvenile’s amenability to treatment and the other factors enumerated in the Juvenile Act provision governing transfer to criminal court—except that the juvenile must bear the burden of establishing by a preponderance of the evidence that transfer is in the public interest.<sup>5</sup> If the court finds that the juvenile has met this burden, the Juvenile Act requires that the court make findings of fact, including specific references to the evidence, and conclusions of law in the transfer order.

The statute providing for transfers from criminal proceedings— sometimes referred to as “reverse” transfers or “decertifications”— states that requests for transfer are

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

to be heard by “the court in a criminal proceeding.”<sup>6</sup> However, as a practical matter, the public interest determination called for cannot be properly made by a judge who is unfamiliar with the juvenile justice system, its available services and dispositional alternatives, and the juveniles’ rehabilitative prospects within it. Accordingly, where

possible, the best practice would be to entrust decertification decisions to experienced juvenile court judges sitting in criminal court for that purpose. At minimum, a judge familiar with the juvenile justice system should conduct the proceeding.

In any event, motions requesting the transfer of a case from criminal proceedings must be dealt with quickly. Because the juvenile may well be detained among adult criminals pending a “decertification hearing,”<sup>7</sup> the mere passage of time may severely compromise his rehabilitative prospects in the juvenile system. It should also be noted that if the court does not make its finding regarding whether a child has met the burden of establishing that the transfer from criminal proceedings would serve the public interest within **20 days** of the hearing on the petition to transfer, the law provides that a juvenile’s transfer request is automatically denied.<sup>8</sup>

## § 6-2 Best Practices

- A system should be developed within each jurisdiction to promptly identify juveniles that have been charged with “direct-file” offenses in the adult criminal justice system, to ensure compliance with Pa.R.Crim.P. 595-598. For example, the president judge may direct magisterial district judges to provide notification to the juvenile probation department when a “direct-file” case comes before them, or request the jail warden to provide notification to the juvenile probation department whenever a juvenile is admitted to the facility.
- Judges presiding in hearings governing transfer to and from criminal proceedings should have broad knowledge of the juvenile and criminal justice systems and the treatment options available in each.
- Experts retained to address a juvenile’s amenability to treatment should be psychologists or psychiatrists with specialized training in adolescent brain development, and broad knowledge of the juvenile and criminal justice systems and the treatment options available in each.
- The court should not hesitate to engage its own independent expert to provide an assessment of the juvenile’s amenability to treatment.
- Courts should not grant a juvenile’s own request to be transferred for criminal prosecution, unless the case meets the statutory offense requirements for transfer, with respect to offense grading, age, and public interest criteria.

- Judges presiding in transfers from criminal proceedings shall ensure that status conferences are conducted in accordance with Pa.R.Crim.P. 595 (mandatory status conference).

### **§ 6-3 Statutory Requirements for Discretionary Transfers to Criminal Proceedings**

After the filing of a delinquency petition but before any hearing on the merits, the Juvenile Act authorizes the discretionary transfer of the case for prosecution in a criminal proceeding if the court finds all of the following:<sup>9</sup>

- **Age.** The juvenile must have been at least 14 at the time of the alleged offense.
- **Offense level.** The offense alleged must be one that would be considered a felony if committed by an adult.
- **Prima facie case.** There must be a prima facie case that the juvenile committed the alleged offense.
- **Absence of mental health/retardation issues requiring commitment.** The court must find “reasonable grounds to believe that the child is not committable to an institution for the mentally retarded or mentally ill.”<sup>10</sup>
- **Public interest.** The court must also find “reasonable grounds to believe that the public interest is served by the transfer,”<sup>11</sup> following mandatory consideration of fifteen enumerated factors and sub-factors (see discussion under “Hearing on Request for Transfer to Criminal Proceedings,” § 6-4). In this regard, it is a best practice for the court to appoint a psychologist or psychiatrist to evaluate the juvenile and make a recommendation regarding amenability. The psychologist or psychiatrist selected to perform the evaluation must have a broad knowledge of both the juvenile and criminal justice systems, and be familiar with the service and treatment options available in each system and how they relate to the juvenile’s assessed needs.

Written notice of a request for transfer must be served at least **3 days** in advance of the transfer hearing.<sup>12</sup> Filing and service of a notice of a request for transfer must ordinarily occur after the filing of the petition but before the first scheduled adjudicatory hearing. Those entitled to notice of a request for transfer include the juvenile, the juvenile’s

guardian, the juvenile’s attorney, the juvenile probation department, and the attorney for the Commonwealth.<sup>13</sup>

## § 6-4 Hearing on Request for Transfer to Criminal Proceedings

Before a juvenile may be transferred for criminal proceedings, the Juvenile Act calls for a hearing, which—in view of the stakes as well as the variety of issues that must be considered—is often a lengthy and wide-ranging one.<sup>14</sup> A transfer hearing must be presided over by a juvenile court judge—not a juvenile court hearing officer.<sup>15</sup> Although the Juvenile Act does not go into detail regarding the prescribed conduct of transfer hearings, a juvenile facing transfer is entitled as a matter of constitutional law to “the essentials of due process and fair treatment.”<sup>16</sup> These essentials include the right to counsel and to “access by the child’s counsel to the social records of the child,” but apparently not to immunity from prosecution based on testimony at the transfer hearing.<sup>17</sup> While the best practice is for the juvenile to be present at the hearing, advanced communication technology (ACT) may be utilized if the parties consent.<sup>18</sup>

Prior to the transfer hearing, the court may order that a social study and report be prepared and submitted “concerning the child, his family, his environment, and other matters relevant to disposition of the case.”<sup>19</sup> Typically, this report is prepared by the juvenile probation department to provide additional information regarding the juvenile’s background and amenability to treatment. However, this report should not replace the assessment of an appropriately trained psychologist or psychiatrist. (See § 6-3 previously mentioned)

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

### ***Factors to Be Considered in Public Interest Determinations***

Apart from determining whether the Commonwealth has established a prima facie felony case against the juvenile and ruling out the necessity of a mental health or mental retardation commitment, the main business of the transfer hearing is to decide whether “the public interest is served” by a transfer.<sup>20</sup> The law directs the court to consider 15 enumerated factors and sub-factors in making its determination regarding the public’s interest in the transfer decision.<sup>21</sup> The seven primary factors to be weighed are the following:

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

While no specific weights are assigned to the above factors, and none is singled out as determinative, it is clear that a particularly detailed inquiry into the juvenile’s amenability to treatment, supervision or rehabilitation is called for, since the law specifies no fewer than eight sub-factors that must be considered in the course of this amenability determination. Specifically, the sub-factors that must be considered as bearing on the juvenile’s amenability include, but are not limited to:

- The juvenile’s age
- The juvenile’s mental capacity
- The juvenile’s maturity
- The juvenile’s degree of criminal sophistication
- The juvenile’s previous record as a delinquent
- The “nature and extent” of the juvenile’s court history and whether previous rehabilitation attempts have succeeded or failed
- Whether the juvenile’s rehabilitation is possible in the time left before juvenile court jurisdiction over him expires
- Any probation or institutional reports regarding the juvenile
- Any other relevant factors

An accurate analysis of amenability requires judges and attorneys to be familiar with the treatment and service options available. Any resources that are recommended for the care or rehabilitation of the juvenile, such as a placement facility, should be well-researched. Attorneys should be able to articulate why a resource option is appropriate and how it will address the juvenile’s specific needs.

### ***Burden of Proof***

Generally, the Commonwealth bears the burden of establishing by a preponderance of evidence that the public interest is served by the transfer of the case to criminal court,

which includes determining whether the child is amenable to treatment, supervision or rehabilitation as a juvenile.<sup>22</sup> However, the burden on these issues shifts to the juvenile when a prima facie case is made that the juvenile has committed one of the enumerated felonies listed below *and* either (1) was 14-years old and used a deadly weapon<sup>23</sup> or (2) was at least 15-years-old and had previously been adjudicated delinquent for any felony-grade offense. The enumerated felonies are as follows:

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

Prosecution under the criminal law and procedures is mandatory, under 42 Pa.C.S. §6355(e), in those cases meeting the statutory criteria for exclusion—that is, cases in which the petition alleges murder or other acts excluded from juvenile court jurisdiction,<sup>24</sup> unless a criminal court has already considered the matter and transferred the case to juvenile court pursuant to 42 Pa.C.S. §6322. As previously discussed (See § 6-1) a criminal court, under 42 Pa.C.S. §6322, may transfer a case where the juvenile is alleged to have committed murder or other statutorily excluded acts, from criminal court to juvenile court if the juvenile establishes by a preponderance of the evidence that the transfer will serve the public interest.<sup>25</sup>

### ***Victim and Community Interests in Transfer Decisions***

A victim of a juvenile offense has the right to notice of any hearings related to the transfer of a juvenile to and from criminal proceedings and may decide to participate in the proceedings.<sup>26</sup> As noted above, in making its “public interest” determination in a transfer proceeding, the court is required to give careful consideration to victim impact evidence. The extent to which the victim has been harmed by the offense is one basic measure of its seriousness. Moreover, the degree of harm suffered by the victim should have considerable bearing on the court’s assessment of the adequacy of a juvenile disposition to meet the case. Accordingly, in the course of the transfer hearing, evidence should be presented on the physical, emotional, and financial impact of the offense on the victim, and such evidence

should be weighed appropriately in the court's decision. Where necessary, as in a disposition hearing, the court should make its own inquiries regarding the victim's feelings, concerns, and wishes regarding transfer.

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

It is true that a victim will sometimes favor transfer to criminal proceedings, and may be disappointed by a decision to keep the case in the juvenile justice system. Under these circumstances, the court has a responsibility to make use of the opportunity presented by the transfer hearing to educate the victim regarding the true basis of the transfer decision. Time should be taken not only to solicit the victim's views during the hearing, but to explain the reasons for a difficult decision at its conclusion. Above all, if the court has declined to transfer a case for criminal prosecution, the victim should be helped to understand that the harm suffered by the victim was not overlooked and will be an important consideration in subsequent delinquency proceedings.

Some of these same general considerations apply to the community interest in transfer proceedings. The law requires the court, in weighing a request for transfer to or from criminal proceedings, to take into account any impact the offense has had on the community and any threat to the community's safety that may be posed by the juvenile. Especially in high-profile cases, community sentiment in favor of prosecuting the juvenile in adult court may be intense—and the general public cannot ordinarily be excluded from these hearings.<sup>27</sup> Here the court's responsibility must be to give due weight to the legitimate community interest in the case, without simply surrendering to public clamor.<sup>28</sup> In difficult cases, the best course is to use the hearing to educate the public regarding the transfer issue, and to explain the grounds for the transfer decision.

### ***Granting or Declining Transfer to Criminal Proceedings***

If the court finds that transfer is not warranted, it must schedule an adjudicatory hearing on the delinquency petition. Otherwise, it must "transfer the case to the division or a judge of the court assigned to conduct criminal proceedings for prosecution."<sup>29</sup>

While the Juvenile Act is silent concerning the written findings that must accompany and support a transfer order, as a matter of constitutional law the juvenile is entitled to "a

statement of reasons or considerations” for transfer that is “sufficient to demonstrate that . . . the question [of certification] has received the careful consideration” of the court, and that sets forth the basis for the order “with sufficient specificity to permit meaningful review.”<sup>30</sup> The court need not provide “detailed or intricate explanations of the rationale for certification,” and its statement of reasons need not contain conventional findings of fact.<sup>31</sup> While the court must consider all the enumerated factors in 42 Pa.C.S. §6355(a)(4)(iii) in determining whether to certify a juvenile, the Juvenile Act is silent as to the weight assessed to each factor. The court “need not address, *seriatim*, the applicability and importance of each factor and fact in reaching its final determination.”<sup>32</sup> On the other hand, supporting a transfer order with a mere “bald reference” to the juvenile’s file is clearly inadequate.<sup>33</sup>

## § 6-5 Transfer to Criminal Proceedings at the Juvenile’s Request

Although transfers for criminal prosecution are generally requested by the Commonwealth, the Juvenile Act permits transfers at the request of juveniles as well.<sup>34</sup> There is nothing in the law to suggest that a juvenile’s request for transfer should be handled differently from the Commonwealth’s request for transfer. The best practice is to assume that the legislature, having defined a narrow category of transfer-eligible cases, intended to place all others under juvenile court jurisdiction, regardless of the forum preferences of the juveniles themselves.<sup>35</sup> Thus, juvenile court judges should deny transfer requests in cases that do not meet the statutory requirements for transfer outlined above. That is, even a juvenile who is willing to be transferred—presumably for strategic reasons of some kind—should meet age and offense requirements for transfer, and the case should otherwise be one in which transfer will serve the public interest. A request for transfer involving a youth who was under 14 at the time of the offense, or one who is not accused of a felony, should not be granted.

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

## § 6-6 Consequences of Transfer to Criminal Proceedings

An order of transfer not only “terminates the applicability” of the Juvenile Act with respect to the offenses alleged in the petition,<sup>36</sup> opening the way for a criminal trial of the juvenile, it also sweeps away confidentiality protections that would otherwise be applied to the juvenile’s records and files,<sup>37</sup> and permits him to be detained “in accordance with the law governing the detention of persons charged with crime.”<sup>38</sup> At the conclusion of the transfer hearing, the juvenile court judge “shall determine bail for the juvenile,” under the ordinary bail rules applicable to adults.<sup>39</sup> However, it should be noted that 42 Pa.C.S. §6327 specifically provides that the court, in making the transfer order, may order continued detention of a juvenile if the “child” is unable to provide bail. Because the transfer hearing serves as the “preliminary hearing” required under the Pennsylvania Rules of Criminal Procedure, the attorney for the Commonwealth may file an information as soon as the transfer order is issued.<sup>40</sup>

If the juvenile is found guilty of a non-summary offense in a criminal proceeding following transfer, the juvenile court will have no

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

jurisdiction over him in the future for crimes that would otherwise be considered delinquent acts. In connection with any subsequent allegations, regardless of their nature, the juvenile will be charged, detained, and tried as an adult.<sup>41</sup>

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<sup>1</sup> Elizabeth Scott, Thomas Grisso, Marsha Levick, and Laurence Steinberg. (2015) *The Supreme Court and the Transformation of Juvenile Sentencing*. John D. and Catherine T. MacArthur Foundation. <http://www.modelsforchange.net/publications/778>

<sup>2</sup> In fact, transfers of juvenile cases to criminal courts have declined considerably since 1996. In 2016, Pennsylvania juvenile courts transferred only 62 juvenile cases, accounting for just 0.3% of the year’s juvenile court dispositions. Juvenile Court Judges’ Commission. Pennsylvania Juvenile Court Dispositions 2016. Shippensburg, PA: Juvenile Court Judges’ Commission.

<sup>3</sup> Commonwealth v. Cotto, 562 Pa. 32, 753 A. 2d 217 (2000).

<sup>4</sup> 42 Pa.C.S. §6322.

<sup>5</sup> 42 Pa.C.S. §6322.

<sup>6</sup> 42 Pa.C.S. §6322(a).

<sup>7</sup> Pursuant to §6327(c.1), a juvenile who is charged with a “direct-file” offense and seeks to transfer to juvenile proceedings, may be detained in a secure juvenile detention facility *if* the attorney for the Commonwealth consents and the court orders the detention.

<sup>8</sup> 42 Pa.C.S. §6322(b).

<sup>9</sup> 42 Pa.C.S. §6355.

<sup>10</sup> 42 Pa.C.S. §6355(a)(4)(iv).

<sup>11</sup> 42 Pa.C.S. §6355(a)(4)(iii).

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<sup>12</sup> 42 Pa.C.S. §6355(a)(3). Given the breadth and importance of the issues to be determined at the transfer hearing, the statutory three days' notice hardly seems adequate. See McCarthy, Pa. Juvenile Delinquency Prac. & Proc. (4th Ed.), § 10-3.

<sup>13</sup> Rule 390, Pa.R.J.C.P.

<sup>14</sup> 42 Pa.C.S. §6355(a)(2).

<sup>15</sup> Rule 187(B), Pa.R.J.C.P.

<sup>16</sup> Kent v. United States, 383 U.S. 541, 86 S. Ct. 1045 (1966).

<sup>17</sup> See McCarthy, Pa. Juvenile Delinquency Prac. & Proc. (4th Ed.), § 10-3.

<sup>18</sup> Rule 394, Pa.R.J.C.P.; Rule 129, Pa.R.J.C.P. Advanced Communication Technology may be utilized for the appearance of a witness at a transfer hearing, unless good cause is shown otherwise.

<sup>19</sup> 42 Pa.C.S. §6339.

<sup>20</sup> Prior to October 1, 2012, the Commonwealth was also required to prove by a preponderance of the evidence that the child was not amenable to treatment, rehabilitation, or supervision. Effective, October 1, 2012, Pa.R.J.C.P. 800(17) suspends 42 Pa. C.S. §6355(g) insofar as it is inconsistent with Rule 394. Section 6355(g) provides that the attorney for the Commonwealth has the burden of establishing by a preponderance of the evidence that the transfer of the case to criminal proceedings serves the public interest *and* that the child is not amenable to treatment, supervision or rehabilitation as a juvenile unless the exceptions of (g)(1) and (2) apply. Rule 394 provides that the attorney for the Commonwealth has *only* the burden of establishing by a preponderance of the evidence that public interest is served by the transfer of the case to criminal proceeding because §6355(a)(4) provides that in determining whether “the public interest is served” by the transfer, the court must consider “whether the child is amenable to treatment, supervision or rehabilitation as a juvenile” based on criteria set forth in the statute.

<sup>21</sup> Many of these factors are loosely based on those suggested by the United States Supreme Court for determinations of this kind in Kent v. United States, 383 U.S. 541, 86 S. Ct. 1045 (1966).

<sup>22</sup> Rule 394, Pa.R.J.C.P.; see also 42 Pa.C.S. §6355(a)(4). Rule 800(17), Pa.R.J.C.P.

<sup>23</sup> “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.”

<sup>24</sup> See 42 Pa.C.S. §6302 definition of “delinquent act”

<sup>25</sup> In so evaluating the public interest, the criminal court shall consider the factors contained in 42 Pa.C.S. §6355(a)(4), as discussed above.

<sup>26</sup> 18 Pa.C.S. §11.213(f)(5) ); See also Comment to Rule 390, Pa.R.J.C.P., suggesting that before the case gets to the transfer hearing, the attorney for the Commonwealth should notify the victim of any request for transfer

<sup>27</sup> See 42 Pa.C.S. §6336(E), which among other things requires open hearings in proceedings involving 14-year-olds accused of felonies—a provision that by itself covers all juveniles eligible for discretionary transfer. All criminal proceedings are open to the public.

<sup>28</sup> See Code of Judicial Conduct, Canon 3: “A judge should be unswayed by partisan interests, public clamor, or fear of criticism.”

<sup>29</sup> Rule 394, Pa.R.J.C.P.

<sup>30</sup> Kent v. United States, 383 U.S. 541, 86 S. Ct. 1045 (1966), cited in Commonwealth v. Broome, 317 Pa. Super. 1, 463 A. 2d 1053 (1983). Cf. 42 Pa.C.S. §6322(b), which requires a court ordering a transfer from a criminal proceeding to “make findings of fact, including specific references to the evidence, and conclusions of law in support of the transfer order.”

<sup>31</sup> Commonwealth v. McDonald, 399 Pa. Super. 250, 582 A.2d 328 (1990).

<sup>32</sup> Commonwealth v. Jackson, 555 Pa. 37, 722 A.2d 1030 (1999).

<sup>33</sup> Commonwealth v. Broome, 317 Pa. Super. 1, 463 A. 2d 1053 (1983).

<sup>34</sup> 42 Pa.C.S. §6355(c).

<sup>35</sup> See McCarthy, Pa. Juvenile Delinquency Prac. & Proc. (4th Ed.), § 10-4.

<sup>36</sup> 42 Pa.C.S. §6355(b).

<sup>37</sup> 42 Pa.C.S. §6308.

<sup>38</sup> 42 Pa.C.S. §6327(d).

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<sup>39</sup> Rule 396, Pa.R.J.C.P.

<sup>40</sup> Rule 395, Pa.R.J.C.P.

<sup>41</sup> 42 Pa.C.S. §6302.



# Chapter 7

## Pre-Adjudicatory Procedures

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### Summary of Contents

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

- § 7-1. Pre-Adjudicatory Practices in General
- § 7-2. Best Practices
- § 7-3. Petitions
- § 7-4. Attorney Representation
- § 7-5. Discovery
- § 7-6. Motion Procedures
- § 7-7. Summonses, Notices, and Subpoenas
- § 7-8. Preservation of Testimony
- § 7-9. Adjudicative Competence
- § 7-10. Post-Petition Alternatives to Adjudication

### Key Statutes

- 42 Pa.C.S. §6333 (subpoenas)
- 42 Pa.C.S. §6334 (petitions)
- 42 Pa.C.S. §6337 (right to counsel)
- 42 Pa.C.S. §6337.1 (right to counsel for children in dependency and delinquency proceedings)
- 42 Pa.C.S. §6338 (other basic rights)
- 42 Pa.C.S. §6340 (consent decree)

### Rules<sup>1</sup>

- Rule 123, Pa.R.J.C.P. (subpoenas)
- Rule 140 (bench warrants for failure to appear at hearings)
- Rules 150-152, Pa.R.J.C.P. (counsel)
- Rule 312, Pa.R.J.C.P. (informal adjustment)

- Rules 330-336, Pa.R.J.C.P. (petitions)
- Rule 337 (filing of petition after case has been transferred from criminal proceedings)
- Rules 340-41, Pa.R.J.C.P. (procedures following filing of petition)
- Rules 344-353, Pa.R.J.C.P. (motion procedures)
- Rules 360-364, Pa.R.J.C.P. (adjudicatory summons and notice)
- Rule 370 (consent decree)
- Rule 371 (objection to consent decree)
- Rule 372 (conditions of consent decree)
- Rules 380-381, Pa.R.J.C.P. (preservation of testimony and evidence)

## JCJC Standards<sup>2</sup>

- Hearing Procedures

### § 7-1 Pre-Adjudicatory Procedures in General

The filing of the petition initiates the scheduling of the adjudicatory proceeding and the process for considering alternatives to adjudication. The petition may be filed by a juvenile probation officer or an attorney for the Commonwealth. However, the District Attorney may require an attorney for the Commonwealth to file petitions in all or certain cases by filing a certification with the court.

Prior to the adjudicatory hearing, the Rules of Juvenile Court Procedure and Juvenile Act provide for various actions to occur. The juvenile must be appointed counsel unless private counsel has been retained. A written summons compelling attendance at the hearing and a copy of the petition must be served on the juvenile and juvenile's parents. Pre-adjudicatory procedures, including motions, discovery requests and subpoenas, are governed by the Rules.

Alternatives to adjudication, including consent decrees, commitment for drug and alcohol or mental health treatment or other diversion options may be considered prior to the adjudicatory hearing or at any time prior to an adjudication of delinquency.

## § 7-2 Best Practices

- The judge should ensure that petitions are timely filed in all cases where informal adjustment or other pre-petition diversion has been considered and rejected.
- The judge should ensure that procedures are in place to provide for the appointment of counsel to the juvenile in advance of the adjudicatory hearing.
- The judge should ensure that procedures are in place that provides for a range of pre-adjudicatory diversion options, including consent decrees, drug and alcohol and mental health treatment.
- Although the Rules provide that a juvenile age 14 or older may waive counsel at an uncontested dispositional review hearing, the court should be extremely reluctant to accept the juvenile's waiver.

## § 7-3 Petitions

The hearing process is formally initiated by the filing of a verified petition. The required contents of a petition track those applicable to written allegations (see § 4-4), including the following:<sup>3</sup>

- The name of the petitioner, together with a verification and signature.
- The juvenile's name, date of birth, and address.
- The date and place the alleged offense was committed, the names and ages of any co-conspirators, and either "a summary of the facts sufficient to advise the juvenile of the nature of the offense alleged," together with the provision of law violated, or else a certification that the juvenile has failed to comply with a sentence imposed for a summary offense.
- Statements that the acts alleged were "against the peace and dignity of the Commonwealth" or in violation of a local ordinance, that proceedings in the matter are "in the best interest of the juvenile and the public," and that "the juvenile is in need of treatment, supervision, or rehabilitation."
- A notation indicating whether the juvenile has or has not been fingerprinted and photographed.

- An averment as to whether the case is eligible for limited public information.<sup>4</sup>

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

- The name and address of the juvenile’s parent or guardian. If the whereabouts of the juvenile’s parents, guardian, or custodian are unknown, or if they reside out of state, the name and address of any known adult relative residing within the county (or, failing this, nearest the court) may be substituted.<sup>5</sup>
- If the juvenile is presently in custody, the petition must provide place and time information so as to permit the scheduling of expedited detention and adjudication hearings.<sup>6</sup>

Multiple offenses alleged to have been committed by the same juvenile within the same judicial district may be included in one petition, as long as they are described separately. If all the offenses arose from the same delinquent episode, they must be combined in a single petition.<sup>7</sup> However, if more than one juvenile is alleged to have participated in an offense, a separate petition must be filed for each juvenile.<sup>8</sup>

Petitions and orders from the Common Pleas Court Management System (CPCMS) must be utilized by the juvenile probation office and the court. These petitions and orders contain the necessary items and findings required by statutes and rules.

***Only a juvenile probation officer or an attorney for the Commonwealth may file a formal delinquency petition, which should occur only after it has been determined that informal handling is inappropriate.***

### ***Filing and Service of Petitions***

Only a juvenile probation officer or an attorney for the Commonwealth may file a formal delinquency petition. However, a county District Attorney may opt to require that petitions be filed only by attorneys for the Commonwealth, either in all delinquency cases or in a defined class of cases, by filing a certification to that effect with the Court of Common Pleas.<sup>9</sup>

Promptly after filing, a copy of the petition must be served in person or by first-class mail on the juvenile and the juvenile’s parent or guardian.<sup>10</sup> Both parents should be served if at all possible, even if one parent has primary physical custody of the child. Copies must also

be served on the juvenile’s attorney, the attorney for the Commonwealth, and juvenile probation, but this service may be by alternative means (such as fax or e-mail) if the individuals agree.

### § 7-4 Attorney Representation

All juveniles are presumed indigent. If a juvenile appears at any hearing without counsel, the court must appoint counsel for the juvenile prior to commencement of the hearing.<sup>11</sup> It should be remembered that not all juveniles understand the term “counsel,” or even “attorney,” and may not fully grasp the need for an advisor and advocate in the situation in which they are placed. The basic points to be impressed upon each juvenile are that having a lawyer in court (1) is expected, (2) is free, and (3) helps the system function as it should. The court must appoint counsel for the juvenile prior to commencement of any hearing, if the juvenile appears without counsel.<sup>12</sup>

The assignment of an Attorney for the juvenile must occur prior to the detention hearing if the juvenile is detained, or otherwise prior to the adjudication hearing.<sup>13</sup> Once an attorney has been assigned or has entered an appearance on behalf of a juvenile, representation continues until court supervision is terminated and the case closed, unless the attorney is permitted to withdraw (see below).<sup>14</sup>

#### ***Prohibition on Waiver of Counsel***

A juvenile under the age of 14 may never waive the right to counsel. A juvenile who is age 14 or older may waive the right to counsel, but only if the waiver is knowing, intelligent and voluntary, the court has tested its basis by means of an on-the-record colloquy with the juvenile, and the proceeding is

**not:**

- a detention hearing;
- a hearing on a requested transfer to criminal proceedings;
- an adjudicatory hearing
- a dispositional hearing; or
- a hearing to modify or revoke probation.

***Uncontested dispositional review hearings involving juveniles age 14 or older are the only delinquency proceedings for which a juvenile may waive the right to counsel.***

Uncontested dispositional review hearings involving juveniles age 14 or older are the only delinquency proceedings for which a juvenile may waive the right to counsel.<sup>15</sup> Judges should not only be skeptical regarding attempts to waive the right to counsel, but alert to the possibility of interfamilial conflicts of interest in this area. The right to counsel is a personal one, and may be waived only by the juvenile, not by the juvenile’s family.<sup>16</sup> Where there is reason to believe that a parent’s interests may be in conflict with the juvenile’s, and that the juvenile has been induced to waive his right in the service of a parental interest, it may be necessary to conduct separate colloquies regarding the positions of the family members—with the juvenile’s occurring out of the hearing of his parents. Where there is a conflict between the juvenile and his or her parents it may be appropriate to appoint a guardian *ad litem* for the juvenile.<sup>17</sup>

The court may assign “stand-by counsel” whenever a juvenile waives representation. In any case, the waiver applies only to the hearing for which it is made. Not only may it be revoked at any time, but the court must inform the juvenile of the right to counsel again at each subsequent hearing in the case.<sup>18</sup>

### ***Withdrawal of Counsel***

Under the Rules of Juvenile Court Procedure for Delinquency Matters, once an appearance has been entered or an assignment made, an attorney’s obligation to represent a juvenile extends until the case is closed or a motion to withdraw is granted.<sup>19</sup> A motion to withdraw may be made orally in open court in the presence of the juvenile, or filed with the clerk of courts, with a copy to be served on the attorney for the Commonwealth as well as the juvenile. Unless new counsel for the juvenile has already entered an appearance, a motion to withdraw may be granted only if good cause is shown.<sup>20</sup>

## **§ 7-5 Discovery**

The Rules provide detailed procedures for the pre-trial exchange of evidence in juvenile delinquency cases.<sup>21</sup> Based generally on the discovery provisions of the Rules of Criminal Procedure<sup>22</sup>, these rules list items that must be disclosed on request, provide for additional disclosure orders at the court’s discretion, and prescribe remedies for a party’s failure to comply with the duty to disclose.

***Attorneys are expected to resolve discovery issues informally.***

Discovery is intended to be an informal process. Attorneys in delinquency proceedings are required to make good faith efforts to resolve discovery issues informally before resorting to motions to compel disclosure.<sup>23</sup> If a discovery motion becomes necessary, it must be made, either orally or in writing, “as soon as possible prior to the adjudicatory hearing.” Pending resolution of the motion, the parties should disclose all material about which there is no dispute.

### ***Mandatory Disclosure by the Commonwealth***

The Commonwealth is required to provide the juvenile or the juvenile’s attorney with all of the following upon request:<sup>24</sup>

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

With respect to all of the above items, the duty to disclose is continuing. That is, upon the discovery of previously requested evidence, material or witness identities coming within the mandatory disclosure rule, at any time prior to the end of the adjudicatory hearing, the attorney for the Commonwealth must promptly notify the court and the juvenile’s attorney.<sup>25</sup>

### ***Additional Disclosure Orders***

In addition to the mandatory disclosure items listed above, the court may also order either party to disclose additional materials “upon a showing that they are material to the preparation of the case and that the request is reasonable.”<sup>26</sup> Such a discovery order is specifically made subject to the juvenile’s right against self-incrimination. The Comment to Pa.R.J.C.P. 340 lists the following examples of evidence that may be material to the preparation of the case:

- Names and contact information for any eyewitnesses.
- All written or recorded statements, and substantially verbatim oral statements, of eyewitnesses.
- All written and recorded statements, and substantially verbatim oral statements, made by the juvenile, or by co-conspirators or accomplices, whether such individuals have been charged or not.
- Any other evidence specifically identified, provided the requesting party can also establish that its disclosure would be in the interests of justice, including details regarding any person involved in the case who has received or been promised valuable consideration in exchange for information.

As is the case with mandatory disclosures, a party subject to a discovery order has a continuing duty to disclose additional evidence, material or witness identities coming within the order.<sup>27</sup>

### ***Remedies for Noncompliance***

Whenever it appears that the Commonwealth has failed to make a mandatory disclosure or that either party has failed to comply with a discovery order, the court may (1) order the party to permit discovery/inspection, (2) grant a continuance, (3) prohibit the introduction of the evidence not disclosed (assuming it is evidence other than the testimony of the juvenile), or (4) make any other order it deems appropriate.<sup>28</sup>

### ***Limits on Discovery***

Discovery of attorney work product—legal research or documents containing “opinions, theories, or conclusions” of the attorneys on either side or their legal staffs—is not permitted.<sup>29</sup> In addition, either party may apply for a protective order denying, restricting, or deferring discovery, which the court may grant “upon a sufficient showing.”<sup>30</sup> The court

may permit this showing to be made wholly or partly in the form of “a written statement to be inspected by the court.” If the motion for a protective order is granted, the written showing must be preserved under seal for appeal purposes.

### ***Disclosure of Alibi Defense***

At least two days in advance of the adjudicatory hearing, a juvenile who intends to offer an alibi defense must provide notice to the attorney for the Commonwealth, indicating the place where the juvenile claims to have been at the time of the offense, the names of all witnesses who will be called in support of the alibi, and contact information for each.<sup>31</sup> In the event of the juvenile’s failure to comply, the court may (1) exclude all alibi evidence (except for the juvenile’s own testimony), (2) exclude only the testimony of witnesses who were not identified in advance, (3) grant a continuance to enable the Commonwealth to investigate the alibi, or (4) make any other order that the interests of justice may require.<sup>32</sup>

While the juvenile cannot be prevented from testifying as to an alibi claim, the Commonwealth may cross-examine the juvenile concerning discrepancies between the alibi claimed at the hearing and any alibi notice given.<sup>33</sup>

Following receipt of an alibi notice but prior to the adjudicatory hearing, the attorney for the Commonwealth must disclose the names of any witnesses who will be called to disprove or discredit the alibi claim, and provide contact information for each.<sup>34</sup> Otherwise, the court may (1) exclude all evidence offered to disprove the alibi, (2) exclude only the testimony of witnesses who were not identified in advance, (3) grant a continuance to enable the juvenile to investigate, or (4) make any other order that the interests of justice may require.<sup>35</sup>

## **§ 7-6 Motion Procedures**

Motions practice in delinquency cases is governed by Rules 344 through 353. Motions may be oral or written, but if time permits, written motions are preferred.<sup>36</sup> Any motion must state with particularity the grounds, any supporting facts, and the relief or order requested. If written, a motion must be signed; any factual basis not already on the record must be verified to be true and correct to the personal knowledge, information, or belief of the person making the motion.<sup>37</sup> Answers are not generally required, but written answers are subject to signature and verification requirements similar to those applicable to motions.<sup>38</sup>

Generally, unless the “interests of justice” require otherwise, all pre-adjudicatory requests for relief must be included in one omnibus motion, to be made “as soon as practical” before the adjudicatory hearing, but in any case prior to the calling of the first witness.<sup>39</sup> Types of relief to be included in an omnibus motion include requests for continuance, for joint or separate hearings, for suppression of evidence, for psychiatric examination, for dismissal of a petition, for disqualification of a judge, for appointment of an investigator, and for a pre-hearing conference.<sup>40</sup> The court should generally dispose of omnibus motions prior to the adjudicatory hearing, postponing the hearing if necessary.<sup>41</sup>

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

### ***Suppression of Evidence***

A motion to suppress evidence obtained in violation of the juvenile’s rights<sup>42</sup> must normally be contained in the juvenile’s omnibus motion for relief. If not, the suppression issue will be deemed waived, unless the opportunity to seek suppression “did not previously exist, or the interests of justice otherwise require.”<sup>43</sup> Following a motion to suppress, the court must make formal findings of fact and conclusions of law regarding whether the evidence in question was illegally seized, and issue an order granting or denying relief. If the court denies the motion, the decision is “final and binding” for purposes of the subsequent adjudication hearing, and the evidence will be admitted unless the juvenile can make a showing of new evidence in favor of suppression that was unavailable at the time the original motion was resolved.<sup>44</sup>

A motion for suppression of evidence may be joined with a motion for the return of property illegally seized.<sup>45</sup>

### ***Motions for Joint or Separate Hearings***

Separate petitions involving one juvenile may be resolved in a single adjudicatory hearing if (1) evidence of each of the offenses alleged would be admissible in a hearing on the other offenses or (2) all of the offenses alleged are based on the same act or transaction. When offenses are alleged in separate petitions involving different juveniles, a single hearing may be held if all the juveniles are alleged to have participated in the same act or transaction or the same series of acts or transactions.<sup>46</sup> Oral or written notice of consolidation must be provided to the juvenile(s) prior to any joint hearing.<sup>47</sup>

When a consolidated hearing is planned, any party may move for separate hearings. Conversely, any party may request consolidation of hearings. Either type of request should ordinarily be included in an omnibus motion. If the above requirements for joint hearings are not met, the court must order separate adjudicatory hearings. But even if consolidation would otherwise be proper under the rules, the court may order separate hearings (or “other appropriate relief”) if any party would be prejudiced by a joint hearing.<sup>48</sup>

## § 7-7 Summonses, Notices, and Subpoenas

A written summons compelling attendance at the adjudication hearing, together with a copy of the petition, must be issued by the court and served on the juvenile and the juvenile’s parents/ guardians at least **14 days** in advance of the hearing (or **7 days** if the juvenile is detained).<sup>49</sup> The summons must specify the date, time and place of the hearing, inform the juvenile of the right to counsel (and to assigned counsel if necessary), and contain a warning that failure to appear may result in arrest.<sup>50</sup> Also included with the summons shall be an order for the child to submit to fingerprinting and photography.<sup>51</sup> Service must be made in person or by first-class mail.<sup>52</sup>

The attorney for the Commonwealth, the juvenile’s attorney, the juvenile probation office, and victims of the juvenile are all entitled to written notice of an adjudication hearing as well. Like the summons, the notice must be served in person or by first-class mail at least **14 days** in advance of the hearing (or **7 days** if the juvenile is detained).<sup>53</sup>

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

Responsibility for notifying victims of the date, time, place, and purpose of the adjudicatory hearing rests with the attorney for the Commonwealth or its designee.<sup>54</sup>

### ***Subpoenas***

At the request of the juvenile, the juvenile’s parents, a probation officer or district attorney, or any other party, or on the court’s own motion, the court or the court clerk may issue a subpoena requiring the attendance of a witness or the production of papers at the hearing.<sup>55</sup> The subpoena must identify and provide the address and telephone number of the person who applied for it, and state on whose behalf the witness is being ordered to

testify.<sup>56</sup> It may be served via first-class mail as well as in person or by registered or certified mail, return receipt requested. However, only a completed return receipt, signed receipt of personal delivery, or a process-server's signed affidavit of in-person delivery constitute *prima facie* evidence of service.

