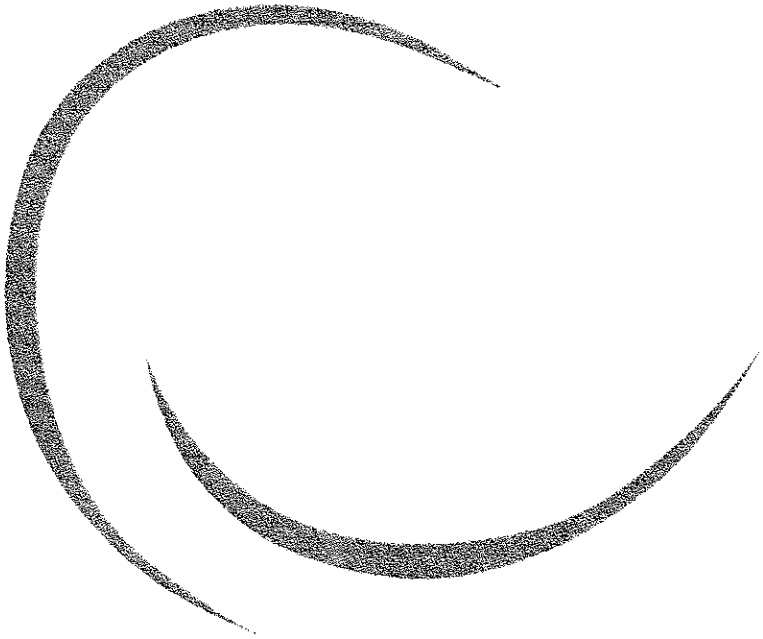
JUVENILE COURT OF MEMPHIS
&
SHELBY COUNTY

DELINQUENCY

BENCH

BOOK



DETENTION HEARINGS PROBABLE CAUSE BONDS

REASONS WARRANTING DETENTION

T.C.A. §37-1-114.

Detention; probable cause; length of detention; secure facilities

(c) A CHILD SHALL NOT BE DETAINED UNLESS:

(1) There is probable cause to believe the child has committed a delinquent offense constituting:

(A) A crime against a person resulting in the serious injury or death of the victim or involving the likelihood of serious injury or death to such victim; or

(B) The unlawful possession of a handgun or carrying of a weapon, as prohibited by title 39, chapter 17, part 13;

(2) There is probable cause to believe the child has committed any other delinquent offense involving the likelihood of serious physical injury or death, or an offense constituting a felony, violation of probation or violation of aftercare, and the child:

(A) Is currently on probation;

(B) Is currently awaiting court action on a previous alleged delinquent offense;

(C) Is alleged to be an escapee or absconder from a juvenile facility, institution or other court-ordered placement; or

(D) Has, within the previous twelve (12) months, willfully failed to appear at any juvenile court hearing, engaged in violent conduct resulting in serious injury to another person or involving the likelihood of serious injury or death, or been adjudicated delinquent by virtue of an offense constituting a felony if committed by an adult;

(3) There is probable cause to believe the child has committed a delinquent offense, and special circumstances in accordance with the provisions of subsection (a) indicate the child should be detained; however, in any such case, the judge shall, within twenty-four (24) hours of the actual detention, excluding non-judicial days, issue a written order on a form prescribed by the Tennessee council of juvenile and family court judges setting forth the specific reasons necessitating such detention. Nothing in this subdivision (c)(3) shall be construed as requiring a hearing or formal finding of fact, except as otherwise required by § 37-1-117;

(4) The child is alleged to be an escapee from a secure juvenile facility or institution;

(5) The child is wanted in another jurisdiction for an offense that, if committed by an adult, would be a felony in that jurisdiction;

(6) There is probable cause to believe the child is an unruly child who has violated a valid court order or who is a runaway from another jurisdiction. Any detention of such a child shall be in compliance with subsection (b);

(7) In addition to any of the conditions listed in subdivisions (c)(1)-(6), there is no less restrictive alternative that will reduce the risk of flight or of serious physical harm to the child or to others, including placement of the child with a parent, guardian, legal custodian or relative; use of any of the alternatives listed in§ 37-1-116(g); or the setting of bail; and

(8) For the purposes of this subsection (c), "serious physical injury" includes conduct that would constitute the offenses of aggravated rape, rape and aggravated sexual battery.

TENNESSEE RULES OF JUVENILE PROCEDURE, RULE 15

PROCEDURES FOR DETENTION HEARINGS

(a) Explanation of Petition and Proceedings. At the beginning of the detention hearing, the court shall inform the parties as to the nature of the complaint, the purpose of the detention hearing, the possible consequences of the court's disposition in that and/or subsequent proceedings, and their legal rights, including:

(1) The right to remain silent, and that anything the child says may be used against the child in the pending or any other proceeding;

(2) The right to an attorney, court-appointed if indigent;

(3) The right to confront and to cross-examine the persons who prepared any police reports, probation reports or other documents submitted, as well as any witness examined by the court during the detention proceedings;

(4) The right to confront and to cross-examine at any subsequent hearings any witness that may be called to testify against the child at those hearings;

(5) The right to use the process of the court to compel the attendance of witnesses on the child's behalf; and

(6) The right to present to the court whatever relevant evidence the child or the parent, guardian or legal custodian, or their counsel, desires to present.

(b) Evidence, Findings, and Order. In conducting a detention hearing, the court may consider reliable hearsay, and upon determining (1) that there is probable cause to believe that the child committed the offense charged, (2) that it is in the best interest of the child and the public that the child be detained pending a hearing on the petition, (3) that the child's detention is warranted or required by law as provided in T.C.A. §37-1-114, and (4) that the immediate welfare of the child and/or the protection of the community so requires, the court shall enter a detention order.

(c) Release of Child. If the court does not make all of the findings set forth in the preceding section, the court shall either order the child discharged forthwith from detention or, in the discretion of the court, release the child to a parent, guardian, legal custodian, or adult relative, with or without bond, pending further proceedings.

THE DETENTION OR INITIAL HEARING CHECKLIST

WHO SHOULD BE PRESENT

The following individuals should be present at the detention or initial hearing:

- The judge who is assigned to the family. In detention hearings, due to the short timeframes involved, this may not be possible. If not, the next hearing should be set before the family's assigned judge who should make all disposition decisions;
- The youth who has been charged with the violation of law;
- The parent or legal custodian of the youth, including the child's caseworker if under custody to the child protection agency;
- If the youth is living with someone other than the parent or legal guardian (e.g., non-custodial relative, foster parent), the caretaker of the youth;
- Counsel representing the youth;
- Prosecuting attorney;
- Certified interpreters if the youth, parent, or custodian does not speak English or is hearing impaired; and
- Juvenile delinquency court security and other court staff as required, including stenographic staff or recording technology.

QUESTIONS THAT MUST BE ANSWERED

- With whom does the youth live and who has legal custody?
- If a parent or custodian is not present, why not, and how can he or she be located to ensure parental presence at the next hearing? What are the names and phone numbers of close relatives or other significant individuals who may be information sources, a parental substitute, or possible places for the youth to stay temporarily?
- Has the youth had access to, and been appointed qualified legal counsel?
- Does the youth require an *in loco parentis*, and if so, has an appropriate individual been appointed?
- Are there any indicators that the youth is not competent to stand trial?
- Has a motion to waive juvenile delinquency court jurisdiction and transfer to criminal court been filed?
- What are the youth's school grade, educational program, and school adjustment?
- Is the youth receiving any current services?
- If the youth is in detention or on probation, did the detention screens, youth's behavior, or probation information indicate any physical or mental issues that need to be immediately addressed?
- If the youth is in detention and the judge hearing the case is not the youth's assigned judge, who is the assigned judge?
- If the youth is in detention, is there reliable information to support a finding that the youth needs to remain detained in secure or non-secure detention or can the youth be released with or without restrictions? If the youth is released, and if the victim is not in court when this decision is made, the prosecutor or probation officer should notify the victim of the youth's release. Issues that should be considered in making the detain or release decision include:

  - ➢ Is there reason to believe the youth might present a danger to the physical safety of the community, or to reoffend upon his or her release?
  - ➢ Is there reason to believe the youth might have unwanted contact with the alleged victim or potential witnesses upon release?
  - ➢ Is there reason to believe that the youth may not appear for court proceedings, attend probation meetings or other obligations, or otherwise fail to comply with the juvenile delinquency court's orders?
  - ➢ Does the youth have a history of engaging in behaviors that will endanger himself or herself, or has the youth made statements leading to a reasonable belief that he or she will engage in such behaviors?
  - ➢ Does the youth have any medical, physical, or mental health issues, including a trauma history, that places the youth's safety in question in a detention setting?
  - ➢ Is there an environment adequately structured by family, community, school, or other support systems to enable the youth to avoid harmful behaviors and associations? In considering this question, the juvenile delinquency court must ensure that disproportionate minority contact is not an unintended result of a negative determination. The court should ensure that family group conferencing is used, when appropriate, to identify all available family members and to create a supervision plan, and that appropriate resources exist to provide support to families when detaining the youth is not in the youth's best interest.

- If the youth will continue to be detained, have all of the parent's or guardian's questions about detention, including visitation, been answered?

- Are title IV-E funds being used for the youth's placement or services and is there any possibility that title IV-E funds will need to be used for the youth's placement or services if adjudicated on the charges? If so, has the court made the necessary findings?
- If the youth has denied the allegation, are dispute resolution alternatives appropriate?

WRITTEN FINDINGS AND ORDERS

The juvenile delinquency court's written findings and orders should be stated in language understandable by the parties and with enough detail to support the court's actions. The juvenile delinquency court's findings and orders should be set out in writing and made available to all legal parties and key participants at the conclusion of the hearing. Key participants include anyone who is essential to the successful implementation of the court's orders such as the parent, legal custodian, child protection worker, *in loco parentis*, and probation officer. The summary should include:

- All persons present at the hearing;
- If parties were absent, whether they were provided with appropriate notice;
- If a parent, legal custodian, relative, or other parental substitute was not present, the name of the appointed *in loco parentis*, and who has responsibility to locate the parent, guardian, relative, or other invested adult for the next hearing;
- If counsel was not present, the plan to ensure the presence of counsel at the next hearing;
- If the issue of competency to stand trial is in question, an order to obtain a decisional capacity assessment, specifying who is responsible to make these arrangements;
- Any rights waived by the youth;
- Whether the prosecutor has filed a motion to waive juvenile delinquency court jurisdiction and transfer the case to criminal court;
- The plea that was entered, and whether the juvenile delinquency court accepted the plea;
- If the youth denied the allegations, whether the case will be referred to a dispute resolution alternative, and if so, the details of the alternative;
- If the case is set for trial or a probable cause hearing on a motion to waive and transfer, a description of pre-trial issues that were addressed, identification of any pre-trial issues that still need to be addressed, and the juvenile delinquency court judge's expectation of how these remaining issues will be resolved;
- If this is a detention hearing, either the reasons why it is necessary to continue to detain the youth or an order to release the youth specifying any restrictions. If the youth is released, and if the victim is not in court when this decision is made, either the prosecutor or a probation officer should notify the victim of the youth's release;
- If the juvenile delinquency court believes there is any possibility that title IV-E funds will be used for the youth's placement or services, or if title IV-E funds are currently being used for the youth's placement or services, and if the youth was placed in detention, a determination as to why remaining in the home was contrary to the youth's best interest and welfare. For all title IV-E eligible youth, whether detained or not detained, findings of fact as to what reasonable efforts were and are being made to keep the youth in the home or to return the youth to the home;
- If the youth is not in detention, description of any restrictions placed on the youth until the next hearing;
- Any evaluations or services that the youth needs prior to the next hearing and who is responsible to obtain the services; and
- The next hearing date and time, and the purpose of the hearing.

BOND GUIDELINES

The U.S. Supreme Court has held that juveniles can be detained prior to trial without bail, as a juvenile does not have the same due process rights as adults since the juvenile is constantly in the "custody" of another. The Tennessee Supreme Court recognized that ruling and noted Tennessee could expand the Supreme Court's limitation if the legislature so desired. Although the statutory right to bail for adults in the criminal code does not apply to juveniles who have committed a delinquent act, the General Assembly has provided Juvenile Court Judges the discretion to make bail an option to pre-adjudicatory detention as written in Tennessee Code Annotated § 37-1-117(c).

If the Magistrate or Judge, in their discretion, decides a bond is warranted in a particular case that jurist shall follow the following guidelines:

1. **The Bond shall be reasonable, and**
2. **The Bond shall not be excessive so as to be punitive in nature.**

ADJUDICATORY HEARINGS

DELINQUENCY ADJUCATORY GUIDELINES

1. **A petition has been filed against you and it is that you, (explain the offense/s.)**

2. **Do you understand what you are charged with?**

3. **You have the right against self-incrimination. This means that you do not have to say anything about your part in the charges or even whether you were anywhere near where the charges happened if you do not want to. You can remain silent and say nothing. If you choose to talk about it, what you say can be used against you. Do you have any questions about what this means?**

4. **You have the opportunity to either admit the charges if they are true or to deny the charges if they are not true. If you deny the charges, there will be a trial to determine whether of not the charges are true. At trial you have the right to:**
   - **Confront witnesses that testify against you, which means your attorney gets to ask them questions to try and show that the charges are not true. Do you have any questions about what this means?**
   - **Compel witnesses, which means the court can require a person, who your attorney thinks can help you show the charges are not true, to come to court and tell what they know. Do you have any questions about what this means?**
   - **You can choose to testify or not to testify at the trial. You can remain silent and not say anything if you want. If you decide not to testify, you choice will not be held against you. Do you have any questions about what this means?**
   - **If you admit the charges, or I find you are guilty at the trial, by law (explain what dispositions you can impose). Do you have any questions about what this means?**

5. **Do you admit or deny the charges?**
   If youth denies the charge, proceed to trial.

6. **If the youth admits the charges:**
   - **Do you understand that in saying that the charges are true, you are giving up your right to a trial, which means you are also giving up your right to confront witnesses, make witnesses testify for you and to remain silent about the charges?**
   - **Has anyone made any threats or promises to you to get you to do this?**
   - **Have you taken any drugs, medicine or alcohol within the last 24 hours?**
     If the youth answer yes the judge must explore further to determine if the youth is impaired.
   - **Are you admitting these charges to benefit yourself and nobody else?**
   - **At the time you did this, did you know those things were wrong?**

If the youth's answers support a plea of admit, the judge should ask the parent, custodian, or in loco parentis, whether they know of any reason that the judge should not accept the plea.

If the judge accepts the plea, the judge should call on the youth to explain what happen in detail. If the youth's explanation indicates the he or she is not really admitting to the offense, the judge should consider withdrawing the acceptance of the plea and setting the case for trial.

THE TRIAL/ADJUDICATION HEARING CHECKLIST

WHO SHOULD BE PRESENT

- The judge who is assigned to the family;
- The youth who has been charged with the violation of law;
- The parent or legal custodian of the youth, including the child's caseworker if under custody of the child protection agency and an *in loco parentis*, if applicable;
- If the youth is living with someone other than the parent or legal custodian (e.g. non-custodial relative, foster parent), the caretaker of the youth;
- Counsel representing the youth;
- Prosecuting attorney;
- Prosecution witnesses, including the victim;
- Victim advocate;
- Witnesses to be called on behalf of the youth, if applicable;
- Certified interpreters if the youth, parent, custodian, victim, or any witness does not speak English or is hearing impaired; and
- Court security and other court staff as required, including stenographic staff or recording technology.

It is not necessary for the probation officers to be present at trials unless they must be there as a witness.

QUESTIONS THAT MUST BE ANSWERED

Questions that Must Be Answered at the End of the Trial to Determine if a Youth Should Be Adjudicated Delinquent:

- Were the prosecutor and counsel prepared for the hearing and has all appropriate evidence been introduced?
- Based on the evidence presented did the prosecutor prove every element of the alleged offense beyond a reasonable doubt?

Questions that Must Be Answered if the Youth Is Adjudicated Delinquent to Determine the Next Step:

- Are the immediate needs of the youth being addressed?
- If the youth is in detention, is there reliable information to support that the youth needs to remain detained in secure or non-secure detention or can the youth be released with or without restrictions? Issues that should be considered in making this decision include:
  - ➢ Is there reason to believe the youth might present a danger to the physical safety of the community, or to reoffend upon his or her release?
  - ➢ Is there reason to believe the youth might have unwanted contact with the victim or witnesses upon his or her release?
  - ➢ Is there reason to believe that the youth may not appear for court proceedings, attend probation meetings or other obligations, or otherwise fail to comply with the court's orders?
  - ➢ Does the youth have a history of engaging in behaviors that will endanger himself or herself, or has the youth made statements leading to a reasonable belief that he or she will engage in such behaviors?
  - ➢ Does the youth have any medical, physical or mental health issues, including a trauma history, that places the youth's safety in question in a detention setting?
  - ➢ Is detention necessary to hold the youth accountable for violations of probation or other court orders?
  - ➢ Is there an environment adequately structured by family, community, school or other support systems to enable the youth to avoid harmful behaviors and associations? In considering this question, the juvenile delinquency court must ensure that disproportionate minority contact is not an unintended result of a negative determination. The court must ensure that family group conferencing is used when appropriate to identify all available family members and to create a supervision plan, and that appropriate resources exist to provide support to families when detaining the youth is not in the youth's best interest.
- If the youth will continue to be detained, have all of the parent's or legal guardian's questions about detention, including visitation, been answered?
- Should the youth be released, with or without restrictions, or moved from secure to non-secure detention? If the youth is released, and if the victim is not in court when this decision is made, the prosecutor or probation officer should notify the victim of the youth's release.
- Are title IV-E funds being used for the youth's placement or services and thus will findings of reasonable efforts need to be made? If so, has information been presented that will enable the court to make the appropriate determinations?

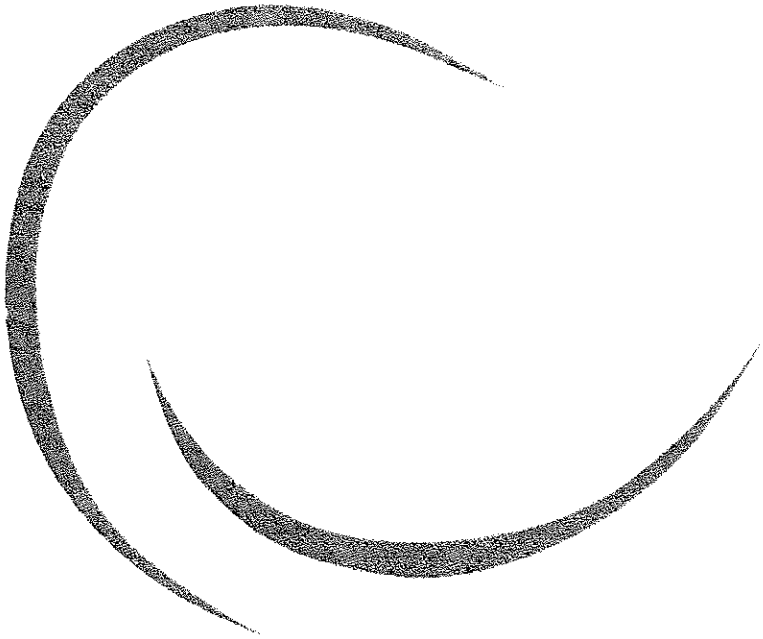
WRITTEN FINDINGS AND ORDERS

If the petition is dismissed:

- All persons present at the hearing;
- If parties were absent, whether they were provided with appropriate notice;
- A statement of the reason for the hearing, the allegation against the youth, and that rights and possible consequences were reviewed;
- A statement that the court did not find the youth to be delinquent;
- Dismissal of the petition; and
- Release of the youth from custody or identification of other pending petitions requiring continued confinement and the next hearing date on those petitions.

If the youth is adjudicated delinquent:

- All persons present at the hearing;
- If parties were absent, whether they were provided with appropriate notice;
- A statement of the reason for the hearing, the allegation against the youth, and that rights and possible consequences were reviewed;
- If a plea agreement was accepted, incorporate the agreement into the record as presented or as modified;
- A statement that the juvenile delinquency court found the youth to be delinquent and the specific reasons for the court's finding;
- If the youth is in detention, either the reasons why it is necessary to continue to detain the youth or an order to release the youth specifying any restrictions;
- If the juvenile delinquency court believes there is any possibility that title IV-E funds will be used for the youth's placement or services, or if title IV-E funds are currently being used for the youth's placement or services, determinations as to what reasonable efforts were and are being made to keep the youth in the home or to return the youth to the home;
- If the youth is not in detention, description of any restrictions placed on the youth until the next hearing;
- Any evaluations or services that the youth needs prior to the next hearing and who is responsible to obtain them; and
- The date and time for the disposition hearing.



PLEA COLLOQUIES

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1. **A petition has been filed against you and it is that you, (explain the offense/s.)**

2. **Do you understand what you are charged with?**

3. **You have the right against self-incrimination. This means that you do not have to say anything about your part in the charges or even whether you were anywhere near where the charges happened if you do not want to. You can remain silent and say nothing. If you choose to talk about it, what you say can be used against you. Do you have any questions about what this means?**

4. **You have the opportunity to either admit the charges if they are true or to deny the charges if they are not true. If you deny the charges, there will be a trial to determine whether of not the charges are true. At trial you have the right to:**
   - **Confront witnesses that testify against you, which means your attorney gets to ask them questions to try and show that the charges are not true. Do you have any questions about what this means?**
   - **Compel witnesses, which means the court can require a person, who your attorney thinks can help you show the charges are not true, to come to court and tell what they know. Do you have any questions about what this means?**
   - **You can choose to testify or not to testify at the trial. You can remain silent and not say anything if you want. If you decide not to testify, you choice will not be held against you. Do you have any questions about what this means?**
   - **If you admit the charges, or I find you are guilty at the trial, by law (explain what dispositions you can impose). Do you have any questions about what this means?**

   Do you admit or deny the charges?
   If youth denies the charge, proceed to trial.

6. **If the youth admits the charges:**
   - **Do you understand that in saying that the charges are true, you are giving up your right to a trial, which means you are also giving up your right to confront witnesses, make witnesses testify for you and to remain silent about the charges?**
   - **Has anyone made any threats or promises to you to get you to do this?**
   - **Have you taken any drugs, medicine or alcohol within the last 24 hours?**
     If the youth answer yes the judge must explore further to determine if the youth is impaired.
   - **Are you admitting these charges to benefit yourself and nobody else?**
   - **At the time you did this, did you know those things were wrong?**

   If the youth's answers support a plea of admit, the judge should ask the parent, custodian, or in loco parentis, whether they know of any reason that the judge should not accept the plea.

   If the judge accepts the plea, the judge should call on the prosecutor to state the facts and the youth to explain what happen in detail if he/she disagrees with the state's version of the events. If the youth's explanation indicates the he or she is not really admitting to the offense, the judge should consider withdrawing the acceptance of the plea and setting the case for trial.

IN THE JUVENILE COURT OF MEMPHIS AND SHELBY COUNTY, TENNESSEE

IN THE MATTER OF

Docket Number _____

A child(ren) under 18 years of age

WAIVER OF TRIAL AND ADMISSION OF DELINQUENCY

I have received and read a copy of the Petition, discussed it with my lawyer, and understand the nature of the complaint. I have explained the facts concerning the complaint to my lawyer. My lawyer has explained the nature of the case against me, possible defenses, and has told me of the possible dispositions or actions the Court could take.

I understand that I may deny the allegations of the Petition, and that if I do, the Court will provide me with a speedy trial; at the trial I understand I have the right to compel the production of any evidence; and the right for me to bring my own witnesses to Court. I understand that I have a right to a lawyer at all times, and I understand that I would have a right to a rehearing and/or appeal, if I am not satisfied with the Court's decision; I understand that I have the right to remain silent.

By my own free will and choice, without any threats or pressure or promises whatsoever, and being fully aware of the action I am taking, I do hereby, in open Court, submit myself to the Court, waive my privilege against self incrimination, and admit the allegations of the Petition fully understanding that the Court may remove me from my home and place me in a state correctional school, and make whatever disposition the Court considers proper and necessary under the circumstances.

I understand that I may have the disposition of my case reheard before the Presiding Juvenile Court Judge, and/or have my case reviewed by an Appellate Court. I further understand that an appeal does not suspend the order of the Juvenile Court and that unless the Circuit Court enters some other order of disposition, the order of the Juvenile Court shall remain in effect.

This the _____ day of _____, 20 _____.

APPROVED:

_____
Child's Signature

_____
Attorney's Signature

_____
Parent/Guardian

_____
Parent/Guardian

TRANSFER HEARINGS

IN THE JUVENILE COURT OF MEMPHIS AND SHELBY COUNTY

IN THE MATTER OF

Docket Number _____

A Child under 18 years of age

STATEMENT AND EXPLANATION OF RIGHTS JUDGE/SPECIAL JUDGE TRANSFER HEARINGS

As Judge/ Special Judge of the Juvenile Court of Memphis and Shelby County Tennessee I hereby certify that I have explained to _____,
A Juvenile charged in this Court with a delinquent act, the charges against him/her, the purpose of the transfer hearing and each of the following rights:

- ❑ The right to receive a copy of the **AFFIDAVIT OF COMPLAINT/PETITION** and **THE NOTICE OF INTENT TO SEEK TRANSFER** before the hearing.
- ❑ The right **TO REMAIN SILENT AND TO NOT INCRIMINATE YOURSELF.** This means that you do not have to say anything about your part in the charges or even whether you were anywhere near where the charges happened if you do not want to. You can remain silent and say nothing. If you choose to talk about it, what you say at this hearing may be used against you in today's hearing. If this matter is transferred to the Criminal Court nothing you say in this proceeding can be used against you in that proceeding. Do you have any questions about what this means?
- ❑ The right to confront witnesses that testify against you, which means your attorney gets to ask them questions to try and show that the charges are not true. Do you have any questions about what this means?
- ❑ The right to compel witnesses, which means the court can require a person, who your attorney thinks can help you show the charges are not true, to come to court and tell what they know. Do you have any questions about what this means?
- ❑ The right to testify or not to testify. You can remain silent and not say anything if you want. If you decide not to testify, you choice will not be held against you. Do you have any questions about what this means?

DO YOU UNDERSTAND THESE RIGHTS AS I HAVE READ THEM TO YOU?

Judge / Special Judge's Signature _____ Date_____

STATEMENT BY THE JUVENILE

I am the person charged in this case. I understand all the rights which the Magistrate / Special Judge explained to me. I also understand the charges against me.

Parent/Guardian Signature_____ Date_____

Juvenile's Signature_____ Date_____

Attorney Signature_____ Date_____

TENNESSEE CODE ANNOTATED
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***** Current through the 2012 Regular Session *****

Title 37 Juveniles
Chapter 1 Juvenile Courts and Proceedings
Part 1 General Provisions

Tenn. Code Ann. § 37-1-134 (2012)

37-1-134. Transfer from juvenile court.

(a) After a petition has been filed alleging delinquency based on conduct that is designated a crime or public offense under the laws, including local ordinances, of this state, the court, before hearing the petition on the merits, may transfer the child to the sheriff of the county to be held according to law and to be dealt with as an adult in the criminal court of competent jurisdiction. The disposition of the child shall be as if the child were an adult if:

(1) The child was sixteen (16) years or more of age at the time of the alleged conduct, or the child was less than sixteen (16) years of age if such child was charged with the offense of first degree murder, second degree murder, rape, aggravated rape, rape of a child, aggravated rape of a child, aggravated robbery, especially aggravated robbery, kidnapping, aggravated kidnapping or especially aggravated kidnapping or an attempt to commit any such offenses. The district attorney general may not seek, nor may any child transferred under the provisions of this section receive, a sentence of death for the offense for which the child was transferred;

(2) A hearing on whether the transfer should be made is held in conformity with §§ 37-1-124, 37-1-126 and 37-1-127;

(3) Reasonable notice in writing of the time, place and purpose of the hearing is given to the child and the child's parents, guardian or other custodian at least three (3) days prior to the hearing; and

(4) The court finds that there are reasonable grounds to believe that:

(A) The child committed the delinquent act as alleged;

(B) The child is not committable to an institution for the developmentally disabled or mentally ill; and

(C) The interests of the community require that the child be put under legal restraint or discipline.

(b) In making the determination required by subsection (a), the court shall consider, among other matters:

(1) The extent and nature of the child's prior delinquency records;

(2) The nature of past treatment efforts and the nature of the child's response thereto;

(3) Whether the offense was against person or property, with greater weight in favor of transfer given to offenses against the person;

(4) Whether the offense was committed in an aggressive and premeditated manner;

(5) The possible rehabilitation of the child by use of procedures, services and facilities currently available to the court in this state; and

(6) Whether the child's conduct would be a criminal gang offense, as defined in § 40-35-121, if committed by an adult.

(4) The court finds that there are reasonable grounds to believe that:

(A) The child committed the delinquent act as alleged;

(B) The child is not committable to an institution for the developmentally disabled or mentally ill; and

(C) The interests of the community require that the child be put under legal restraint or discipline.

(b) In making the determination required by subsection (a), the court shall consider, among other matters:

(1) The extent and nature of the child's prior delinquency records;

(2) The nature of past treatment efforts and the nature of the child's response thereto;

(3) Whether the offense was against person or property, with greater weight in favor of transfer given to offenses against the person;

(4) Whether the offense was committed in an aggressive and premeditated manner;

(5) The possible rehabilitation of the child by use of procedures, services and facilities currently available to the court in this state; and

(6) Whether the child's conduct would be a criminal gang offense, as defined in § 40-35-121, if committed by an adult.

DEPARTMENT OF JUSTICE
ADDITIONAL
GUIDELINES
IN
TRANSFER PROCEEDINGS

The Judge or Juvenile Court Magistrate presiding as Special Judge considers and documents his or her consideration of factors relevant to his or her findings, including, but not limited to:

1. **The extent and nature of the Child's prior delinquency;**

2. **The nature of past treatment efforts and the nature of the Child's response thereto;**

3. **The Child's suitability for additional treatment;**

4. **The nature of the delinquent act alleged;**

5. **The Child's social factors;**

6. **The alternatives within the juvenile justice system which were considered and the rationale for rejecting those alternatives;**

7. **Whether the juvenile court and the juvenile justice system can provide rehabilitation of the juvenile.**

Pursuant to: III. Substantive Remedial Measures, A. Due Process, 1. Policies and Procedures (c) Transfer Hearings (g). Pg. 12.

RULE 24: TRANSFER TO CRIMINAL COURT IN DELINQUENT CASES.

When the allegations of the petition are so serious and/or the child's age or record is such that transfer of a child to the sheriff to be dealt with as an adult is likely or probable, the court should not hear the case on its merits, but shall proceed to conduct a probable cause hearing only, and announce that intention and purpose when the case is first presented.

(a) Transfer of Jurisdiction of Child to Criminal Court. The court after notice, hearing, and a finding that the criteria for transfer as required by T.C.A. § 37-1-134 exist, may transfer jurisdiction over a child to adult criminal court pursuant to T.C.A. §§ 37-1-134 and 37-1-159.

(b) Transfer Hearing.

(1) The judge shall conduct a transfer hearing in all cases in which transfer to criminal court is sought under T.C.A. § 37-1-134.

(2) At the transfer hearing:

(i) A prosecutor shall represent the state;

(ii) The child shall be represented by an attorney;

(iii) The child may testify as a witness in his or her own behalf and call and examine other witnesses and produce other evidence in his or her own behalf, however no plea shall be accepted by the court; and

(iv) Each witness shall testify under oath or affirmation and be subject to cross-examination.

(3) The same rules of evidence shall apply as are applicable to a general sessions preliminary hearing.

(4) Unless the child appears in any way to be mentally ill or intellectually disabled, and unless personally or through counsel, asserts that the child is mentally ill or intellectually disabled, it shall be presumed that the child is not committable to an institution for the mentally ill or intellectually disabled, and the court may so find. If mental illness is alleged, the court shall order psychological or psychiatric examination at any stage of the proceeding.

(5) If, after considering the evidence including the factors set forth in T.C.A. § 37-1-134, the court determines that the criteria for transfer as set forth in T.C.A. § 37-1-134 have been satisfied and finds that there are reasonable grounds for transfer as required by T.C.A. § 37-1-134, the child may be transferred to criminal court for trial as in the case of adults.

(6) If reasonable grounds are not found, the judge shall deny the motion for transfer and set the petition alleging a delinquent offense for trial on its merits in juvenile court or may immediately proceed to hold the adjudicatory hearing with the consent of the respondent. However, the judge shall not at any time preside over the adjudicatory hearing of a case in which the judge has conducted a transfer hearing, if any interested party objects.

(7) Any order of transfer shall specify the grounds for transfer and set bond if the offense is bailable pursuant to state law.

(c) Appeals. Appeals shall be in accordance with T.C.A. § 37-1-159.

[As amended by order filed January 13, 2012, effective July 1, 2012.]

Advisory Commission Comments.

Under T.C.A. § 37-1-134 the court must find reasonable grounds to believe that (i) the child committed the delinquent act as alleged, (ii) the child is not committable to an institution for the intellectually disabled or mentally ill, and (iii) the interests of the community require that the child be put under legal restraint or discipline. Regarding § 37-1-134, and subsection (b)(4) of Rule 24, it has been held by both the Tennessee Court of Appeals and Court of Criminal Appeals that, although the burden of proof is on the prosecution on such issue, there is a presumption of noncommittability similar to that relating to sanity in criminal trials. Such presumption can be rebutted by evidence introduced by the defendant, and in such event the burden would shift back to the prosecution to persuade the court the child is not committable. See *Boyd v. State*, Tenn. Crim. App. (December 30, 1979); *State v. Miller*, Tenn. App. Middle Section (June 25, 1976). The committee suggests, however, that it is good practice in any case for the court to arrange for testing and evaluation, evidence of which may be introduced by either of the parties or the court on the issue of committability.

WAIVER AND TRANSFER HEARINGS CHECKLIST

WHO SHOULD BE PRESENT AT BOTH THE PROBABLE CAUSE PHASE AND THE RETAIN OR WAIVE PHASE

The following individuals should be present for the probable cause hearing:

- The judge who is assigned to the family;
- The youth who has been charged with the violation of law;
- The parent or legal custodian of the youth, including the child's caseworker if under custody to the child protection agency, and an *in loco parentis*, if applicable;
- If the youth is living with someone other than the parent or legal guardian (e.g., non-custodial relative, foster parent), the caretaker of the youth;
- Counsel representing the youth;
- Prosecuting attorney;
- Prosecution witnesses;
- Victim and victim advocate;
- Any witnesses for the youth, if applicable;
- Certified interpreters if the youth, parent, custodian, victim, or any witness does not speak English or is hearing impaired;
- During the probable cause phase, the probation officer's presence is not needed in most cases unless the probation officer will testify, or unless the case is a discretionary waiver and the necessary evaluations are available to move directly into the second phase of the proceeding if probable cause is established. During the retain or waive phase, the youth's probation officer, or other person who prepared the social evaluation should be present; and
- Court security and other court staff as required, including stenographic staff or recording technology.

QUESTIONS THAT MUST BE ANSWERED DURING THE PROBABLE CAUSE PHASE

- With whom does the youth live and who has legal custody?
- If a parent or legal custodian is not present, were they properly served and why are they not present?
- Was the issue of competency to stand trial raised, and if not, did the court detect any indicators of competency to stand trial issues that need to be addressed?
- Have all pending motions been identified and addressed?
- Were the prosecutor and counsel prepared for the hearing and has all appropriate evidence been introduced?
- Is there probable cause to believe that the youth committed the alleged offense?
- Is the offense a mandatory or discretionary judicial waiver?

WRITTEN FINDINGS AND ORDERS DURING THE PROBABLE CAUSE PHASE

- All persons present at the hearing;
- If parties were absent, whether they were provided with appropriate notice;
- A statement of the reason for the hearing, specifically the allegation against the youth, the prosecutor's motion to waive juvenile delinquency court jurisdiction and transfer the case to criminal court, that rights and possible consequences were reviewed, and that evidence was presented to determine probable cause;
- A statement that the court found probable cause to believe the youth committed the offense; and
- Description of how the case meets the statutory requirements for a discretionary judicial waiver.

If a second hearing will be required, the findings and orders must also include:

- Orders that arrangements be made to complete the necessary evaluations, including designating who has responsibility for ensuring completion, what qualified practitioners will conduct the evaluations, and any dates that have already been set;
- If the youth is in detention, either the reasons why it is necessary to continue to detain the youth, or an order to release the youth specifying any restrictions;
- If the youth is not in detention, description of any restrictions placed on the youth until the next hearing;
- If the juvenile delinquency court believes there is any possibility that title IV-E funds will be used for the youth's placement or services, or if title IV-E funds are currently being used for the youth's placement or services that may continue to be needed if the court decides to retain jurisdiction, a determination as to what reasonable efforts were and are being made to keep the youth in the home or to return the youth to the home;
- A date for the next hearing within 10 business days if the youth is known to the juvenile delinquency court or not more than 20 business days if the youth is new to the juvenile delinquency court; and
- The date when the evaluations will be provided to the prosecutor and youth's counsel for review prior to the next hearing.

QUESTIONS THAT MUST BE ANSWERED DURING THE RETAIN OR WAIVE PHASE

- With whom does the youth live and who has legal custody?
- If a parent or legal custodian is not present, were they properly served and why are they not present?
- Have all pending motions been identified and addressed?

- Were the prosecutor and counsel prepared for the hearing and has all appropriate evidence been introduced?
- Has the prosecutor presented clear and convincing evidence that the case should be transferred to the criminal court, considering the youth's dangerousness, sophistication/maturity, and amenability to treatment in the juvenile delinquency system?
- Are the immediate needs of the youth being addressed?

WRITTEN FINDINGS AND ORDERS DURING THE RETAIN OR WAIVE PHASE

<u>If the juvenile delinquency court denies the motion to waive jurisdiction:</u>

- All persons present at the hearing;
- If parties were absent, whether they were provided with appropriate notice;
- A statement of the reason for the hearing, specifically the allegation against the youth, that probable cause has been established, and that the prosecutor has filed a motion to waive juvenile delinquency court jurisdiction and transfer the case to criminal court;
- A statement that the court has denied the motion and the specific reasons for the court's finding;
- Either the reasons why it is necessary to continue to detain the youth or an order to release the youth specifying any restrictions;
- If the youth is not in detention, description of any restrictions placed on the youth until the next hearing;
- If the court believes there is any possibility that title IV-E funds will be used for the youth's placement or services, or if title IV-E funds are currently being used for the youth's placement or services, findings of fact as to what reasonable efforts were, and are being made to keep the youth in the home or to return the youth to the home;
- Any evaluations or services that the youth needs prior to the next hearing and who is responsible to obtain them;
- If the youth denies the offense:
  - ➢ A description of the pre-trial issues that were addressed, identification of any pre-trial issues that still need to be addressed, and the expectation of how these remaining issues will be resolved;
  - ➢ The date and time for the trial and any additional pre-trial hearing if necessary; and
- If the youth admits the offense, either the court's disposition orders (See Chapter VII: The Disposition Hearing) or the date and time for the disposition hearing.

<u>If the juvenile delinquency court grants the motion to waive jurisdiction and transfer to criminal court:</u>

- All persons present at the hearing;
- If parties were absent, whether they were provided with appropriate notice;
- A statement of the reason for the hearing, specifically the allegation against the youth, that probable cause has been established on the prosecutor's motion to waive juvenile delinquency court jurisdiction and transfer the case to criminal court, and that the purpose of the hearing was to determine whether to waive and transfer;
- A statement that the court has granted the motion and the specific reasons for the court's finding; and
- Orders that arrangements be made to notify the criminal court of the transfer and if necessary, orders that arrangements be made to transfer the youth from juvenile custody to criminal custody.

DISPOSITION/ RESTITUTION

THE DISPOSITION HEARING CHECKLIST

WHO SHOULD BE PRESENT

- The judge who is assigned to the family;
- The youth who has been adjudicated on the violation of law;
- The parent or legal custodian of the youth, including the child's caseworker, if under custody to the child protection agency, and an *in loco parentis*, if applicable;
- If the youth is living with someone other than the parent or legal guardian, the caretaker of the youth (e.g., non-custodial relative, foster parent);
- Counsel representing the youth;
- Prosecuting attorney;
- The victim and victim advocate, if the victim wishes to participate;
- Certified interpreters if the youth, parent, custodian, victim, or a witness does not speak English or is hearing impaired;
- The probation officer or other person who conducted the pre-disposition investigation, if applicable; and
- Court security and other court staff as required, including stenographic staff or recording technology.

QUESTIONS THAT MUST BE ANSWERED

- What level of intervention is required in order to protect community safety while the youth is engaged in services to promote behavior change?
- What are the youth's special treatment needs (e.g., mental health, substance abuse, sexual offending, physical health, etc.) that must be addressed in order for the youth to change his or her behavior?
- What is the youth's education situation and what must be done to maximize success in the school environment? If the youth is not currently succeeding, has an assessment for special education services been conducted? If not, why not? If the youth has an Individual Education Plan (IEP), is the parent fully participating in the IEP process? If not, who would be appropriate to appoint to teach the parent how to fully participate or to serve as the youth's education representative?
- What are the youth, family, and community strengths that can assist the youth in making the necessary behavior change?
- What family and community issues are likely to impede the youth in implementing necessary behavior change and should the juvenile delinquency court judge consider any orders specific to the parent?
- What victim issues should be taken into consideration and should restitution be ordered?
- What is the least restrictive disposition in type and duration that will provide community safety, hold the youth accountable, assist the youth to learn new attitudes and competencies resulting in law-abiding behaviors, and repair the damage caused by the offense?
- Does this disposition meet the test of an individualized service plan that meets the specific needs of the youth?
- Is this disposition commensurate with the offense, and have offenses with similar circumstances generally received similar court responses? If not, can the court clearly explain the reasons why it is choosing the disposition, and that reasons are supported by evidence?
- Are there any statutory collateral restrictions that the adjudication and disposition invokes (e.g., if the offense is a sex offense, are there any registration or restriction requirements)?
- If the recommended disposition is probation, does the proposed probation plan cover all necessary components, meet the needs of the youth and victim, and provide for community safety?
- If the recommended disposition is placement, is it clear why placement is necessary and does the proposed initial reentry plan cover all necessary components, meet the needs of the youth and victim, and provide for community safety?
- Can the services begin immediately, and if not, how long will it be before services can begin? If the service needs are intensive, and the delay will be more than a few weeks, are there less intensive interim services that can be provided?
- If the youth is in detention, and the disposition cannot be immediately implemented, is there reliable information to support the youth's continued placement in secure or non-secure detention until the disposition can be implemented, or can the youth be released with or without restrictions? If the youth is released, and if the victim is not in court when this decision is made, the prosecutor or probation officer should notify the victim of the youth's release. Issues that should be considered in making this decision include:

  - ➢ If the youth is moving to a secure placement, is it in the youth and community's best interest to continue to detain the youth?
  - ➢ Is the disposition a non-secure placement? If so, is there reason to believe that the youth presents a danger to the physical safety of the community or is likely to reoffend if released prior to a representative from the non-secure placement meeting with the youth to engage the youth in the placement plan? Except in very unusual circumstances, a youth should be held in secure detention no more than five additional days under these circumstances.
  - ➢ Is the disposition a community intervention or probation? If so, is there reason to believe that the youth will not engage in the intervention if released prior to the probation officer or a representative from the community service meeting with the youth to engage the youth? Except in very unusual circumstances, a youth should be held in secure detention no more than three additional days under these circumstances.
  - ➢ Does the youth have any medical, physical or mental health issues, including a trauma history, that places the youth's safety in question in a detention setting?

- If the youth continues to be detained, have all of the parent's or legal custodian's questions about detention, including visitation, been answered?
- Are or will title IV-E funds be used for the youth's placement or services?
- Should a progress hearing or progress conference be set, or a progress report ordered?

WRITTEN FINDINGS AND ORDERS

- All persons present at the hearing;
- If parties were absent, whether they were provided with appropriate notice;
- A statement of the reason for the hearing;
- The disposition ordered by the court, a summary of the reasons this disposition was selected, and what is to be accomplished as a result of the disposition;
- Any additional services that are part of the disposition, who is to provide the services, and when the services will start;
- Any court ordered expectations of the youth, parent, or legal custodian while the youth is receiving services;
- Any sanctions ordered by the court, including fines, court costs, and restitution;
- If the youth is in detention, either the reasons why it is necessary to continue to detain the youth in secure or non-secure detention or an order to release the youth specifying any restrictions;
- If title IV-E funds are or will be used for the youth's placement:
  - A temporary commitment of the youth to the juvenile delinquency court or probation agency that has a title IV-E agreement, or to the child protection agency, unless the parent has signed an agreement for care.
  - Findings of fact as to what reasonable efforts were and are being made to keep the youth in the home or to return the youth to the home.
  - Approval of a case plan or an order that the case plan be submitted to the juvenile delinquency court within 60 days of the youth's placement in the title IV-E eligible placement or service.
- The date of a review hearing within six months of the date the youth was placed in eligible foster care or within six months of the 60th day that the youth was removed from the home. A child is considered to have entered foster care on the date the court found that the delinquent youth was also an abused or neglected youth or 60 days from the actual removal, whichever is first. If a youth was moved from ineligible care (such as detention) into foster care within 60 days after removal from home, the clock starts 60 days after removal. If a youth was moved from ineligible care into foster care more than 60 days after removal from the home, the clock starts when the child was moved into foster care.
- If the disposition is probation or placement, approval of a probation or initial reentry plan that is incorporated by reference into the court's orders;
- The date and time of the progress hearing or conference, or the date a progress report is due, if applicable; and
- Appeal rights and process.

POST DISPOSITION HEARINGS

PROBATION & PAROLE VIOLATION HEARING CHECKLIST

WHO SHOULD BE PRESENT

- The judge who is assigned to the family;
- The youth who is on probation or parole;
- Counsel who represented the youth on the law violation that resulted in probation or parole;
- Prosecuting attorney who represented the youth on the law violation that resulted in probation or parole;
- The parent, legal custodian, and physical custodian of the youth, including the child's caseworker if under custody of the child protection agency;
- The probation or parole officer;
- Any education institution, service provider, or other person pertinent to the alleged violation, or pertinent to issues with regard to the juvenile delinquency court approved plan;
- Certified interpreters, if the youth, parent, or custodian do not speak English or are hearing impaired;
- A representative from the youth's tribal council, if applicable; and
- Court security and other court staff as required, including stenographic staff or recording technology.

QUESTIONS THAT MUST BE ANSWERED

- In what ways has the youth complied and not complied with the juvenile delinquency court-approved plan and what sanctions and incentives have previously been implemented?
- Have the parents or physical custodian complied with the juvenile delinquency court-approved plan? If not, why not?
- Have the service providers and probation or parole officer complied with the court-approved plan? If not, why not?
- If the family situation contributed to the problem, is the family situation improving?
- What is the youth's education situation? Is the youth fully engaged in an education environment that is meeting the youth's needs, including credit recovery, remediation, tutoring and services to address any special learning needs; and is the youth progressing?
- Is a change of plan needed and if so, what services, sanctions, incentives, or restrictions are no longer needed or what additional services or sanctions should be added?
- Are there outstanding restitution, court fines, or court costs, and if so, have payments been made?
- Is the youth involved in placement or services funded through title IV-E, and if so, what requirements and determinations need to be addressed?
- Should the court set a review hearing, progress report, case staffing, or progress conference?