### ***Bench Warrants***

The court may issue a bench warrant for the arrest of a person who fails to appear in response to a summons or subpoena, but in either case the warrant must be supported by a finding that sufficient notice was given. The judge may rely on first-class mail service if additional evidence of sufficient notice is presented. The judge cannot find sufficient evidence solely based on first class mail service.<sup>57</sup>

## **§ 7-8 Preservation of Testimony**

Following the commencement of delinquency proceedings, the testimony of a witness who may be unavailable for a later hearing may be taken and preserved, either pursuant to a court order or by agreement of the parties.<sup>58</sup>

Any party may request the court to order the preservation of testimony.<sup>59</sup> After notice and hearing, the court may order testimony of a witness to be taken and preserved if it appears that the witness may later become unavailable (by dying, becoming incompetent, or leaving the jurisdiction, for example), or if, "due to exceptional circumstances," the interests of justice require it. The judge must state on the record the grounds for an order to take and preserve testimony, and the order itself must specify the time and place at which the testimony will be taken and the manner in which it will be recorded, preserved, and safeguarded until the hearing.

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

Testimony that is to be preserved pursuant to a court order, unless the order specifies otherwise, is taken in the presence of the judge as well as the juvenile, the juvenile's attorney and the attorney for the Commonwealth, who are given full opportunity to examine and cross-examine the witness and to raise objections.<sup>60</sup> However, the court need not make rulings on admissibility until the testimony is offered into evidence at the later hearing.

The parties may also agree to take and preserve a witness's testimony, conducting what amounts to a deposition.<sup>61</sup> The parties' agreement must be reduced to writing and filed with the clerk, and must contain the same specifics as a court order for the preservation of testimony—that is, the time, the place, and the manner of recording, preserving and keeping the testimony until the hearing. Testimony to be preserved by agreement should be taken in the presence of the juvenile, the juvenile's attorney, and the attorney for the Commonwealth, unless the parties agree otherwise. As when the testimony is presided over by the court, the parties have full opportunity to examine, cross-examine, and raise objections. The court must rule on admissibility when the testimony is later offered into evidence.

The court may order or the parties may agree to the recording of testimony by any means, but if the testimony is to be recorded on video, it must be simultaneously taken down by a stenographer, and certain basic technical requirements must be met.<sup>62</sup> For example, the recording must begin with detailed identifying statements, must show the swearing-in of the witness, and must be timed throughout by an on-camera digital clock. All objections and their grounds must be made on the recording. If the testimony is recorded without the court presiding, a log must be kept of each objection, showing the time it was made, in order to facilitate later admissibility rulings; in making its rulings on objections, the court may either read the stenographic transcript or view pertinent sections of the video with the aid of the log.<sup>63</sup>

## §7-9 Adjudicative Competence

Due process requires that a juvenile be competent to stand trial, which includes capacity to sufficiently understand the nature of the proceedings and to assist counsel in his defense. In *Drope v. Missouri*, 420 U.S. 162 (1975), the Court held that “[a] person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel and to assist in preparing his defense may not be subjected to trial.”

Adjudicative competence is generally raised at the pre-trial stage of delinquency proceedings, but it can be raised at any point in the proceedings, including post-trial.

## ***Standard for Adjudicative Competence***

In *Dusky v. United States*, 362 U.S. 402, 172 (1960), the Court announced the standard for competence to stand trial: whether the defendant “has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he has a rational as well as factual understanding of the proceedings against him.”

Under the Mental Health Procedures Act, incompetence is demonstrated by substantial inability to “understand the nature or object of the proceedings against him or to participate and assist in his defense.”<sup>64</sup> Thus, competence is two-pronged and requires both the ability to understand the proceedings and the ability to assist in one’s own defense. The Mental Health Act is applied to children in the juvenile justice system.<sup>65</sup>

In *Godinez v. Moran*, 509 U.S. 389 (1993), the Court held that the competency standard for pleading guilty is the same as the competency standard for standing trial established in *Dusky*.

## ***Elements of Competence***

Analyses of competence to stand trial in individual cases typically require information related to two major elements of competence: abilities related to “factual understanding” and abilities related to “rational understanding.”<sup>66</sup>

***Factual understanding*** of the trial process refers to the youth’s basic understanding of the nature of the proceedings, including:

- Nature and seriousness of the charges
- The purpose of a trial process and possible penalties
- Possible pleas, and the nature of plea agreements
- The role of various participants in the process, especially defense counsel, and including the youth himself as the defendant

***Rational understanding*** of the trial process (sometimes called “appreciation” of the significance of what one factually understands) refers to the youth’s ability to apply this information in a manner that does not impair decision making. Several reasons for limitations often seen in youth’s rational understanding may be relevant:

- Understanding is often limited by the youth’s auditory and visual processing problems.

- Immaturity may impair some youth’s abilities to perceive risks of various decisions realistically, to weigh their long-range consequences, or to decide autonomously rather than on the basis of perceptions of their peers.
- Mental disorders may distort or “override” factual understanding (for example, if they involve beliefs that distort the youth’s perceptions of the significant of the trial process).

Analysis of a youth’s ***ability to assist counsel*** must focus on three main areas:

- Abilities associated with communication and trust, which may include ability to comprehend counsel’s inquiries (e.g., ability to discern what is relevant to the question and to articulate the relevant information).
- Abilities associated with managing the demands of trial process (e.g., ability to endure stress, maintain demeanor, and testify relevantly, if necessary).
- Abilities associated with decision-making.

Deficits in ability to make autonomous decisions may arise because of problems related to immaturity in all of the above areas. They may also arise due to an inability to understand factually or to apply the information rationally to one’s case. Any of these may reduce the youth’s ability to assist counsel. Thus, an examination of the youth’s ability to use information in a decision-making process is especially important.

### ***Competency Evaluation***

Judges have a duty to order a competency examination if there is reason to believe that a juvenile charged with a criminal offense is not fit to stand trial.<sup>67</sup> If the juvenile or his attorney objects to the examination, the court is required to conduct a hearing on whether a competency examination should be ordered.<sup>68</sup>

The competency examination must:<sup>69</sup>

- Be conducted by at least one psychiatrist or licensed psychologist;
- Contain a description of the examination;
- Provide a diagnosis of the juvenile’s mental condition;
- Provide an opinion of the juvenile’s capacity to understand the nature and subject of the proceedings and to assist in his defense;

- When requested, provide an opinion of his mental condition as it relates to criminal responsibility, if his mental condition may be relevant to legal responsibility for the offense; and
- When requested, provide an opinion as to the juvenile’s capacity to have a particular state of mind, where that state of mind is an element of the offense.

## § 7-10 Post-Petition Alternatives to Adjudication

**Consent Decree.** A consent decree is an order that suspends the proceedings and places the juvenile under the supervision of the juvenile probation officer under terms and conditions agreed to by the parties.<sup>70</sup> The entry of a consent decree may occur any time after the filing of a petition and before the entry of an adjudication order.<sup>71</sup> The consent decree may only be ordered by the court if the attorney for the Commonwealth, the juvenile and counsel for the juvenile agree.<sup>72</sup> However, in appropriate cases, the court may inquire of the parties whether a consent decree has been considered.

The terms and conditions of the consent decree shall generally provide a balanced attention to the protection of the community, the juvenile’s accountability for the offense committed, and the development of the juvenile’s competencies to enable the juvenile to become a responsible and productive member of the community.<sup>73</sup>

When entering a consent decree, the court must explain on the record or in writing the terms, conditions and duration of the consent decree, and the consequences for violating the consent decree.<sup>74</sup>

A consent decree may remain in force for a maximum of six (6) months unless extended by the court for a maximum of six (6) additional months. Upon motion, the court may discharge the juvenile earlier than the time stated in the consent decree.<sup>75</sup> (See § 8-9, “Consent Decrees”)

**Mental Health Treatment.** If at any hearing under the Juvenile Act the evidence indicates that the juvenile may be both severely mentally disabled and presents a danger to himself or others, the court is to proceed under the provisions of the Mental Health Procedures Act.<sup>76</sup> If a child under the jurisdiction of the juvenile court is initially hospitalized and is in need of extended involuntary emergency treatment, a petition under §303 of the Mental Health Procedures Act may be filed in juvenile court, authorizing a mental health commitment for up to **20 days**.<sup>77</sup> If the juvenile is in need of further mental health

treatment, a petition filed under §304 of the Mental Health Procedures Act allows for a mental health commitment for up to **90 days**.<sup>78</sup> At the expiration of that period of commitment, an additional period of involuntary treatment may be ordered not to exceed more than **180 days**.<sup>79</sup>

***Drug and Alcohol Treatment.*** Act 53 of 1997<sup>80</sup> permits a parent or guardian to petition the juvenile court to commit a minor child between the ages of 12-17 for involuntary drug and alcohol treatment. The commitment does not require an adjudication of delinquency or dependency.

Following the filing of a petition, the court must appoint counsel for the minor and order a drug and alcohol assessment. The assessment must be performed by a psychiatrist, a licensed psychologist with specific training in drug and alcohol assessment and treatment, or a certified addiction counselor. On the basis of the assessment, the court may order the minor committed to involuntary drug and alcohol treatment, including in-patient treatment up to **45 days**.

The court must find by clear and convincing evidence that the minor is a drug-dependent person, incapable of accepting or unwilling to accept voluntary treatment and that the minor will benefit from involuntary treatment services. The minor is to remain under the treatment designated by the court for a period of up to **45 days** unless sooner discharged.

Prior to the end of the **45-day** period, the court is to conduct a review hearing for the purpose of determining whether further treatment is necessary. If the court determines further treatment is needed, the court may order the minor recommitted for an additional period of treatment not to exceed **45 days** unless sooner discharged. The court may continue the minor in either inpatient or outpatient treatment for successive **45-day** periods pursuant to determinations that the minor will benefit from these services.

Unless the court finds that the parent or legal guardian is without financial resources, the parent or legal guardian is obligated for court costs, counsel fees for the minor and the costs of assessment and treatment services.

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<sup>1</sup> <http://www.pacourts.us/courts/supreme-court/committees/rules-committees/juvenile-court-procedural-rules-committee/juvenile-court-committee-rules-and-forms>

<sup>2</sup> <http://www.jcjc.pa.gov/Publications/Pages/JuvenileCourtStandards.aspx>

<sup>2</sup> Pa.R.J.C.P. 401. Adjudicatory Hearing.

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- <sup>3</sup> Rule 330(C), Pa.R.J.C.P.
- <sup>4</sup> 42 Pa.C.S. § 6307(b)(1)
- <sup>5</sup> 42 Pa.C.S. §6334(a)(3).
- <sup>6</sup> 42 Pa.C.S. §6334(a)(4) and Rule 330, Pa.R.J.C.P.
- <sup>7</sup> Rule 332, Pa.R.J.C.P.
- <sup>8</sup> Rule 333, Pa.R.J.C.P.
- <sup>9</sup> Rule 330A, Pa.R.J.C.P.
- <sup>10</sup> Rule 331, Pa.R.J.C.P.
- <sup>11</sup> Rule 151, Pa.R.J.C.P.
- <sup>12</sup> Rule 151(B), Pa.R.J.C.P.
- <sup>13</sup> Rule 150(B), Pa.R.J.C.P. The language of the rule—that “counsel shall represent the juvenile until final judgment”—should be understood to mean until the court’s supervision is terminated and the case closed.
- <sup>14</sup> Rule 150(B), Pa.R.J.C.P. The language of the rule—that “counsel shall represent the juvenile until final judgment”—should be understood to mean until the court’s supervision is terminated and the case closed.
- <sup>15</sup> Rule 152, Pa.R.J.C.P.
- <sup>16</sup> See Comment to Rule 152, Pa.R.J.C.P. Prior to the adoption of the Rules of Juvenile Court Procedure for Delinquency Cases, a juvenile’s parent or guardian was allowed to waive the juvenile’s right to counsel under 42 Pa.C.S. §6337, but that provision has been superseded by Rule 152.
- <sup>17</sup> In certain situations, the judge may appoint an attorney to act as guardian *ad litem* (GAL) for a child in a delinquency case. The appointed GAL is responsible for ensuring that the youth fully understands the court proceedings and that the youth’s rights are being protected. A GAL should be appointed when: the youth’s parent is the victim; the parent cannot be found or willfully fails to come to court; the parent does not seem to be concerned with the youth’s best interests; or, the parent cannot understand the proceedings because of mental incapacity. 42 Pa. C.S. §6311. It is important that the role of the GAL is not conflated with the role of counsel for the juvenile.
- <sup>18</sup> Rule 152, Pa.R.J.C.P.
- <sup>19</sup> Rule 150(B), Pa.R.J.C.P.
- <sup>20</sup> Rule 150(C), Pa.R.J.C.P.
- <sup>21</sup> See Rules 340-341, Pa.R.J.C.P.
- <sup>22</sup> Rule 573, Pa.R.Crim.P. (Pretrial Discovery and Inspection)
- <sup>23</sup> Rule 340(A), Pa.R.J.C.P.
- <sup>24</sup> Rule 340(B), Pa.R.J.C.P. As the Comment to Rule 340 notes, the rule is not “intended to limit in any way disclosure of evidence constitutionally required to be disclosed.” Accordingly, any exculpatory evidence coming within the rule of *Brady v. Maryland*, whether or not listed in Rule 340(B), must be disclosed.
- <sup>25</sup> Rule 340(D), Pa.R.J.C.P.
- <sup>26</sup> Rule 340(C), Pa.R.J.C.P.
- <sup>27</sup> Rule 340(D), Pa.R.J.C.P.
- <sup>28</sup> Rule 340(E), Pa.R.J.C.P.
- <sup>29</sup> Rule 341(G), Pa.R.J.C.P.
- <sup>30</sup> Rule 341(F), Pa.R.J.C.P.
- <sup>31</sup> Rule 341(A), Pa.R.J.C.P.
- <sup>32</sup> Rule 341(B), Pa.R.J.C.P.
- <sup>33</sup> Rule 341(C), Pa.R.J.C.P.
- <sup>34</sup> Rule 341(D), Pa.R.J.C.P.
- <sup>35</sup> Rule 341(E), Pa.R.J.C.P.
- <sup>36</sup> See Official Comment, Rule 344, Pa.R.J.C.P.
- <sup>37</sup> Rule 344(C), Pa.R.J.C.P.
- <sup>38</sup> Rule 344(D), Pa.R.J.C.P.
- <sup>39</sup> Rules 346 and 347, Pa.R.J.C.P.
- <sup>40</sup> Comment, Rule 346, Pa.R.J.C.P.
- <sup>41</sup> Rule 348, Pa.R.J.C.P.
- <sup>42</sup> See 42 Pa.C.S. §6338(b): “An extrajudicial statement, if obtained in the course of violation of this chapter or which could be constitutionally inadmissible in a criminal proceeding, shall not be used against him. Evidence illegally seized or obtained shall not be received over objection to establish the allegations made against him.”
- <sup>43</sup> Rule 350, Pa.R.J.C.P.
- <sup>44</sup> Rule 350(D), Pa.R.J.C.P.

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- <sup>45</sup> Rule 353, Pa.R.J.C.P.  
<sup>46</sup> Rule 351(A), Pa.R.J.C.P.  
<sup>47</sup> Rule 351(B), Pa.R.J.C.P.  
<sup>48</sup> Rule 352, Pa.R.J.C.P.  
<sup>49</sup> Rules 360, 362, and 363, Pa.R.J.C.P.  
<sup>50</sup> Rule 362, Pa.R.J.C.P.  
<sup>51</sup> Rule 363, Pa.R.J.C.P.  
<sup>52</sup> Rules 360 and 363, Pa.R.J.C.P.  
<sup>53</sup> Rule 363, Pa.R.J.C.P.  
<sup>54</sup> See Comment Rule 360, Pa.R.J.C.P.  
<sup>55</sup> 42 Pa.C.S. §6333  
<sup>56</sup> Rule 123, Pa.R.J.C.P.  
<sup>57</sup> Rule 140, Pa.R.J.C.P.  
<sup>58</sup> Rule 380, Pa.R.J.C.P.  
<sup>59</sup> Rule 380(A), Pa.R.J.C.P.  
<sup>60</sup> See Comment, Rule 380, Pa.R.J.C.P.  
<sup>61</sup> Rule 380(B), Pa.R.J.C.P.  
<sup>62</sup> Rule 381, Pa.R.J.C.P.  
<sup>63</sup> See Comment, Rule 381, Pa.R.J.C.P.  
<sup>64</sup> 50 Pa. P.S. §7402(a)  
<sup>65</sup> 42 Pa.C.S. § 6356  
<sup>66</sup> This section is adapted from the National Juvenile Defender Center’s “Toward Developmentally Appropriate Practice: A Juvenile Court Training Curriculum.”  
<sup>67</sup> See 50 P.S. 7402(c)-(d).  
<sup>68</sup> *Id.*  
<sup>69</sup> 50 Pa. P.S. 7402(e)(4).  
<sup>70</sup> Rule 370(a), Pa.R.J.C.P.  
<sup>71</sup> Rule 370(a), Pa.R.J.C.P.  
<sup>72</sup> Rule 371, Pa.R.J.C.P.  
<sup>73</sup> Rule 373, Pa.R.J.C.P.  
<sup>74</sup> Rule 370(b), Pa.R.J.C.P.  
<sup>75</sup> Rule 373, Pa.R.J.C.P.  
<sup>76</sup> 42 Pa.C.S. § 6356. 50 P.S. § 7101 et seq.  
<sup>77</sup> 50 P.S. § 7303.  
<sup>78</sup> 50 P.S. § 7304.  
<sup>79</sup> 50 P.S. § 7305.  
<sup>80</sup> 71 P.S. § 1690. 112 a et seq.



# Chapter 8

## The Adjudicatory Hearing

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### Summary of Contents

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

- § 8-1. The Adjudicatory Hearing in General
- § 8-2. Best Practices
- § 8-3. Timing of Hearings
- § 8-4. General Conduct of Hearings
- § 8-5. Hearings Conducted by Juvenile Court Hearing Officers
- § 8-6. Public Attendance at Hearings
- § 8-7. Hearing Procedures
- § 8-8. Admissions
- § 8-9. Consent Decrees
- § 8-10. Trauma-Informed Court Process and Procedures
- § 8-11. Ensuring the Rights of Victims
- § 8-12. Accommodating Young Witnesses

### Key Statutes

- 42 Pa.C.S. §6302 (definitions)
  - “Assessment”
  - “Screening”
  - “Sexual violence”
- 42 Pa.C.S. §6310 (parental participation)
- 42 Pa.C.S. §6335 (release or holding of hearing)
- 42 Pa.C.S. §6336 (conduct of hearing)
- 42 Pa.C.S. §6336.2 (use of restraints on children during court proceedings)
- 42 Pa.C.S. §6337.1 (right to counsel for children in dependency and delinquency proceedings)
- 42 Pa.C.S. §6338 (other basic rights)
- 42 Pa.C.S. §6339 (investigation and report)
- 42 Pa.C.S. §6340 (consent decree)

- 42 Pa.C.S. §6341 (adjudication)
- 18 P.S. §11.201 (victim attendance rights)

## **Rules<sup>1</sup>**

- Rule 120, Pa.R.J.C.P. (definitions)  
“Advanced Communication Technology”  
“Destroy or Destruction”  
“Expunge or Expungement”
- Rule 122, Pa.R.J.C.P. (continuances)
- Rule 127, Pa.R.J.C.P. (recording of hearings)
- Rule 128, Pa.R.J.C.P. (presence at proceedings)
- Rule 129, Pa.R.J.C.P. (appearance by advanced communication technology)
- Rule 131, Pa.R.J.C.P. (guardian’s presence)
- Rule 132, Pa.R.J.C.P. (victim’s presence)
- Rule 136, Pa.R.J.C.P. (ex parte communication)
- Rule 139, Pa.R.J.C.P. (use of restraints on the juvenile)
- Rule 140, Pa.R.J.C.P. (bench warrants for failure to appear at hearings)
- Rules 150-152, Pa.R.J.C.P. (counsel)
- Rule 370, Pa.R.J.C.P. (consent decree)
- Rule 371, Pa.R.J.C.P. (objection to consent decree)
- Rule 373, Pa.R.J.C.P. (conditions of consent decree)
- Rule 401, Pa.R.J.C.P. (introduction)
- Rule 404, Pa.R.J.C.P. (prompt adjudicatory hearing)
- Rule 406, Pa.R.J.C.P. (adjudicatory hearing)
- Rule 407, Pa.R.J.C.P. (admissions)
- Rule 408, Pa.R.J.C.P. (ruling on offenses)
- Rule 409, Pa.R.J.C.P. (adjudication of delinquency)

## **JCJC Standards<sup>2</sup>**

- Development of the Social Study

## § 8-1 Adjudicatory Hearings in General

The Rules and the Juvenile Act outline the process for the adjudicatory hearing, which is conducted without a jury in an informal but orderly manner. The victim of an alleged delinquent act, counsel for the victim, and any person accompanying a victim for his or her assistance may attend the hearing. The public is generally excluded from the hearing, except for cases involving specified delinquent acts set forth in the Juvenile Act.

The attorney for the Commonwealth has the burden of establishing beyond a reasonable doubt that the juvenile committed an alleged delinquent act. The juvenile may tender an admission at this hearing provided the court has ensured that an attorney has reviewed and completed the admission colloquy with the juvenile and has conducted an independent inquiry with the juvenile as required by the Rules.

Within **7 days** of hearing the evidence on the petition or accepting an admission, the court must enter a finding specifying which offenses, including grading and counts, were committed by the juvenile. If the court finds that the juvenile committed none of the alleged delinquent acts, it shall dismiss the petition. If the court finds the juvenile committed any of the alleged delinquent acts, the court may enter a consent decree, upon the agreement of all parties, or proceed to a hearing to determine if the juvenile is in need of treatment, supervision or rehabilitation. If the court determines that the juvenile is not in need of treatment, supervision or rehabilitation, the court must enter an order dismissing the petition . If the court determines by a preponderance of the evidence that the juvenile is in need of treatment, supervision, or rehabilitation, the juvenile shall be adjudicated delinquent and the court shall proceed to determine a proper disposition.<sup>3</sup>

## § 8-2 Best Practices

- An adjudicatory hearing for a youth who is not in detention should be scheduled within **30 days** after the filing of the petition.
- The atmosphere of the hearing should encourage the maximum participation of all concerned.
- The judge should ensure that the courtroom is a trauma-informed environment.
- At the commencement of the adjudicatory hearing, the judge should introduce him or herself, identify all persons in the courtroom, and announce the purpose of the hearing.

- 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, the adjudicatory hearing should normally be conducted in the county in which the delinquent act occurred.
  - In such cases, following the court's hearing the evidence on the petition or accepting an admission, the court must enter findings specifying which offenses, including grading and counts, alleged in the petition were committed by the juvenile.
  - If restitution is owed, the court should enter a finding of the amount of restitution owed, and to whom it should be paid, if ordered.
  - The court should 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.
- Whenever possible, consent decrees should be approved by the judge in court after the full participation of all parties, the crime victim and juvenile's family. Only an in-court consent decree procedure makes it possible for the judge to articulate both the specific terms and the broader purposes of the consent decree.
- Judges should ensure that there is a process in place for the timely expungement of juvenile records in accordance with the Rules.

### **§ 8-3 Timing of Hearings**

Generally, if the juvenile is being detained or held in shelter care pending the adjudicatory hearing, the Juvenile Act requires that the court schedule the hearing for no later than **10 days** from the date of the filing of the petition.<sup>4</sup> As is discussed more fully in the Chapter 5, under certain circumstances this ten-day deadline may be extended by court order for a single additional **10-day** period in order to secure evidence. In case of failure to hold a hearing within the **10-or 20-day** timetable, the juvenile must be released, unless the delay was occasioned by the actions of the juvenile or the juvenile's attorney.<sup>5</sup>

The Juvenile Act imposes no explicit deadline for holding adjudicatory hearings in cases in which juveniles are not detained or held in shelter care, and the Rules only require that the adjudicatory hearing "be held within a reasonable time."<sup>6</sup> As a matter of good practice, an adjudicatory hearing for a juvenile who is not in detention should be scheduled within **30**

**days** after the filing of the petition. The **30-day** timetable should be extended only for a specific period of time, and then only (1) by agreement of the parties or (2) for reasonable cause shown.<sup>7</sup>

The judge should carefully review the reasons for requests to schedule hearing dates beyond the recommended time lines. Some cases may necessitate a longer period of preparation between the detention or initial hearing and the adjudicatory hearing. Examples of situations that may need more time include cases with complex discovery issues, cases in which laboratory tests are needed to determine illegal substances, or those involving a victim who is hospitalized due to injuries from the alleged offense. However, it seems clear that at some point, a delay in bringing a juvenile to adjudication may deny “the essentials of due process and fair treatment” required by the constitution. As the Superior Court has pointed out,

“[i]n its protective role the state must consider the importance of time in a developing child’s life in attempting to fashion a successful rehabilitation program for each juvenile. As the juvenile years are marked with significant changes and rapid development, children experience an acceleration in the passage of time so that, to a juvenile, one year may seem to be five. To ensure successful rehabilitation, the reformation program...must commence within a reasonable time of the child’s delinquent act so that the child can comprehend the consequences of his act and the need for reform. As a result, the concept of ‘fundamental fairness’ in juvenile proceedings would seem to require that at least some limit be placed on the length of time between the delinquent act and the case disposition....”<sup>8</sup>

### **§ 8-4 General Conduct of Hearings**

One of the most important responsibilities of a juvenile court judge is that of establishing and maintaining the appropriate atmosphere in delinquency hearings. The Juvenile Act calls for “informal but orderly” hearings in delinquency matters.<sup>9</sup>

What sorts of hearing practices set the tone called for here? What concrete steps must be taken to “encourage the maximum participation of all concerned” in delinquency hearings? How can a juvenile court judge help to ensure that interests

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

and points of view that are important to the proper resolution of delinquency matters are adequately represented in hearings?

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

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

- ***Enlarge the courtroom, at least in your mind.*** Delinquency hearings in Pennsylvania are not intended to be for professionals only. The people who don’t sit at the counsel table—victims, witnesses, family members, their supporters and friends—matter too. Their views, their comprehension of the process and its purposes, their understanding and acceptance of its outcomes, all matter. Simply bearing this in mind could significantly change a judge’s approach and attitude, and ultimately be reflected in the way hearings are routinely conducted.
- ***Slow down.*** Especially in busy courts, it can be tempting to aspire to merely mechanical case-processing efficiency—to want to cycle through a crowded docket as rapidly as possible and to treat everything that slows the process down as an obstacle or a distraction. What often gets overlooked in this sort of haste are the real purposes of delinquency hearings. It may be that the problem lies elsewhere—too many hearings scheduled for the same day, too little time allocated to each one, too few judges and masters assigned to delinquency cases, etc. But it all has to stop—or rather slow down—here.
- ***Identify the players.*** Who are all those people in the back? Too many judges take no trouble to find out. As a result, in the course of the hearing, they miss opportunities both to learn and to teach. The people in the back, of course, are equally at a loss, since the routine participants in delinquency hearings—the prosecutor, the probation officer, the public defender, the clerk, the recorder, the tipstaff—are well-known to one another and rarely identify themselves. The result is a kind of wall of incomprehension separating the insiders from the outsiders, requiring everyone to

guess at everyone else's identity. Fortunately, it isn't hard to break through. In some courtrooms, for example, there are sign-in sheets for those attending hearings. The clerk may read out the names of those present at the start of the hearing, or the sheet may be kept on the bench to be consulted by the judge throughout.

- ***Explain, articulate, and translate.*** If the nonprofessionals attending delinquency hearings are to understand and participate in the proceedings, they will from time to time need guidance, if not a translation. It is largely up to the judge to explain what is happening and why for the benefit of those unfamiliar with the court process—and not only to describe the mechanics of the system but to articulate the principles behind it. But judges can also encourage probation officers, attorneys and others routinely involved in delinquency hearings to express their thoughts and assumptions clearly, and to steer away from lingo, acronyms, and other unfamiliar forms of shorthand that have the effect of keeping outsiders out.
- ***Use motivational interviewing.*** This evidence-based practice a core practice of the JJSES, involves asking open-ended questions, giving affirmations recognizing strengths, listening reflectively and responding with summaries communicating interest, understanding and attention to important details. Colloquies should engage the juvenile in a discussion with the court about important matters. Judges should avoid questions asking for a “yes” or “no” answer, and should use language understandable to the juvenile.
- ***Observe some formalities.*** Many of those in the courtroom will have just this one experience of the juvenile justice system. What sort of impression will they take with them? The informality and lack of solemnity with which delinquency hearings are sometimes conducted may suggest—to victims, to community members, and perhaps most disastrously to juveniles and their families—that delinquency matters are not taken seriously. A judge can do something to counteract this impression simply by insisting that everyone in the courtroom show proper respect for the occasion.
- ***Remember courtesies.*** Judges should not leave it to others to extend common courtesies to those in attendance at hearings—such as the courtesy of acknowledging them directly, of welcoming them, of thanking them for their time, and of apologizing for long waits, crowded conditions, and so on. (Of course, if the court's facilities or scheduling practices are such that apologies are always in order, the judge has a responsibility to advocate for concrete changes as well.) Even more importantly, when a delinquency matter is unexpectedly continued, or witnesses are

dismissed because their testimony is not needed, or an offer of admissions eliminates the need for an adjudicatory hearing, the judge should not neglect to say something by way of explanation and apology to those who have been inconvenienced.

## § 8-5 Hearings Conducted by Juvenile Court Hearing Officers

Pennsylvania law permits juvenile hearings to be conducted by juvenile court hearing officers.<sup>10</sup> However, the Rules limit the authority of hearing officers. Hearing officers have no authority to conduct hearings involving felonies or requests for transfer to criminal proceedings, to issue warrants, or to hear requests for writs of habeas corpus.<sup>11</sup> Before the hearing commences, it is the duty of the hearing officer to inform the parties that they are entitled to a hearing before a judge.<sup>12</sup> If a party objects to a hearing before a hearing officer, the matter must be heard by a judge.<sup>13</sup> However, there is no need to file exceptions or to request a rehearing.<sup>14</sup>

When a hearing is conducted by a hearing officer, the written findings and recommendations for disposition are sent to a judge and copies are given to the parties to the proceeding.<sup>15</sup> The judge receiving the findings is empowered to order a rehearing before a judge at any time upon cause shown.<sup>16</sup> The Pennsylvania Superior Court has found that this procedure does not violate the constitutional ban against double jeopardy.<sup>17</sup> If no rehearing is ordered, the hearing officer's findings and recommendations become those of the court upon written confirmation by the judge.<sup>18</sup> A judge may accept the factual findings of a hearing officer but alter the legal determinations, including finding the juvenile delinquent of a more serious offense than the hearing officer did if the factual findings so warrant.<sup>19</sup>

## § 8-6 Public Attendance at Hearings

The Juvenile Act provides for varying degrees of openness in hearings on delinquency petitions:<sup>20</sup>

- ***In camera hearings.*** The general rule is that juvenile hearings are closed to all except “the parties, their counsel, witnesses, the victim and counsel for the victim, other persons accompanying a party or a victim for his or her assistance, and any other person as the court finds have [sic] a proper interest in the proceeding or in

the work of the court.”<sup>21</sup> The juvenile’s parent or guardian will normally be present, as persons assisting a party, and can in fact be compelled to attend where it is in the best interests of the juvenile.<sup>22</sup> From this list it will be seen that even a so-called “closed” hearing may be attended by quite a crowd, particularly if the court construes operative terms (such as “proper interest”) liberally.

- **Hearings closed by agreement.** The juvenile and the attorney for the Commonwealth may agree to close a hearing, though not presumably to “the parties, their counsel, witnesses, the victim,” and the other categories listed above.<sup>23</sup>
- **Open hearings in certain serious cases.** Except by agreement of the parties, the public cannot be excluded from delinquency hearings involving (1) any felony allegedly committed by a juvenile of at least 14 or (2) certain enumerated felonies allegedly committed by a juvenile of 12 or 13.<sup>24</sup> The enumerated felonies are roughly the same as those that are excluded from juvenile court jurisdiction when committed by a juvenile of sufficient age using a deadly weapon. They include:
  - Murder
  - Voluntary manslaughter
  - First degree felony aggravated assault
  - First degree felony arson
  - Involuntary deviate sexual intercourse
  - Kidnapping
  - Rape
  - First degree felony robbery
  - Robbery of a motor vehicle
  - Any attempt, conspiracy, or solicitation to commit any of these offenses.

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

discretion to close portions of hearings or take other action to safeguard the confidentiality of mental health and medical information as well as institutional and probation reports.<sup>25</sup>

## § 8-7 Hearing Procedures

To find a youth delinquent requires (1) a finding of fact that a youth has committed a delinquent act within the court's jurisdiction and (2) a determination as to whether the youth is in need of supervision, rehabilitation or treatment. This process involves four distinct steps:

### ***Initial steps:***

- ✓ An adjudicatory hearing should commence with a determination that the juvenile court has jurisdiction over the matter petitioned. (For a discussion of the exact boundaries of Pennsylvania delinquency jurisdiction, see § 4-5.)
- ✓ The judge must identify everyone in the courtroom to confirm the presence of the juvenile,<sup>26</sup> his or her counsel, the juvenile's parent(s), legal custodian including the juvenile's caseworker if under the custody of the county Children and Youth agency (C&Y), caretaker<sup>27</sup> or guardian *ad litem*,<sup>28</sup> the prosecuting attorney and any other persons having an interest in the proceeding, including the victim if he or she has chosen to appear. If the juvenile is in restraints they must be removed prior to the commencement of the hearing unless the court determines that they are necessary.<sup>29</sup>
- ✓ All juveniles are presumed indigent. If the juvenile appears without counsel, the court must appoint counsel for the juvenile prior to commencement of the hearing.<sup>30</sup> A juvenile, regardless of age, may not waive his/her right to counsel for an adjudicatory hearing, including a hearing involving the tender of an admission.<sup>31</sup> (See § 7-4, "Attorney Representation.")
- ✓ The court determines whether an admission will be tendered or a fact-finding hearing will be conducted. The court must explain to all persons present the procedure which will be followed, and must assure that the juvenile is fully aware of all constitutional rights and of the collateral consequences of a delinquency adjudication.<sup>32</sup>

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

**Fact-finding.** If the court determines that it has jurisdiction to hear the matter, that the juvenile has counsel, and that the child is fully aware of all constitutional rights and of the collateral consequences of a delinquency adjudication, it may proceed to hear evidence (or accept admissions) on whether the juvenile committed the delinquent acts alleged in the petition. Under the Juvenile Act, the accused is “entitled to the opportunity to introduce evidence and otherwise be heard in his own behalf and to cross-examine witnesses”<sup>33</sup> as well as to be represented by counsel.<sup>34</sup> The Juvenile Act specifies that the district attorney must represent the Commonwealth in these proceedings.<sup>35</sup>

**Ruling on offenses.** Within **7 days** of hearing the evidence or accepting admissions, the court must enter a finding specifying which if any of the offenses alleged in the petition the juvenile has been proven beyond a reasonable doubt to have committed.<sup>36</sup> For each delinquent act proven or admitted, the court must specify the grading and counts. If the court dismisses the allegations as unproven, it must also release a juvenile who has been detained, unless there are other grounds for detention,<sup>37</sup> and order the destruction of fingerprints and photographs.<sup>38</sup>

**Adjudication of delinquency.** If the court has found beyond a reasonable doubt that the juvenile committed any delinquent act,<sup>39</sup> it must, except when the juvenile is not a resident of the county wherein the delinquent acts occurred, proceed—either immediately or at a postponed hearing—to hear evidence regarding whether the juvenile is “in need of treatment, supervision or rehabilitation, as established by a preponderance of the evidence” and therefore delinquent. If the juvenile is in detention, the court is to make its finding within **20 days** of the ruling on the offenses; if the juvenile is not in detention, the court must make its finding within **60 days** of the ruling on the offenses. These time restrictions may be extended if there is an agreement by both parties.<sup>40</sup> If the court finds that the juvenile is in need of treatment, supervision or rehabilitation, it must order the law enforcement agency that submitted the written allegation to fingerprint and photograph the juvenile, if this was not previously done,<sup>41</sup> and must ensure that these records are forwarded to the State Police.<sup>42</sup> If the juvenile is a resident of another county at the time of the commission of one or more offenses, the court should transfer the case, after ruling on the offenses, to the juvenile’s home county for adjudication on the question of delinquency.

## **Evidence**

**Fact-finding:** Accused juveniles have the right to confront and cross-examine witnesses against them and to request exclusion of illegally obtained evidence and extrajudicial statements that would be inadmissible in criminal proceedings.<sup>43</sup> The court must take care to avoid prematurely considering evidence that bears only on the question of appropriate

dispositions. In general, while the court is engaged in determining whether or not the juvenile committed the acts alleged in the petition, evidence that would not be competent in a criminal proceeding (e.g.: victim impact statements, probation pre-disposition reports) should not be admitted. Incriminating statements made in connection with admissions that are not accepted or are withdrawn are likewise inadmissible.<sup>44</sup>

**Witnesses:** All witnesses against a juvenile in a delinquency proceeding must be sworn and subject to the penalties for perjury.<sup>45</sup> When a witness is a child under the age of 14 it must be established before any testimony is taken that the witness is competent. The test and manner for determining the competency of a child witness was described by the Superior Court as follows:

“In establishing competency the court should inquire into three areas of testimonial capacity: capacity to observe the acts about which the infant is to testify; capacity to recollect what was observed; and, capacity to communicate what was observed, that is, the capacity to understand questions and frame intelligent answers, and the capacity to appreciate the moral responsibility to be truthful.”<sup>46</sup>

It is not so important that the child understand or appreciate the meaning of the oath itself, but the witness must have a sense that falsehoods will be punished.<sup>47</sup>

**Need for treatment or supervision or rehabilitation:** Evidence rules may be relaxed in determining whether the juvenile needs treatment, supervision or rehabilitation.

The Juvenile Act actually prohibits the court from ordering even the preparation of a social report in a contested case involving a juvenile who has not yet been found to have committed a delinquent act.<sup>48</sup> In practice, however, unless the juvenile objects, the routine in many counties is not to wait, but to begin assembling social report information before any fact-finding has occurred. In any case, the JCJC Standards Governing the Development of the Social Study provide that “adequate precautions must be taken to assure that information from the social study report will not be disclosed to the Court prior to adjudication.”

### ***Record Requirements and the Use of Advanced Communication Technology (ACT)***

All reports and writings relied upon by the judge in the making of his or her determinations must be received into evidence and made part of the official record. Alternatively, the relevant parts of a written report or writing may be read into the record by the judge or a witness. Confidential reports and writings should be placed under seal and be made

available for subsequent review only by court order. Under the Rules, there must be a verbatim recording of the entire adjudicatory proceeding.<sup>49</sup> The applicable rules do not specify how or by whom the recording is to be made. Any method of recording authorized by the court may be utilized provided the recording can be transcribed if ordered. The recording must be transcribed upon motion of any party, upon the court's own motion or as required by law.<sup>50</sup> A court may utilize advanced communication technology for the appearance of the juvenile or of a witness, but only if the parties consent.<sup>51</sup> Notwithstanding, the court should never conduct an adjudicatory hearing (or accept an admission) without the juvenile's presence.<sup>52</sup>

### ***Required Findings***

Within **7 days** of hearing the factual evidence on a delinquency petition, "the court must make and file its findings whether the acts ascribed to the child were committed by him."<sup>53</sup> The seven-day deadline may be extended only by agreement of the parties, but failure to meet it is not grounds for dismissal or discharge. In any case, the best practice is to make the factual finding, if at all possible, at the conclusion of the fact-finding hearing.

Again, the court's finding that the juvenile committed a delinquent act is not the equivalent of a finding of delinquency. The latter requires a separate finding—that the juvenile is currently "in need of treatment, supervision or rehabilitation"—which can be and often is made at a separate disposition hearing, especially where the allegations of delinquency were not admitted by the juvenile. (See the following chapter on "Delinquency and Disposition Determinations.") In theory, a court may find that the juvenile committed the acts alleged in the petition, but further conclude that no treatment, supervision, or rehabilitation is needed—in which case a dismissal and discharge are warranted. However, the Juvenile Act provides that, even without further proof, the fact that the juvenile has committed an act constituting a felony is sufficient to sustain a finding of a need for treatment, supervision, or rehabilitation.<sup>54</sup>

If the court finds that the juvenile committed none of the alleged delinquent acts<sup>55</sup> or finds that the juvenile is not in need of treatment, supervision or rehabilitation,<sup>56</sup> the court must order *sua sponte* the expungement of the record and destruction of fingerprints and photos related to the dismissed petition, and absent cause shown, the court must expunge or destroy the records, fingerprints and photos.<sup>57</sup>

If the court finds that the juvenile committed none of the alleged delinquent acts and dismisses the petition, the victim, if not present, is to be notified of the final outcome of the proceeding.<sup>58</sup>

## § 8-8 Admissions

At any time after a petition is filed, the Rules allow the juvenile to tender an admission to some or all of the alleged delinquent acts.<sup>59</sup> If the prosecutor and counsel for the juvenile have entered into an admission agreement, the court has the final determination over whether to accept the parties' admission agreement.

Before accepting an admission, the court must confirm that the admission is knowingly, intelligently and voluntarily made. As part of this determination, the court must ensure that:

- an attorney has reviewed and completed the written admission colloquy required by Rule 407<sup>60</sup> and,
- there is a factual basis for the admission.

At the hearing the court must conduct an independent inquiry with the juvenile to determine:

- whether the juvenile understands the nature of the allegations to which he or she is admitting and understands what it means to admit;
- whether the juvenile understands that he or she has the right to a hearing before the judge and understands what occurs at a hearing;
- whether the juvenile is aware of the dispositions that could be imposed and the consequences of an adjudication of delinquency that can result from an admission;
- whether the juvenile has any questions about the admission; and,
- whether there are any other concerns apparent to the court after such inquiry that should be answered.

If juvenile is making an admission, the colloquy must be in writing and substantially in the form required by Rule 407, reviewed and completed with the juvenile by an attorney, and submitted to and reviewed by the court.

If the juvenile is making an admission to one or more acts of "sexual violence"<sup>61</sup> which may render the juvenile eligible for civil commitment for involuntary treatment upon attaining 20 years of age, the colloquy must include the addendum required by Rule 407D. It is essential that the court ensure that a juvenile who is entering an admission to an act of "sexual violence" understands all of the rights and potential dispositions and consequences

of that admission. (See below and § 10-8 Special Disposition Review Procedures for Juveniles Committed to Placement for Specified Acts of Sexual Violence.)

### ***Good Practice in Accepting Admissions***

The judge should give careful thought to the acceptance of an admission and the process by which it is accepted. The judge should ensure that the process does not give the juvenile the impression that he or she will not be held responsible for an offense, or that the admission process is a way of manipulating the juvenile delinquency system for gain. The admissions process is an opportunity to gain information about the circumstances of the offense and the impact of the crime on the victim and the community as well as the rehabilitative needs of the juvenile in order to craft an appropriate disposition.

- ***Get the facts.*** Busy prosecutors can sometimes be content with very general admissions that dispose of the case without settling key factual issues. A judge should not be, particularly when the means of clarifying the issues are right in the courtroom. A juvenile may admit to attempted credit card fraud, but how did he come by the credit card—by happenstance or by theft? If the prosecutor’s summary of the Commonwealth’s case passes over a point like this, the judge should inquire. The idea is not to stir up factual disputes for their own sake. But what if the credit card-holder is right in the gallery? Delinquency adjudications, and the dispositions based on them, should as far as possible reflect reality—and not the incomplete, ambiguous version of reality that too often emerges when factual issues are not put to the test of an evidentiary hearing.
- ***Take special care in sex offense cases.*** As discussed above, if a juvenile admits to having committed an act of sexual violence,<sup>62</sup> and is in placement at age 19 ½, he or she must be referred to the State Sexual Offenders Assessment Board (SOAB) for an assessment.<sup>63</sup> If the SOAB concludes the juvenile is in need of involuntary treatment, the court must conduct a special dispositional review hearing. If, at the conclusion of that hearing, the court finds that there is a prima facie case that the juvenile is in need of involuntary treatment under 42 Pa.C.S. Ch. 64, the court must direct the filing of a petition to initiate commitment proceedings under that chapter.<sup>64</sup> Further proceedings would then be conducted pursuant to that chapter, the Court Ordered Involuntary Treatment of Certain Sexually Violent Persons statute.<sup>65</sup> (See § 10-8, “Special Disposition Review Procedures for Juveniles Committed to Placement for Specified Acts of Sexual Violence.”)

- ***Address the parents/guardians.*** The judge should inquire as to whether or not the parents/guardians have been involved in the process and understand the next steps.
- ***Address the gallery.*** In too many courtrooms, victims, witnesses, family members and others are assembled for adjudicatory hearings, detained for a time, and dismissed without explanation or apology when admissions make their testimony unnecessary. As was noted earlier (see “General Conduct of Hearings,” § 8-4, above), a better procedure is for the judge to address them directly, to explain what is happening and why, to thank them for taking time to contribute to the resolution of the matter, and to apologize for having inconvenienced them.
- ***Engage the victim of the crime.*** Judges should not focus so narrowly on the business being transacted in front of the bench that they forget that the hearing is for the victim, too. (See § 8-11 “Ensuring the Rights of Victims,” below.)
- ***Call upon the juvenile.*** During the judge’s inquiry of the juvenile, before accepting the juvenile’s admission, the judge should ask the juvenile to describe what happened when the crime was committed. Depending on the sophistication of the juvenile the judge may inquire “*What were you thinking at the time of the crime?*” “*Have your thoughts changed since then?*” One kind of accountability—and not the least important kind—is simply accountability for explanations. That form of accountability can be severely undercut by a proceeding in which the juvenile never feels called upon to speak, to look anyone in the eye, to face up to anything publicly, or even to acknowledge that he is the person everyone is talking about. A perfunctory “Do you have anything to say?” may elicit nothing, of course. But judges should be aware of tendencies of their own that discourage responses from juveniles—such as the tendency to cut embarrassing pauses short, to suggest answers, to interrupt and scold. (Adults often “listen” to young people by arguing them into silence.) Even a direct, pointed question is unlikely to draw a meaningful response unless the judge is willing to wait—to let the hearing grind to a halt—for what may seem like a long time. And yet, considering the substantial investment that the juvenile justice system makes in arresting, processing, trying, placing, treating, and supervising a typical juvenile offender, doesn’t it make sense for the official overseeing this sprawling project to make some effort—including the effort of waiting through a silence of 10 or 20 seconds—to find out what is going through his mind?

If the judge finds that the attorney has reviewed the written admission colloquy with the juvenile and that there is a factual basis for the admission, and has determined after an

independent inquiry with the juvenile that the admission has been made knowingly, intelligently and voluntarily, the judge may accept the juvenile’s admission. After accepting the juvenile’s admission the court must determine if the juvenile is in need of treatment, supervision, or rehabilitation. If the court finds that the juvenile is in need of treatment, supervision, or rehabilitation it must adjudicate the juvenile delinquent and move the case forward to the disposition phase. If the judge determines that the admission should not be accepted, the case must be scheduled for a contested adjudicatory hearing.

## § 8-9 Consent Decrees

At any time before the court has entered findings and an adjudication order, the parties may move to have the proceedings suspended pursuant to a consent decree imposing negotiated supervision conditions.<sup>66</sup> Nothing prohibits the entry of a consent decree after an admission under Rule 407 or after a finding under Rule 408. The court may not enter a consent decree over the objection of either the juvenile or the attorney for the

***Nothing prohibits the entry of a consent decree after acceptance of an admission under Rule 407 or a ruling pursuant to Rule 408.***

Commonwealth.<sup>67</sup> On the other hand, the court need not approve a consent decree that is inconsistent with the public interest merely because the parties have agreed to it.

Consent decree terms and conditions, like disposition orders, must “provide balanced attention to the protection of the community, accountability for offenses committed and the development of competencies to enable the child to become a responsible and productive member of the community.”<sup>68</sup> That means that, in determining the appropriateness of a consent decree, the court should consider the rehabilitative needs and strengths of the juvenile, the seriousness of the offense, and the impact on the victim and the community, just as it does when making a disposition determination. The court should also consider whether the needs of the juvenile can be addressed in the time the consent decree remains open. Consent decree conditions may include evidence-based programming specifically targeted to identified needs, restorative conditions including but not limited to restitution, and conditions targeted at community protection including reporting obligations, associational restrictions, and curfews.

Victims are entitled to submit prior comment on the appropriateness of a negotiated consent decree.<sup>69</sup> Before approving a consent decree, a judge should always confirm that

any required consultation with the victim has in fact occurred. In addition, as was noted in the previous discussion of “Informal Adjustment” (see § 4-8), the views of law enforcement may also shed light on the appropriateness of a proposed consent decree.

This approach has the virtue of clarifying, for the benefit of the juvenile and his family, the victim, and others interested in the case, what the juvenile justice system intends to accomplish through the consent decree. It also helps to ensure that district attorneys, juvenile probation officers, and others involved in negotiating consent decrees do not overlook essential provisions, and that judges do not approve consent decrees that are incomplete. (For more detailed information on appropriate terms and conditions for diverted cases, see the discussion of “Informal Adjustment” at § 4- 8.)

Under the Rules, the court is required to explain to the juvenile—“on the record or in writing”—the terms, conditions and duration of the consent decree and the consequences for violating it.<sup>70</sup> Although consent decrees in some jurisdictions are submitted on paper and approved routinely, without the appearance or participation of the juvenile, his family, or the victim, valuable opportunities may be lost thereby.

The better practice, if possible, is for the interested parties to be present in court for the approval and entry of the consent decree. Only an in-court consent decree procedure makes it possible for the judge to do all the following:

- Articulate both the specific terms and the broader purposes of the consent decree.
- Ensure that the parties, particularly the juvenile and his family, understand what is expected of them, and the consequences of failure to comply.
- Make it clear that the court’s own authority is behind the consent decree.
- Call upon the juvenile to explain his conduct and acknowledge responsibility for it.
- Explain the availability of and process for expungement.

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

When a juvenile has successfully fulfilled the terms and conditions of a consent decree, he or she is discharged by the probation office, the original petition is dismissed, and no further proceedings may be brought against him or her on the basis of the conduct alleged in the original petition.<sup>71</sup> On the other hand, if the juvenile violates conditions imposed by

the consent decree or has a new delinquency petition filed against him while subject to a consent decree, the attorney for the Commonwealth, following consultation with juvenile probation, may reinstate the original petition.<sup>72</sup>

The consent decree may be for a term of up to **6 months**.<sup>73</sup> However, upon motion, the court may discharge the juvenile earlier, or extend the consent decree for up to an additional 6 months.

**Expungement:** Upon motion or *sua sponte*, expungement proceedings may be commenced when **6 months** have elapsed since the final discharge from a consent decree supervision and no proceeding seeking adjudication or conviction is pending.<sup>74</sup> The court must ensure there is a process in place in their county for timely expungements.

### § 8-10 Trauma-Informed Court Process and Procedures<sup>75</sup>

A majority of children involved in the juvenile justice system have a history of trauma. Children and adolescents who come into the court system frequently have experienced not only chronic abuse and neglect but also exposure to substance abuse, domestic violence and community violence.

The psychological, emotional, and behavioral consequences of these experiences can be profound, but may go unrecognized if judges and related personnel do not delve more deeply into the backgrounds of children and adolescents who come before the court. By understanding the impact of trauma on the development, beliefs, and behaviors of children, judges can become more effective in addressing the unique needs and challenges of traumatized children and adolescents involved in the juvenile court system.

Child abuse and neglect have been shown to adversely affect the growth of the brain, nervous, and endocrine systems and to impair many aspects of psychosocial development, including the acquisition of social skills, emotional regulation, and respect for societal institutions and mores. Although a significant proportion of traumatized children seen in court meet the diagnostic criteria for posttraumatic stress disorder (PTSD), many others suffer from traumatic stress responses that do not meet the clinical definition of PTSD. Traumatic stress may manifest differently in children of different ages.

The following table summarizes child traumatic stress reactions by age group:

Age Group	Common Traumatic Stress Reactions
Young Children (Birth – 6 y)	<ul style="list-style-type: none"> <li>• Withdrawal and passivity</li> <li>• Exaggerated startle response</li> <li>• Age outbursts</li> <li>• Sleep difficulties (including night tremors)</li> <li>• Separation anxiety</li> <li>• Fear of new situations</li> <li>• Difficulty assessing threats and finding protection (especially in cases where a parent or caretaker was aggressor)</li> <li>• Regression to previous behaviors (e.g., baby talk, bed-wetting, crying)</li> </ul>
School-Age Children (6 – 12 y)	<ul style="list-style-type: none"> <li>• Abrupt and unpredictable shifts between withdrawn and aggressive behaviors</li> <li>• Social isolation and withdrawal (may be an attempt to avoid further trauma or reminders of past trauma)</li> <li>• Sleep disturbances that interfere with daytime concentration and attention</li> <li>• Preoccupation with traumatic experience(s)</li> <li>• Intense, specific fears related to the traumatic event(s)</li> </ul>
Adolescents (13 – 18 y)	<ul style="list-style-type: none"> <li>• Increased risk taking (substance abuse, truancy, risky sexual behaviors)</li> <li>• Heightened sensitivity to perceived threats (may respond to seemingly neutral stimuli with aggression or hostility)</li> <li>• Social isolation (belief that they are unique and alone in their pain)</li> <li>• Withdrawal and emotional numbing</li> <li>• Low self-esteem (may manifest as a sense of helplessness or hopelessness)</li> </ul>

If any of the above reactions are displayed by the juvenile or the victim, or there is a traumatizing incident in the courtroom, the judge should inquire whether there is support for the affected person. If there is an identified person with whom the juvenile or victim can speak, arrangements should be made for these persons to timely meet. Where a traumatizing incident occurs in the courtroom or elsewhere before the commencement of proceedings, the judge should allow a delayed exit or ensure there is a safe exit for all affected persons from the courtroom and courthouse.

Although the court will receive information about the juvenile's trauma, the judge should refrain from discussing it openly in the courtroom – call a side bar. If there is information

about suicidal ideations, the judge should be especially mindful of the language he or she and others are using in open court. Where possible, “One Family–One Judge” case assignment practices may serve to minimize the number of times juveniles or victims have to retell their traumatizing histories.

Formal trauma assessment is critical to identifying children and adolescents in the courtroom who are suffering from traumatic stress. Well-validated trauma screening tools include:

- UCLA PTSD Reaction Index<sup>76</sup>
- Trauma Symptom Checklist for Children (TSCC)<sup>77</sup>
- Child Sexual Inventory<sup>78</sup>

The court should ensure that these assessments are administered and interpreted by qualified professionals.

When referring traumatized children and families for care, courts have the unique opportunity to choose practitioners or agencies that understand the impact of trauma on children and can provide evidence-based treatment appropriate to the child’s needs.

While treatment needs to be individualized depending on the nature of the trauma a child has experienced, clinicians should use treatments that have clinical research supporting their use. Evidence-based treatment practices are those that have been rigorously studied and found to be effective in treating child or adolescent trauma.<sup>79</sup>

The judge should consider requesting the juvenile probation department to develop a list of community providers who have training and experience in delivering evidence-based trauma practices. If the community lacks trained trauma professionals, creating an advisory group that can increase community awareness of evidence-based practices and necessary training requirements might be helpful. It is important to remember that trauma treatment may need to be combined with treatment for other conditions as well, such as substance abuse or aggression. By becoming trauma-informed and encouraging the development and mobilization of trauma-focused interventions, judges can make the difference between recovery and continued struggle for traumatized youth and their families.

## § 8-11 Ensuring the Rights of Victims

The victim of a juvenile's crime is required to receive notice of the adjudicatory hearing.<sup>80</sup> In addition, the victim, counsel for the victim, and any other person accompanying a victim for his or her assistance, have the right to attend the adjudicatory hearing.<sup>81</sup> If the victim is not present at the hearing, and the court determines that the juvenile is not in need of treatment, supervision or rehabilitation, and terminates jurisdiction, the victim is entitled to be notified of this outcome.<sup>82</sup>

The judge must ensure that a process is implemented to inform the court that a victim is present or wishes to be present at a hearing and that the victim is given information regarding their ability to be present and the ways they may participate. It is essential that victims receive accurate information about the juvenile justice system and the proceeding they will attend.

In 1995, during Special Session 1, the Pennsylvania Legislature changed the mission of the juvenile justice system with the passage of Act 33, amending the Juvenile Act with a new purpose clause reading in part as follows: "...consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community".<sup>83</sup> According to the Pennsylvania Council of Chief Juvenile Probation Officers and the Juvenile Court Judges' Commission: "This new purpose clause in the Juvenile Act is rooted in the philosophy of balanced and restorative justice, which gives priority to repairing the harm done to crime victims and communities and which defines offender accountability in terms of assuming responsibility for the harm caused by his/her behavior and taking action to repair that harm to the extent possible. At the foundation of this philosophy is the concept that crime victims and the community, as well as juvenile offenders, should receive balanced attention and gain tangible benefits from their interactions with Pennsylvania's juvenile justice system." <sup>84</sup>

The provision of balanced attention to crime victims essentially requires a commitment to three categories of rights to which crime victims are entitled at the adjudicatory hearing and throughout the entire juvenile justice process. These rights are codified in the Pennsylvania's Crime Victims Act<sup>85</sup> and the Rules of Juvenile Court Procedure for Delinquency Matters<sup>86</sup>:

- ***The right to be notified.*** Notification and information are essential needs of crime victims. It is not by choice that victims of juvenile offenders are involved in the juvenile justice system. That choice was made for them by the juvenile offender. The victim's lack of power to control the situation will affect every movement, every action and all of their choices in their journey toward recovery. Providing notification to victims of crime can contribute to the victim's restoration. Providing notification to victims of their rights at each stage of the process can also assist victims in assessing their own personal sense of safety and security. Notification and information also provide opportunities for victims to regain the power and control that was taken during the commission of the crime.
- ***The right to be present.*** The opportunity to be present during proceedings in the juvenile justice system is an important way in which victims feel included in the process. Victims may want and need to be present to see the offender, hear the arguments and or the recommendations of both the defense and the Commonwealth and see the reactions of all parties involved in the proceedings. Most importantly, when present, victims can see and hear the case unfold before their own eyes. Providing victims with the opportunity to be present allows them to determine for themselves what they will see and hear. They can stay or leave as the testimony proceeds. Their presence allows them to learn about the system first hand. Allowing victims to be present at proceedings removes them from the sidelines of justice and places them closer to the experience of justice. Ensuring the opportunity for victims to be present demonstrates the transparency of the juvenile justice system in addressing the crimes committed against them. Victims may not always choose to attend, but extending the right to be present acknowledges the victims' need to be included and the system's desire to include them throughout the process. Extending to victims the right to be present represents an effort by the system to restore the power and control taken from them as a result of the commission of the offense. Victims who are informed and involved in the process are more likely to be cooperative and satisfied with their experience in juvenile justice system.
- ***The right to be heard.*** The opportunity for victims to be heard by the juvenile justice system may have the greatest impact on their overall well-being and may influence their satisfaction with the justice system. The victim's initial complaint is a story on paper. It has no face, little feeling and is impersonal. When a victim is consulted on the potential for the reduction of charges, to provide testimony, or to submit a victim impact statement, the victim becomes a real person who is now part of the system of justice. These opportunities bring the victim in from the sidelines

toward the center of the process, where they can talk about their victimization, the long-term effects on them, their family and friends, and what they need to be made whole. Victims who have been heard are more likely to feel that they have experienced justice.<sup>87</sup>

The following activities are critical if a court is committed to achieving the purposes for which crime victims have been guaranteed these rights:

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

- ***Groundwork.*** Creating a place for victims in juvenile court begins outside the courtroom. As administrators and leaders of their courts, judges should continually monitor the effectiveness and adequacy of local efforts to bring victims into the justice process. Do victims receive consistent, accurate, timely, and sensitive notification regarding court proceedings? Is there an orientation program to help them understand their rights? Is there a separate victim/witness waiting area in the courthouse? Are there victim advocates to accompany them to hearings? Is any effort made to determine their satisfaction with the process afterwards, or to offer them post-disposition advice and guidance?
- ***Pre-hearing consultation.*** Victims must be notified of significant proceedings pertaining to the case and the date, time, place, purpose, and outcome of the proceeding.<sup>88</sup> Victims must also be given an opportunity to submit comment prior to several key case processing events. In general, victims have a right to be heard before cases are resolved wholly or partially by any sort of agreement. Victims have the right to have their input considered in disposition decision-making as well.<sup>89</sup> While prosecutors and probation officers are given the primary responsibility for soliciting victim input in juvenile cases, victims ultimately depend upon judges to enforce and give substance to their consultation rights. If the judge always demands to know what the victim thought about a proposed consent decree or negotiated admission agreement, or why there is no impact statement in the predisposition report, prosecutors and probation departments will make it their business to find out—and will not come to court until they do.
- ***Sequestration.*** The victim, counsel for the victim, and other persons accompanying the victims for his or her assistance are permitted to attend all proceedings.<sup>90</sup> In rare instances to preserve the dignity and orderly functioning of the court, the court may exclude some persons from the proceedings. As a matter of basic due process, a

victim who is to be a witness in an adjudicatory hearing may have to be excluded from the hearing room during some part of the fact-finding phase. However, keeping in mind victims' own hearing attendance rights as well the practical and symbolic value of victim presence and participation in juvenile hearings, judges should take steps to keep these periods of sequestration to an absolute minimum, including requiring prosecutors to present their cases in such a way as to permit victims to return to the courtroom as soon as possible. In any case, judges should make sure that victims understand the purpose and necessity of sequestration.

- **Participation.** What has been said above about the judge's role in encouraging "maximum participation" in juvenile hearings (see "General Conduct of Hearings," §8-4), applies with special force to encouraging victim participation. Juvenile court judges must be alert for opportunities to acknowledge the victim's presence in the courtroom, to explain the court's methods and procedures, and to articulate the principles they are intended to serve. Once the fact-finding phase is concluded, the judge should take the opportunity afforded by the victim's presence to describe the disposition process, to solicit victim input orally, to gather additional details regarding written victim impact statements (see below), and where appropriate and with the support and consent of the victim, to orchestrate impromptu victim-offender interactions.
- **Opportunity/encouragement to speak.** No matter what the posture of the case, victims should always be afforded some opportunity to tell the court what they experienced and how it felt. A victim who has been given a chance to speak regarding these matters is more likely to accept the outcome of the judicial process—to feel that something like justice has been done. The victim's account may also help the juvenile to understand the consequences of his wrongdoing more fully. As long as the judge retains control of the situation, even the victim's anger may be good for the juvenile to hear. And it should lead to better disposition decision-making as well, by giving the court a deeper understanding of the harm caused by the juvenile's offense and the steps that must be taken to repair it. But affording victims a meaningful opportunity to speak in court will take groundwork as well—such as a victim advocate's help in the preparation of a statement, as well as an opportunity to speak with and receive support from an advocate after the hearing is over.

- **Apologies in the courtroom.** Before allowing an apology in the courtroom the judge should inquire whether the victim is ready to receive the apology at this time and whether the victim prefers that the juvenile address the court or the victim.
- **Post-hearing consultation.** In addition to the above notification requirements, the victim must be provided with notice of review hearings, of motions for early termination of court supervision,<sup>91</sup> and of details regarding the final disposition of the case.<sup>92</sup> When a juvenile has been adjudicated delinquent for a personal injury crime and ordered to a residential placement, shelter facility or detention center, the victim may request prior notice of the juvenile’s release, including a release on a temporary leave or home pass, of any escape or failure to return from a temporary leave or home pass, and of any change in placement.<sup>93</sup>

## § 8-12 Accommodating Young Witnesses

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

Proper handling of a very young witness calls first of all for a realistic assessment of the child’s current level of development. Basic background materials on the stages of child and adolescent development, including developmental skills typically found among children of various ages, can be found in *Child Development: A Judge’s Reference Guide*, which is available from the National Council of Juvenile and Family Court Judges.<sup>94</sup>

***Courtroom routines and procedures may have to be altered to accommodate young witnesses.***

- **Evaluating competence.** While testimonial competence is ordinarily presumed, courts are required to inquire closely into the mental capacities of witnesses younger than 14 before allowing them to give evidence.<sup>95</sup> This involves scrutinizing (1) their ability to observe and recall the events about which they will testify, (2) their capacity to understand questions and frame intelligent answers regarding those events, and (3) their consciousness of the duty to testify truthfully.<sup>96</sup>

Confusion about the meaning of the term “oath” or about the purpose of the proceeding is not necessarily an indication of incompetence, as long as a child witness knows the importance of truth-telling.<sup>97</sup> Even a child who believed it was “good to lie” was found competent, where it appeared she understood that she would be punished if she did so.<sup>98</sup>

- ***Avoiding the wrong questions.*** Because judges are responsible for getting at the truth in juvenile proceedings, they must be vigilant regarding confusing, misleading, and otherwise inappropriately phrased questions, both in their own examination of young witnesses and in their monitoring of examinations conducted by attorneys. Children are more likely to give clear, complete, reliable, useful testimony if they are not faced with the following kinds of questions:
  - *Long, grammatically complex, or compound questions.* One authority suggests, as a rule of thumb, “the younger the child, the shorter the question.”<sup>99</sup>
  - *Questions containing big, unfamiliar, or legal-technical words.* “Point to” works better than “identify.”
  - *Questions that are phrased negatively.* “Did you not,” etc.
  - *Questions that abruptly change the subject.* Judges should make sure that young witnesses are not confused by sudden and unexplained transitions in questioning.
  - *Repetitive questions.* Again, judges should recognize that children may not understand why the same thing is being asked repeatedly, and either limit or explain the reasons for the repetition.
  - *Closed yes-or-no questions.* Child witnesses should not be asked to restrict themselves to one-word answers, unless it’s very clear that they understand the questions. The danger of misunderstanding can be partially avoided with open-ended follow-ups, giving them the opportunity to explain what they think their “yes” or “no” meant.
- ***Adapting court procedures.*** Judges should be flexible in accommodating the special needs of young witnesses in their courtrooms. Common accommodations include the following:
  - *Support persons.* Children are often allowed to have adult supporters with them while they testify, and even at times to sit in their laps while being

questioned. Some difficulty is presented when an adult support person is also a witness in the case—as when both a parent and a child have evidence to give regarding the alleged victimization of the child by a third party—or where there is reason to believe the presence of the support person will influence the content of the child’s testimony. The former problem at least can be overcome by having the adult supporter testify first, outside of the child’s hearing.

- *Other kinds of support.* Children should by all means be permitted to bring special blankets, stuffed animals, and other comfort objects with them into the courtroom, and to hold them while testifying.
- *Breaks.* When children have difficulty on the stand, judges should be liberal in granting recesses and allowing attorneys and others to confer with them privately to learn what is the matter.
- *Clearing courtroom of spectators.* In order to make it easier for a young witness to give testimony, the judge may at any time close the hearing to the general public, although the agreement of the parties may be required in a case designated an “open proceeding” by the Juvenile Act.<sup>100</sup>
- *Conferring or conducting examinations in chambers.* Likewise, judges should consider taking young witnesses into their chambers where necessary, to explain the proceedings, to put fears about testifying to rest, to assess their competency, or even to conduct the examination itself. In an adjudicatory hearing in which the child witness is testifying for the Commonwealth, however, a preliminary competency examination may be conducted in chambers, but the testimony itself must be given in the presence of the accused.
- *Changing physical courtroom arrangements.* There is no reason why the physical layout or seating arrangements in the courtroom cannot be temporarily changed to help put a young witness at ease (although, again, during the adjudication phase the court must be cautious about compromising the juvenile’s confrontation rights).
- *Other courtroom changes.* Many experienced juvenile court judges have developed their own “tricks of the trade” for supporting, encouraging, and alleviating the stress of children giving evidence in their courtrooms. These may involve changing their usual tone of voice or terminology, raising ice-breaking topics to establish rapport and open up communication, and even using toys, puppets, and similar devices to relax and focus the child.

Accommodation of young witnesses may also include the use of advanced communication technology (ACT) at the adjudicatory hearing.<sup>101</sup> Under appropriate circumstances, in a case involving a child victim or child material witness, the General Assembly has provided a process for the court to order that the victim's or witness's testimony to be recorded for presentation in court.<sup>102</sup> In addition, an otherwise inadmissible out-of-court statement describing any one of a number of enumerated serious offenses, made by a child victim or witness no older than 12 at the time of the statement, may be admissible in evidence in a criminal or civil proceeding, provided the court finds in an *in camera* hearing that (1) the evidence is relevant, (2) the time, content and circumstances of the statement provide sufficient indicia of reliability, and (3) the child either testifies at the proceeding or is unavailable as a witness. In order to make a finding that the child is unavailable as a witness, the court must determine from the evidence that being required to testify as a witness would cause the child to suffer serious emotional distress that would “substantially impair the child's ability to reasonably communicate.”<sup>103</sup> In making this determination, the court may observe and question the child, either inside or outside the courtroom, and/or may hear testimony of a parent or custodian or any other person, including a person who has dealt with the child in a medical or therapeutic setting. If the court hears testimony in connection with making a finding that the child is unavailable, the defendant, the attorney for the defendant and the attorney for the Commonwealth have the right to be present, except that if the court observes or questions the child, the court shall not permit the defendant to be present.<sup>104</sup>

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#### ENDNOTES

<sup>1</sup> <http://www.pacourts.us/courts/supreme-court/committees/rules-committees/juvenile-court-procedural-rules-committee/juvenile-court-committee-rules-and-forms>

<sup>2</sup> <http://www.jcjc.pa.gov/Publications/Pages/JuvenileCourtStandards.aspx>

<sup>3</sup> Rules 406-409, Pa.R.J.C.P. and 42 Pa.C.S. §6336.

<sup>4</sup> 42 Pa.C.S. §6335(a) and Rule 240(D), Pa.R.J.C.P.

<sup>5</sup> 42 Pa.C.S. §6335(f).

<sup>6</sup> Rule 404, Pa.R.J.C.P.

<sup>7</sup> Note that the National Council of Juvenile and Family Court Judges' Juvenile Delinquency Guidelines call for, an adjudicatory hearing for a youth who is not in detention to be scheduled for no more than twenty business days from the initial hearing, unless the nature of the case is such that longer preparation time is required.

<sup>8</sup> Commonwealth v. Dallenbach, 1999 Pa. Super. 101, 729 A.2d 1218 (1999).

<sup>9</sup> 42 Pa.C.S. §6336.

<sup>10</sup> 42 Pa.C.S. §6305.

<sup>11</sup> Rule 187, Pa.R.J.C.P.

<sup>12</sup> 42 Pa.C.S. 6305(b). Rule 187(c) Pa.R.J.C.P.

<sup>13</sup> 42 Pa.C.S. 6305(b). Rule 187(c) Pa.R.J.C.P.

<sup>14</sup> In re A.M., 365 Pa. Super. 516, 530 A.2d 430 (1987)

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- <sup>15</sup> 42 Pa.C.S. 6305(c). Rule 191(b) Pa.R.J.C.P.
- <sup>16</sup> 42 Pa.C.S. 6305(d). Rule 191(c) Pa.R.J.C.P.
- <sup>17</sup> In Interest of Stephens, 277 Pa.Super. 470, 419 A.2d 1244 (1980).
- <sup>18</sup> 42 Pa.C.S. 6305(d). Rule 191(c) Pa.R.J.C.P.
- <sup>19</sup> In Interest of Perry, 303 Pa. Super. 162, 459 A.2d. 789 (1983).
- <sup>20</sup> 42 Pa.C.S. §6336.
- <sup>21</sup> 42 Pa.C.S. §6336(d).
- <sup>22</sup> See Rule 131, Pa.R.J.C.P.
- <sup>23</sup> 42 Pa.C.S. §6336(e).
- <sup>24</sup> 42 Pa.C.S. §6336(e).
- <sup>25</sup> 42 Pa.C.S. §6336(f).
- <sup>26</sup> Rule 128, Pa.R.J.C.P.
- <sup>27</sup> Rule 131, Pa.R.J.C.P. Guardian’s Presence. Guardian is defined by Rule 120 to include any parent, custodian, or other person who has legal custody of a juvenile, or person designated by the court to be a temporary guardian for purposes of a proceeding. 42 Pa.C.S. §6310 (relating to parental participation).
- <sup>28</sup> In certain situations, the judge may appoint an attorney to act as guardian *ad litem* (GAL) for a child in a delinquency case. The appointed GAL is responsible for ensuring that the youth fully understands the court proceedings and that the youth’s rights are being protected. A GAL should be appointed when: the youth’s parent is the victim; the parent cannot be found or willfully fails to come to court; the parent does not seem to be concerned with the youth’s best interests; or, the parent cannot understand the proceedings because of mental incapacity. 42 Pa. C.S. §6311. It is important that the role of the GAL is not conflated with the role of counsel for the juvenile.
- <sup>29</sup> Rule 139, Pa.R.J.C.P. and 42 Pa.C.S. §6336.2.
- <sup>30</sup> Rule 151, Pa.R.J.C.P. and 42 Pa.C.S. §6337.1.
- <sup>31</sup> Rule 152 A(3)(b), Pa.R.J.C.P.
- <sup>32</sup> See “The Pennsylvania Juvenile Collateral Consequences Checklist” available for download at <https://padmc.org/the-pa-juvenile-collateral-consequences-checklist/>
- <sup>33</sup> 42 Pa.C.S. §6338(a).
- <sup>34</sup> 42 Pa.C.S. §6337. Rule 151, Pa.R.J.C.P.
- <sup>35</sup> 42 Pa.C.S. §6336(b).
- <sup>36</sup> Rule 408, Pa.R.J.C.P.
- <sup>37</sup> Rule 408(B), Pa.R.J.C.P.
- <sup>38</sup> 42 Pa.C.S. §6341(a).
- <sup>39</sup> See Rule 408(C), Pa.R.J.C.P., which specifies that the court must proceed to the adjudication phase if it finds “that the juvenile committed any delinquent act...”
- <sup>40</sup> Rule 409(B) Pa.R.J.C.P. and 42 Pa.C.S. §6341(b).
- <sup>41</sup> Rule 362(6), Pa.R.J.C.P.
- <sup>42</sup> Rule 409(A)(2)(b), Pa.R.J.C.P.
- <sup>43</sup> 42 Pa.C.S. §6338(b).
- <sup>44</sup> 42 Pa.C.S. §6338(b).
- <sup>45</sup> Commonwealth ex rel. Freeman v. Superintendent of State Correctional Institution at Camp Hill, 212 Pa. Super. 422, 431, 242 A.2d 903, 908(1968).
- <sup>46</sup> Commonwealth v. Mangillo, 250 Pa. Super. 202, 205,378 A.2d 897, 898 (1977).
- <sup>47</sup> Commonwealth v. Fox, 445 Pa.76, 282 A.2d 341 (1971).
- <sup>48</sup> 42 Pa.C.S. §6339.
- <sup>49</sup> Rule 406 (B), Pa.R.J.C.P. and Rule 127(A), Pa.R.C.P.
- <sup>50</sup> Rule 127(B) and Comment, Pa.R.J.C.P. See also Rule 406(B), Pa.R.J.C.P.
- <sup>51</sup> Rule 128(C), Rule 129(A)(1) and Rule 406(C), Pa.R.J.C.P.
- <sup>52</sup> Rule 128, Pa.R.J.C.P.
- <sup>53</sup> 42 Pa.C.S. §6341(a).
- <sup>54</sup> 42 Pa.C.S. §6341(b).
- <sup>55</sup> Rule 408(B), Pa.R.J.C.P.
- <sup>56</sup> Rule 409(A)(1), Pa.R.J.C.P

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<sup>57</sup> Rule 409(A)(1)(b), Pa.R.J.C.P.

<sup>58</sup> See the Comment to Rule 408, Pa.R.J.C.P.

<sup>59</sup> Rule 407, Pa.R.J.C.P.