WRITTEN FINDINGS AND ORDERS

- All persons present at the hearing;
- If parties were absent, whether they were provided with appropriate notice;
- A statement of the reason for the hearing and the violation that was alleged;
- A statement that the juvenile delinquency court found the youth to have committed the violation and the specific reasons for the court's finding; or, a statement that the court did not find the youth to have committed the violation and dismissal of the violation;
- If the court found the youth committed the violation, the orders of the court and the reasons for those orders, including any modifications to the court approved plan;
- If title IV-E funds are being used:
  - ➢ What reasonable efforts are being made to return or maintain the youth in the home or achieve the permanency plan;
  - ➢ If the required six-month review hearing has not yet been held, either identify this hearing as the required six-month review hearing or set a date within six months of the date the youth was placed in eligible foster care or within six months of the 60th day that the youth was removed from home for the required six-month review;
  - ➢ Restatement of the date of the previously set permanency hearing that is within 12 months of the date the youth was placed in eligible foster care or within 12 months of the 60th day that the youth was removed from home for the required six-month review; and
- A statement that the youth continues under the status of probation or parole, if applicable, and the date and time of the next progress hearing, progress report, case staffing, or progress conference regarding the youth.

POST-DISPOSITION REVIEW (IN HOME) CHECKLIST

WHO SHOULD BE PRESENT

- The judge who is assigned to the family;
- The delinquent youth;
- The parent or legal custodian of the youth, including the child's caseworker if under custody to the child protection agency;
- If the youth is living with someone other than the parent or legal custodian, the caretaker of the youth (e.g., non-custodial relative, foster parent);
- Counsel representing the youth;
- Prosecuting attorney;
- Tribal council representative, if applicable;
- Certified interpreters, if the youth, parent, or custodian do not speak English or are hearing impaired;
- The probation officer;
- Service provider representatives and education representatives as appropriate; and
- Court security and other court staff as required, including stenographic staff or recording technology.

QUESTIONS THAT MUST BE ANSWERED

- If the youth continues on a waiting list for services, what if anything can be done to expedite the youth's entry into the needed service including finding another service provider? What services are or can be provided in the interim?
- If the youth continues on a waiting list for services, and is being held in secure or non-secure detention, is there reliable information to support the youth's need for continued placement in secure or non-secure detention until the disposition can be implemented, or can the youth be released with or without restrictions? The *DELINQUENCY GUIDELINES* does not recommend that a youth be held in secure detention when the juvenile delinquency court has ordered community services except in very rare circumstances. In most situations, release with or without house arrest or electronic monitoring should be sufficient.
- If the service has started, has the youth complied with the court's orders? If not, is it because:
  - ➢ The services were available and accessible but the youth refused to participate;
  - ➢ The services have not been easily accessible;
  - ➢ There are transportation issues;
  - ➢ The services are not meeting the youth's needs, including the youth's cultural needs; or
  - ➢ Some other reason.
- Have the parents, legal guardian, or custodian complied with the court and services expectations of involvement? If not, is it because:
  - ➢ They refused to participate;
  - ➢ The services have not been easily accessible (e.g., appointments are only available during the workday);
  - ➢ Transportation issues;
  - ➢ A lack of cultural understanding on the part of service providers; or
  - ➢ Some other reason.
- If the youth and parent have complied with expectations, is the youth's problem behavior improving?
- If the family situation contributed to the problem, is the family situation improving?
- What is the youth's education situation? Is the youth engaged in an education environment that can meet the youth's needs, including credit recovery, remediation, tutoring, and services for any special learning or behavioral needs? Is the youth progressing? If not, why not, and what needs to be done to remedy the situation? If the youth has been expelled or suspended, was due process given to the youth?
- Is a change of plan needed, and if so, what services or restrictions are no longer needed or what additional services or restrictions need to be added?
- Are there outstanding restitution or court fines and costs, and if so, what is the youth's plan to take care of these responsibilities?
- Are title IV-E funds being used for the youth's services? If so, are all of the requirements of title IV-E being met?
- Should another progress hearing be set, a progress report ordered, or should a progress conference, case staffing or dispute resolution alternative be set?

WRITTEN FINDINGS AND ORDERS

- All persons present at the hearing;
- If parties were absent, whether they were provided with appropriate notice;
- A statement of the reason for the hearing;
- The orders of the court and the reasons for those orders;
- Any modifications to the court ordered probation plan, and if additional services are part of the orders, who is to provide the services and when the services will begin;
- Any new court ordered expectations of the youth and parent or custodian during the time that community services are being delivered;
- If the youth is in detention, either the reasons why it is necessary to continue to detain the youth in secure or non-secure detention or an order to release the youth specifying any restrictions;
- If title IV-E funds are or will be used for the youth's services:
  - ➢ Findings of fact as to what reasonable efforts were and are being made to keep the youth in the home.
  - ➢ Either changes to the case plan or confirmation that the case plan remains in effect as previously approved.
  - ➢ Either identification of this hearing as the six-month review hearing, the date of a review hearing that will be held within six months of the date the youth began title IV-E eligible services that will serve as the six-month review hearing, or the date that the six-month review was previously held.
  - ➢ The date of a permanency hearing that is within 12 months of the date the youth began title IV-E eligible services.

- Either:
  - The date, time, and method of the next post-disposition review; or
  - Termination of the juvenile delinquency court's involvement in post-disposition review of this case.

POST-DISPOSITION REVIEW (OUT OF HOME) CHECKLIST

WHO SHOULD BE PRESENT

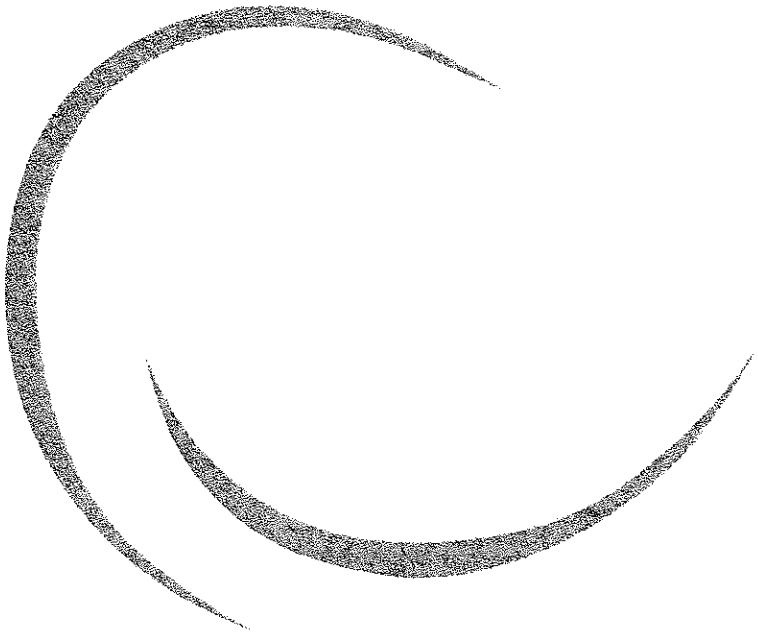
- The judge who is assigned to the family;
- The delinquent youth, in person or by video or telephone conferencing;
- The parent or legal custodian, or future custodian of the youth including the child's caseworker if under custody to the child protection agency;
- Placement facility staff, either in person or by video or telephone conferencing;
- An education representative;
- Counsel representing the youth;
- Prosecuting attorney;
- Case manager;
- The probation officer or correctional authority representative;
- Certified interpreters, if the youth, parent, or custodian do not speak English or are hearing impaired;
- A representative from the youth's tribal council, if applicable; and
- Court security and other court staff as required, including stenographic staff or recording technology.

QUESTIONS THAT MUST BE ANSWERED

- If the youth continues on a placement waiting list:
  - ➢ What, if anything, can be done to expedite the youth's entry into placement and what services are or will be provided in the interim?
  - ➢ If the youth is being held in secure or non-secure detention, is there reliable information to support the youth's need for continued placement in secure or non-secure detention until the placement can be implemented, or can the youth be released under house arrest or electronic monitoring? Issues that should be considered in making this decision include:
    - ° Is there reason to believe that the youth will not report to the placement if released?
    - ° Is there reason to believe that the youth will reoffend if released on house arrest or electronic monitoring?
    - ° Does the youth have any medical, physical or mental health issues, including a trauma history, that places the youth's safety in question in a detention setting?
  - ➢ If the youth is in detention and continues to be detained, have all of the parents' or legal guardian's questions about detention, including visitation, been answered?
- If the placement has been made, has the youth complied with the court's expectations? If not, why not?
- Have the parents, legal custodian, and future custodian complied with the court and placement's expectations of involvement? If not, why not?
- Is the youth making progress?
- If the family situation contributed to the problem, is the family situation improving?
- If the youth is institutionalized through the state youth authority, and if the youth was under the custody of the child protection agency prior to institutionalization, is the child protection agency maintaining contact and will it be prepared to resume custody at the appropriate time? Will the youth need transitional planning under title IV-E or help with independent living? Are opportunities under the Chafee Act appropriate?
- What is the youth's education situation? Is the youth fully engaged in an education environment that is meeting the youth's needs, including credit recovery, remediation, tutoring, and services to address any special learning needs, and is the youth progressing educationally?
- Is a change of plan needed and if so, what services, sanctions, incentives, or restrictions are no longer needed and what additional services or graduated sanctions or incentives should be added?
- Are there outstanding restitution, court fines, or court costs, and if so, is the placement assisting the youth to address these responsibilities?
- Has final planning for reentry begun? If not, when will it begin? When will the final reentry plan be ready to submit to the juvenile delinquency court?
- Is the placement being funded through title IV-E, and if so, what requirements and determinations need to be addressed?
- When should another progress hearing, progress report, case staffing, progress conference, or date for submission of the final reentry plan be set?

WRITTEN FINDINGS AND ORDERS

- All persons present at the hearing;
- If parties were absent, whether they were provided with appropriate notice;
- A statement of the reason for the hearing;
- The orders of the juvenile delinquency court and the reasons for those orders;
- If the youth remains on a waiting list for placement and is in detention, either the reasons why it is necessary to continue to detain the youth in secure detention, or an order to move the youth to non-secure detention or shelter care, or an order to release the youth specifying any restrictions;
- Any modifications to the initial reentry plan that do not violate the parameters of the placement or institution's responsibility;
- If the placement is funded through title IV-E:
  - ➢ What reasonable efforts are being made to return the youth to the home or achieve the permanency plan?
  - ➢ If the required six-month review hearing has not yet been held, either identify this hearing as the required six-month review hearing or set a date within six months of the date the youth was placed in eligible foster care or within six months of the 60th day that the youth was removed from home for the required six-month review.
  - ➢ Restatement of the date of the previously set permanency hearing that is within 12 months of the date the youth was placed in eligible foster care or within 12 months of the 60th day that the youth was removed from home.
- Either the date and time of the next review hearing, progress report, case staffing, progress conference, or the date a finalized reentry plan is to be submitted to the juvenile delinquency court.



JUVENILE DELINQUENCY GUIDLINES OJJDP/NCJFCJ

JUVENILE DELINQUENCY GUIDELINES

Improving Court Practice in Juvenile Delinquency Cases

NATIONAL COUNCIL OF JUVENILE
AND FAMILY COURT JUDGES
Reno, Nevada

JUVENILE DELINQUENCY GUIDELINES

Improving Court Practice in Juvenile Delinquency Cases

Authored by the Publication Development Committee
JUVENILE DELINQUENCY GUIDELINES Project
Honorable David E. Grossmann and
Honorable Maurice Portley, Co-Chairs

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Mary V. Mentaberry, Executive Director
University of Nevada, Reno

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As early as 1996, the National Council of Juvenile and Family Court Judges (NCJFCJ) recognized the need to develop a document to guide court improvement in handling of juvenile deliquency cases. Although it was clear that improvement was necessary, court jurisdictions across the nation had no guidebook against which to measure or assess their daily practice. A document which would outline best practices and which could be used to help courts identify problem areas, to plan for change, and to implement improvement was critically needed.

In 2001, the National Council received funding from the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice to begin drafting this document. A Development Committee of national experts was assembled along with a primary author – Barbara Seibel – to begin this work. In selecting members of the Committee, we were committed to including practitioners as well as policy-focused professionals. Academics and researchers were also included on the Committee. Through its diversity, and throughout three years of discussion, debate, and hard work, this Committee was able to generate a document which will serve as a tool for jurisdictions nationwide as they seek to improve daily practice and to better serve the communities and youth on their watch.

Our deepest appreciation to our Committee Co-Chairs Hon. David Grossmann and Hon. Maurice Portley; our funder; Robert Flores, Administrator, Office of Juvenile Justice and Delinquency Prevention; the primary author, Barbara Seibel; as well as to the members of the Committtee, peer reviewers, NCJFCJ membership and staff who reviewed and edited this document. They gave generously of their time and energy to ensure this document's accuracy, timeliness, and applicability to jurisictions nationwide.

This document is not a reflection of the current state of juvenile justice today, but of what juvenile justice practice can be in the future. For the Committee's foresight and dedication to this mission, we offer our deepest thanks.
-- Mary Mentaberry, Executive Director National Council of Juvenile and Family Court Judges

For decades, the National Council of Juvenile and Family Court Judges (NCJFCJ) has provided judicial training and juvenile justice technical assistance. NCJFCJ members understand that an effective juvenile justice system requires a highly skilled juvenile and family court judiciary and system professionals, effective and efficient court processes, and adequate resources.

Since 1990, the Permanency Planning for Children Department (PPCD) of the NCJFCJ, in collaboration with the Office of Juvenile Justice and Delinquency Prevention (OJJDP), juvenile court judges, juvenile court administrators, and child welfare experts across the country, led the Child Victims Act Model Courts Project. Believing that courts and agencies needed to undergo a fundamental paradigm shift to change the way they worked individually and in concert, this project designed an innovative and practice-based training and technical assistance model. This model for change, supported by The Adoption Assistance and Child Welfare Act (1980), Pub. L. No. 96-272, resulted in national systemic improvements in the way juvenile and family courts handle abuse and neglect cases. Two critical components of this change process were the publication of the *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases*, and implementing the recommendations and other best practices through "Model Courts." Lead judges of juvenile and family courts across the nation requested that their courts be selected as advocates and models for system change, committing to:[1]

- Adhere to, and be guided by, the key principles of the *RESOURCE GUIDELINES*;
- Analyze practice and results of their existing court processes and identify improvement opportunities;
- Implement process improvement, measure results, and share their experiences both with other Model Courts and with all juvenile courts; and
- Commit to and promote systems change both within their own jurisdiction, and at the state, regional, and national levels.

Using this successful training and technical assistance model, the NCJFCJ hopes to achieve equally significant improvements in the way that the juvenile courts across the country and in U.S. territories handle their delinquency jurisdictions.

The first step toward change is the publication of this book – *JUVENILE DELINQUENCY GUIDELINES: Improving Court Practice in Juvenile Delinquency Cases* – for juvenile delinquency court judges and juvenile delinquency system professionals. Juvenile justice system practitioners from across the country have contributed to its development.[2]

The second step in the change effort will be the broad dissemination of the *DELINQUENCY GUIDELINES* and the implementation of the *DELINQUENCY GUIDELINES* recommendations through designated Model Courts. In addition, the NCJFCJ will supplement the *DELINQUENCY GUIDELINES* with training and technical assistance, research and evaluation, and additional publications and tools for practice and policy development. Through these efforts, juvenile delinquency courts across the country will be assisted in assessing current practice, identifying areas in need of improvement, and planning and working toward positive change. The result will be a renewed focus on delinquency system improvement, including improved court handling of juvenile delinquency cases, innovative community-based collaborative responses to juvenile crime and delinquency, and expansion of professional networks interested in improving governmental responses to at-risk youth.

A. HISTORICAL PERSPECTIVE[3]

As we reach for system improvement, it is helpful to review the past practices of our over 100-year-old United States juvenile court system. Prior to the establishment of its first juvenile delinquency court, America followed legal traditions inherited from England. These traditions categorized people as "infants" or "adults" and allowed three options for children and youth who broke the law:

- Any child below age seven was presumed to be incapable of criminal intent and conclusively exempt from prosecution and punishment.
- Children ages seven through 14 could invoke the "infancy defense" and try to convince the court of their incapacity for criminal intent. The prosecutor would counter such a defense to show criminal capability, and if successful, the child would face criminal penalties, including imprisonment or death.
- Children over the age of 14 were always prosecuted and punished as if they were adult criminals.

In the 1800s, believing that animals were treated better than children, members of the Society for the Prevention of Cruelty to Animals started a movement for prevention of cruelty to children, a movement that helped establish separate courts for juveniles and adults. The first juvenile court in the United States, authorized by the Illinois legislature, began operation in 1899 in

Cook County (Chicago), Illinois. The legislation that created this court included a comprehensive set of definitions and rules "to regulate the treatment and control of dependent, neglected, and delinquent children."[4] The court was charged with promoting the welfare of children in trouble, to avoid the stigma of crime and criminality, and to "as far as practical, treat children not as criminals but as children in need of aid, encouragement and guidance."[5] The laws were to be "liberally construed," to accomplish the goal that the "care, custody, and discipline" of these children "shall approximate as nearly as may be that which should be given by parents."

By 1925, following Illinois' lead, all but two states had established juvenile courts based on the British doctrine of *parens patriae* (the state as parent). This doctrine gave government the right to intervene in the lives of children, with or without the consent of parents. This approach included the concept of individualized justice – not every child in every situation should receive exactly the same response. The focus was on the offender and not the offense, on rehabilitation instead of punishment. The court was responsible for balancing the needs of children, their families, and their communities. This approach produced court processes such as:

- The juvenile delinquency court controlling its own intake, as opposed to the criminal court, where grand juries and prosecutors controlled intake;
- The option of handling cases informally as opposed to formally;
- Less formal hearing procedures;
- Confidential proceedings;
- The absence of attorneys except in trials or the most serious cases; and
- Dispositions based on perceived remedial need instead of automatic dispositions determined by the offense.

The concept of individualized justice has remained the hallmark of the juvenile justice system since inception and has clearly differentiated it from the criminal justice system. Although the juvenile delinquency court considers the facts of the offense when determining the proper disposition of a juvenile delinquency case, the juvenile delinquency court is not *driven* by the offense, but instead, by the specific needs and circumstances of the individual youth. Thus the original design of the juvenile delinquency court optimized its chances of providing community safety by imposing consequences that have the best chance of producing change in each youth.

Three U.S. Supreme Court decisions caused the pendulum to shift in the 1960s and 1970s away from part of the *parens patriae* doctrine. These decisions responded to concerns that the rights of youth were being trampled, and that *parens patriae* and unbridled judicial discretion, however benevolently motivated, were arbitrary and unfair. These decisions were:[6]

- *Kent v. United States* (1966) established that transfer to criminal court must consider due process and fair play, and that the youth must be represented by an attorney who must have access to the youth's juvenile records.
- *In re Gault* (1967) established that juveniles had the constitutional right to notice of the proceedings, the right to counsel, the right to confront and cross-examine accusers, the right against self-incrimination (i.e., the right to remain silent), and the right to appeal a decision of the juvenile delinquency court. Aggregately, these rights are referred to as due process rights.
- *In re Winship* (1970) changed the burden of proof from preponderance of evidence to proof beyond a reasonable doubt.

In contrast to this shift, however, *McKeiver v. Pennsylvania* (1971) moved in the opposite direction when the U.S. Supreme Court determined that in juvenile proceedings there was no right to trial by jury.

During this period, juvenile delinquency court purpose clauses began to use words such as "punishment" and "accountability," and juvenile delinquency court process focused more on the criminal nature of delinquent acts and adopted essential due process rights accorded to criminal court defendants. This shift caused mounting concern that youth who had committed acts which would not be considered criminal if committed by adults – referred to as status offenders – should be protected from inappropriate juvenile delinquency court responses. The Juvenile Justice and Delinquency Prevention Act of 1974 (Act) was passed for this purpose and limited the placement of status offenders in secure detention or correctional facilities. There was also concern that alleged and adjudicated delinquents were being harmed by contact with alleged and convicted adult criminals in adult jails, lockups, and other institutions. Consequently, the Juvenile Justice and Delinquency Prevention Act required that juvenile offenders be removed from adult jails and separated from adults in institutional settings. Subsequent amendments to the Act include:

- In 1980, Congress amended the Act to allow the secure detention of status offenders who had violated valid court orders.

- In 1984, Congress amended the Act to define valid court order and to refine other concepts.
- In 1992, Congress amended the Act to add programs to address gender bias, prevention, treatment, graduated sanctions, and risk assessments/needs assessments.
- In 1998, Congress amended the Act to address disproportionate minority confinement. Throughout the history of the juvenile delinquency court, juvenile offenders have represented all ethnic backgrounds and all socioeconomic levels. However, the juvenile delinquency court has been challenged throughout its years with the dynamic of disproportionate minority involvement in the juvenile justice system.
- In 2002, Congress continued the four core elements of the previous Acts and amendments – specifically, deinstitutionalization of status offenders, separation of juveniles and adults in secure institutions, removal of juveniles from adult jails and lockups, and reduction of disproportionate minority contact where it exists; and added emphasis on the link between child abuse and neglect and delinquency, with a new requirement that child welfare records should be available to the juvenile delinquency court system so that the youth's best interest would be considered when the juvenile delinquency court made decisions.

The next pendulum swing began in the mid-1980s in response to a rapid escalation in the volume and seriousness of youth crime. There was a growing public perception that juvenile delinquency courts were "soft" in their responses to serious crime. From 1988 to 1994, juvenile arrests for violent crimes increased 62%.[7] In response to this escalation, legislatures significantly modified juvenile delinquency court processes in four areas. These areas included: 1) transferring youth to criminal court, 2) relaxing confidentiality protections, 3) the emergence of an increased role for the prosecutor in juvenile delinquency court, and 4) "toughening" juvenile delinquency court sanctions.

The first significant change in juvenile delinquency court practice addressed youth who had committed serious crimes and changed state statutes regarding who should be handled in juvenile delinquency court and who should be transferred (or waived) to the criminal court. Between 1992 and 1995, 40 states and the District of Columbia changed their laws to restrict juvenile delinquency court jurisdiction in the most serious cases in three ways.[8]

- *Passing laws requiring automatic waivers to criminal court for specified offenses* - Prior to this time, laws specified that only certain offenses were *eligible* for transfer to criminal court. Laws were changed to specify that certain offenses must be transferred to criminal court.
- *Lowering the age of transfer to criminal court* - Prior to this time, laws generally did not permit the transfer of youth to criminal court if they were under the age of 14 to 16. By 1995, 11 states had lowered the age of transfer.[9]
- *Removing or reducing discretion from juvenile delinquency court judges over whether to keep youth under the jurisdiction of the juvenile delinquency court or to waive youth to the criminal court* - Not only were judges required to waive specified offenses, but also laws in some states gave prosecutors the discretion of whether to file an offense in juvenile delinquency court or criminal court. There was an increase in the number of states that required statutory exclusion or legislative transfer, which mandated certain offenses be filed directly in criminal court, removing specified youth from the original jurisdiction of the juvenile delinquency court. There was also an increase in the number of offenses included in this category.

The second significant change in juvenile delinquency court practice occurred in the area of confidentiality protections. Prior to the 1990s, juvenile delinquency court hearings and information were generally off-limits to the press and the public. Rarely was a juvenile offender's name or picture printed in the newspaper. Non-parties could not generally attend juvenile delinquency court hearings unless it was demonstrated that the public's right to know outweighed the youth's right to confidentiality. This perspective changed as many legislatures removed the confidentiality restrictions and determined that the community's right to know superceded the protection of the youth from stigma. Unless it was shown that opening the proceeding would significantly harm the youth, the juvenile process was opened to the public in many jurisdictions.

The third significant change in juvenile delinquency court practice resulted in routine involvement of the prosecutor in the juvenile delinquency court. Prior to *In re Gault*, prosecutors seldom appeared on juvenile delinquency cases except, on occasion, to help the probation department address legal matters. Over the past 30 years, more prosecutors have participated in juvenile delinquency court

according to their traditional role as the advocate for the community by reviewing and filing petitions, appearing at all hearings, and taking positions in each delinquency case at every stage of the proceedings. This development has led to the juvenile delinquency court resembling the adult criminal process in several respects, specifically the growth of the adversarial process in the juvenile delinquency court and the practice in many jurisdictions of extensive use of plea negotiating.

The fourth change in juvenile delinquency court practice toughened the sanctions available to juvenile delinquency courts. Examples of this change include lowering the age for youth to be held in secure detention, lowering the age for youth to be sent to secure correctional institutions, and the option of blended sentencing.[10] In blended sentencing a judge may impose both a juvenile and criminal sentence. If the juvenile successfully completes the juvenile sentence, the criminal sentence may be set aside or the juvenile may be ordered to serve a sentence in a juvenile facility until reaching the age of majority and then be transferred to a criminal justice system facility to complete the sentence.

At the same time legislatures were toughening their response to juvenile crime, delinquency systems also began exploring the model of Balanced and Restorative Justice (BARJ). The model gives equal consideration to 1) protecting the community, 2) holding offenders accountable for their acts, and 3) helping offenders to develop the skills and attitudes they need to succeed in becoming law-abiding and productive members of society.[11]

Ten years after this decade of toughening responses to juvenile crime, the U.S. Supreme Court moved in the opposite direction when it overturned the previous decision of *Stanford v. Kentucky* (1989) that execution of a person who was 16 or 17 years of age at the time of his or her offense did not offend the Eighth Amendment's prohibition against "cruel and unusual punishment." In *Roper v. Simmons* (2005) the U.S. Supreme Court determined that the national consensus had changed, that the death penalty was a disproportionate punishment for juveniles, and that youth under the age of 18 are categorically excluded from capital punishment. Whether this is the beginning of another shift, or an anomaly such as *McKeiver v. Pennsylvania* (1971), remains to be determined.

B. NEED FOR AND PURPOSE OF THE JUVENILE DELINQUENCY GUIDELINES

Societal trends carried from the 1990s into the new millennium – a mobile population, increasingly complex family situations, single parent homes, decreased supervision of children, parents who are less available to their children, substance abuse in youth and families, gang-related activity, and increasing incidence of serious mental health issues in younger youth – have created significant challenges for the juvenile delinquency court. Juvenile delinquency court judges are on the front-line, dealing with some of society's most difficult problems.[12]

These dynamics have made it difficult for juvenile delinquency courts to maintain balance between meeting the needs of juvenile offenders and community safety. They have resulted in juvenile justice system challenges such as an increased percentage of mental illness in incarcerated youth, detention rates that are the highest in the world, disproportionate minority representation throughout the system, and a lack of uniformity in juvenile delinquency court practice and decision-making from jurisdiction to jurisdiction. Although pieces of the juvenile delinquency court process have been modified, there has been no major examination or comprehensive overhaul in decades.

Many challenges have rendered past practices ineffective and require new and innovative approaches. Juvenile delinquency court statistics, OJJDP research, juvenile justice experts, juvenile delinquency court judges, and juvenile justice system staff from many jurisdictions consistently express concern about the effectiveness of the juvenile justice system to address the following challenges:

- Increasing numbers of youth are failing and dropping out of school with educational deficits serving as the primary reason for entry into the juvenile justice system.
- Increasing numbers of youth have multiple needs including serious histories of trauma, mental health, and behavioral problems; most of these youth experience disconnected, uncoordinated service systems – child welfare, special education, mental health systems, and juvenile justice agencies – that have minimal communication or coordination regarding services to these youth.
- Because of limited resources, some agencies have become involved in "competition not to serve" these challenging youth and are "dumping" their most difficult clients into the juvenile justice system.
- Many youth are involved in repeated but unconnected contacts with law enforcement with a general lack of a continuum of graduated sanctions and available service options.

- The rate of arrests for serious crimes committed by females is rising in contrast to the overall decrease in the commission of serious crimes, and traditional services are not effective with this population.
- The rate of arrests for serious crimes committed by younger youth is rising in contrast to the overall decrease in the commission of serious crimes, with deficits in the services required to address their needs.

The leadership of the National Council of Juvenile and Family Court Judges, along with national experts in probation, youth corrections, prosecution, law enforcement, and defense agree that the juvenile delinquency court system needs guidelines that will help them improve practice. They need guidelines that will address both the enduring problems of delinquency and emerging challenges. Frustration with the ineffectiveness of old ways of doing business has provided significant momentum for the development and publication of recommendations that will be the foundation for positive change in our nation's juvenile delinquency courts.

The purpose of the *JUVENILE DELINQUENCY GUIDELINES: Improving Court Practice in Juvenile Delinquency Cases* is to set forth the essential elements of effective practice for the court processes that are involved in the handling of juvenile delinquency cases. It identifies recommended practices throughout the juvenile delinquency court system – from the determination of whether a case should enter the formal juvenile delinquency court system, to determination as to whether juvenile delinquency court jurisdiction should be waived and the youth transferred to criminal court, and to post-disposition review of the reentry process for youth returning to the community from out of home placement.

In the effort to produce better results in our nation's juvenile delinquency courts, the Development Committee of the *DELINQUENCY GUIDELINES* has accessed a wealth of experience and data. The Committee recognizes that there are some areas where research is lacking, and have identified practices from innovative juvenile delinquency courts across the country that have shown positive results.

This collective experience comes together in the *JUVENILE DELINQUENCY GUIDELINES: Improving Court Practice in Juvenile Delinquency Cases.* This is the first organized effort by the NCJFCJ and the OJJDP to identify comprehensive and effective practice for the nation's juvenile delinquency courts. The goals are to improve the nation's juvenile delinquency systems and the outcomes for the youth, families, victims, and communities they serve. The results of the implementation of the *DELINQUENCY GUIDELINES* recommendations, and other innovations developed and implemented through the *DELINQUENCY GUIDELINES* Model Courts, will be measured and tracked to determine their effectiveness.

C. SCOPE, STRUCTURE AND USE OF THE JUVENILE DELINQUENCY GUIDELINES

The scope of the JUVENILE *DELINQUENCY GUIDELINES: Improving Court Practice in Juvenile Delinquency Cases* begins at the point when an affidavit alleging a violation of the law is brought to the juvenile delinquency court. It ends upon completion of all delinquency hearings on a petition, including post-disposition review hearings.

The *DELINQUENCY GUIDELINES* distinguishes between illegal behaviors committed by youth (status offenses and delinquency), as opposed to illegal behaviors committed against youth (abuse, neglect, and dependency). A status offense is defined as those offenses that would not be illegal if committed by an adult, for example, truancy, runaway, incorrigibility, and alcohol or tobacco possession or use. The *DELINQUENCY GUIDELINES* speaks only to the juvenile delinquency court processes involved with youth who are alleged to have committed illegal behaviors. The *DELINQUENCY GUIDELINES* recognizes that in some states status offenders are under the jurisdiction of the abuse and neglect jurisdiction of the juvenile court as opposed to the delinquency jurisdiction. The *DELINQUENCY GUIDELINES* does not recommend against the practice of status offenders being under the abuse and neglect jurisdiction. ***The DELINQUENCY GUIDELINES does recommend*, however, that only law-violating juveniles should be under the delinquency jurisdiction of the juvenile court**.

All juvenile delinquency courts have jurisdiction over misdemeanor and felony cases, except those felony cases specified by state statute as prosecutor discretion to file in juvenile or criminal court, or those felonies specified as direct filings in criminal court. Most juvenile delinquency courts have jurisdiction over status offenses. Many juvenile delinquency courts have jurisdiction over juvenile traffic offenses. ***The DELINQUENCY GUIDELINES recommends* that juvenile delinquency courts use informal systems with status offenders unless their behaviors become chronic**.

The *DELINQUENCY GUIDELINES* begins in Chapter I with the reasons the juvenile delinquency court continues to be a necessary institution and describes the goals and key

principles that are a necessary foundation for juvenile delinquency courts of excellence. Chapter I concludes with the identification of roles and responsibilities that must exist in an effective juvenile delinquency court system.

In Chapter II, important general issues not already covered in the *Key Principles* are briefly presented. All persons involved in any delinquency system need to be knowledgeable about these issues. Many of these general issues have been extensively written about in multiple publications. The purpose of addressing them in the *DELINQUENCY GUIDELINES* is to emphasize their importance, to summarize the issues, and to identify additional references for in-depth study.

Chapter III begins with a petition that alleges a youth to have violated the juvenile code and covers:

- The importance of consistency in decision-making;
- Process and options for diverting complaints from the formal delinquency system;
- Engaging the formal system; and
- Alternatives to secure detention, managing the detention population, and restrictions on holding youth in adult jails.

The formal system is different from the informal system in that, if a youth complies with the expectations of the informal system, a petition is either not filed or dismissed, and the offense, even though admitted, should not become part of a delinquency record.

Chapters IV through XI describe the process of each of the hearings that are part of the formal juvenile delinquency court system. The structure of these chapters includes the purpose of the hearing, timing of the hearing, conducting the hearing, including who should be present and what information the juvenile delinquency court should have, as well as the decisions the juvenile delinquency court should make and record in their written findings and orders. These hearings include:

- The Detention or Initial Hearing
- Hearings on Motions To Waive Juvenile Delinquency Court Jurisdiction and Transfer Jurisdiction To Criminal Court
- The Trial and Adjudication Hearing
- The Disposition Hearing
- The Appeals Process
- Post-Disposition Review of Delinquent Youth Who Remain in Their Home with Court Ordered Services
- Post-Disposition Review of Delinquent Youth Placed Out of the Home by Juvenile Delinquency Court Order
- Probation and Parole Violations

The *DELINQUENCY GUIDELINES* ends with a final chapter on implementation issues, checklists, a glossary, and appendices.

The structure of this book has been time-tested by the National Council of Juvenile and Family Court Judges in publications previously created for use in the juvenile court's abuse and neglect jurisdiction. The NCJFCJ's Permanency Planning for Children Department has published two similar books - *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse & Neglect Cases*, and *ADOPTION AND PERMANENCY GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases.* Tens of thousands of these books have been distributed and found to be useful by juvenile court judges and other juvenile court professionals across the country. They have been used as bench references, as system improvement roadmaps, and as training guides for system participants. As in the abuse and neglect books, the *DELINQUENCY GUIDELINES* includes hearing checklists that judges can use on the bench as reminders of the questions that must be answered and the key decisions for each delinquency hearing.

It is important to note that the juvenile delinquency court judges and other juvenile delinquency system professionals who collaborated on the development of the *DELINQUENCY GUIDELINES* understand that many juvenile delinquency courts will not be able to implement all of the recommendations. All juvenile delinquency courts, however, should be able to implement some of the recommendations and show increased effectiveness and efficiencies as a result. Some of the recommendations require transition funding to initially implement the practice, and then show sufficient cost reductions to allow the practices to continue without permanent cost increases. Some recommendations require resource shifts to implement. Other recommendations can be implemented without cost. Throughout the document and specifically in Chapter XII, examples of how juvenile delinquency courts have made these transitions are described.

The *DELINQUENCY GUIDELINES* is intended to be used by courts and other juvenile delinquency system stakeholders to assist their efforts to improve practice. The *DELINQUENCY GUIDELINES* is aspirational - they focus on what should be as opposed to what is. Every effort has been made to make the *DELINQUENCY GUIDELINES* practical and usable, and to ground recommendations in the most current research and promising practices available at the time of development.

Some jurisdictions are already following many of the recommendations. Some jurisdictions may

find it extraordinarily challenging to follow the recommendations. Regardless of jurisdictional status and resources, it is hoped that the *DELINQUENCY GUIDELINES* provides a common vision and motivational framework for those working toward an improved juvenile delinquency system.

As jurisdictions strive to implement the *DELINQUENCY GUIDELINES* with training and technical assistance from the NCJFCJ, juvenile delinquency system practitioners from all situations - urban, rural, suburban, and with varying degrees of resources - will be able to create and share successful implementation methods.

Endnotes

[1] National Council of Juvenile and Family Court Judges. (2004). *Status Report 2003: A Snapshot of the Child Victims Act Model Courts Project.* [Technical Assistance Bulletin, 8(1).] Reno, NV: Permanency Planning for Children Department / Author.

[2] See the Preface for participants in the development of the *DELINQUENCY GUIDELINES.*

[3] Significant portions of this chapter were taken from: National Center for Juvenile Justice. (2002). *Desktop Guide to Good Juvenile Probation Practice.* Pittsburgh, PA: Author.

[4] Section 22 of the Act to Regulate the Treatment and Control of Dependent, Neglected and Delinquent Children. Reprinted in: Hurley, T. (1907). *Origin of the Illinois Juvenile Court Law,* 3rd ed. Chicago, IL: Visitation and Aid Society. Also referenced in: The David and Lucile Packard Foundation. (1996). *The Future of Children: The Juvenile Court, 6*(3).

[5] "An act to regulate the treatment and control of dependent, neglected and delinquent children." Revised Statutes of the State of Illinois (1899) as quoted in: Trattner, W. (1989). *From Poor Law to Welfare State: A History of Social Welfare in America,* 4th ed., (pp. 117-118). New York, NY: The Free Press.

[6] See Appendix B for additional information on these cases and for additional key Supreme Court cases affecting the rights of juvenile offenders.

[7] Snyder, H., & Sickmund, M. (1999). *Juvenile Offenders and Victims: 1999 National Report.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

[8] The David and Lucile Packard Foundation. (1996). *The Future of Children: The Juvenile Court, 6*(3).

[9] Torbet, P., Gable, R., Hurst, H., Montgomery, I., Szymanksi, L., & Thomas, D. (1996). *State Responses to Serious and Violent Juvenile Crime.* Pittsburgh, PA: National Center for Juvenile Justice.
According to the National Center for Juvenile Justice, by 2002, two states (Kansas and Vermont) specified age ten as the minimum age for transfer; three states (Colorado, Montana and Missouri) specified age 12; and 22 states and the District of Columbia have at least one provision for transferring juveniles to criminal court for which no minimum age is specified. (See http://www.ncjj.org/stateprofiles/).

[10] As of the end of the 2002 legislative session, 26 states had adopted some form of blended sentencing in which both juvenile and criminal sentencing procedures could be used in certain serious cases. Griffin, P. (2003). *National Overviews: State Juvenile Justice Profiles.* Pittsburgh, PA: National Center for Juvenile Justice. Online. Available: http://www.ncjj.org/stateprofiles/.

[11] Maloney, D., Romig, D., & Armstrong, T. (1988). Juvenile probation: The balanced approach. *Juvenile and Family Court Journal 39*(3), 1-57. By the end of 2004, at least 30 states had adopted or were examining juvenile codes or administrative procedures that included this concept and 41 states articulated restorative principles in one or more policy documents.

[12] Supra note 9.

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As jurisdictions strive to implement the *GUIDELINES* with training and technical assistance from the NCJFCJ, juvenile delinquency system practitioners from all situations - urban, rural, suburban, and with varying degrees of resources - will be able to create and share successful implementation methods.

This chapter of the *DELINQUENCY GUIDELINES* provides the foundation a juvenile delinquency court needs to become a court of excellence. The chapter begins with a basic discussion of why a separate court for juveniles and adults continues to be necessary. The chapter moves to the goals and key principles of a juvenile delinquency court of excellence. The chapter concludes by defining critical roles in the juvenile delinquency court process and the responsibilities of each role.

A. THE CONTINUING NEED FOR THE JUVENILE DELINQUENCY COURT

As described in the Introduction, during the 1990s legislatures moved away from a rehabilitative juvenile delinquency court model toward a more punitive model by reducing the minimum age of transfer to adult court and expanding the offenses for which a juvenile could be transferred. They also moved away from individualized justice by instituting automatic waivers and direct criminal filings that reduced judicial discretion. These changes caused some individuals to question whether there was still a need for a separate juvenile delinquency court. The answer is unequivocally yes.

In most instances, the criminal court is focused on deterrence and punishment. The juvenile delinquency court is focused on identifying the underlying issues causing the delinquent behavior and providing interventions to address these issues. Both courts have a goal of community safety. The juvenile delinquency court, however, accomplishes this goal through individualized responses as opposed to standard sentencing, an important difference. In *Roper v. Simmons* (2005) the U.S. Supreme Court stated the following three reasons that make juveniles under 18 different from adults:

- *First, as any parent knows and as the scientific and sociological studies tend to confirm, a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the youth. These qualities often result in impetuous and ill-considered actions and decisions.*[1] *In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent.*[2]
- *Second, juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.*[3] *Youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment. As legal minors, juveniles lack the freedom that adults have to extricate themselves from a criminogenic setting.*[4]
- *Third, the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.*[5]

Because youth are more readily changeable, interventions that enhance their understanding and skills are most effective in changing their behavior and consequently, in most instances, more effective in improving future community safety than strictly punitive responses. Community safety is inextricably linked to teaching juvenile offenders the skills that will change their behavior from offending to law abiding. Research suggests that there are effective responses that can prevent crime and reduce risk factors for crime.[6]

The juvenile delinquency court of excellence is the hub of the juvenile justice system. From this hub, schools and public and private social agencies draw additional authority when the problems of troubled youth and their families rise to the level of youth breaking the law.[7] Without the involvement of these system stakeholders, the attitudes, skills, and behaviors of most youth may not be changed. With their involvement, the change that will produce safe communities can occur.

The child welfare system has an important impact on the juvenile justice system. Research is clear that youth who have been abused and neglected are at heightened risk for early onset of delinquency. Examples of research findings include:

- Physical abuse and parental psychological unavailability at an early age were found to be risk factors for antisocial behavior in adolescence.[8]
- Characteristics that are common in parents of abused and neglected children, including poor parenting skills, parental stress, low interaction between parent and child, poverty, young parents, parental criminal problems, and low parental education are related to later violence in offspring.[9]
- Almost 50% of the maltreated boys in one

study were persistent serious delinquents by age 13 years, compared with 19% of the matched controls. This relationship is all the more important because early onset of serious delinquency is a general indicator for a continued serious delinquent career.[10]

- Children who witness partner violence have higher rates of distress, internalizing problems, noncompliance, aggression, delinquency and other antisocial behavior.[11]
- Almost 50% of the sexually assaulted boys in the study reported engaging in delinquent acts, compared with only 16.6% of those not sexually assaulted; the girl's rate was 19.7%, four times higher than the delinquency rate of girls who had not been sexually assaulted (4.8%).[12]

Recognizing the importance of the heightened risk of delinquency for adjudicated abused and neglected youth, the Juvenile Justice and Delinquency Prevention Act of 2002 requires a study of juveniles in the juvenile justice system who were in the care or custody of the child welfare system prior to becoming delinquent.

In addition to the heightened risk of delinquency for abused and neglected youth, there is a heightened risk of delinquency for youth who have experienced other types of victimization and child trauma, including witnessing violence and physical assault. Recent studies have found that:

- Youth who are victimized have a 78% likelihood to offend as compared to a 32% likelihood of non-victims.[13]
- Almost 47% of physically assaulted boys report engaging in delinquent acts as compared with almost 10% of boys who were not physically assaulted. Twenty-nine percent (29%) of physically assaulted girls report engaging in delinquent acts as compared with 3% of non-assaulted girls.[14]
- About 33% of boys who had witnessed violence reported engaging in delinquent acts as compared with 6.5% of boys who did not witness violence. About 17% of girls who witnessed violence reported delinquent behavior as compared with 1.4% of girls who did not witness violence.[15]

These interrelationships and complexities regarding delinquent behavior, victimization, trauma, abuse, and neglect further emphasize the need for a separate juvenile delinquency court - a court staffed with judges and other professionals who understand and can address these dynamics in their responses to youth who break the law.

Countries across the world have juvenile delinquency courts for the same reasons. They are the legal institutions that address the problems of youth who break the law by bringing together the professionals, parties, and tools that will make a difference in the unacceptable behavior of these youth. Formal legal proceedings in the juvenile delinquency court bring parents, social workers, probation officers, schools, service providers, and members of the community into a problem-solving environment to address some of society's most enduring problems. There is no substitute for the juvenile delinquency court and society will not function well without it.

B. THE GOALS OF A JUVENILE DELINQUENCY COURT OF EXCELLENCE

In order for systems to be effective and be able to prove their effectiveness, they need to have clearly stated measurable goals. The key principles or steps that will lead the system toward goal achievement must be defined. Participants in the system must continually measure progress toward key principles and goals, instituting process improvement when needed. The juvenile delinquency court and the stakeholders that directly interact in the court's processes need to have compatible goals in order for the juvenile justice system to serve most effectively the youth and families that come before it. In the juvenile delinquency court of excellence, stakeholders involved in the daily operations of the juvenile justice system work together to craft goal statements and work together to monitor progress toward goals.

A juvenile delinquency court goal statement should include some aspect of all of the following components:

The goals of the Juvenile Delinquency Court are to:

- ***Increase safety in communities by supporting and implementing both effective delinquency prevention strategies as well as a continuum of effective and least intrusive responses to reduce recidivism;***[16]
- ***Hold juvenile offenders accountable to their victims and community by enforcing completion of restitution and community service requirements;***[17] ***and***
- ***Develop competent and productive citizens by advancing the responsible living skills of youth within the jurisdiction of the juvenile delinquency court.***[18]

The juvenile delinquency court cannot achieve these goals alone. These goals can only be achieved when the

juvenile delinquency court collaborates with stakeholders in the community and other components of the juvenile justice system.

Some juvenile delinquency courts may choose to call this statement a vision or mission statement as opposed to a goal statement. Regardless of what nomenclature the juvenile delinquency court chooses, all of the concepts apply.

Some juvenile delinquency court judges express concern about the appropriateness of becoming involved in system collaboration. They are often concerned because they believe that collaboration may be perceived as engaging in *ex parte* or unethical communication that violates judicial canons. Juvenile delinquency court judges must be diligent regarding protection of the rights of all parties and should therefore not engage in *ex parte* discussions regarding substantive issues of pending cases without the knowledge of all parties. When involved in collaborative and training activities, the juvenile delinquency court judge must make it clear that no discussions will occur involving pending cases and that case examples will protect the confidentiality of the parties. Judges must also examine their judicial ethics advisory committee opinions, if available, and any court decisions interpreting state judicial conduct codes as to the propriety of judicial and non-judicial conduct.

However, the prohibition against *ex parte* communications and the restrictions created by state judicial conduct codes should not preclude the involvement of juvenile delinquency court judges in community and system collaboration. Accordingly, the National Council of Juvenile and Family Court Judges (NCJFCJ) has taken a leadership role in advocating judicial collaboration since the early 1990s. ***The DELINQUENCY GUIDELINES recommends* where state expectations are not clear or prohibit juvenile delinquency court judges from community involvement and collaboration, juvenile delinquency court judges should make every effort to either adopt rules that encourage judges to be involved in system collaboration, or advocate change in their state judicial conduct codes to permit system collaboration.**

C. KEY PRINCIPLES OF A JUVENILE DELINQUENCY COURT OF EXCELLENCE

It is important for juvenile delinquency courts to identify the *Key Principles* that will lead them to achieve their goals. The NCJFCJ has researched and published recommendations on more than 25 different issues within the juvenile delinquency system. Throughout these publications, there are certain principles that are consistently recommended, and it is from this group of recommendations, as well as the Project Development Committee's extensive experience, that these foundational *Key Principles* for the optimal juvenile delinquency court of excellence have been identified.[20]

It is important to note that some jurisdictions may currently have state statutes that prevent them from implementing one or more of these key principles. In order for a juvenile delinquency court to be *optimally* efficient and effective, implementation of these principles in their entirety is necessary. However, implementation of any of the principles should improve the juvenile delinquency court process. In jurisdictions where state statutes prevent implementation of a key principle, juvenile delinquency court judges should consider working with the legislature and delinquency system participants to change these statutes.[21]

The *DELINQUENCY GUIDELINES 16 Key Principles* that form the foundation for juvenile delinquency courts of excellence to reach their goals are:

1. ***Juvenile Delinquency Court Judges Should Engage in Judicial Leadership and Encourage System Collaboration*** – *The juvenile delinquency court judge should regularly convene system stakeholders and the community to promote mutual respect and understanding within the juvenile delinquency court system, and to work together to improve the system. The juvenile delinquency court judge and court administrator should engage the state chief justice and state court administrator in system collaboration.*

In addition to state and local judiciary, juvenile delinquency court stakeholders include state court administrators, law enforcement officers, detention and juvenile delinquency court intake staff, prosecutors, public defenders and the defense bar, probation officers, detention staff, substance abuse and mental health systems professionals, education administrators and teachers, workforce development staff, child welfare professionals, representatives of community agencies, crime victims, crime victim advocates, victim services providers, legislators, and the community at large. If a state uses a judicial assignment system, it is important that both the judge who is responsible for assignments and the judges assigned to juvenile delinquency court are involved in juvenile delinquency court judicial leadership and system collaboration.

Juvenile delinquency court judges should regularly appear in the community for the purpose

of promoting better understanding and support. They should inform the community of the juvenile delinquency court's goals and the issues associated with youth, families and crime victims in the juvenile delinquency court system. Judges should encourage the development of successful programs, including volunteer and faith-based programs, to assist children and families within the juvenile delinquency court. Juvenile delinquency court judges should be willing to be engaged by system participants and the community to discuss juvenile delinquency court issues and the work of others on behalf of children and families.[22]

States should consider creating juvenile justice commissions and juvenile court judges should consider creating statewide juvenile court judges organizations for the purpose of providing leadership and influence at the state level.[23] Supreme Court Chief Justices and state court administrators should be involved in juvenile delinquency court leadership and support efforts, and should empower judges at the local level to engage in leadership and collaboration activities.

2. ***Juvenile Delinquency Systems Must Have Adequate Staff, Facilities, and Program Resources*** – *Juvenile delinquency systems must have sufficient numbers of qualified judges, judicial officers, probation officers, case management staff, intake staff, prosecutors, public defenders, and victims' advocates to create manageable caseloads and timely process. They must have adequate courtrooms, separate and safe waiting areas for victims and offenders, secure holding facilities, private meeting space for youth and counsel, and detention facilities that are both secure and non-secure. They must have the necessary array and quantity of quality services to meet the needs of delinquent youth.*

Juvenile delinquency courts must have access to a wide array of diversion resources as an alternative to formal juvenile delinquency court action, and to assessment services, treatment services for mental health, substance abuse and sexual offenders, educational assistance, restitution programs, non-secure community service programs, wrap-around services for youth with multiple needs, and community placements. Juvenile delinquency courts must have access to services for parents who need assistance in managing the behavior or special needs of their delinquent child.

Juvenile delinquency courts must have access to secure facilities for serious and violent offenders. These facilities should be staffed by qualified professionals and provide treatment and other services that will prepare youth for reentry into the community.

3. ***Juvenile Delinquency Courts and Juvenile Abuse and Neglect Courts Should Have Integrated One Family-One Judge Case Assignments*** – *One juvenile court judge should handle the delinquency and abuse and neglect hearings on all members of one family from the beginning to the end of all juvenile delinquency court processes. When the juvenile delinquency court has jurisdiction over other related matters, such as child support or domestic relations, those matters should also be included in One Family-One Judge case assignments. When the court does not have jurisdiction over other related matters, the juvenile delinquency court judge should initiate coordination among the courts to ensure consistency of response.*

One family-one judge provides consistency and increased knowledge of the youth and family. When an alleged delinquent youth is also an adjudicated abused or neglected youth, the same judge or hearing officer should, at a minimum, oversee disposition planning and monitoring to ensure consistency and avoid contradictory responses.

Judges should be trained to hear evidence impartially and should be unbiased in hearing evidence during the adjudicatory process, even though they have heard previous cases regarding the same youth. In many small jurisdictions, one family-one judge case assignments occur naturally since there is only one judge to hear juvenile cases. Judges are responsible to ensure that their appointed judicial officers are also trained to hear evidence impartially. If counsel has reason to believe that a judge or judicial officer cannot be impartial in a specific case, counsel should file a motion requesting recusal or disqualification.

4. ***Juvenile Delinquency Court Judges Should Have the Same Status as the Highest Level of Trial Court in the State and Should Have Multiple Year or Permanent Assignments*** – *Juvenile delinquency court judges should do everything possible to inform elective and appointing authorities that in order for a juvenile delinquency court to be effective, its judges should have a professed interest in and capacity to handle juvenile and family matters, and judicial terms should be permanent or a minimum of six years.*

Juvenile delinquency courts of excellence have judges who are dedicated to and invested in

the juvenile delinquency court system. The breadth of knowledge and wisdom that result from experience are critical to ensure that this complex court serves the best interests of the community and its youth. ***The DELINQUENCY GUIDELINES recommends* six continuous years as the minimum time for a judge or judicial officer to spend on the juvenile delinquency court bench.**

5. ***All Members of the Juvenile Delinquency Court Shall Treat Youth, Families, Crime Victims, Witnesses, and Others With Respect, Dignity, Courtesy, and Cultural Understanding*** – *The juvenile delinquency court must be accessible, understandable, and respectful to persons of all ages, cultures, and abilities, in its processes, its written materials, and its verbal and non-verbal communications.*

All members of the juvenile delinquency court system, from intake, assessment, diversion, courtroom, and disposition services, must understand and appreciate the ethnic and cultural traditions and mores, the socio-economic circumstances, the gender differences, the disabilities, and the strengths of those who enter the juvenile delinquency system. All members of the juvenile delinquency court should understand how courts can positively impact disproportionate minority contact, and should design and monitor decision points to ensure fair and consistent decision-making that minimizes the possibility of bias.

Effective juvenile delinquency court systems ensure certified interpreters are available to assist families who do not speak English or are hearing impaired; legal materials are available in the language of significant ethnic groups in the jurisdiction that do not speak English; and, services are designed with appropriate cultural and cognitive understanding. Juvenile delinquency courts of excellence strive to set their hearings and appointments at times that will minimize youth missing school and parents missing work.

6. ***Juvenile Delinquency Court Judges Should Ensure Their Systems Divert Cases to Alternative Systems Whenever Possible and Appropriate*** – *Juvenile delinquency courts should limit formal processing of petitions to cases where it is apparent that law enforcement diversion, prosecutor diversion, or juvenile delinquency court diversion to community services, has failed to protect, or will be ineffective in protecting the community from significant risk of harm.*

Juvenile delinquency courts should encourage law enforcement and prosecutors to consider diversion for every status offender, every first-time, non-violent misdemeanant offender, and other offenders as appropriate. Juvenile delinquency court judges should engage the community, law enforcement, and the prosecutor to develop diversion programs, including dispute resolution alternatives. Juvenile delinquency court judges should participate in the creation and ongoing monitoring of these programs to ensure that they are successfully diverting appropriate alleged juvenile offenders.

7. ***Youth Charged in the Formal Juvenile Delinquency Court Must Have Qualified and Adequately Compensated Legal Representation*** – *Alleged and adjudicated delinquent youth must be represented by well trained attorneys with cultural understanding and manageable caseloads. Juvenile delinquency court administrative judges are responsible to ensure that counsel is available to every youth at every hearing, including post-disposition reviews and reentry hearings.*

Juvenile delinquency court judges and judicial officers should be extremely reluctant to allow a youth to waive the right to counsel. On the rare occasion when the court accepts a waiver of the right to counsel, the court should take steps to ensure that the youth is fully informed of the consequences of the decision. A waiver of counsel should only be accepted after the youth has consulted with an attorney about the decision and continues to desire to waive the right.

8. ***Juvenile Delinquency Court Judges Should Ensure Crime Victims Have Access to All Phases of the Juvenile Delinquency Court Process and Receive All Services to Which They Are Entitled by Law*** – *The prosecutor, probation officer, or both, should provide victim advocates to assist crime victims throughout the court process. Crime victims should be welcomed, respected, listened to, and involved in system improvement efforts.*

Juvenile delinquency court judges should ensure that crime victims are encouraged to participate in the juvenile delinquency court process by providing safe and separate waiting rooms, providing assistance in submitting victim impact statements, and making enforced orders of restitution. Judges should ensure that offending youth have opportunities to learn the impact of crime on the victim through victim impact panels or other methods, and that programs exist to assist youth to earn and pay restitution to victims.

9. ***Juvenile Delinquency Courts Should Render Timely and Just Decisions and Trials Should Conclude Without Continuances*** – *Timeliness includes the days between when a youth is charged, adjudicated and disposition orders are made and implemented, as well as the hours parties wait between the time their hearing is scheduled and when it actually begins. Just decisions ensure that the juvenile delinquency court's response is in line with the offense and that similar offenses with similar circumstances generally receive similar responses.*

Timely delinquency systems require that diversion decisions be made within days of the filing of an affidavit, that the initial hearing on formally processed petitions be scheduled within three weeks of the petition being signed for youth not in detention, and that cases are taken under advisement no more than five days. Timely delinquency systems require all hearings to be scheduled and held at specific times with the next hearing set at the end of each hearing. It is important to note that just decisions can be appropriate for the offense, be similar to those for other offenses with similar circumstances, and yet still provide individualized responses to meet the youth's needs.

10. ***Juvenile Delinquency System Staff Should Engage Parents and Families at all Stages of the Juvenile Delinquency Court Process to Encourage Family Members to Participate Fully in the Development and Implementation of the Youth's Intervention Plan*** – *Juvenile delinquency system staff should make efforts to identify and engage parents and other family members, including extended family. The juvenile delinquency court judge should strongly encourage delinquency system staff to involve the family in developing the case plan and make sure that the case plan includes services for the family that will enhance family skills to improve the youth's chances of success. The juvenile delinquency court judge should hold parents and legal guardians accountable for participation in the treatment plan.*

Juvenile delinquency system judiciary and staff should routinely gather identifying information on immediate and extended family members so that the court is aware of all resources and support systems that are available to become part of the youth's intervention plan and support system. The juvenile delinquency court should encourage the inclusion of the parents and family in developing the intervention plan to the maximum degree possible, as family involvement in negotiating and designing the plan, even choices with regard to minor details, can positively impact adherence and favorable outcomes.[24] The juvenile delinquency court judge should require the parent or legal guardian to participate in treatment when necessary to meet the needs of the youth, if state statutes permit such orders.

11. ***The Juvenile Delinquency Court Should Engage the School and Other Community Support Systems as Stakeholders in Each Individual Youth's Case*** – *The juvenile delinquency court enhances a youth's chance for success by working with school systems and other community support systems. The need to address a youth's educational functioning cannot be overemphasized, as education is a critical factor in every youth's potential success.*

Juvenile delinquency system staff should routinely collect information about the youth and family's cultural, religious and other community interests and connections, in order to build both short and long term support systems for the youth. Medical, mental health, substance abuse, child protection, developmental disabilities, and other systems should be engaged as appropriate to meet each youth's needs.

The juvenile delinquency court should routinely obtain information in every case to identify and address all of the youth's educational needs. Youth who are not succeeding in school are prime candidates for truancy, and truancy is a risk factor for delinquency. In today's job market, the lack of a high school diploma can mean unemployment or a minimum wage job. Unless the youth is in an appropriate education environment as part of the solution for change, the youth's chances of success are severely limited. Consequently, it is important that a coordinated effort be made by juvenile delinquency courts and schools to ensure each youth's success, especially youth who have dropped out or been incarcerated.

12. ***Juvenile Delinquency Court Judges Should Ensure Court Dispositions are Individualized and Include Graduated Responses, Both Sanctions and Incentives*** – *Juvenile delinquency court staff should hold youth and families accountable for illegal behavior, deliver clear consequences when youth violate the law, and teach youth necessary behavior change. Effective juvenile delinquency courts accomplish these goals by using*

graduated responses that vary according to the severity, frequency and degree of violence of the offense, and the special needs, strengths, and circumstances of the youth and family.

In effective individualized juvenile delinquency court response systems, trained professionals, usually probation officers, assess each youth and accurately determine the strengths and needs around which to build responses. Individualized responses are designed so that they do not prevent a juvenile delinquency court from rendering similar responses for similar offenses under similar circumstances.

A graduated sanctions and incentives model has been developed by the Juvenile Sanctions Center of the National Council of Juvenile and Family Court Judges. The Center published *Graduated Sanctions for Juvenile Offenders: A Program Model and Planning Guide* in 2003. This publication describes in detail how a juvenile delinquency court can implement a multi-tiered continuum of interventions that emphasizes the need to hold each juvenile offender accountable for any and all offenses committed. The continuum provides services that can respond effectively to the individual needs of each offender, uses graduated consequences and positive reinforcement, and promotes the use of progressively more severe sanctions when needed for repeat offenders. This model recognizes that it is necessary, in order to prevent a youth's return to the juvenile justice system, to couple sanctions and incentives with a range of effective service interventions to address the underlying problems that caused the delinquent behavior.

Research suggests that graduated responses are more effective when they include not only consequences but also nurturing and cultivation of existing strengths.[25] Research also shows that responses are more effective when they enable youth to actively practice and demonstrate skills in a way that strengthens a community connection. Consequently, juvenile delinquency court judges should ensure that their graduated response systems include opportunities for youth to contribute positively to the community while developing necessary skills and knowledge to change their behavior.

13. ***Juvenile Delinquency Court Judges Should Ensure Effective Post-Disposition Review Is Provided to Each Delinquent Youth as Long as the Youth Is Involved in any Component of the Juvenile Justice System*** – *Effective oversight ensures that youth and parents are complying with court orders and that service providers are following through with timely, necessary services. Court orders should always be reasonable, necessary, and supported by evidence.*

Juvenile delinquency courts should use their statutory oversight authority to the fullest extent possible. The juvenile delinquency court has the capacity to provide objective third party monitoring and recourse for parties to challenge decisions. Active and meaningful post-disposition review should occur until all court requirements are completed, including the process of successful reentry into the community if the youth has been placed.

If the juvenile delinquency court does not have oversight authority, the court should work together with the governmental systems that do have oversight authority to ensure that all delinquent youth are being held accountable and are receiving needed services in a timely fashion. If youth are frequently recidivating because they have not received appropriate and effective services, juvenile delinquency court judges should work collaboratively to improve existing systems. When necessary, juvenile delinquency court judges should advocate for changes in state law to provide judicial oversight authority to the juvenile delinquency court.[27]

14. ***Juvenile Delinquency Court Judges Should Hold Their Systems and the Systems of Other Juvenile Delinquency Court Stakeholders Accountable*** – *Juvenile delinquency court judges should ensure that the juvenile delinquency system has measurable goals, key principles, and objectives that serve as standards against which system performance is measured, and that an annual delinquency system "report card" is made available to stakeholders and the public.*

The juvenile delinquency court judge should lead a collaborative effort of all delinquency system stakeholders to establish and clearly articulate delinquency system goals. The juvenile delinquency court and each system stakeholder should subsequently establish aligned goals and objectives so that the court and all system stakeholders are moving in the same direction and can measure and report progress. The juvenile delinquency court should measure the outcomes of all routinely court ordered services to ensure they are effective.

15. ***Juvenile Delinquency Court Judges Should Ensure the Court Has an Information System That Can Generate the Data Necessary to Evaluate Performance, Facilitate Information***

Sharing with Appropriate Agencies, and Manage Operations Information – *Juvenile delinquency court staff should regularly generate aggregate data for monitoring and managing court performance. In addition, the judiciary and other appropriate court staff should be able to use the system to obtain case tracking and case management data on individual cases as well as manage other operation information needs such as property and evidence.*

Judges should ensure that their juvenile delinquency court information systems have the capacity to collect, analyze, and report data that measures the extent to which their key principles are being followed and their goals and objectives are achieved. Pre-programmed system reports should provide aggregate information on the timely processing of cases including the number of, reasons for, and lengths of time for continuances. Aggregate reports should report outcomes, recidivism, and the administration of consistent justice to youth with similar charges and characteristics. The system should have query abilities to produce *ad hoc* reports. Judges, judicial officers, probation officers, and other approved staff should be able to access current and complete information on the status and progress of any individual youth. The system should be able to link information on family groups and abuse and neglect cases.

The juvenile delinquency court should design information systems so that they maintain the privacy rights of individuals and so that within privacy parameters, information can be shared between the juvenile delinquency court and other appropriate governmental or service agencies.

16. ***The Juvenile Delinquency Court Judge Is Responsible to Ensure that the Judiciary, Court Staff, and all System Participants Are Both Individually Trained and Trained Across Systems and Roles*** – *All participants in the juvenile delinquency court system should be trained in child and adolescent development principles, cultural differences, mental health, substance abuse, and learning issues, and community systems and services. All participants in the juvenile delinquency court system should be cross-trained in the basics of local process, goals, key principles, and individual roles.*

Training should include opportunities to learn about the ideas and promising practices of other juvenile delinquency court systems as well as current research on effective interventions. Training should enhance the system participant's ability to build consensus, promote collaboration within the system and within the community, and provide effective outcomes. Training should identify system barriers and review process results and goal achievements in order to identify outcomes, and to design, implement, and determine the impact of system improvements. The focus of all training should not only be on knowledge transfer, but also attaining demonstrable skills so that system participants not only know what to do, but how to do it.

D. ROLES AND RESPONSIBILITIES WITHIN THE JUVENILE DELINQUENCY COURT OF EXCELLENCE

The final section of this chapter identifies and describes the different and critical roles within the juvenile delinquency court. This section speaks to the primary roles in the juvenile delinquency court process, and is not intended to cover the roles of all of the system stakeholders, such as service providers and state youth authorities. The roles and responsibilities follow the order that generally occurs in the juvenile delinquency system, beginning with law enforcement and ending with probation. Different departments of government, or of the juvenile delinquency court, carry out these roles in different jurisdictions, and they may be called by different titles; but each of these roles should be fulfilled in order for a juvenile delinquency court to operate effectively. In order to create a juvenile delinquency court of excellence, the professionals involved in every aspect of every role must be committed to timeliness, i.e., to keeping the length of time between the alleged youth incident and the next process step as short as possible. They must also be committed to cultural understanding.

- **Law Enforcement** – Whether called police, sheriff or another title, law enforcement personnel play a key role in the juvenile delinquency court. They protect children and the community, identify problems and resources, and, as the usual first point of contact with delinquent youth, are in a position to recognize early problem behaviors of youth. Law enforcement responsibilities in the juvenile delinquency court process include:

  - In response to observation or a citizen complaint, conducting a timely preliminary investigation to determine if a law violation has occurred;
  - Identifying the juvenile offender;
  - Gathering evidence;
  - Documenting the offense in clear, specific terms;
  - Providing or referring the youth to diver-

sion services as quickly as possible when appropriate;
- Arresting the youth, if appropriate, and presenting the youth, reports and evidence to the juvenile delinquency court and prosecutor as quickly as possible;
- Testifying in juvenile delinquency court; and
- Enforcing court orders.

- **Juvenile Delinquency Court Intake and Docketing** – In most jurisdictions the affidavit (police report) is filed with the juvenile delinquency court and this begins court involvement. At this point, the responsibilities that must be carried out include:

  - Working with the prosecutor to determine immediately legal sufficiency, and whether the case will be handled formally or informally, and processing the affidavit and petition; and
  - If the charge will be handled formally, setting the case for a hearing and notifying parties as quickly as possible.

  In some juvenile delinquency courts, probation officers handle intake; in some juvenile delinquency courts, intake is a separate department from probation; and in some juvenile delinquency courts, intake is handled by a combination of court staff and prosecutor's staff. Different models can work equally well as long as there are consistently followed, clear guidelines specifying which cases will be handled formally; and as long as well trained staff are making the decision of which diversion resource to use.

- **Prosecution**[28] – The prosecutor should screen every affidavit to determine whether the allegations are legally sufficient. Once the prosecutor determines the case is legally sufficient, the prosecutor should either assess the case for diversion, or refer the case back to juvenile delinquency court intake to assess the case for diversion. (Refer to Chapter III for more information.)

  - The primary duty of the prosecutor is to seek justice in light of the special interests and needs of the juvenile as well as the safety and welfare of the community;
  - Juvenile prosecution is a priority requiring experienced prosecutors. Juvenile prosecutors should be selected on the basis of their skill and competence. They should have a particular interest in youth, have knowledge of juvenile law, and be trained in the development, education, substance abuse, and mental health of youth. Juvenile delinquency court cases should not be assigned to entry level prosecutors;
  - The prosecutor has a responsibility to promptly and thoroughly investigate the youth's case in order to make informed judgments on the proper course of action in the case;
  - The prosecutor should be knowledgeable of all the disposition resources available in the jurisdiction;
  - The prosecutor should appear as an attorney for the state in all hearings concerning a juvenile accused of an act where the prosecutor would appear if an adult committed the same act. This includes, but is not limited to, hearings for detention, speedy trial, motions, dismissal, entry of pleas, trial, waiver, disposition, post-disposition review, probation and parole violation hearings, and any appeal from, or collateral attacks upon, the decisions in each of these proceedings;
  - Before the trial and adjudication hearing, the prosecutor should file all appropriate pre-trial motions needed to protect the interests of the state; and
  - Because a breakdown in the exchange of discovery materials can lead to adjudication by ambush and a disposition that fails to consider important information, the prosecutor should turn over all discovery materials as defined by court rule, or as properly requested by counsel for youth as soon as possible. Where the jurisdiction provides for reciprocal discovery, the prosecutor should pursue all such relevant materials.

- **Detention Intake** – if the youth is arrested by law enforcement and brought to the juvenile delinquency court with the affidavit or warrant, the following decisions need to be made:

  - Whether to release the youth unconditionally;
  - Whether to release the youth with conditions;
  - Whether to place the youth in non-secure detention; or
  - Whether to place the youth in secure detention.

  In many jurisdictions, these roles are the responsibility of probation staff. In other jurisdictions, intake departments or detention staff are responsible for these tasks. The staff making these decisions must be specially qualified to use validated risk of reoffending screening tools, and trained to deal with potentially difficult behavior.

- **Detention** – Whether operated by the juvenile delinquency court or by another public or private entity, secure and non-secure detention facilities should be components of all juvenile delinquency systems. The purpose of detention is to provide a holding place for youth who should not be released to the community pending the hearing

process. Detainment should only be considered when a youth is believed to be a danger to self or others, or at risk to reoffend or to abscond. Detention staff must be well-trained in safety and crisis management skills. Secure and non-secure detention environments should include all of the following:[29]

- Safe, clean and healthy environment;
- Separation of youth by gender, maturity level, and seriousness of the offense;
- Medical, substance abuse, mental health, and trauma screening;
- Medical, mental health, and substance abuse emergency services;
- Psychological evaluation and mental health treatment;
- An environment that is conducive to learning and provides for the beginning of the rehabilitative process;
- Access to mail, telephone, and visitation by family, relatives, and counsel;
- Mandatory education; and
- Recreation programming.

- **Victim Advocates** – The responsibilities of advocates for victims of crime usually fall under the auspices of either, or both, the prosecutor's office and probation. Responsibilities to victims include:

  - Explaining the juvenile delinquency court process to the victim and keeping the victim abreast of where the case is in the juvenile delinquency court process;
  - If the case goes to trial, preparing the victim to testify, providing a safe waiting area separate from the alleged offender, and accompanying the victim throughout the time at juvenile delinquency court;
  - Encouraging the victim to file a victim's impact statement, including a request for restitution, if appropriate, and assisting with these items, if requested;
  - Assisting the victim to access any victim reparation funds that may be available and appropriate;
  - Assisting the victim to access any social services or victims' organizations as needed and desired;
  - Informing the victim of the juvenile delinquency court's response to the extent appropriate; and
  - Assisting the victim throughout the post-disposition period to collect restitution and to inform the victim of appropriate changes in case status, such as offender release back into the community.

- **Certified Interpreters** – Whenever a youth or parent understands little or no English, or is hearing impaired, a certified court interpreter should be present to translate juvenile delinquency court proceedings. A qualified interpreter must have a high level of proficiency in both English and the second language, as well as knowledge of juvenile delinquency court processes. The court interpreter must provide interpretation in a manner faithful to all canons of the code of professional responsibility, and in compliance with all juvenile delinquency court policies regarding court interpretation.

- **Counsel for Youth**[30] – In order to best represent the client and to provide for the speedy administration of juvenile cases, it is the responsibility of counsel for youth to begin active representation of the client before the detention or initial hearing (see Chapter III, Section C (3), Ensuring Qualified Counsel Is Available and Prepared for the Detention or Initial Hearing) and immediately following the counsel's appointment or retention. Counsel for youth must be able to explain the juvenile delinquency court process in terms the youth can understand. Whether performed by a public defender or the private bar, counsel for youth is responsible to:

  - Be an advocate, zealously asserting the client's position under the rules of the adversary system;
  - Be an experienced attorney in order to provide effective legal assistance. The representation of youth in juvenile delinquency court should not be an entry-level position that eventually graduates attorneys to other areas of defense work. Counsel for youth should have a particular interest in youth and family systems, focus on juvenile law, and be trained in the development, education, substance abuse, and mental health of youth. They should be selected on the basis of their skill and competence;
  - Promptly and thoroughly investigate the client's case in order to be an effective advocate;
  - Ensure the juvenile delinquency court has been informed of the youth's special needs;
  - Be knowledgeable of all the disposition resources available in the jurisdiction;
  - Appear as an attorney for the youth in all hearings concerning a juvenile accused of an act where the defense attorney would appear if an adult committed the same act. This includes, but is not limited to, hearings for detention, speedy trial, motions, dismissal, entry of pleas, trial, waiver, disposition, post-disposition reviews, probation or parole violation hearings, and any appeal from or collateral attacks upon the decisions in each of these proceedings;
  - Before the trial and adjudication hearing, file all appropriate pre-trial motions in order to protect the youth's rights and preserve the fairness of the trial and adjudication hearing. Such motions may include efforts to obtain discovery materi-

als, to suppress physical evidence and confessions, or to challenge the circumstances of a pretrial identification, etc; and
- Actively pursue discovery from the prosecutor under informal procedures, court rule, and motions practice as appropriate. Effective representation of the client's interests is frustrated when counsel for the youth is ignorant of information contained in discovery materials. Where the jurisdiction requires reciprocal discovery, counsel for youth should provide such materials as promptly as possible.

- ***In Loco Parentis*** – A supportive parent or legal guardian should be present at every juvenile delinquency court hearing for an alleged or adjudicated delinquent youth. Occasionally, however, an alleged delinquent youth's parent or legal guardian may be unable to provide appropriate parental support and advice during the juvenile delinquency court process, and no other relative or other adult with a positive relationship with the youth is available. In such circumstances, the court should appoint an *in loco parentis*. Examples include:

  - The parent or legal guardian is part of the prosecution of the case;
  - The juvenile delinquency court judge believes the parent or legal guardian is so antagonistic toward the youth as to be unable to provide support and advice (e.g., the parent immediately informs the court that he or she wants nothing further to do with the youth and does not care what happens); or
  - The parent or legal guardian did not appear for the detention or initial hearing without reasonable cause, even though notice was properly served.

  In loco parentis means in place of the parent. Appointing an *in loco parentis* ensures that the youth has access to substitute parental support and advice between the time of arrest and disposition. Examples of the responsibilities of this role include helping the youth maintain contact with counsel, serving as a concerned adult, visiting in detention, communicating to family members as appropriate, and identifying immediate and extended family who may be willing to step forward and support the youth through the remaining court process. The relationship between an *in loco parentis* and counsel for the youth is the same as between a parent and counsel for the youth. If the *in loco parentis* offers testimony to the court, including opinion testimony, it is subject to cross examination. The person appointed *in loco parentis* has no official role outside of the juvenile delinquency case.

  The appointment of an *in loco parentis* should be rare and is presumed to be unnecessary. Juvenile delinquency court intake, probation, or counsel for the youth should make every effort to identify family or adult family friends who can provide contact and guidance to the youth if the parent or custodian cannot. If a youth in the legal custody of the child protection agency needs the appointment of an *in loco parentis* because the agency is part of the prosecution, the juvenile delinquency court judge or judicial officer should determine if there is another family member, a guardian *ad litem*, or a court appointed special advocate (CASA) already involved on the abuse and neglect case who knows the youth. If so, the juvenile delinquency court should determine if any of these persons would be appropriate to serve as *in loco parentis* on the delinquency case. The juvenile delinquency court can also recruit and train volunteers to be on call for this role.

  The determination of whether an *in loco parentis* is needed, appointing an appropriate person to fill this role, and determining how long the individual should remain appointed is the responsibility of the juvenile delinquency court judge. The appointment should never last beyond disposition, because unless the youth has turned 18, the juvenile delinquency court must ensure a parent, relative, or legal guardian is in place as part of the juvenile delinquency court's disposition. A juvenile delinquency court judge or judicial officer should be able to quickly determine if an *in loco parentis* should be considered because the parent or legal guardian is part of the prosecution of the petition, or is absent from the initial hearing even though notified. If the juvenile delinquency court judge cannot immediately identify a relative or adult to serve the parental role, the judge should appoint an *in loco parentis*.

  An *in loco parentis* will no longer be needed if an appropriate parent, relative, interested adult, or legal guardian becomes available after the appointment, or if the parent, relative, or legal guardian is no longer part of the prosecution's case and is able to provide support to the youth.

- **Judge or Judicial Officer**[31] – An elected or appointed judge, or an attorney the judge has appointed as a judicial officer, should conduct every formal juvenile delinquency court hearing. Different jurisdictions use the terms magistrates, referees, commissioners,

hearing officers, masters, and associate judges, instead of judicial officer. While in the courtroom, the responsibilities of the judge or judicial officer are to:

- Administer due process by following the laws and rules of the state and the local juvenile delinquency court;
- Ensure all parties who appear before the juvenile delinquency court receive the legal and constitutional rights to which they are entitled;
- Determine the truth of facts and ensure that the process is implicitly fair to all parties;
- Ensure the juvenile delinquency court's orders are reasonable, necessary, and supported by the evidence;
- Ensure juvenile delinquency court ordered services are appropriate to the needs of the youth, have been determined to be effective, and protect the interests of the community;
- Monitor the provision of juvenile delinquency court ordered services until all obligations have been fulfilled; and
- Act consistently in all instances pertaining to public safety and welfare.

In addition to these judicial functions, the role of the juvenile delinquency court judge includes leadership, collaborative, and advocacy components, as well as commenting on, and if necessary, drafting legislation that the judge believes is necessary to complete the work of the juvenile delinquency court.[32] These responsibilities are detailed in the *Goals and Key Principles* sections of this chapter. Some administrative juvenile delinquency court judges have responsibility for court administrative staff, probation, detention, and residential treatment centers.

Throughout the *DELINQUENCY GUIDELINES*, whenever the text says "judge," the statement includes both an elected or appointed judge and an attorney the judge has appointed as a judicial officer.

- **Security** – Whether performed by juvenile delinquency court staff or law enforcement staff, security should be sufficient so that all participants and juvenile delinquency court staff feel reasonably safe. Security screening upon entering the court building is necessary, as is courtroom security. Some juvenile delinquency courts can ensure safety with alarm buzzers in the courtroom to access security assistance outside the courtroom. Other juvenile delinquency courts need security staff in every courtroom to ensure safety.

  Security staff is also responsible to ensure that an emergency response plan is in place. This plan should provide guidance to staff and interested stakeholders regarding known hazards and emerging threats. Security staff should train all juvenile delinquency court staff and regular participants in the juvenile delinquency court system regarding the plan.[33]

- **Juvenile Delinquency Courtroom Case Management** – Case Management staff should be available in every juvenile delinquency courtroom. These staff may be referred to as bailiffs, court clerks, or court case managers. Their responsibilities are to:

  - Call parties to the hearing and direct parties to the appropriate department after a juvenile delinquency court hearing (e.g., probation, fines and court costs collection, etc.);
  - Ensure all required courtroom documents are available on each case, including affidavits and petitions; and
  - Assist the judge before, during and after the hearing as required, including dissemination of the juvenile delinquency court's written findings and orders to parties and key participants at the end of the hearing.

- **Hearing Recording** – This role may be performed by a person who is a court reporter, or may be performed by electronic equipment.[34]

- **Mental Health, Substance Abuse, and Education Evaluation Clinic** – These evaluations services ideally are provided in a special juvenile delinquency court evaluation clinic that is in close proximity to the juvenile delinquency court's secure detention facility. Options for staffing the clinic include psychiatrists, psychologists, and social workers employed by, or under contract with, the juvenile delinquency court; or psychiatrists, psychologists, and social workers who are employees of the mental health, substance abuse, and education systems and assigned to this clinic. Juvenile courts must have immediate access to these evaluation services in sufficient quantity to meet the following needs:

  - Emergency needs of detained youth;
  - Decisional capacity evaluations for competency to stand trial;
  - Forensic evaluations of youth on discretionary motions to waive juvenile delinquency court jurisdiction and transfer to criminal court; and
  - Mental health, substance abuse, and education evaluations of youth as part of the pre-disposition investigation process in order to recommend treatment services needed by the youth.

The professionals who provide these services should be well-trained in child assessment, psychopathology, substance abuse, learning delays and disabilities, and the impact of trauma and victimization; they should be knowledgeable regarding the special forensic questions raised in delinquency cases, and readily available to provide timely services.

- **Probation** – In some juvenile delinquency systems, the probation department handles everything from case intake and diversion, detention intake, courtroom case management, pre-disposition investigations, and multiple types of probation supervision. In every juvenile delinquency court, probation officers serve the role of disposition assessment and probation supervision, the primary juvenile delinquency court disposition. In addition to probation officer, they may be referred to as community service officers, community justice officers, or juvenile officers.

  Probation officers are often the heart of the juvenile delinquency court operation, and must be well trained and extremely knowledgeable about juvenile law, juvenile delinquency court process, cultural issues, needs and risk screening, education systems and issues, substance abuse, mental health, family violence and other trauma issues, behavior management, liability issues, child and adolescent development, family systems, the relationship between prior victimization and offending behavior, how to identify signs of prior victimization, and many other areas. *The Desktop Guide to Good Juvenile Probation Practice* describes good probation practice as mission-driven, performance-based, and outcome-focused.[35] In this *Desktop Guide*, the role of juvenile probation is described as:

  ....a catalyst for developing safe communities and healthy youth and families....a role that can be fulfilled by:

  - *Holding offenders accountable;*
  - *Building and maintaining community-based partnerships;*
  - *Implementing results-based and outcome-driven services and practices;*
  - *Advocating for and addressing the needs of victims, offenders, families, and communities;*
  - *Obtaining and sustaining sufficient resources; and*
  - *Promoting growth and development of all juvenile probation professionals.*

  Probation is the key resource to facilitate referral to treatment services to meet the special needs of each youth. In some jurisdictions, probation officers are employees of the juvenile delinquency court and under the authority of the presiding or administrative judge. In other jurisdictions, probation is under the authority of another state or county department. If under different authorities, it is most important that the two entities collaborate closely and that their goals and principles are in alignment.

Endnotes

[1] *Johnson v. Texas*, 509 U.S. 350, (1993).

[2] All states have a minimum voting age of 18; 45 states establish 18 as the minimum age for jury service; and 47 states establish 18 as the minimum age for marriage without parental or judicial consent.

[3] *Eddings v. Oklahoma*, 455 U.S. 104, (1982).

[4] Steinberg, L., & Scott, E. S. (2003). Less guilty by reason of adolescence: Developmental immaturity, diminished responsibility, and the juvenile death penalty. *American Psychologist, 58*, 1009-1018.

[5] Erikson, E. (1968). *Identity, Youth and Crisis.* New York: Norton.

[6] Sherman, L. W., Gottfredson, D., MacKenzie, D., Eck, J., Reuter, P., & Bushway, S. (1997). *Preventing Crime: What Works, What Doesn't, What's Promising.* Washington, DC: U.S. Department of Justice.

[7] Mitchell, D. B., & Kropf, S. E. (2002). Youth violence: Response of the judiciary. In G. S. Katzmann (Ed.), *Securing Our Children's Future: New Approaches To Juvenile Justice and Youth Violence.* Washington, DC: Brookings Institution Press and Governance Institute.

[8] Quas, J. A., Bottoms, B. L., & Nunez, N. (2002). Child maltreatment and delinquency: Framing issues of causation and consequence. *Children's Services, 5*, 245-248.

[9] Hawkins, J. D., Herrenkohl, T., Farrington, D. P., Brewer, D., Catalano, R. F., & Harachi, T. W. (1998). A review of predictors of youth violence. In R. Loeber, & D. P. Farrington (Eds.), *Serious and Violent Juvenile Offenders: Risk Factors and Successful Interventions* (pp. 106-146). Thousand Oaks, CA: Sage.

Lipsey, M. W., & Derzon, J. H. (1998). Predictors of violent or serious delinquency in adolescence and early adulthood: A synthesis of longitudinal research. In R. Loeber, & D. P. Farrington (Eds.), *Serious and Violent Juvenile Offenders: Risk Factors and Successful Interventions* (pp. 86-105). Thousand Oaks, CA: Sage.

[10] Zingraff, M., Leiter, J., Myers, K., & Johnson, M. (1993). Child maltreatment and youthful problem behavior. *Criminology, 31*, 173-202.
Loeber, R., & Farrington, D. P. (Eds.). (2001). *Child Delinquents: Development, Interventions, and Service Needs.* Thousand Oaks, CA: Sage.
[11] Tolan, P. H., Gorman-Smith, D., & Henry, D. B. (2002). Linking family violence to delinquency across generations. *Children's Services, 5*, 273-284.
[12] Kilpatrick, D. G., Saunders, B. E., & Smith, D. W. (2003). *Youth Victimization: Prevalence and Implications.* [NIJ Research in Brief.] Washington, DC: U.S. Department of Justice.
[13] Shaffer, J. N., & Ruback, R. B. (2002). *Violent Victimization As A Risk Factor For Violent Offending Among Juveniles.* [OJJDP Bulletin.] Washington, DC: U.S. Department of Justice.
[14] Ibid.
[15] Ibid.
[16] Measured by a reduction in the youth crime rate, the percentage of youth who recidivate, and a reduction in the number of instances of recidivating for youth who do recidivate. Community safety concept noted in Maloney, D., Roming, D., & Armstrong, T. (1988). Juvenile probation: the balanced approach. *Juvenile and Family Court Journal, 39*(3), 1-57.
[17] Measured by the percentage of restitution dollars paid and community service hours completed as compared to those ordered. Accountability concept noted in Maloney, D., Roming, D., & Armstrong, T. (1988). Juvenile probation: the balanced approach. *Juvenile and Family Court Journal, 39*(3), 1-57.
[18] Measured by using a validated instrument that defines "responsible living skills" and is administered at the point of entry and again at exit producing a percentage of youth whose skills increased during their juvenile delinquency court involvement. Competency development concept noted in Maloney, D., Roming, D., & Armstrong, T. (1988). Juvenile probation: the balanced approach. *Juvenile and Family Court Journal, 39*(3), 1-57.
[19] For more information on these NCJFCJ publications, see the contact information in Appendix A.
[20] The individuals who participated on the Project Development Committee are listed in the Preface.
[21] It is important to note that such activities cannot be supported with federal funds due to the requirements of 18 U.S.C. § 1913.
[22] Refer to Section B of this chapter regarding how a juvenile delinquency court judge can engage in judicial leadership and collaboration without violating judicial canons on *ex parte* communication. It is important to note that legislative lobbying activities cannot be supported with federal funds due to the requirements of 18 U.S.C. § 1913.
[23] Pennsylvania is an example of a state with a juvenile justice commission, and Louisiana and Ohio are examples of states with strong statewide juvenile and family court judge's associations.
[24] Meichenbaum, D., & Turk, D. (1987). *Facilitating Treatment Adherence: A Practitioner's Guidebook.* New York, NY: Plenum Press.
[25] Clark, M. D. (2001). Change-focused youth work: The critical ingredients of positive behavior change. *Journal of the Center for Families, Children & the Courts, 3*, 59-72.
[26] Bazemore, G., Nissen, L., & Dooley, M. (2000). Mobilizing social support and building relationships: Broadening correctional and rehabilitative agendas. *Corrections Management Quarterly, 4*, 10-21.
[27] Supra note 21.
[28] This section was prepared by the American Bar Association, Juvenile Justice Center using the National District Attorneys Association *Resource Manual And Policy And Positions On Juvenile Crime Issues,* (July 2002), p. 4.
[29] Roush, D. W. (1996). *Desktop Guide To Good Juvenile Detention Practice.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention.
[30] Supra note 21.
[31] Edwards, L. P. (1992). The juvenile court and the role of the juvenile court judge. *Juvenile and Family Court Journal, 43*(2).
[32] Supra note 21.
[33] For a model Crisis Response/Emergency Operations Plan refer to http://www.ready.gov/.
[34] In 2005, state-of-the-art juvenile delinquency courts use digital voice and image recording stored on compact discs.
[35] National Center for Juvenile Justice. (2002). *Desktop Guide to Good Juvenile Probation Practice.* Pittsburgh, PA: Author.

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The *JUVENILE DELINQUENCY GUIDELINES* is intended to be used by courts and other juvenile delinquency system stakeholders to assist their efforts to improve practice. The *GUIDELINES* is aspirational - they focus on what should be as opposed to what is. Every effort has been made to make the *GUIDELINES* practical and usable, and to ground recommendations in the most current research and promising practices available at the time of development.

Some jurisdictions are already following many of the recommendations. Some jurisdictions may find it extraordinarily challenging to follow the recommendations. Regardless of jurisdictional status and resources, it is hoped that the *GUIDELINES* will provide a common vision and motivational framework for those working toward an improved juvenile delinquency system.

As jurisdictions strive to implement the *GUIDELINES* with training and technical assistance from the NCJFCJ, juvenile delinquency system practitioners from all situations - urban, rural, suburban, and with varying degrees of resources - will be able to create and share successful implementation methods.

Certain issues related to juvenile court processes and procedures in delinquency cases are of sufficient importance that all persons involved in the system need a basic understanding of these issues. Some of these issues have already been defined and discussed in Chapter I under *Goals and Key Principles*. Additional important issues that are identified and summarized in this chapter include jurisdiction and authority, confidentiality of hearings, documents and records, and disproportionate minority contact. Recommendations are made for calendaring and case management. Compacts and laws that relate to the delinquency process are examined, including the Interstate Compact for Juveniles (ICJ), the Interstate Compact for the Placement of Children (ICPC), and title IV-E. Specific tools that assist in the delinquency process are explored including screening and assessment tools and dispute resolution alternatives. The chapter ends with discussion of specialty dockets, called specialty courts in some jurisdictions.

Each of these general issues has been extensively covered in multiple publications. The purpose of addressing them in this chapter is to:

- Emphasize their importance;
- Summarize the issue; and
- Identify additional references for more information. These additional references can be found in the footnotes throughout the chapter.

A. JURISDICTION AND AUTHORITY

Every state has laws establishing a system of juvenile delinquency courts, outlining their purposes and procedures, and defining the limits of their powers. In most states, however, this court is not actually called the "juvenile delinquency court."[1] The names of the courts with juvenile delinquency jurisdiction vary by state and include District Court, Superior Court, Circuit Court, County Court, Family Court, Probate Court, and others.[2] **Regardless of what the court is called, the following tenets should apply to all courts that handle juvenile delinquency cases:**

- **The juvenile delinquency court should have original and exclusive jurisdiction and authority to coordinate all matters affecting children and families in delinquency cases.**[3]
- **The juvenile delinquency court should have the stature of general trial courts.**[4]
- **The juvenile delinquency court should have the power necessary to meet judicial responsibilities and should have the authority, by statute or rule, to order, enforce, and review delivery of court ordered services and treatment for children and families.**[5]

Although all juvenile delinquency courts have jurisdiction over misdemeanors and felonies, except where statute provides prosecutorial waiver or requires that certain offenses be directly filed in criminal court, other boundaries of jurisdiction vary from state-to-state. The five main jurisdictional areas of variation in the juvenile justice system are age of criminal responsibility, how jurisdictions handle status offenses, how jurisdictions handle traffic offenses, the extent to which the most serious offenses are transferable to criminal court or excluded from juvenile jurisdiction, and whether juvenile delinquency courts have continuing jurisdiction over youth placed with the state youth correctional authority while in custody and upon return to the community.

1. Age of Criminal Responsibility

Every state sets an upper age limit beyond which the juvenile delinquency court loses jurisdiction over new offenses, and criminal court jurisdiction commences. This upper age limit varies from the 15th birthday to the 18th birthday.[6] Most states have extended juvenile jurisdiction over youth who have been adjudicated delinquent on offenses committed while under juvenile jurisdiction. The purpose of extended jurisdiction, which is typically to age 21, is to enable continued correctional commitment or supervision beyond the upper age of jurisdiction. Some states also set a lower age limit, below which a child cannot be charged with a delinquency offense.[7]

***The DELINQUENCY GUIDELINES recommend* that all juveniles who have not yet turned 18 should be under the original jurisdiction of the juvenile delinquency court.** The U.S. Supreme Court stated in *Roper v. Simmons (2005): In recognition off the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent.*[8]

2. Status Offenses

The second jurisdictional area of variation is whether the juvenile delinquency court has jurisdiction over status offenses. A status offense is behavior that is lawful for adults but unlawful for children. Status offenses include truancy, running away from home, curfew violations, being beyond the control of parents, using tobacco, and consumption of alcohol.

It is important to note that in this document,

status offenses *do not include* cases where illegal behaviors have been committed *against* youth, i.e., abuse, neglect, and dependency. Youth in need of services because of abuse or neglect should be considered dependent youth, not delinquent youth. However, when a youth is involved in either status or delinquency offenses, and is an abused or neglected youth, both petitions should be handled by the same juvenile court judge as indicated in ***Key Principle 3: Juvenile Delinquency Courts and Juvenile Abuse and Neglect Courts Should Have Integrated One Family-One Judge Case Assignments.***

Most states retain some type of status offense jurisdiction. However, most states have also increased diversion options and have encouraged diversion of these cases from the formal delinquency system. Generally, informal processing of a case means that even though the youth has admitted the offense, if the youth complies with the informal intervention, either a formal complaint is not filed, or if already filed, is dismissed. **Juvenile delinquency courts should have processes for handling status offenses that include the following guidelines:**[9]

- **The juvenile delinquency court should not ignore truancy or family dysfunction. It is well recognized that stability in the home and school attendance are essential for our nation's success.**
- **The formal juvenile delinquency court must remain available for the most serious status offense cases, including truants who do not respond to informal interventions.**
- **The juvenile delinquency court must acknowledge that the most effective solutions for the problems underlying status offenses involve services to the child and family within the community. There is a role for the juvenile delinquency court in status offenses, but it is limited and restrained.**

Juvenile delinquency courts should process status offenses in alignment with ***Key Principle 2: Juvenile Delinquency Court Judges Should Ensure Their Systems Divert Cases to Alternative Systems Whenever Possible and Appropriate***. Juvenile delinquency courts should limit formal processing of petitions to cases where it is apparent that law enforcement diversion, prosecutor diversion, or juvenile delinquency court diversion to community services has failed to protect, or will be ineffective in protecting the community from significant risk of harm. Juvenile delinquency courts should encourage law enforcement and prosecutors to consider diversion for every status offender, every first-time, non-violent misdemeanant offender, and other offenders as appropriate.