<sup>60</sup> <http://www.pacourts.us/forms/juvenile-delinquency-forms>

<sup>61</sup> 42 Pa.C.S. §6302.

<sup>62</sup> 42 Pa.C.S. §6302.

<sup>63</sup> 42 Pa.C.S. §6358(b).

<sup>64</sup> 42 Pa.C.S. §6358(f).

<sup>65</sup> 42 Pa.C.S. §6401, *et seq.*

<sup>66</sup> 42 Pa.C.S. §6340(a) and Rule 370, Pa.R.J.C.P.

<sup>67</sup> 42 Pa.C.S. §6340(b) and Rule 371, Pa.R.J.C.P.

<sup>68</sup> 42 Pa.C.S. §6340(c.1). See also Rule 373(A), Pa.R.J.C.P.

<sup>69</sup> See 18 P.S. §11.201(4) and Comment, Rule 370, Pa.R.J.C.P. By its terms, the Crime Victims Act provision giving victims the right to submit prior comment on the appropriateness of a consent decree applies only in personal injury or burglary cases. However, the Comment to Rule 370 states that “the victim(s) of the offense should be consulted” before a juvenile is placed on consent decree, without mentioning any restrictions as to the type of offense involved, and this is clearly the best practice. In general, the Rules of Juvenile Court Procedure for Delinquency Matters have dispensed with offense restrictions in extending notice and comment rights to victims in juvenile delinquency cases.

<sup>70</sup> Rule 370(B), Pa.R.J.C.P.

<sup>71</sup> 42 Pa.C.S. §6340(e).

<sup>72</sup> 42 Pa.C.S. §6340(d).

<sup>73</sup> Rule 373(B), Pa.R.J.C.P.

<sup>74</sup> Rule 170(A)(3), Pa.R.J.C.P.

<sup>75</sup> National Child Traumatic Stress Network, Justice System Consortium (2009). Helping Traumatized Children: Tips for Judges. (Footnotes Omitted). See also, National Council of Juvenile and Family Court Judges, Juvenile and Family Court Journal, Special Issue – Winter 2006, Vol. 57, No. 1. Special Issue - Child Trauma, <https://www.ncjfcj.org/sites/default/files/Winter%20Journal%202006%20Special%20Issue%20-%20Child%20Trauma.pdf>

<sup>76</sup> [http://tdg.ucla.edu/sites/default/files/UCLA\\_PTSD\\_Reaction\\_Index\\_Flyer.pdf](http://tdg.ucla.edu/sites/default/files/UCLA_PTSD_Reaction_Index_Flyer.pdf)

<sup>77</sup> <http://www.nctsn.org/content/trauma-symptom-checklist-children>

<sup>78</sup> <http://www.nctsn.org/content/child-sexual-behavior-inventory>

<sup>79</sup> Information on specific evidence-based treatments for child traumatic stress is available from: The National Child Traumatic Stress Network, Empirically Supported Treatments and Promising Practices, [http://www.nctsn.org/nctsn\\_assets/pdfs/promising\\_practices/NCTSN\\_E-STable\\_21705.pdf](http://www.nctsn.org/nctsn_assets/pdfs/promising_practices/NCTSN_E-STable_21705.pdf), The National Crime Victims Research and Treatment Center – Child Physical and Sexual Abuse: Guidelines for Treatment, <https://mainweb-v.musc.edu/vawprevention/general/saunders.pdf>

<sup>80</sup> Rule 360, Pa.R.J.C.P.

<sup>81</sup> 42 Pa.C.S. 6336 and Rule 132, Pa.R.J.C.P.

<sup>82</sup> Comment to Rule 409, Pa.R.J.C.P.

<sup>83</sup> 42 Pa.C.S. 6301

<sup>84</sup> Pennsylvania Council of Chief Juvenile Probation Officers, 2015.

<sup>85</sup> <http://www.legis.state.pa.us/WU01/LI/LI/US/HTM/1998/0/0111..HTM>

<sup>86</sup> <http://www.pacourts.us/courts/supreme-court/committees/rules-committees/juvenile-court-procedural-rules-committee/juvenile-court-committee-rules-and-forms>

<sup>87</sup> Adapted from “A Handbook for Juvenile Justice Professionals and Victim Service Providers” Pennsylvania Council of Chief Juvenile Probation Officers and the Juvenile Court Judges’ Commission, January 2016. A copy of the handbook is available for download at [http://www.pachiefprobationofficers.org/victim\\_restoration.php](http://www.pachiefprobationofficers.org/victim_restoration.php)

<sup>88</sup> 18 P.S. §11.201(2), Rule 241 (Detention Hearing), Rule 360 (Summons and Notice of the Adjudicatory Hearing) and, Rule 500 (Summons and Notice of the Dispositional Hearing), Rule 600 (Summons and Notice of Dispositional Review Hearing, Pa.R.J.C.P.)

<sup>89</sup> 18 P.S. §11.201(4), (5) and, (5.2), Rule 311(B), Pa.R.J.C.P., and Comment, Rule 370, Pa.R.J.C.P.

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<sup>90</sup> Rule 132, Pa.R.J.C.P., 42 Pa.C.S. §6336(d) and 18 P.S. §11.201(3).

<sup>91</sup> Rule 632(B), Pa.R.J.C.P.

<sup>92</sup> 42 Pa.C.S. 6336(f) and 18 P.S. 11.201(12).

<sup>93</sup> 18 P.S. §11.201(8.1).

<sup>94</sup> This 1993 publication can be ordered from the National Council at (775) 784-6012, or online at <http://www.ncjfcj.org>.

<sup>95</sup> In the Interest of C.L. and P.G., 436 Pa.Super. 630, 648 A.2d 799(1994).

<sup>96</sup> Commonwealth v. Trimble, 419 Pa.Super. 108, 615 A.2d 48 (1992), quoted in In the Interest of J.R., 436 Pa. Super. 416, 648 A.2d 28 (1994).

<sup>97</sup> In the Interest of C.L. and P.G., 436 Pa.Super. 630, 648 A.2d 799 (1994).

<sup>98</sup> In the Interest of J.R., 436 Pa.Super. 416, 648 A.2d 28 (1994).

<sup>99</sup> This rule of thumb, along with all subsequent text material on questioning and accommodating child witnesses, has been adapted from Matthews, E., and Saywitz, K. "Child Victim Witness Manual." California Center for Judicial Education and Research Journal 12(1), 1992.

<sup>100</sup> 42 Pa.C.S. §6336(e). In writing this Chapter reference was made to West's Pennsylvania Practice, Vol. 18, Juvenile Delinquency Practice and Procedure, Fifth Edition, by Francis Barry McCarthy.

<sup>101</sup> Rules 129 and 406, Pa.R.J.C.P.

<sup>102</sup> 42 Pa.C.S. § 5984.1

<sup>103</sup> 42 Pa.C.S. § 5985.1

<sup>104</sup> 42 Pa.C.S. § 5985.1(a.1) and (a.2).

# Chapter 9

## Delinquency and Disposition Determinations

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### Summary of Contents

This chapter discusses the proper conduct of hearings to determine whether a juvenile is in need of treatment, supervision or rehabilitation and what form the disposition should take.

- § 9-1. Delinquency and Disposition Determinations in General
- § 9-2. Best Practices
- § 9-3. The Use of Evidence-Based Practices
- § 9-4. The Social Study and Other Dispositional Aids
- § 9-5. Dispositional Hearings
- § 9-6. Victim Input at Disposition
- § 9-7. Securing Parental Cooperation and Involvement
- § 9-8. Disposition Options in General
- § 9-9. Option to Utilize Dependency Dispositions
- § 9-10. Probation
- § 9-11. Restitution and Community Service
- § 9-12. Placement
- § 9-13. Dispositions Involving Special Populations

### Key Statutes

- 42 Pa.C.S. § 6301 (purposes of disposition)
- 42 Pa.C.S. § 6309(d) (juvenile history record information, disposition reporting)
- 42 Pa.C.S. § 6310 (parental participation)
- 42 Pa.C.S. § 6336.2 (use of restraints on children during court proceedings)
- 42 Pa.C.S. § 6337.1 (right to counsel for children in dependency and delinquency proceedings)
- 42 Pa.C.S. § 6341(d) (adjudication, evidence on issue of disposition)
- 42 Pa.C.S. § 6351 (disposition of dependent child)
- 42 Pa.C.S. § 6352 (disposition of delinquent child)
- 42 Pa.C.S. § 6352.2 (interagency information sharing)

42 Pa.C.S. §6358 (assessment of delinquent children by State Sexual Offenders Assessment Board)  
42 Pa.C.S. §9728 (collection of restitution)  
18 P.S. §11.201, 11.216 (victim notice and comment rights, restitution rights)  
23 Pa.C.S. §5501 et seq. (parental liability for torts of children)  
50 Pa.C.S. §4401 et seq. (mental retardation commitments)  
50 Pa.C.S. §7301 et seq. (mental health commitments)

## **Rules**

Rule 128, Pa.R.J.C.P. (presence at proceedings)  
Rule 129, Pa.R.J.C.P. (appearance by advanced communication technology)  
Rule 132, Pa.R.J.C.P. (victim's presence)  
Rule 136, Pa.R.J.C.P. (ex parte communication)  
Rule 139, Pa.R.J.C.P. (use of restraints on the juvenile)  
Rule 140, Pa.R.J.C.P. (bench warrants for failure to appear at hearings)  
Rule 147, Pa.R.J.C.P. (educational decision maker)  
Rule 151, Pa.R.J.C.P. (assignment of counsel)  
Rule 152, Pa.R.J.C.P. (waiver of counsel)  
Rule 409, Pa.R.J.C.P. (adjudication of delinquency)  
Rule 500, Pa.R.J.C.P. (summons and notice of dispositional hearing)  
Rule 510, Pa.R.J.C.P. (prompt dispositional hearing)  
Rule 512, Pa.R.J.C.P. (dispositional hearing)  
Rule 513, Pa.R.J.C.P. (aids in disposition)  
Rule 515, Pa.R.J.C.P. (dispositional order)  
Rule 516, Pa.R.J.C.P. (service of the dispositional order)

## **JCJC Standards**

- Development of the Social Study
- Disposition of DUI Charges
- Administration of Restitution Funds
- Juvenile Justice System Enhancement Strategy (JJSES)
- The Standardized Program Evolution Protocol (SPEP)

## § 9-1 Delinquency and Disposition Determinations in General

After finding that a juvenile committed at least one of 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.”<sup>1</sup> If the court determines the juvenile is in such need,<sup>2</sup> the court must enter an appropriate disposition. Generally, court ordered treatment, care or supervision, pursuant to a delinquency disposition, should seek to further the purposes of the Juvenile Act, 42 Pa.C.S. §6301(b). To accomplish those purposes, the court must employ evidence-based practices whenever possible and use the least restrictive intervention that is consistent with the protection of the community, the imposition of accountability for offenses committed and the rehabilitation, supervision and treatment needs of the child. Confinement may be imposed only if necessary.<sup>3</sup> Dispositional hearings must be prompt,<sup>4</sup> conducted in accordance with mandated procedure<sup>5</sup> and followed by an appropriately crafted dispositional order.<sup>6</sup> Developing and implementing delinquency dispositions are among the most important responsibilities entrusted to juvenile court judges.

### §9-2 Best Practices

- In order to craft and implement effective dispositions, the judge should be knowledgeable about the community-based and residential services available to the court.
- Prior to the dispositional hearing, the judge should ensure that all necessary information is available, including the juvenile probation office pre-disposition report (social study), the results of the YLS risk/needs assessment, and the results of any other examinations or assessments.
- The judge should, at the commencement of the dispositional hearing, introduce him or herself, identify all persons in the courtroom, and explain the purpose of the hearing.
- The juvenile’s parents or guardians should be present and provided with the opportunity to be heard. If they are absent, judges should determine the reason for the absence and make necessary arrangements for future participation.
- When a juvenile is involved in both dependency and delinquency proceedings, the judge should require the presence of both the youth’s case worker, and juvenile

probation officer at the dispositional hearing, and should ensure their cooperative supervision of the juvenile pursuant to the local shared case responsibility protocol.

- The court should encourage the participation of all concerned. It should be evident that it is the intent of the judge to arrive at a disposition which provides balanced attention to the protection of the community, accountability to the victim and development of the juvenile's competencies.
- Before deciding the disposition of the case, the court must give the victim the opportunity to be heard, and to submit an oral and/or written victim impact statement if the victim so chooses.
- The judge should be aware of and consider the juvenile's trauma history. However, a judge should not risk re-traumatizing or embarrassing the juvenile by discussing the juvenile's trauma history in the courtroom.
- The juvenile's educational needs should be of particular concern to the court in crafting the disposition that will be ordered.
- The court must ensure the family's involvement in treatment, in both the community and placement.
- To achieve the purposes of the Juvenile Act, the court's disposition must address the identified criminogenic needs of the juvenile through the use of evidenced-based practices and interventions that will be included in the juvenile's case plan.
- The judge should ensure that the juvenile understands the court's expectations and the consequences of non-compliance with the dispositional order.
- The judge should strive to visit and become familiar with the community-based and residential programs utilized by the court.

## § 9-3 The Use of Evidence-Based Practices

To achieve the purposes of the Juvenile Act, 42 Pa.C.S. §6301, et. seq., the balanced and restorative justice (BARJ) mission of Pennsylvania’s juvenile justice system, and the goals of Pennsylvania’s Juvenile Justice System Enhancement Strategy (JJSES), any disposition must require the employment of evidence-based practices.<sup>7</sup> The application of evidence-based practices translates directly into enhanced public safety. The research over the last two decades is both clear and compelling regarding those interventions that result in reduced recidivism.

The key concepts in evidence-based practice are the risk, needs and responsivity principles. The **risk principle** refers to the probability that a youth will re-offend, based on characteristics that are correlated with future delinquency. These risk factors are static, or non-changeable. They include, for example, current age, age at first arrest, and number of prior arrests. The **need principle** defines the juvenile’s individual and environmental attributes that are predictive of future delinquent behavior and that can be changed. These are known as criminogenic needs. Examples of criminogenic needs include antisocial attitudes and beliefs, antisocial peers, temperament issues, lack of family support, substance abuse, lack of education, and lack of prosocial leisure outlets. In order to reduce the probability of delinquency and recidivism, a juvenile’s criminogenic needs must be accurately assessed and then effectively addressed through individual supervision and programmatic interventions. The **responsivity principle** emphasizes the importance of characteristics that influence a juvenile’s ability and motivation to learn. Individual traits that interfere with – or facilitate – learning are known as “responsivity factors.” The basic assumption underlying the responsivity principle is that all juveniles and all programs are not the same. As such, better treatment outcomes will result from properly matching a young person’s individual characteristics (e.g., culture, cognitive ability, maturity and gender) with service characteristics (e.g., location, structure, length, dosage, methodology, and facilitator traits).

In short, the **risk principle** helps identify **who** should receive juvenile justice interventions and treatment. The need principle focuses on **what** about the young person must be addressed. The responsivity principle underscores the importance of **how** treatment should be delivered, with behavioral and cognitive behavioral skill-building techniques being the most effective.

Generally, a judge making a disposition decision should consider the following:

- **Individualization.** A juvenile court disposition must be “best suited to the child’s treatment, supervision, rehabilitation, and welfare.”<sup>8</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>9</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>10</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 lacks 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. Holding a juvenile accountable does not mean punishing the juvenile. 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 juvenile—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, “Competency Skills and Goals by Domain.”)

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.” Competency development is not a synonym for “treatment” in the sense of clinical interventions addressing substance abuse, mental illness, sexual aggression, and violence. Many youth involved with the juvenile justice system do not need treatment for specific offending behaviors, but nearly all of them could benefit from learning competency development skills. Furthermore, certain treatments help address responsivity factors such as learning disabilities, mental health, and self-esteem: these treatments are required to stabilize youth but do not necessarily advance competency development. Once youth are stabilized, skill building leading to successful community living can be conducted.

The JJSES substantially advances the competency development goal by utilizing actuarial assessments that identify criminogenic needs which, when addressed, reduce recidivism. Pennsylvania selected the *Youth Level of Service/Case Management Inventory (YLS/CMI)* risk/needs assessment to identify these criminogenic needs and pinpoint the skill areas requiring development. The criminogenic needs (dynamic risk factors) assessed by the *YLS/CMI* are: attitudes/orientation, personality/behavior, peer relations, family

circumstances/parenting, substance abuse, education/employment and leisure/recreation. The JJSES endorses the skill enhancement approach, incorporating teaching, modeling, role-playing, coaching, and providing feedback in key competency skill areas. Furthermore, the JJSES provides training and tools to probation officers and other stake-holders to help them develop youths' skills, such as impulse control and problem solving, in order to reduce the likelihood that those involved in the juvenile justice system will commit delinquent acts in the future.

The primary tool for establishing and accomplishing competency development goals is a comprehensive case plan describing the steps that the probation officer and juvenile must take to reduce the risk of recidivism. Case plans must target interventions to the youth's most pressing criminogenic needs and engage youth using effective skill-training interventions and activities such as cognitive behavioral approaches. Additionally, capitalizing on the youth's and family's strengths and on the protective factors within their communities will result in more successful outcomes.

## SIDEBAR

### Competency Skills and Goals by Domain

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 the broad goal of competency development in disposition-making by dividing it 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.

END SIDEBAR

## Connection Between BARJ Competency Development Domains and YLS/CMI Domains

<b>BARJ Competency Development Domains</b>	<b>Link to YLS/CMI Criminogenic Need Domains</b>
1. Pro-Social Skills	Personality/Behavior and Peer Relations
2. Academic Skills	Education/Employment
3. Workforce Development Skills	Education/Employment
4. Independent Living Skills	n/a (stabilization factor)
5. Moral Reasoning Skills	Attitudes/Orientation

Source: JCJC Monograph, (November 2015) Advancing Balanced and Restorative Justice Through Pennsylvania’s Juvenile Justice System Enhancement Strategy, p.12.

[https://pachiefprobationofficers.org/docs/BARJ\\_and\\_JJSES.pdf](https://pachiefprobationofficers.org/docs/BARJ_and_JJSES.pdf)

### § 9-4 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>11</sup> Finally, as is discussed in “Victim Input at Disposition,” at §9-6 below, the victim may make or submit an impact statement, which must likewise be accepted and considered by the court in determining disposition.<sup>12</sup>

## SIDEBAR

### *A Thorough Predisposition 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 impact information
- School history
- Service history
- Interview information from the youth and the youth’s parents/guardians, covering:
  - Living and work situation of family members
  - Significant individuals influencing youth
  - Health history
  - Trauma history
  - Substance abuse and mental health/retardation issues
  - Talents and prosocial activities
  - Attitudes regarding offense, beliefs regarding its causes, and willingness to change

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

**END SIDEBAR**

## ***Timing of 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 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 § 9-5, “Dispositional Hearings,”), 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>13</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>14</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 Social Study***

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 case plan (sometimes referred to as a supervision plan).

***Judges should insist that social study reports provided by the probation department include all the information the court needs to order complete and balanced dispositions.***

In addition to the items listed above, the social study should contain the juvenile's overall level of risk as determined through the administration of the YLS, as well as 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 advocate. (As is discussed more fully below, victims have a right under the Crime Victims Act and the Rules 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,” § 9-6.)

### ***The Case Plan***

As is discussed above, the social study concludes with the probation officer’s recommendation for a disposition and case plan. Case plans are written documents that, at a minimum, outline the activities to be completed during a period of supervision. Case plans link assessments with services aimed at improving competencies and reducing recidivism. They are road maps that provide direction for probation officers, youths, and families throughout the period of supervision. As such, they are a very valuable element of the JJSES and the centerpiece of supervision for juveniles. Comprehensive case plans focus on reducing assessed risk factors that will have the greatest impact on recidivism, take into account the juvenile’s strengths, identify the juvenile’s triggers and customize approaches based on traits such as culture, gender, language, disabilities and mental health. In essence, the goal of a case plan is to identify and prioritize the domains that will have the greatest impact on future delinquent behavior, appropriately match services to those areas, and do so in the right dosage and intensity. Case plans should be developed by probation officers in conjunction with youth and their families. Effective case plans are dynamic; they are expected to change over time.

### ***Integration of YLS/CMI***

An essential function of a juvenile probation officer is to gather information that the department and stakeholders need in order to address the goals of community protection, competency development, and accountability—in ways that provide balanced attention to the interests of the juvenile, the victim, and the community. Gathering information related to community protection entails asking one set of questions:

- What are the youth’s risk score and level?
- What must the probation department do to manage and minimize the risk?
- What level of external control is required?

Gathering information relevant to competency development goals requires getting answers to another set:

- What, according to the YLS/CMI, are the youth's specific criminogenic risk factors?
- What specific interventions are most appropriate to address a youth's most influential needs?
- What skill development activities are necessary to improve competencies and increase the juvenile's decision to lead a prosocial lifestyle?
- What academic and/or work force development activities would benefit the youth?

Finally, key questions related to the goal of accountability include:

- Who was affected by the youth's behavior?
- How will the youth acknowledge and repair the harm caused?

This information-gathering culminates in a recommendation for the dispositional option that best serves the interests of the juvenile, victim and community in the least restrictive way.

## **§ 9-5 Dispositional Hearings**

As was noted above, in Pennsylvania, once the court has found that a juvenile committed the delinquent acts alleged in the petition and adjudicated the juvenile delinquent,<sup>15</sup> it may commence the dispositional 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 dispositional hearing.<sup>16</sup> Like other hearings in delinquency cases, the dispositional 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>17</sup> Under certain circumstances, the court may utilize advanced communication technology for the appearance of the juvenile or witness.<sup>18</sup> The attorney for the Commonwealth must attend the hearing.<sup>19</sup> As described previously, all juveniles are presumed indigent (see § 8-7, "Hearing Procedures"). If a juvenile appears at any dispositional hearing without counsel, the court must appoint counsel for the juvenile. A waiver of right to counsel may not be accepted by the court for a dispositional hearing.<sup>20</sup>

Generally, unless the parties agree otherwise, the dispositional hearing must be held within twenty days of the ruling on offenses if the juvenile is in detention, or otherwise within sixty days.<sup>21</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>22</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 a contested hearing on whether the juvenile committed the acts alleged in the petition and (2) allow sufficient time before the commencement of the dispositional portion of the hearing to digest the information in the social study report.

### ***Evidence***

The Juvenile Act provides that in disposition hearings (which the Rules refer to as dispositional 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>23</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>24</sup>

Before deciding disposition, the court shall give the juvenile and the victim the opportunity to be heard.<sup>25</sup>

### ***Required Findings and Conclusions***

In accordance with the Juvenile Act, 42 Pa.C.S.A. §6352(c), prior to entering an order of disposition, the court must state its disposition and the reasons for it on the record in open court, together with the goals, terms and conditions of that disposition. If the child is to be committed to out-of-home placement, the court must state the name of the specific facility or type of facility to which the child will be committed and its findings and conclusions of law that form the basis of its decision, including the reasons why such commitment was determined to be the least restrictive placement that is consistent with the protection of the public and best suited to the child’s treatment, supervision, rehabilitation and welfare. The court must also make findings as to whether any evaluations, tests, counseling or treatments are necessary for the juvenile and any findings necessary to insure the stability and appropriateness of the juvenile’s education. Lastly, the court must enter any findings necessary to identify, monitor, and address the juvenile’s needs concerning healthcare and disability, if any, and if parental consent cannot be obtained, authorize any necessary evaluations and treatment.<sup>26</sup> If necessary, the court may appoint an educational decision maker.<sup>27</sup>

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>28</sup> (See sidebar, “Dependency Dispositions,” §9-9.)

### ***Appeal Rights Notice***

Pursuant to Pa.R.J.C.P. 512.C, prior to the conclusion of the dispositional hearing, the court must determine on the record that the juvenile has been advised of the right to file a post-dispositional motion and appeal, of the time limits for the post-dispositional motion and appeal, of the time limits within which the post-dispositional motion must be decided, and of the requirement that, whether or not the juvenile elects to file a post-dispositional motion, only issues raised before and during adjudication will be deemed preserved for

appeal. When the juvenile is tendering an admission to a delinquent act pursuant to Pa.R.J.C.P. 407, it may be useful and efficient to have the juvenile and his attorney complete a written acknowledgment of the post-dispositional procedures described in Pa.R.J.C.P. 512.C at the same time as the written admission colloquy required by Rule 407.C. In that manner, the court will already have made an on the record determination that the juvenile has been advised of all of the applicable post-dispositional procedures.

### ***Dispositional Order Requirements***

Pursuant to Pa.R.J.C.P. 515, the court's dispositional order must provide balanced attention to the protection of the community, accountability for the offenses committed, and development of competencies to enable the juvenile to become a responsible and productive member of the community. In addition to all of the findings required by 42 Pa.C.S.A. §6352(c), above, as well as the date of the order and the judge's signature and printed name, the order must state whether the case is one of those for which the public may have access to records and information under 42 Pa.C.S. § 6307 (b)(1)(i). If fingerprints and photos have not already been taken, the order must also direct the juvenile to submit to fingerprinting and photographing by the law enforcement agency that submitted the written allegation.

The dispositional order must likewise include the amount of any restitution to be paid by the juvenile, the person to whom restitution is owed, and any payment schedule. If the juvenile has a guardian, the order must state any conditions, limitations, restrictions or obligations imposed upon the guardian. Lastly, the court must forward the case disposition to the JCJC in accordance with its requirements.

Pa.R.J.C.P. 516 requires that the court serve the dispositional order on the juvenile, the juvenile's guardian, the juvenile's attorney, the attorney for the Commonwealth, the juvenile probation officer and any agency directed to provide treatments.

### **§ 9-6 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, an object of the disposition is to require the juvenile to repair the harm done by the offense. Consequently, the victim will be an indispensable contributor to the process.

The victim of a juvenile's crime is required to receive notice of the dispositional hearing.<sup>29</sup> In addition, the victim, counsel for the victim, and any other person accompanying a victim for his or her assistance, have the right to attend the dispositional hearing.<sup>30</sup> Before deciding the disposition of the case, the court must give the victim the opportunity to be heard, and to submit an oral and/or written victim impact statement if the victim so chooses.<sup>31</sup> The Crime Victims Act explains that the victim impact statement is to detail the physical, psychological and economic effects of the crime on the victim and the victim's family and specifically requires the court to consider the victim impact statement in determining disposition.<sup>32</sup> If the victim is not present at the hearing, and the court determines that the juvenile is not in need of treatment, supervision or rehabilitation, and terminates jurisdiction, the victim is entitled to be notified of this outcome.<sup>33</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

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

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 warranted, may delay proceedings until one is secured.

If the victim is present in the courtroom the judge should convey the importance of victim input in the disposition process. 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 how important their statement is to the court. The following series of general questions<sup>34</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?

- How could the juvenile help to repair the harm done to you?
- 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. 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 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.

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 statements, the bearing that it had on the decision, should be explicitly acknowledged. If a disposition suggested by the victim—such as commitment—is not consistent with BARJ, 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>35</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.

## § 9-7 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>36</sup> 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>37</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

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

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>38</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. Courts may 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 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.

Parents, and any other involved adult family members, need to be informed about assessment results and treatment objectives. They should be engaged in identifying and supporting individual goals for the juvenile and informed regarding the juvenile’s progress. The core partnership with the family may also be enhanced by offering them supports, such as mental health services and recreational activities. For juveniles who require placement, keeping them close to their homes will give them opportunities to repair and renew family relationships and to practice skills that will help them address challenges they may face upon release, thereby reducing the chances of recidivism.

## § 9-8 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 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

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

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. 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 degreed 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.

### § 9-9 Option to Utilize Dependency Dispositions

Where appropriate, a court presiding over a delinquency case may also order any of the dispositions authorized for *dependent* children.<sup>39</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>40</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 §3-2 “Basic Juvenile Justice Structure and Funding” 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 eliminate the necessity of removing him from the home. In addition, the juvenile's case must be determined by the court to be subject to “Shared Case Responsibility,” between the juvenile probation department and the county children and youth agency (C&Y), with the probation department having primary responsibility for addressing delinquency issues and the C&Y agency being responsible for providing or arranging for family support or other services typically associated with dependency cases.

### § 9-10 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>41</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>42</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 some possible conditions of probation. But there is an almost infinite variety of possibilities, including, but not limited to, fine/restitution obligations, participation in constructive service or education programs, 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>43</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. 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.

### ***Probation Supervision***

Effective probation supervision techniques teach and reinforce prosocial behavior through working relationships marked by strong rapport. The probation officer seeks to enhance the intrinsic motivation of the juvenile, using strength-based approaches, motivational enhancement skills, and the appropriate use of rewards and sanctions.

The essence of effective probation supervision is to foster positive adjustment and behavior. Case plans must provide a constructive blueprint to change behavior and restore those harmed by past offenses. The probation officer uses the case plan as a roadmap for evidence-based supervision and interventions that reflect the goals of balanced and restorative justice, such as the use of cognitive behavioral worksheets, referral to treatment services, and development of a restitution plan.

The JJSES provides a strategy and suggests tools, such as the YLS/CMI, service matrices, placement guidelines, and SPEP, for more accurately matching youth to the most appropriate service. The strategy and tools help jurisdictions better identify the moderate to high risk youth whose cases are more likely to require formal court processing. (See Ch. 2 and discussion of YLS/CMI at § 4-7, “Intake Conferences.”)

## **§ 9-11 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>44</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

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

court.<sup>45</sup> A separate provision permits an order of probation to “include an appropriate fine 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>46</sup>

Restitution and community service are two of 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>47</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>48</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>49</sup>
- **Suitability.** The court must “take into consideration the age, physical and mental capacity of the child” in imposing work service as well.<sup>50</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>51</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***

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>52</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.

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 requires 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>53</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>54</sup> However, as a matter of good practice, all funds collected should be applied to the restitution obligation until it is fully satisfied.

## **SIDEBAR**

### **Pennsylvania's Victim Compensation Fund**

Victims of crime in Pennsylvania, including victims of juvenile offenders, may receive compensation under the state's Victims Compensation Assistance Program ("VCAP") for medical and funeral expenses, the costs of counseling, lost earnings or support caused by the crime, and other specified expenses such as child care and transportation 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.<sup>55</sup>

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 two years of the crime, but some exceptions are made for victims younger than 18 years.

For more information, contact:

Victims Compensation Assistance Program  
P.O. Box 1167 Harrisburg, PA 17108-1167  
(800) 233-2339  
Secured Fax (717) 787-4306  
<http://www.pccd.state.pa.us/>

**END SIDEBAR**

## ***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>56</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>57</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. 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 support and assistance 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, they have been performing work, that has proven to be beneficial to communities of need.

***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 work on projects until completion so that they can see, take pride in, and be publicly recognized for what they have accomplished.

## § 9-12 Placement

In cases requiring residential placement because of the risks posed by the juvenile, the basic goals of balanced and restorative justice remain the same. While a “balanced response” in such a case may require an emphasis on protecting the community, juvenile justice practitioners are still duty-bound to address basic competencies, apply evidence-based practices to reduce dynamic risk factors, and address accountability to victims. All jurisdictions must ensure that they have a range of options available for youth—from least to most restrictive—and that residential placement occurs after consideration of least restrictive alternatives. Research and experience demonstrate that the many youth placed in residential settings do not need to be in secure facilities to ensure community protection.

The court may commit a juvenile who has been adjudicated delinquent to “an institution, youth development center, camp, or other facility for delinquent children which is operated under the direction or supervision of the court or other public authority and approved by the Department of Human Services or (assuming the juvenile is at least 12) to a Youth Development Center or Youth Forestry Camp operated by the Department of Human Services.<sup>58</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>59</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>60</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>61</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>62</sup>

***The Juvenile Act clearly designates placement as a “last resort” disposition.***

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

- ***Placement 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>63</sup>

Generally, consideration of placement 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 placement is required.*** 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 PA Department of Human Services 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 must impose not only the briefest but also the least restrictive placement that is consistent with public safety and the juvenile’s rehabilitative needs. If a juvenile is to be committed to out-of-home placement, both the Juvenile Act and Rules mandate that the court state on the record, in open court, the name of the specific facility or type of facility to which the juvenile will be committed and the court’s findings and conclusions of law that formed the basis of its decision, including the reasons why commitment to that facility or type of facility was determined to be the least restrictive placement that is consistent with the protection of the public and best suited to the juvenile’s treatment, supervision, rehabilitation and welfare.<sup>64</sup>
- ***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 placement 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 aftercare planning. In the same vein, victims must not be forgotten either. Under the Crime Victims Act, any personal injury crime victim who requests, is entitled to receive prior notice of a juvenile offender’s release from placement.<sup>65</sup> (See § 10-7, “Monitoring and Planning for the Return of Juveniles in Placement,” for a more detailed discussion of these issues.)

## **§ 9-13 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. Their dispositions should be based on good clinical assessments, and providers of court-ordered treatment should be 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 and of the court liaison staff of the Bureau of Juvenile Justice Services in the Department of Human Services.<sup>66</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.

### ***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>67</sup>

A special Juvenile Act provision<sup>68</sup> authorizes Pennsylvania juvenile courts to resort to the civil commitment procedures of the Mental Health and Mental Retardation Act of 1966<sup>69</sup> or the Mental Health Procedures Act<sup>70</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>71</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>72</sup>

Juvenile court judges should be aware of the importance of early identification of juveniles with mental health issues. In individual cases, judges may of course order physical or mental examinations of juveniles at any time during which delinquency proceedings are pending.<sup>73</sup> But mental health screening must be a routine practice if it is to identify all juveniles with unmet mental health treatment needs.

### **Screening Instruments**

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. Some examples of behavioral health screening instruments that are used at probation intake or in detention include:

- ***Massachusetts Youth Screening Instrument: Second Version*** (MAYSI~2; Grisso & Barum, 2006): a 52-question self-report screening instrument that measures symptoms on seven scales pertaining to emotional, behavioral, or psychological disturbance, including suicide ideation. This tool has been examined in more than 50 research studies, and possibly the only tool with national norms.
- ***Suicide Ideation Questionnaire*** (SIQ; Reynolds 1988): a 25-item self-report screening instrument used to assess suicidal ideation in adolescents. It can be administered individually or in a group setting.
- ***Global Appraisal of Individual Needs-Short Screener*** (GAINS-SS; Dennis, Scott, Funk, & Foss, 2005): a 20-item behavioral health screening tool designed to identify adolescents in need of more detailed assessment for substance use or mental disorder. Many studies have been conducted to demonstrate that this tool accurately identifies drug and alcohol problems.
- ***Voice-Diagnostic Interview Schedule for Children*** (Voice-Disc; Wasserman, McReynolds, Fisher, & Lucas, 2005): a self-report computerized tool based on the DSM-IV that produces computer assisted diagnoses. This instrument can take up to 1 hour to complete, yet it is often classified as a screen because a follow-up assessment is recommended to confirm any diagnosis.

## Assessments

A behavioral health assessment normally involves a more in-depth, comprehensive process and may require specially trained or credentialed staff. There are multiple options for instruments that may be used as part of a more comprehensive assessment. These instruments may require administration by clinically trained or credentialed staff and may be included as part of a psychological and/or psychiatric evaluation. The following are used in youth systems and have varying degrees of research to support their use:

- ***Child and Adolescent Functional Assessment Scale*** (CAFAS; Hodges, 2000): a functional assessment that rates youth on the basis of the adequacy and deficits in functioning within life domains such as home and school and with regard to potential problem areas such as substance use or self-harming behavior. It was developed to assist in identifying those individuals with “serious emotional disturbances” for the purposes of determining service eligibility. A screening version of this assessment – the *Juvenile Inventory for Functioning* – has been created and is currently undergoing validation.
- ***Child and Adolescent Needs and Strengths-Comprehensive*** (CANS-C; Lyons, Griffin, Fazio, & Lyons, 1999): the CANS has several versions. Although this tool collects information about a youth’s mental health problems and risk, it does not measure its characteristics, but rather provided a mechanism to support consistent communication about a youth’s service needs and level of functioning. It is considered a needs assessment tool that documents functioning in several domains, including substance abuse, mental health, other risk behaviors, and caregiver needs. It has some reliability evidence.
- ***Achenbach System of Empirically Based Assessment*** (ASEBA; Achenbach & Rescorla, 2001): formerly known as the *Child Behavior Checklist*: a widely studied and used 118-item self-report form focusing on eight behavioral and problem dimensions that can be grouped into two broader types of pathology: “externalizing” (outward expression) and “internalizing” (inward feelings and thoughts). It is completed by the youth, parents, or teachers.
- ***Behavioral Assessment System for Children*** (BASC-2; Reynolds & Kamphaus, 2004): a self-report tool that has different versions for the adolescent, parent/guardians, and teacher. The BASC-2 has different age appropriate versions ranging from childhood to young adulthood. It provides norm-based information

about problem areas including aggression, anxiety, attention problems, conduct problems, and depression.

- ***Practical Adolescent Dual Diagnosis Interview*** (PADDI: Estroff & Hoffman, 2011): a guided interview procedure that identifies suggested diagnoses related to substance abuse and mental disorders. It can be useful in mental health clinics, private practices, courts and juvenile justice facilities.

## **Psychological Evaluations**

Psychological evaluations are written, visual, or verbal tests and assessments administered to measure the cognitive and emotional functioning of children and adults. Psychological evaluations are used to assess a variety of mental abilities and attributes, including achievement and ability, personality, and neurological functioning.

In the juvenile justice system, psychological evaluations can be used to assist in the development and implementation of an appropriate juvenile court disposition and case plan, including treatment or interventions. All psychological or neuropsychological evaluations should be administered, scored and interpreted by trained professionals. Professional guidelines require that whoever administers the evaluation should advise the youth and his parents/guardians of the intended use of the results and to whom the results will be disclosed. An informed consent may need to be signed to share the results of the evaluation with other professionals.

Tests and assessments are two separate but related components of a psychological evaluation. Psychologists use both types of tools to help them arrive at a diagnosis and a treatment plan.

Testing involves the use of formal tests such as questionnaires or checklists. These are often described as “norm-referenced” tests. That simply means the tests have been standardized so that test-takers are evaluated in a similar way, no matter where they live or who administers the test. A norm-referenced test of a child's reading abilities, for example, may rank that child's ability compared to other children of similar age or grade level. Norm-referenced tests have been developed and evaluated by researchers and proven to be effective for measuring a particular trait or disorder.