3. Traffic Offenses

All states hold youth accountable for traffic offenses. However, there is not uniformity in how juvenile traffic matters are handled. In some states (e.g., Nevada, Illinois), the municipal court handles all traffic matters, adult and juvenile. In other states (e.g., California, Michigan, Ohio, Virginia) juvenile traffic offenses are handled in the juvenile delinquency court.

For those juvenile delinquency courts that have jurisdiction over traffic offenses, extensive resources are required to manage this offense category, and these offenses often are processed and docketed separately from other delinquency offenses. The number of traffic offenses can be as high as 30% to 40% of all petitions filed in the juvenile delinquency court.[10]

There is a primary difference between the way juvenile traffic cases are handled in jurisdictions with separate juvenile traffic courts and in jurisdictions with one traffic court that includes both adults and juveniles. In juvenile traffic courts, all violations require a court appearance, as opposed to being able to pay out a fine without attending court. The philosophy behind this method of intervention in the juvenile delinquency traffic court is to make a strong impact on young drivers who are just beginning to develop their patterns of responsibility or irresponsibility behind the wheel, and on the parents of these young drivers, when they violate traffic laws. By requiring the youth and parents to appear in juvenile delinquency court, the court ensures that each violation is taken seriously. When youth commit serious traffic offenses, such as operating a vehicle at high speeds, running stop signs or red lights, or in other ways that put other persons at significant risk, or, when youth show a pattern of repeated traffic violations, a strong and immediate response that includes both sanction, such as license suspension, and education is needed.

***The DELINQUENCY GUIDELINES recommends* the following practices with regard to juvenile traffic offenses:**

- **In jurisdictions where juvenile traffic offenses are handled along with adult traffic offenses in a combined traffic court, serious driving offenses such as driving under the influence of alcohol or drugs, alcohol-related reckless operation, underage driving without a license, reckless driving, and vehicular homicide should be filed in the juvenile delinquency court as opposed to the traffic court.**

- **In jurisdictions where juvenile traffic offenses are handled along with adult traffic offenses in a combined traffic court, there should be a mechanism to transfer a case to the juvenile delinquency court when significant services are needed to change the youth's behavior, and these services are not available through the combined traffic court.**
- **When juveniles are involved in alcohol-related traffic offenses, they should receive a significant response with a strong education and counseling component.**[11]

4. Juvenile Delinquency Court and Criminal Court Jurisdiction of the Most Serious Offenses

The fourth jurisdictional area that significantly varies from state-to-state is the degree to which the most serious offenses can be transferred to criminal court through discretionary or mandatory waiver, or are excluded from juvenile jurisdiction with a requirement to directly file in criminal court. State legislatures have significantly changed their laws in this area since 1992.[12]

The National Council of Juvenile and Family Court Judges has established the following policy position:

> ***The determination as to whether a juvenile charged with a serious crime should be handled in juvenile delinquency court or transferred to criminal court is best made by a juvenile judge in a judicial hearing with the youth represented by qualified counsel. In this hearing, the varied circumstances of each case and the distinct characteristics of each youth are closely examined by a judge who hears from all parties. The judge evaluates the important personal and community factors related to the choice of jurisdiction and determines whether to retain the case in juvenile delinquency court or transfer the case to the criminal court.***

Accordingly, prosecutorial waiver, mandatory transfers, and automatic exclusions are not recommended.[13] Such practices can place juvenile delinquency judges in positions where they are statutorily required to take actions that they do not believe will be most effective in changing the youth's behavior, or in the best interest of the community.

5. Youth Placed With the State Youth Correctional Authority and Reentry to the Community from Correctional Institutions

The last major delinquency jurisdictional area that varies from state to state is whether the juvenile delinquency court has jurisdiction over youth while under the custody of, and upon return to the community from, the state youth correctional authority. Reoffending rates and recommitment or incarceration rates of youth released from state correctional care are difficult to find, but those that do exist raise questions about the effectiveness of the system.[14]

To address these issues, the OJJDP and NCJFCJ became involved in a reentry initiative in 2002. *Reconnecting: the Role of the Juvenile Court in Reentry* indicates that only four states have statutes that give juvenile delinquency courts significant influence or authority over the handling of state-committed youth from the beginning to the end of the process.[15] Forty-one states are widely varied in the extent of judicial involvement in commitment, release and reentry; however, they give the juvenile delinquency court some influence or authority over parts of the process. In five states, juvenile delinquency courts wield little, if any, influence at any of the stages of state-committed youth.

Key Principle 13 states that Juvenile Delinquency Court Judges Should Ensure Effective Post-Disposition Review Is Provided to Each Delinquent Youth as Long as the Youth Is Involved in Any Component of the Juvenile Justice System. Effective oversight ensures that youth and parents comply with juvenile delinquency court orders and that service providers are following through with timely, necessary services. Court orders should always be reasonable, necessary, and supported by evidence.

Juvenile delinquency courts should use their statutory oversight authority to the fullest extent possible. The juvenile delinquency court has the capacity to provide objective third-party monitoring and recourse for parties to challenge decisions. Active and meaningful post-disposition review should occur until all court requirements are completed, including the process of successful reentry into the community if the youth has been placed.

If the juvenile delinquency court does not have oversight authority, the court should work together with the governmental systems that do have oversight authority to ensure that all delinquent youth are being held accountable and are receiving needed services in a timely fashion. If youth are frequently recidivating because they have not received needed services, juvenile delinquency court judges should work collaboratively to improve existing systems. When necessary,

juvenile delinquency court judges should advocate for changes in state law to provide judicial oversight authority to the juvenile delinquency court.[16]

B. CONFIDENTIALITY OF HEARINGS, DOCUMENTS, AND RECORDS

Confidentiality, as it relates to juvenile delinquency courts, is another area of juvenile process that has undergone significant change since the 1990s. Historically the juvenile delinquency court closed its proceedings, documents, and records, ostensibly to protect juveniles from the stigma of public knowledge of their court involvement and to reduce trauma to the youth. The historical position is shifting to opening the process due to the belief that public access and openness is preferred, unless there is a clear reason why a juvenile would be harmed by openness. This move toward fewer confidentiality restrictions is reflected in other legislative mandates such as:

- Fingerprinting – Most states authorize or require law enforcement agencies and courts to fingerprint certain arrested juveniles. Requirements vary by offense – from alleged misdemeanors to alleged felonies; and also vary by age – the most common threshold is 14, but is as young as 11 years of age.[17]
- Photographs – Most states have laws permitting or requiring photographs of alleged delinquent juveniles be taken with their fingerprints at the time of arrest.[18]
- DNA Samples - DNA samples are required to be taken at the time of arrest in many states for certain offenses.[19]
- Megan's Law – This law has been enacted in a significant number of states and requires certain adjudicated juvenile sex offenders to be publicly registered in their community.[20]

Many juvenile delinquency court professionals believe that lack of public access to the juvenile justice system has harmed the community and its youth. If the only way a community is exposed to the juvenile delinquency court process is through extreme cases reported in the media, the community often makes erroneous assumptions about how the system works, and *whether* the system works. This has resulted in pressure for legislative change based on incomplete and inaccurate information. Openness of hearings, records, and documents is more likely to provide a complete and accurate picture of the system.

The confidentiality discussion generally falls into four categories: 1) Who is permitted to attend juvenile delinquency court hearings?; 2) What information is made available to the juvenile delinquency court and who has access to this information?; 3) What information should be shared between agencies and organizations involved with the youth and court personnel regarding a youth's behavior and needs?; and, 4) Who has access to youth specific juvenile delinquency court legal records?

1. Juvenile Delinquency Court Hearings[21] – ***The DELINQUENCY GUIDELINES-recommended* practice regarding openness of juvenile delinquency hearings is that hearings should be presumed to be open to the general public, unless sufficient evidence supports a finding that an open hearing will harm the juvenile and that the juvenile's interests outweigh the public's interest.**

The primary reason for requiring closed juvenile delinquency court proceedings has been to protect youth from the stigma of delinquency. Juvenile delinquency court judges from many courts that permit delinquency hearings to be open to the general public have expressed that, in the majority of cases, youth do not feel a stigma attached to their delinquent activity. Most youth openly share their situations with peers, school, and community so that before even appearing before the court, their alleged illegal activity is well-known to those in the youth's life. In the minority of cases, where public information might cause stigma, open courts have a mechanism for closing some or all of the proceedings. Requests to close proceedings generally receive a hearing on the merits, thus ensuring protection of the youth when appropriate, and also ensuring that the public has the opportunity to oppose the request.

2. What Information Will Be Provided to the Juvenile Delinquency Court and Who Has Access to this Information? – This confidentiality category has two important questions: a) What information should be provided to the juvenile delinquency court by other agencies working with a youth?; and b) What information should be available to victims, the general public, or media representatives who may attend open juvenile delinquency court hearings?

During the pre-trial and adjudication process, most information focuses on the facts of the offense and most information is presented as testimony in open court or as exhibits that become a part of the legal record. If the juvenile delinquency court has open hearings, the public has access to most of this information. During the disposition process, however, more personal information about the youth and family is presented to the juvenile delinquency court to assist

the court in determining causal factors for problem behavior and what services and treatment might be effective to help the youth change the problem behavior.

Juvenile delinquency courts cannot be expected to make decisions without information and cannot make good decisions if agencies withhold information that is pertinent to the needs of the youth. Juvenile delinquency courts cannot make timely decisions and operate efficiently if procedures to share information are cumbersome and time- and resource-intensive.

There are many barriers to timely provision of appropriate information. One of the most common barriers is that, due to the complexity of privacy standards and confidentiality laws, agencies sometimes erroneously believe that these laws prevent them from providing information to the juvenile delinquency court, when in fact, the laws provide mechanisms so that the information can be provided to the court. Federal statutes that fund education, social, health, drug abuse, alcohol abuse, and mental health services include confidentiality provisions that can be extensive. Examples include HIPAA (Health Insurance Portability and Accountability Act of 1996), FERPA (Family Educational Rights and Privacy Act, passed in 1974 with nine amendments up to 2001) and 42 U.S.C./42 C.F.R. Part 2 (consolidated alcohol and drug abuse confidentiality protections, 1992). All of these laws and regulations significantly limit the information that can be shared with others about a patient or student without written consent. Further complicating the matter, states have confidentiality statutes that vary considerably and may be more restrictive than the federal regulations. However, these laws and regulations provide that this protected information can be disclosed without the patient's consent if authorized by an appropriate court order.

Juvenile delinquency courts may internally create another barrier to the timely provision of complete information. Some juvenile delinquency courts do not have procedures to incorporate knowledge from abuse and neglect cases into the delinquency disposition process. Courts that use the recommended practice of ***Key Principle 3: Juvenile Delinquency Courts and Juvenile Abuse and Neglect Courts Should Have Integrated One Family-One Judge Case Assignments*** do not have this issue. The Juvenile Justice and Delinquency Prevention Act of 2002 requires states to establish policies and systems that make child protection services and child welfare records available to the juvenile delinquency court. The reason for this requirement is to ensure that the best interests of the child are considered when determining an appropriate action on a delinquency offense, and when establishing and implementing treatment plans for juvenile offenders.

An effective way to ensure the timely provision of appropriate information to the juvenile delinquency court is for juvenile delinquency court judges to appoint a Confidentiality Board or Rules Committee. The Board or Committee consists of representatives from the court, prosecutor's office, public defender's office, service agencies, media, victim advocates, and family advocates. The charge of the Board or Committee is: 1) to develop recommended procedures that implement state and federal laws and court rules; 2) to ensure that the court receives all information necessary to determine appropriate dispositions in a timely fashion; 3) to ensure that confidential information is not released to the public, but that the public has access to non-confidential information; and 4) to ensure smooth linkages exist regarding appropriate information-sharing between system stakeholders. The Board or Committee presents their recommendations to the juvenile delinquency court's administrative rule-making authority for a final determination regarding court policy.

Confidentiality Boards and Rules Committees should be responsible for:

- Analyzing the law relating to the provision of confidential information;
- Analyzing policies and practices to see if they hinder the provision of confidential information;
- Recommending policy for the court and other entities involved;
- Generating Memoranda of Understanding based on the presiding judge's and other entities' designated policies that will identify what is confidential and non-confidential; and to design processes that will enable both types of information to be shared expeditiously with the juvenile delinquency court and others;[22] and
- Educating staff of all juvenile justice system stakeholders regarding the policies so that all stakeholders understand what information they should share and how to share it expeditiously.

Court rule should establish that counsel for youth automatically has access to all case-specific information provided to the juvenile delinquency court.

Regarding what information should be available to victims, the general public or media representatives who may attend open juvenile delinquency court hearings, an effective practice used by many juvenile delinquency courts with open hearings is to require documents submitted to the court to be divided into two sections: first,

general investigation information about the adjudicated juvenile which is made available to the public; and second, treatment history, child welfare involvement, trauma history, mental health, and other evaluative information about the youth and family which is used to evaluate competency or used to determine disposition, which is not shared with the public. Other open courts allow the general public to attend hearings, but do not give them access to any written information. How a juvenile delinquency court handles this issue can have a great impact on how much information agencies are willing to share with the court.

3. What Information Should Be Shared Between Agencies and Organizations Involved With the Youth and Juvenile Delinquency Court Personnel Regarding a Youth's Behavior and Needs?[23]

Confidentiality laws need not impede information exchanges among those who make up the system of care for a delinquent youth. ***The DELINQUENCY GUIDELINES recommends* that information exchanges should be the norm and not the exception**. Unfortunately, two of the most frequently cited barriers to delivering comprehensive and integrated services to youth in the juvenile justice system are a lack of information-sharing among agencies, and confidentiality restrictions.

Determining what information should be shared balances the individual's right to privacy and the need of providers in a youth's system of care to share information for the effective and efficient provision of services. When youth-serving entities commit to developing a system of information-sharing, they find appropriate ways to share important information, as confidentiality statutes and regulations contain exceptions to their coverage or specify methods for disclosure. Once the decision to share information has been made, each involved organization needs to define the following:[24]

- What information do you need and for what purpose?
- What information is deemed confidential?
- What information is not considered confidential?
- What exceptions are there to the confidentiality restriction?
- What information sharing should be authorized? For what use? Under what conditions?
- What are the requirements for release of information?
- Can information be shared with the consent of the youth or parent?
- Can information be shared without the consent of the youth or parent?
- What are the requirements for consent release?
- Who can give consent for information pertaining to minors?
- Does the provision authorize other mechanisms for information-sharing, such as interagency agreements or Memoranda of Understanding?

It is important to assess implementation policies and practices of each agency or organization that interfaces with the juvenile delinquency court to see if they hinder the ability to share information with others. In many instances, policy and practice, not laws, stop the sharing of information.[25]

4. Juvenile Delinquency Court Legal Records – Legal records in the juvenile delinquency court include affidavits, petitions, motions, exhibits, court findings, and court orders. The records of criminal charges of adults are open to everyone, and can even be accessed on the Internet. In some states, juvenile records are also released without qualifying restrictions.[26]

In addition to the public and media, juvenile delinquency court legal records are frequently requested by the criminal court for sentencing decisions and by the military for screening purposes. Every state gives the criminal prosecutor or criminal court access to the juvenile delinquency court records of criminal defendants at some point in the judicial process.[27]

Juvenile delinquency court practice is not consistent with regard to the sealing and expungement of juvenile delinquency court records.[28] Sealing records removes them from review or examination except by court order or by designated officials. Expungement allows for the erasure or destruction of juvenile records, under certain circumstances, once a juvenile reaches the age of majority, or as otherwise set by state statute. The questions facing juvenile delinquency courts are: 1) Under what circumstances should juvenile records be sealed or expunged?; and, 2) If sealed, what are the circumstances under which they should be accessible?

***The DELINQUENCY GUIDELINES recommends* the following practices regarding juvenile delinquency court records that *have not been expunged*, including records that have been sealed:**

- **Juvenile delinquency court legal records should be provided to criminal courts when requested for sentencing and to designated agencies that are responsible for making pre-sentence recommenda-**

tions to the court.[29]

- **Juvenile delinquency court legal records should be open to those who have a recognized legitimate reason for access, such as the military and the police. The court should consider the recommendations of its appointed confidentiality board or rules committee to determine general rules regarding the sealing of records and access to legal records by the media and others.**

The issue of the expungement of records is very complex, varies from jurisdiction to jurisdiction, and usually involves a tiered approach, depending upon the seriousness of the offense. ***The DELINQUENCY GUIDELINES recommends* the following practices regarding the expungement of juvenile delinquency court records**:

- **The juvenile delinquency court should automatically expunge the records of adjudicated status offenses when the youth reaches the age of majority if the youth has complied with all orders of the court and if no additional charges have been filed within the prior year.**
- **At the age of 18, when juvenile delinquency court jurisdiction has ended, and after one year has lapsed since all juvenile delinquency court obligations have been met and no additional offenses have occurred, all traffic and misdemeanor records should be eligible for an expungement request. The request should be forwarded to the prosecutor's office for an opportunity to respond to the request.**
- **If an expungement request is made regarding a traffic or misdemeanor offense, the juvenile delinquency court should generally favor expungement, with the court's decision always based on community safety. Exceptions to favoring expungement might include certain traffic offenses such as driving under the influence of alcohol or drugs, or vehicular homicide.**
- **At the age of 21, if no additional offenses have occurred since the youth left the jurisdiction of the juvenile delinquency court, and if all juvenile delinquency court obligations have been met, all felony records should be eligible for an expungement request. The request should be forwarded to the prosecutor's office for an opportunity to respond.**
- **If an expungement request is made regarding a felony offense that did not involve a weapon or significant physical harm, the juvenile delinquency court should generally favor expungement, with the court's decision always based on community safety.**
- **If an expungement request is made regarding a felony offense involving a weapon or significant physical harm, the court should generally not favor expungement.**
- **When a juvenile delinquency court grants expungement of a record, the court should notify the police and prosecutor and request that they also destroy their records of the offense.**

C. THE IMPORTANCE OF TIMELINESS IN THE JUVENILE DELINQUENCY COURT

For many youth, adolescence can be a very difficult period of physical, intellectual, emotional, and social growth. For youth who do not have a safe and nurturing social environment, substantial developmental delays can result, particularly in the area of cognitive development, trust development, and feelings of security. Most adolescents acquire the ability to think beyond the present reality and deduce future conditions by the age of 16. However, these abilities are especially dependent on environmental support. Without the support of a safe and nurturing social environment, these abilities may not be acquired until the late teens or twenties.[30] Many youth who become involved in the juvenile delinquency court, both pre-adolescents and adolescents, have not yet developed the ability to think beyond the present and to connect present acts with future consequences. Because their concept of the passage of time is not fully developed, the prolonged uncertainty of not knowing what will happen can be frightening and further damage the youth's cognitive development and levels of trust and security.

Because of these developmental dynamics, timeliness throughout the juvenile justice process is critical for two reasons:

- One purpose of the juvenile justice process is to teach offenders that illegal behavior has consequences and that anyone who violates the law will be held accountable. A youth with delayed cognitive development who must wait a significant period of time between offense and consequence may not be able to sufficiently connect the two events. As a result, the intended lesson of consequences and accountability is lost and the consequences will not likely change future behavior.
- If the juvenile justice process is not timely,

many youth will experience prolonged uncertainty. Prolonged uncertainty can increase anxiety. Increased anxiety can negatively impact trust and a sense of fairness. If a youth does not perceive the juvenile justice system to be predictable and fair, then the system's goal of changing behavior is less likely to be achieved.

In some juvenile delinquency courts, youth wait for months between the time a summons to appear is issued and the first court hearing. This delay significantly reduces the effectiveness of the juvenile delinquency court.

D. CASE DOCKETING AND CASE MANAGEMENT

Effective case management starts as soon as the written allegation of a law violation is presented to the juvenile delinquency court. Effective case management does not end until the final juvenile delinquency court order has been complied with and the case terminated. Examination of the following issues and processes will assist a juvenile delinquency court to determine whether its existing docketing and case management systems are effective:

- The length of time between the filing of an affidavit and each subsequent process step, including diversion, initial hearing, adjudication, disposition, and post-disposition review;
- The number of continuances granted, reasons for granting continuances, and length of continuances;
- The length of time between when parties are told the hearing will begin and the actual start of the court hearing;
- The availability and preparation of counsel from the first hearing to the last; and, whether unavailability of, or lack of preparation by counsel makes continuances necessary;
- The length of time between the diversion decision or disposition order and the date services begin;
- Whether there are processes to ensure the prompt identification of problems, and the prompt return of cases to court if some aspect of the court's orders is not being fulfilled in a timely fashion; and,
- Whether judges, intake, case management staff, prosecutors, counsel for youth, and probation officers have reasonable caseloads that permit effective, timely responses.

Effective case docketing and case management systems follow three important principles of timeliness. The first two principles are: 1) all hearings should be held as close to the alleged law violation as possible; and, 2) if the youth is adjudicated on the offense, the juvenile delinquency court's response is swift, and needed services are readily available. These principles are easily measured with properly designed management information systems. **Juvenile delinquency courts should set expected timeframes, as described in Chapters III - XI of the *DELINQUENCY GUIDELINES*, and regularly review data on the length of time between filing of the offense, the first hearing, and each subsequent hearing; and, the length of time between when court services, including probation, are ordered and when those services actually begin.**

The third principle of effective case docketing and case management systems is to respect and efficiently use the time of court staff, prosecutors, counsel for youth, victims, witnesses, youth, youth's family, probation, and service providers. There are four areas in which this commitment is most evident:

- Whether processes are designed to eliminate duplication, delay, and wasted resources;
- Whether juvenile delinquency court hearings start at the scheduled time;
- Whether juvenile delinquency court dates are credible with continuances kept to a minimum; and
- Whether sufficient time is allocated to each hearing so that it can be completed during the allocated time, including trials that are completed on consecutive days.

The design of juvenile delinquency court case management processes is critical to ensure that resources are used efficiently and that caseloads and workloads are manageable. Examples of practices that impede efficient use of resources include:

- Overloading the system by failing to manage the volume of formal cases; and not diverting less serious cases from the formal system. This results in an unnecessarily large number of cases that must be handled in the formal system.
- Not screening petitions for legal sufficiency. This results in using unnecessary resources to schedule and hold hearings.
- Using multiple petitions with single counts instead of using multiple counts within a single petition. This results in unnecessary paper handling.
- Issuing multiple warrants (writs) or multiple probation violations simultaneously. This results in unnecessary paper handling.
- Failing to consolidate all pending charges

when a hearing is set. This results in unnecessary hearings.

- Requiring probation staff to spend significant amounts of time in juvenile delinquency court hearings in circumstances where they can convey all necessary information in writing and their presence is not really necessary. This results in a reduction of time available to deliver services to probationers.
- *De novo* systems where cases are tried before a judicial officer who is not a judge and aggrieved parties more than occasionally request a complete new trial before a judge. This process can result in multiple cases being tried on two separate occasions at great time and expense to the court, parties, witnesses, and many others.

Resources are wasted and individuals feel disrespected when parties must routinely wait extensive periods beyond their scheduled court time or when cases are continued multiple times without explanation or resolution. Cases should be docketed for a certain time and waiting time past the docketed time should be measured and monitored. When the next juvenile delinquency court hearing date is set at the end of each hearing, with all parties present and with the needs of parties taken into account, parties should be held to the selected court date except for emergencies. Data on continuances, including the reason for the continuance and the days between continuances, should be regularly monitored.

Some of the practices that juvenile delinquency courts have implemented in order to docket and manage cases and resources effectively include:

- Prosecutors screen every affidavit for legal sufficiency. This eliminates citizens filing improper or insufficient charges when police have declined to file charges. Citizens quickly learn that their charges will be screened out by the prosecutor's office for lack of sufficiency, and they stop filing charges when police have determined charges to be inappropriate or unnecessary. Juvenile delinquency courts can ensure citizens are not inappropriately being denied access to the juvenile delinquency court by monitoring citizen complaints of denied access to determine if policy adjustments need to be made.
- Collaboration between the juvenile delinquency court, police, prosecutors, and community services provides a broad range of informal programs available to successfully divert all but the more serious charges.
- Juvenile delinquency courts working closely with the police, prosecutor, and detention administration so that police know the offenses that will not be handled formally, and the offenses that will not result in detention. This enables police to create their own diversionary resources for charges that will not be handled formally, and prevents police from wasting time arresting youth and bringing them to detention when the youth will not be detained. As a result of these practices, the number of formal filings and the detention population significantly decreases. This frees both time and monetary resources for police, prosecutors, and the juvenile delinquency court; and allows dollars to be reallocated to fund diversion services and alternatives to secure detention.
- One petition with multiple counts is used as opposed to multiple individual petitions for related incidents. This significantly decreases the amount of paperwork flowing through the system and reduces instances of multiple concurrent warrants. When one petition with multiple counts is used, it is important to track both petitions *and* counts per petition in the management information system.
- As soon as the police complete an investigation and decide to file an affidavit without a request to detain the youth, the police officer assigns the initial juvenile delinquency court date using a pre-determined system provided and approved by the juvenile delinquency court.[31] The police officer gives the parent and youth written notice of the court date. This system reduces the amount of time between when the charge is filed and the first court date, and eliminates court resources used for setting initial hearings and handling service of the summons. This system also reduces the amount of time between the filing of the affidavit and the initial hearing.
- Two public defenders and two prosecutors are assigned to each juvenile delinquency courtroom. While one case is being heard, final preparation and negotiations are occurring on the next case. This practice eliminates unnecessary continuances because counsel is not available, enhances the flow of cases, and allows for time-specific case calendaring. This practice is possible for two reasons: 1) Cases are assigned to judges and hearing officers by geographic area, resulting in the same judge, prosecutor, and public defender always handling the youth's case; and 2) There are a comparatively low number of cases requiring formal juvenile delinquency court resources because the front door is managed so that only the more serious cases are handled formally. Overall,

fewer judicial officers, prosecutors, and public defenders are required.

- In systems with *de novo* hearings, implementing a pretrial conference system requires parties to come together for a settlement conference. If a case results in a settlement agreement, the parties present the proposed settlement to the juvenile delinquency judicial officer on the same day as the settlement conference. If the parties cannot reach an agreed settlement, the petition is scheduled for a trial before a juvenile delinquency court judge for a date and time-specific hearing with an appropriate number of hours allotted on consecutive days, if required. This system eliminates the possibility of a juvenile delinquency court trial before a judicial officer and a repeat of the trial before the judge.
- Courtrooms have direct access to the juvenile delinquency court's management information systems, which can select the next juvenile delinquency court hearing date given certain parameters. The system generates waiver forms and the written juvenile delinquency court findings and orders for immediate distribution to parties. The written findings and orders serve as notification of the next hearing date and time, preventing the need for additional hearing notification.
- Probation officers have assigned days in juvenile delinquency court (i.e., scheduled one day a week) so that they can spend more time in the field and plan their time more efficiently.
- Management information systems, directly accessible by the juvenile delinquency court judge, convey probation reports and recommendations to the judge. This system releases the probation officer from needing to be in the courtroom unless there is a specific reason requiring the probation officer's presence (e.g., the recommendation is placement or parties or key participants disagree with the probation recommendation).
- When a youth is adjudicated, and the judge believes that the disposition will not be removal of the youth from the home, instead of referring the case to probation for investigation and continuing the case for disposition, the juvenile delinquency court judge refers the case to the probation department without setting a separate disposition hearing. The probation department has a structured process using validated screening tools and structured guidelines that determine the probation response. The probation plan is forwarded to the judge and all parties for review and the judge's determination as to whether post-disposition review is needed. Because judges and judicial officers helped design the system and are confident that the system will result in good decisions, they do not feel it necessary to have another hearing to approve probation's recommendation. In a jurisdiction with a population of a half million, this practice has eliminated the need for 900 additional juvenile delinquency court hearings per year.

Finally, juvenile delinquency courts cannot have effective docketing and case management systems if they do not have sufficient judicial resources to manage the juvenile delinquency court's caseload. Extensive work has occurred in the juvenile neglect and abuse court to determine how to measure performance and how to measure the amount of judicial resources that a court needs to handle its cases within recommended time lines. Similar work has also occurred in the juvenile delinquency court. By identifying the number and type of cases that come before the juvenile delinquency court annually, determining the number of types of hearings needed (e.g., detention hearings, initial hearings, trials, etc.), identifying average lengths of time required for and between hearings, and applying other systemic factors, the amount of docket time needed by a juvenile delinquency court to manage its caseload can be determined.[32]

E. USING SCREENING AND ASSESSMENT TOOLS TO HELP MAKE KEY DECISIONS

Whenever possible, validated screening and assessment tools (also referred to as structured decision-making, or SDM) should guide non-judicial juvenile delinquency system decisions that are not directed by statute. Probation should also use screening and assessment tools to prepare disposition recommendations for the juvenile delinquency court judge.

In the context of screening and assessment tools, validity refers to the extent an instrument actually measures what it claims to measure. Establishing validity is an ongoing and complex process that requires the involvement of a trained researcher familiar with test theory, psychometrics, scale development, and validation methodology. In selecting screening tools, it is important to determine if the tool has undergone rigorous development and review. Many instruments found on the web are problematic and will not provide the desired results.

Trained individuals who are not clinicians should administer validated screening tools to every youth entering specific phases of the juvenile justice system. The screening tools should

take a short period of time to administer, generally not more than 20 minutes. They are designed to identify whether a more in-depth assessment is needed. When a screening tool calls for more in-depth information, a clinical assessment conducted by a qualified mental health, substance abuse, or education professional, or an assessment using a validated assessment tool is indicated.

The incidence of mental health problems, substance abuse issues, and exposure to trauma resulting in traumatic stress reactions are significantly higher in the juvenile offending population than the population at large. A 2002 federally funded study of youth in Cook County juvenile detention (Chicago, Illinois) is, according to the National Institute of Mental Health, the largest and most methodologically sophisticated of its kind. This study found that nearly two-thirds of boys and nearly three-quarters of girls detained in the Chicago juvenile facility had at least one psychiatric disorder. This compares to a 15% incidence rate of psychiatric illnesses in the general youth population.[33] This high incidence is comparable to other teens at highest risk, such as maltreated and runaway youth. The study also found that two-thirds of the teens tested positive for drugs with many youth having both a mental illness and substance abuse problem.

A substantial body of research also shows that the prevalence of childhood abuse, neglect, and other trauma among delinquent populations is substantially greater than in the general population; and, that delinquent youth with a history of abuse or neglect are at higher risk of continuing their delinquent behavior than delinquents without such a history.[34]

If juvenile delinquency courts hope to break the cycle of recidivism, youth with mental health and substance abuse issues and youth with histories of abuse, neglect, and other trauma require early identification and targeted intervention. Screening for these important factors should occur at the earliest point in the juvenile delinquency court process so that the juvenile delinquency court's ability to change the delinquent behavior of youth, by addressing causal factors, can be maximized.[35] It is important to note that information a youth reveals during the screening process should not be used against her or him at trial. Otherwise, the youth will not likely disclose important information related to immediate needs.

Since different decision points involve different issues, validated screening tools should be specifically designed to identify the issues that will help the juvenile delinquency court make the best point in time decision. Each screening tool should gather only those facts required to make the decision at hand. Decision-making tools should be designed to accomplish the following:[36]

- Introduce greater consistency and equity to the decision-making process;
- Focus limited system resources on the highest risk and highest need offenders, while reducing the unnecessary use of secure detention, residential treatment, and correctional placements;
- Ensure that decisions are based both on concerns for community safety and concerns about the youth's needs and necessary treatment interventions;
- Provide a mechanism to facilitate linking youth with the types of programs that are most appropriate to their offense, level of risk to reoffend, needs, and strengths; and
- Provide for administrative overrides, both mandatory and discretionary. Mandatory overrides reflect policy positions. For example, a juvenile delinquency court may decide that any youth using a firearm will be placed in secure detention. Discretionary overrides, which generally require supervisory approval, allow for unique or mitigating circumstances that may not be captured by the validated screening tool.

It is important to carefully monitor discretionary administrative overrides. If frequently used, they will undermine the value of using these tools by reintroducing subjectivity and inconsistency. Supervisors should either approve overrides, or monitor all instances of overrides on a regular basis to ensure their appropriateness.

When decision-making tools are used to determine services such as informal interventions and dispositional service plans, the tools must be able to identify youth and family strengths and assets. [37]When key assets to success have been validated, probation can use the validated tool to determine which key assets the youth possesses and which need to be developed. This results in the design of a more effective intervention plan. The same tool for youth assets can be completed at the time of case closure as a post-test to determine whether the youth has increased his or her responsible living skills which will provide the information needed to determine whether probation is achieving this part of the juvenile delinquency court's goal.[38]

The decision points in a juvenile delinquency system where structured decision-making should be used include:[39]

1. Prosecutor or Juvenile Delinquency Court Decisions Regarding Whether a Case Should Be Handled Formally or Diverted and Handled Informally – When the prosecutor finds an affidavit legally sufficient, the prosecutor or juvenile delinquency court intake must make the decision of whether the youth will be divert-

ed or handled formally. This decision should be based on a validated intake screening process that includes risk to reoffend, needs, and strengths. If the risk to reoffend section of the screen indicates an informal approach is appropriate, the needs and strengths sections guide the decision of which informal intervention is most appropriate. If the screen identifies a youth as having a potential mental health or substance abuse problem that might require treatment, the youth should be referred for more in-depth clinical assessment.

2. Initial Detention Admission Decisions – When the intake process determines formal action is needed, and when the youth is arrested, an important decision point occurs. The decision is whether to release the youth with or without restrictions pending hearing on the charge or detain the youth in secure or non-secure detention pending the initial hearing. This decision should be guided by the use of a validated risk to reoffend screen that includes screening for danger to self and others issues, and guides identification of the need to refer the youth for acute psychiatric evaluation or substance abuse detoxification evaluation. In some instances, it is more appropriate and safe for a youth at high risk to reoffend to be held in a psychiatric facility or detoxification facility, as opposed to secure detention.

Many such tools are in use and they generally use a fairly standard group of weighted factors that have been validated as predictors of reoffending. These tools produce a score that determines which option - release pending hearing with or without restrictions, or secure or non-secure detention - will be selected. Most detention screening tools for risk of reoffending provide for administrative overrides, both mandatory and discretionary. A model risk of reoffending assessment instrument is available through the NCJFCJ's Juvenile Sanctions Center.

3. Detention Behavior Management Decisions – If the detention intake department decides to admit the youth to secure or non-secure detention, additional screening should occur. If not already completed at case intake, mental health screens that identify past trauma history, risk of suicide, and other serious mental health risk factors, and substance abuse screens should be administered at this point to every youth. These screens can also be designed to identify levels of aggression and maturity, factors that should guide decisions on detention unit placement; and can provide important information to detention staff that can assist in selecting the most effective methods of behavior management for the particular youth. Physical health assessments should occur at the earliest possible time. If the juvenile delinquency court judge determines that the youth will remain in secure or non-secure detention beyond the detention hearing, educational assessments should be administered.

4. Disposition Recommendations of Court Ordered Services and Levels of Probation Supervision – An assessment process that is multi-faceted and more comprehensive than the previous screening processes should guide disposition recommendations and determination of levels of probation supervision. This assessment process should provide direction in addressing the following questions:

- What level of intervention is required in order to protect community safety while the youth is engaged in behavior change? If probation supervision is appropriate, what level of supervision should be used?
- What are the youth's special treatment needs (i.e., mental health, substance abuse, education), that must be addressed in order for the behavior to change?
- What are the youth's strengths that can assist in making the necessary behavior change?
- What family and community strengths are likely to assist the youth in implementing necessary behavior change?
- What family and community issues are likely to impede the youth in implementing necessary behavior change?
- What victim issues should be taken into consideration?

Disposition assessment tools should produce a grid that matches risks, needs, and strengths with disposition resource alternatives. A sample disposition matrix for adjudicated delinquent youth is available from the Juvenile Sanctions Center's *Graduated Sanctions for Juvenile Offenders: A Program Model and Planning Guide*, (p. 87, NCJFCJ, 2003).[40]

Using validated screening tools enhances objectivity and decreases individual subjectivity, which can be unintentionally influenced by individual bias. Consequently, structured decision making results in more equitable treatment of minority youth, a topic discussed in the next section. For all youth, structured decision making creates a more just and consistent response and can also assist juvenile delinquency court systems in managing resource allocation.

Well-designed, validated screening and assessment tools can greatly improve the predictive accuracy of decisions resulting in a system that is more rational, efficient, just, and better managed.[41] Validated screening and assessment tools designed locally should not be used in a different

location without re-validating their effectiveness for the new population. All locally created screening and assessment tools should be periodically re-validated.

F. DISPROPORTIONATE MINORITY CONTACT

Disproportionate minority contact in the juvenile delinquency system refers to situations where a larger proportion of a particular group is found at various stages of the system than is represented in the general population. Depending on the population characteristics of juvenile delinquency system jurisdictions, disproportionate minority contact may be found involving African Americans, Native Americans, Hispanics and other ethnicities, as well as minority religions. Minority youth tend to be over-represented at multiple stages of the juvenile justice process and the degree of disproportionate contact tends to increase as a minority youth penetrates further into the system.[42]

Although disproportionate contact of minorities is well documented in all parts of the juvenile justice system, determining the causes is more difficult. The National Council of Juvenile and Family Court Judges concluded in their 1990 publication, *Minority Youth in the Juvenile Justice System: A Judicial Response:*

> *There is no simple answer to this question and any answer suggested should include varying authority of the juvenile delinquency courts; the varying application of statutes and guidelines; funding for juvenile justice; the socio-political factors within local settings; the dynamic of minority communities and families; the legal and nonlegal characteristics of minority youth referred to the system; and the possibility of systemic racism.*

In 1993, when modifications to the Juvenile Justice and Delinquency Prevention Act added reporting requirements regarding disproportionate minority confinement, juvenile delinquency courts questioned whether a problem existed.[43] Studies conducted by juvenile delinquency courts would often result in findings that minority youth who were brought to the juvenile justice system by local law enforcement and detained had more serious offense histories and presenting offenses than their non-minority peers. These results reinforced the belief that there were justifiable reasons that minority youth were disproportionately detained and that the problem was beyond the control of juvenile delinquency courts.[44] Other studies, however, indicated that:

- Disproportionate minority contact was not a function of offending patterns among minority youth. Iowa, Maryland, and Pennsylvania found that after controlling for offense, history, characteristics of the offense, social history, gender, rate and age, formal intake outcomes (case filing, detention) were more common for African American male youth than for whites.[45]
- Two-thirds of existing studies found that ethnic status influenced decision making within the juvenile justice system.[46]

As a result of these and other studies, many juvenile delinquency courts looked harder at the data to determine if there were causal factors that were under the juvenile delinquency court's control.[47] The Juvenile Detention Alternatives Initiative (JDAI) funded by the Annie E. Casey Foundation, promoted local system strategies to reduce minority overrepresentation.[48] This important initiative has helped juvenile delinquency courts examine policies, procedures, practices, and programs; and to identify and address many elements of disproportionate minority contact over which the court does have control. Examples include:

- Juvenile delinquency court systems with multiple points of subjective rather than objective decision-making produced disparities;
- Cultural insensitivity throughout the system, resulting in a lack of positive engagement of families and youth in helping to solve the problem, with lack of understanding producing unnecessary resistance and hostility;
- Unnecessary delays in the juvenile delinquency court process contributing to longer lengths of stay in detention, so that the number of days of disproportionate confinement was exacerbated even further;
- A lack of services, or barriers to accessing services, combined with a probability that if services had been available, minority youth might not have engaged in law breaking behavior; and
- Barriers to services for minority youth once they entered the juvenile justice system. Several studies found that:
  - ➢ Juveniles of color are generally underserved by the mental health system. This causes many children of color not to receive services or to have been poorly served by the mental health system prior to their entry into the juvenile justice system.[49]
  - ➢ African American adolescents with mental health problems, particularly males, are more likely to be referred to juvenile delinquency court rather than the treatment system.[50]

➢ Historically, Mexican Americans and other immigrant groups have shown low rates of use of mental health services, in part due to language difficulties and lack of neighborhood-based services, increasing the likelihood that treatable, yet untreated mental illness caused behavior that resulted in contact with the juvenile delinquency court.[51]

Although it remains true that societal issues may subject minority youth to risk factors for delinquency, ongoing work in many juvenile delinquency court jurisdictions shows that the practices of individual justice agencies can exacerbate or alleviate the disparity at each decision point.[52] Examples of practices that juvenile delinquency courts can adopt to alleviate these disparities include:

- Collecting, analyzing, and monitoring data from all decision points to ensure that minority youth are not being disparately treated;
- Creating multidisciplinary task forces that include minority representatives to monitor disproportionate minority contact, and involving minority representatives in developing and implementing alternatives to detention and institutional confinement;[53]
- Collaborating to ensure that all juvenile justice practitioners, including judges, police officers, prosecutors, counsel for youth, intake officers, probation officers, detention care workers, and correctional workers are culturally competent;[54]
- Ensuring that minority practitioners are represented in direct service delivery and in critical decision-making ranks of the juvenile justice process;[55]
- Providing increased access to culturally knowledgeable and community-based early intervention services and diverting youth in the juvenile justice system to these treatment systems whenever possible;[56]
- Focusing on the strengths and protective factors available to culturally diverse youth, their families, and extended families; and providing for techniques such as family conferencing that maximize engagement of ethnic families and build on their strengths;[57]
- Using validated, objective, and culturally unbiased screening and assessment instruments at all decision points; and
- Contracting with parents representing a community's cultural and ethnic groups to serve as advocates and liaisons – as "parent partners" – to families going through the system.[58]

Juvenile justice systems involved in the Juvenile Detention Alternatives Initiative (JDAI) have shown that these system changes reduced the degree of disproportionate minority contact in their systems.[59]

G. DISPUTE RESOLUTION ALTERNATIVES[60]

Alternative methods of resolving disputes allow parties to settle a potential or existing legal matter outside of a formal juvenile delinquency court proceeding. This technique is used broadly in disputes between adults (e.g., divorce, consumer disputes, civil actions) and is referred to as alternative dispute resolution or ADR. ADR is generally thought of as two or more equal individuals coming to the table and coming to an agreement using mediation.

Although the technique is successfully used in the juvenile delinquency court, it is important to point out that *its use is not generally between two equal parties*, but between a juvenile who has violated the law and the victim of that violation. Consequently, instead of using the traditional term of ADR, the *DELINQUENCY GUIDELINES* uses the term dispute resolution alternatives, or DRA, to emphasize the difference. Dispute resolution alternatives can be used in the juvenile delinquency system both as an informal diversion and a formal intervention. When a dispute resolution alternative is used in a formal delinquency court case, the proposed resolution is presented to the juvenile delinquency court judge for approval.

In many juvenile delinquency courts, dispute resolution alternatives have met with enormous support, success, and growth. Dispute resolution alternatives can be successfully used in the juvenile delinquency court particularly when the perpetrator and the victim have an ongoing relationship or the circumstances of the offense have contributing factors from both the offender and victim. It is important to note that in most circumstances these techniques are used to determine the response to the offending behavior as opposed to whether or not the youth broke the law.

Examples of dispute resolution alternatives that have been successfully used in juvenile delinquency courts include:

- **Victim-Offender Conferencing** – This intervention occurs after a voluntary admission of guilt by the offender and uses trained facilitators to guide dialogue between the victim and offender. The process is victim-focused. The purposes of the dialogue are to teach responsibility to the offender and to provide the offender with an opportunity to repair harm in a manner that is acceptable to both parties. If

the case is being handled formally, the juvenile delinquency court judge must approve the plan. It is important to know whether the victim or offender is a trauma victim before using this intervention as there is risk that re-traumatization may occur.

- **Family Group Conferencing/Family Conflict Resolution** – Immediate and extended family members and close friends meet to design solutions that they agree to implement to resolve a problem. Although these methods are most often used in conjunction with abuse, neglect, or dependency proceedings, they are also useful in delinquency proceedings when there are problems within the family structure, including developing safety plans for detention release in domestic violence situations and identifying family supports for a youth when the parents are not able to provide adequate support or supervision.[61]
- **Accountability Boards** – Trained community members sit as a panel to provide a mechanism for informal diversion and immediate sanctioning, usually to first or second time status or misdemeanant offenders who have admitted their offense.
- **Negotiation, also referred to as Mediation** – A neutral facilitator assists parties to come to an agreement on a response that is acceptable to all to an admitted offense. The facilitator assists parties to identify issues that need to be addressed, and empowers them to negotiate workable solutions. Examples of situations where negotiation might be appropriate include:

  - Youth offenses within the family structure;
  - Offenses within a school or residential setting;
  - Dealing with ongoing neighborhood and community disputes that have resulted in an offense; and
  - Developing crime prevention plans.

Using dispute resolution alternatives in the juvenile delinquency system has several advantages. Advantages for the parties include:

- An agreed solution is more likely to be supported and followed;
- Settlements can be reached more quickly than if the case goes to juvenile delinquency court for resolution;
- It is less expensive as attorneys may not need to be involved and juvenile delinquency court costs are often reduced;
- It generally takes fewer hours to complete the process than attending multiple juvenile delinquency court hearings; and
- Participating in the process teaches youth and families a method for resolving problems in the future.

Advantages for the juvenile delinquency court include:

- Reduced docket time required for judges, enabling the juvenile delinquency court to have more time to hear cases; and
- Conservation of scarce juvenile delinquency court resources, such as counsel for youth and prosecutors, for those cases that need them most.

Dispute resolution alternatives can be used both to divert the filing of a formal petition as well as to design solutions that can be proposed to the juvenile delinquency court judge for formal cases involving family conflict. Following are examples of how dispute resolution alternatives have been used in several juvenile delinquency courts:

- In Cook County (Chicago, Illinois), the prosecutor's office, which screens all affidavits for legal sufficiency and diverts all appropriate cases from the formal system, uses victim-offender conferencing as a diversion option. The prosecutor also uses mediation to divert formal action on youth who are acting out in group home placements.[62]
- In Marion County (Indianapolis, Indiana), the use of dispute resolution alternatives started within the formal juvenile delinquency court system, but then transitioned totally to the school, community, and police in order to prevent cases from entering the juvenile delinquency court system as filed affidavits.[63]
- The State of Oregon has 26 community dispute resolution centers in 20 counties. The centers are used as part of a graduated response effort at the front end of the juvenile delinquency system to divert cases. Early data shows a substantial reduction in recidivism one year after completion of the program.[64]
- The Lucas County Juvenile Court (Toledo, Ohio) uses dispute resolution alternatives in four ways:[65]

  (1) Mediation has been used since 1991 to meet the demand of status offense cases brought to the juvenile delinquency court. The settlement rate – defined as coming to an agreed response plan – has consistently exceeded 90% and has reduced the percentage of adjudicated status offenders from 26% to 5%. The percentage of status offend-

ers placed on probation fell from 19% to less than 1%.

(2) Mediation is used in truancy prevention to improve communication between teachers and parents of children who are excessively absent from school. Project evaluation confirms that a more positive relationship is developed and maintained between the family and the school, resulting in better school attendance.