A psychological assessment can include numerous components such as norm-referenced psychological tests, informal tests and surveys, interview information, school or medical records, medical evaluation and observational data. A psychologist determines what information to use based on the specific questions being asked.

For example, assessments can be used to determine if a youth has a learning disorder, is competent to stand trial or has a traumatic brain injury.

One common assessment technique is a clinical interview, in which a psychologist speaks to a youth about his/her concerns and history in order to observe how the youth thinks, reasons and interacts with others. Assessments may also include interviewing other people who are close to the client, such as family members or care givers.

Together, testing and assessment allow a psychologist to see the full picture of a youth's strengths and limitations.

For more information on psychological evaluations see the American Psychological Association website: <http://www.apa.org/helpcenter/assessment.aspx>

### **Psychiatric Evaluations**

A psychiatric evaluation is an assessment of a youth for serious emotional and/or behavioral problems, performed by a child and adolescent psychiatrist. A comprehensive psychiatric evaluation usually requires several hours over one or more visits with the youth and his/her parents. With proper consent, other significant individuals such as the family physician, school officials or other relatives may be contacted for additional information.

A comprehensive psychiatric evaluation frequently includes the following:

- Description of present problems and symptoms
- Information about health, illness and treatment (both physical and psychiatric), including current medications
- Parent and family health and psychiatric histories
- Information about the child's development
- Information about school and friends
- Information about family relationships
- Interview of the child or adolescent
- Interview of parents/guardians
- If needed, laboratory studies such as blood tests, x-rays, or special assessments (for example, psychological, educational, speech and language evaluation)

The child and adolescent psychiatrist then develops a formulation. The formulation describes the child's problems and explains them in terms that the parents and child can understand. The formulation combines biological, psychological and social parts of the

problem with developmental needs, history and strengths of the child, adolescent and family.

### **Further Information**

An online *Behavioral Health Services Resource Guide* for juvenile probation officers and other youth service professionals is available from the Behavioral Health Subcommittee of the Pennsylvania Council of Chief Juvenile Probation Officers:

[http://www.pachiefprobationofficers.org/docs/BH\\_Services\\_Guide\\_1-15-16.pdf](http://www.pachiefprobationofficers.org/docs/BH_Services_Guide_1-15-16.pdf)

The Resource Guide was designed to provide basic information and then offer links to the websites of official and recognized agencies and organizations related to behavioral health that provide more comprehensive and detailed information.

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

*Mental Health Association*

500 Montgomery Street, Suite 820

Alexandria, VA 22314

(703) 684-7722

(800) 969-NMHA

Fax (703) 684-5968

<http://www.mentalhealthamerica.net>

*Children's Mental Health Campaign*

335 Chandler Street

Worcester, MA 01602

[CMHC@MSPCC.ORG](mailto:CMHC@MSPCC.ORG)

*National Center for Mental Health and Juvenile Justice*

Policy Research Associates, Inc.

345 Delaware Avenue

Delmar, NY 12054

(866) 962-6455

<http://www.ncmhjj.com>

The Substance Abuse and Mental Health Service Administration

5600 Fishers Lane

Rockville, MD 20857

(877) 726-4727

<http://www.samhsa.gov>

### ***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>74</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 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>75</sup>

- *Frequent, random testing.*
- *Regularly-scheduled status checks/hearings.*
- *A graduated response* 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, Act 53 of 1997 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 in a facility that is set up to address those specific drug and alcohol needs of the youth.<sup>76</sup> (For an in-depth review of Act 53 procedures, see § 7-10, "Post-petition Alternatives to Adjudication.") 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>77</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>78</sup> is subject to JCJC Standards Governing an Allegation of Delinquency Involving a Charge of “Driving Under the Influence of Alcohol or Controlled Substance.” Consent decrees in such cases may include the following terms and conditions:

- Driver’s license suspension for six months (mandatory)<sup>79</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 (if other than a first offense general impairment)
- Mandatory use of ignition interlock for a period of one year following license suspension
- 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  
(877) 726-4727  
[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

Fax (757) 220-0449

<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>80</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>81</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>82</sup>
- ***Amenability to treatment.*** Overall, juvenile sex offenders are considered more amenable to treatment than adult sex offenders.<sup>83</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 and 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>84</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>85</sup>

Certain juvenile sex offenders may be subject to involuntary civil commitment upon age 21. 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>86</sup> (For an in-depth review of this issue, see § 8-8, "Admissions," and §10-8 "Special Disposition Review Procedures for Juveniles Committed to Placement for Specified Acts of Sexual Violence.")

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  
1200 Children's Avenue, Suite 14000  
Oklahoma City, OK 73104  
(405) 271-4401  
<http://www.ouhsc.edu/>

Center for Sex Offender Management  
c/o Center for Effective Public Policy  
8605 Cameron Street, Suite 514  
Silver Spring, MD 20910  
(301) 589-9383  
<http://www.csom.org>

### ***Females***

The proportion of girls involved in Pennsylvania's juvenile justice system is a critical concern. 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>87</sup> There is thought to be a particularly close 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>88</sup> In Pennsylvania, a special treatment curriculum has been developed to address PTSD in female delinquent youth and PTSD victims in residential placements.<sup>89</sup>

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

Pennsylvania's Post Traumatic Stress Disorder Project  
Gary J. Lewis  
Pennsylvania PTSD Project Coordinator  
2771 South Grande Blvd.

Greensburg, PA 15601  
(724)830-1815  
<http://co.westmoreland.pa.us/222/PTSD-Project>

National Center for Juvenile Justice  
3700 South Water Street, Suite 200  
Pittsburgh, PA 15203  
Phone (412) 227-6950  
Fax (412) 227-6955  
<http://www.ncjj.org>

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

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

National Center for Child Traumatic Stress  
NCCTS at Duke University  
1121 West Chapel Hill Street, Suite 201  
Durham, NC 27701  
Phone: (919) 682-1552  
Fax (919) 613-9898

NCCTS at University of California, Los Angeles  
11150 W. Olympic Blvd., Suite 650  
Los Angeles, CA 90064  
Phone: (310) 235-2633  
Fax (310) 235-2612

### ***Juvenile Fire-Setters***

Arson is the only major crime category in which most of those arrested are juveniles.<sup>90</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>91</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 or cry for help.<sup>92</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 671  
Cheyenne, WY 82003  
(202) 737-1226  
<http://www.firemarshals.org>

## ENDNOTES

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<sup>1</sup> Rule 409(A), Pa. R.J.C.P.; 42 Pa.C.S. §6341(b).

<sup>2</sup> See *In the interest of N.C.*, 171 A.3d 275 (Pa.Super.2017), in which the Superior Court held that the Commonwealth must prove beyond a reasonable doubt that the juvenile is in need of treatment, supervision, or rehabilitation.

<sup>3</sup> 42 Pa.C.S. §6301(b)(3)

<sup>4</sup> Rule 510, Pa.R.J.C.P.

<sup>5</sup> Rule 512, Pa.R.J.C.P.

<sup>6</sup> Rule 515, Pa.R.J.C.P.

<sup>7</sup> 42 Pa.C.S. §6301(b)(3)(i). In general, see *Pennsylvania's Juvenile Justice System Enhancement Strategy* at [https://pachiefprobationofficers.org/docs/JJSES\\_Monograph.pdf](https://pachiefprobationofficers.org/docs/JJSES_Monograph.pdf) and the November 2015 JCJC publication titled *Enhancing Balanced and Restorative Justice through Pennsylvania's Juvenile Justice System Enhancement Strategy* at [https://pachiefprobationofficers.org/docs/BARJ\\_and\\_JJSES.pdf](https://pachiefprobationofficers.org/docs/BARJ_and_JJSES.pdf)).

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- <sup>8</sup> 42 Pa.C.S. §6352(a).
- <sup>9</sup> 42 Pa.C.S. §6352(a).
- <sup>10</sup> 42 Pa.C.S. §6352(a).
- <sup>11</sup> Rule 513(B), Pa.R.J.C.P.
- <sup>12</sup> Rule 513(C), Pa.R.J.C.P.
- <sup>13</sup> 42 Pa.C.S. §6341(b).
- <sup>14</sup> 42 Pa.C.S. §6339(a).
- <sup>15</sup> Rules 408 and 409, Pa.R.J.C.P.
- <sup>16</sup> See Comment, Rule 512, Pa.R.J.C.P.
- <sup>17</sup> Rule 512(B), Pa.R.J.C.P.
- <sup>18</sup> Rule 512(A)(3), Pa.R.J.C.P.
- <sup>19</sup> Rule 512(A)(4), Pa.R.J.C.P.
- <sup>20</sup> Rules 151 and 152.A(3)(d), Pa.R.J.C.P.
- <sup>21</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>22</sup> 42 Pa.C.S. §6341(e).
- <sup>23</sup> 42 Pa.C.S. §6341(d). To the same effect, see Rule 512(A)(1), Pa.R.J.C.P.
- <sup>24</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. (4th Ed.), §12-4.
- <sup>25</sup> Rule 512(A)(2), Pa.R.J.C.P.
- <sup>26</sup> Rule 512(D)(7), Pa.R.J.C.P.
- <sup>27</sup> Rules 147 and 512(D)(6), Pa.R.J.C.P.
- <sup>28</sup> 42 Pa.C.S. §6351(b).
- <sup>29</sup> Rule 500, Pa.R.J.C.P.
- <sup>30</sup> 42 Pa.C.S. 6336 and Rule 512, Pa.R.J.C.P.
- <sup>31</sup> Rule 512 and Comment, Pa.R.J.C.P.
- <sup>32</sup> 18 P.S. § 11.201.
- <sup>33</sup> Comment to Rule 409, Pa.R.J.C.P.
- <sup>34</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>35</sup> However, judges should not overlook the possibility that community representatives may be available to present what is in effect “victim impact” evidence.
- <sup>36</sup> 42 Pa.C.S. §6310
- <sup>37</sup> 23 Pa.C.S. §5505
- <sup>38</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>39</sup> 42 Pa.C.S. §6352(a)(1).
- <sup>40</sup> See 42 Pa.C.S. §6351.
- <sup>41</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>42</sup> Griffin, P., and Torbet, P. (Eds.) (2002). Desktop Guide to Good Juvenile Probation Practice. Pittsburgh, PA: National Center for Juvenile Justice.
- <sup>43</sup> In Pennsylvania, many juvenile court judges also have the option of ordering juveniles to be supervised by probation officers right in their schools.

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<sup>44</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>45</sup> Rule 515, Pa.R.J.C.P.

<sup>46</sup> 42 Pa.C.S. §6352(a)(6).

<sup>47</sup> See *Tate v. Short*, 401 U.S. 395, 91 S. Ct. 668, 28 L. Ed. 2d 130 (1971).

<sup>48</sup> 43 P.S. §41 et seq.

<sup>49</sup> 42 Pa.C.S. §6352(a)(6).

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

<sup>52</sup> 37 Pa. Code §§200.501-200.514.

<sup>53</sup> See 42 Pa.C.S. §9728.

<sup>54</sup> 42 Pa.C.S. §9728(g.1).

<sup>55</sup> 18 P.S. §11.1101.

<sup>56</sup> 42 Pa.C.S. §6352(a)(6).

<sup>57</sup> Maloney, D., and Bazemore, G. (December 1994) “Making a Difference—Community Service Helps Heal Troubled Youths.” *Corrections Today* 56(7).

<sup>58</sup> 42 Pa.C.S. §6352(a)(3) and (4).

<sup>59</sup> 42 Pa.C.S. §6352.

<sup>60</sup> 42 Pa.C.S. §6352(b).

<sup>61</sup> 42 Pa.C.S. §6353(a).

<sup>62</sup> 42 Pa.C.S. §6353(a).

<sup>63</sup> 42 Pa.C.S. §6301.

<sup>64</sup> 42 Pa.C.S. §6352(c) and Rule 512 D (4), Pa.R.J.C.P.

<sup>65</sup> 18 P.S. §11.201(8.1).

<sup>66</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>67</sup> Coccozza, 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>68</sup> 42 Pa.C.S. §6356.

<sup>69</sup> 50 P.S. §4101 et seq.

<sup>70</sup> 50 P.S. §7101 et seq.

<sup>71</sup> See 50 P.S. §4406.

<sup>72</sup> See 50 P.S. §7303, 7304.

<sup>73</sup> 42 Pa.C.S. §6339.

<sup>74</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>75</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>76</sup> 71 P.S. §1690.112a.

<sup>77</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

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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/](http://www.drugabusestatistics.samhsa.gov/).

<sup>78</sup> 75 Pa.C.S. § 3802.

<sup>79</sup> 75 Pa.C.S. § 3804 (e)(2)(v)

<sup>80</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>81</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>82</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)): 555-76S.

<sup>83</sup> *Ibid.*

<sup>84</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>85</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>86</sup> 42 Pa.C.S. § 6358 and §§6401-6409.

<sup>87</sup> Acoca, Leslie. (2001). "Investing in Girls: A 21st Century Strategy." *Juvenile and Family Justice Today* 10(1): 12-19. See also Kerig, P. and Ford, J. (2014). "Trauma among Girls in the Juvenile Justice System." Available at National Child Traumatic Stress Network: <http://www.nctsn.org/products/trauma-among-girls-juvenile-justice-system-2014>

<sup>88</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>89</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>90</sup> Snyder, H. (2005). *Juvenile Arrests 2003*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

<sup>91</sup> United States Fire Administration. *Arson and Juveniles: Responding to the Violence*. Available online: <http://www.usfa.fema.gov/>.

<sup>92</sup> National Association of State Fire Marshals. (July 2000). *Juvenile Firesetter Intervention Research Project: Final Report*. Available online: <http://www.firemarshals.org/>.



# Chapter 10

## Probation and Placement Reviews, Nunc Pro Tunc Relief, and Termination of Court Supervision

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### Summary of Contents

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

- § 10-1 Probation and Placement Reviews, Nunc Pro Tunc Relief, and Termination of Court Supervision in General
- § 10-2 Best Practices
- § 10-3 Review Procedures
- § 10-4 Nunc Pro Tunc Hearings
- § 10-5 Probation Monitoring and Enforcement
- § 10-6 Probation Modification and Revocation
- § 10-7 Monitoring and Planning for the Return of Juveniles from Placement
- § 10-8 Special Disposition Review Procedures for Juveniles Committed to Placement for Specified Acts of Sexual Violence
- § 10-9 Cessation of Court Supervision

### Key Statutes

- 42 Pa.C.S. §6324 (taking into custody for probation violation)
- 42 Pa.C.S. §6351 (disposition of dependent child)
- 42 Pa.C.S. §6352.1 (treatment records)
- 42 Pa.C.S. §6352.2 (interagency information sharing)
- 42 Pa.C.S. §6353 (limitation on and change in place of commitment)
- 42 Pa.C.S. §6358 (assessment of delinquent children by state sexual offenders assessment board)
- 42 Pa.C.S. Chapter 64 (court-ordered involuntary treatment of certain sexually violent persons)

- 42 Pa.C.S. § 9728 (collection of restitution, reparation, fees, costs, fines and penalties)
- 18 P.S. § 11.201 (personal injury victim’s right to submit comment or testify at disposition review, right to notice of and opportunity to object to transfers)
- 55 Pa. Code § 3800 et. seq.

## Rules

- Rule 120, Pa.R.J.C.P. (definitions)  
“Advanced Communication Technology”  
“Educational Decision Maker”  
“Service Provider”
- Rule 128, Pa.R.J.C.P. (Presence at Proceedings)
- Rule 129, Pa.R.J.C.P. (Appearance by Advanced Communication Technology)
- Rule 132, Pa.R.J.C.P. (Victim’s Presence)
- Rule 139, Pa.R.J.C.P. (Use of Restraints on the Juvenile)
- Rule 140, Pa.R.J.C.P. (Bench Warrants for Failure to Appear at Hearings)
- Rule 141, Pa.R.J.C.P. (Bench Warrants for Absconders)
- Rule 147, Pa.R.J.C.P. (Educational Decision Maker)
- Rule 240, Pa.R.J.C.P. (Detention of Juvenile)
- Rule 241, Pa.R.J.C.P. (Notice of Detention Hearing)
- Rule 242, Pa.R.J.C.P. (Detention Hearing)
- Rule 512(c), Pa.R.J.C.P. (Colloquy and Inquiry of Post-Dispositional Rights)
- Rule 515, Pa.R.J.C.P. (Dispositional Order)
- Rule 516, Pa.R.J.C.P. (Service of the Dispositional Order)
- Rule 600, Pa.R.J.C.P. (Summons and Notice of the Commitment Review, Dispositional Review, and Probation Revocation Hearing)
- Rule 605, Pa.R.J.C.P. (Detaining Juvenile for Modification of the Dispositional Order or Violation of Probation)
- Rule 610, Pa.R.J.C.P. (Dispositional and Commitment Review)
- Rule 612, Pa.R.J.C.P. (Modification or Revocation of Probation)
- Rule 620, Pa.R.J.C.P. (Post-Dispositional Motions)
- Rule 622, Pa.R.J.C.P. (Motion for *Nunc Pro Tunc* Relief)
- Rule 625, Pa.R.J.C.P. (Hearing and Findings on Motion for *Nunc Pro Tunc* Relief).
- Rule 628, Pa.R.J.C.P. (Order of Court on Motion for *Nunc Pro Tunc* Relief)
- Rule 630, Pa.R.J.C.P. (Loss of Court Jurisdiction)

- Rule 631, Pa.R.J.C.P. (Termination of Court Supervision)
- Rule 632, Pa.R.J.C.P. (Early Termination of Court Supervision by Motion)
- Rule 1608 D (1) (k), Pa.R.J.C.P. (Additional Findings for Shared Case Management Cases or Dually Adjudicated Youth)

## **JCJC Standards and Resources**

- Disposition Review Hearing Checklist for Juvenile Judges/Hearing Officer (Revised 12/20/17)
- Dispositional Review Hearing Reference Guide for Juvenile Court Judges/Hearing Officer (Revised 12/20/17)
- General Practice Hearing Checklist for Juvenile Judges and Hearing Officer (Revised 12/20/17)
- JJSES Monograph entitled “Pennsylvania Juvenile Justice System Enhancement Strategy: Achieving Our Balanced and Restorative Justice Mission Through Evidence-Based Policy and Practice, April 2012 (JJSES Monograph 1)
- JJSES Monograph entitled “Advancing Balanced and Restorative Justice Through Pennsylvania’s Juvenile Justice Enhancement Strategy, November 2015 (JJSES Monograph 2)
- Home Passes to Delinquent Children in Placement
- Aftercare Services

### **§10-1 Probation and Placement Reviews, Nunc Pro Tunc Relief, and Termination of Court Supervision in General**

The issuance of a disposition order does not terminate a juvenile court judge’s responsibility in a delinquency case. If the court has imposed restrictions or conditions such as restitution, treatment, or community service on the juvenile, it must stand ready to enforce them. If it has ordered evidence-based interventions, it must ensure that programs targeted to the juvenile’s risks are provided. And if the court has caused the juvenile to be removed from his home and placed in a residential facility, it must actively oversee the monitoring of his rehabilitative progress and his safety and well-being. Planning for the juvenile’s successful return to the community must begin immediately, and attention must also be given to the juvenile’s educational needs, medical needs, and family contact. In general, a juvenile court judge must affirmatively monitor compliance with its disposition orders, in order to ensure that they accomplish their intended purposes.

This may mean giving priority—in scheduling and otherwise—to addressing probation violations or reviewing dispositions to ensure that the appropriate treatment is being provided. It may mean taking a keener and more skeptical interest in the assessments and reports of service providers regarding individual juveniles – raising more questions, recalling more individual circumstances, probing deeper should provider representatives seem to fall back on the same boilerplate language for youth after youth.

It may mean making the commitment to visit placement facilities used by the court to see first-hand how they are run and what they are like. But in the long run, it must mean being willing to participate in program planning and budgeting and to lead ongoing efforts to evaluate, expand, and improve the disposition options available to the court at the local and state level.

### **§10-2 Best Practices**

- Although the court is only required to hold placement review or permanency hearings at least every six months, holding more frequent reviews keeps everyone accountable and helps to ensure the adequacy of plans for supervision, treatment, and discharge.<sup>1</sup>
- The judge must allow enough time for these hearings. It is important for the court to receive sufficient information about the juvenile’s treatment plan and progress to determine whether the court’s disposition is accomplishing its intended purpose.
- The judge should make efforts to learn about all treatment providers used by the court and should, if possible, visit residential treatment providers.
- Judges should also be familiar with Department Human Services regulations issued under 55 Pa. Code Chapter 3800, which set forth minimum operational requirements and the rights of juveniles in residential and day treatment.<sup>2</sup> These regulations do not include quality of care standards.
- As in other kinds of hearings, the judge should commence disposition review hearings by introducing him or herself, identifying all persons in the courtroom, announcing the purpose of the hearing, and explaining the procedure that will be followed. Likewise, the judge should encourage the maximum participation of all concerned in the matter, and should take steps to ensure that the courtroom is a trauma-informed environment. (See § 8-10.)

- A representative of the treatment provider who is knowledgeable about the case plan and the juvenile’s progress should be present at the hearing.
  - The judge should utilize motivational interviewing in the courtroom.
  - The judge should always conduct the proceeding in a manner that emphasizes the juvenile’s strengths and accomplishments.
  - The judge must work to ensure that the family is involved in treatment, whether the child is in the community or placement.
  - Court orders should reflect the juvenile’s identified risks/needs and strengths and the evidence-based treatment available to address those risks/needs.
  - The judge should ensure that all hearing participants understand the final order and its justification.
  - The court should review the status of restitution and other financial obligations at each dispositional review hearing to ensure that progress is being made toward the payment of restitution and court fees
  - For youth who have been adjudicated both delinquent and dependent, holding joint delinquency dispositional reviews and dependency permanency hearings is a more efficient way to provide oversight.
  - A court-initiated conference or abbreviated hearing is an efficient way to address particular issues between regularly scheduled review hearings.
  - Motions provide the parties with access to the court between regularly scheduled hearings so that emergent issues needing the court’s attention can be addressed without crowding the court docket.

### **§10-3 Review Procedures**

Chapter 6 of the Pennsylvania Rules of Juvenile Court Procedure, Parts A through D, governs all aspects of post-dispositional procedure.

- **Summons and notice.** The content, form, and service requirement applicable to summonses and notices generally (see § 7-7) also apply to a summons and notice of a commitment review, dispositional review, or probation revocation hearing.<sup>3</sup> A summons must be issued to the juvenile and the juvenile’s guardian before any such

hearing, and the court must provide notice to the attorney for the Commonwealth, the juvenile's attorney, the juvenile probation office, the placement facility (if the juvenile is in placement), and the educational decision maker, if applicable. The attorney for the Commonwealth or its designee must notify the victim of the time, place, and purpose of the hearing.<sup>4</sup>

- ***Detention pending review.*** The Rules authorize the detention of the juvenile in connection with the filing (or anticipated filing within **24 hours**) of a motion for modification of a dispositional order or a motion alleging a probation violation, subject to the general notice, time, and manner of hearing requirements applicable to detention generally.<sup>5</sup>

In such a case, a detention hearing—in which the court would be called upon to determine (1) whether there is probable cause for the modification of the violation of probation alleged and (2) if detention is warranted—must be held within **72 hours**.<sup>6</sup>

The disposition review or probation revocation hearing for a juvenile who is detained must be held within **10 days**, unless a further delay is caused by the juvenile or the juvenile's attorney or is necessary to secure additional evidence.<sup>7</sup>

When a juvenile is detained after being unsuccessfully discharged from a placement, the hearing must be held within **20 days** of discharge.

The Rules do not preclude the emergency transfer of a juvenile from a placement to a detention facility.

A juvenile may not be placed in a county jail or state prison for a juvenile case, even if he is above the age of 18.

- ***Modification of dispositional order.*** Following the filing of a motion for modification of the dispositional order, or a discharge from a placement facility (which may include an emergency transfer to a detention facility pending reconsideration of the disposition), the juvenile must be given a statement of reasons for the motion for modification or discharge, and a review hearing must be held within **20 days**.
- ***Scheduling dispositional reviews.*** The court may schedule a hearing to review a disposition “at any time,” but must do so at least **every 6 months**. As a matter of good practice, dispositional review hearings should be held **every 90 days**, and more often where appropriate. This will help to ensure that rehabilitative progress

is being made, that changing needs are being addressed, and that adequate attention is being given to discharge planning and continuity of care. A juvenile may request an earlier review at any time, as well as a change in treatment or services.

- **Remote hearings.** If the parties agree, a review hearing for a juvenile in a remote facility may be conducted “by teleconferencing, two-way simultaneous audio-visual communication, or another similar method,” as long as the juvenile and the juvenile’s attorney are able to communicate confidentially prior to and during the hearing. **However, in all cases the juvenile must appear in person at least once a year unless good cause is shown.**<sup>8</sup>
- **Scope of Review.** Care must be taken to set expectations for the review in advance of the hearing. The court should hear from all interested parties and should ensure that the case plan addresses the criminogenic needs identified by the Youth Level of Service (YLS) risk/need assessment and builds on the juvenile’s strengths. In addition to the juvenile, counsel for the juvenile and the District Attorney, the court should hear from treatment providers, parents or guardians, the probation officer, the victim, and any guardian ad litem, child protective services worker or educational decision-maker who may be involved in the case. The areas to be covered may, include but are not limited to:
  - frequency and nature of probation contact
  - evidence-based treatment—type, frequency
  - any special conditions imposed by court: e.g. letter of apology, restitution, community service
  - behavior at home or frequency and nature of parental contact (visits, phone contact, home passes, etc.)
  - psychiatric treatment provided and any medications
  - dental and medical treatment
  - pro-social activities, including education (progress toward graduation, behavior in school), vocational training, employment
  - successes and any treatment/program/probation responses
  - setbacks or infractions and any treatment/program/probation responses
  - newly identified risks, needs or strengths, and plan to address
  - discharge planning
  - juvenile’s goals

For youth in placement, judges should be sure to inquire about family contact, including phone calls, visits, family therapy sessions, and home passes. Denial or limitations of visits and phone contacts should not be used as a disciplinary tool.

If it appears during the hearing that there is no family member to assist the juvenile in continuing schooling following placement, the court may appoint an educational decision-maker.<sup>9</sup>

- ***Victims' rights.*** Before a change in disposition is ordered, the court must give the victim an opportunity to give an oral and/or written victim impact statement. If not present, the victim must be notified of the final outcome of the proceeding.<sup>10</sup> The victim must be notified in advance of home passes, community contact, and release.
- ***Colloquies concerning post-dispositional rights.*** If the juvenile is aggrieved by a change in a dispositional order, or whenever a more restrictive dispositional order is entered, the court must conduct a colloquy to satisfy itself that the juvenile is aware of all post-dispositional rights.<sup>11</sup> If a change in disposition results in an out-of-home placement, the court should explain the availability of expedited appellate review of the out-of-home placement pursuant to Pa. R.A.P. 1770.<sup>12</sup>

### §10-4 Nunc Pro Tunc Hearings

A juvenile seeking retroactive correction of an earlier ruling may file a motion with the Clerk of Courts for ***nunc pro tunc*** relief.<sup>13</sup> Such a motion must be filed as soon as possible, but no later than **60 days** after the error is made known.

A judge must assign new counsel if ineffective assistance of counsel is the basis of the claim. Rule 622C specifies the required contents of the motion. The Commonwealth may file an answer to the motion which must be filed within **10 days** of receipt of the motion pursuant to Rule 622D. The court may order the Commonwealth to file an answer within a time frame set by the court.

- ***Hearings.*** An evidentiary hearing must be conducted as soon as possible but no later than **30 days** after filing the motion unless the judge finds that good cause is shown to extend the time for investigation and preparation.
- ***Granting motion without a hearing.*** A judge may grant the motion without a hearing if sufficient facts exist in the record to warrant relief. The motion must be granted within **30 days** of the filing of the motion unless an extension is granted. A

court may grant relief on some issues and order a hearing on the other issues. Findings of fact and conclusions of law must be set forth in the order.

- **Summary dismissals.** The court must give notice to the parties of its intention to dismiss the motion without hearing, giving the reasons for dismissal. The court may order such dismissal if it concludes that no genuine issues exist concerning any material fact, that the juvenile is not entitled to relief, that or no purpose would be served by any further proceeding.

The juvenile may respond within **20 days** of the date of the notice. The judge may then order the motion dismissed, grant leave to file an amended motion, or direct that the proceedings continue. The court may also dismiss some issues while ordering a hearing on others. Findings of fact and conclusions of law must be set forth in the order. The order must also include a notice of the right to appeal and the time within which the appeal is to be taken.

A summary dismissal is also authorized if a judge determines that a motion involving the same issue or issues was previously filed by the juvenile and determined adversely to the juvenile.

- **Findings.** At the conclusion of the hearing the judge must state findings of fact and conclusions of law for all material issues raised on the record. The court must also issue an order denying relief or granting a specific form of relief.
- **Orders for Nunc Pro Tunc Relief.** The Court may issue *nunc pro tunc* relief as to:
  - the detention of the juvenile
  - whether a new adjudicatory hearing is granted
  - correction of the adjudication of delinquency
  - correction of the disposition
  - termination of court supervision and/or
  - other matters that are appropriate

The order is required to include a statement of the right to appeal from the final order disposing of the *nunc pro tunc* motion and the time limit within which the appeal must be taken.

- **Denial by Operation of Law.** If a judge fails to decide a motion or grant an extension within **30 days**, the motion will be deemed denied by operation of law and it will not be subject to reconsideration. The clerk of courts is required to enter an order declaring that the motion is denied by operation of law pursuant to Rule

625(E) and advising the juvenile of the right to appeal and the time within which the appeal is to be taken.

## **§10-5 Probation Monitoring and Enforcement**

The court should take the following steps to ensure that probation is an effective disposition:

- ***Stick to a limited number of firm, enforceable, pertinent conditions.*** As has already been noted (see § 9-8), one basic error many courts make is to impose a long list of “standard” conditions and restrictions as part of every probation disposition – inevitably including some that are meaningless, some that are unsuitable, and some that will get no enforcement priority at all. The better practice is to specify concrete, individualized goals related to community protection, accountability, and competency development. The focus should be on monitoring progress toward those goals. Before the hearing ends, the court should satisfy itself that the juvenile understands what he is required to do.
- ***Clearly explain the positive consequences of following the court’s order and the negative consequences of violating it.*** This may mean taking extra time at the conclusion of the disposition hearing to explain the consequences of compliance or noncompliance to the juvenile and his family, rather than leaving it to the probation department.
- ***Acknowledge and recognize progress and pro-social behaviors and strengths.*** Courts must give significant attention to positive behaviors and strengths to ensure that these behaviors continue. Pro-social behaviors are promoted through recognition, acknowledgement and affirmation. Research shows that greater use of rewards and incentives as opposed to sanctions is more likely to improve offender motivation to change. Effective rewards include written notes, public praise and acknowledgement as well as lessened control, including fewer drug tests or earlier discharge from supervision.
- ***Understand the reasons for noncompliance before responding.*** Juveniles who violate probation conditions—missing restitution payments, skipping appointments—may be sending signals; where possible, judges should make some effort to find out what the signals might mean. Inquiry should be made about observed behaviors in all areas of the juvenile’s life as well as any changes in circumstances, significant

life events or anniversaries. This may also mean ordering further mental health or drug and alcohol evaluations.

***Use a graduated approach to sanctioning.*** It is not practical or even desirable to respond to every infraction with probation revocation or institutionalization. Every jurisdiction should have a continuum of intermediate sanctions for probation violations—additional essays, community service, earlier curfews, and stricter levels of supervision—that can be gradually increased in intensity as infractions continue. Sanctions for non-

compliance should be determined in advance. Sanctions for juveniles who violate terms of supervision should be administered in accordance with research-informed policy developed to maximize their results.

***To be effective, sanctions should be certain, swift, and proportionate.***

Based on research, overly harsh responses to unacceptable behavior can actually be counterproductive to the desired result. An effective graduated sanction policy is one that clearly defines desired behaviors and consequences of behaviors.

Delineated sanctions should be administered equitably for greater effect. A structured sanctioning response to behavior also aids in promoting consistency among staff.<sup>14</sup>

- ***Use care when imposing community service as a sanction.*** Community service is an excellent way for courts to help juveniles develop competencies and become incorporated into the fabric of the community. However, imposition of community service as a punishment may discourage juveniles from participating in community service in the future. If community service is imposed as a sanction it should be meaningful and directly related to the harm caused by the infraction. The court should explain the reasons for its order.
- ***Develop a uniform sanction and reward policy.*** The administrative judge should lead discussions on a local level to develop a sanction and reward policy that ensures consistent decisions by juvenile probation officers, juvenile court hearing officers and judges.

## §10-6 Probation Modification and Revocation

In general, when presented with a request to modify or revoke probation as a result of a juvenile's noncompliance, courts should opt for modification rather than revocation for less severe infractions. The response to behavioral health issues and/or drug and alcohol use should in most cases be an assessment, evaluation, or review to determine whether the treatment plan should be modified. More broadly, as noted above, the court should not have to choose between punishing every instance of noncompliance with revocation or ignoring it entirely. An array of swift and certain sanctions, proportional to various offense levels and progressively increasing in seriousness, should be available to choose from – with revocation and institutional commitment at the end of the line.

- **Initiation of Modification or Violation.** A motion to modify or revoke probation must be filed in accordance with the filing and service requirements applicable to motions in delinquency cases generally. (See § 7-6).<sup>15</sup>
- **Detention.** A juvenile may be detained in connection with the filing (or the anticipated filing within **24 hours**) of a motion to modify or revoke probation. If the juvenile is detained, the hearing on the proposed modification or revocation must be held within **10 days** of the detention hearing (which in turn must have been held within **72 hours** of the initial detention). If the juvenile is not detained, the hearing on must be held “promptly.”<sup>16</sup>
- **Modification and Violation Hearings.** While neither the Juvenile Act nor the Rules contain any further guidance regarding the conduct of modification/revocation hearings, the U.S. Supreme Court has held that due process requires that the defendant in a probation or parole revocation proceeding be given an opportunity to present evidence, to confront and cross-examine witnesses, and to show that, even if a violation occurred, the circumstances do not warrant revocation. A juvenile should be advised of these rights on the record before any admission to a violation is accepted.

Victims must be afforded be opportunity to be heard at any violation hearing.

If the court grants the motion to modify/revoke, it must state the grounds for the modification and issue another dispositional order setting forth the new terms and conditions in accordance with Rule 515.<sup>17</sup>

A colloquy and inquiry of post-dispositional rights (See Rule 512 C) must be conducted whenever a juvenile is aggrieved by a change in the dispositional order. If a juvenile's probation is revoked and out-of-home placement is ordered, the court

must also explain to the juvenile the availability of review of the placement pursuant to Pa.R.A.P. 1770.<sup>18</sup>

## § 10-7 Monitoring and Planning for the Return of Juveniles in Placement

Once a juvenile enters residential placement pursuant to a dispositional order, the Juvenile Act and the Rules require that courts monitor and review the placement by conducting regular review hearings. The purpose of these hearings is to ensure that the juvenile is receiving necessary treatment and services, that the conditions of the disposition are being met, and that placement continues to be necessary.<sup>19</sup>

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

Ideally, a treatment plan or individual service plan (ISP) should be developed for the juvenile within **the first 30 days** of placement. The ISP should clearly define the treatment objectives and the services, programs and treatment to assist the juvenile in meeting these objectives.

The ISP should be connected to the mission of “balanced and restorative justice”, and treatment objectives should address community safety and protection, victim awareness and accountability, and competency development. The ISP should also address the criminogenic needs identified in the Youth Level of Service/Case Management Inventory (YLS).

Although an ISP will usually be developed within the first 30 days of placement, it is important to remember that the ISP is a working document, which should be flexible enough to address the changing needs and circumstances of the juvenile.

At each placement review hearing, the court should carefully review the treatment plan to ensure that it is connected to the identified rehabilitative needs of the juvenile. The court should also ensure that the ISP is revised, when necessary, to meet the needs of the juvenile and that the juvenile is moving towards discharge.

Well-run courts use opportunities presented by placement review hearings to oversee treatment plan development, and to ensure that plans focus on reducing assessed risk factors that will have the greatest impact on recidivism, emphasize strengths, identify triggers, and customized to reflect the juvenile’s culture, gender, language, disabilities and mental health.<sup>20</sup> Routine review hearings also afford opportunities to measure the rehabilitative progress of the juvenile in placement, to review the necessity of continued

placement, to address any obstacles that may still stand in the way of a return to the community, and to ensure that there is a workable reintegration plan in place.

### ***Timing of Placement Reviews***

- ***Routine placement reviews.*** When a juvenile is in placement the court must hold a placement review hearing (sometimes referred to as a commitment review hearing) at least **every 6 months**. The juvenile must **appear in court at least once a year**.<sup>21</sup> These should be regarded as minimum requirements; good practice may require more frequent hearings, in order to increase judicial oversight and hold all parties accountable. In particular, an initial review hearing within 3 months of placement affords a good opportunity to ensure that the right services are in place and to “tweak” the treatment plan if necessary.
- ***Permanency hearings.*** For dependent children who have been adjudicated delinquent (“dually adjudicated youth”) and who are in court-ordered placement, the court must also hold a permanency hearing pursuant to Rules 1607 & 1608 at least **every 6 months**. The 6-month review is required to ensure federal funding under Title IV-E of the Social Security Act. (See Chapter 3.) The juvenile must appear in court at least every 6 months.
- ***Extension/modification hearings.*** The court must hold a hearing whenever there is a request to extend or modify a placement order “in order to effectuate the original purpose for which the order was entered.”<sup>22</sup> The hearing must be held within **20 days** of a request for a change in the dispositional order.<sup>23</sup>
- ***Facility transfer hearings.*** Whenever an institution holding a placed juvenile seeks to transfer the juvenile to a more secure facility the committing court must hold a hearing on the proposed transfer. Likewise, when a secure institution gives notice that a juvenile’s progress warrants a transfer to a less secure facility, and either the committing court or the Commonwealth objects, the court must hold a hearing on the propriety of the transfer. If, after a hearing, the court modifies disposition or enters a new disposition which transfers the juvenile to a more secure placement, a colloquy and inquiry of post-dispositional rights (See Rule 512 C) must be conducted.<sup>24</sup>

### ***Dually Adjudicated Youth***

For youth who have been adjudicated both dependent and delinquent (“dually adjudicated youth”), holding joint delinquency dispositional reviews and dependency permanency

hearings is a more efficient way to provide oversight. Dual hearings enable the court to more clearly define the responsibilities of the probation department and the child welfare agency and can help streamline services and prevent a duplication of services and inconsistent treatment plans. It can also lead to a smoother transition from placement to the community. Remember to allow more time for these hearings as more attorneys will be involved and more witnesses will likely testify.

### ***Addressing Emergent Issues***

It is important that courts overseeing placement have flexible mechanisms for dealing with urgent issues that arise between regularly scheduled review hearings. The status review hearing is one efficient way to resolve such issues between the regularly scheduled hearings. It is not necessary for the probation department or the provider to submit a complete report at the status review hearing.

Motions also provide an effective way to address issues that need to be brought to the court's attention between placement review hearings. Motions provide the parties with access to the court between regularly scheduled hearings and issues can be addressed without crowding the court docket.

### ***Dispositional Review Issues***

In addressing the issues to be determined at a dispositional review hearing, the court should consider the "balanced and restorative justice" mission of Pennsylvania's juvenile justice system and the application of the JJSES to this mission (see Chapter 2). In particular, the court should continue to review the case plan development, which should have been initiated at the time of disposition or upon admission to placement.

At dispositional review hearings, juvenile court judges should have basic questions for all of the principal parties.

#### **Questions for the Service Provider**

##### *Community Safety and Protection:*

- What assessments have been performed?
- Are you aware of the criminogenic needs identified in the YLS? How is the treatment plan addressing these needs?
- What services is the juvenile receiving? Why?
- Is the juvenile responsive to treatment?

- Is the juvenile making progress?
- Has the juvenile exhibited any concerning behaviors?
- Is the juvenile taking medication? Is so, why and how has the juvenile responded to the medication?
- What contact has the juvenile had with family members or other supports?
- Are the parents invested in the treatment plan? Have they had the opportunity to visit the program?
- Describe the interaction of the juvenile with the family? Are there any safety concerns that might warrant a referral to C&Y?
- Has the juvenile had home visitation. If not, why? Was the home visitation successful?
- Has a relapse prevention plan been developed? What is the plan?

*Accountability:*

- Is there any opportunity to complete community service or earn money to pay restitution?
- Has the juvenile completed an impact of crime program?
- Has the juvenile gained insight into his offending (empathy)?

*Competency Development:*

- Where does the juvenile attend school? Does he have an IEP? What grade level or grade is the juvenile in? What classes is he taking, what are his grades and what progress is he making towards graduation?
- Is the appointment of an Educational Decision Maker necessary?<sup>25</sup>
- Is the juvenile engaged in any vocational programs?
- Is the juvenile receiving other independent living services?
- Is the juvenile engaged in any extracurricular activities (on grounds or off grounds)?

*Other:*

- What are the strengths of the juvenile? What are the challenges?
- What are the strengths of the family? What are the challenges?

- Does the juvenile have any special medical, physical or mental health needs?
- Is the juvenile receiving any therapeutic services or prescribed any medications?
- Is the provider using Evidenced-Based Programming?

### **Questions for the Probation Department**

- How do the interventions/services address the criminogenic needs identified in the YLS?
- Describe the progress made in achieving the goals set forth in the case plan.
- How much contact with the juvenile since the last hearing?
- How much contact with the juvenile's family?
- What are the strengths of the juvenile and his family? What are the challenges?
- What steps are being taken to prepare the family for return?
- Have there been home passes? If so, were they successful?
- Is there adequate family support and structure for this juvenile?
- Who is helpful or harmful in the juvenile's life?
- Are there any safety concerns that might warrant a referral to C&Y?
- What is the discharge goal?
- What is the plan for education or employment?

### **Questions for the Juvenile**

- Do you feel safe?
- What are your goals/plans?
- Describe your strengths.
- What are your challenges?
- What progress have you made? How do you feel about the progress that you have made?
- Do you feel that the treatment and services are helping you? Why or why not?
- Are you taking any medications? What medications? How do they make you feel?

- What have you learned in this program?
- What changes have you made and will you make when you are discharged?
- What would you like the court to order today?

### **Questions for the family**

- Have you had an opportunity to visit the program? How do you feel about the program and the services that your child is receiving?
- Do you understand the treatment and services that your child is receiving and why?
- What contact have you had with the probation officer and the providers?
- If there has been home visitation, how did it go?
- Do you have any concerns with the safety of your child?
- Are you in agreement with the recommendations of the provider and/or the probation officer? If not, what would you like the court to order today?
- If recommended, are you willing to engage in family therapy with your child or accept services in your home?
- Do you understand the services that your child is receiving?
- Are you aware of the medication that your child is prescribed? Do you know why? Do you have any concerns about the medication?

### ***Disposition Review for Dually Adjudicated Youth***

In addition to ensuring that the juvenile is receiving necessary treatment and services and that the conditions of the disposition are being met, the court must explore additional issues and make additional findings in cases involving “dually adjudicated” or “shared case responsibility” youth in placement. In general, the purpose of a “permanency hearing” in a dependency case is to review the child’s permanency plan, the date by which the permanency goal might be achieved, and whether the placement continues to be best suited to the safety, protection, and welfare of the child.<sup>26</sup> Accordingly, in review hearings involving dually adjudicated youth, the court must make these additional inquiries:

- What is the permanency plan? What is the likely date that the plan will be achieved?
- Is the permanency plan appropriate?
- Did the agency make reasonable efforts to finalize the permanency plan?

- What are the views of the juvenile?
- For juveniles 14 years of age and older, what are the necessary services to transition to successful adulthood?
- For juveniles 14 years of age and older, is the juvenile making progress towards graduation?
- For juveniles 14 years of age and older, is the juvenile placed in the least-restrictive setting that will enable him to develop independent living skills?
- For juveniles 14 years of age and older, what efforts have been made to develop and maintain connections with supportive adults regardless of placement type?
- For juveniles 14 years of age and older, what job readiness services have been provided and what employment/career goals have been established?
- For juveniles 14 years of age and older, are there any physical or behavioral health needs that will require continued services into adulthood?
- For juveniles 14 years of age and older, what steps are being taken to ensure that the juvenile will have stable housing when discharged from care?
- For juveniles 18 years of age and older, what is the reason for continued jurisdiction of the court?
- Did the agency take sufficient steps to ensure the reasonable prudent parent standard?
- Did the agency take sufficient steps to ensure that the juvenile is engaging in age-appropriate activities?
- If the permanency plan is “Another Planned Permanent Living Arrangement” (APPLA), the court must make the APPLA findings required by Pa. R.J.C.P. 1608 D (2).

### ***Victim Input***

Prior to the adoption of the Rules, the Crime Victims Act gave victims of personal injury crimes the right to be notified of disposition review hearings at their request, to submit written comment or present oral testimony at such hearings, and to have their views considered by the court.<sup>27</sup> The law also guaranteed any personal injury crime victim who requests it the right to receive prior notice and submit a written objection whenever the

transfer or release of a juvenile offender is proposed that is contrary to a previous court order or placement plan approved a dispositional review hearing.<sup>28</sup>

However, the Rules have essentially expanded these rights to the victims of all juveniles who are subject to dispositional review proceedings. The attorney for the Commonwealth or designee is to notify the victim of the date, time, place and purpose of every dispositional review hearing. Whenever there is a request for a change in the dispositional order, other than a motion to revoke probation as provided in Rule 612, notice and an opportunity must be given to all parties and the victim. Prior to ordering a change in the disposition, the court is to give the victim the opportunity to submit an oral and/or written victim impact statement if the victim so chooses.<sup>29</sup>

At hearings in which victims are present, the judge should welcome them and solicit their full participation using the basic techniques that have already been described in connection with disposition hearings. (See "Victim Input at Disposition," §9-6.)

If the victim is not present and no impact statement has been presented, it is the responsibility of the court to inquire whether the victim requested advance notice of the hearings, and if so, whether notice was provided, whether efforts were made to solicit written input and whether assistance was offered, etc., and whether the victim's position is known by any person at the hearing. If the victim is not present, the victim is to be notified of the final outcome of the proceeding. In counties that receive funding from the Victims of Juvenile Offenders Program (VOJO) administered by the Pennsylvania Commission on Crime and Delinquency, these duties should be entrusted to the Victim/Witness Coordinator.

In dispositional review decision-making, regardless of whether the victim has provided input, the judge must carefully consider the nature of the offense and its impact on the victim in determining what is needed to render the juvenile accountable and what measures may be necessary to protect the safety of the public.

### ***Aftercare/Reentry Planning***

Aftercare or re-entry services for committed juveniles represent an attempt to build a bridge between the institutional and community environments, so as to help assure the successful transition from residential placement to life in the community. While aftercare approaches vary, any well-designed strategy will feature some combination of (1) *preparatory planning* during placement; (2) *transitioning* from the residential facility to the community, perhaps including some testing of the juvenile's readiness through home visits

and other brief excursions outside the walls; and (3) *post-release supervision and services* designed to help the juvenile safely adjust and reintegrate into the community.

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

To fulfill these responsibilities, the judge should:

- ***Be familiar with programs and services.*** Ideally, judges should visit the residential facilities to which the court commits juveniles, and meet the people who operate them. This is by far the best practice. However, if it is not possible for judge to visit the programs, judges should insist that probation staff do so, and that they regularly report to the court regarding what they see. Judges should also be familiar with other services or programs that they must use for reentry or aftercare. Ideally, judges should not order services or programs with which they are not familiar.

It is important for judges to have knowledge of what services are being offered by a provider and what populations are best served by particular programs. Where it is necessary to make use of a program for the first time, the judge should do research about the program or speak with other judges who have used it.

Judges must learn from dispositional successes and failures, and keep track of who has thrived in particular placements and who hasn't, and what has made the difference. As necessary, judges should take a leadership role when it appears change or expansion in the existing continuum of dispositional options is required.

- ***Set clear expectations at disposition for the juvenile, the probation department and the placement facility.*** Placement should be seen as a period of intensive preparation for post-placement life in the community. In other words, there is work to be done, and everyone involved must understand this. The juvenile and the juvenile's attorney need to know what the court expects in the way of participation in treatment and counseling, education, restitution, community, service, etc.—both the scope of the work and the way it relates to a successful return home. Placement facility staff must be informed of specific conditions and goals the court is setting for the juvenile's placement, as well as ongoing information and reporting responsibilities. Juvenile probation staff must also

understand their responsibilities with respect to collaborating with placement staff in planning, maintaining frequent contact with the juvenile during the placement phase, staying in touch with the juvenile's family, and making sure that post-placement services and supports are lined up and ready when the juvenile needs them.

- ***Ensure that the juvenile probation department collaborates with residential treatment staff in planning.*** One of the primary targets of Pennsylvania's efforts to improve aftercare statewide is the frequent disconnect between residential treatment programming and aftercare planning. (See sidebar, "17 Principles of a Comprehensive Aftercare System.") Whenever a youth is ordered into placement, facility staff are required by DHS regulations to draw up a written "Individual Service Plan (ISP)" for the youth during the first 30 days.<sup>30</sup> Because they often lack input from juvenile probation, however, these plans tend to focus primarily on institutional expectations. Even when they are appropriately individualized, these plans may have very little connection with real-life expectations for the youth upon his return to the community.

In order to ensure that the placement phase is as productive a preparation for post-institutional life as possible, the court should use its authority to see that the juvenile probation department is participating in a coordinated planning process—contributing information on the juvenile's background and needs (YLS assessment, copies of reports from psychological or psychological assessments, school records, information on physical health and medications, information on family members and supports, etc.), making clear what the post-release expectations are, and helping to develop a single joint plan that integrates both institutional treatment and aftercare services, which can be refined as the juvenile nears release.

In reviewing the adequacy of aftercare plans, the court should look for the use of skill-building and tools such as modeling, reinforcement, and role-playing; cognitive behavioral interventions, which are designed to restructure problematic thinking patterns and attitudes; and evidence-based programming and interventions.<sup>31</sup>

- ***Ensure that the juvenile probation department visits juveniles in placement regularly.*** Again, the court's authority is needed to enforce the expectation that juvenile probation officers make regular trips to placement facilities, meeting privately with juveniles on their caseloads as well as treatment and program staff, and contributing their views at release staffings. This has always been good probation practice. The JCJC Standards Governing Aftercare Services, which spell out what judges should generally expect of probation departments in the way of aftercare planning and services, call for

monthly probation officer visits to facilities, both to monitor the juvenile's progress and to confer with the facility's staff.<sup>32</sup>

- ***Conduct meaningful dispositional review hearings.*** A detailed substantive dispositional review hearing is what ultimately drives good aftercare planning. The dispositional review hearing is the one forum in which all the parties are assembled and answerable to the hearing is the one forum in which all the parties are assembled and answerable to the court regarding the progress that is being made toward the ultimate goal of successful reintegration.

It is essential, in scheduling these cases, that judges allow sufficient time to make the detailed inquiries and determinations that are required. As explained in detail above, judges should have basic questions at each dispositional review hearing for probation staff, residential treatment staff, the juvenile, the parents or caregivers, and others, in order to assess progress in achieving established goals and the quality of the aftercare plan.

Judges should explain expectations and reasons on the record and make sure that all concerned understand what is expected of them and why. Invite the parties to ask questions about what has been or will be ordered.

At every hearing, the court should discuss the discharge plan to ensure that the providers are working towards discharge. The discharge plan should be implemented upon entry into placement, but should be a "work in progress," taking into account the progress made, any changes in family situation, and the juvenile's desires.

The court should consider ordering the re-administration of the YLS prior to discharge to determine whether the criminogenic needs have been sufficiently addressed. If a program has been analyzed under the Standardized Program Evaluation Protocol (SPEP), before releasing a juvenile from residential placement or from a program, the court should determine whether the juvenile was placed in the right program; whether the services provided were implemented with fidelity, and addressed criminogenic needs; and whether the juvenile received the right "dosage" of these services.<sup>33</sup>

- ***Enter sufficiently detailed court orders.*** Judges must enter court orders that are sufficiently detailed to provide clear direction to probation, residential treatment staff, the juvenile and his parents or caregivers, and when applicable, the Children and Youth caseworker, regarding the aftercare plan and its implementation.

A good court order should clearly set forth the findings of fact that support the court's decisions. It should include the strengths and accomplishments of the parties. It should also clearly set forth the expectations of the court, and be written in plain language so that most people (assuming a 5<sup>th</sup> grade reading level) can understand it.

- ***Ensure that juveniles return from placement with necessary documentation and a supportive adult.*** The court should ensure that juveniles discharged from placement have all necessary documentation (birth certificate, social security card, state I.D.) and a least one named supportive adult. This is especially important for juveniles who will not return home upon discharge from placement.

### ***Transition from Placement to Home***

In most cases, juveniles in residential placement, especially secure placement, present a higher risk to the safety of the community as well as higher risk to recidivate. Most placement facilities provide a high level of structure and supervision that many of the juveniles have not experienced prior to entering placement. Accordingly, it is important to consider incremental decreases in the levels of supervision before returning a juvenile to home and community and before termination of supervision. This is particularly true for juveniles in secure placement and for juveniles in residential sex offender treatment programs.

### ***Home Passes***

Home passes are critical to the successful transition of a highly structured setting of residential programs to home, where there may be little or no structure or supervision. Home passes afford the court an opportunity to assess the capacity of the parents or guardians to provide appropriate structure and supervision; to identify issues in the community or in the juvenile's family relationships that might complicate reunification; and to determine what services are necessary to increase the probability of successful return home.

The JCJC Standards Governing Home Passes to Delinquent Children in Placement <sup>34</sup> lay out detailed procedures that should be adopted for authorizing and arranging short-term home visits for committed juveniles. While such visits are essential to an orderly transition from institutionalization to freedom and responsibility, home passes should be granted only with due consideration and appropriate safeguards for the public and advance notification to any victim who has requested it.<sup>35</sup>

Prior to the first home pass, the provider and the probation department should meet with the juvenile and the caregivers to set clear expectations, goals, and objectives for the home pass (curfew, hanging out with friends, activities, therapy, etc.)

### ***Providing Post-Placement Support to the Juvenile as a Dependent Child***

Finally, if a juvenile in residential placement or under supervision has satisfied treatment goals and remains in placement or under supervision because there is no safe and appropriate family member or discharge resource, then consideration should be given to making a referral to the county children and youth agency for the filing of a dependency petition. A juvenile who has successfully achieved treatment goals and met the conditions of supervision should not remain under supervision as a delinquent child merely because he does not have a place to live. Affording dependency services in such a case removes the stigma associated with being on probation, allows the court to close the delinquency matter, and may allow the juvenile's delinquency record to be expunged at an earlier date.

Even if the county children and youth agency is not receptive to filing dependency petitions in such cases, the court should be aware that the Dependency Rules provide that any person (i.e. the juvenile's counsel or juvenile probation officer) can file an application with the court to file a dependency petition.<sup>36</sup> If such an application is filed, the court must conduct a hearing within **14 days** to determine if there are sufficient facts alleged to support a petition of dependency; and whether the person applying for the petition is a proper party to the proceedings.<sup>37</sup>

## SIDEBAR

### 17 Principles of a Comprehensive Aftercare System

A broad-based effort to improve aftercare—featuring enhanced statewide monitoring and technical assistance, policy coordination, and a variety of pilot experiments at the county level—was undertaken between 2004 and 2010 as a component of Pennsylvania’s *Models for Change* partnership with the John D. and Catherine T. MacArthur Foundation. As part of this work, the Pennsylvania Commission on Crime and Delinquency, the Juvenile Court Judges’ Commission, the Pennsylvania Council of Chief Juvenile Probation Officers, and the Pennsylvania Departments of Public Welfare (now Human Services) and Education committed to the following joint statement of the principles of a comprehensive aftercare system:

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

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

**END SIDEBAR**

## **§ 10-8 Special Disposition Review Procedures for Juveniles Committed to Placement for Specified Acts of Sexual Violence**

Juveniles committed to placement following adjudication for certain sex offenses may be subject to special disposition review procedures, pursuant to a law providing a civil commitment alternative to discharge at age 21 for “sexually violent delinquent children” in need of continued involuntary treatment.<sup>38</sup>

The procedure applies to any juvenile who:

1. has been found to be delinquent for an act of sexual violence which if committed by an adult would be a violation of 18 Pa.C.S. § 3121 (relating to rape), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault), 3125 (relating to aggravated indecent assault), 3126 (relating to indecent assault) or 4302 (relating to incest);
2. who is committed to an institution or other facility pursuant to section 6352 (relating to disposition of delinquent child) and who remains in any such institution or facility as a result of that adjudication of delinquency upon attaining 20 years of age; and
3. who is currently in need of involuntary treatment due to a mental abnormality or personality disorder which results in serious difficulty in controlling sexually violent behavior that makes the person likely to engage in an act of sexual violence.

A juvenile who meets the first two criteria is subject to an assessment by the State Sexual Offenders Assessment Board (SOAB).<sup>39</sup> For purposes of the assessment, the SOAB is entitled to inspect the juvenile court files and records pertaining to the juvenile,<sup>40</sup> and to have the assistance of the juvenile probation officer in obtaining access to the juvenile.<sup>41</sup> However, if copies of files are provided to the Board, the substance of any confidential communication from the juvenile to a psychiatrist or licensed psychologist made in the course of treatment should first be redacted.<sup>42</sup>

**90 days prior to the 20th birthday of the child**, the juvenile probation department must notify the board of the status of the delinquent child and the institution or other facility where the child is presently committed. The probation department must assist the board in obtaining access to the child and any information required by the board to perform the assessment, including, but not limited to, the child’s official court record and complete juvenile probation file.<sup>43</sup>

The SOAB will conduct an assessment, which must include the SOAB's determination of whether or not the child is in need of commitment for involuntary treatment due to a mental abnormality or personality disorder that results in serious difficulty in controlling sexually violent behavior. Upon the completion of the assessment pursuant to this section, and **no later than 90 days after the child's 20th birthday**, the SOAB must file the assessment with the court.

### ***Duties of the Court upon Receipt of the SOAB Assessment***

The court must provide a copy of the SOAB assessment to the probation department, the district attorney, county solicitor or designee and the child's attorney.<sup>44</sup>

Where the SOAB has concluded that the child is in need of involuntary treatment pursuant to the provisions of 42 Pa. C.S. Chapter 64, the court must conduct a dispositional review hearing at which the county solicitor or a designee, the probation officer and the child's attorney are present. The hearing must be held **no later than 180 days before the 21st birthday** of the child. At the hearing, the court must consider the assessment, treatment information and any other relevant information. If, at the conclusion of the dispositional review hearing, the court finds there is a prima facie case that the child is in need of involuntary treatment under the provisions of 42 Pa. C.S. Chapter 64, the court must direct the county solicitor or a designee to file a petition to initiate proceedings under the provisions of that chapter.<sup>45</sup>

### ***Duties of the Court in Proceedings Under 42 Pa.C.S. Chapter 64***

Wherever the juvenile may be in custody, the court having jurisdiction for purpose of proceedings under Chapter 64 is the county Court of Common Pleas that entered the original delinquency commitment order.<sup>46</sup>

The petition commencing these proceedings must set forth facts constituting reasonable grounds to believe the juvenile comes within the involuntary commitment law's criteria, must include the SOAB's assessment, and must be served on the juvenile, the juvenile's attorney in the disposition review hearing, and the county solicitor or designee, along with notice of the hearing on the petition. The juvenile and the juvenile's attorney at disposition review must receive written notice of the right to counsel (including appointed counsel if necessary). The juvenile must also be informed that he has a right to be assisted by an independent expert on sexually violent behavior, and that a reasonable fee will be allowed for this purpose if the juvenile cannot afford to engage one. (Best practice is to appoint an independent expert at the cost of the court.)

A public hearing on the petition must be held within **30 days** of the filing of the petition. At the hearing, the juvenile has the right to confront and cross-examine witnesses and to present evidence, but may not be called as a witness without his consent.

Following the hearing, if the court finds by clear and convincing evidence that the juvenile has “a mental abnormality or personality disorder which results in serious difficulty in controlling sexually violent behavior” that makes him “likely to engage in an act of sexual violence,” it must enter an order directing immediate commitment for inpatient treatment in a facility designated by the Department of Human Services, the Sexual Responsibility and Treatment Program (SRTP) on the grounds of Torrance State Hospital in Westmoreland County. Commitment in such a case is for a period of one year, after which the law provides for an annual review hearing procedure, based on a facility evaluation and a new assessment by the SOAB.<sup>47</sup>

**Sample language for the commitment court order:**

Pursuant to 42 Pa. C.S.A. § 6404, this court finds, by clear and convincing evidence, that \_\_\_\_\_ has a Mental Abnormality or Personality Disorder which results in serious difficulty in controlling Sexually Violent behavior that makes \_\_\_\_\_ likely to engage in an act of Sexual Violence, and otherwise meets ALL criteria necessary for continued treatment pursuant to 42 Pa. C.S.A. § 6404.

Accordingly, pursuant to 42 Pa. C.S.A. § 6404, \_\_\_\_\_ is hereby committed (or recommitted) immediately for a period of one (1) year to the Pennsylvania Sexual Responsibility and Treatment Program, at Torrance State Hospital a facility designated by the Commonwealth Department of Human Services.

An appeal shall not stay the execution of this order.

The exhibits that were entered into evidence in the hearing on the above petition, held on \_\_\_\_\_ (date) shall be and are SEALED and filed with \_\_\_\_\_ (enter appropriate county office).

Copies of any reports submitted by the State Sexual Offenders Assessment Board or by Pennsylvania Sexual Responsibility and Treatment Program at Torrance State Hospital shall be sent to the solicitor and defense counsel.

### ***Commitment and Annual Review***

The initial commitment of the “Sexually Violent Delinquent Child” (hereinafter “person”) is for a period of one year.<sup>48</sup> At least **60 days prior to the expiration of the one-year inpatient commitment period**, the director of the SRTP or a designee must submit an evaluation and the SOAB must submit an assessment of the person to the court.<sup>49</sup>

The court must schedule a review hearing, which must be held **no later than 30 days after receipt of both the SRTP evaluation and the SOAB assessment**. Notice of the review hearing must be provided to the person, the attorney who represented the person at the previous hearing, the district attorney and the county solicitor or a designee. The person and his attorney must also be provided with written notice advising that the person has the right to counsel and that, if he cannot afford one, counsel must be appointed for the person.

If the court determines by clear and convincing evidence that the person continues to have serious difficulty controlling sexually violent behavior while committed for inpatient treatment due to a mental abnormality or personality disorder that makes the person likely to engage in an act of sexual violence, the court must order an additional period of involuntary inpatient treatment of one year. (See suggested language, above.)

Otherwise, the court must order the Department of Human Services, in consultation with the SOAB, to develop an outpatient treatment plan for the person. The order must be in writing and must be consistent with the protection of the public safety and appropriate control, care and treatment of the person.<sup>50</sup>

### ***Transfer to Involuntary Outpatient Treatment***

Whenever it appears that the juvenile no longer has serious difficulty controlling sexually violent behavior, the director of the SRTP or a designee may petition for discharge, with notice to the person, the person’s attorney, the SOAB, the district attorney and the county solicitor. The SOAB must conduct a new assessment in such a case, and a hearing must be held **within 15 days of the court’s receipt of the new assessment**.<sup>51</sup>

An outpatient treatment plan must be in writing and must identify the specific entity that will provide each clinical and support service identified in the plan. The Department of Human Services must provide a copy of the outpatient treatment plan to the court, the person, the attorney who represented the person at the most recent hearing, the SOAB, the district attorney and the county solicitor or a designee.

The court is prohibited from discharging the person from involuntary treatment until the person has completed involuntary outpatient treatment pursuant to section 42 Pa.C.S. § 6404.2 (relating to duration of outpatient commitment and review).<sup>52</sup>

The Department of Human Services is required to provide the juvenile with notice of the person's right to petition the court for transfer to involuntary outpatient treatment over the objection of the department. The court, after review of the petition, may schedule a hearing pursuant to 42Pa.C.S. § 6403(c).

Following a hearing on a discharge petition, if the court finds by clear and convincing evidence that the juvenile continues to have serious difficulty controlling sexually violent behavior due to a mental abnormality or personality disorder, it must deny the petition, and the person “shall be subject to the remainder of the period of commitment.” Otherwise, the court must order the Department of Human Services, in consultation with the SOAB, to develop an outpatient treatment plan for the person.

If a court has ordered the transfer of the person to involuntary outpatient treatment the court may specify the terms and conditions of the outpatient commitment, including, but not limited to:

- Absolute compliance with the outpatient treatment plan.
- Restrictions and requirements regarding the location of the person's residence and the times the person must be physically present.
- Restrictions and requirements regarding areas the person is not permitted to visit.
- Restrictions and requirements regarding who the person may contact in any medium.
- Periodic polygraph tests.<sup>53</sup>

The court must order involuntary outpatient treatment for a period of **1 year**, and the involuntary outpatient treatment provider is required to submit a report on the person's status and clinical progress not less than **every 30 days**.<sup>54</sup>

**At least 60 days prior to the expiration of the one-year outpatient commitment period**, the director of the SRTP or a designee must submit an evaluation, and the SOAB must submit an assessment of the person to the court. The court must then **schedule a review hearing no later than 30 days after receipt of both the SRTP evaluation and the SOAB assessment**. Notice of the review hearing must be provided to the person, the attorney for the person, the district attorney and the county solicitor or a designee. The

person and his attorney must also be provided with written notice advising the person has the right to counsel and that, if the person cannot afford one, counsel shall be appointed for the person.<sup>55</sup>

If the court determines by clear and convincing evidence that the person has serious difficulty controlling sexually violent behavior due to a mental abnormality or personality disorder that makes the person likely to engage in an act of sexual violence, the court must order an additional period of involuntary inpatient treatment of one year. Otherwise, the court must order the discharge of the person and inform the person on the record and in open court of the person's obligation to attend lifetime counseling and of the penalty for failing to attend counseling under 18 Pa.C.S. § 4915.1. The order shall be in writing and shall be consistent with the protection of the public safety and appropriate control, care and treatment of the person.<sup>56</sup>

A "Sexually Violent Delinquent Child" who is discharged from placement is mandated by statute to attend at least monthly counseling sessions for the rest of his life in a program approved by the SOAB, and is financially responsible for all fees assessed from the counseling sessions unless the person can prove to the satisfaction of the court that he cannot afford to pay for the counseling sessions. Upon such a determination by the court, the SOAB is required to pay the requisite fees. The SOAB is responsible for monitoring the person's compliance with the lifetime counseling mandate.<sup>57</sup>

## **§ 10-9 Cessation of Court Supervision**

Court supervision may end by loss of court jurisdiction,<sup>58</sup> by termination of court supervision,<sup>59</sup> or by early termination by motion.<sup>60</sup>

### ***Loss of Jurisdiction***

Once a juvenile reaches the age of twenty-one the jurisdiction of the juvenile court ends regardless of whether the juvenile has completed the conditions of supervision, and the court is required to enter an order terminating supervision of the juvenile.<sup>61</sup> However, the court must retain jurisdiction until age 21 over a youth who has failed to pay restitution in full. If restitution remains unpaid when the court's jurisdiction over a juvenile terminates at age 21, a judgement must be filed.<sup>62</sup>

The court should review the issue of restitution at each dispositional review hearing to ensure that progress is being made towards the payment of restitution and court fees. It is

not in a juvenile's best interest for the case to remain open until the age of 21 when the juvenile has otherwise satisfied all other obligations of the dispositional order. The collateral consequences of having a judgment entered can have a negative impact on a juvenile's successful transition to adulthood.

### ***Termination of Court Supervision***

The juvenile probation department must promptly notify the court when the conditions of probation have been satisfied.<sup>63</sup> The court must then decide if supervision should be terminated. The notice from the probation department must state that:

- the juvenile has completed the terms of the court's dispositional order;
- restitution, fines, and costs have been paid in full; and
- the juvenile has not committed any new offenses for which a new delinquency or criminal proceeding may be commenced.

Any party may object to the notice and request a hearing. The objection must be made within **30 days** of receipt of the notice; otherwise, objections are deemed waived. If objections are made, the court must hold a hearing and give each party an opportunity to be heard before the court enters its final order. The attorney for the Commonwealth or designee is to notify the victim of the date, time, place and purpose of the hearing. The victim may be present at the hearing and is to be afforded the opportunity to submit an oral and/or written victim-impact statement.<sup>64</sup>

After the hearing, if the court is satisfied that the juvenile has carried out the terms of the dispositional order, the court may discharge the juvenile from its supervision.

Some juveniles make extraordinary progress in completing the terms of the dispositional order. Such accomplishments should be acknowledged in a public way. This can be done in several ways:

- Hold a case-closing hearing where the court can congratulate the juvenile on earning case closure.
- Send a "case closure" letter to the juvenile, congratulating him or her on completing the terms of the dispositional order.
- During juvenile justice week or at another designated time, honor those juveniles who have made extraordinary progress.

## ***Early Termination of Court Supervision by Motion***

Any party may move for early termination of court supervision.<sup>65</sup> The motion must state with specificity why early termination is sought and why the requirements of Rule 631(A) have not been met. In addition to the service requirements of Rule 345, any party moving for early termination must serve the motion on the juvenile probation officer, and the victim must be provided with notice of the motion as well.

A party or the juvenile probation officer may object to the motion and request a hearing. Objections must be made within **30 days** of the date of the motion, or they are deemed waived.

The court may rule on the motion and any objections without a hearing. However, if objections have been made and/or the court has determined a hearing is necessary, the court must hold a hearing and give each party, the victim, and the juvenile probation officer an opportunity to be heard before the court enters its final order. Although the Rules do not address it, the attorney for the Commonwealth or designee should be responsible for notifying the victim of the date, time, place and purpose of the hearing. The victim may be present at the hearing and is to be afforded the opportunity to submit an oral and/or written victim-impact statement.<sup>66</sup>

If the court is satisfied that there are compelling reasons to discharge the juvenile prior to the completion of the requirements of Rule 631(A), the court may order an early discharge of the juvenile from its supervision.

In general, in order hold juvenile offenders accountable, it is important for they be required to complete the terms of the dispositional order before case closure. Therefore, early termination should only be granted for a compelling reason. In deciding whether to grant early case closure, the court should consider:

- what terms of the dispositional order have not been completed and the reasons that the terms have not been completed;
- whether keeping the case open will result in completion of the dispositional order;
- whether the juvenile presents a risk to the safety of the community;

- whether the interest of the public served by early termination;
- whether the juvenile has developed the competencies necessary to successfully transition to adulthood; and
- whether there is an objection by the probation department, the attorney for the Commonwealth, or the victim.

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<sup>1</sup> Best practice guidelines in dependency cases encourage holding permanency hearings every three months. (Pennsylvania Children’s Roundtable Initiative. Pennsylvania Dependency Benchbook, 12.2)

<sup>2</sup> <http://www.pacode.com/secure/data/055/chapter3800/chap3800toc.html>

<sup>3</sup> Rule 600, Pa.R.J.C.P.

<sup>4</sup> Comment, Rule 600, Pa.R.J.C.P.

<sup>5</sup> Rules 605,240, 241 and 242, Pa.R.J.C.P.

<sup>6</sup> Rule 610(B), Pa.R.J.C.P.

<sup>7</sup> Rules 605(B) and 612(B), Pa.R.J.C.P.

<sup>8</sup> Rule 610, Pa.R.J.C.P.

<sup>9</sup> Rule 147, Pa.R.J.C.P.

<sup>10</sup> Rule 610, Pa.R.J.C.P.

<sup>11</sup> Rules 610 and 512, Pa.R.J.C.P.

<sup>12</sup> Rule 610 Comment, Pa.R.J.C.P.

<sup>13</sup> Rules 622, 625 and 628 Pa.R.J.C.P.

<sup>14</sup> *Pennsylvania’s Juvenile Justice System Enhancement Strategy-Achieving Our Balanced and Restorative Justice Mission Through Evidence-based Policy and Practice* (Juvenile Court Judges’ Commission and Pennsylvania Council of Chief Juvenile Probation Officers, April 2012) p.29

<sup>15</sup> Rule 345, Pa.R.J.C.P.

<sup>16</sup> Rule 612, Pa.R.J.C.P.

<sup>17</sup> Rule 612(C), Pa.R.J.C.P.

<sup>18</sup> Rule 612(E) and Comment, Pa.R.J.C.P.

<sup>19</sup> Rule 610, Pa.R.J.C.P.

<sup>20</sup> *Pennsylvania’s Juvenile Justice System Enhancement Strategy-Achieving Our Balanced and Restorative Justice Mission Through Evidence-based Policy and Practice* (Juvenile Court Judges’ Commission and Pennsylvania Council of Chief Juvenile Probation Officers, April 2012) p.21.

<sup>21</sup> Rule 610(A), Pa.R.J.C.P.

<sup>22</sup> 42 Pa.C.S. §6353(a).

<sup>23</sup> Rule 610(B), Pa.R.J.C.P.

<sup>24</sup> 42 Pa.C.S. §6353(b) and Rule 610(D), Pa.R.J.C.P.

<sup>25</sup> Rule 147, Pa.R.J.C.P. An educational decisionmaker should be appointed only if the juvenile has no guardian or, after giving the guardian notice and an opportunity to be heard, the court had determined that it is in the juvenile’s best interest to limit the guardian’s right to make decisions regarding the juvenile’s education.

<sup>26</sup> Rule 1608, Pa.R.J.C.P.

<sup>27</sup> 18P.S. § 11.201(5.2)

<sup>28</sup> 18P.S. § 11.201(8.1)(iii)

<sup>29</sup> Rule 610(B) and Comment, Pa.R.J.C.P.

<sup>30</sup> <http://www.pacode.com/secure/data/055/chapter3800/s3800.224.html>

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<sup>31</sup> *Pennsylvania's Juvenile Justice System Enhancement Strategy-Achieving Our Balanced and Restorative Justice Mission Through Evidence-based Policy and Practice* (Juvenile Court Judges' Commission and Pennsylvania Council of Chief Juvenile Probation Officers, April 2012) pp.23-27.

<sup>32</sup> <http://www.jcjc.pa.gov/Publications/Documents/Standards%20Governing%20Aftercare%20Services.pdf>

<sup>33</sup> *Ibid.*, p.28

<sup>34</sup> <http://www.jcjc.pa.gov/Publications/Documents/Standards%20Governing%20Home%20Passes%20to%20Delinquent%20Children%20in%20Placement.pdf>

<sup>35</sup> 18P.S. § 11.201(8.1)(i)

<sup>36</sup> Rule 1320, Pa.R.J.C.P.

<sup>37</sup> Rule 1321, Pa.R.J.C.P.

<sup>38</sup> 42 Pa. C.S. §§6358, 6401-6409.

<sup>39</sup> 42 Pa. C.S. §§6358(a).

<sup>40</sup> 42 Pa.C.S. § 6307.

<sup>41</sup> 42 Pa.C.S. § 6358(b).

<sup>42</sup> *See* 42 Pa.C.S. § 5944 and *Commonwealth v. Carter*, 821 A.2d601 (Pa. Super. 2003).

<sup>43</sup> 42 Pa.C.S. § 6358(b).

<sup>44</sup> 42 Pa.C.S. § 6358(d).

<sup>45</sup> 42 Pa.C.S. § 6358(f).

<sup>46</sup> 42 Pa.C.S. § 6403(b).

<sup>47</sup> 42 Pa.C.S. §§ 6403(d) and 6404(a).

<sup>48</sup> 42 Pa.C.S. § 6404 (a).

<sup>49</sup> 42 Pa.C.S. § 6404 (b)(1).

<sup>50</sup> 42 Pa.C.S. § 6404 (b)(2).

<sup>51</sup> 42 Pa.C.S. § 6404 (c).

<sup>52</sup> 42 Pa.C.S. § 6404 (d).

<sup>53</sup> 42 Pa. C.S. § 6404.2 (a).