(3) Mediation is used in delinquency cases to develop response plans after the youth has admitted the behavior. The percentage of delinquency cases referred to mediation has increased from 15% to 33%. The settlement rate has consistently exceeded 90%.

(4) Family conflict resolution is used to create a release plan for youth being held in secure detention on domestic violence charges. The family is empowered to identify and select, with the approval of the juvenile delinquency court judge, the conditions of the child's release from detention and to create plans that will prevent future acts of violence.

- Connecticut has established a statewide juvenile mediation program for minor delinquency cases. Probation officers, trained to maintain a neutral facilitator role, serve as mediators to assist parents and children in resolving the intrafamily conflicts underlying the problematic behavior. Communications during the process are confidential with only the terms of the agreement presented to the juvenile delinquency court judge. An evaluation of the first year of the program found that 85% of the minor delinquency cases brought to this program were resolved through mediation.[66]

Dispute resolution alternatives are valuable tools that juvenile delinquency courts can use in implementing ***Key Principle 6: Juvenile Delinquency Court Judges Should Ensure Their Systems Divert Cases to Alternative Systems Whenever Possible and Appropriate***. When the juvenile delinquency court and community work together to create community resources for dispute resolution, juvenile delinquency courts can conserve their scarce resources to use on the more serious cases. In addition to the community resources already described above, other resources that can be used for conducting dispute resolution alternative programs include community volunteers (such as the Better Business Bureau arbitration and mediation models) and students at local colleges of law.

H. INTERSTATE COMPACT FOR JUVENILES (ICJ) AND INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN (ICPC)

There are two interstate compacts that mandate interstate procedures in the juvenile delinquency court – the Interstate Compact for Juveniles (ICJ), and the Interstate Compact for the Placement of Children (ICPC). Compacts are agreements between two or more states that bind them to the compact's provisions. Compacts are subject to substantive principles of contract law and compacting states are bound to observe the terms of their agreements, even if those terms are inconsistent with other state laws. Compacts may not be unilaterally renounced by a member state, except as provided by the compacts themselves. Congress and the courts can compel compliance with the terms of interstate compacts, which is why compacts are considered the most effective means of ensuring interstate cooperation.

- **The Interstate Compact for Juveniles (ICJ)** – The ICJ was originally established in 1955. It is a multi-state agreement – a legal contract involving all 50 states, the District of Columbia, the Virgin Islands, and Guam – that provides a procedural means to regulate the movement across state lines of juveniles who are under court supervision. It is estimated that ICJ handles the transfer and supervision across state lines of more than 40,000 juvenile offenders and non-offenders annually.[67]

  The purpose of the ICJ is to address juveniles who are not under proper supervision and control, or who have absconded, escaped or runaway; and who are likely to endanger their own health, morals, and welfare, and the health, morals, and welfare of others. The ICJ achieves its purpose by providing an agreed system for:[66]

1. Cooperative supervision of delinquent juveniles on probation or parole;
2. The return, from one state to another, of delinquent juveniles who have escaped or absconded;
3. The return, from one state to another, of nondelinquent juveniles who have run away from home; and
4. Additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively.

In 2002, the Council of State Governments, in cooperation with the OJJDP, recommended that a revised Compact be endorsed by the states because the language and methods of the current Compact were:

> *...antiquated, its rules and procedures were not widely followed or understood, and its structure and overall management was powerless to meet the real needs of juveniles within the modern justice system. Not all states maintained identical contextual language, and rules of the current compact are problematic and potentially detrimental to juveniles themselves.*[69]

The primary changes in the newly proposed compact include establishing a staffed independent compact operating authority, a national governing commission appointed by participating state governors, rule making and sanction authority, a mandatory funding mechanism, and authority to compel standardized information.

- **The Interstate Compact for the Placement of Children (ICPC)**[71] – The second of the two compacts is the ICPC. It is the only statutory mechanism juvenile and family court judges and child protection agencies have to ensure protection and services to children who are placed across state lines for foster care or adoption.[72] The ICPC is a law that has been enacted verbatim by all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. It establishes orderly procedures for the interstate placement of children and fixes responsibility for those involved in placing the child.

  The ICPC covers children that courts have found to be abused, neglected and adjudicated delinquents who are placed in private residential treatment facilities. The ICPC operates through state compact administrators located in the state human services agency, and the Association of Administrators of the Interstate Compact for the Placement of Children (AAICPC), which is affiliated with the American Public Human Services Association (APHSA). The ICPC is administered by the Secretariat of the AAICPC and staffed by the APHSA.

- **Comparison of the ICJ and the ICPC** – In order to compare the ICPC and ICJ as it relates to the question of out-of-state confinement of adjudicated delinquents, it is necessary to know the intent of both Compacts and to analyze the relevant provisions of each. The Secretariat of the AAICPC has concluded the following:[73]

  - Under Article VI of ICPC, adjudicated delinquents can be placed in private institutions. Conceivably, they could also be placed in public institutions, but this is not the present practice, nor to the best of our knowledge is it being considered.
  - Article X of ICJ could be used to place adjudicated delinquents in public institutions, if appropriate steps were taken. The use of ICJ for placements in private institutions might be possible, but it would be more difficult.

  A summary of the points leading to the Secretariat's conclusion is as follows:

  - The ICJ does not provide for the out of state confinement of delinquent juveniles but does authorize "supplementary agreements" for this purpose. In order to use the ICJ for the out-of-state confinement of a delinquent youth, a supplementary agreement must be in place between the two states. In addition, consent of the parent or guardian is required in order to make an out-of-state placement through ICJ.
  - Article VI of the ICPC was designed to facilitate and directly authorize the out-of-state confinement of adjudicated delinquents in private institutions. No supplementary agreements are required. It does require a juvenile delinquency court hearing, at which time the court must make three findings: 1) equivalent facilities for the child are not available within the state; 2) placement into another state is in the best interests of the child; and, 3) the placement will not cause undue hardship. With these juvenile delinquency court findings, the placement can be made through ICPC without the consent of the parent or guardian.

It is important to note that unless the procedures and requirements of either the ICJ or ICPC are followed, the placement of a delinquent youth in another state will not be lawful. When placing a delinquent youth who is still subject to the jurisdiction of the juvenile delinquency court under the delinquency matter, it is essential that the court's authority be continued in force. If the juvenile is sent out-of-state improperly, this jurisdiction will be lost. As a result, the juvenile will no longer be subject to the compulsory jurisdiction of the state that made the adjudication and ordered the confinement and care. The receiving state will not have any compulsory jurisdiction. Consequently, the juvenile's presence in the institution will be on nothing more than a voluntary basis.

I. TITLE IV-E IN THE JUVENILE DELINQUENCY SYSTEM[74]

The Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272) amended the Social Security Act to authorize the title IV-E program to benefit children who have been subjected to abuse or neglect in their homes (42 U.S.C. 670 et seq.). The title IV-E program may also

appropriately serve certain youth in the juvenile delinquency system, specifically, those youth who meet the title IV-E eligibility criteria and who present with child protection or dependency issues in addition to their delinquent status. In many juvenile delinquency systems, these youth end up in the care of the child welfare system because of a need for residential treatment.

Title IV-E requires, as a condition of eligibility, that the responsibility for "placement and care" of a child be vested either with: 1) the State agency responsible for administering the title IV-E plan (State agency); or, 2) another public agency, which can be a juvenile delinquency court or a juvenile justice probation agency, that is authorized under State law to operate as a child placing agency and has a title IV-E agreement with the State or local agency responsible for title IV-E. A number of States (e.g., Texas, New Hampshire, Indiana, Ohio, California) have developed memoranda of understanding (MOUs) and protocols between State and county child welfare agencies, juvenile courts, and juvenile probation departments to ensure title IV-E protections for delinquents and status offenders.

If a juvenile delinquency court enters into an agreement with the State agency, they must comply with the title IV-E requirements that apply to all children in eligible foster care in order to claim title IV-E funds for costs incurred for the placement of eligible youth in approved or licensed facilities.[75] Requirements that must be met at the beginning of the hearing process on a new delinquency petition include:

Remaining at Home is Contrary to a Child's Welfare Determination – The youth must have been removed pursuant to a voluntary agreement entered into by their legal guardian or as the result of a judicial determination that continuation in the home would be contrary to their welfare; and, their families must meet Aid to Families with Dependent Children eligibility criteria related to income level and deprivation.

For title IV-E eligibility, this finding must be in the first order authorizing, even temporarily, the removal of a child from home, no matter where the child is placed at that time - whether in a secure or non-secure detention facility, a licensed foster family home, or a child care institution. **If this determination is not made in the first court ruling removing the child from the home, the child will be ineligible for title IV-E foster care maintenance payments for the duration of that stay in foster care.**

Reasonable Efforts to Prevent Removal Determination – The juvenile delinquency court must also make a finding that reasonable efforts were either made, or not required, to prevent the child's removal from home. It must be established that reasonable efforts were made prior to the child's removal from home, regardless of at what point in the case the State asks for a judicial reasonable efforts finding. The judicial determination must be made within 60 days of the child's removal from home. **If this determination is not made within the required time, the child will be ineligible for title IV-E foster care maintenance payments for the duration of that stay in foster care.**

Good practice requires that services provided to youth in the juvenile delinquency system should be administered in the least restrictive setting appropriate, at home with supervision when possible, and only in out-of-home care when in-home care is contrary to the child's welfare. For a delinquent youth to become eligible for title IV-E foster care maintenance funding, the youth must be placed in a licensed foster family home or a child care institution licensed by the State **and not operated primarily to detain adjudicated delinquent youth**. The definition of child care institution specifically excludes detention facilities, forestry camps, training schools, and any other facility operated primarily for the detention of children determined to be delinquent.[76]

In addition to the requirement for timely court orders with the findings related to "contrary to the welfare" and "reasonable efforts", there are protections that must be provided. These requirements apply to each child receiving foster care under the supervision of the State, those who are title IV-E eligible and those who are not. Therefore, these protections must be provided to virtually all children in foster care through the child protection agency, probation department, or a State-licensed child placing agency, including delinquent and status offenders. These requirements are intended to ensure that children do not enter out-of-home care unnecessarily, and that once in care they receive the services they need and help to prepare them to return home or to another permanent setting:

- **Case Plans** – Federal law requires that there be a written case plan that addresses such concerns as the appropriateness of the placement, the treatment and services the youth needs, meeting the youth's health and educational needs, and services needed to improve the conditions in the home. **Case plans must be prepared within 60 days of the time the youth enters care.**
- **Periodic Reviews** – A juvenile court or administrative review is required **at least every six months** to monitor compliance with the case plan, the necessity for and appropriateness of the placement, the progress made in improving the home, and when the youth is likely to return home or placed for adoption or legal guardianship.

- **A Permanency Hearing and Reasonable Efforts to Finalize a Permanency Plan** - The State agency must obtain a judicial determination that it made reasonable efforts to finalize the permanency plan for delinquent and status offenders **within twelve months from the date the child is considered to have entered foster care.**[77] After the first finding of reasonable efforts to finalize the permanency plan, title IV-E requires further determinations at least once every twelve months provided the child is in eligible foster care.

  Permanency planning is just as essential for delinquent youth as it is for children entering care for reasons of abuse and neglect. The permanency hearing should be used to make permanency decisions based on the individual circumstances of the case, including a decision about the appropriateness of initiating termination of parental rights. Title IV-E requires the agency and court to document an individual, compelling reason for establishing a permanency plan other than reunification, adoption, legal guardianship, or placement with a fit and willing relative. Through this judicial determination at the permanency hearing, the findings of reasonable efforts to reunify the family and reasonable efforts to finalize alternate permanent plans are consolidated.[78]

- **Termination of Parental Rights (TPR) Filing Requirement** – Delinquent and status offenders in foster care are not exempt from title IV-E's TPR requirements. The State agency or probation department must file a petition to terminate parental rights for delinquent and status offenders who have been in eligible foster care for 15 of the most recent 22 months, unless it can document an individual, compelling reason for establishing a permanency plan other than reunification, adoption, legal guardianship, or placement with a fit and willing relative.
- **Notice and Opportunity to be Heard Requirements** – Title IV-E requires that the foster parents (if any) of a child, and any pre-adoptive parents or relatives providing care for the child be provided with notice of, and an opportunity to be heard, in any review or hearing to be held with respect to the child. This applies to delinquent and status offenders when these youth are in eligible foster care.

The protections for youth required under the title IV-E program are a good basis for establishing sound delinquency practice, and some juvenile courts are routinely functioning at that level of excellence. For other courts, compliance with the required judicial oversight and necessary documentation will require a major change in practice. In order for juvenile delinquency courts with title IV-E agreements to ensure compliance with the "contrary to the welfare" and "reasonable efforts" determinations, they generally must either make these determinations at the detention hearing for every new delinquency petition, or institute a "red-flag" system that identifies any youth who may be eligible for title IV-E funding at the initial or detention hearing on a new delinquency petition.[79] It is incumbent upon the court to make the required determinations in a clear and definitive manner, and that they be so reflected in the court orders.

The Children's Bureau monitors federally-assisted State child welfare programs through Child and Family Services Reviews (CFSRs) and Title IV-E Foster Care Eligibility Reviews.[80] The CFSR is a results-focused approach to monitoring that measures State compliance with the State plan requirements under titles IV-B[81] and IV-E of the Social Security Act. State child welfare programs are reviewed in two areas: (1) outcomes for children and families served by the child welfare system; and, (2) systemic factors that directly affect the State's capacity to deliver services leading to improved outcomes. Systemic factors include whether a State has in place, and is successfully operating, systems for reviewing the cases of children in foster care at required intervals, training child welfare staff, licensing foster care providers, and recruiting prospective adoptive parents. As a part of the CFSR, the on-site review team interviews juvenile and family court judges, as stakeholders, in three sites in each State.

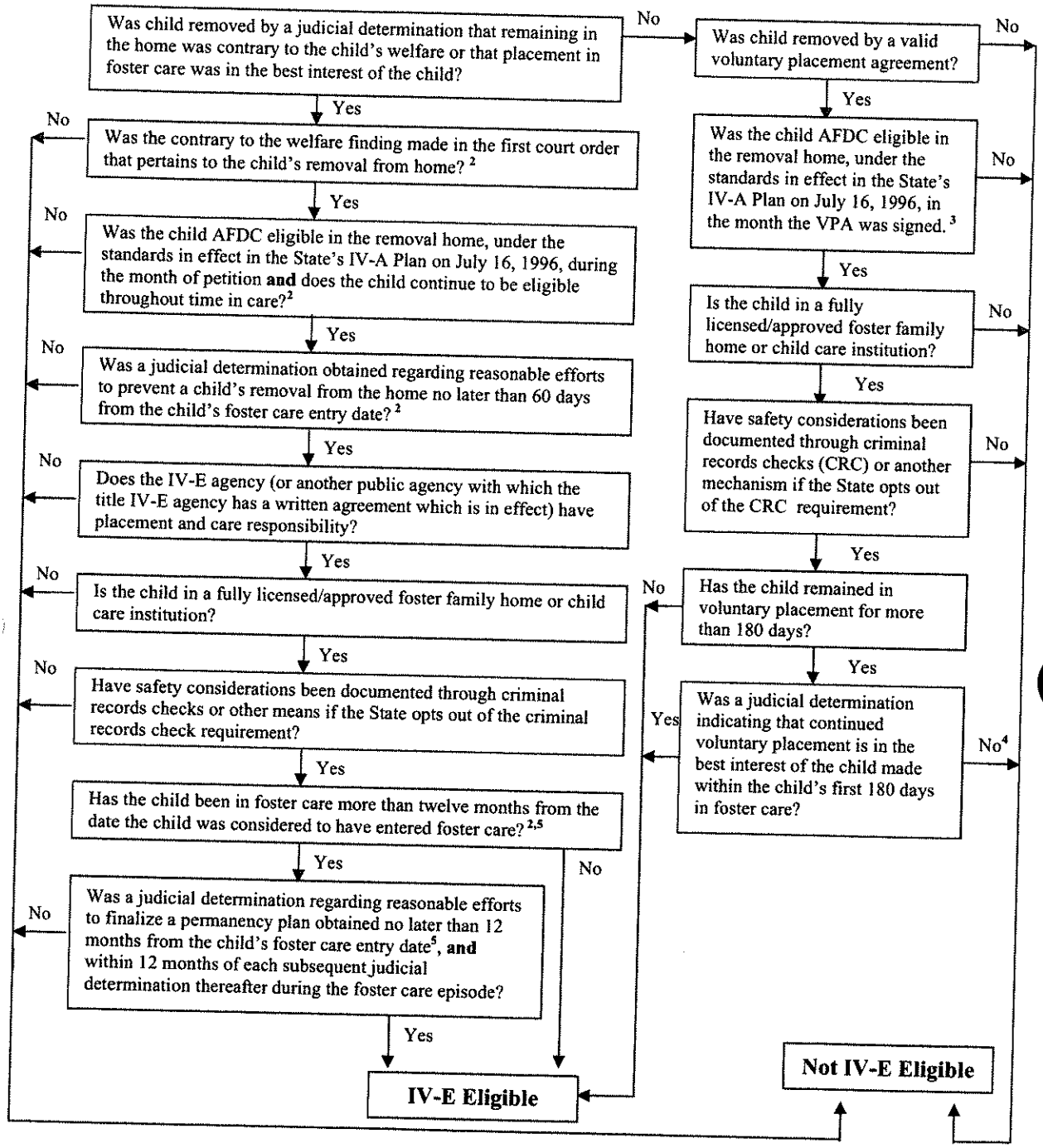
The Title IV-E Foster Care Eligibility Reviews focus on whether a child meets the statutory eligibility requirements for the program and is in a licensed placement where safety requirements have been met. This two-stage review of the Federal foster care program is conducted every three years. During the first stage, 80 cases are reviewed. A disallowance is taken for all cases that fail to meet the requirements, which includes maintenance payments and administrative costs associated with each error case. If a State fails more than a specific percentage of cases, the State is out of compliance with the Federal foster care eligibility requirements. As a condition of non-compliance,

> the State is required to complete a program improvement plan (PIP) and undergo a second review. After the secondary review, if the State is still not in compliance, a second disallowance is assessed based on the total population of children in foster care.[82]

Title IV-E is complex in its structure, and it can be difficult to deal with its accountability requirements and potential costly disallowances. It is important that delinquency courts have a thorough understanding of the law and regulations related to title IV-E, before they consider entering into an interagency agreement with the State agency responsible for administering the State title IV-E plan. In addition to reviewing the summary information on title IV-E provided in Appendix J, courts should consult the Child Welfare Policy Manual posted on the Children's Bureau website[83], HHS Regional Office staff[84], and experts in the field.[85]

A chart of requirements for eligibility for title IV-E funding follows.

Title IV-E Foster Care Eligibility Chart[1]



[1] Title IV-E foster care eligibility requirements have changed over time. This chart will be accurate and most useful for cases to which the current regulations, which were effective March 27, 2000, apply.
[2] For children who entered care on or after March 27, 2000.
[3] The AFDC home may be different for States under the Ninth Circuit Court.
[4] If *No*, the child is eligible for title IV-E payments made in the first 180 days; eligibility ends on the 181st day in foster care.
[5] The date that a child is considered to have entered foster care is the earlier of a judicial finding of abuse or neglect or 60 days from the date the child is removed from the home.

J. SPECIALTY DOCKETS[86]

The final general issue addressed in this chapter is the juvenile delinquency court's use of specialty dockets. Specialty dockets are designed to handle a specific type of offense or offender and are relatively new to the juvenile delinquency court. The specialty docket concept started in the adult system with drug courts.

Criminal drug courts were developed because adult substance abusers were frequent repeat offenders, had well-defined treatment needs and treatment services, and the traditional correctional system was having minimal impact. Offenders were not receiving treatment services in a timely way. If they went to the service, they did not stay involved long enough to correct their problem. Although relapses were frequent, the offender had become disconnected from the system when the relapse occurred with no immediate help available. Criminal drug courts were created due to the belief that a system that included trained court staff, including the judge, with a particular interest in the problem issue, combined with small caseloads, frequent hearings, immediate responses, family involvement, and integrated and available treatment services could change the cycle of recidivism. Between 1989 and 2000, more than 1,000 individual criminal and juvenile courts had either implemented or were planning to implement a drug court to address substance abuse and drug-related crime.[87]

When the success of adult drug courts became well-documented, the concept moved into the juvenile system as a specialty docket in the mid-1990s, first for substance abusers and then for youth with significant mental health issues.[88] Juvenile delinquency courts that have implemented specialty dockets believe that the success of the approach has been transferred from the adult population to the juvenile population, with modifications to the special circumstances and needs of youth and their families that are different from adult criminal offenders.

Regardless of the type of youth served, specialty dockets share common elements:

- Early screening of individuals entering the juvenile delinquency court system with in-depth assessments if indicated by the initial screen;
- If the assessment indicates the youth exhibits the specific problem issue to a significant degree, the youth is placed on the specialty docket with a team that is well-trained both in adolescent development and the specialty issue being addressed by the docket. The team includes the judge, prosecutor, counsel for the youth, probation officer, school liaison, a specialty professional who serves as the case manager of treatment services, and a program evaluator;
- Development of a comprehensive, culturally competent, accessible, and immediately available program of treatment and other core services that use the least restrictive setting. This ensures that the program has the capacity to provide adequate services to address the multifaceted issues faced by the youth and his or her family. The treatment plan is approved by the juvenile delinquency court judge and ordered as part of the disposition;
- Dispositions focus on appropriate treatment issues and engaging the family in the treatment plan. The plan, which includes the youth and family, juvenile delinquency court services, treatment services, and school system, is closely coordinated;
- Ongoing monitoring of the youth's progress in the program through frequent and random checks (including urinalysis for the substance abuser), continuous supervision, and proactive case management; and
- Juvenile delinquency court review hearings are frequently held with immediate responses to noncompliance, as well as providing encouragement and accolades.

Most specialty docket professionals agree that successful specialty dockets are consistent, predictable, immediate, and use graduated responses, both sanctions and incentives, to promote positive behavioral change.

Juvenile delinquency courts should consider developing specialty dockets when their current system has a higher than average recidivism rate for youth with specialized treatment needs. Juvenile delinquency courts need to show caution when setting up specialty dockets because they can be resource intensive. Juvenile delinquency resource intensive specialty dockets should be closely evaluated to ensure that improved outcomes are significant enough to justify any increased expense.[89]

Endnotes

[1] Snyder, H., & Sickmund, M. (1999). *Juvenile Offenders and Victims: 1999 National Report.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

[2] Ibid.

[3] National Council of Juvenile and Family Court Judges. (1989). *Judicial Authority and Responsibility: 18 Recommendations on Issues in Delinquency and Abuse/Neglect Dispositions.* Reno, NV: Author.

[4] National Council of Juvenile and Family Court Judges. (1984). *The Juvenile Court and Serious Offenders.* Reno, NV: Author.

[5] Supra note 1.

[6] As of 2002, in 35 states juveniles are defined as those individuals who have not yet turned 18; in two states the age limit is not having reached the 17th birthday; in 10 states the age limit is the 16th birthday; and in three states the age limit is the 15th birthday. Mitchell, D. B., & Kropf, S. E. (2002). Youth violence: Response of the judiciary. In G. S. Katzmann (Ed.), *Securing Our Children's Future: New Approaches To Juvenile Justice and Youth Violence.* Washington, DC: Brookings Institution Press and Governance Institute.

[7] Refer to the Appendix for a listing of state-by-state Age of Majority.

[8] All states have a minimum voting age of 18; 45 states establish 18 as the minimum age for jury service; and 47 states establish 18 as the minimum age for marriage without parental or judicial consent.

[9] Edwards, L. P. (1992). The juvenile court and the role of the juvenile court judge. *Juvenile and Family Court Journal, 43*(2).

[10] The juvenile delinquency courts in the State of Ohio are examples of juvenile delinquency courts with traffic jurisdiction. Demonstrating the large volume of juvenile traffic offenses, Hamilton County (Cincinnati), with a population of approximately 900,000, handled 6,859 juvenile traffic petitions in 2001 as compared with 18,801 delinquency petitions. Toledo, a city with a population of approximately 455,000, handled 4,772 traffic petitions in 2001 as compared with 7,205 delinquency petitions.

[11] National Center for Statistical Analysis. (2003). *Youth Fatal Crash and Alcohol Facts:*

- In 2001, 9,024 people of all ages died in crashes where a young driver was involved; while 59% of those fatalities were 15 through 20 years old, thousands of others of all other ages, also died.
- More than 75% of the people who died in crashes where a young driver was drinking were 15 through 20 years old.
- Passengers of all ages account for 25% of motor vehicle fatalities; but passengers account for 37% of youth motor vehicle fatalities. The six years from 15 through 20 years of age account for more than 20% of all passenger fatalities.
- About twice as many young people die in weekend crashes, per day, as on weekdays. Approximately three times as many young people die in alcohol-related crashes, per day, on weekends than weekdays.
- More than 60% of youth alcohol-related crash fatalities occurred in rural areas.
- In 2000, about 7% of licensed drivers are ages 15 through 20, but this age group accounts for approximately 15% of drivers involved in fatal crashes and 13% of drivers involved in fatal crashes who had been drinking.
- Per mile driven, 16-year-old drivers had the highest rate of involvement in fatal crashes in 2000.

[12] Between 1992 and 1995, 40 states and the District of Columbia changed their laws to restrict juvenile delinquency court jurisdiction in the most serious cases in a variety of ways. The David and Lucile Packard Foundation. (1996). *The Future of Children: The Juvenile Court, 6*(3), 9.

By 2002, the National Center for Juvenile Justice reported:

- All states have a mechanism to prosecute juveniles in criminal court, and every state allows juveniles under the age of 16 to be tried in criminal court for certain offenses.
- 46 states have discretionary and/or mandatory judicial waiver.
- 15 states have prosecutorial waiver.
- 29 states have mandatory exclusions from juvenile delinquency court.
- 25 states have reverse waiver provisions from criminal court to juvenile delinquency court.
- 23 states have no minimum age for juvenile waiver.
- Two states (Kansas and Vermont) have a minimum age of 10 and three states (Colorado, Montana and Missouri) have a minimum age of 12.

[13] The National District Attorneys Association policy: *For serious, violent or habitual offenders, where factually appropriate, prosecutors should be given the discretion to file such cases in adult court without judicial intervention.*

[14] Each year more than 2,000 youthful offenders are released from the California Youth Authority where the majority of youth are committed for violent crimes. The recidivism rate of these parolees is 91%. Byrnes, M., Macallair, D., & Shorter, A. D. (2002). *Aftercare as Afterthought: Reentry and the California Youth Authority.* San Francisco, CA: Center on Juvenile and Criminal Justice.

Re-referral and arrest rates for youth released from state juvenile justice programs in Ohio measured nine months after release is 46% and in Texas, measured 12 months after release is 47%; re-commitment or incarceration rates for youth released from state juvenile justice programs in Texas measured 36 months after release is 49%. Bureau of Data and Research of the Florida Department of Juvenile Justice. (1999). National Comparisons from State Recidivism Studies. [Management Report Number 99-13.]

[15] National Council of Juvenile and Family Court Judges. (2004). *Reconnecting: The Role of the Juvenile Court in Reentry.* Reno, NV: Author.

[16] It is important to note that such activities cannot be supported with federal funds due to the requirements of 18 U.S.C. § 1913.

[17] According to the National Center for Juvenile Justice, by 1998, 47 states authorized or required law enforcement agencies and courts to fingerprint certain arrested juveniles.

[18] According to the National Center for Juvenile Justice, by 1998, 46 states had laws permitting or requiring photographs of alleged delinquent juveniles to be taken with their fingerprints at the time of arrest.

[19] According to a February 2005 report by Smith Alling Lane, a corporation that monitors DNA activities, 32 states have passed state DNA statutes that allow for collection of DNA material for certain adjudicated juvenile delinquents. In some states, all felonies are included; in others, specific felonies such as sex offending are singled out for inclusion.

[20] As of the end of the 2000 legislative session, 28 states required such registration. Szymanski, L. (2001). *Megan's Law: Juvenile Sex Offender Registration Age Limits.* [NCJJ Snapshot 6(6).] Pittsburgh, PA: National Center for Juvenile Justice.

[21] At the end of the 1999 legislative session, 13 states had statutes or court rules that permitted or required juvenile delinquency hearings to be open to the general public; 21 states opened delinquency hearings to the public but placed certain age and offense requirements on the openness of the hearing; and 17 states had statutes or court rules that generally closed delinquency hearings to the public. Szymanski, L. (2000). *Confidentiality of Juvenile Delinquency Hearings.* [NCJJ Snapshot 5(9).] Pittsburgh, PA: National Center for Juvenile Justice.

[22] For examples of Memoranda of Understanding, as well as additional information on this topic, refer to: Jones, B. E. (2002). *In Brief: Information Sharing and Confidentiality, Volume One.* Portland, OR: Reclaiming Futures.

[23] Significant portions of this section have been excerpted from: Jones, B. E. (2002). *In Brief: Information Sharing and Confidentiality, Volume One.* Portland, OR: Reclaiming Futures.

[24] English, A., & Tereszkiewicz, L. (1988). *School-Based Health Clinics: Legal Issues 33-34.* San Francisco, CA: National Center for Youth Law and Center for Population Options. An additional resource regarding information-sharing is the Global Justice Information Sharing Initiative: www.it.ojp.gov/global.

[25] Supra note 21.

[26] As of 2000, in nine states, juvenile legal records were publicly released without qualifying restrictions. In 15 states, juvenile records were open to the public if the juvenile in question had committed a specified offense regardless of age; and in 14 states, juvenile records were only open to public scrutiny if the juvenile committed a specified offense and is of a certain age. Szymanski, L. (2000). *Public Juvenile Court Records.* [NCJJ Snapshot 5(10).] Pittsburgh, PA: National Center for Juvenile Justice.

[27] Office of Juvenile Justice and Delinquency Prevention [NCJRS]. *Juvenile Justice Reform Initiatives in the States 1994-1996.* Online. Available at http://www.ojjdp.ncjrs.org/pubs/reform/ch2_i.html.

[28] Twenty-four states have provisions that certain records can never be sealed or expunged; 17 states have provisions for previously sealed records to be unsealed; 30 jurisdictions allow specified parties access to sealed or expunged records. Szymanski, L. (2000). *Sealing/Expungement/Destruction Of Juvenile Court Records: What Is The Court Process?* [NCJJ Snapshot 4(11).] Pittsburgh, PA: National Center for Juvenile Justice.

[29] National Council of Juvenile and Family Court Judges. (1984). The juvenile court and serious offenders: 38 recommendations. *Juvenile & Family Court Journal (Special Issue).*

[30] Grisso, T., & Schwartz, R. G. (Eds.). (2000). *Youth on Trial: A Developmental Perspective on Juvenile Justice.* Chicago, IL: University of Chicago Press.

[31] See Chapter IV, Section C (1), for details regarding how such a system can work and preserve prosecutorial review, informal diversion, and one youth-one judge.

[32] Resources for docketing and case management and workload include:

- The guide and toolkit *Building a Better Court: A Guide to Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases* published in 2004 by the American Bar Association Center on Children and the Law, The National Center for State Courts, and the National Council of Juvenile and Family Court Judges.
- Maricopa County Juvenile Court in Phoenix, Arizona, has one of the most sophisticated computerized docketing and management information systems in the country. Their system manages not only court dockets but also prosecutor and public defender schedules so that computerized scheduling of cases can ensure that attorneys are not double-booked.
- See Chapter XII, Section D, Caseloads And Workloads.

[33] Teplin, L. A., Abram, K. M., McClelland, G. M., Dulcan, M. K., & Mericle, A. A. (2002). Psychiatric disorders in youth in juvenile detention. *Archives of General Psychiatry, 59,* 1133-1143.

[34] Wiebush, R., Freitag, R., & Baird, C. (2001). *Preventing Delinquency Through Improved Child Protection Services.* [OJJDP Juvenile Justice Bulletin (July).] Washington, D.C. Office of Juvenile Justice and Delinquency Prevention. Also see references in Chapter II, Section A for additional information on research on this topic.

[35] Additional resources regarding mental health screening in the juvenile justice system include:

- Grisso, T., Vincent, G., & Seagrave, D. (2005). *Mental Health Screening And Assessment In Juvenile Justice.* New York, NY: Guilford Press.
- Grisso, T., & Underwood, L. (2004). *Screening And Assessing Mental Health And Substance Use Disorders Among Youth In The Juvenile Justice System: A Resource Guide For Practitioners.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention.
- The National Center for Mental Health and Juvenile Justice website contains up-to-date research and policy regarding meeting the mental health needs of youth in the juvenile justice system: http://www.ncmhjj.com/
- Grisso, T. (2004). *Double Jeopardy: Adolescent Offenders With Mental Disorders.* Chicago, IL: University of Chicago Press.
- Connecticut Center for Effective Practices at: http://www.chdi.org/index.html.
- The National Child Traumatic Stress Network at: http://www.nctsnet.org.
- Wolpaw, J. M., & Ford, J. D. (2004). *Assessing Exposure to Psychological Trauma and Post-Traumatic Stress in the Juvenile Justice Population.* Report from the National Child Traumatic Stress Network / Juvenile Justice Working Group.
- Hennessey, M., Ford, J. D., Mahoney, K., Ko, S. J., & Siegfried, C. B. (2004). *Trauma Among Girls in the Juvenile Justice System.* Report from the National Child Traumatic Stress Network / Juvenile Justice Working Group.

[36] National Council of Juvenile and Family Court Judges. (2002). *Structured Decision Making for Graduated Sanctions.* [Training and Technical Assistance Program 1(2).] Reno, NV: Juvenile Sanctions Center / Author.

[37] A youth and family needs/strengths assessment can be found in the National Council of Juvenile and Family Court Judges' Juvenile Sanctions Center (2002) *Graduated Sanctions for Juvenile Offenders: A Program Model and Planning Guide.* The Search Institute has identified 40 developmental assets that can positively influence choices made by adolescents. Their website is http://www.search-institute.org/

[38] See Chapter I, Section B, *The Goals Of A Juvenile Delinquency Court Of Excellence.*

[39] Substantial portions of this section come from the National Council of Juvenile and Family Court Judges' Juvenile Sanctions Center (2002) *Graduated Sanctions for Juvenile Offenders: A Program Model and Planning Guide.* [See Wiebush, R., Chapter 5: A Model Structured Decision Making System for Graduated Sanctions.] Portions of this section also come from: National Center for Juvenile Justice. (2002). *Desktop Guide to Good Juvenile Probation Practice.* Pittsburgh, PA: Author.

[40] Ibid.

[41] Gaes, G. G. (2002). *Managing the Juvenile Offender Population Through Classification and Programming.* In G. S. Katzmann (Ed.), *Securing Our Children's Future: New Approaches To Juvenile Justice and Youth Violence.* Washington, DC: Brookings Institution Press and Governance Institute.

[42] In 2000, although African American youth between the ages of 10 and 17 constituted only 15% of the population in the United States, they accounted for:

- 29% of court referrals;
- 32% of cases handled formally in the juvenile court;
- 35% of juveniles detained in delinquency cases (down from 41% in 1997);
- 33% of juveniles placed as a court disposition; and
- 43% of juveniles transferred to adult criminal court (down from 52% in 1997).

Stahl, A., Finnegan, T., & Kang, W. (2002). *Easy Access to Juvenile Court Statistics: 1985 – 2000.* National Center for Juvenile Justice data archives. Online. Available at: http://ojjdp.ncjrs.org/ojstatbb/ezajcs/.

In 2001-2002, in Dade County (Miami), Florida:

- 70% of the population and 45% of delinquency referrals involved whites. Percentages *declined* with further penetration into the juvenile justice system with transfers to adult courts being 35% white.

- 57% of the population and 40% of the delinquency referrals involved Hispanics. Percentages *declined* with further penetration into the juvenile justice system with transfers to adult courts being 34% Hispanic.
- 20% of the population and 55% of the delinquency referrals involved blacks. Percentages *increased* with further penetration into the juvenile justice system with transfers to adult courts being 65% black.

In 2000, Latino youth were over represented in detention facilities at a rate nearly one-and-a-half times their percentage in the at-risk juvenile population, and the rate of Latino youth overrepresentation in corrections facilities is almost twice the percentage of the population of at-risk Latino youth. Cox, J. A., & Bell, J. (2001). Addressing disproportionate representation of youth of color in the juvenile justice system. *Journal of the Center for Families, Children & the Courts, 3*, 31-43.

In 2000 in the State of Alaska, Native American youth were overrepresented at two points in the juvenile justice system (requests for pre-adjudicatory detention and more restrictive supervision levels); and African American youth were overrepresented at five points in the system (probation violations, secure detention, probation report outcomes, adjudications, and more restrictive supervision levels). State of Alaska Department of Health and Social Services, Division of Juvenile Justice. (2001). *Analysis of Minority Youth Representation.*

[43] Juvenile Justice and Delinquency Prevention Amendments (1992). Note that in the 2002 reauthorization, disproportionate minority confinement tracking was changed to required tracking of disproportionate minority contact throughout the juvenile delinquency system.

[44] Cox, J. A., & Bell, J. (2001). Addressing disproportionate representation of youth of color in the juvenile justice system. *Journal of the Center for Families, Children & the Courts, 3*, 31-43.

[45] National Council of Juvenile and Family Court Judges' Juvenile Sanctions Center (2002) *Graduated Sanctions for Juvenile Offenders: A Program Model and Planning Guide.* [See Lindsay, M. Chapter 4: Issues and Programs for Special Needs Populations.]

[46] Pope, C., & Feyerherm, W. (1991). *Minorities And The Juvenile Justice System.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention. Pope, C., and Feyerherm, W. (1990). Minority status and juvenile justice processing: An assessment of the research literature. *Criminal Justice Abstracts, 22*(2), 327-335 [Part I] and *22*(3), 527-542 [Part II].

[47] In 2001, the State of Alaska found that some factors leading to disproportionate minority contact were outside of their jurisdiction: socioeconomics, disparate service delivery to minorities in other systems, media portrayals of minorities, decision-making in schools, and family systems devastated by dysfunction. They also found two major decision points where significant minority overrepresentation existed that were outside the jurisdiction of the Division of Juvenile Justice – referrals and referral requests for pre-adjudicatory detention. However, they found six major decision points where significant minority overrepresentation existed that were primarily within their jurisdiction. State of Alaska Department of Health and Social Services, Division of Juvenile Justice. (2001). *Analysis of Minority Youth Representation.*

[48] For more information about JDAI: www.aecf.org/initiatives/jdai.

[49] National Mental Health Association. (2000). *Mental Health and Youth of Color in the Juvenile Justice System.* www.nmha.org/children/justjuv/colorjj.cfm.

[50] Cross, T. L., Bazron, B. J., Dennis, K. W., & Issacs, M. R. (1989). *Toward a Culturally Competent System of Care.* Washington, DC: CASSP Technical Assistance Center.

[51] Gibbs, J., & Huang, L. (1998). *Children of Color: Psychological Interventions with Culturally Diverse Youth.* San Francisco, CA: Jossey-Bass.

[52] Supra note 43.

[53] Supra note 43.

[54] National Council of Juvenile and Family Court Judges. (1990). *Minority Youth in the Juvenile Justice System: A Judicial Response.* [Volume 41(3A).] Reno, NV: Author.

[55] Supra note 44.

[56] Brooks, K., Adams, K. J., Rose, J. (2001). *The Special Needs of Youth In the Juvenile Justice System: Implications for Effective Practice.* Covington, KY: Children's Law Center.

[57] Supra note 43.

[58] Supra note 43.

[59] One JDAI site, Santa Cruz, California, with 33% of the general population being Latino, reduced the Latino population in secure detention from 64% in 1997-98, to 53% in 1999, and to 46% in 2000. (Supra note 44.)

[60] Resources used in this section include:

- Juvenile Division of the Lucas County Court of Common Pleas. (2001). *2001 Annual Report.* Toledo, OH: Author.
- The David and Lucile Packard Foundation. (1996). *The Future of Children: The Juvenile Court*, 6(3).
- National Council of Juvenile and Family Court Judges Juvenile Sanctions Center (2002) *Graduated Sanctions for Juvenile Offenders: A Program Model and Planning Guide.* [See Geis, S., & Cohen, M. Chapter 3: Promising and Proven Programs for Graduated Sanctions.]

[61] A resource for information on family group conferencing is: Gunderson, K., Cahn, K., & Wirth, J. (2003). The Washington state long-term outcome study. *Protecting Children - Promising Results, Potential New Directions: International FGDM Research and Evaluation in Child Welfare, 18*(1-2).

[62] For more information, contact the Cook County State's Attorney's Office, Juvenile Justice Bureau, 1100 South Hamilton, Chicago, Illinois 60612 [phone (312) 433-7000].

[63] For more information contact the Marion County Superior Court, Juvenile Division. See "Resources" in the Appendix for contact information.

[64] National Council of Juvenile and Family Court Judges' Juvenile Sanctions Center (2003) *Graduated Sanctions for Juvenile Offenders: A Program Model and Planning Guide.*

[65] For more information, contact the Lucas County Juvenile Court. See "Resources" in the Appendix for contact information.

[66] D'Amico, S. (1986). The development and evaluation of a court-connected juvenile mediation program. *Juvenile and Family Court Journal, 37*, 7-13.

[67] Office of Juvenile Justice and Delinquency Prevention (2001). *Interstate Compact on Juveniles.* [OJJDP Annual Report 2000.]

[68] Excerpted from the Interstate Compact for Juveniles, Article I – Findings and Purpose.

[69] The Council of State Governments' website at www.csg.org.

[70] As of September 2004, 21 states had adopted the new compact and it had been introduced in four additional states. (Supra note 69).

[71] Substantial portions of this section were excerpted from *The Interstate Compact for the Placement of Children: A Manual and Instructional Guide for Juvenile and Family Court Judges.* [NCJFCJ and APHSA. (2001)].

[72] Foster care includes relative placement, foster home placement, and group and residential care placement of a child in the care of a public or private child placing agency.

[73] Supra note 70.

[74] This section includes a summary of the full text on title IV-E in Appendix J. The title IV-E program is administered at the Federal level by the Children's Bureau at the U.S. Department of Health and Human Services (HHS), Washington, DC. Detailed information about title IV-E can be found on the Children's Bureau web site at http://www.acf.hhs.gov/programs/cb. Additional resources on this topic include the following NCJFCJ publications:

- *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse & Neglect Cases* (1995)
- *ADOPTION AND PERMANENCY GUIDELINES:* Improving Court Practice in Child Abuse and Neglect Cases (2000)
- *Training Guide: Resource Guidelines, Adoption And Permanency Guidelines, And Adoption And Safe Families Act* (2002)

[75] Title IV-E maintenance funds are meant to cover a portion of states' costs for food, shelter, clothing, daily supervision, school supplies, general incidentals, liability insurance for the child, and travel to the child's homes for visits. States set the basic rates they pay foster parents and childcare institutions for these maintenance costs. To determine the amount of reimbursement states receive for a placement under title IV-E, a state's payment rate for that placement (minus the costs not allowable under title IV-E) is multiplied by its title IV-E matching rate, which is the same as its Medicaid matching rate and based on per capita income.

[76] See 42 U.S.C. section 672.

[77] A child is considered to have entered foster care either 60 days following the child's "removal from home" or on the day that the court found that the child was abused or neglected, whichever comes first. See 45 C.F.R. section 1355.20.

[78] See 65 FR 4052.

[79] The law specifically prohibits the court practice of making *"nunc pro tunc"* entries, which literally means "now for then" or making a determination at a later stage of the court process intended to be effective at an earlier stage in the court process. See 45 C.F.R. section 1356.21(d)(2).

[80] See 65 FR 4020 (January 25, 2000).

[81] The title IV-B child welfare services program provides Federal funds in the form of formula grants to States and Tribes to establish, extend and strengthen child welfare services.

[82] Detailed information about the title IV-E foster care eligibility reviews, in a Title IV-E Foster Care Eligibility Review Guide issued to the State agencies administering title IV-E, is available at http://www.acf.hhs.gov/programs/cb/laws/im/im0111a1.htm.

[83] See an easy-to-use question and answer format under title IV-E in the Child Welfare Policy Manual under Laws/Policies on http://www.acf.hhs.gov/programs/cb.

[84] A list of Regional Offices can be found at http://www.acf.hhs.gov/index.html

[85] See e.g., Griffin, P., & Halemba, G. (2003). *The Ohio Bulletin: Federal Placement Assistance Funding for Delinquency Services.* Pittsburgh, PA: National Center for Juvenile Justice; and Juvenile Sanctions Center. (2004). *Using Federal Title IV-E Money to Expand Sanctions and Services for Juvenile Offenders.* Reno, NV: National Council of Juvenile and Family Court Judges.

[86] Information in this section was drawn from: Office of Juvenile Justice and Delinquency Prevention. (2001). *Juvenile Drug Court Programs.* [JAIBG Bulletin.] Washington, DC: Author; Office of Justice Programs. (1999). *Juvenile and Family Drug Courts: An Overview.* [OJP Drug Court Clearinghouse and Technical Assistance Project.] Washington, DC: Author; and Arredondo, D. E., Kumli, K., Soto, L., Colin, E., Ornellas, J., Davilla, R. J., Edwards, L. P., & Hyman, E. M. (2001). Juvenile mental health court: Rationale and protocols. *Juvenile and Family Court Journal,* 1-19.

[87] Bureau of Justice Assistance. (2003). *Juvenile Drug Courts: Strategies in Practice.* Washington, DC: U.S. Department of Justice. [NCJ 197866.]

[88] National Center for Juvenile Justice data through 2000 indicates the number of **drug cases** handled by the juvenile delinquency courts increased by more than 200% between 1991 and 2000. Stahl, A., Finnegan, T., & Kang, W. (2002). *Easy Access to Juvenile Court Statistics.*

A major longitudinal study noted that delinquent behavior and substance abuse clearly overlap regardless of age, gender, or ethnicity, with approximately 50% of juvenile offenders having diagnosable substance use disorders in need of treatment. National Council of Juvenile and Family Court Judges' Juvenile Sanctions Center (2003) *Graduated Sanctions for Juvenile Offenders: A Program Model and Planning Guide.* [See Lindsay, M. Chapter 4: Issues and Programs for Special Needs Populations.]

A 2002 federally funded study of youth in Cook County juvenile detention (Chicago, Illinois) found that two-thirds of the teens tested positive for drugs. Teplin, L. A., Abram, K. M., McClelland, G. M., Dulcan, M. K., & Mericle, A. A. (2002). Psychiatric disorders in youth in juvenile detention. *Archives of General Psychiatry, 59,* 1133-1143. As of 2001, more than 140 juvenile drug courts had been established and more than 125 were being planned.

A very conservative research estimate states that 20% of juvenile offenders are **mentally ill**; a study in Santa Clara County(San Jose), California found that on a specific day, 215 of 301 youth detained in secure detention were in the county's mental health services database and half had conditions that generally require medication. (*Juvenile Court Targets Mental Illness,* San Jose Mercury News, February 24, 2001).

Estimates of less serious illness are in the range of 40% to 70%. Pumariega, A. J., Atkins, D. L., Rogers, K., Montgomery, L., Nybro, C., Caesar, R., & Millus, D. (1999). Mental health and incarcerated youth II: Service utilization. *Journal of Child and Family Studies, 8,* 205–215. A Cook County mental health study found that nearly two-thirds of boys and nearly three-quarters of girls detained in the Chicago juvenile facility had at least one psychiatric disorder. Teplin, L. A., Abram, K. M., McClelland, G. M., Dulcan, M. K., & Mericle, A. A. (2002). Psychiatric disorders in youth in juvenile detention. *Archives of General Psychiatry,* 59, 1133-1143.