<sup>54</sup> 42 Pa. C.S. §6404.2(b) and(c).

<sup>55</sup> 42 Pa. C.S. §6404.2(f).

<sup>56</sup> *Ibid.*

<sup>57</sup> 42 Pa. C.S. § 6404.2 (g).

<sup>58</sup> Rule 630, Pa.R.J.C.P.

<sup>59</sup> Rule 631, Pa.R.J.C.P.

<sup>60</sup> Rule 632, Pa.R.J.C.P.

<sup>61</sup> Rule 630, Pa.R.J.C.P.

<sup>62</sup> 42 Pa.C.S. §§ 6352(a)(5) and 9728.

<sup>63</sup> Rule 631, Pa.R.J.C.P.

<sup>64</sup> Rule 631 Comment, and Rule 132 Pa.R.J.C.P.

<sup>65</sup> Rule 632, Pa.R.J.C.P.

<sup>66</sup> Rule 132 and Comment to Rule 632, Pa.R.J.C.P.



# Chapter 11

## Juvenile Court Administration

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### Summary of Contents

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

- § 11-1. Juvenile Court Administration in General
- § 11-2. The Role of the Administrative Judge
- § 11-3. Making Good Use of Judicial Resources
- § 11-4. Safeguarding Juvenile Records
- § 11-5. Promoting Accountability for Performance and Outcomes
- § 11-6. Sources of Further Information

### Key Statutes

- 42 Pa.C.S. §6305 (masters)
- 42 Pa.C.S. §6307 (inspection of court files and records)
- 42 Pa.C.S. §6308 (law enforcement records)
- 42 Pa.C.S. §6309 (juvenile history record information)
- 42 Pa.C.S. §6352.2 (interagency information sharing)
- 42 Pa.C.S. §6371 et seq. (Juvenile Court Judges' Commission)
- 18 Pa.C.S. §9123 (expungement of juvenile records)
- 62 P.S. § 704.1 (payment to counties for services to children)
- 62 P.S. § 709.1 (needs-based budgeting process)

### Rules

- Rule 160 Pa.R.J.C.P. (official court record)
- Rule 161 Pa.R.J.C.P. (juvenile probation files)
- Rule 170 Pa.R.J.C.P. (motion to expunge or destroy records)
- Rule 172 Pa.R.J.C.P. (order to expunge or destroy records)
- Rule 173 Pa.R.J.C.P. (retention of information from juvenile records)
- Rule 182 Pa.R.J.C.P. (qualifications of juvenile court hearing officer)

- Rule 185 Pa.R.J.C.P. (appointment of juvenile court hearing officer)
- Rule 187 Pa.R.J.C.P. (authority of juvenile court hearing officer)
- Rule 190 Pa.R.J.C.P. (admissions before juvenile court hearing officer)
- Rule 191 Pa.R.J.C.P. (hearing officer’s findings and recommendations to the judge)
- Rule 192 Pa.R.J.C.P. (challenge to juvenile court hearing officer’s recommendation)

## **JCJC Standards**

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

### **§ 11-1 Juvenile Court Administration in General**

The degree to which the balanced and restorative justice mission of Pennsylvania’s juvenile justice system is achieved is directly related to the quality of local judicial leadership. In addition to ensuring juvenile court proceedings comport with the mandates of the Juvenile Act and Rules of Juvenile Court Procedure, juvenile court judges must work to ensure that their local juvenile systems are designed and operate in a manner that is consistent with this mission. This is especially true for judges who have been designated as administrative judges or who otherwise have responsibility for supervising the juvenile probation department and/or establishing juvenile court policy.

As outlined below, juvenile court administrative judges have responsibilities “off the bench” that are unlike those of all other judges. Their responsibilities require them to be knowledgeable about juvenile probation operations and evidence-based juvenile justice practices, to keep abreast of local and statewide juvenile justice outcome data, including recidivism rates, to familiarize themselves with the dispositional placement options available to the court, the funding of these services, and much more.

In addition, administrative judges have the obligation to become familiar with the services and supports available to court-involved children and families, and to advocate for new or expanded services when needed. This should be an ongoing process, and include reviewing the adequacy of the county’s annual “Needs-Based Plan and Budget” submission to the Department of Human Services.

## § 11-2 The Role of the Administrative Judge

The JCJC Standards Governing the Administration of Juvenile Court provide that in each judicial district in Pennsylvania, regardless of size, an administrative judge must be designated to serve as the “one person through whom all administrative direction will be channeled” and to “meet the probation department’s need for one source of administrative authority....” In some jurisdictions, the President Judge functions in this capacity.

The designation or appointment of a single juvenile court administrative judge is critical to the effective and efficient operation of both the court and juvenile probation department, and to ensuring that an appropriate range of essential services and supports is available to meet the needs of the juveniles who come within the jurisdiction of the court.

The administrative judge’s broad duties include the following:

- ***Developing and reviewing policy.*** The administrative judge, preferably with the involvement of other judges in the district, should oversee the development and review of local juvenile court policies on matters such as intake practice, diversion guidelines, detention, probation and aftercare supervision, victim notification and accommodation, and confidentiality of juvenile court proceedings, files and records.
- ***Ensuring the adequacy of services.*** The administrative judge should not accept situations in which local children are deprived of needed services, including services for at-risk children intended to prevent juvenile delinquency. Administrative judges should not only confer with their chief juvenile probation officers and children and youth directors regarding the “Needs-Based Plan and Budget,” but should take an active and ongoing leadership role in developing and shaping it. (See §3-2, “Basic Juvenile Justice Structure and Funding.”)
- ***Ensuring the adequacy of legal representation.*** Juveniles are entitled to effective assistance of counsel in delinquency proceedings. Administrative judges should be zealous advocates for high quality legal representation for juvenile offenders. Administrative judges should work with local bar associations to recruit and educate competent counsel for juvenile cases, both to expand the pool of available lawyers and to reduce defender caseloads. Judges should meet with county commissioners and executives to ensure that lawyers are adequately compensated for their representation.
- ***Calling attention to unfilled needs.*** If the services provided to the court by outside agencies are not adequate, the administrative judge should inform the public. Press

conferences, news releases, and announcements at public meetings are possible ways of keeping the public informed on a regular basis regarding gaps in the continuum of local services for juveniles, from prevention to aftercare.

- ***Working with community members.*** The administrative judge of the juvenile court should consider enlist the help of interested citizens within the judicial district to ensure the availability of adequate services. Engaging the community and local school districts helps the court understand the community's problems and priorities, while enabling the community to understand, appreciate, and support the work of the court.
- ***Leading the probation department.*** The administrative judge should work closely with the chief juvenile probation officer to see that staff carry out the policies and procedures of the court, and should ensure that written probation department policy and procedures are developed to cover such matters as personnel practices, training requirements, work duties, supervisory responsibilities, and rules for the conduct of hearings and the maintenance and control of records.<sup>1</sup>
- ***Creating opportunities for education and training.*** The administrative judge should actively identify opportunities for the continuing education of probation officers, judges and hearing officers, attorneys and other stakeholders on juvenile justice and related subjects.
  - ***Juvenile Court Hearing Officers.*** It is the responsibility of the administrative or president judge to ensure that all juvenile court hearing officers comply with the Rules of Procedure, which require hearing officers to complete six hours of instruction from the Juvenile Court Judges' Commission every two years.<sup>2</sup>
  - ***Juvenile Probation Officers.*** The administrative judge should ensure that probation officers are familiar with evidence-based practices and current trends in juvenile justice. The administrative judge should create opportunities for ongoing education within the department and ensure that probation officers have the opportunity to attend conferences and meetings such as the Pennsylvania Conference on Juvenile Justice and other conferences related to juvenile justice. Additionally, the administrative judge should support probation officers in obtaining advanced degrees, and should be aware of opportunities such as the Juvenile Court Judges' Commission's Master's Degree Program at Shippensburg University, which enables a juvenile probation office to obtain a master's degree at no cost. A well-educated probation department is crucial to

the implementation of evidence-based practices, and ultimately to better outcomes for youth. Moreover, access to advanced education will enable probation officers to receive higher salaries or move into supervisory positions, which increases retention.

- **Judges, Lawyers, and Others.** The administrative judge should also encourage judges and attorneys practicing in juvenile court to attend continuing education programs on delinquency law, policy, and related social science research. Ongoing education provides judges, attorneys and others with the information and tools they need to make better decisions on behalf of children and families, to guide systemic change in their communities, and to understand the issues faced by the families whose cases they must hear on a daily basis. Administrative judges should partner with local and state bar associations and universities to create low-cost educational opportunities.

- **Leading the court.** Many of the children and families who enter our courthouses have been exposed to repeated traumatic events such as poverty, violence, drug addiction, and incarceration. Accordingly, it is important for the administrative judge to collaborate with systems stakeholders to ensure that the local court process is trauma-informed. A trauma-informed court should encompass the following elements:

***Administrative judges should ensure that their courts are trauma-informed.***

- **Respect in the courthouse.** Everyone entering the courthouse has the right to be treated with dignity and respect. Administrative judges should work with building security and the sheriff's department to ensure that persons entering the building are not subjected to unnecessary invasive procedures and trauma during screening. Administrative judges should assist in developing and creating training opportunities for judges and hearing officers, lawyers, probation officers, court employees, building guards, sheriff's departments, and others on implicit bias, cultural competence, and engagement to improve interactions with others.
- **Safety in the courthouse.** Everyone has a right to feel safe in courthouses and court-operated facilities. Administrative judges should work with building security and the sheriff's department to identify and correct safety issues within court facilities. Administrative judges should assist in developing and creating training opportunities for building security and the

sheriff's department on maintaining safety, including proper de-escalation techniques, alternatives to physical restraint, and the use of appropriate force.

- **Timely hearings.** Long periods of waiting in the courthouse can increase or cause trauma and anxiety. Administrative judges should work with judges, hearing officers, the probation department and court staff to build consensus and to create an expectation that hearings will start on time. (See § 11-3, "Making Good Use of Judicial Resources—Judicial Workload and Scheduling Practices.")
- **Trauma-informed practices.** Administrative judges, with the assistance of other judges and hearing officers, should work to ensure that court proceedings and practices are designed so as to avoid exacerbating trauma, and that they respect the right to be heard, acknowledge strengths, and result in decisions that are timely and clearly understood.

### § 11-3 Making Good Use of Judicial Resources

Among the most important duties of an administrative judge is to advocate for resources for the juvenile court—including a sufficient number of competent and committed judicial officers to handle the court's workload. When too few experienced judges are assigned to hear delinquency matters, the results are often crowded dockets, long delays, hasty and superficial hearings, excessive reliance on hearing officer—and ultimately a kind of second-class justice. It is primarily up to the administrative judge in each district to speak out against these inadequacies, and to argue in favor of assignment, rotation, and calendaring policies that give juvenile delinquency and dependency cases the time and attention they deserve.

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

### ***Judicial Assignment and Rotation***

"This is no job for most rookies."

This statement from former Judge Isaac Garb<sup>3</sup> was based on a career's worth of experience in the Court of Common Pleas, Bucks County. Now deceased, Judge Garb was a long-term

member and former Chairman of the Juvenile Court Judges' Commission. Unfortunately, as Judge Garb points out, in too many jurisdictions the juvenile court bench is considered a place "for the judge to learn his or her trade." This despite the fact that "the juvenile court is arguably the most important of all the courts within the trial court constellation." Certainly, judges presiding over juvenile courts are entrusted with unusually broad discretion. Their most important decisions are seldom guided by cut-and-dried rules, and often call for considerable wisdom, insight, and knowledge of the world.

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

### ***Judicial Workload and Scheduling Practices***

Administrative judges should also work for the reform of case assignment and scheduling practices that overwhelm judges, discourage deliberation, and create courthouse conditions that are at best chaotic and at worst degrading and unconscionable. So-called "cattle call" scheduling—in which numerous juvenile court hearings are set for the same time in the same courtroom, and parties and their attorneys, victims, witnesses, families and supporters restlessly crowd the lobbies and hallways, waiting for their cases to be heard—is still the rule in too many jurisdictions. Administrative judges should use their authority to move their courts in the direction of manageable judicial caseloads and time-certain scheduling, in which specific time slots are assigned to individual hearings.<sup>4</sup> If it is not possible to move all at once to a time-certain system, block scheduling—in which limited numbers of hearings are stacked in one-hour blocks—will capture many of the same benefits.

### ***Use of Juvenile Court Hearing Officers***

The administrative judge should ensure that the appointment and use of juvenile court hearing officers is in accordance with the Rules. In order to preside in delinquency

proceedings as a juvenile court hearing officer, an individual must have been licensed to practice law for at least five consecutive years and have completed six hours of instruction approved by the Pennsylvania Continuing Legal Education Board.<sup>5</sup>

The Juvenile Act authorizes courts to “direct that hearings in any case or class of cases be conducted in the first instance” by attorneys appointed as masters, rather than by judges.<sup>6</sup> Prior to the adoption of the Rules of Juvenile Court Procedure for Delinquency Matters, there were no real limits on the use of masters in delinquency cases. Problems associated with scarce resources, overburdened judges and overbooked juvenile courtrooms eventually led to widespread and arguably excessive reliance on masters to do the work of juvenile court judges. As the Juvenile Court Procedural Rules Committee’s Explanatory Report noted, “Masters were introduced to ease the court docket due to a rapidly increasing number of juvenile cases. Masters were not intended to take over the juvenile system or the judges’ primary responsibilities and duties. In a minority of counties, the judges rarely hear juvenile cases and the master sets forth the ‘judgments’ with the judges’ rubber-stamped order...The Committee wanted to prohibit the master-run systems and ensure the judges performed the important duties they were elected to do. The Committee wanted to stress the importance of juvenile cases and the very serious consequences of a juvenile adjudication.”

In 2017, the Rules of Juvenile Court Procedure were amended to replace the term “master” with the term “juvenile court hearing officer” throughout the Rules. The definition of the term “juvenile court hearing officer” specifically provides that the term has the same meaning as the term “master” as used in the Juvenile Act.<sup>7</sup>

Rule 187, Pa.R.J.C.P., provides that juvenile court hearing officers may preside over only the following:

- detention hearings, detention review hearings, or shelter-care hearings;
- discovery, pre-adjudicatory, or preliminary proceedings for misdemeanors;
- any hearing in which the petition alleges only misdemeanors; and
- uncontested dispositional review hearings and uncontested probation revocation hearings.<sup>8</sup>

Juvenile Court Hearing Officers are specifically prohibited from doing any of the following:

- presiding over any hearing in which the petition alleges a felony;
- conducting hearings to consider transfer to criminal proceedings;
- issuing warrants; or
- hearing requests for writs of habeas corpus.<sup>9</sup>

Prior to the commencement of any proceeding, the juvenile court hearing officer must inform the parties that they have a right to have the matter heard by a judge. If the juvenile or the attorney for the Commonwealth objects to having the matter heard by the juvenile court hearing officer, the case must be heard before a judge.<sup>10</sup> If the parties do not object, the juvenile court hearing officer must announce findings and recommendations on the record at the conclusion of the hearing, and submit a summary within one business day to the juvenile court judge. Any party may challenge the recommendation by filing an oral or written motion requesting a rehearing within three days.<sup>11</sup> The judge may accept or reject the juvenile court hearing officer's recommendation, send it back for clarification, or schedule a rehearing within seven days.<sup>12</sup>

The administrative judge should develop a plan for the supervision, regular observation and continuing education of all juvenile court hearing officers.

## **§ 11-4 Safeguarding Juvenile Records**

Confidentiality has always been one of the core values of the juvenile court system. In order to safeguard a young person's chances of a decent future, it is often necessary to deny or restrict access to records relating to his past—and sometimes even to bury that past altogether. Accordingly, Pennsylvania law strictly limits access to court and juvenile probation files and records in delinquency proceedings<sup>13</sup> as well as to law enforcement records relating to juveniles,<sup>14</sup> and provides procedures for the expungement of juvenile records in appropriate cases.<sup>15</sup>

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

### ***Limits on Access to Juvenile Court Records***

The "Official Court Record" in a delinquency case is the juvenile court file maintained by the clerk of courts.<sup>16</sup> This file includes petitions, motions, evidence admitted into the record, hearing transcripts, findings and orders as well as social reports and other documents prepared at the court's request; it is not open to inspection by the public.<sup>17</sup> In the absence of special court authorization, such records may be examined and copied only under the following conditions:<sup>18</sup>

- **Courts.** The court’s own judges, officers, and professional staff may inspect juvenile records, as can the Administrative Office of Pennsylvania Courts and the courts of any other jurisdiction needing access to such records in the discharge of their official duties.
- **Parties.** Case files and records may be inspected by parties and their attorneys and representatives, although the court may restrict access to social reports containing the names of confidential sources.
- **Custodial agencies.** Public and private agencies entrusted with supervision or custody of the juvenile may inspect court records.
- **Access for sentencing purposes.** In connection with the preparation of a pre-sentence report in a criminal case, both the officers and staff of the court and the attorney for the defendant may inspect records related to the defendant’s juvenile court career.
- **Limited access for bail-setting purposes.** Likewise, a judge or other official making a bail determination in a criminal case may inspect juvenile court petitions, adjudication and disposition orders, orders resulting from disposition review hearings, and bench warrant and escape histories relating to the accused.
- **Limited adult correctional, parole board and probation access.** Officials of the Department of Corrections or of a state correctional or penal institution housing a former delinquent may inspect records related to the former delinquent, as can an adult parole board, court or county probation official making parole or supervision decisions about a former delinquent, but none of these officials may see social reports containing the names of confidential sources except with court permission.
- **Access for sex offender assessment purposes.** As noted above (see § 10-8), for purposes of an assessment of a committed sex offender by the State Sexual Offenders Assessment Board, the Board is entitled to inspect the juvenile court files and records pertaining to the offender.
- **Department of Human Services.** The DHS is granted access for use in determining whether a minor named as the perpetrator of an indicated report of child abuse should be expunged from the state-wide database.
- **Special access with leave of court.** Those who can show “a legitimate interest in the proceedings or in the work of the unified judicial system” may inspect juvenile court records with the court’s leave.

Note that similar access restrictions—with similar exceptions—apply to law enforcement agencies' records and files relating to juveniles.<sup>19</sup>

### ***Limits on Access to Juvenile Probation Files***

The Rules of Juvenile Court procedure distinguish between the “Official Court Record” and “Juvenile Probation Files,” which are records maintained by the juvenile probation department. The latter—including but not limited to such information as copies of information contained in the official juvenile court record; social studies; school records and reports; screenings and assessments, psychological and psychiatric evaluations and reports, drug and alcohol testing, evaluations, and reports; placement reports; employment records; and probation reports—are likewise not open to public inspection. These records are open to inspection and/or copying only by the following individuals and agencies:

- the juvenile’s attorney;
- the attorney for the Commonwealth;
- the State Sexual Offenders Assessment Board;
- the Juvenile Court Judges’ Commission; or
- any other person, agency, or department by order of court.<sup>20</sup>

Under the JCJC Standards Governing the Release of Information Contained in Juvenile Court Files and Juvenile Probation Records and Reports, the president judge of each court should adopt written policies governing dissemination of juvenile probation records and reports. These policies should require:

- that juvenile probation staff be present at inspection and responsible for any copying,
- that a case-specific record of the names and addresses of those to whom copies are provided be maintained, and
- that all records provided to individuals be accompanied by a statement prohibiting secondary dissemination.<sup>21</sup>

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

- ***Publicly available information about certain serious offenders.*** The public (including the news media) is entitled to know certain items of information—the juvenile’s name, address, age, charged offenses, substantiated offenses, and case disposition—regarding the following categories of juveniles:<sup>22</sup>

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

In order to ensure that this information is released only in appropriate cases, the juvenile petition is required by the Rules of Juvenile Court Procedure to contain an averment as to whether the case is eligible for limited public inspection,<sup>23</sup> and the dispositional order entered following an adjudication of delinquency is required to include a designation as to whether the case is eligible for limited public information.<sup>24</sup> Upon request, the clerk of courts is mandated to create a document that contains the information that is required to be released.<sup>25</sup>

- ***Information that must be released to schools.*** Whenever a juvenile who is enrolled in school is found delinquent, the juvenile probation department must provide the building principal or designee with the juvenile's name and address, a listing of the delinquent acts the juvenile was found to have committed together with a brief description of them, and the disposition of the case.<sup>26</sup> In the case of a juvenile adjudicated of a felony offense, the probation department must also provide relevant information from the juvenile's probation or treatment reports, supervision plan and prior delinquency history. In addition, the court or juvenile probation department may share any additional information deemed necessary to protect public safety or facilitate the juvenile's appropriate treatment, supervision or rehabilitation. All delinquency information provided to schools must be maintained separately from official school records, and transferred when the juvenile transfers.
- ***Information released pursuant to court order.*** Finally, the court may authorize release of other information contained in juvenile court files or probation records or

reports in response to a request for access in the form of a motion.<sup>27</sup> The JCJC Standards Governing the Release of Information Contained in Juvenile Court Files and Juvenile Probation Records and Reports provide that the motion must specify the information being sought and the purpose for which it will be used. In disposing of the motion, “the court should consider the purpose for which the information will be used, the nature of the information requested, administrative or legislative authority governing the release of the information, the nature of the offense, and the impact that the release of the information would have on the child and the community.”<sup>28</sup> The JCJC Standards further provide that any order granting such a motion should prohibit further dissemination of any information disclosed.

### *Expungement*

Pennsylvania law sets out procedures for the expungement of juvenile court records in a variety of situations.<sup>29</sup> Although it can be regarded as a “remedy”—a form of relief to be requested by juveniles and their families—expungement is also possible on the court’s own motion, and should really be a matter of routine in all cases in which juveniles have done what the court expected of them.

Accordingly, in all cases in which an expungement would be granted if a juvenile were to request it (see below), courts should set in place procedures under which the probation department initiates the expungement process automatically after the appropriate length of time has elapsed. It is recognized that in cases where the juvenile has been adjudicated delinquent, determining whether the expungement would normally be granted is far more complicated than in cases involving an informal adjustment or consent decree.

Juvenile records may be expunged upon motion. The motion must take the form of a proposed expungement order specifying the juvenile’s name, date of birth, and case docket number, the allegations and the law enforcement agency that made the allegations, the date of the arrest, any reference or tracking number that would assist the law enforcement agency in locating the pertinent police report or written allegation, the disposition of the case, the statutory authority for expungement (see below), and the agencies upon which the order is to be served.<sup>30</sup> The motion must be served on the chief juvenile probation officer as well as the attorney for the Commonwealth and any other party upon whom service is ordinarily required in a delinquency case. Unless the attorney for the Commonwealth answers in opposition to the motion within **30 days of the motion**, it may be disposed of without a hearing.

Administrative Judges should consider creating procedures to facilitate the filing of motions to expunge, including creating form motions and proposed orders, assigning court staff to assist persons in completing the forms, waiving or eliminating filing fees, and appointing counsel or providing *pro bono* representation for persons seeking to expunge juvenile records.

Except upon cause shown, expungement is **required** in cases in which the court finds any one of the following:<sup>31</sup>

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

In addition, with the consent of the attorney for the Commonwealth, the court is authorized to order expungement of the juvenile records of any individual who has reached the age of 18, if it appears advisable in view of the following factors: the type of offense; the individual's age, job history, criminal activity and drug or alcohol problems; any "adverse consequences that the individual may suffer if the records are not expunged;" and whether the public's safety requires retention of the records.<sup>32</sup>

### ***Destruction of Fingerprints and Photographs***

The Juvenile Act authorizes arresting agencies to take fingerprints and photographs of juveniles, and requires that they be taken of juveniles who have been found delinquent.<sup>33</sup> The fingerprints and photographs of alleged as well as adjudicated delinquents must be forwarded to a central repository maintained by the Pennsylvania State Police,<sup>34</sup> and may be disseminated to federal, state, and local law enforcement agencies for investigative purposes as well,<sup>35</sup> although in all instances they must be stored separately from those of

adults.<sup>36</sup> In any case in which the court finds that the juvenile did not commit the delinquent acts ascribed to him, however, the court must at the time of dismissal direct that the State Police and any other law enforcement agencies with fingerprints and photographs of the juvenile in their possession destroy them immediately.<sup>37</sup>

## § 11-5 Promoting Accountability for Performance and Outcomes

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

It is essential for the administrative judge to become familiar with and knowledgeable about county-specific and statewide juvenile justice system statistical information. The annual “Pennsylvania Juvenile Court Dispositions Reports” prepared by the Juvenile Court Judges’ Commission (JCJC) are especially important in this regard. These reports

summarize juvenile court statistical data

provided by county juvenile probation

departments, and include detailed information

regarding alleged and substantiated offenses;

secure detention admissions; attorney

representation; juvenile delinquency

dispositions; juvenile delinquency placements;

median time lapse for case processing; and many other topics. Within the reports, some of

the data are organized and presented in graphs by class of county to help judges and others

make comparisons across counties of similar size and demographic composition. In

addition to graphs and charts, narrative is included that is intended to help readers more

quickly recognize various statewide trends. While some county-specific data are presented

within the body of the reports, most of the county-specific data are presented in

appendices. These reports are available on the JCJC’s website at [www.jcjc.pa.gov](http://www.jcjc.pa.gov).

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

### ***Balanced and Restorative Justice Outcomes***

Historically, our nation’s juvenile courts and probation departments have not been good at quantifying what they do, measuring their success at it, or demonstrating that success to the public. Often, the only hard numbers available focused on their failures—recidivism

rates. Their many accomplishments—instances in which tangible progress is made, lessons learned, harm repaired, communities made safer—literally go uncounted.

Fortunately, Pennsylvania juvenile courts have since 2004 participated in a statewide juvenile justice system outcome measurement program that tracks benchmark indicators of system performance in achieving the primary goals of balanced and restorative justice. Courts submit quarterly outcome data to the Juvenile Court Judges' Commission (JCJC), which reports them annually in an aggregate "report card" format. The outcome measures report for 2016 accounted for 10,408 delinquency cases closed during the year, including the following:

- **Community Protection.** 83.8% of juveniles successfully completed supervision without a new offense.
- **Accountability.** 83.2% of juveniles required to pay restitution satisfied their obligations, while 96.7% of those with assigned community service successfully completed it.
- **Competency Development.** 84.4% of juveniles were employed or engaged in an educational or vocational activity at case closing.<sup>38</sup>

Administrative judges have an obligation to familiarize themselves with these outcome measures in order to show the effectiveness of juvenile court and its ability to rehabilitate juveniles. This information can be used to assist the court to engage the community, develop programs, and obtain necessary funding.

### ***Recidivism Research***

More recently, comprehensive statewide and county-specific recidivism data have become available to aid judges in determining the impact of the Juvenile Justice System Enhancement Strategy in their respective jurisdictions. The JJSES Leadership Team had two overarching goals in commissioning these recidivism studies. First, since the core premise of the JJSES is that recidivism rates can be reduced through the implementation of evidence-based practices, the main goal was to establish a recidivism benchmark against which the JJSES could be measured. The second goal was to examine differences between recidivists and non-recidivists in terms of demographics and other key variables to identify factors associated with recidivism in the Pennsylvania juvenile justice system.

For the purpose of the research, the following definition for recidivism was adopted:

*A subsequent delinquency adjudication in juvenile court or conviction in criminal court for either a misdemeanor or felony offense within two years of case closure.*

The two-year tracking period was selected because there was a consensus that recidivism beyond two years from case closure would be less likely to be related to the services and interventions provided during the period of juvenile court supervision.

A benchmark was developed with cases closed in 2007, 2008, 2009, and 2010 to provide an accurate measure of pre-JJSES recidivism. To date, four subsequent reports have been released.<sup>39</sup>

The focus of the study released in 2016 differed from the three previous JCJC studies. While the earlier reports focused on establishing a benchmark of recidivism and identifying differences between recidivists and non-recidivists, the 2016 report also highlighted how Pennsylvania juvenile recidivism trends changed over a six-year period 2007-2012.

In addition, the 2016 report included expected vs. observed statewide recidivism rates for each of the six cohort years. As previous recidivism analyses have demonstrated, it is important to take into account how juvenile offender population's change over time and the impact this change may have on expected recidivism rates. For example, if a juvenile probation department is consistently diverting low risk youth out of the juvenile justice system, the recidivism rate of that department would inevitably increase, as it is providing services to juveniles (i.e., moderate and high-risk youth) who are more likely to recidivate.

Measurement and reporting of this kind help to focus juvenile courts and probation departments on what matters, and serve in the long run to strengthen understanding and support for the juvenile justice system's mission among other branches of government and the public at large. They can also provide an invaluable management tool to judges and chief juvenile probation officers. Administrative judges should pay attention to what the data say about the current performance of their own courts and probation departments, and actively promote future efforts to improve performance through outcome measurement.<sup>40</sup>

## **§ 11-6 Sources of Further Information**

The Pennsylvania Juvenile Delinquency Benchbook is intended to be read in combination with current Pennsylvania statutes and case law, all applicable rules and standards, and other sources of information pertinent to Pennsylvania juvenile court and probation

practice. Some of the most important sources of further information and support for Pennsylvania juvenile court judges are described below.

### ***Juvenile Court Judges' Commission Standards***

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

As of 2018, the JCJC has issued the following standards:

- ***Standards Required for Participation in JCJC Grant-in-Aid Program***
  - Operation of a Juvenile Probation Merit System
  - Juvenile Court Intake
  - Secure Detention Under the Juvenile Act
  - Hearings and Administrative Reviews for Children Held in Secure Detention
- ***Standards Governing Specialized Probation Services***
  - Aftercare Services
  - Community-Based Probation Services
  - Intensive Probation Services
  - School-Based Probation Services
  - Specialized Intensive Probation Services for Drug and Alcohol Offenders
  - Specialized Intensive Aftercare Services for Drug and Alcohol Offenders
- ***Advisory Juvenile Court Standards***
  - Administration of Juvenile Court
  - Use of Juvenile Court Hearing Officers
  - Juvenile Court Jurisdictional Procedures
  - Inter-County Transfer of Delinquency Cases
  - Use of Alternatives to Secure Detention
  - Development of the Social Study
  - Allegation of Delinquency Involving a Charge of DUI or Under a Controlled Substance

- Home Passes to Delinquent Children in Placement
- Juvenile Court Policies Regarding the Human Immunodeficiency Virus
- Qualifications and Training of Court-Appointed Special Advocates
- Searches of the Person and Property of Children by Juvenile Probation Officers
- Administration of Restitution Funds
- Collection and Disbursement of Restitution
- Release of Information Contained in Juvenile Court Files and in Juvenile Probation Records and Reports
- Assignment of Community Service in Juvenile Delinquency Cases

All JCJC Standards can be downloaded free at the JCJC's website ([www.jcjc.pa.gov](http://www.jcjc.pa.gov)).

### ***Pennsylvania Commission on Crime and Delinquency (PCCD)***

***PCCD's Office of Juvenile Justice and Delinquency Prevention*** serves as a key point of contact for information relating to funding opportunities for communities and for the juvenile justice system. PCCD has a proven track record in leading the development and implementation of research-based approaches that succeed in preventing youth violence, delinquency, substance abuse, educational failure and many other adolescent problem behaviors. Most funding to communities is awarded on a competitive basis through initiatives that give priority to these evidence-based practices, especially the ***Communities That Care (CTC)***<sup>41</sup> risk-focused prevention model and programs that meet the ***Blueprints for Healthy Youth Development***<sup>42</sup> model program criteria. In particular, administrative judges are encouraged to become familiar with and advocate for the implementation of ***CTC*** in communities that could most benefit from this proven approach.

***PCCD's Office of Victim Services*** provides funding to victim service agencies that work directly with crime victims, provides financial help to crime victims through Pennsylvania's Victims Compensation Assistance Program (VCAP), and engages agencies and organizations throughout the criminal and juvenile justice systems on behalf of crime victims. Of particular importance to administrative judges is the funding that is made available to counties through the state Victims of Juvenile Offenders (VOJO) appropriation. Eligibility for VOJO funding hinges upon ensuring that services provided to victims of crimes committed by juvenile offenders are in conformity with the Crime Victims Bill of Rights and the Rules of Juvenile Court Procedure.<sup>43</sup>

## Juvenile Justice Agencies and Organizations

- ***Pennsylvania Juvenile Court Judges' Commission***  
601 Commonwealth Avenue, Suite 9100  
P.O. Box 62425  
Harrisburg, PA 17106-2425  
(717) 787-6910  
[www.jcjc.pa.gov](http://www.jcjc.pa.gov)
- ***Pennsylvania Commission on Crime and Delinquency***  
3101 North Front Street  
P.O. Box 1167  
Harrisburg, PA 17108-1167  
(800) 692-7292  
[www.pccd.pa.gov](http://www.pccd.pa.gov)
- ***Pennsylvania Department of Human Services***  
Office of Children, Youth and Families (OCYF)  
625 Forster Street, Health and Welfare Building  
PO Box 2675, Harrisburg 17110-2675  
(717) 787-4756  
[www.dhs.pa.gov](http://www.dhs.pa.gov)
- ***OCYF Bureau of Juvenile Justice Services***  
329 Forum Building, Harrisburg 17120-2675  
(717) 705-2451
- ***National Center for Juvenile Justice***  
3700 South Water Street, Ste. 200  
Pittsburgh, PA 15203  
(412) 227-6950  
<http://www.ncjj.org/>

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<sup>1</sup> For more detailed requirements relating to the running of juvenile probation departments, see the Juvenile Court Judges' Commission's Standards Governing the Operation of a Juvenile Probation Merit System. These and all other JCJC Standards are available online at [www.jcjc.pa.gov](http://www.jcjc.pa.gov)

<sup>2</sup> Rule 182(B), Pa.R.J.C.P.

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<sup>3</sup> Quotations in this section are taken directly from unpublished correspondence of Senior Judge Isaac Garb, Court of Common Pleas, Bucks County, with Jim Anderson, former Executive Director, Juvenile Court Judges' Commission.

<sup>4</sup> In a time-certain scheduling system, the amount of time that will be needed for each hearing must be estimated on the basis of past experience with similar hearings. Note that some case management information systems are capable of capturing the starting and ending times of hearings, so that data analysis will yield highly accurate scheduling predictions.

<sup>5</sup> Rule 182(A) and (B), Pa.R.J.C.P. The required topics include the Juvenile Act, Rules of Juvenile Court Procedure, penal laws of the Commonwealth, the Child Protective Services Law, evidence rules and methodology, child and adolescent development, and the collateral consequences of an adjudication of delinquency. Upon meeting those requirements, the Rules provide that the juvenile court hearing officer must thereafter complete six hours of instruction designed by the Juvenile Court Judges' Commission (JCJC) in juvenile delinquency law, policy, or related social science research every two years.

<sup>6</sup> 42 Pa.C.S. §6305. In any hearing before a master, the juvenile must be informed at the outset of the right to a hearing before a judge; either the juvenile or the Commonwealth may insist on a judicial hearing. The master's findings and recommendations become final only when confirmed in writing by the judge, who may order a rehearing "at any time upon cause shown."

<sup>7</sup> Rule 120, Pa.R.J.C.P.

<sup>8</sup> Rule 187(A), Pa.R.J.C.P.

<sup>9</sup> Rule 187(B), Pa.R.J.C.P.

<sup>10</sup> Rule 187(C), Pa.R.J.C.P.

<sup>11</sup> Rule 192, Pa.R.J.C.P.

<sup>12</sup> Rule 191, Pa.R.J.C.P.

<sup>13</sup> 42 Pa.C.S. §6307 and Rules 160 and 161 Pa.R.J.C.P.

<sup>14</sup> 42 Pa.C.S. §6308.

<sup>15</sup> 18 Pa.C.S. §9123.

<sup>16</sup> Rule 120 Pa.R.J.C.P.

<sup>17</sup> 42 Pa.C.S. §6307 and Rule 160 Pa.R.J.C.P.

<sup>18</sup> 42 Pa.C.S. §6307(a)(1)-(7). See also Rule 160, Pa.R.J.C.P., and 37 Pa. Code §200.802.

<sup>19</sup> See 42 Pa.C.S. §6308, which requires law enforcement records relating to juveniles to be kept separate from those of adults, and permits disclosure of their contents only to courts, counsel for the parties, commitment agencies, law enforcement officials from other jurisdictions, etc.

<sup>20</sup> Rule 161 Pa.R.J.C.P.

<sup>21</sup> 37 Pa. Code §200.802(c).

<sup>22</sup> 42 Pa.C.S. §6307(b).

<sup>23</sup> Rule 330(C) Pa.R.J.C.P.

<sup>24</sup> Rule 515(A) Pa.R.J.C.P.

<sup>25</sup> Rule 160(D) Pa.R.J.C.P.

<sup>26</sup> 42 Pa.C.S. §6341 and Rule 163, Pa.R.J.C.P.

<sup>27</sup> 37 Pa. Code §200.802(b).

<sup>28</sup> 37 Pa. Code §200.802(b)(2).

<sup>29</sup> 18 Pa.C.S. §9123.

<sup>30</sup> Rule 170(B), Pa.R.J.C.P. Under Rule 172, Pa.R.J.C.P., an order to expunge must contain all of these items plus the judge's name and signature and the date of the order.

<sup>31</sup> 18 Pa.C.S. §9123(a).

<sup>32</sup> 18 Pa.C.S. §9123(a)(4).

<sup>33</sup> 42 Pa.C.S. §6308(c).

<sup>34</sup> 42 Pa.C.S. §6309(b).

<sup>35</sup> 42 Pa.C.S. §6308(c)(2).

<sup>36</sup> 42 Pa.C.S. §6308(c)(3).

<sup>37</sup> 42 Pa.C.S. §6341(a).

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<sup>38</sup> Pennsylvania Juvenile Court Judges' Commission. (2006). Juvenile Justice System Outcomes: Statewide Outcome Measures 2005. Harrisburg, PA: Juvenile Court Judges' Commission. [www.jcjc.pa.gov](http://www.jcjc.pa.gov)

<sup>39</sup> Pennsylvania Juvenile Court Judges' Commission. [www.jcjc.pa.gov](http://www.jcjc.pa.gov)

<sup>40</sup> For more information, see Harp, C., Bell, D. Bazemore, G., and Thomas, D. (2006). Guide to Developing and Implementing Performance Measures for the Juvenile Justice System. Alexandria, VA: American Prosecutors Research Institute.