[89] The juvenile mental health court in Santa Clara County (San Jose), California was established through the realignment of existing resources and did not require significant new financial resources or personnel for its operation. In six years, Milwaukee, Wisconsin reduced the average cost per mentally ill juvenile offender from more than $6,000 per month to less than $3,200. Arredondo, D. E., Kumli, K., Soto, L., Colin, E., Ornellas, J., Davilla, R. J. Jr., Edwards, L. P., & Hyman, E. M. (2001). Juvenile mental health court: Rationale and protocols. *Juvenile and Family Court Journal,* 1-19.

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The *JUVENILE DELINQUENCY GUIDELINES* is intended to be used by courts and other juvenile delinquency system stakeholders to assist their efforts to improve practice. The *GUIDELINES* is aspirational - they focus on what should be as opposed to what is. Every effort has been made to make the *GUIDELINES* practical and usable, and to ground recommendations in the most current research and promising practices available at the time of development.

Some jurisdictions are already following many of the recommendations. Some jurisdictions may find it extraordinarily challenging to follow the recommendations. Regardless of jurisdictional status and resources, it is hoped that the *GUIDELINES* will provide a common vision and motivational framework for those working toward an improved juvenile delinquency system.

As jurisdictions strive to implement the *GUIDELINES* with training and technical assistance from the NCJFCJ, juvenile delinquency system practitioners from all situations - urban, rural, suburban, and with varying degrees of resources - will be able to create and share successful implementation methods.

This chapter examines the initial juvenile delinquency court process, beginning when the juvenile delinquency court is presented with a written allegation that a youth has violated the law and ending with the setting of the first juvenile delinquency court hearing. The first hearing is either the detention hearing, if the youth is detained, or the initial hearing, if the youth is summoned to juvenile delinquency court.

The chapter also extensively discusses alternatives to handling cases through the formal delinquency system and alternatives to placing youth in detention. Although fewer violent and dangerous crimes are being committed by youth, more youth are being referred to juvenile delinquency courts for drugs, domestic violence, and other problem behaviors that can be handled more effectively through social, substance abuse, and mental health agencies.[1] It is the responsibility of the juvenile delinquency court judge and other juvenile justice system stakeholders to work together to prevent youth from being unnecessarily involved in the juvenile delinquency court and unnecessarily placed in detention.

The written allegation that begins the juvenile delinquency court process is a document that explains the facts and circumstances of the alleged law violation and provides identifying information regarding the defendant and witnesses. The document is usually completed by law enforcement. Jurisdictions call this initial written allegation by many names (e.g., police report, affidavit, probable cause statement, complaint, case summary). The *DELINQUENCY GUIDELINES* uses the term "affidavit" when referring to this document.

Either at the same time, or at another step in the process, a second document is completed that states in formal legal language the name and number of the specific state statute that the youth is alleged to have violated. This second document is also called by different names in different jurisdictions. The *DELINQUENCY GUIDELINES* uses the term "petition" to refer to this second document.

In some juvenile delinquency courts, the person completing the affidavit also files the petition at the same time and both documents begin the juvenile delinquency court process. In other courts, the affidavit is filed with the juvenile delinquency court, and then forwarded to the prosecutor or handled by juvenile delinquency court intake to make the decisions of legal sufficiency and formal or informal processing. If the prosecutor or juvenile delinquency court intake decides to pursue formal action, the prosecutor or juvenile delinquency court intake prepares and files the petition to accompany the affidavit. In some jurisdictions, the affidavit is not considered a filed document and does not become part of the court file.

The steps in the process of handling the affidavit, or the affidavit and petition, specifically, determining legal sufficiency and whether to proceed formally or informally, are covered in the first part of this chapter. Included are descriptions of informal juvenile delinquency court proceedings and other diversion options. The chapter also discusses the processes involved in the decision to detain or release an arrested youth.

There are three possible circumstances when an affidavit is filed with the juvenile delinquency court:

1. An affidavit may be filed without the police arresting the youth. In this circumstance, the police believe that community safety will not be adversely affected if the youth remains in the community until appearing before the juvenile delinquency court. The juvenile delinquency court process in this situation is described in section B.
2. The second circumstance is when the police arrest the youth and bring the youth to detention intake when they file the affidavit. This should occur only when the police believe that the youth should be detained until the first hearing.
3. The third circumstance is when the police have been unable to locate the youth and believe that the youth should be detained when located. The police file the affidavit with a request to issue a warrant or writ for the youth's arrest. In this situation, once the arrest warrant is issued, the juvenile delinquency court does not become further engaged until the youth is arrested and brought to the juvenile delinquency court.

The juvenile delinquency court process subsequent to law enforcement bringing a youth to the juvenile delinquency court detention intake to be detained on a served warrant parallels the process that occurs when a youth is arrested at the time the affidavit is filed. Both of these situations are described in section B.

A. THE IMPORTANCE OF CONSISTENCY AND TIMELINESS IN DECISION MAKING

Three of the most important decisions made in a juvenile delinquency case occur at the outset of the process. Those decisions are:

1. Are the allegations legally sufficient to move the case forward or are the allegations insufficient for the case to proceed?
2. If the allegations are legally sufficient, will the case be diverted or handled in the formal delinquency court system?

3. If the case will be handled formally, will the youth be detained or released until the first hearing; and if detained, is secure detention required?

As discussed in Chapter II, Section E, *Using Screening and Assessment Tools to Help Make Key Decisions*, decisions such as these, if not totally statutorily driven, should be made using validated screening tools that are designed to assess risk to reoffend as well as capture information available on possible needs. The screening tool will vary depending upon the specific issues to be addressed and what information is available at the point of screening. Chapter II, Section E, describes different factors that should be built into screening tools for use at different points in the juvenile delinquency court process. When juvenile delinquency systems use validated tools they enhance objectivity and decrease individual subjectivity, resulting in greater consistency and fairness.

The first of the three decisions made at the outset of the process, determining whether the allegation is legally sufficient, is statutorily driven. For the most part, the second decision of whether to proceed formally or divert to informal resources is not statutorily driven except in the most serious felony cases involving prosecutorial waiver and direct file in criminal court. Therefore, the decision of whether to proceed formally or to divert should be made using a validated screening tool, specifically designed to assist with determining which cases may be appropriate to divert, and to ensure diversion decisions are made using consistent factors. The third decision is statutorily driven by state law, which usually allows juvenile delinquency court intake to detain a youth only if the youth is a danger to self or others, will probably reoffend, or may abscond. However, implementing this statutory standard justly, consistently, rationally, and efficiently requires the use of a validated screening tool designed to assist in identifying risk of reoffending or absconding, as well as identifying possible needs of the youth.

These decisions are too important to be left to unstructured guesswork. They should be determined by written criteria that are aligned with the law and the goals and key principles of the juvenile delinquency court. The criteria should give structure and consistency to decision-making, without eliminating professional discretion.[2] When the juvenile delinquency court operates detention facilities, the presiding judge should approve the detention intake criteria. When the juvenile delinquency court does not operate detention, both entities should collaborate to set the criteria. For the juvenile justice system to operate optimally, the community, law enforcement, social service agencies, and other system participants should understand when youth are and are not likely to be detained.

Timeliness is as important as consistency. As discussed in Chapter II, Section C, many youth who become involved in the juvenile delinquency court, both pre-adolescents and adolescents, have not yet developed the ability to think beyond the present and to connect present acts with future consequences. As a result, if the juvenile delinquency court process is not timely, the intended lesson of consequences and accountability is lost and so the juvenile delinquency court's consequences will not likely change the youth's future behavior. Timeliness is important regardless of whether the matter will be handled formally or informally. It applies to all steps of the process and all juvenile justice participants, from law enforcement's investigation and decision to charge the youth, to informal decisions and interventions, to each step that leads up to the juvenile delinquency court judge making disposition orders. Delays in the response of the juvenile justice system lessen the impact of an intervention.

B. LEGAL SUFFICIENCY

The first step in processing the filed affidavit is to determine if there is legal sufficiency. Legal sufficiency includes: 1) if the information stated in the affidavit is proven to be true, would the alleged facts be legally sufficient to establish that the alleged law violation has occurred; 2) whether the alleged offense is within the statute of limitations; 3) whether the alleged offense occurred within the geographic jurisdiction of the juvenile delinquency court; and, 4) whether the alleged offense is within the legal jurisdiction of the court. Legal sufficiency should be determined before a decision is made regarding whether to proceed formally or to divert. A juvenile delinquency charge should not be referred for formal processing or informal diversion if the allegation is not legally sufficient.

The DELINQUENCY GUIDELINES recommends: When juvenile delinquency courts use intake staff or probation officers to review affidavits and file complaints, not only should the prosecutor sign off on a petition prior to filing, but the prosecutor should also review any affidavit that the intake officer declined to file, and have the ability to override the intake decision.[3] If not well-designed, this process could take significant time to move between the juvenile delinquency court and prosecutor. The most efficient way to handle this first step in the juvenile delinquency court process, in order to reduce the length of time between the presentation of the allegation to the juvenile delinquency court and the youth's first contact from the formal or infor-

mal system, is to have prosecutor trained and approved staff at the point of initial filing of the affidavit, to ensure staff have sufficient legal knowledge to make the decision as to legal sufficiency.

The decision of legal sufficiency, if not made immediately upon the filing of the affidavit (Day 1), should be made in most cases by the end of the next business day (Day 2). There may be some instances where more time is required to make this decision well. It is not an acceptable trade-off to file unnecessarily in order to meet this recommended time line.

In some juvenile delinquency courts, all citizens are allowed direct access to the formal juvenile delinquency court process and the court will accept all affidavits for formal processing without screening for legal sufficiency. Some juvenile delinquency courts will accept citizen affidavits after the police have investigated and refused to file. This practice is not recommended because it is not a good use of the juvenile delinquency court's resources and can unreasonably require a youth and family to appear before the juvenile delinquency court. If citizens are complaining that law enforcement is not filing affidavits when they should, the juvenile delinquency court administrative judge should contact the head of the law enforcement agency and request that a group of citizens, law enforcement, and juvenile delinquency court representatives be convened to explore the issue and determine what changes, if any, should be recommended. It is more effective and efficient to address a systems issue in this way, as opposed to a case-by-case basis.

C. PROCESS AND OPTIONS FOR DIVERTING AFFIDAVITS AND PETITIONS FROM THE FORMAL DELINQUENCY COURT SYSTEM

A significant percentage of juvenile delinquency cases are, and should be, handled informally. Most juvenile delinquency courts handle the majority of status offense cases informally. In addition, a significant percentage of charges against persons and property, drug charges, and public order charges are handled informally.[4]

1. Process for Determining Whether to Handle an Affidavit Formally or Informally

The next step in processing the filed affidavit, after it has been determined to be legally sufficient, is to determine whether it will be diverted from the formal system and handled informally. ***Key Principle 6: Juvenile Delinquency Court Judges Should Ensure Their Systems Divert Cases to Alternative Systems Whenever Possible and Appropriate*** guides this system decision by limiting formal processing of petitions to cases where it is apparent that law enforcement diversion, prosecutor diversion, or juvenile delinquency court diversion to community services has failed to protect, or will be ineffective in protecting the community from significant risk of harm.

There are several reasons for this key principle:

- First, most youth who are referred to juvenile delinquency court for a delinquent or status offense never return on a subsequent offense.[5] Using expensive formal resources for this population is not necessary when less expensive informal diversion resources are equally effective.
- Second, properly designed informal response systems are faster than the formal adversarial juvenile delinquency court process. Since responses that occur closer to the time of the offense have more impact than delayed responses, an informal response can be more effective for the youth.
- Finally, in order for juvenile delinquency courts to have sufficient resources to deal effectively with the more serious offenders, the juvenile delinquency court should not use unnecessary resources on less serious offenders.

Juvenile delinquency courts should encourage law enforcement and prosecutors to consider diversion for every status offender, every first-time, non-violent misdemeanant offender, and other offenders as appropriate. Juvenile delinquency courts judges should engage the community, law enforcement, and the prosecutor in the development of diversion programs, including dispute resolution alternatives. Juvenile delinquency court staff should participate in the creation and ongoing monitoring of these programs to ensure that they are successfully diverting appropriate alleged juvenile offenders.

As discussed in Chapter II, Section E, and earlier in this chapter, the prosecutor or juvenile delinquency court intake should use a validated diversion screening tool to determine which cases are diverted for informal processing. If police, social service agencies or probation officers make diversion decisions prior to an affidavit being filed, these decisions should also be made using shared, consistent standards. These decisions and outcomes should be held in a central repository of information so that each entity can determine if the youth has been previously diverted, and so that consistency and outcomes can be evaluated.

Juvenile delinquency systems should maximize diversion opportunities so that most minor offenders with no serious prior involvement with the juvenile delinquency court, and who, along

with their families, are willing to acknowledge responsibility and accept services and sanctions voluntarily, are diverted from the formal system. Most cases appropriate for informal diversion involve offenses that do not pose a significant threat to public safety requiring arrest and detainment. Consequently, they would fall into the situation of filing an affidavit without an arrest.

Timeliness is equally important when affidavits and petitions are diverted as when they are handled in the formal delinquency court system. Where a jurisdiction's statutory timeframes are shorter than those recommended, the statutory timeframes should be followed. A juvenile delinquency court with technology resources as recommended in ***Key Principle 15: Juvenile Delinquency Court Judges Should Ensure the Court Has an Information System That Can Generate the Data Necessary to Evaluate Performance, Facilitate Information Sharing with Appropriate Agencies, and Manage Operations Information*** will be able to track these steps to ensure timeframes are being met.

Listed below are the process steps and recommended time lines to determine whether to proceed formally or informally and how to handle informal cases. *All references to numbers of days refer to business days as opposed to calendar days.*

- Review all affidavits using written juvenile delinquency court to quickly sort those cases that are obvious formal action cases (i.e., felonies, multiple repeat misdemeanants, first time misdemeanants with weapon involvement, or serious injury to the victim, etc.) for formal processing in the juvenile delinquency court. This step should be completed immediately following the decision of legal sufficiency, which should be made no later than the end of the workday following the filing of the affidavit (Day 2).
- Review remaining affidavits to identify probable informal diversions, applying that have been agreed to by the prosecutor's office, the juvenile delinquency court, community, police, and defense counsel, and which have been incorporated into a validated diversion screening tool. This review can be made based on the information in the affidavit and information regarding prior diversions and formal petitions. A supervisor should review cases where overrides have been made to ensure consistency and appropriateness of these decisions.
  This decision should be made no later than the end of the second workday following the filing of the affidavit (Day 3). If the review determines that the case should be handled formally, the prosecutor should file the petition with the juvenile delinquency court immediately, so that the juvenile delinquency court process of setting the initial hearing can begin no later than the next day (Day 4). In some cases, where the youth is not detained, the prosecutor may need more time to investigate the matter. If so, the prosecutor should complete the investigation as expeditiously as possible, but within five days. Refer to the next section, *Engaging the Formal Delinquency System*, for the process steps for setting the initial hearing.
- For cases still under consideration for diversion to informal resources, contact the victim to obtain additional information about the offense and to ascertain the victim's view of proceeding informally. Although a victim's opposition or unwillingness to participate informally should not by itself rule out diversion in an otherwise appropriate case, the victim's viewpoint and desires should be carefully weighed (Days 4 and 5).[6]
- Make the final decision whether the case qualifies to be diverted to informal resources, if agreed to by the youth and parent or guardian, and if the youth admits responsibility. If the youth and parent or guardian do not agree to use the informal system, they have the right for the case to be handled formally. If the final intake decision is that informal diversion is appropriate, tentatively determine which diversion option appears most appropriate (Days 4 and 5).
- Depending on the diversion option selected, either notify the youth and parent or custodian of the date and time to appear for an informal hearing or an assessment meeting, or contact the alleged offender and parent or custodian by phone to determine their willingness to cooperate with a direct referral to a diversion program or intervention. If contact is made by phone, obtain additional information to assist in making adjustments to the diversion option tentatively selected and inform the youth and parent or custodian of the next step (Day 5).
- At the first face-to-face contact between the diversion option and the youth and parent or custodian, which could be an informal hearing, a meeting, or an educational program, inform the youth and parent or custodian of their right to refuse diversion and demand a formal hearing. Determine if the youth accepts responsibility for the offense. If the youth does not, immediately refer the case to the formal system. Inform the youth and parent that if the youth fails to fulfill the diversion requirements, the case will be formally prosecuted. Explain the youth's rights

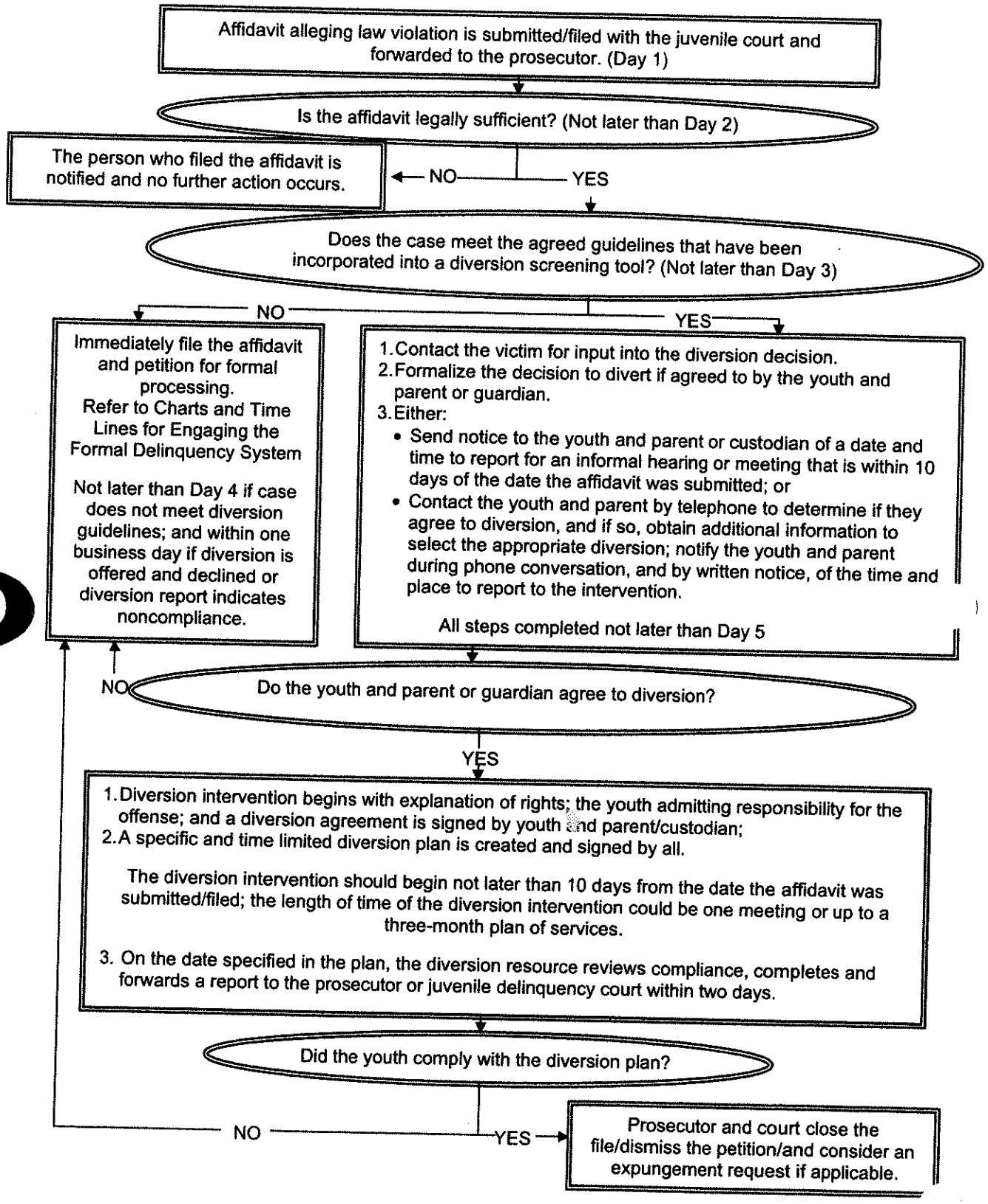
under Miranda, and that, if the youth fails to fulfill the diversion requirements, any statements made during diversion may be used against her or him at a formal adjudication hearing. Obtain youth and parent or custodian signatures on a written agreement to handle the case informally. The agreement should specify that the youth and parent or custodian were notified of the rights and consequences discussed above. This face-to-face contact should occur as soon as possible but not later than the tenth day after the affidavit was filed.

- After discussing the situation with the youth and parent or custodian, determine what services or sanctions are appropriate, and complete and sign a written time-limited plan of services and sanctions with the youth and parent or custodian. This plan could be fulfilled after attendance at a specified program, or it could continue up to three months for an ongoing service. Required diversion services should not generally exceed three months, although exceptional circumstances may warrant that required services continue up to six months. Voluntary continued participation with the diversion service, beyond the time when the agreement ends, should be encouraged, if appropriate.
- The diversion intervention should forward a report to the referring entity by the end of the second business day after the end of the agreement time. The prosecutor or juvenile delinquency court intake reviews compliance and either terminates the case if the diversion agreement has been met, or refers the case for formal prosecution if the youth did not successfully complete the diversion agreement. Case termination or referral for formal prosecution should be completed within two days of the receipt of the diversion services report.

In some juvenile delinquency courts a successful diversion does not show on the youth's record because a petition was never filed. In other juvenile delinquency courts the petition is filed, but shows as a dismissal on the official record if the diversion is completed successfully. In other juvenile court systems, the offense shows on the youth's official record as an admitted offense. If a successful diversion shows on a youth's official record, the youth should be able to immediately file for expungement.

A chart of the steps and timeframes for the diversion process follows.

2. Chart of Steps and Timeframes for the Diversion Process



3. Diversion Options

There are many diversion options used by juvenile delinquency courts. There are also many diversion options used by police, schools, prosecutors, and other organizations in lieu of referring the case to the juvenile delinquency court. Most diversion options fall into one of three categories: 1) informal juvenile delinquency court proceedings; 2) dispute resolution alternatives; and, 3) community-based programs and service interventions. All diversion options should be time-limited. Some diversion options such as negotiation (AKA mediation), family group conferencing/family conflict resolution, victim-offender conferencing, and accountability boards have already been described in Chapter II, Section G. Other diversion options include:

- Youth (AKA Teen) Courts[7]

  Youth Courts, also called Peer Courts and Teen Courts, were developed in the 1980s as an alternative to the traditional juvenile delinquency court system for younger and less serious offenders.[8] Forty-eight states have at least one youth court in the state. This popularity was driven by the juvenile delinquency court's need to focus resources on increased numbers of serious, violent, and chronic juvenile offenders, thereby requiring alternative systems for less serious offenders; and, by positive anecdotal reports from those involved with this peer-centered approach. In response to this rapid growth, the OJJDP awarded a grant to The Urban Institute of Washington, D.C., in 1998, to conduct a national evaluation of youth courts and the National Youth Court Center (NYCC) was established in 1999 as a central point of contact for Youth Courts.[9]

  Youth courts operate on the premise that the judgment of a juvenile offender's peers may have a greater impact than the decisions of adult authority figures. Therefore, if other teens question and confront an offending youth's behavior and attitudes, there should be a significant rehabilitative effect. By integrating teen offenders into the jury after they have completed their sanctions, they are helped to reintegrate into the prosocial community. In addition, the youth court concept was designed to have a positive effect, in essence a "civics lesson," on the non-offending volunteer teens who serve in the various youth court roles, and to empower youth to accept responsibility for their communities and their peers. Finally, youth courts may also encourage the entire community to take a more active role in responding to juvenile crime. Publications on youth courts consistently state the following benefits:

  - Accountability – helping to ensure that young offenders are held accountable for their illegal behavior.
  - Timeliness – moving from arrest to sanctions within a matter of days rather than the months that may pass with traditional juvenile delinquency courts.
  - Cost Savings – handling a substantial number of youth offenders at relatively little cost due to using primarily volunteer youth and adults.
  - Community Cohesion – increasing public appreciation of the legal system, enhancing community and juvenile delinquency court relationships, encouraging greater respect for the law among youth, and promoting volunteerism among both adults and youth.

  Refer to the Appendices for more information on youth courts.

- Other Informal Juvenile Delinquency Court Proceedings Including Truancy Court

  Informal juvenile delinquency court proceedings may be operated by the juvenile delinquency court or by community agencies that have been authorized by the juvenile delinquency court to hold informal court proceedings. When operated by the juvenile delinquency court, informal hearing officers are often probation officers. When operated by court authorized community agencies, the informal hearing officer is often a criminal justice professional, a social worker, or a volunteer attorney.

  Truancy courts held in schools are an example of informal juvenile delinquency court proceedings. Truancy courts in Louisville, Kentucky, Baltimore, Maryland, and Phoenix, Arizona, have been identified as effective uses of juvenile delinquency courts to address truancy on an informal basis. Their impact comes from a combination of using the juvenile delinquency court's atmosphere of formality and consequence, but in a non-punitive manner, while keeping students in the school setting and identifying and treating the underlying family and school causes of the truancy.[10]

  Informal juvenile delinquency court proceedings follow a quasi-hearing protocol, with hearings held in a room resembling a courtroom, allegations read to participants, the youth questioned regarding the incident and admitting or denying the allegations, and the parent, school staff, and other appropriate key participants speaking about the youth's behavior in general. The infor-

mal hearing officer makes a disposition using the power that was granted through the youth's and parents' consent to have the charge handled informally.

Typical dispositions in informal hearings include a period of house confinement or other privilege restrictions such as no television, limited social activities, or driving restrictions; essays on the offense, or what the youth will do to prevent further offenses; apology letters and voluntary restitution to the victim; informal supervision; community service hours; and referrals to community agencies for counseling, substance abuse evaluations, or other social services as needed. It is important that hearing officers in informal juvenile delinquency court proceedings have sufficient training in legal issues to ensure that the rights of the youth and family are not violated. It is also important that hearing officers in informal juvenile delinquency court proceedings understand community cultural differences and have sufficient training in adolescent development, victimization and trauma, mental health, and substance abuse so that the disposition will be effective in deterring future law violations.

Informal juvenile delinquency court proceedings may be held in the juvenile delinquency court building, a community or municipal center, or a school. Informal juvenile delinquency court proceedings held in communities and staffed by volunteers from the community, can be very effective for several reasons:

- They can be held in the evening to make it easier for parents to be involved without taking time away from work;
- They can incorporate dispositions that help improve the community and help strengthen the youth's connections to the community, such as washing police cars at the local station, cleaning community areas, or volunteer service in the community;
- Using community volunteers increases the community's knowledge of juvenile justice and often creates strong system advocates; and
- The costs involved in using formal juvenile delinquency court resources can be avoided. Informal juvenile delinquency court proceedings use fewer resources than formal hearings because they do not involve prosecutor and defense attorneys, multiple hearings, and are not conducted by higher paid judicial staff.

Some informal juvenile delinquency court proceedings are staffed only by a hearing officer, while others have assigned probation officers and clerks. It is important that there is some method of follow-up to ensure that the youth complies with the agreed disposition. If the youth does not comply, the case should be referred back to the formal juvenile delinquency court.

- Educational Programs

  Many juvenile delinquency courts refer youth directly to educational programs as an informal diversion. These programs are usually designed to teach substantive information that addresses a specific type of behavior or issue. They support cognitive development and pro-social skills. In order for the offense to be handled informally, the youth, and sometimes the parents, must agree to attend the program. These programs usually consist of one or more sessions held in the evening or weekend where educational information is presented, including the harmful and unpleasant consequences of continuing the behavior. They also include a presentation of community resources that are available to families needing further assistance. Examples of this type of diversion option include theft prevention programs, violence prevention programs, fire safety programs, and victim impact programs.

- Referrals to Community Agencies

  An affidavit, or discussion with youth and parent, may provide information that indicates a direct referral to a community agency for assessment and intervention would be appropriate. For a juvenile delinquency court to use this method effectively, protocols and agreements must be worked out in advance between the court and the agency. The protocols must include a maximum acceptable time between referral and engagement, agreed forms for obtaining consent, an agreed plan, and how and when the agency will report back to the juvenile delinquency court on follow-through.

Certain offenses are clear indicators of the need for specialized assessment and intervention. When this type of case is diverted for informal processing, juvenile delinquency courts should refer these youth and families to social service systems that can assess and address the need. Any diversion option for youth with indicators of substance abuse or mental health issues, or where offenses are related to family conflict, should require an assessment by an appropriate professional and require follow-up on assessment recommendations. Juvenile delinquency court judges should engage community resources

to create rapid response systems for youth with these needs who have been informally diverted.

For all youth whose cases are handled informally, it is important to ensure that staff are trained to identify warning signs of those issues that are more prevalent in the juvenile justice population than the population at large – specifically, mental health issues, substance abuse, domestic violence, victimization and trauma, and past or present abuse or neglect. Youth with these problems are likely to recidivate unless they receive interventions specific to these issues. Professionals involved in making diversion decisions, and professionals involved in providing diversion services, should be trained to identify signs that these problems might exist, and to make appropriate referrals to community services that can successfully address these issues.

D. ENGAGING THE FORMAL DELINQUENCY SYSTEM

In some juvenile delinquency courts, all petitions found legally sufficient are formally filed, and then the decision is made whether to divert the case to the informal system. If the case is diverted to the informal system, the formal filing is held in abeyance until the youth successfully complies with the diversion intervention, and then the formal petition is dismissed. In other juvenile delinquency courts, after the affidavit has been found legally sufficient and the decision is made to handle the case informally, a petition is not filed. If the youth does not comply with the informal intervention, the petition is then filed. Regardless of which system is used, this section begins at the point that the decision is made to process the allegation formally. If the petition has not yet been filed, it should be filed at this point.

As discussed at the beginning of the chapter, there are three different situations that may exist when the formal process is engaged:

- A petition is filed with a request to summon the youth to juvenile delinquency court.
- The arrested youth is brought to detention, the affidavit is filed, and the police request the youth be detained until the juvenile delinquency court hearing.
- The petition is filed and a warrant issued for the youth's arrest.[11]

1. The Juvenile Delinquency Court Accepts a Formal Petition Without Arrest or Warrant

At this point, the decisions of legal sufficiency and whether to proceed informally or formally have been made and the decision is to proceed formally. Depending on individual case circumstances, these decisions are made between day 2 and day 5 from the date the affidavit is filed. The juvenile delinquency court's next steps in the process are:

- **Immediately set a date for the initial hearing. The hearing date should be set as soon as notice can be completed, but not more than three weeks from the filing of the petition.**

Based on the hearing time line parameters built into the juvenile delinquency court's management information system, the system should generate the earliest appropriate date and specific time for the initial juvenile delinquency court hearing on the appropriate judge's docket. Three Key Principles apply to this process step:

> ***Key Principle 3: Juvenile Delinquency Courts and Juvenile Abuse and Neglect Courts Should Have Integrated One Family-One Judge Case Assignments***
>
> ***Key Principle 9: Juvenile Delinquency Courts Should Render Timely and Just Decisions and Trials Should Conclude Without Continuances***
>
> ***Key Principle 15: Juvenile Delinquency Court Judges Should Ensure the Court Has an Information System That Can Generate the Data Necessary to Evaluate Performance, Facilitate Information-Sharing with Appropriate Agencies, and Manage Operations Information***

By entering the youth's name in the juvenile delinquency court's management information system, the system should identify the judge assigned to the youth's family; if the youth's family has previously been in the formal system; or, should assign a judge, if this is the first formal juvenile court matter in the youth's family. The management information system should identify if the youth is involved in the juvenile court's abuse and neglect system or any other area of the juvenile court, and assign the same judge to the juvenile delinquency case. It is not effective juvenile delinquency court practice for child protection and juvenile delinquency efforts to be handled independently. This can result in duplicate services, gaps in services, inconsistent dispositions, and judicial decisions based on half of the relevant information.[12]

The management information system should identify whether any other matters regarding the

youth are pending so that this new petition can be consolidated with any pending matters. If the youth is on probation, the management information system should have the ability to electronically notify the probation officer of the new offense and initial hearing date.

- **Initiate service of the summons to appear before the juvenile delinquency court.**

  The juvenile delinquency court's management information system should be able to generate the documents for hearing notification immediately after selecting the court date. When the summons is served, information should also be provided to the youth and family that describes the juvenile delinquency court process, legal rights, the choices that need to be made at the initial hearing, why counsel for youth is important, and options to obtain legal representation for the youth prior to the hearing.

  The process steps of setting the initial hearing and initiating hearing notification should both occur no later than the end of the business day following the decision to proceed formally (Day 3 to Day 6).

- **Ensure that legal representation is assigned in advance.**

  Key Principle 7: Youth Charged in the Formal Juvenile Delinquency Court Must Have Qualified and Adequately Compensated Legal Representation applies to this process step. ***The DELINQUENCY GUIDELINES recommends* that the youth, parent, and counsel for the youth meet prior to the initial hearing to determine the position they will take at the hearing**. This enables counsel to contact the prosecutor prior to the hearing if desired. The better the preparation prior to the hearing, the more timely and efficient the process will be. See Section D (3) of this chapter for how to design a system that provides for counsel for youth to be appointed prior to the first hearing.

- **Consolidate all appropriate information, forward the information to the prosecutor, and place it into the juvenile delinquency court's legal file.**

  This includes the affidavit and petition and any other appropriate information that has been provided to the juvenile delinquency court, including reports from failed diversion interventions.

When juvenile delinquency courts accept a formal petition without arrest or warrant, and then routinely take more time to set the initial hearing than required by service of summons, they do not provide timely justice. Juvenile delinquency court judges should require their systems to be timely, and if they are not, should engage juvenile delinquency court staff and all involved system stakeholders to design a system that will be timely. Once a timely system is designed, all new cases should proceed under the new system.

Juvenile delinquency courts that do not create systems that enable counsel to be obtained in advance of the initial hearing, and as a consequence, allow counsel to be absent or unprepared at the first hearing, make it difficult for time-specific hearings to be set and adhered to, cause additional unnecessary hearings to be set which wastes juvenile delinquency court resources, and delay timely justice. Such systems end up with unnecessary continuances, waste expensive resources due to extensive waiting times, and are disrespectful to its citizens. These issues are part of ***Key Principle 9: Juvenile Delinquency Courts Should Render Timely and Just Decisions and Trials Should Conclude Without Continuances***.

Examples of the way one juvenile delinquency court accomplishes timely process, diversion, and one family-one judge in situations where the juvenile delinquency court accepts a formal petition without arrest or warrant are as follows:[13]

- The police officer provides a copy of the affidavit and gives an initial court date to the youth and family when the decision is made to file the affidavit. This is possible because the juvenile delinquency court sets aside docket dates and times for initial hearings and provides these dates to the police.
- Because the jurisdiction assigns judges geographically, the youth automatically appears before his or her assigned judge every time, preserving one family-one judge. If a juvenile delinquency court does not assign judges geographically, the system can work by providing the police immediate phone access to this information, or providing the police access to the component of the juvenile delinquency court's management information system that selects court dates by the assigned judge.
- As soon as the affidavit is filed with the juvenile delinquency court, the case is screened for legal sufficiency and formal or informal processing. The police are sufficiently trained so that insufficiency is rarely an issue, and the police have created their own diversion resources for youth with less serious offenses. Consequently, most filed affi-

davits are legally sufficient and are handled formally. If, however, the affidavit is filed and the decision is made to handle the matter informally, the parties appear at the scheduled initial hearing date, but instead of a hearing, they meet with the diversion coordinator to sign the agreement for the informal process and select the diversion program. Another option for diversion processing is to contact the family by telephone and vacate the court date if informal diversion is chosen.

This system saves significant juvenile delinquency court resources to issue the summons and enables an initial hearing or informal diversion to be scheduled within a week of the filing of the affidavit. A chart of steps and time lines for engaging the formal juvenile delinquency system is at the end of Section C of this chapter. The next step in the process of engaging the formal system is the initial hearing, which is described in Chapter IV.

2. The Youth Is Delivered to Juvenile Delinquency Court or Detention Intake with the Affidavit and a Request to Detain, or the Youth Is Delivered to Intake on a Served Warrant

This section covers the remaining two situations that may exist when the formal delinquency court process is engaged. In the situation where a warrant was issued upon the initial filing of the formal petition because the defendant could not be found, the police have now arrested the youth and brought the youth to detention intake with a request for detainment until the first hearing. When police request that the youth be detained, it is important that the affidavit not only specify the details of the alleged offense, but also the reasons the youth should be detained.

The place of intake may vary from jurisdiction to jurisdiction. There may be a secure detention facility where police bring youth, and juvenile delinquency court or detention intake staff make the decision whether to detain in secure or non-secure detention or shelter care, or to release the youth pending the initial hearing. The jurisdiction may have a place where police can bring all youth when they file the affidavit, and the juvenile delinquency court is responsible to determine whether to hold or release, and if release, contact the parent to pick up the youth. Some rural jurisdictions have no detention facilities and their choices are to transport the youth to another jurisdiction's secure or non-secure detention or shelter care or to release the youth to an appropriate adult. The most effective juvenile delinquency systems have options for both secure and non-secure detention, and minimize the practice of police delivering a youth to the juvenile delinquency court for processing, when the youth will not qualify for secure or non-secure detention.

When the police deliver a youth to the designated intake point, the process steps are:

- **The juvenile delinquency court and prosecutor should immediately make the two decisions of legal sufficiency and whether to handle the case formally or informally, except when these decisions were made when the warrant was issued. If the case will be handled formally, the affidavit and petition should be filed.**

  In systems where the police, schools, prosecutor, child protection agency and juvenile delinquency court are a collaborative team with aligned expectations, it should be rare for a youth to be arrested and brought to intake on a petition that is legally insufficient. If the petition is not legally sufficient, or if the situation will be handled informally, the youth should be immediately released to an appropriate adult.

- **If state statutes permit or require, and if the affidavit to be handled formally alleges a misdemeanor or felony, photograph and fingerprint the youth.**[14]

  Fingerprinting and photographing alleged delinquent youth assists the juvenile delinquency court to accurately identify repeat offenders who may give false identification.

- Decide if the youth should be released with or without restrictions pending hearing on the charge, or detained in secure or non-secure detention.

  State statutes generally restrict authority to detain a youth prior to adjudication for three reasons: 1) the youth is a danger to the community or likely to commit another serious offense; 2) there is reason to believe that the youth will not appear at the scheduled court hearing if released; or, 3) the youth's safety requires detainment.

  Different jurisdictions have different systems regarding who is responsible for intake and detention. In some jurisdictions, the juvenile delinquency court operates both the intake and detention centers of the juvenile delinquency court. In others, detention intake is the responsibility of another department of government. In some jurisdictions, the child welfare system or other social service agencies are responsible for non-secure detention. Some rural jurisdictions have no

options for secure or non-secure detention in their areas and must travel extensive distances to facilities in other counties if they believe a youth should be detained.

***The DELINQUENCY GUIDELINES recommends* a system that includes a variety of options for youth who should be released with restrictions pending the initial hearing, or detained in secure or non-secure detention until the detention hearing**. There are varying degrees of danger to the community and varying degrees of risk of absconding. A significant factor in assessing these risks is whether or not there is supervision available that will enforce restrictions so that secure detention is not required. Youth who would meet the criteria of release, except that they lack appropriate home supervision, can be appropriately placed at home with electronic monitoring, placed with appropriate relatives, or placed in non-secure facilities. To the extent possible, there should be sufficient resources and facilities available to provide release with restrictions and secure and non-secure options in every jurisdiction.

Professionals from assessment centers, receiving centers, and holdover programs can help determine the appropriate degree of security required, coordinate getting youth in the most appropriate setting, and ensure that youth do not end up in secure detention unnecessarily.[15] Large jurisdictions should have staff secure and non-secure options in different locations than secure detention. Rural jurisdictions may need to create multi-use buildings with flexible areas that can shift from secure to non-secure depending on the detained population.

Youth who otherwise would be released but cannot be because a parent or custodian cannot be located, the parent or custodian is deemed to provide insufficient supervision, or the youth is in the custody of the child protection agency for foster care, should not be placed in secure detention by default. Youth whose own safety requires detainment should generally not be held in secure detention. These youth may include youth actively under the influence of illegal substances, youth in psychiatric crisis, or youth who need protection from an unsafe situation. In these instances, hospitals, treatment centers, or non-secure facilities are the appropriate places of detainment as opposed to secure juvenile detention.

The decision of which setting is most appropriate to the needs of the youth and community should be made immediately upon the youth's arrival at detention intake. The decision should be guided by the use of a validated detention admission screen as discussed in Chapter II, Section E (1), that is completed on every youth, to ensure consistency in decision-making.[16] As described in more detail in Chapter II, the detention admission screen should produce a score which determines whether secure detention is required due to high risk to reoffend or abscond. It should also identify special needs of the youth so that they can be addressed in secure detention, and help identify appropriate alternatives if secure detention is not required. The detention admission screen should identify any medical, physical, mental health, or family violence issues, including a trauma history, that might place the youth's safety in question or impact behavior management issues in the secure or non-secure detention setting.

- **If the decision is to release with or without restrictions, set the date for the initial hearing within two weeks, prepare the hearing notification packet, ensure the police, prosecutor, and victim are notified of the release, and release the youth to the parent or custodian.**

  The juvenile delinquency court's management information system should select a court date and generate documents for hearing notification so that they can be served on the youth and parent at release. When the summons is served, information should be provided to the youth and family that describes the juvenile delinquency court process, legal rights, and choices that need to be made at the first hearing. It should also provide information regarding options for obtaining counsel for the youth prior to the initial hearing, so that counsel has time to prepare, hearings do not need to be unnecessarily continued, and the process proceeds in as timely a fashion as possible.

  Any restrictions placed on the youth pending the initial juvenile delinquency court hearing should be provided in writing, thoroughly explained to the youth and parent or custodian, and signed by the youth and parent or custodian. Examples of restrictions used by juvenile delinquency courts in lieu of secure detention are covered in the next section of this chapter.

- If the decision is to detain the youth in secure or non-secure detention, set the detention hearing on the next business day,

but no later than 48 hours (excluding Saturdays, Sundays, and legal holidays).

Juvenile delinquency courts with the most efficient processes work collaboratively with the police and community residential facilities to ensure admission guidelines are clearly delineated and communicated. The system stakeholders agree that youth who will not be detained are not arrested and brought to juvenile delinquency court intake. If there is question as to what the outcome will be, an advance call is made to determine whether the circumstances will result in detainment.

When a youth is brought to detention with a request to detain but is not detained, the person making the arrest, and the juvenile delinquency system loses credibility with the youth. Also, it is a significant waste of time resources on both the part of the police and detention intake when this occurs. The police have made an unnecessary trip. Detention intake must locate an appropriate person to whom they can release the youth.

***The DELINQUENCY GUIDELINES recommends* that, wherever possible, a juvenile delinquency court is able to hold detention hearings on Saturday mornings for youth admitted to detention Friday afternoon or evening.**

Once the decision to detain has been made, intake should:

- Serve the youth with the affidavit and petition and explain what can be expected in detention and at the detention hearing. Intake should tell the youth what charges have been brought against him or her, explain detention rules and processes, and explain the decisions the juvenile delinquency court judge will make at the detention hearing. Intake should explain the role of counsel, and how counsel will contact the youth prior to the detention hearing.
- Contact the parent, guardian, and custodian. Explain the circumstances and charges, when to appear for the juvenile delinquency court detention hearing, how to obtain counsel for the youth, and the decisions to be made at the first hearing. Permit the youth to talk to the parent, guardian, custodian, or other significant adult.
- Process the youth for admission to secure or non-secure detention. This processing should include a mental health screen, including risk of suicide, and a substance abuse screen.[17] The substance abuse screen may include a breathalyzer or urinalysis. Administering breathalyzers and urinalyses serve both to ensure the safety of the child by identifying immediate medical treatment needs, and ensure protection of intake and detention staff from unanticipated aggressive behavior that may occur because the youth is under the influence of a behavior-altering substance. An assessment of levels of aggression, maturity, and trauma history should direct the decision on unit placement and inform detention staff of effective methods of behavior management. Physical health screens should occur at admission with full physical assessments provided within 48 hours.

- **When the youth is released or detained, ensure that legal representation is assigned in advance.**

  Key Principle 7: Youth Charged in the Formal Juvenile Delinquency Court Must Have Qualified and Adequately Compensated Legal Representation applies regardless of whether the youth is released or detained. ***The DELINQUENCY GUIDELINES recommends* that youth, parent, and counsel for the youth meet prior to the detention or initial hearing to determine the position they will take at the hearing**. This enables counsel to contact the prosecutor prior to the hearing if desired. The better the preparation prior to the hearing, the more timely and efficient the process will be. See the next section for how to design systems that ensure qualified counsel is available prior to the detention or initial juvenile delinquency court hearing.

- **When the youth is released or detained, consolidate all appropriate information, forward the information to the prosecutor, and place it into the juvenile delinquency court's legal file.**

  This includes the affidavit and petition and any additional police reports, documentation of to whom the child was released, if applicable, or documentation of the parent or custodian contact on a detained youth.

In some instances, the youth does not need to be detained but a parent or custodian or relative cannot be located. When this occurs, intake should arrange the release of the youth to an appropriate shelter care or non-secure holdover facility until the parent, custodian, or a relative can be located.

The next step is the detention hearing or initial hearing, which is covered in the next chapter.

3. Ensuring Qualified Counsel Will Be Available and Prepared for the First Hearing

When juvenile delinquency courts have effective informal systems that handle less serious cases, and only the more serious cases appear on the formal docket, resources should be freed to enable all youth with formal petitions to be represented by qualified and effective counsel. Qualified counsel has an understanding of child development principles, cultural differences, mental health, trauma, mental retardation, and maturity issues that relate to juvenile competency to stand trial issues; treatment options that could serve as effective alternatives to detention; and special needs issues including prior victimization and educational needs. Qualified counsel understands juvenile delinquency court process and knows enough about disposition resources to advocate for a disposition response that will meet the youth's needs. Effective counsel becomes involved in the case prior to the first hearing, has a manageable caseload, and is present at all juvenile delinquency court hearings.

Although *In re Gault*[18] mandated that accused juveniles have the right to the assistance of defense counsel to safeguard legal interests, the right to effective counsel remains underutilized.[19] Too often juvenile delinquency court judges' and judicial officers' inquiries regarding the right to and desire for counsel are absent or not thorough, resulting in waiver of counsel. Juveniles who are not represented by counsel are not likely to effectively exercise their other due process rights.[20]

Frequently, even though counsel is assigned to represent youth, crushing caseloads, lack of time to investigate charges or gather critical information, and inadequate training and experience result in ineffective representation. A comprehensive study published by the American Bar Association's Juvenile Justice Center indicated that aggressive advocacy was often discouraged, and was not widespread or even very common.[21] Studies of 12 state juvenile delinquency court defense systems confirmed that excessive caseloads, inordinately low compensation, lack of counsel at critical stages of the process, lack of training, and lack of investigative and technology resources remain common problems.[22] Juvenile delinquency court personnel have sometimes perceived that when counsel represents youth, the court process is delayed and made more cumbersome. In contrast to this perception, juvenile delinquency courts have found that providing counsel facilitates earlier resolution of cases.[23]

Many juvenile delinquency courts have systems that provide access to counsel the day of the detention or initial hearing. However, most juvenile delinquency courts wait to address the issue of counsel until the parties appear at court. This system design results in the inability of counsel to meet with the youth prior to the day of the hearing and is generally designed this way because:

- State laws prohibit the public defender from becoming involved in a case until after the juvenile delinquency court orders the appointment of counsel;
- Funding systems do not allow payment prior to appointment;
- Inadequate funding systems require the public defender to limit the number of cases that can be handled and limit the amount of time spent on a case to a minimum. This causes processes to be developed that discourage the youth and families from requesting counsel; and,
- A belief by juvenile delinquency courts that representation is not really needed by youth, or that if representation is needed, contact prior to the first hearing is not necessary.

The delay is unfortunate. First, it makes it difficult for juvenile delinquency courts to set and hold to specific initial hearing times and it creates unnecessary and inefficient delays, often requiring additional hearings that could have been avoided. Second, it prevents indigent youth and families from being able to access counsel in advance of the hearing to fully explore the options and make advised and considered decisions about the best course of action. Finally, it prevents the public defender from being able to prepare for the initial hearing prior to the court date. Families who can afford private counsel do not have these barriers and rarely appear at a detention or initial juvenile delinquency court hearing without prior consultation with counsel.

Potential solutions to enable indigent youth and families to interact with counsel before the first hearing include:

- The juvenile delinquency court and public defender working with the legislature to change rules or statutes that prevent the public defender from becoming involved before the first court hearing.[24]
- Drafting a Memorandum of Understanding between the juvenile delinquency court and public defender that allow the public defender to become involved before the first hearing. Three ways to accomplish this are:

  - ➢ Agree that at the time the petition is filed and prior to the summons being sent, the juvenile delinquency court will generate an order on every formal case stating that if a youth qualifies, the juvenile delinquency court will appoint the public

defender to the case *nunc pro tunc* to the qualification date.

- ➢ Agree that if the youth seeks the services of the public defender prior to the hearing and qualifies, the public defender will immediately submit a request for appointment for the juvenile delinquency court to consider prior to the first hearing, and that the request will be favorably received.
- ➢ The juvenile delinquency court, public defender, and funding sources work out a funding system that enables the public defender to accept a qualified youth for representation before the hearing.

- The system creates interim legal services that indigent clients can access when the police begin an investigation or when the family learns that a petition has been filed. These services provide fast, free legal advice until a public defender is assigned. A representative meets with the youth and family at the police station or detention, advises youth and family of their rights prior to the juvenile delinquency court hearing, and collects information for the first hearing.[25]

Juvenile delinquency court judges are responsible to ensure that qualified and effective counsel is available for all youth alleged to have violated the law who appear before the formal juvenile delinquency court. If such systems do not exist, the judge should work with the public defender, private bar, funding sources, and the legislature to overcome the barriers to creating this system.[26]

A chart of steps and time lines for engaging the formal delinquency system follows.

4. Chart of Steps and Time Lines for Engaging the Formal Delinquency System

PRIOR PROCESS STEPS: Either (1) the affidavit was completed without an arrest, the prosecutor determined it to be legally sufficient and the prosecutor or juvenile delinquency court intake decided to handle the case formally; or, (2) the police have arrested a youth, delivered the youth to juvenile detention, and filed an affidavit; or, (3) the police have filed an affidavit with a warrant for the youth's arrest.

Has the youth been delivered to juvenile detention with the affidavit?

NO →

The juvenile delinquency court accomplishes the following not later than the end of the business day following the filing of the petition:

1. Determines if the youth has an assigned judge.
2. Schedules the case for an initial hearing before the assigned judge as soon as notice can be completed but not more than three weeks from the date the petition is filed.
3. Sends the summons to appear with information regarding:
   - Explanation of the juvenile delinquency court process;
   - Legal rights;
   - The types of decisions that the court will make at the initial hearing;
   - Why counsel for the youth is important; and
   - How to obtain counsel for the youth before the initial hearing.
4. Consolidates legal documents, forwards documents to prosecutor, and places documents into the juvenile delinquency court's legal file.

YES →

Juvenile court intake and the prosecutor immediately determine legal sufficiency and whether to proceed formally or informally.

Is the affidavit legally sufficient?

NO → Decline to prosecute and immediately release the youth.

YES →

Will the affidavit be considered for informal diversion?

YES → Immediately release the youth and refer to diversion process chart and time lines.

NO →

If statutorily appropriate, photograph and fingerprint.

Based on the detention admission screen, does the youth qualify for admission to secure or non-secure detention?

NO →

- Select a court date within two weeks on the family's assigned judge's docket.
- Generate summons, explanation of process, instructions on obtaining an attorney, and any restrictions on the youth's behavior.
- Release youth to parent, guardian, or custodian, serving summons and reviewing all written information.
- Forward documents to prosecutor and juvenile delinquency court's legal file.

YES →

- Set detention hearing for next business day and not later than 48 hours.
- Serve youth with affidavit and petition and explain the court process and detention rules.
- Contact the parent or custodian; explain charges, how to obtain counsel, process, detention, visitation; permit youth to talk to parent.
- Process youth for admission to secure or non-secure detention or shelter care.
- Forward information to prosecutor and juvenile delinquency court's legal file.

E. ALTERNATIVES TO SECURE DETENTION, MANAGING THE DETENTION CENSUS, AND RESTRICTIONS ON HOLDING YOUTH IN ADULT JAILS

Juvenile delinquency courts should have a continuum of options for youth who, for community safety reasons, should not be released after arrest to their parent or custodian without restrictions after arrest. Juvenile delinquency courts should also have an alternative to secure detention for youth who cannot be released because parents, custodians, or relatives cannot be located.[27] This continuum is necessary in order to ensure that the juvenile delinquency court is effectively protecting both the youth and the community. Secure detention is unnecessary and can be potentially harmful to certain youth who are at low to moderate risk of reoffending. Without a continuum of alternatives, it becomes difficult to keep detention at a safe census level and to ensure availability of secure detention to those juveniles who require it.

It is also important for juvenile delinquency courts to know that federal restrictions prohibit the use of adult jails for holding juveniles. Discussion of these issues concludes this section and this chapter.

1. Alternatives to Secure Detention

As previously discussed, the risk of reoffending screen used when an arrested youth is brought to detention should produce a score that coincides with either release without restriction, release with restriction, non-secure detention, or secure detention. Youth whose scores do not rise to the level of danger to self or others, significant risk to reoffend, or risk of absconding according to the validated risk screen and overrides, should be unconditionally released until the initial hearing or released to shelter care if a parent or custodian cannot be located. When youth need to be detained because they are a danger to themselves, they should be placed in an appropriate medical, mental health, or substance abuse assessment or treatment facility. Youth who are rated at medium to high risk of absconding or reoffending should be matched with an appropriate secure or non-secure option according to their assessed degree of risk of reoffending or absconding.

Many juvenile delinquency courts have been very successful in using options to secure detention to manage youth who show a moderate risk to reoffend or abscond, as well as to provide non-secure options to youth whose parents cannot be located or cannot provide appropriate supervision. Due to increased staffing and building security requirements, the more restrictive the detention option, the more expensive the option. It is not a good use of resources to use a more restrictive option than is necessary to maximize community safety and maximize probability that the youth will appear at the initial hearing.

Options to secure detention, moving from those designed for lower risk to reoffend youth to higher risk to reoffend youth, generally fall into one of three broad categories:[28]

- **Home detention and home supervision programs** – the youth lives at home and continues to report to work or school with varying degrees of restrictions and supervision. Restrictions include curfews, house arrest, and electronic monitoring. Supervision includes unannounced visits and random telephone calls to check compliance.
- **Day and evening reporting centers** – the youth sleeps at home but is required to report to a structured and supervised center on a daily basis after school or work and on the weekends. These programs operate at a significantly lower cost than detention because there is no need for third shift staff coverage.
- **Temporary shelters or holdover programs** – these can be staff-secure facilities where youth at risk of reoffending reside in lieu of secure detention, or they can be non-secure holding facilities for youth who could be released but the parent, custodian, or a relative cannot be located or cannot provide appropriate supervision. These programs generally operate at approximately 75% of the cost of detention because of reduced staffing ratios, and often offer more skill-building experiences and relational support than secure detention.

  Three populations of youth that often unnecessarily remain in secure detention for extended periods of time are youth involved in domestic violence, youth whose parent or custodian refuse to allow them to return home, and youth awaiting non-secure residential placement. Non-secure or staff-secure facilities can be a very effective alternative for these populations as well as other higher risk populations.[29]

Examples of juvenile delinquency courts that have had very successful experiences in creating continuums of options to secure detention are described below:

- An urban and suburban area with a population of approximately one-half million has a detention facility that could house 125

youth; however, it averages a daily population of 60.[30] This enables three units to remain closed at significant savings. A portion of these savings fully funds a three-tiered system of detention levels. When a youth is arrested and brought to the detention facility, a risk screen is completed which places the youth in one of three levels:

- Level 1 is secure detention.
- Level 2 is a detention reporting center. Youth in school are required to report to a center 34 hours a week, and youth not attending school are required to report to the center 51 hours a week. While at the reporting center, youth are involved in structured programming that includes a "thinking error" behavioral management program, tutoring, job readiness, basic living skills, community service, recreation, and drug testing.
- Level 3 is home detention. Youth have a minimum of two surveillance contacts per day and six hours of weekly programming at the detention reporting center.

Level 2 and Level 3, referred to as community detention, together average a cost of less than one-third the cost of Level 1. Level 2 and Level 3 options have a capacity of 55 youth per day. In 83% of cases, youth successfully completed all three requirements of the community detention program which are: 1) appearing at all juvenile delinquency court hearings as scheduled; 2) not engaging in behavior that results in additional charges while in community detention; and, 3) not exhibiting behavior in the detention reporting center that would require placement into secure detention.

- A very large urban juvenile delinquency court decided it needed alternatives to secure detention when the 500-bed detention facility was consistently running at 800 youth per day.[31] This jurisdiction has a population of approximately six million. With assistance from the Annie E. Casey Foundation, they instituted a continuum of options to secure detention that resulted in reducing the secure detention population to an average of 475 youth per day. When the grant ended, more than enough resources were saved annually from reduced secure detention staffing costs to continue to support the cost of the continuum of options.

A risk of reoffending screen is used at detention intake to determine which option should be used. As with the prior example, success is defined by three factors: 1) appearing at all juvenile delinquency court hearings as scheduled; 2) not engaging in behavior that results in additional charges while in community detention; and, 3) not exhibiting behavior that would require placement into secure detention. The options included in this continuum and the percentages of youth who successfully complete each alternative to secure detention are:

- Juvenile Delinquency Court Notification – the focus of this intervention is on keeping out of detention those youth who do not appear for juvenile delinquency court, have arrest warrants issued as a result, and are usually held in secure detention after the warrant has been served. Many of these youth are in this predicament because of a lack of discipline by parents or youth in managing their appointments and obligations, as opposed to intentionally ignoring the juvenile delinquency court. Additional written and telephone reminder notices to all youth in advance of every pre-adjudication court hearing has reduced the number of youth who are placed in secure detention for this reason.
- Community Outreach Supervision – ten hours of random direct supervision contacts are made with youth by agencies within the community. Success rate is 94%.
- Home Confinement – youth receive two random home visits by a probation officer every three days during the evening and weekend, as well as random telephone voice verification approximately five times a week. Success rate is 94%.
- Evening Reporting Center – home confinement is combined with a requirement to report to a center five days a week from 4:00 p.m. to 9:00 p.m. There are five centers in different areas of the city operated by community organizations. Success rate is 95%.
- Electronic Monitoring – youth are placed at home on electronic monitoring supervised through collaboration between probation and the sheriff's office. Success rate is 96%.
- Staff-secure Shelter – these shelters are designed for youth who are pending adjudication and disposition and for youth awaiting non-secure placement. The shelters are operated by community agencies. Success rate is 96%.

- A county juvenile delinquency court in a rural area that incorporates a population of 122,000, consisting of four primary towns, is an example of how to overcome the challenges of providing a continuum of secure detention options in a rural area.[32] In addition to a regional secure detention facility, the county juvenile delinquency court has the following continuum of options:

- Electronic Monitoring – provides supervision for youth to remain in their home from several days to several weeks pending juvenile delinquency court disposition.
- Community-Based Emergency Shelter with Negotiation (AKA Mediation) Services – the juvenile delinquency court purchases this service from a community agency. The service provides not only temporary shelter, but also negotiation services to create a safety plan for the community and family so that the youth can be released home pending resolution of the court process.
- Foster Care – the juvenile delinquency court contracts with a private foster care provider for eight beds that can be used for emergency placements.
- In addition, the county is developing a day and night reporting center and a non-secure girl's shelter.

A study in North Carolina examined 19 alternatives to detention programs around the state, both in cities and rural areas.[33] All programs included careful screening for admission, intensive monitoring and supervision, small caseloads with individualized attention, strict rules for compliance and curfew, contacts at nights and weekends, verification of compliance at home and school, inclusion of supportive community resources, and rapid placement into secure confinement if needed.

The study found the programs to provide less restrictive options to secure detention in a cost-effective manner without compromising public safety. Over 75% of the cases in the alternative programs successfully avoided secure detention. Of the less than 25% of cases that ended up in secure detention, less than 5% committed new offenses while in the program. The remainder failed due to technical program violations.

2. Managing the Detention Census[34]

When detention facilities extend beyond their intended capacity, it is not in the best interest of the youth who are detained, nor is it in the best interest of detention staff or the juvenile justice system. Over-crowded detention facilities can be unhealthy, dangerous, and chaotic places, with high operating costs, overtaxed staff, inadequate services, and heightened risks of violence and suicide among detainees. Too often, jurisdictions build bigger detention facilities only to have them exceeding capacity in a short period of time. Several studies have found evidence that detention rates varied in direct proportion to the availability of detention facilities.[35]

These problems can be avoided when juvenile delinquency courts, and the intake and detention facilities that support them, have processes in place to ensure that only those youth who require secure detention are entered into secure detention, and that these youth are released in a timely fashion.[36] Experiences described in the previous section show that by providing options to secure detention, juvenile delinquency courts can manage their detention population without putting the community at risk, without building bigger facilities, and without filling every available secure detention bed.

The first line of defense against allowing the detention population to exceed capacity has been extensively discussed. To summarize, this first line of defense is to: 1) use validated risk of reoffending screens and consistent processes to determine which youth can be safely released or diverted to non-secure options; and, 2) develop a continuum of options to secure detention that will enhance community safety, keep youth who need crisis mental health or substance abuse detoxification facilities out of secure detention, help youth build skills, and conserve resources. A strong system to manage secure detention intake, and a system to ensure that detained youth are released in a timely fashion, will make the most significant impact on keeping the detention population within capacity.

Additional tools that juvenile delinquency courts and detention systems have used to keep their detention populations at a safe level and to ensure that detained youth are released in a timely fashion include:[37]

- Setting a maximum acceptable secure detention daily population; communicating the number of youth in detention along with the number of openings in the various non-secure detention options daily to judges and probation officers; ensuring that non-secure options have sufficient capacity so that some openings always exist; and regularly reinforcing to all juvenile delinquency court staff the judge's expectation to keep detention within the established acceptable population boundary.
- Involving representatives of all juvenile delinquency court divisions, detention, police, victims, child welfare agency, prosecutors, counsel for youth, and community leaders in examining an overcrowding problem and creating a continuum of options to solve the problem.
- Ensuring that no pre-disposition youth is held in detention without a timely pending court date.[38]
- If statutes allow detention to be used as a disposition consequence, having clear guidelines regarding when it is appropriate to use detention in this manner and for how long, and requiring that the juvenile delin-

quency court order specifies a reasonable end date for the detention.

- Holding weekly meetings led by the judge and including invited representatives of all pertinent system participants, including judicial officers, probation officers, detention intake staff, detention management staff, prosecutor, counsel for youth, child welfare representatives, and schools, to review any youth who is in detention post-adjudication. The purpose of the review is to ensure that there is a valid reason to continue to hold every youth and that systems involved in setting up disposition services are acting in a timely fashion, so that no youth remains in secure detention longer than is absolutely necessary.

Juvenile delinquency courts should measure and monitor the number of youth who abscond or fail to appear in court to insure that release options are not used inappropriately.

3. Restrictions on Holding Juveniles in Adult Jails[39]

The Juvenile Justice and Delinquency Prevention Act of 1974, and subsequent modifications to that Act, established requirements related to holding juveniles in adult jails. In order for states to receive their full share of federal formula grants, these requirements must be met. The parts of this Act that specifically relate to holding juveniles in adult jails include:[40]

- Sight and Sound Separation – Whether waiting trial or already adjudicated, juveniles may not be detained where they will be in contact with adult inmates. This requirement does not rule out time-phased use of non-residential areas by juveniles and adults and is not violated by brief, accidental contact in such areas.
- Jail and Lockup Removal – Unless they are being tried as adults in criminal court, juveniles may not generally be detained in adult jails or lockups, except that:
  - Juveniles accused of nonstatus offenses can be detained in an adult jail or lockup for no more than six hours if being processed for release, awaiting transfer to a juvenile facility, or waiting to make a court appearance, but only if they do not have contact with adult inmates and if the staff have been trained and certified to work with juveniles.
  - Juveniles accused of nonstatus offenses can be detained in an adult jail or lockup if they are outside a metropolitan statistical area (as defined by the Office of Management and Budget), there is no existing acceptable alternative placement available, and conditions of distance to be traveled do not allow for juvenile delinquency court appearances within 48 hours; or, if conditions of safety exist that do not allow for reasonably safe travel, the time for an appearance may be delayed until 24 hours after travel conditions become safe. In all of the above circumstances, the juvenile must be awaiting an initial juvenile delinquency court appearance that will occur within 48 hours after being taken into custody (excluding Saturdays, Sundays, and legal holidays), they must not have contact with adult inmates, and the staff must have been trained and certified to work with juveniles.
- Collocated Facilities – A juvenile detention facility collocated with an adult jail facility or lockup must meet specific criteria to establish that both facilities are separate and distinct.
- Status Offenders – Since the Act prohibits the placement of status offenders and nonoffenders in secure detention facilities or secure correctional facilities, it clearly prohibits holding status offenders in adult jails or lockups.
- Juvenile Transfers – Once a juvenile has been formally waived or transferred to criminal court and criminal felony charges have been filed, the Act requirement that "no juvenile alleged to be or found to be delinquent shall be detained or confined in any jail or lockup for adults" is no longer applicable. The youth is no longer an alleged delinquent, but an alleged felon. Consequently a juvenile who has been transferred or waived, or is otherwise under the jurisdiction of a criminal court, is not federally required to be separated from adult criminal offenders in a jail or prison.

It is important to note, however, that there is also no requirement that a juvenile who has been formally waived or transferred to criminal court with criminal felony charges filed, be placed with adults in an adult jail. Waiver and transfer do not transform a juvenile into an adult. A waived and transferred juvenile can be commingled with juvenile offenders until reaching the age of full criminal responsibility.

It is equally important to note that youth have a constitutional right to reasonable safety, adequate medical and mental health care, rehabilitative treatment, and mandatory education. A juvenile delinquency court must take into consideration the safety of the transferred juvenile in an adult criminal facility, the safety of other juveniles and staff if the transferred youth is retained in a juve-

nile detention or correctional facility, and the constitutional rights of the youth, when making the determination of where the transferred youth should be detained.[41]

When a juvenile delinquency court fails to follow the requirements of the Juvenile Justice and Delinquency Prevention Act, the juvenile delinquency court potentially places the youth in a harmful situation, potentially places the juvenile delinquency court in a weakened liability position, and potentially harms all delinquent youth by unnecessarily reducing the amount of funds available to the juvenile delinquency system to meet the needs of delinquent youth.

Endnotes

[1] DeMuro, P. (1999). *Consider the Alternatives (Pathways Series #4).* Baltimore, MD: Annie E. Casey Foundation.

[2] National Center for Juvenile Justice. (2002). *Desktop Guide to Good Juvenile Probation Practice.* Pittsburgh, PA: Author.

[3] National Prosecution Standards, 92.9, National District Attorneys Association (1991).

[4] According to *Juvenile Court Statistics: 1985-2000,* 42% of delinquency cases disposed by juvenile delinquency courts were handled informally. Types of delinquency cases handled informally include:

- 39% of charges against persons
- 45% of property charges
- 39% of drug charges
- 41% of public order charges

Of the informally handled cases in 2000, 38% were dismissed. In the remaining 62%, the youth voluntarily agreed to intervention services or sanctions. Stahl, A., Finnegan, T., & Kang, W. (2002). *Easy Access to Juvenile Court Statistics: 1985 – 2000.* National Center for Juvenile Justice data archives. Online. Available at: http://ojjdp.ncjrs.org/ojstatbb/ezajcs/

[5] Snyder, H., & Sickmund, M. (1999). *Juvenile Offenders and Victims: 1999 National Report.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

[6] Supra note 2.

[7] Substantial portions of this section were excerpted from the following publications:

- National Council of Juvenile and Family Court Judges. (2003). *Promising Sanctioning Programs in a Graduated System.* [Juvenile Sanctions Center Training and Technical Assistance Program, 1(4).] Reno, NV: Author.
- Butts, J. A., Buck, J., & Coggeshall, M. B. (2002). *The Impact of Teen Court on Young Offenders.* Washington, DC: The Urban Institute.
- Peterson, S. B., & Elmendorf, M. J. (2001). Youth courts: A national youth justice movement. *Corrections Today.*
- *Juvenile Justice Today: Essays on Programs and Policies.* (2002). American Correctional Association.
- Lockart, P. S., Pericak, W.C., and Peterson, S. B. (1996) Youth Court: The Colonie, New York Experience. *Journal for Juvenile Justice and Detention Services, 11,* 79-82..
- *National Facts and Stats.* National Youth Court Center. Online. Available at www.youthcourt.net
- Godwin, T. M., Heward, M. E., & Spina, T. (2000). *National Youth Court Guidelines.* Lexington, KY: National Youth Court Center.
- Weisz, V., Lott, R. C., & Thai, N. D. (2002). A teen court evaluation with a therapeutic jurisprudence perspective. *Behavioral Sciences and the Law,* 20, 381-392.
- Office of Juvenile Justice and Delinquency Prevention (2001). *OJJDP Annual Report 2000 Chapter 3.* Washington, DC: Author.
- Butts, J. A., & Buck, J. (2000). *Teen Courts: A Focus on Research.* [OJJDP Juvenile Justice Bulletin.] Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

[8] In 1995, there were only 50 teen courts in the United States. However, by 2003, there were 1,000 operational teen courts and more than 100 in development. Seventeen states have passed legislation expressly sanctioning the establishment of these courts.

[9] NYCC is operated by the American Probation and Parole Association of Lexington, Kentucky with funding support from the OJJDP, the U.S. Department of Transportation's National Highway Traffic Safety Administration, the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration, and the U.S. Department of Education's Office of Elementary and Secondary Education. The NYCC website is: www.youthcourt.net.

[10] Walls, C. (2003). *New Approaches to Truancy Prevention in Urban Schools.* ERIC Clearinghouse on Urban Education. ISSN 0889 8049

[11] In 1996, 84% of delinquency cases were referred by law enforcement agencies. Social service agency representatives, school personnel, parents, probation officers, and victims referred the remainder. In the same year, juveniles were detained at some point between referral and disposition in 19% of all processed delinquency cases. Statistics are not available regarding the percentage of youth detained at the point the petition is filed as opposed to a later stage in the court process. Snyder, H., & Sickmund, M. (1999). *Juvenile Offenders and Victims: 1999 National Report.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

[12] Weiss, C. P. (1999). Improving communication and coordination between the child welfare and juvenile justice systems. *Child Law Practice, 18,* 141-148.

[13] For more information contact the Circuit Court of Cook County, Juvenile Delinquency Division, Chicago, Illinois. See the Appendices for contact information.

[14] As of the end of 1997, 46 states and the District of Columbia allowed the fingerprinting and photographing of juveniles under specific circumstances. Some states restrict by age, and others by offense. Snyder, H., & Sickmund, M. (1999). *Juvenile Offenders and Victims: 1999 National Report.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

[15] The State of Utah uses receiving centers. The State of Florida uses an assessment center model. Juvenile holdover programs are a relatively new model that can be useful in rural areas. See Section E, *Alternatives to Secure Detention* for more information.

[16] The screen may also be called a detention admission model or a risk/needs assessment.

[17] The Massachusetts Youth Screening Instrument (MAYSI) is specifically designed to assess psychological distress experienced by youth in the juvenile justice system for the purpose of referral for mental health services. It requires only a fifth grade reading level. Questions may be read to youth below that level. For further information: http://www.umassmed.edu/nysap/maysi2/what.cfm.

[18] See the Appendices for a summary of *In re Gault.*

[19] Ainsworth, J. E. (1996). The court's effectiveness in protecting the rights of juveniles in delinquency cases. *The Juvenile Court: The Future of Children, 6,* 64-74.

[20] Supra note 19.

[21] Puritz, P., Burrell, S., Soler, M., Warboys, L., & Schwartz, R. (1995). *A Call For Justice: An Assessment Of Access To Counsel And Quality Of Representation In Delinquency Proceedings.* Washington DC: American Bar Association.

[22] Between 2001 and 2003, the American Bar Association studied access to and quality of counsel for indigent youth in Georgia, Kentucky, Louisiana, Maine, Maryland, Montana, North Carolina, Ohio, Pennsylvania, Texas, Virginia, and Washington. Information can be found at www.abavideonews.org/.

[23] A study in Lucas County Juvenile Court determined that when counsel was present at the initial hearing (youth who are not detained), 78% of cases were resolved at that hearing. Consequently, no additional docket time was required. Because fewer hearings needed to be scheduled, the juvenile delinquency court was able to meet docketing timeframes as required by the state Supreme Court without adding additional staff. It is important to note that this references initial hearings and not detention hearings. As reported in the *2001 Annual Report,* Juvenile Division of the Lucas County Court of Common Pleas, Toledo, Ohio.

[24] It is important to note that such activities cannot be supported with federal funds due to the requirements of 18 U.S.C. § 1913.

[25] Puritz, P., and Shang, W. (1998). Innovative approaches to juvenile indigent defense. *Juvenile Justice Bulletin.*

- Supra note 19.

[26] Supra note 2.

[27] Supra note 1.

[28] Supra note 2.

[29] For more information on how urban, suburban, and rural communities can design, develop, and implement a juvenile holdover program, the OJJDP along with the National Highway Traffic Safety Administration and the American Probation and Parole Association developed a CD-Rom entitled *"An Implementation Guide for Juvenile Holdover Programs"* in June 2001. For more information go to www.nhtsa.dot.gov.

[30] For more information, contact the Lucas County Juvenile Court in Toledo, Ohio. See the Appendices for contact information.

[31] For more information, contact the Circuit Court of Cook County, Juvenile Delinquency Division, Chicago, Illinois. See the Appendices for contact information.

[32] For more information contact the Deschutes County Juvenile Court in Oregon. See the Appendices for contact information.

[33] McCord, J., Widom, C. S., & Crowell, N. A. (Eds.). (2001). *Juvenile Crime, Juvenile Justice.* Washington, DC: National Academy Press.

[34] Substantial portions of this section are excerpted from: Orlando, F. (1999). *Controlling the Front Gates: Effective Admissions Policies and Practices.* Baltimore, MD: Annie E. Casey Foundation; and Snyder, H., & Sickmund, M. (1999). *Juvenile Offenders and Victims: 1999 National Report.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

[35] McCord, J., Widom, C. S., & Crowell, N. A. (Eds.). (2001). *Juvenile Crime, Juvenile Justice.* Washington, DC: National Academy Press.

[36] In 1998, overcrowding in public detention centers was the norm rather than the exception, with 70% of publicly held juveniles in facilities operating above their rated capacities. Most detainees were held for very short periods in connection with nonviolent and often minor offenses. Historically, juveniles have often been held in secure detention for reasons having nothing to do with risk of reoffending or absconding. Some states allow secure detention to be used as a dispositional order. This further exacerbates over-crowding.

[37] Also, refer to Roush, D. W. (1996). *Desktop Guide To Good Juvenile Detention Practice.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

[38] The detention hearing should be scheduled the next business day after the youth is detained (48 hours maximum). Subsequent hearings when youth are in detention should be scheduled as quickly as possible and never for a period longer than two weeks.

[39] Many of the concepts included in this section are from: National Center for Juvenile Justice. (2002). *Desktop Guide to Good Juvenile Probation Practice.* Pittsburgh, PA: Author. Snyder, H., & Sickmund, M. (1999). *Juvenile Offenders and Victims: 1999 National Report.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention. Sickmund, M., Snyder, H., & Poe-Yamagata, E. (1997). *Juvenile Offenders and Victims: 1997 Update on Violence.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

[40] This information includes modifications to the Act through 2002 that are currently in effect. The Act can be accessed through the Office of Juvenile Justice and Delinquency Prevention website at: www.ojjdp.ncjrs.org.

[41] Additional resources regarding conditions of juvenile confinement include:

- The U.S. Department of Justice, Civil Rights Division, Special Litigation Section, which includes litigation related to conditions of confinement and statutory and constitutional rights. Their website is: http://www.usdoj.gov/crt/split/juveniles.htm.
- The Office of Juvenile Justice and Delinquency Prevention Performance-Based Standards addressing conditions of confinement and services for youth housed in correctional facilities, including detention facilities. They have standards that address security, order, safety, programming, health and mental health services, etc. Their website is: www.performancebasedstandards.org. Office of Juvenile Justice and Delinquency Prevention publications can be accessed online at: http://abstractsdb.ncjrs.org/content/AbstractsDB_search.asp.
- The Office of Juvenile Justice and Delinquency Prevention document *The Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 2002.* Online. Available at: http://ojjdp.ncjrs.org/compliance/guidancemanual.pdf.

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The *JUVENILE DELINQUENCY GUIDELINES* is intended to be used by courts and other juvenile delinquency system stakeholders to assist their efforts to improve practice. The *GUIDELINES* is aspirational - they focus on what should be as opposed to what is. Every effort has been made to make the *GUIDELINES* practical and usable, and to ground recommendations in the most current research and promising practices available at the time of development.

Some jurisdictions are already following many of the recommendations. Some jurisdictions may find it extraordinarily challenging to follow the recommendations. Regardless of jurisdictional status and resources, it is hoped that the *GUIDELINES* will provide a common vision and motivational framework for those working toward an improved juvenile delinquency system.

As jurisdictions strive to implement the *GUIDELINES* with training and technical assistance from the NCJFCJ, juvenile delinquency system practitioners from all situations - urban, rural, suburban, and with varying degrees of resources - will be able to create and share successful implementation methods.

CHAPTER IV: THE DETENTION OR INITIAL HEARING

This chapter describes the first hearing on a formally processed juvenile delinquency petition. Prior to this point, an affidavit was filed and determined to be legally sufficient. The prosecutor or juvenile delinquency court staff decided to handle the case in the formal juvenile delinquency court and a formal petition alleging delinquency was filed. If the youth was summoned to juvenile delinquency court after the petition was filed, the *DELINQUENCY GUIDELINES* refers to the youth's first appearance in juvenile delinquency court as the "initial hearing." If the youth is in detention, the *DELINQUENCY GUIDELINES* refers to the first hearing as the "detention hearing." Although most juvenile delinquency courts call the first hearing when a youth is held in detention the "detention hearing," many different names are used for the first hearing when a youth is summoned to juvenile delinquency court, including arraignment, probable cause, pre-trial, or plea hearing. Usually, the only differences between a detention hearing and an initial hearing are: 1) the timing of the hearing; and, 2) the need to determine whether the youth will continue to be detained if the hearing is a detention hearing.

In juvenile delinquency courts where counsel is appointed and has met with the youth prior to the detention or initial hearing, one hearing can often cover issues of detainment and probable cause, can allow a plea to be entered, and if the youth denies the charge, can address pre-trial issues. Consequently, pre-trial issues are included in this chapter. This concept of combining all detention, probable cause, plea, and pre-trial issues into one hearing may be foreign to many juvenile delinquency court jurisdictions. However, in many instances, counsel and prosecutor can be prepared to address all of these issues resulting in a one-hearing system that is more timely for the youth, reduces detention lengths of stay, conserves juvenile delinquency court docket time, and conserves prosecutor and counsel time.

Whenever practicable, if the youth is being detained in secure detention, a detention hearing held in a courtroom setting within the detention center or on the grounds of a juvenile justice complex is preferred because this reduces safety and security concerns and saves transportation costs. Preferably, the first hearing, and subsequent hearings through disposition, are held face-to-face, as opposed to electronically.

A. PURPOSE OF THE DETENTION OR INITIAL HEARING

The issues that must be covered in a detention hearing or initial hearing that combines plea and pre-trial issues include:

1) Ensuring qualified counsel has been engaged;
2) Determining whether the youth understands the allegations, court process, and procedures, and appears competent to go forward;
3) Ensuring the youth and parent understand their rights and the juvenile delinquency court process;
4) Determining whether there is probable cause to proceed;
5) Determining whether the prosecutor will request that juvenile jurisdiction be waived and the youth transferred to the criminal court;
6) Determining whether the youth admits or denies the allegations, and if the youth admits, determining whether a separate disposition hearing should be set;
7) If the youth denies the allegations, determining whether dispute resolution alternatives are appropriate, and if not, addressing pre-trial issues and setting the case for trial;[1]
8) If the youth is in detention, determining whether the youth should continue to be detained in secure or non-secure detention or released with or without restrictions pending the next hearing; and
9) If the youth is in secure or non-secure detention or shelter care, and if the youth is currently receiving services funded through title IV-E, or if it is anticipated that if adjudicated, additional services may be needed that could be funded through title IV-E, determine whether remaining at home is contrary to the youth's welfare and whether reasonable efforts have been made to prevent removal and to return the youth to the home.[2]

This first juvenile delinquency court hearing is an opportunity for the court to show its commitment to four key principles:

Key Principle 3: Juvenile Delinquency Courts and Juvenile Abuse and Neglect Courts Should Have Integrated One Family-One Judge Case Assignments

Key Principle 5: All Members of the Juvenile Delinquency Court Shall Treat Youth, Families, Crime Victims, Witnesses, and Others With Respect, Dignity, Courtesy, and Cultural Understanding

Key Principle 7: Youth Charged in the Formal Juvenile Delinquency Court Must Have Qualified and Adequately Compensated Legal Representation

Key Principle 9: Juvenile Delinquency

Courts Should Render Timely and Just Decisions and Trials Should Conclude Without Continuances

B. TIMING OF THE DETENTION OR INITIAL HEARING

The detention hearing should be held the first business day following the youth's detainment and not more than 48 hours after detainment (excepting weekends and holidays). ***The DELINQUENCY GUIDELINES recommends* that, if possible, juvenile delinquency courts hold detention hearings on Saturday mornings to avoid unnecessarily detaining a youth over the weekend**. Difficulty contacting the parents and notifying them of the need to appear in juvenile delinquency court should be the only reason to delay the detention hearing beyond the next business day. In many cases, when the parent appears for the hearing, and when counsel is available and able to talk with the youth and parent prior to the hearing, all pre-trial issues can be addressed at the detention hearing.

When a youth is summoned to juvenile delinquency court, the initial hearing should be held as close to the date the petition was filed, as service of summons will allow. Determining whether the case will be handled informally or formally could take up to five working days as described in Chapter III, Section C (1). If systems exist so that law enforcement can assign the hearing date and provide hearing notification to the youth and parent at the time the decision is made to file the affidavit [as described in Chapter III, Section D (1)], the initial hearing could be held within two weeks of the date the affidavit and petition was filed. If the juvenile delinquency court assigns the hearing date and handles hearing notification, the initial hearing should be held not more than three weeks from the date the affidavit was filed.

In addition to the detention and standard initial hearing, some juvenile delinquency courts provide a third timing option. This option, an expedited initial hearing, can be requested by the arresting officer for a youth who was not detained, but whose risk level was close to detainment. In this system, the arresting officer is able to immediately obtain an initial hearing date within five days, and the arresting officer serves the summons to the youth and parent immediately.

C. LEGAL REPRESENTATION AT THE DETENTION OR INITIAL HEARING

In a juvenile delinquency court of excellence, counsel is appointed prior to the detention or initial hearing, and has time to prepare for the hearing. Chapter III, Section D (3) gives several examples of how to set up such a system. ***Key Principle 7: Youth Charged in the Formal Juvenile Delinquency Court Must Have Qualified and Adequately Compensated Legal Representation,*** applies to this step in the process. ***The DELINQUENCY GUIDELINES recommends* that the youth, parent, and counsel for the youth meet prior to the initial hearing to determine the position they will take at the hearing**. This enables counsel to contact the prosecutor prior to the hearing if desired. The better the preparation prior to the hearing, the more timely and efficient the process will be.

Delays in the appointment of counsel create less effective juvenile delinquency court systems. Delays make it difficult for juvenile delinquency courts to set and hold to specific initial hearing times and create unnecessary and inefficient delays, often requiring additional hearings that could have been avoided. Families who can afford private counsel do not have these barriers and rarely appear at the first juvenile delinquency court hearing without prior consultation with counsel.

If it is not possible for a youth and family to contact counsel prior to the first juvenile delinquency court hearing, the second preference is to provide access on the day of the first hearing with sufficient time for the youth, family, and counsel to discuss the case before entering the courtroom. In some juvenile delinquency courts, a staff person from the juvenile delinquency court or public defender's office meets with every youth and family when they arrive at court to determine whether the youth qualifies for a public defender. If so, a public defender is available to meet with them before the hearing. The youth and parent or guardian are told to appear at court sufficiently ahead of the scheduled hearing time so that this process can be completed and the case called when scheduled. If the youth does not qualify for a public defender, a member of the private bar is called upon to meet with the youth and family and the juvenile delinquency court assesses attorney fees. To make this system work, the juvenile delinquency court has agreements with private counsel who regularly appear before the juvenile delinquency court to sign in when she or he are in the juvenile delinquency court, and to make themselves available, if possible, to pick up these cases.

When juvenile delinquency systems have effective management information systems, the juvenile delinquency court and public defender can predict the number of cases that will require counsel so that adequate resources are available to enable this system to function effectively.

***The DELINQUENCY GUIDELINES recommends* the combination of all plea and pretrial issues into the first hearing**, whenever

possible, over a separate arraignment hearing at which time counsel is appointed, for two reasons. First, it prevents the youth from going through a juvenile delinquency court hearing without the benefit of counsel. Second, it eliminates an additional hearing on every juvenile delinquency court delinquency petition. Eliminating the additional hearing saves significant resources because:

- Parents must come to court and potentially miss work once instead of twice;
- Youth must come to court and potentially miss school once instead of twice;
- Less time passes between the filing of the petition and resolution of the petition, enhancing timely juvenile delinquency court decisions;
- Docket time is conserved;
- Prosecutor and counsel for youth time is conserved; and
- If the youth is in detention, the number of detention days is reduced, assisting with detention census control.

D. CONDUCTING THE DETENTION OR INITIAL HEARING

The first contact between families and the juvenile delinquency court is often the detention or initial hearing. Because this first meeting sets the stage for the family to become positively or negatively engaged with the juvenile delinquency court process, it is important to create an atmosphere of respect, dignity, courtesy, and cultural understanding *(Key Principle 5)*. At this entry point the juvenile delinquency court can exhibit these qualities in many ways:

- By providing a clean, orderly, attractive, and safe waiting area for the youth and family;
- By providing private areas for the family to meet with counsel;
- By providing materials that explain the juvenile delinquency court process in languages that represent significant ethnic groups in the community who do not speak English;
- By providing easily accessible certified court interpreters to family members who do not speak English or are hearing impaired;
- By ensuring all delinquency system participants show respect for everyone who comes into the juvenile delinquency court;
- By beginning the hearing at the scheduled time; and
- By involving all family members who are present in the courtroom in the hearing, showing them that their participation is important. This can be accomplished by ensuring that parties and key participants introduce themselves and explain their relationship to the youth; and by ensuring that, during the course of the hearing, the juvenile delinquency court gives parents, custodians, and other individuals pertinent to the issues, an opportunity to speak.

In some juvenile delinquency courts, brochures and other explanatory materials are available in the waiting areas. In other juvenile delinquency courts, videotapes are played in the waiting areas of the court that explain to youth and families their rights and what will occur in the juvenile delinquency courtroom. Both methods increase a family's understanding of the process, and increase their ability to effectively address the issues in the hearing. These materials supplement the responsibility of counsel for the youth, and the juvenile delinquency court judge, to explain rights and the court process.

1. Who Should Be Present

The following individuals should be present at the detention or initial hearing:

- The judge who is assigned to the family. In detention hearings, due to the short timeframes involved, this may not be possible. If not, the next hearing should be set before the family's assigned judge who should make all disposition decisions;
- The youth who has been charged with the violation of law;
- The parent or legal custodian of the youth, including the youth's caseworker if under custody to the child protection agency;
- If the youth is living with someone other than the parent or legal guardian (e.g., non-custodial relative, foster parent) as the caretaker of the youth;
- Counsel representing the youth;
- Prosecuting attorney;
- Certified interpreters if the youth, parent, or custodian does not speak English or is hearing impaired; and
- Juvenile delinquency court security and other court staff as required, including stenographic staff or recording technology.

If the youth is on probation or involved in services, it may not be necessary for the probation officer or other worker to be present as long as there is a system to ensure that all necessary information is available to the judge, prosecutor, and counsel, either through paper or computerized systems.

If the parent or legal custodian does not appear for the hearing or is part of the prosecution of the case, a relative, or other adult with a positive relationship with the youth should be

permitted to fulfill the role of supportive parent. If no other person known to the youth is available, the court should appoint an *in loco parentis* to serve as a supportive adult until either the parent or a relative becomes available, or until the disposition hearing is completed (refer to Chapter I, Section D for a more detailed explanation of this role).

2. Information the Juvenile Delinquency Court Should Have

At the start of the detention and initial hearing, the following information should be available:

- The petition and affidavit concerning the alleged law violations and any motions that have been filed;
- Information regarding the youth's prior involvement with the juvenile delinquency court, including any other pending charges, and whether the youth is under the court's abuse and neglect jurisdiction;[3]
- If the youth is in detention, information regarding the youth's adjustment and any issues of concern;
- If the youth is in detention, any information from the detention intake screening process that indicates immediate service needs of the youth, such as medical or mental health needs;
- If the youth is on probation and in detention, information from the probation officer that may be pertinent to the decision of whether the youth needs to continue to be held in secure or non-secure detention or can be released with or without restrictions;
- If the youth is on probation, information from the probation officer regarding any cultural or disability issues that would assist the judge to successfully communicate with the youth and family; and
- If the youth is in secure or non-secure detention or shelter care, whether the youth is receiving services, or may need services that could be funded through title IV-E.

3. Reading of the Petition and Explanation of Rights

Juvenile delinquency court judges must be vigilant to ensure that they do not allow the reading of the petition and explanation of rights to become a mechanical process. This can be difficult when dockets are over-crowded, multiple cases are scheduled at the same time, and the judiciary covers these process points multiple times everyday.

It is equally important for the judge, especially when dealing with a youth and parent for the first time, to watch for indicators that they may not understand what is happening. When verbal or nonverbal warning signs of a lack of understanding appear, it is important to slow the process. The judge must carefully assess whether there are issues of competency to stand trial that need to be addressed, or whether language should be simplified to assist the youth and parents to understand. Competency to stand trial issues are discussed in the next section.

Prior to the hearing, the youth and family should have been served with a copy of the petition and affidavit and given a written explanation of their rights. Both items should be written in simple language designed to assist understanding. When qualified counsel represent youth and have prepared before the hearing, counsel will have also carefully reviewed the petition and rights with the youth and family. Counsel will have significant information from these interactions to assist in identifying whether there are questions of competency to stand trial that need to be addressed.

Once the petition has been read, and the juvenile delinquency court is assured that the youth and parent or guardian understand the allegations, due process rights should then be reviewed. These rights include the right to counsel, the right to have parents present, the right to a trial, the right to confront and cross-examine witnesses, and the privilege against self-incrimination. The burden of proof and possible consequences if adjudicated on the offense should also be reviewed. Depending on state statutes, other rights or issues may need to be reviewed. The youth and parent or guardian should sign a statement that they understand their rights and if the youth in consultation with the parent or guardian and counsel chooses to waive any right, the youth, parent or guardian, and counsel should sign a written waiver.[4] If the prosecutor has requested that the juvenile delinquency court waive jurisdiction and transfer the case to the criminal court, the juvenile delinquency court should explain the process the juvenile delinquency court will use to rule on the motion, and the potential consequences, if the court grants the motion.

When qualified counsel is involved, the juvenile delinquency court can be confident that when the youth and parent or guardian respond that they understand the allegations, understand their rights, and choose to waive a right or enter a plea, that they are making knowing, intelligent, and voluntary decisions.

4. Questions of Competency To Stand Trial

Legal competency is defined as a threshold requirement, imposed by society, for an individ-

ual to retain decision-making power in a particular activity or set of activities. A judge determines competency. There are many different aspects of legal competency, and an individual may be competent for one purpose but not for another. Decisional capacity is defined as the mental ability to understand the nature and effects of one's acts and refers to a medical-legal construct that is determined by a clinician. Although technically these terms are distinct concepts, they are clearly related and often are used interchangeably.[5]

A clinician who has specialized training and experience in forensic evaluation of juveniles must assess the decisional capacity of a youth with regard to the youth's ability to understand the nature of the juvenile delinquency court proceedings and to assist counsel with his or her defense. These are the primary issues that determine whether or not the youth is competent to stand trial. It is important that the clinician's report describes any relevant negative impact on the youth's decisional capacity caused by situational factors that can be remedied or accommodated such as the individual's cultural background, primary language, communication style, physical or sensory impairments, motivation, attentiveness, or emotional factors.[6] A youth may be rendered functionally incompetent to stand trial because the manner in which the juvenile delinquency court conducts its proceedings is not conducive to the youth being able to understand. Youth may also be rendered incompetent to stand trial because of their age-related immaturity, mental illness, trauma, mental retardation, or developmental disabilities. Using the clinician's assessment of the decisional capacity of the youth, the juvenile delinquency court judge determines whether the youth is competent to stand trial.

A juvenile delinquency court judge and counsel generally assume a youth is competent to stand trial. However, when counsel, prosecutor, or the juvenile delinquency court judge observe indicators that competency to stand trial may be an issue, each is obligated to pursue the question further. A juvenile's competence to stand trial should be explored through additional questioning during the detention or initial hearing, in order to determine whether or not a clinical assessment is needed, when the juvenile meets any of these criteria:[7]

- The juvenile is under the age of 15;
- The juvenile has a history of mental retardation, mental illness, or trauma;
- The juvenile's educational or medical records describe borderline intelligence or learning disabilities; or
- The juvenile is exhibiting deficits in memory, attention, or reality testing.

Counsel for the youth is obligated to request a clinical assessment of decisional capacity if the youth's competency to stand trial is in question. The juvenile delinquency court judge is independently obligated to order an assessment if the judge's observations raise competency issues, even if counsel does not request an assessment. If an assessment is needed, the juvenile delinquency court judge should order the assessment, specify the person responsible to arrange the assessment, and continue the detention or initial hearing for as short a period of time possible for the assessment and report to be completed. If the youth is in detention, the need for continued detainment must be addressed.