<sup>41</sup> [www.communitiesthatcare.net](http://www.communitiesthatcare.net).

<sup>42</sup> <http://www.blueprintsprograms.com/>

<sup>43</sup> [Pennsylvania's Crime Victims' Rights and Corresponding Rules of Juvenile Court Procedure - A Handbook for Juvenile Justice Professionals and Victim Service Providers.](#)

# Glossary

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**Act of Sexual Violence:** As defined in 42 Pa.C.S. Ch. 64 ( relating to court-ordered involuntary treatment of certain sexually violent persons), any conduct prohibited under the following provisions of law: 18 Pa.C.S. § 3121 (relating to rape);18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse);18 Pa.C.S. § 3124.1 (relating to sexual assault); 18 Pa.C.S. § 3125 (relating to aggravated indecent assault); 18 Pa.C.S. § 3126 (relating to indecent assault); 18 Pa.C.S. § 4302 (relating to incest). Juveniles who are found to be delinquent for any of these acts who are committed to an institution or other facility, and who remain in any such facility as a result of that adjudication of delinquency upon attaining 20 years of age, are subject to assessment by the State Sexual Offenders Assessment Board (SOAB).

**Adolescent Development:** The process through which “biological, cognitive, emotional and social development unfolds and interacts during the second decade of life.” (Lerner and Steinberg, Handbook of Adolescent Psychology, 2004) The study of adolescent development is primarily dominated by psychology, although other disciplines such as biology and neuroscience help inform our understanding of adolescence. Increasingly, researchers study the impact of context (*i.e.* families, peers, schools, neighborhoods, culture) on adolescents’ development, and how such contexts contribute to both positive and negative outcomes.

**Age-appropriate or Developmentally-appropriate:** The terms used to describe: 1) the activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; or 2) in the case of a specific child, activities or items that are suitable based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

**Advanced Communication Technology:** The term used throughout the Rules of Juvenile Court Procedure to describe communication equipment that may be used, depending on the proceeding, to provide for the appearance of the juvenile and/or a witness. The term includes, but is not limited to, systems providing for two-way simultaneous audio-visual communication, closed circuit television, telephone and facsimile equipment, and electronic mail. (See Rule 129, Pa.R.J.C.P.)  
<https://www.pacode.com/secure/data/237/chapter1/s129.html>

**Aftercare:** Services (including health, mental health, educational, vocational, family services, etc.) designed to help youth re-enter the community after placement in out-of-home facilities. Collaboration and planning for aftercare should begin as soon as the juvenile enters placement.

**Assessment:** An individualized examination of a child to determine the child's psychosocial needs and problems, including the type and extent of any mental

health, substance abuse or co-occurring mental health and substance abuse disorders and recommendations for treatment. The term includes, but is not limited to, a drug and alcohol, psychological and psychiatric evaluation, records review, clinical interview and the administration of a formal test and instrument. The term is distinguished from the term "Screening."

**Balanced and Restorative Justice (BARJ):** The philosophical foundation of Pennsylvania's juvenile justice system mission, which gives priority to repairing the harm done to crime victims and communities and which defines offender accountability in terms of assuming responsibility for the harm caused by his/her behavior and taking action to repair that harm to the extent possible. The commitment to this philosophy led to the 1995 amendments to the Juvenile Act which mandate the system.... *"consistent with the protection of the public interest, to provide for children committing delinquent acts program of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community."* (See, in particular, 42 Pa.C.S. § 6301(b)(2), 6340(c.1) and 6352(a)).

**Certification or Waiver to Criminal Court:** The transfer of a case for criminal prosecution under 42 Pa.C.S. § 6355 and Rules 390-396 Pa.R.J.C.P.

**Clerk of Courts:** The official in each judicial district who has the responsibility and function under state law or local practice to maintain the official court record and docket, without regard to that person's official title. A party to the proceedings may not function as the clerk of courts.

**Collateral Consequences:** The negative results of a juvenile delinquency adjudication that compound a disposition or sanction imposed by the court. Juvenile records and system involvement, for example, may limit a youth's opportunities to obtain education, health care, housing, and employment, to own or possess a firearm, etc.

**Commitment (also known as Placement):** The court-ordered removal of a juvenile from his/her home as a disposition following an adjudication of delinquency. Commitment/Placement occurs only after a delinquency adjudication, as opposed to "detention," which may be ordered by the court or authorized by a juvenile probation officer pending an adjudicatory or other hearing.

**Competency:** A youth's ability to stand trial, measured by his or her capacity to understand juvenile court proceedings, to consult meaningfully with a lawyer, and to assist in his or her own defense.

**Consent Decree:** The post-petition, pre-adjudication suspension of delinquency proceedings pursuant to 42 Pa.C.S. §6340 and Rules 370-373 Pa.R.J.C.P., agreed to by the attorney for the Commonwealth and the juvenile, through which the court may continue a juvenile under supervision in his home under conditions negotiated with the juvenile probation office. A consent decree is to remain in force for no more than 6 months. However, upon motion, the court may discharge the juvenile sooner or extend the period on consent decree supervision not to exceed an additional 6 months.

**County Children and Youth ( C&Y) Agency:** The county child welfare agency. These agencies are supervised by the Department of Human Services pursuant to the Human Services Code 62 P. S. § 901 *et seq.*

**Court:** The Court of Common Pleas which is assigned to hear juvenile delinquency matters. The term has the same meaning as the term “Juvenile Court.” The term also includes juvenile court hearing officers when they are permitted to hear cases under the Rules of Juvenile Court Procedure.

**Court-Appointed Special Advocate (CASA):** An individual appointed by the court to participate as an advocate for a child who is dependent or alleged to be dependent pursuant to 42 Pa.C.S. § 6342.  
[https://govt.westlaw.com/pac/Document/N10548B40343811DA8A989F4EECDB8638?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/pac/Document/N10548B40343811DA8A989F4EECDB8638?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)) and Rule 1158, Pa. R.J.C.P.  
<https://www.pacode.com/secure/data/237/chapter11/s1158.html>

**Criminogenic needs:** Characteristics of a juvenile that, when changed, are associated with changes in the juvenile’s risk of reoffending. (See *dynamic risk factors.*)

**Decertification from criminal court:** The transfer of a case from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322.

**Delinquent Act:** In general, an act committed by a juvenile that would constitute a crime if committed by an adult. However, in Pennsylvania, the term ‘delinquent act’ does not include the crime of murder; any of a series of designated felonies if a deadly weapon was used during the commission of the offense committed by a juvenile age 15 or older; or any of another series of designated felonies if the juvenile is age 15 or older and has been previously adjudicated delinquent on the basis of any of these offenses. These excluded “direct file” offenses are initially subject to criminal court jurisdiction. In addition, summary offenses are excluded from the definition (unless a juvenile fails to comply with a lawful sentence imposed for the offense by the minor judiciary), as are offenses committed by a juvenile who has been found guilty in a criminal proceeding for other than a summary offense. (See 42 Pa.C.S. § 6302)  
[https://govt.westlaw.com/pac/Document/NA708D0D0A60C11E6A692AE782C07BAFA?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/pac/Document/NA708D0D0A60C11E6A692AE782C07BAFA?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

**Delinquent Child/Juvenile:** A child 10 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.

**Dependent Child:** In general, a child who is without proper parental care or supervision, or who has been abused, who is habitually truant from school, who is ungovernable, or who is under the age of 10 and who has committed a delinquent act or crime other than a summary offense. (See 42 Pa.C.S. § 6302)  
[https://govt.westlaw.com/pac/Document/NA708D0D0A60C11E6A692AE782C07BAFA?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/pac/Document/NA708D0D0A60C11E6A692AE782C07BAFA?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

**Detention:** The temporary custody of a juvenile in a secure juvenile detention facility that is licensed by the Pennsylvania Department of Human Services Detention. In general, unless a juvenile order to be placed in detention by the court at a hearing, all juveniles admitted to detention must have a hearing within 72 hours.

**Destroy or Destruction:** As defined in the Rules, to erase permanently or the process of permanent erasure of an item leaving no trace or indication that it ever existed. These terms are distinguished from the terms “Expunge” and “Expungement”. See, in particular, 42 Pa.C.S. § 6341(a) and Rule 408, Pa.R.J.C.P, <https://www.pacode.com/secure/data/237/chapter4/s408.html> , which mandates that if the court finds that a juvenile committed none of the delinquent acts alleged in the petition, the court shall order, *sua sponte*, the destruction of fingerprints and photographs related to the dismissed petition.

**Direct File Offense:** A crime that is subject to the initial jurisdiction of the adult criminal justice system because it is excluded from the definition of “Delinquent act” in the Juvenile Act. These cases may be transferred to juvenile court following a “decertification hearing” in criminal court held pursuant to 42Pa.C.S. §§ 6322 and 6355.

**Disposition:** The final determination in a delinquency case made by the court after an adjudication of delinquency, or any determination that ceases juvenile court action on a case.

**Diversion:** The redirection of a juvenile from further involvement in the juvenile justice system. Diversion may occur pre-arrest; following arrest but prior to the submission of the written allegation to (i.e. through referral to a Youth Aid Panel); following the submission of the written allegation but prior to the filing of a petition ( i.e. through an informal adjustment), or following the filing of the petition but prior to an adjudication of delinquency ( i.e. through the entry of a consent decree).

**Dual status case:** A designation for youth who is involved in dependency court because of abuse or neglect and also involved in the juvenile justice system because of delinquent behavior.

**Dually adjudicated youth:** A youth who has been adjudicated both delinquent and dependent.

**Dynamic risk factors:** Characteristics of a juvenile or the juvenile’s environment that can change over time, because of treatment or the normal developmental process. (See *Criminogenic needs*) The *criminogenic needs* assessed through the administration of the YLS include: attitudes/orientation (antisocial thinking); personality/behavior (antisocial temperament); and peer relations (antisocial companions).

**Educational decision maker:** A responsible adult appointed by the court pursuant to Rule 147, Pa.R.J.C.P. <https://www.pacode.com/secure/data/237/chapter1/s147.html> to make decisions regarding a juvenile’s education when the juvenile has no guardian or the court has limited the guardian’s right to make such decisions for the juvenile. The educational decision maker acts as the juvenile’s representative concerning all matters regarding education unless the court specifically limits the authority of the educational decision maker.

**Expunge/Expungement:** To erase legally or the process of legal erasure of the juvenile record or the sealing of the record, making it permanently unavailable to the public, except that some information may be retained only by a juvenile justice agency for limited purposes as provided in Rule 173, Pa. R.J.C.P.

<https://www.pacode.com/secure/data/237/chapter1/s173.html>

The statutory requirements for expungement of records in juvenile delinquency cases and in the cases of summary offense committed by persons under 18 years of age are included in the Criminal History Record Information Act (CHRIA) at 18 Pa.C.S. § 9123.

[https://govt.westlaw.com/pac/Document/N0C303000595E11E48144C5F0CF420019?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/pac/Document/N0C303000595E11E48144C5F0CF420019?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

**Guardian:** As defined in the Rules of Juvenile Court Procedure, the term includes any parent, custodian, or other person who has legal custody of a juvenile, or any person designated by the court to be a temporary guardian for purposes of a proceeding.

**Habitually Truant:** As defined in the Public-School Code, a child subject to compulsory school attendance laws who has six (6) or more school days of unexcused absences during the current school year. (See **Truant**)

**Informal Adjustment:** The pre-petition diversion of a case by a juvenile probation officer following the receipt of the written allegation pursuant to 42 Pa.C.S. § 6323 and Rule 312 Pa.R.J.C.P., where it appears that adjudication would not be in the best interest of the public, and the juvenile, the juvenile and the juvenile's guardian consent to informal adjustment, and the admitted facts bring the case within the jurisdiction of the court. The duration of a period of supervision and/or services under an informal adjustment may not exceed six months, unless extended by order of the court for an additional period not to exceed three months.

**Informal Hearing:** The "72-hour hearing" that is required by 42 Pa.C.S. § 6332 and pursuant to Rules 240-242 Pa.R.J.C.P. to be held not later than 72 hours after a juvenile is placed in detention or shelter care to determine whether his detention or shelter care is required under § 6325 (relating to detention of child), whether to allow the juvenile to remain in the home would be contrary to the welfare of the juvenile and whether probable cause exists that the juvenile has committed a delinquent act.

**Intake:** The process following the submission of the written allegation to the juvenile probation office, during which juvenile probation officer investigates a youth's charges and background and decides whether to release the youth, consider the youth for informal adjustment or other diversion option, or formally proceed against him/her in juvenile court.

**Interagency Information Sharing Agreement:** An agreement developed under 42 Pa.C.S. § 6352.2 among the county C&Y agency, juvenile probation department, local law enforcement agencies, mental health agencies, drug and alcohol agencies, local school districts and other agencies and entities as deemed appropriate, to enhance

the coordination of case management services to and the supervision of children who have been accepted for service by a county C&Y agency, and who also are being supervised under an informal adjustment or a consent decree, have been found to have committed a delinquent act or have been found to be dependent or delinquent. The purpose of the agreement is to enhance the coordination of efforts to identify children who may be at risk of child abuse, parental neglect or initial or additional delinquent behavior, and to provide services to these children and their families. Any such agreement must shall be signed by the chief executive officers of these entities as well as the public defender's office and guardian *ad litem* in each county and must be submitted to the court for approval.

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**Interstate Compact for Juveniles:** The Interstate Compact for Juveniles is a contract between the states that regulates the interstate movement of juveniles who are under court supervision or who have run away from home and left their state of residence. States ratifying the compact are bound by federal law to observe the terms of the agreement. The Compact provisions take precedence over conflicting state laws, including conflicting provisions of the Juvenile Act (42 Pa.C.S. §§ 6361-6365). The Compact provides for states' supervision and return of juveniles who have run away from home and left their state of residence; are on probation, parole, or other supervision, or have escaped to another state; and have been accused of an offense in another state. Questions and requests for assistance should be directed to the office Pennsylvania's Compact Administrator in the Department of Human Services: <https://www.juvenilecompact.org/east/pennsylvania>

**Juvenile Detention Center or Facility:** refers to a facility, privately or publicly owned and operated, which is approved by the state Department of Human Services (DHS) to detain a juvenile temporarily.

**Juvenile:** A person who has attained ten years of age and is not yet twenty-one years of age who is alleged to have, upon or after the juvenile's 10<sup>th</sup> birthday, committed a delinquent act before reaching eighteen years of age or who is alleged to have violated the terms of juvenile probation prior to termination of juvenile court supervision.

**Juvenile Court Hearing Officer:** is an attorney with delegated authority to preside over and make recommendations for delinquency matters. Juvenile court hearing officer has the same meaning as master as used in the Juvenile Act. The cases over which a juvenile court hearing officer may preside are limited by Rule 187, Pa.R.J.C.P. <https://www.pacode.com/secure/data/237/chapter1/s187.html>

**Juvenile Court Judge:** A judge of the Court of Common Pleas who presides over delinquency or dependency proceedings.

**Juvenile Court Judges' Commission (JCJC):** Established in 1959, the JCJC consists of 9 judges appointed by the Governor upon the nomination of the Chief Justice of Pennsylvania. The JCJC is housed administratively within the Governor's Office of General Counsel, and is mandated by the Juvenile Act to advise juvenile courts

concerning the proper care and maintenance of delinquent and dependent children; establish standards governing the administrative practices and judicial procedures used in juvenile courts; establish standards and make recommendations regarding personnel practices and employment standards used in probation offices; collect and analyze data to identify trends and to determine the effectiveness of programs and practices to ensure the reasonable and efficient administration of the juvenile court system; and administer a grant-in-aid program for the development and improvement of county juvenile probation services. The JCJC's administrative offices are in the Pennsylvania Judicial Center in Harrisburg and the JCJC's Center for Juvenile Justice Training and Research is housed at Shippensburg University. <http://www.jcjc.pa.gov>.

**Juvenile History Record Information:** Information collected pursuant to this § 6309 of the Juvenile Act concerning alleged delinquents and adjudicated delinquents whose fingerprints and photographs are taken pursuant to § 6308(c) following an allegation of delinquency, consisting of identifiable descriptions, dates and notations of arrests or other delinquency charges and any adjudication of delinquency or preadjudication disposition other than dismissal arising therefrom.

This information, which is maintained by the Pennsylvania State Police in the Central Repository, also includes the last known location and the juvenile court jurisdiction status of each adjudicated delinquent. Juvenile history record information does not include intelligence information, investigative information, treatment information, including medical and psychiatric information, caution indicator information, modus operandi information, wanted persons information, stolen property information, missing persons information, employment history information, personal history information or presentence investigation information.

**Juvenile Justice and Delinquency Prevention Act (JJDP):** A 1974 federal law (reauthorized in 1992 and 2002) <https://www.ojjdp.gov/about/jjdpa2002titlev.pdf> which provides funding to states and territories that comply with so-called "core protections" regarding the care and treatment of youth. The four "core protections" outlined in the JJDP are: Deinstitutionalization of Status Offenders (DSO) — youth who are runaways, truants or curfew violators cannot be detained in juvenile detention facilities or adult jails; "Sight and Sound" — disallows sight and sound contact between juvenile and adult offenders, if juveniles are held in an adult jail or lock-up under the limited circumstances allowed by the JJDP; "Jail Removal" — disallows the placement of youth in adult jails and lock-ups except under very limited circumstances; and Disproportionate Minority Contact (DMC) — requires states to address the disproportionate involvement of minority youth in the states' juvenile justice systems. The funding comes to the states through the federal Office of Juvenile Justice and Delinquency Prevention. <https://www.ojjdp.gov/> In Pennsylvania, these funds are received and administered by the Pennsylvania Commission on Crime and Delinquency (PCCD) <http://www.pccd.pa.gov/pages/default.aspx>, which monitors the state's compliance with the JJDP "core protections", files the necessary assurances with the federal OJJDP and awards sub-grants of these funds upon the recommendation of PCCD's Juvenile Justice and Delinquency prevention Committee (JJDP).

**Juvenile Justice and Delinquency Prevention Committee (JJJPC):** The advisory committee of PCCD that is traditionally charged by PCCD with preparing and at least once every two years updating a comprehensive juvenile justice plan on behalf of the Commonwealth based on an analysis of the Commonwealth's needs and problems, including juvenile delinquency prevention. Funding awarded to counties by PCCD upon the recommendation of the JJJPC is critically important to the ongoing implementation of the JJSES. (See **Pennsylvania Commission on Crime and Delinquency (PCCD)**)

**Juvenile Justice System Enhancement Strategy (JJSES):** Pennsylvania's comprehensive strategy to achieve its balanced and restorative justice mission by employing evidence-based practices at every stage of the juvenile justice process; collecting and analyzing the data necessary to measure the results of these efforts; and with this knowledge, striving to continuously improve the quality of our system's decisions, services and programs. The concept and statement of purpose for the JJSES was developed in June 2010 at the annual strategic planning meeting of the Executive Committee of the Pennsylvania Council of Chief Juvenile Probation Officers <https://www.pchiefprobationofficers.org/> and the management staff of the JCJC. <http://www.jcjc.pa.gov>.

**Juvenile Probation Files:** The records formally maintained by the juvenile probation office and its officers, including, but not limited to, copies of information contained in the official juvenile court record; social studies; school records and reports; health evaluations, screenings, assessments, records, and reports, including psychological and psychiatric evaluations and reports, drug and alcohol testing, evaluations, and reports; placement reports and documents; employment records; and probation reports. These records are distinguished from the Official Court Record, which is the juvenile court file maintained by the clerk of courts.

**Juvenile Probation Officer:** is a person who has been appointed by the court or employed by a county's juvenile probation office, and who has been properly commissioned by being sworn in as an officer of the court to exercise the powers and duties set forth in Rule 195 Pa.R.J.C.P.

<https://www.pacode.com/secure/data/237/chapter1/s195.html>, the Juvenile Act at 42 Pa.C.S. § 6304

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and § 6324,

[https://govt.westlaw.com/pac/Document/N0EFC9C60343811DA8A989F4EECDB8638?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/pac/Document/N0EFC9C60343811DA8A989F4EECDB8638?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)), and the Child Protective Services Law at 23 Pa.C.S § 6315

[https://govt.westlaw.com/pac/Document/N52875620CCA811E3ACD4BDF3665B5BCE?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/pac/Document/N52875620CCA811E3ACD4BDF3665B5BCE?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)).

**Massachusetts Youth Screening Instrument-version 2 (MAYSI-2):** The MAYSI-2 is a scientifically proven screening instrument that is designed to help juvenile probation departments and juvenile justice service providers identify youth, ages

12–17, who may have special mental health needs. The MAYSI-2 is a computerized, self-report questionnaire that contains 52 items written at a fifth-grade reading level. In Pennsylvania, the MAYSI-2 has been used by juvenile detention centers since 2000, and juvenile probation departments began implementing the MAYSI-2 in 2007 in conjunction with Pennsylvania’s *Models for Change* initiative with the MacArthur Foundation. It is now a critical component of the JJSES.

<http://www.nysap.us/MAYSI2.html>

**Minor:** Any person, other than a juvenile, under the age of eighteen.

**Need Principle:** A central tenet of the JJSES which emphasizes targeting *criminogenic needs factors* that are associated with delinquent behavior. This principle focuses on *what* about the juvenile must be addressed in order to reduce the juvenile’s likelihood of recidivism.

**Official Court Record:** The juvenile court file maintained by the clerk of courts which contains all court orders, court notices, docket entries, filed documents, evidence admitted into the record, and other court designated documents in each juvenile case. This file is distinguished from the “Juvenile Probation Files” maintained by the juvenile probation office.

**Parties:** In a juvenile delinquency case, the parties are the juvenile and the Commonwealth.

**Pennsylvania Commission on Crime and Delinquency (PCCD):** Pennsylvania’s state criminal and juvenile justice planning agency. Most federal funding for criminal and juvenile justice purposes comes to the Commonwealth through PCCD and is awarded through sub-grants to local government and other eligible grant recipients. Among the duties of PCCD are to prepare and at least once every two years update a comprehensive juvenile justice plan on behalf of the Commonwealth based on an analysis of the Commonwealth’s needs and problems, including juvenile delinquency prevention. This responsibility is traditionally delegated to PCCD’s Juvenile Justice and Delinquency Prevention Committee (JJJPC). (See **Juvenile Justice and Delinquency Prevention Committee**)

**Pennsylvania Council of Chief Juvenile Probation Officers:** The professional association of Pennsylvania chief juvenile probation officers. Established in 1967, The Chiefs’ Council works closely with the JCJC, PCCD and other system partners on juvenile justice policy and practice issues. The Executive Committee of the Council worked with the administrative staff of the JCJC to develop the concept for the Juvenile Justice System Enhancement Strategy (JJSES) and the Council is actively involved in leading its continued implementation and refinement. The Chiefs’ Council is widely recognized as one of the nation’s most influential organizations of its kind.

<https://www.pachiefprobationofficers.org/>

**Pennsylvania Detention Risk Assessment Instrument (PaDRAI):** A concise, structured decision-making instrument used to assist Pennsylvania juvenile probation officers in the decision of whether to securely detain a youth, release to an alternative to detention, or release to the custody of a parent or responsible adult during the period that the youth is awaiting his/her juvenile court hearing. The instrument is

designed to assess the risk that a youth will: 1) commit additional offenses while awaiting his/her juvenile court hearing; and/or 2) fail to appear for his/her scheduled juvenile court hearing. It is recommended that the PaDRAI be used for every decision involving a new allegation of delinquency. However, it is not recommended for use in detention decisions involving technical violations of probation. The PaDRAI is modeled after instruments developed through the Juvenile Detention Alternatives Initiative (JDAI) of the Annie E. Casey Foundation.

**Permanency Plan:** A mandatory plan that describes how a youth will leave the child welfare system and return safely to family or find a new family setting. Federal law has established the following hierarchy for permanency goals: returning home, adoption, placement with a legal guardian, placement with a fit and willing relative, and Another Planned Permanent Living Arrangement (APPLA). The Permanency Plan will list the goals for the child as well as the goals for the family and specific services needed to achieve the permanency plan. The Permanency Plan must contain other elements that are required by federal and state law regarding the child's needs related to areas such as education, health care, and contact with families and the services that must be provided to address any identified needs or problems. By the time a youth is 16, the Permanency Plan should also include an Independent Living Plan.

**Permanency Hearings:** Hearings conducted pursuant to the Juvenile Act at 42 Pa.C.S. § 6351 and Rule 1608 Pa.R.J.C.P. for the purpose of determining or reviewing the permanency plan of a dependent child who is in court-ordered out-of-home placement, the date by which the goal of permanency for the child might be achieved and whether placement continues to be best suited to the safety, protection and physical, mental and moral welfare of the child. These hearings are a requirement for federal funding under Title IV-E of the Social Security Act. (See 42 U.S.C. § 671 and 45 CFR 1356.21)

In general, the court must conduct a permanency hearing within 6 months of the date of the child's removal from the child's guardian for placement pursuant to 42 Pa.C.S. §§ 6324 or 6332, or pursuant to a transfer of legal custody, or other disposition pursuant to Rule 1515, whichever is earliest; or each previous permanency hearing until the child is removed from the jurisdiction of the court.

**Permanent Legal Custodianship (PLC):** PLC is a permanency arrangement specific to Pennsylvania. In this arrangement, permanent legal custody of a child is given to a foster parent, relative, or someone else committed to the child. The custodian must be committed to caring for the child until he or she reaches adulthood. If placed with a permanent legal custodian, a youth's case is discharged from the child welfare system—no caseworker is assigned to the family and no case management services or court review occurs. Unlike with adoption, the rights of a child's biological parents do not need to be terminated for PLC to be granted. PLC can come with a financial subsidy.

**Petition:** The formal document by which an attorney for the Commonwealth or the juvenile probation officer alleges a juvenile to be delinquent. The petition is distinguished from the "written allegation" that is completed by a law enforcement

officer and submitted to the juvenile probation office to commence delinquency proceedings.

**Placement facility:** is any facility, privately or publicly owned and operated, that identifies itself either by charter, articles of incorporation, or program description, to receive delinquent juveniles or which otherwise provides treatment to juveniles as a case disposition. Placement facilities include, but are not limited to, residential facilities, group homes, after-school programs, and day programs, whether secure or non-secure. This term is distinguished from the term “Juvenile Detention Center or Facility,” which provide temporary secure care to juveniles pending a court proceeding or transfer to a placement facility.

**Pre-disposition Report:** A report prepared by the juvenile probation office that summarizes important information concerning the juvenile to aid the court in determining the disposition of a juvenile delinquency case. Unless the allegations in a delinquency petition are admitted by a juvenile or notice has been given by the Commonwealth of its intent to seek transfer of the juvenile’s case to criminal proceedings, the court may not direct the making of the study and report until after the adjudicatory hearing and the court has found that the juvenile committed a delinquent act. In some jurisdictions, this report is referred to as the “social study” (See 42 Pa.C.S. §6339)

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**Probation:** In general, the status of a juvenile being supervised in the community by a juvenile probation office following an adjudication of delinquency, as an alternative to out-of-home placement, subject to conditions imposed by the court and/or probation office.

**Proceeding:** Any stage in the juvenile delinquency process occurring once a written allegation has been submitted to the juvenile probation office.

**Protective Custody:** When a child is taken into custody for protection as an alleged dependent child pursuant to the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.* or custody may be assumed pursuant to 23 Pa.C.S. § 6315.

**Protective factors:** Characteristics of a juvenile or the environment surrounding the juvenile that interact with risk factors to reduce the likelihood of involvement in delinquent or criminal activities (e.g. the presence of caring and supportive adults in the community and at school; having a stable family; having a positive/resilient temperament; etc.)

**Protective Supervision:** Supervision ordered by the court of children found to be dependent. Note that the Juvenile Act at 42 Pa.C.S. § 6304 specifically recognizes that dependent children may be placed by the court under the protective supervision of a probation officer.

<https://govt.westlaw.com/pac/Document/N12CE64E0343811DA8A989F4EECDB8>

**Responsivity factors:** Factors that may affect a juvenile's ability to respond to treatment and programming, such as motivation to change, cognitive functioning, and access to transportation, which may be considered in risk/needs assessments. These factors are important to consider when determining appropriate treatment and services for the youth.

**Restitution Fund:** A fund specifically authorized by the Juvenile Act. The president judge is required to promulgate written guidelines for the administration of the fund, and disbursements from the fund are to be made, subject to the written guidelines and the limitations of the Juvenile Act, at the discretion of the president judge and used to reimburse crime victims for financial losses resulting from delinquent acts. (42 Pa.C.S. §6352(a)(5)) Contributions to such a fund are one of the dispositional options available to the court following an adjudication of delinquency (§ 6352), or as a condition of a consent decree (§ 6340). In addition, contributions to a restitution fund may be a condition a condition of an informal adjustment (§ 6323), and the Act specifically mandates that upon notice being certified to the court that a child has failed to comply with a lawful sentence imposed for a summary offense, any money subsequently paid by the child pursuant to the disposition of the charges must be administered and disbursed in accordance with written guidelines adopted by the president judge. Further, the court may direct that any portion of the money received from the child shall be deposited into a restitution fund established by the president judge of the court of common pleas pursuant to section 6352(a)(5) (relating to disposition of delinquent child).

**Risk Assessment Instrument:** A tool used to assess a youth's likelihood (or risk) of future re-offending. Items on these instruments can reflect both life circumstances (*e.g.* history of child abuse) and personal characteristics (*e.g.* attitudes and past behaviors) that have been found to predict future problem behavior. Within the context of the juvenile justice system, risk assessment instruments can be used at different decision-making points (*e.g.* diversion, detention, or disposition). The briefer screening instruments, such as those often used to determine whether or not to detain a youth, generally consider more basic characteristics that are unchanging, such as the current alleged offense or prior arrest history. More comprehensive risk assessment instruments generally consider a broader range of risk factors, and can be used to guide treatment planning. (See **Youth Level of Service/Case Management Inventory**)

**Risk factors:** Characteristics of a youth or the environment surrounding the youth that increase the likelihood of engaging in delinquency. There are two types of risk factors: *static* and *dynamic*. **Static risk factors** are those historical characteristics of juveniles that cannot be changed through treatment or programming, such as the age at which the first offense was committed, history of violent behavior, and parental criminality. **Dynamic risk factors** are characteristics that can change over time, because of treatment or the normal developmental process.

**Risk Principle:** A central tenet of the JJSES, which refers to the probability that a juvenile will reoffend and that the level of service should match the risk level of the juvenile.

Therefore, the highest-risk offenders should receive the most intensive services and supervision. This principle identifies *who* should receive juvenile justice system intervention and treatment.

**School to Prison Pipeline:** A metaphor used to describe the increasing patterns of contact students have with the juvenile and adult criminal justice systems as a result of the practices implemented by educational institutions, such as “zero-tolerance policies” and the increased referral to law enforcement of school misbehavior and altercations between students.

**Screening:** A process, regardless of whether it includes the administration of a formal instrument, that is designed to identify a child who is at increased risk of having mental health, substance abuse or co-occurring mental health and substance abuse disorders that warrant immediate attention, intervention or more comprehensive assessment.

**Service Provider:** Any entity that provides services to juveniles pursuant to a proceeding under the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*

**Seventy-Two Hour Hearing:** The informal hearing required by 42 Pa.C.S. § 6332 and pursuant to Rules 240-242 Pa.R.J.C.P. to be held not later than 72 hours after a juvenile is placed in detention or shelter care, to determine whether detention or shelter care is required under § 6325 (relating to detention of child), whether to allow the juvenile to remain in the home would be contrary to the welfare of the juvenile, and whether probable cause exists that the juvenile has committed a delinquent act.

**Sexual Violence:** Defined in the Juvenile Act as rape, indecent contact as defined in 18 Pa.C.S. § 3101 (relating to definitions), incest or using, causing, permitting, persuading or coercing the child to engage in a prohibited sexual act as defined in 18 Pa.C.S. § 6312(a) (relating to sexual abuse of children) or a simulation of a prohibited sexual act for the purpose of photographing, videotaping, depicting on computer or filming involving the child. Juveniles who are found to be delinquent for any of these acts who are committed to an institution or other facility, and who remain in any such facility as a result of that adjudication of delinquency upon attaining 20 years of age, are subject to assessment by the State Sexual Offenders Assessment Board. (See **Sexually Violent Delinquent Child**)

**Sexually Violent Delinquent Child:** A person who has been found delinquent for an act of sexual violence which if committed by an adult would be a violation of 18 Pa.C.S. § 3121 (relating to rape), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault), 3125 (relating to aggravated indecent assault), 3126 (relating to indecent assault) or 4302 (relating to incest) and who has been determined to be in need of commitment for involuntary treatment under 42 Pa.C.S. Ch. 64 (relating to court-ordered involuntary treatment of certain sexually violent persons).

**Shared Case Responsibility:** The practice of a juvenile probation department and county children and youth (C&Y) agency sharing responsibility for providing services and

support to a juvenile. The concept was previously known as “shared case management,” which was developed as the means to ensure the reimbursement of eligible placement maintenance costs under Title IV-E of the Social Security Act for delinquent youth committed to Title IV-E-eligible placements. Shared legal responsibility may be directed via court order, including in the cases of “dually adjudicated youth” (where a delinquent juvenile has also been found to be a dependent child), or through less formal arrangements in informal adjustment and consent decree cases.

**Shelter care:** Temporary care of a child in physically unrestricted facilities.

**Social Study:** A pre-dispositional report, which summarizes important information concerning the juvenile to aid the court in determining the disposition of a juvenile delinquency case. Unless the allegations in a delinquency petition are admitted by a juvenile or notice has been given by the Commonwealth of its intent to seek transfer of the juvenile’s case to criminal proceedings, the court may not direct the making of the study and report until after the adjudicatory hearing and the court has found that the juvenile committed a delinquent act. See 42 Pa.C.S. § 6339.

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**Standardized Program Evaluation Protocol (SPEP):** A critical component of Pennsylvania’s Juvenile Justice System Enhancement Strategy (JJSES), the Standardized Program Evaluation Protocol (SPEP) is a validated and data-driven rating system for evaluating juvenile justice program effectiveness developed by Dr. Mark Lipsey of the Peabody Research Institute at Vanderbilt University. The SPEP uses research on juvenile justice programs that reduce recidivism. To determine a SPEP score, the provider’s services are compared to characteristics of effective programs in the research: service type, dosage, quality of service, and risk levels of the youth. <http://www.episcenter.psu.edu/juvenile/spep>

**State Sexual Offenders Assessment Board (SOAB):** The board responsible for conducting an assessment to determine whether a juvenile who was found to be delinquent for an act of “sexual violence”, and who remains in delinquency placement upon attaining 20 years of age, is in need of involuntary commitment as a “sexually violent delinquent child” under 42 Pa.C.S. Ch. 64.

**Statement of Reasons:** The requirement of 42 Pa.C.S. § 6352 (c) and Rule 512 (D), that prior to entering an order of disposition following an adjudication of delinquency, the court shall state its disposition and the reasons for its disposition on the record in open court, together with the goals, terms and conditions of that disposition. If the child is to be committed to out-of-home placement, the court must also state the name of the specific facility or type of facility to which the child will be committed and its findings and conclusions of law that formed the basis of its decision, including the reasons why commitment to that facility or type of facility was determined to be the least restrictive placement that is consistent with the protection of the public and best suited to the child's treatment, supervision, rehabilitation and welfare

**Static risk factors:** Historical characteristics of juveniles that cannot be changed through treatment or programming, such as the age at which the first offense was committed, history of violent behavior, and parental criminality.

**Status Offense:** Conduct that is considered unlawful when committed by a minor (because of his/her childhood “status”) but is not criminal when committed by an adult. Common examples include running away from home, habitual disobedience to parents, truancy, curfew violations, and the underage consumption of alcohol. In Pennsylvania, children who are ungovernable or habitually truant from school may be alleged to be dependent children. The underage consumption of alcohol and related offenses are summary offenses that fall within the jurisdiction of the minor judiciary.

**Truant:** As defined in the School Code, a child subject to compulsory school attendance laws who has incurred three (3) or more school days of unexcused absences during the current school year. (See **Habitually Truant**)

**Victims of Juvenile Offenders (VOJO) Grants:** Grants available through the Pennsylvania Commission on Crime and Delinquency that provide financial support, training, and technical assistance to county-based victim service agencies to promote the rights and services to victims in the juvenile justice system. The VOJO grant program is funded by primarily through an annual state appropriation. County allocations have historically been determined by a formula using the county’s juvenile population (75%) and juvenile dispositions at (25%). Eligible activities support the full range of rights, services, and responsibilities within the juvenile justice system outlined in the Crime Victims Act (e.g. notification, accompaniment, assistance with victim impact statements and crime victims’ compensation assistance).

**Written Allegation:** The document that is completed by a law enforcement officer or other person that is necessary to allege a juvenile has committed an act of delinquency. Delinquency proceedings are commenced by the submission of the written allegation to the juvenile probation office.

**Youth Level of Service/Case Management Inventory (YLS/CMI):** A highly regarded and validated assessment instrument utilized throughout Pennsylvania’s juvenile justice system that assesses a juvenile’s risk to recidivate by measuring 42 risk/need factors within the following eight domains: prior and current offenses (antisocial history); attitudes/orientation (antisocial thinking); personality/behavior (antisocial temperament); peer relations (antisocial companions); family circumstances/parenting; education/employment; substance abuse; and leisure/recreation.

In 2013, the JCJC approved a new allocation methodology for the agency’s Juvenile Probation Services grant program to counties which made a county’s eligibility for any JCJC grant funds contingent upon the submission of a plan to the JCJC that must address the implementation of the YLS risk/need assessment instrument; the development of recommendations to the court based upon the YLS results, including the identified risk and needs of each juvenile; and the development and

implementation of a case plan based upon YLS results, which targets services to meet the identified risk and needs of each juvenile.

**Zero Tolerance:** School discipline policies that mandate harsh punishments such as suspension, expulsion, and, in many instances, referral to law enforcement for rule violations. The zero-tolerance approach removes youth from classrooms and routes them into the juvenile justice system for behavioral problems that, in the past, were adequately managed by the school system. (See also **School-to-Prison Pipeline.**)

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