If the clinical assessment determines that the youth has significant decisional capacity impairments, the clinician should describe the areas of impairment and recommend whether hospitalization, treatment, or service interventions will enable the youth to become competent. If the juvenile delinquency court judge determines that the youth is not competent to stand trial, the judge should either:

- Refer the youth for mandated treatment if there is reason to believe that the treatment will render the youth competent to stand trial and the prosecutor chooses to continue to prosecute the petition; continue the case for the shortest time possible required by the treatment intervention to determine whether progress has been made in restoring the youth to competency to stand trial; and specify where the treatment will occur, when it will commence, and who is responsible to ensure that all appropriate arrangements are made; or
- Dismiss the petition if there is no reason to believe that treatment will render the youth competent to stand trial, or the prosecutor chooses not to continue to prosecute the petition; determine if probate or other legal action is appropriate, and if so, identify who will pursue the legal action and when; or, if appropriate, provide information to the youth and family regarding an agency or service that can either assist the youth to improve the impairments or maximize the youth's ability to function with the impairments.

5. Probable Cause and Entering a Plea

Except when the prosecutor has requested a transfer to criminal court, a separate hearing to determine probable cause is often unnecessary. If a motion for transfer has been filed, the juvenile delinquency court must set the case for a separate probable cause hearing.[8] If a motion to transfer has not been filed, and if there are any issues of

probable cause, counsel should raise them at this time. Unless counsel specifically requests a separate hearing to determine probable cause, or unless the prosecutor has filed a motion to transfer, the juvenile delinquency court should move to the plea phase.

Consultation between the youth, parent or guardian, and counsel regarding whether the youth wishes to admit or deny the charge should have occurred before entering the courtroom. The juvenile delinquency court judge should again read the allegations against the youth and ask the youth's counsel whether the youth admits or denies the allegations. If there are multiple counts within a petition or multiple petitions, each should be read separately, and the youth should be asked to respond individually to each allegation.[9]

6. If the Youth Admits the Allegation

If the youth, through counsel, has decided to admit all counts of all petitions, the youth should complete and sign a plea petition that in addition to listing rights has a statement of admission and describes what occurred. The youth should recite the facts of the offense and the court should accept the admission and adjudicate the youth.[10] The juvenile delinquency court has several options regarding how to proceed depending on the specific circumstances of the case:

- **If this is a detention hearing, and the judge is not the family's assigned judge** - The case should be set for a disposition hearing on the docket of the assigned judge. Prior to setting the disposition hearing:
  - ➢ The juvenile delinquency court judge must decide whether the youth should continue to be detained in secure or non-secure detention because he or she is a danger to self or others, or at risk of absconding or reoffending, or whether the youth should be released with or without restrictions pending the disposition hearing. If the youth will continue to be detained, the disposition hearing should be set as soon as possible and no longer than five business days, unless additional information is needed that will take a longer period to obtain. If additional information is needed, the hearing should be set no longer than 10 business days.
  - ➢ If the youth will be released from detention, the disposition hearing should be set as soon as possible and not longer than 10 business days, unless additional information is needed that will take a longer period to obtain. Under no circumstances should the disposition hearing be set for a period longer than 20 business days when the youth is not in detention.
  - ➢ If the youth is released, and if the victim is not in court when this decision is made, the prosecutor or probation officer should notify the victim of the youth's release.

- **If this is a detention hearing, and the judge is the family's assigned judge** - The hearing can move to the disposition phase if all information and all necessary individuals are present. *See Chapter VII: The Disposition Hearing.* If additional information or persons are needed:
  - ➢ The disposition hearing should be set for a future date.
  - ➢ Prior to setting the disposition hearing, the juvenile delinquency court judge must make a decision regarding whether the youth should continue to be detained in secure or non-secure detention because he or she is a danger to self or others or at risk of absconding or reoffending, or whether the youth should be released with or without restrictions pending the disposition hearing.
  - ➢ If the youth continues to be detained, the disposition hearing should be set as soon as possible within five business days, unless additional information is needed that will take a longer period to obtain. If additional information is needed, the hearing should be set no longer than 10 business days.
  - ➢ If the youth is released from detention, the disposition hearing should be set as soon as possible within 10 business days, unless additional information will take a longer period to obtain. Under no circumstances should the disposition hearing be set for a period longer than 20 business days for a youth not in detention.
  - ➢ If the youth is released, and if the victim is not in court when this decision is made, the prosecutor or probation officer should notify the victim of the youth's release.

- **If this is an initial hearing and the youth is not in detention** - The judge hearing the case should be the family's assigned judge, and the case can move to the disposition phase if all information and all necessary individuals are present. *See Chapter VII: The Disposition Hearing.* If additional information or persons are needed:
  - ➢ The disposition hearing should be set for a future date. This date should be as soon as possible within 10 business days, unless the additional information needed will take a longer period to obtain. Under no circumstances, when the youth is not detained, should the disposition hearing be set for a period longer than 20 business days.

7. If the Allegations Are Denied or if the Prosecutor Has Filed a Motion To Waive Juvenile Delinquency Court Jurisdiction and Transfer the Case to Criminal Court

If any of the allegations of the petition are denied, and the prosecutor has not filed a motion to waive and transfer, the juvenile delinquency court judge, parties, and key participants should discuss whether dispute resolution alternatives are appropriate as opposed to setting the case for trial.[11] If a dispute resolution alternative is appropriate, the parties should agree on the specifics of the dispute resolution alternative, and the juvenile delinquency court judge should continue the hearing for the shortest time necessary to complete the dispute resolution alternative. At the continued hearing, parties will either present a proposed resolution, or inform the juvenile delinquency court that resolution has not been possible. If there is a proposed resolution, the juvenile delinquency court must determine whether to approve the proposal and make it a court order. If the juvenile delinquency court approves the proposal, a review hearing should be set at a time appropriate to the details of the court approved resolution, to ensure that all parties have complied with the resolution that has become a juvenile delinquency court order. See *Chapter IX: Post-Disposition Review* for more information on the next steps in the juvenile delinquency court process.

If dispute resolution alternatives are not appropriate, have failed to produce an agreed proposal, or have produced a proposal but the juvenile delinquency court judge does not approve it, the case should be set for trial on the docket of the youth's assigned judge. If the prosecutor has filed a motion to waive juvenile delinquency court jurisdiction and transfer the case to criminal court, the case should be set for a probable cause hearing.

Regardless of whether the case is set for trial or set for probable cause hearing on a motion to waive and transfer, similar issues must now be addressed. Since counsel and prosecutor are present, pre-trial or pre-probable cause hearing issues can be identified and resolved. These issues include:

- Determine the necessity or desirability of amendments to the pleadings;
- Discuss the possibility of obtaining stipulations of fact and documents that will avoid unnecessary proof;
- Identify any additional pre-trial motions that the prosecutor or counsel for the youth intends to file. Both prosecutor and counsel for the youth should turn over all discovery materials according to juvenile delinquency court rule and as properly requested as soon as possible as well as pursue discovery under informal procedures as appropriate;
- Identify expert witnesses;
- Exchange names of witnesses to be called during the trial and the general nature of their expected testimony;
- Set deadlines for dispositive motions; and
- Any other matter that may aid in the timely completion of the trial.

Discovery delays and disputes are a common cause for unnecessary continuances and slow resolution of juvenile delinquency court cases. Juvenile delinquency courts, by statute and court rule, should specifically define obligations with regard to discovery. As a result, only under the most unusual circumstances should it be necessary for the court to be involved in discovery disputes. The presiding judge over the juvenile delinquency court should make it clear to all system participants that, within the juvenile delinquency court's discovery rules, disputes and delays will not be tolerated.[12]

The juvenile delinquency court judge should question both attorneys about the number of witnesses to be called, and determine the amount of time needed for the trial or probable cause hearing on a waiver and transfer motion. If the case is complex and there are multiple issues that will need to be addressed at another date, the juvenile delinquency court should simultaneously set two hearings – a pre-trial hearing and the trial or probable cause hearing. The pre-trial hearing should be set within a timeframe that allows the trial or probable cause hearing to be held as soon as possible but no later than 10 business days if the youth is detained, and as soon as possible but no later than 20 business days if the youth is not detained. It is important that the juvenile delinquency court judge or judicial officer ensures that a sufficient amount of consecutive trial time is set aside on the juvenile delinquency court's docket so that it will not be necessary to continue the trial in progress. ***Key Principle 9 states Juvenile Delinquency Courts Should Render Timely and Just Decisions and Trials Should Conclude Without Continuances.*** Non-consecutive trial dates are inefficient and take more total time than if the trial is continuous. They unnecessarily require witnesses, victims, and families to come to court more times than is necessary. They delay timely juvenile delinquency court decisions.

If the youth is detained, a determination must be made regarding whether there is reliable information to support the youth's need to remain detained in secure or non-secure detention or whether the youth can be released with or without restrictions.[13] It is important to identify whether the youth is receiving or may need services that could

be funded through title IV-E so that the proper eligibility determinations can be made.[14]

E. QUESTIONS THAT MUST BE ANSWERED

In order to ensure that all issues have been covered at the detention or initial hearing, the judge should know the answers to all of the following questions before concluding the hearing:

- With whom does the youth live and who has legal custody?
- If a parent or custodian is not present, why not? How can he or she be located to ensure parental presence at the next hearing? What are the names and phone numbers of close relatives or other significant individuals who may be information sources, act as a parental substitute, or provide possible places for the youth to stay temporarily?
- Has the youth had access to, and been appointed qualified legal counsel?
- Does the youth require an *in loco parentis*, and if so, has an appropriate individual been appointed?
- Are there any indicators that the youth is not competent to stand trial?
- Has a motion to waive juvenile delinquency court jurisdiction and transfer to criminal court been filed?
- What are the youth's school grade, educational program, and school adjustment?
- Is the youth receiving any current services?
- If the youth is in detention or on probation, did the detention screens, youth's behavior, or probation information indicate any physical or mental issues that need to be immediately addressed?
- If the youth is in detention and the judge hearing the case is not the youth's assigned judge, who is the assigned judge?
- If the youth is in detention, is there reliable information to support a finding that the youth needs to remain detained in secure or non-secure detention or can the youth be released with or without restrictions? If the youth is released and the victim is not in court when this decision is made, the prosecutor or probation officer should notify the victim of the youth's release. Issues that should be considered in making the detain or release decision include:
  - ➢ Is there reason to believe the youth might present a danger to the physical safety of the community, or to reoffend upon release?
  - ➢ Is there reason to believe the youth might have contact with the alleged victim or potential witnesses upon release?
  - ➢ Is there reason to believe that the youth may not appear for juvenile delinquency court proceedings, attend probation meetings or other obligations, or otherwise fail to comply with the juvenile delinquency court's orders?
  - ➢ Does the youth have a history of engaging in behaviors that will endanger himself or herself, or has the youth made statements leading to a reasonable belief that he or she will engage in such behaviors?
  - ➢ Does the youth have any medical, physical, or mental health issues, including a trauma history, that places the youth's safety in question in a detention setting?
  - ➢ Is there an environment adequately structured by family, community, school, or other support systems to enable the youth to avoid harmful behaviors and associations? In considering this question, the juvenile delinquency court must ensure that disproportionate minority contact is not an unintended result of a negative determination. The court should ensure that family group conferencing is used, when appropriate, to identify all available family members and to create a supervision plan, and that appropriate resources exist to provide support to families when detaining the youth is not in the youth's best interest.
- If the youth will continue to be detained, have the parent's or guardian's questions about detention, including visitation, been answered?
- Are title IV-E funds being used for the youth's placement or services and is there any possibility that title IV-E funds will need to be used for the youth's placement or services if adjudicated on the charges? If so, has the court made the necessary findings?
- If the youth has denied the allegation, are dispute resolution alternatives appropriate?

If the hearing has moved into the disposition phase, the juvenile delinquency court must know additional information as outlined in *Chapter VII: The Disposition Hearing*.

F. WRITTEN FINDINGS AND ORDERS

The juvenile delinquency court's written findings and orders should be stated in language understandable by the parties and with enough detail to support the court's actions. The juvenile delinquency court's findings and orders should be set out in writing and made available to all legal parties and key participants at the conclusion of the hearing. Key participants include anyone who is essential to the successful implementation of the court's orders such as the parent, legal custodian, child protection worker, *in loco parentis*, and probation officer. The summary should include:

- All persons present at the hearing;
- If parties were absent, whether they were provided with appropriate notice;
- If a parent, legal guardian, custodian, relative, or other parental substitute was not present, the name of the appointed in loco parentis, and who has responsibility to locate the parent, guardian, relative, or other invested adult for the next hearing;
- If counsel was not present, the plan to ensure the presence of counsel at the next hearing;
- If the issue of competency to stand trial is in question, an order to obtain a decisional capacity assessment, specifying who is responsible to make these arrangements;
- Any rights waived by the youth;
- The plea that was entered, and whether the juvenile delinquency court accepted the plea;
- If the youth denied the allegations, whether the case will be referred to a dispute resolution alternative, and if so, the details of the alternative;
- If the case is set for trial or a probable cause hearing on a motion to waive and transfer, a description of pre-trial issues that were addressed, identification of any pre-trial issues that still need to be addressed, and the juvenile delinquency court judge's expectation of how these remaining issues will be resolved;
- If this is a detention hearing, either the reasons why it is necessary to continue to detain the youth or an order to release the youth specifying any restrictions. If the youth is released and the victim is not in court when this decision is made, either the prosecutor or a probation officer should notify the victim of the youth's release;
- If the juvenile delinquency court believes there is any possibility that title IV-E funds will be used for the youth's placement or services, or if title IV-E funds are currently being used for the youth's placement or services, and if the youth was placed in detention, a determination as to why remaining in the home was contrary to the youth's best interest and welfare. For all title IV-E eligible youth, whether detained or not detained, findings of fact as to what reasonable efforts were and are being made to keep the youth in the home or to return the youth to the home;
- If the youth is not in detention, description of any restrictions placed on the youth until the next hearing;
- Any evaluations or services that the youth needs prior to the next hearing and who is responsible to obtain the services; and
- The next hearing date and time, and the purpose of the hearing.

If the hearing has moved into the disposition phase, additional items need to be included as outlined in *Chapter VII: The Disposition Hearing.*

A chart of steps and time lines for the Detention or Initial Hearing follows.

Endnotes

[1] See Chapter II, Section G.

[2] Refer to Chapter II, Section I, *Summary and Flowchart of Title IV-E in the Juvenile Delinquency System* and the Appendices, *Title IV-E in the Juvenile Delinquency System.*

[3] The 2002 reauthorization of the Juvenile Justice and Delinquency Prevention Act requires that states receiving funds under the Act implement systems to ensure that public child welfare records are available to the juvenile delinquency court for the purposes of establishing and implementing treatment plans for juvenile offenders.

[4] Refer to the Appendix D for a detailed listing of due process rights and other issues that the juvenile delinquency court judge needs to cover in the plea and pre-trial process.

[5] Buckles, V. D. (Spring, 2005). *Decisional Capacity And Understanding Of Informed Consent.* Human Studies Committee of the Washington University Medical Center Newsletter; and Grisso, T., Steinberg, L., Woolard, J., Cauffman, E., Scott, E., Graham, S., Lexcen, F., Reppucci, N.D., & Schwartz, R. (2003). Juveniles' competence to stand trial: A comparison of adolescents' and adults' capacities as trial defendants. *Law and Human Behavior, 27,* 333-363.

[6] Texas Council for Developmental Disabilities Criminal Competency Position Statement (2003).

[7] Grisso, T., Miller, M., & Sales, B. (1987). Competency to stand trial in juvenile court. *International Journal of Law and Psychiatry, 10,* 1-20.

[8] Motions to transfer to criminal court are covered in Chapter V.

[9] Supra note 4.

[10] The Therapeutic Jurisprudence model suggests that after any plea of admit, it is important for the youth personally to acknowledge his or her accountability. For example, the court might require the youth to take the stand, under oath, state that he or she did commit the crime and exactly how it was committed.

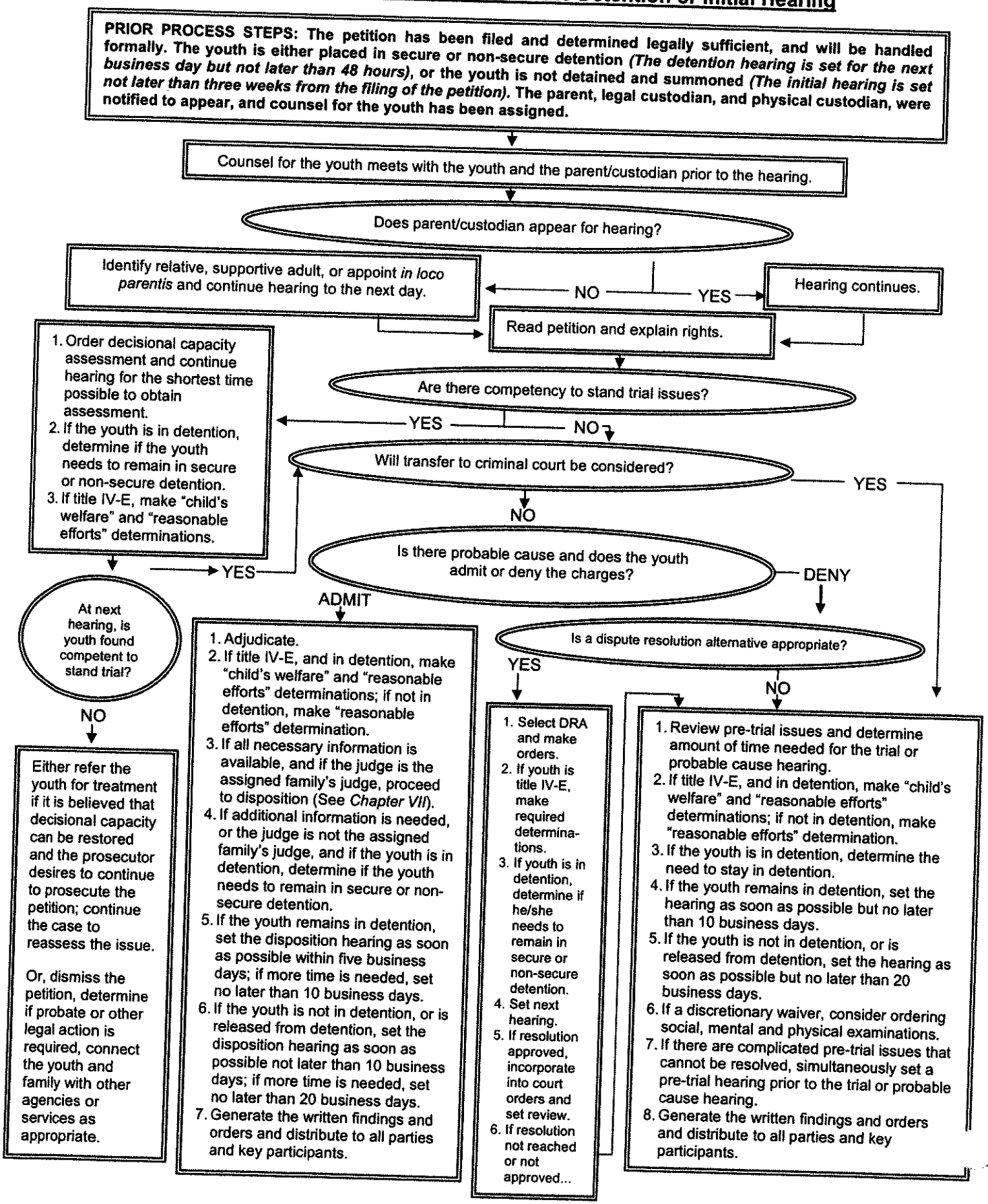
[11] See Chapter II, Section G, *Dispute Resolution Alternatives* for more information regarding DRA options.

[12] An example of clearly defined discovery rules from the San Francisco County Superior Court can be found online at: http://sfgov.org/site/uploadedfiles/courts/rule_13.pdf.

[13] See the next section for specific issues that could be considered in making this decision.

[14] Supra note 2 for additional information.

Chart of Steps and Time Lines for the Detention or Initial Hearing



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The *JUVENILE DELINQUENCY GUIDELINES* is intended to be used by courts and other juvenile delinquency system stakeholders to assist their efforts to improve practice. The *GUIDELINES* is aspirational - they focus on what should be as opposed to what is. Every effort has been made to make the *GUIDELINES* practical and usable, and to ground recommendations in the most current research and promising practices available at the time of development.

Some jurisdictions are already following many of the recommendations. Some jurisdictions may find it extraordinarily challenging to follow the recommendations. Regardless of jurisdictional status and resources, it is hoped that the *GUIDELINES* will provide a common vision and motivational framework for those working toward an improved juvenile delinquency system.

As jurisdictions strive to implement the *GUIDELINES* with training and technical assistance from the NCJFCJ, juvenile delinquency system practitioners from all situations - urban, rural, suburban, and with varying degrees of resources - will be able to create and share successful implementation methods.

This chapter describes the process of determining whether the juvenile delinquency court will waive jurisdiction and transfer a case to the criminal court.[1] The areas of transfer, waiver, and non-amenability are complex areas of juvenile law, and the juvenile delinquency judge's decision to waive jurisdiction and transfer a youth to criminal court is a profoundly important one.[2] One of the key Supreme Court cases affecting the rights of alleged juvenile delinquency offenders, *Kent v. United States* (1966), states that:[3]

> *"The Juvenile Court has considerable latitude in determining whether a child should be certified to the adult court, but it must provide fairness and basic due process including: a fair hearing, the assistance of counsel, access to social records, and findings by the court as to the reasons for certifying."*

The Introduction, Section A: Historical Perspective, and Chapter II, Section A (4): Juvenile Delinquency Court and Criminal Court Jurisdiction of the Most Serious Offenses, discuss state law regarding whether a juvenile charged with a serious offense goes before the criminal court. Statutes vary substantially from state to state, and legislatures continue to change their statutes regarding this issue.[4]

State laws provide for multiple ways for a juvenile charged with a serious offense to come under the jurisdiction of the criminal court:[5]

- Discretionary Judicial Waiver – If a motion to waive is filed by the prosecutor, the juvenile delinquency court judge has the authority to make the decision whether to waive juvenile delinquency court jurisdiction and transfer the case to criminal court or to retain jurisdiction. With discretionary waivers, both the prosecutor and the juvenile delinquency court judge are part of the decision-making process. The prosecutor chooses, within certain statutory parameters, whether or not to file a motion requesting a discretionary judicial waiver with transfer to criminal court; and, the juvenile delinquency court judge makes the decision whether to grant the motion within the parameters of age, offense, and potential for amenability as defined by state statutes. The discretionary judicial waiver process consists of two decisions – the first is the determination of probable cause, and the second is the determination of whether the youth should remain under the jurisdiction of the juvenile delinquency court or be transferred to the criminal court.[6] Other terms used by states for waiver include transfer, relinquish, or decline jurisdiction, and other terms used for transfer are certification, remand, and bind over.

  Typically, with judicial waivers, the prosecutor is charged with the burden of proving why the youth is not amenable to a juvenile delinquency court response. Some states have added presumptive waiver provisions in certain types of cases that shift the burden of proof regarding amenability from the prosecutor to the youth.[7] A presumptive waiver provision assumes that the youth is not amenable to juvenile rehabilitation and requires the youth to prove why he or she is amenable to juvenile rehabilitation.

- Mandatory Judicial Waiver – The juvenile delinquency court is required to transfer a case to criminal court if the juvenile delinquency court judge finds probable cause and the alleged offense is specified by state statute as a mandatory waiver. In mandatory judicial waivers, neither the prosecutor nor the juvenile delinquency court judge has discretion or authority *not* to waive the youth to the criminal court after probable cause is established. The mandatory judicial waiver process consists of only one decision, the determination of probable cause.
- Prosecutorial Waiver – The prosecutor has the authority to decide whether to file the charge in the juvenile delinquency court or the criminal court if the alleged offense falls within offense and age parameters established by state statutes. Concurrent jurisdiction is another term used for prosecutorial waiver.
- Statutory Exclusion – State statutes require that certain offenses be directly filed in the criminal court if allegedly committed by a juvenile of a certain age, removing discretion from both the prosecutor and the juvenile delinquency court judge. Another term used for statutory exclusion is direct file. Exclusions are generally limited to capital crimes, murders, and other serious offenses against persons. Where statutory exclusion exists, state statutes may allow "reverse waiver" which gives the criminal court discretion to waive jurisdiction and transfer the case of a juvenile to the juvenile delinquency court.
- Blended Sentencing – In some states, the juvenile delinquency court has a *dispositional* mechanism to impose criminal sentencing in a juvenile matter. This mechanism is called "blended sentencing" and gives the juvenile delinquency court the power to impose both juvenile and adult sentences concurrently under certain circumstances.

Blended sentencing power may also be given to the criminal court to choose between juvenile and criminal sentencing, or to impose concurrent sentences, when a juvenile is in criminal court on a statutory exclusion or mandatory judicial waiver. When blended sentences are imposed concurrently, the criminal sentence may be suspended unless the offender violates the conditions of the juvenile sentence. Or, the juvenile sentence may be served until the youth reaches the age of majority at which time the criminal sentence is imposed, minus time already served in the juvenile justice system.

Of these multiple ways for a juvenile charged with a serious offense to come under the jurisdiction of the criminal court, this chapter addresses discretionary and mandatory judicial waivers. These two situations are the only *pre*-adjudication situations in which the juvenile delinquency court is involved in the decision-making process.

The National Council of Juvenile and Family Court Judges has taken a policy position regarding decisions to transfer youth to criminal court. The policy states:

> *The determination as to whether a juvenile charged with a serious crime should be handled in juvenile delinquency court or transferred to criminal court is best made by a juvenile delinquency court judge in a judicial hearing with the youth represented by qualified counsel. In this hearing, the varied circumstances of each case and the distinct characteristics of each youth are closely examined by an experienced judge who hears from all parties. The judge evaluates the important personal and community factors related to the choice of jurisdiction and determines whether to retain the case in juvenile delinquency court or transfer the case to the criminal court.*

The DELINQUENCY GUIDELINES affirms this policy that waiver and transfer decisions should only be made on an individual, case-by-case basis, and not on the basis of the statute allegedly violated; and affirms that the decision should be made by the juvenile delinquency court judge.[8] The contested hearing process of discretionary judicial waivers provides the most complete information upon which to base the decision of transfer and waiver and takes into consideration the potentially mitigating individual differences among juvenile offenders. ***The DELINQUENCY GUIDELINES recommends*, as discussed in Chapter II, Section A: Jurisdiction and Authority, that juvenile delinquency court jurisdiction should be in effect until a youth's 18th birthday**.

Finally, ***the DELINQUENCY GUIDELINES recommends* that waiver and transfer of juveniles to adult court should be rare and only after a very thoroughly considered process**. A review of 50 studies of juvenile transfers to the criminal justice system reveals that recidivism rates are higher among juveniles transferred to criminal court than among those retained in the juvenile justice system, and that transferred juveniles are more likely to reoffend, to reoffend more quickly, and to reoffend at a higher rate.[9]

A. PURPOSE OF THE HEARING PROCESS ON MOTIONS TO WAIVE JUVENILE DELINQUENCY COURT JURISDICTION AND TRANSFER JURISDICTION TO CRIMINAL COURT

Prior to this point in the juvenile delinquency court process, an affidavit and delinquency petition have been filed, determined legally sufficient by the prosecutor, and formally processed. The youth and parent have been served with a copy of the affidavit and petition. Counsel has been appointed and the first hearing has been held. At the first hearing the petition was read, due process rights were explained, the burden of proof and possible consequences were explained, and the youth and parent signed a statement acknowledging that they understood their rights.

The prosecutor has filed a motion requesting the juvenile delinquency court waive jurisdiction and transfer the youth's case to criminal court. Because only the most serious cases are considered for waiver and transfer, it is probable that the youth is in detention. Because discovery and all pre-trial issues were resolved at the initial or detention hearing, discovery delays and disputes, which are a common cause for unnecessary continuances and slow resolution of juvenile delinquency court cases, have been avoided. The juvenile delinquency court, by statute and court rule, has specifically defined obligations with regard to discovery.[10] As a result, only under the most unusual circumstances is it necessary for the juvenile delinquency court to be involved in discovery disputes. The presiding judge over the juvenile delinquency court has made it clear to all system participants that within these defined obligations disputes and delays will not be tolerated. All of these steps and processes were covered in Chapters III and IV. The case is now before the juvenile delinquency court to determine whether or not to grant the prosecutor's motion to waive juvenile delinquency court jurisdiction and transfer the youth to criminal court.

At hearings on motions to waive and transfer, the juvenile delinquency court has either one or two decisions to make depending on whether the case is a mandatory judicial transfer or a discretionary judicial transfer. In both instances, the court must determine whether there is probable cause to believe the youth has committed the alleged offense. If the juvenile delinquency court finds probable cause, and the case is a mandatory judicial transfer, the law requires that the case be transferred to criminal court and the juvenile delinquency court's role is completed. However, if the juvenile delinquency court finds probable cause and the case is a discretionary judicial transfer, the court must make a second decision – whether or not the juvenile delinquency court will retain jurisdiction or waive jurisdiction and transfer the youth to criminal court. Some jurisdictions refer to the second phase as the amenability phase. In order to have adequate information to make the decision as to whether the juvenile delinquency court should retain or waive jurisdiction, the juvenile delinquency court must conduct an investigation that includes a social, physical, and forensic examination of the youth.

In most discretionary judicial transfer hearings, the state has the burden of proving that there is probable cause to believe that the juvenile has committed the offense and that the juvenile should not remain under the jurisdiction of the juvenile justice system. The juvenile, through counsel, may contest the waiver motion by challenging or producing evidence to challenge the prosecutor's evidence, but is not required to do so. If the judicial waiver has a presumptive waiver provision, however, the youth may have the burden of proving that he or she is amenable to rehabilitation in the juvenile justice system.

B. TIMING OF THE HEARING PROCESS ON MOTIONS TO WAIVE JUVENILE DELINQUENCY COURT JURISDICTION AND TRANSFER JURISDICTION TO CRIMINAL COURT

If the youth is in detention, the process to consider waiver and transfer should be expedited. The goal for the setting of the probable cause hearing should be no more than 10 business days from the detention hearing. If this is a discretionary judicial waiver and a second hearing is needed to determine whether to retain or waive jurisdiction, the goal for the setting of the second hearing should be no more than 10 business days from the probable cause hearing.

On discretionary transfers, some juvenile delinquency courts set two separate hearings, the first to establish probable cause, and the second to determine whether to retain or waive juvenile delinquency court jurisdiction. The social, physical, and forensic evaluations are conducted between the first and second hearings. Other juvenile delinquency court systems use the time between the detention hearing and the probable cause hearing to prepare evidence for probable cause *and* to conduct the social, physical, and forensic evaluations. This second process requires only one hearing which is bifurcated into the probable cause phase and the retain or waive phase.

The one-hearing system has two advantages. First, the victim and parties have to come to court once instead of twice. Second, the length of time of the process is reduced, which decreases the length of time the youth is detained in the juvenile detention facility. There are also two disadvantages to the one-hearing system. First, if the court does not find probable cause, the social, physical, and forensic evaluations are not needed and resources have been wasted. Second, the amount of time to conduct the social, physical, and forensic evaluation may be reduced. To decide which process is most efficient, juvenile delinquency courts should look at the percentage of motions to waive juvenile court jurisdiction that do not result in a finding of probable cause, and the amount of time the juvenile delinquency court needs to produce quality social, physical, and forensic evaluations. If the percentage of motions denied is low, and if the juvenile delinquency court can produce and distribute quality social, physical, and forensic evaluations in less than four weeks, the one-hearing system should use fewer resources, and therefore be preferable.

Between the detention hearing and probable cause hearing, the prosecutor must arrange for witnesses to be present to testify as to probable cause; and laboratory test results may need to be obtained. Counsel for the youth must become sufficiently knowledgeable of the alleged incident and of the youth's circumstances in order to be properly prepared for cross-examination and to determine whether or not to call witnesses for the defense. In order to complete these critical steps, prosecutors and counsel for youth must have reasonable caseloads, with resources to investigate all necessary aspects of the case, and counsel for youth must have been appointed prior to the detention hearing as recommended in Chapter III, Section D (3).

With regard to the amenability phase, in order to provide evaluation reports to parties three days prior to the hearing, the forensic evaluation must be completed in seven business days. With the proper resources and procedures in place, this timeframe is achievable for most youth for the following reasons:

- Most juveniles considered for waiver to criminal court have extensive juvenile court

histories and have a probation officer who has had previous contact with, and knowledge of, the youth and family.

- Most of these youth with extensive histories have had social evaluations and mental health evaluations in the past.
- The probability of finding probable cause when the prosecutor has filed a motion to waive to criminal court is high, if prosecutors are properly screening these petitions.
- If the allegations in the petition are serious enough for a waiver motion to be filed, even if the motion is not granted, the probability of needing current social, physical, and psychological information is extremely high.
- The probation department has two weeks to use productively between the detention hearing and the waiver hearing, in addition to the two weeks between the probable cause hearing and the amenability hearing, to update information and obtain the needed evaluations.

Therefore, in circumstances where the youth has a long court history and is on probation, the probation officer should use the two weeks between the detention hearing and the hearing on the waiver motion to update the social evaluation, school information, mental health service information, and obtain a current physical exam. The probation officer should therefore have current information ready to forward to the forensic examiner on the same day that the juvenile delinquency court judge finds probable cause and orders the forensic evaluation.

In the juvenile delinquency court the *DELINQUENCY GUIDELINES* aspires to, the court has used its management information system as a planning tool to predict the number of forensic evaluations needed annually and has ensured adequate resources exist to meet the need. It has designed procedures so that the time to conduct these evaluations is available and immediately accessible. Consequently, the forensic evaluation can be completed and the report produced within seven business days. An example of a process that enables the forensic evaluation to begin immediately is:

- The juvenile delinquency court has available experienced mental health clinicians either employed by the juvenile delinquency court or contracted through a community mental health agency, and the ability to directly schedule appointments in a timely fashion.
- At the time the prosecutor files a waiver motion on a discretionary waiver, the probation officer discusses the youth and family dynamics with the clinician, determines the type and number of appointments needed for the examination, and schedules the necessary appointments.
- When the court orders the forensic evaluation, the appointments are already scheduled for within the first few days after the order, and the clinician can complete the evaluations and complete the report with enough time to distribute to parties three days prior to the hearing.

There will be circumstances when the juvenile delinquency court must continue the case beyond the recommended 10 business day period for the second hearing on a discretionary waiver and transfer case, specifically in the relatively small number of cases where the juvenile delinquency court does not have significant prior knowledge of the youth and family, a social evaluation, school and other information has not been compiled, and prior mental health evaluations have not occurred. In other circumstances, however, if the juvenile delinquency court finds it necessary to frequently grant continuances beyond 10 business days, the juvenile delinquency court should carefully review the reasons for needing additional time to ensure that the reasons are valid, and not because the juvenile delinquency court has failed to design and implement expeditious processes. When additional time is requested because each day is being used to perform a process step, and there is no time spent on waiting lists, an extension is probably necessary.

However, when additional time is requested because of waiting lists, the system can be redesigned to eliminate these delays. The juvenile delinquency court judge should convene representatives from each involved system to design and implement a new process that will eliminate the delays. By tracking the process steps in delays beyond 10 business days, evaluating the reasons for the delays, collecting this information over time, and calculating the costs of the delay, juvenile delinquency courts can build support for requests for reallocated or additional resources to reduce unnecessary delays.

It should be noted that although these timeframes may seem impossibly short for many juvenile delinquency courts, current state law mandates even shorter timeframes, which juvenile delinquency courts are successfully meeting. For instance, California law mandates that under all circumstances the trial must be set by the 15th day of entry into detention. This means that if the juvenile delinquency court denies the motion to waive and transfer, the trial still must be held by the 15th day. Consequently, decisions on motions to waive and transfer must be made in less than three weeks.

C. LEGAL REPRESENTATION

Even before *In re Gault* (1967), mandated legal representation throughout the juvenile delinquency court process *Kent v. United States* (1966) required the appointment of counsel in cases where the juvenile delinquency court was considering waiver of juvenile court delinquency jurisdiction and transfer to criminal court.

When a juvenile delinquency court has implemented ***Key Principle 7: Youth Charged in the Formal Juvenile Delinquency Court Must Have Qualified and Adequately Compensated Legal Representation***, counsel is appointed for the youth prior to the detention or initial hearing.

If, however, a juvenile delinquency court has not implemented *Key Principle 7*, and an attorney does not represent the youth at the detention or initial hearing, the court must appoint legal representation for the alleged offender prior to the probable cause hearing on a waiver motion.

Because of the very serious potential consequences if the juvenile delinquency court decides to waive jurisdiction and transfer the youth to the criminal court, including lengthy incarceration, and possible abuse in adult prison of immature or special needs youth, it is critical that counsel has the time and resources to prepare for the probable cause hearing. Counsel must understand child and adolescent development, developmental disabilities, victimization and trauma, mental health, mental retardation and maturity issues, and the treatment services that are available in the juvenile justice system. Counsel must also understand the criminal court system in order to determine whether counsel believes the youth will be better served in juvenile delinquency court or criminal court.

Prior to the probable cause hearing on a motion to waive juvenile delinquency court jurisdiction and transfer a case to criminal court, counsel should investigate all circumstances of the case relevant to the appropriateness of transfer. Counsel should also seek disclosure of any reports or other evidence that will be submitted to, or may be considered by the court, in the course of transfer proceedings. If circumstances warrant, counsel should have requested appointment of an investigator or expert witness to aid in the preparation of the defense, and any other order necessary to protect the youth's rights, during pre-trial proceedings. Counsel should also fully explain the nature of the proceedings and the consequences of transfer to the youth and the youth's parent or legal custodian.[11]

D. CONDUCTING THE PROBABLE CAUSE PHASE ON MOTIONS TO WAIVE JUVENILE DELINQUENCY COURT JURISDICTION AND TRANSFER JURISDICTION TO CRIMINAL COURT

Because of the seriousness of hearings on waiver and transfer, juvenile delinquency courts must be absolutely certain that all statutes are strictly followed, that proper security is in place, and that the courtroom and waiting areas are conducive to safety and respect for witnesses and potentially distraught family members. The juvenile delinquency court should provide two separate waiting areas, one for the victim and other prosecution witnesses, and one for the defense witnesses, if applicable, and the youth's family.

The juvenile delinquency court judge should explain and maintain strict courtroom decorum and expectations for all participants, including the attorneys, the public and the press. The juvenile delinquency court must be a place where all youth, families, victims, witnesses, and other system participants are treated with respect, dignity, and courtesy. The manner in which the juvenile delinquency court judge sets the tone in this hearing can have a significant influence on whether the participants perceive the process as fair.

1. Who Should Be Present

The following individuals should be present for the probable cause hearing:

- The judge who is assigned to the family;
- The youth who has been charged with the violation of law;
- The parent or legal custodian of the youth, including the child's caseworker if under custody to the child protection agency, and an *in loco parentis*, if applicable;
- If the youth is living with someone other than the parent or legal guardian (e.g., non-custodial relative, foster parent), the caretaker of the youth;
- Counsel representing the youth;
- Prosecuting attorney;
- Prosecution witnesses;
- Victim and victim advocate;
- Any witnesses for the youth, if applicable;
- Certified interpreters if the youth, parent, custodian, victim, or any witness does not speak English or is hearing impaired; and
- Court security and other court staff as required, including stenographic staff or recording technology.

If the youth is on probation, the probation officer's presence is not needed in most cases, unless the probation officer will testify, or unless the case is a discretionary waiver and the necessary evaluations are available to move directly

into the second phase of the proceeding if probable cause is established.

2. Information the Juvenile Delinquency Court Should Have

At the start of the probable cause phase, the following information should be available:

- The petition, affidavit, waiver motion, and any other filed motions and reports concerning the alleged law violation;
- A record of the juvenile delinquency court's decisions and orders from any prior hearings on the current charges;
- A list of witnesses that the prosecution and defense plan to call; and
- If the youth is on probation or engaged in services, information from the probation officer or service provider regarding any cultural or disability issues that would assist the judge in successfully communicating with the youth and family.

3. Reading of the Petition, Explanation of Rights, and Explanation of the Hearing Process

To assist the parents and youth to understand the juvenile delinquency court proceedings, the juvenile delinquency court judge should begin the hearing by reading the petition that describes the offense the youth is alleged to have committed and reviewing all of the youth's due process rights. The juvenile delinquency court judge should explain how the court will determine if there is probable cause, and how the hearing will proceed. The juvenile delinquency court judge should explain the possible consequences if probable cause is established, including whether the case is a mandatory or discretionary waiver and transfer, and what will occur if the court does or does not make a finding of probable cause. Refer to the Appendix D for a detailed list of due process rights and other issues that the juvenile delinquency court judge should review and explain.

4. Presentation of the Prosecutor's Case for Probable Cause[12]

All testimony presented at the probable cause hearing should be under oath and subject to cross-examination. The prosecutor should be required to present evidence as to the alleged offender's identity as the perpetrator, and of probable cause regarding every element of the alleged offense. The prosecutor should present evidence that is more substantive than the affidavit and petition alone. However, it is not necessary to conduct a full trial. After evidence is presented, whether by written report or witness testimony, counsel for the youth should have the opportunity to challenge or cross-examine.

Unless waived by counsel, the statements of a juvenile or other information or evidence derived directly or indirectly from statements made during the juvenile delinquency court or detention intake processing of the case should not be admissible for probable cause determination. The reason such statements should not be admissible is that the youth should be encouraged to disclose fully to these professionals to ensure all important information related to immediate needs is disclosed without the concern that the statements might later be used against her or him at trial.

5. Presentation by Counsel of the Youth's Case Against Probable Cause

The burden of proof is on the state, and consequently, the youth is not required to present any witnesses or to prove that he or she did not commit the offense. Counsel may choose, however, to present evidence that challenges the evidence of the prosecutor.

As with the prosecutor's evidence, any evidence presented by counsel should be under oath and subject to cross-examination. After any witness' testimony on behalf of the youth, the prosecutor should have the opportunity to cross-examine.

At the conclusion of the youth's case, the prosecutor may present a rebuttal. Then the prosecutor and counsel for the youth may present closing arguments regarding the probable cause phase.

E. QUESTIONS THAT MUST BE ANSWERED DURING THE PROBABLE CAUSE PHASE

In order to ensure that all issues have been covered during the probable cause phase, the juvenile delinquency court judge should know the answers to all of the following questions before making a decision:

- With whom does the youth live and who has legal custody?
- If a parent or legal custodian is not present, were they properly served and why are they not present?
- Was the issue of competency to stand trial raised, and if not, did the court detect any indicators of competency to stand trial issues that need to be addressed?
- Have all pending motions been identified and addressed?
- Were the prosecutor and counsel prepared for the hearing? Has all appropriate evidence been introduced?

- Is there probable cause to believe that the youth committed the alleged offense?
- Is the offense a mandatory or discretionary judicial waiver?

F. ADDITIONAL INFORMATION NEEDS, QUESTIONS, AND FINDINGS AND ORDERS RELATED TO THE PROBABLE CAUSE PHASE

1. Findings and Orders if the Juvenile Delinquency Court Does Not Find Probable Cause

If the juvenile delinquency court judge is not persuaded that there is probable cause to believe that the youth committed the offense, and if no other motions have been filed, the prosecutor's motion to waive jurisdiction and transfer the case to criminal court should be denied. Because the prosecutor was unable to establish probable cause with regard to the youth's culpability for the offense, the petition alleging delinquency should be dismissed and the youth should be immediately released from custody unless there are other charges for which the youth is being detained.

The juvenile delinquency court's written findings and orders should be stated in language understandable by the parties and with enough detail to support the court's actions. The juvenile delinquency court's findings and orders should be set out in writing and made available to all legal parties and key participants at the conclusion of the hearing. The findings and orders should include:

- All persons present at the hearing;
- If parties were absent, whether they were provided with appropriate notice;
- A statement of the reason for the hearing, specifically the allegation against the youth, the prosecutor's motion to waive juvenile delinquency court jurisdiction and transfer the case to criminal court, that rights and possible consequences were reviewed, and that evidence was presented to determine probable cause;
- A statement that the court *did not* find probable cause to believe that the youth committed the offense;
- Denial of the prosecutor's motion;
- Dismissal of the petition; and
- Release of the youth from custody or identification of other pending delinquency petitions requiring detainment and the date of the next hearing on the pending petitions.

2. If the Juvenile Delinquency Court Finds Probable Cause and the Case Is a Mandatory Judicial Waiver

If the juvenile delinquency court is persuaded that probable cause exists to believe that the youth committed the offense, the juvenile delinquency court must determine whether state statutes identify the case as a mandatory judicial waiver. If the case meets statutory definitions of offense type, age, and any other requirements for mandatory judicial waiver, the court must transfer the case to the criminal court.

- Interlocutory Appellate Review

  Although the finding of probable cause is not a final order, because of the potentially serious consequences of a juvenile's charges being transferred to criminal court, counsel for the youth should have the opportunity to request expedited interlocutory appellate review of the juvenile delinquency court's decision if counsel believes that the juvenile delinquency court judge has made an error in process or judgment. Courts of appeal have discretion to consider appeals from interlocutory orders. This appellate review, however, should be a streamlined and speedy process. Juvenile delinquency court presiding judges and court administrators should take a leadership role in approaching their appellate court presiding judge and court administrator, and, with participation of prosecutors and counsel for youth, design a timely review process for these circumstances. This process should result in the speedy completion of an initial appellate paper review, preferably within 10 business days. This review would determine whether the juvenile delinquency court should move forward with transfer to the criminal court, or whether there is reason for additional appellate consideration.

- Transfer to Criminal Court

  If counsel does not file a request for appellate review, or if appellate review has determined that the juvenile delinquency court should move forward with transfer to the criminal court, the juvenile delinquency court must forward the case to the criminal court to advise them of the transfer of the offense so that the criminal court can set the arraignment hearing. The juvenile delinquency court's finding of probable cause on the delinquency charge for waiver of jurisdiction and transfer to criminal court does not substitute for the criminal court's requirement to determine probable cause in most states.

The juvenile delinquency court must decide whether the youth will continue to be held in the juvenile detention facility, released, or

transferred to the criminal jail. The Juvenile Justice Delinquency Prevention Act states:

> *If criminal felony charges have been filed against a juvenile in a court exercising criminal jurisdiction, the juvenile can be detained in an adult jail or lockup. The jail and lockup removal requirement does not apply to those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed or to juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges. Note that waiver or transfer and the filing of criminal felony charges does not transform a juvenile into an adult. Therefore, such a juvenile can be detained (or confined after conviction) in a juvenile facility and commingled with juvenile offenders until that juvenile reaches the state's age of majority, at which time, he or she must be separated from the juvenile population within six months.*

Youth have a constitutional right to reasonable safety, adequate medical and mental health care, rehabilitative treatment, and mandatory education. Unless the juvenile delinquency court believes that an older youth presents a danger to other youth or staff in the juvenile detention facility and subsequently the court believes that the youth's rights can be accommodated in the criminal jail, the youth should continue to be held in the juvenile facility. If a juvenile delinquency court judge is considering the necessity of transferring an older youth to adult jail, the judge should be convinced that adult jail facilities can safely and appropriately accommodate the juvenile.

- Written Findings and Orders

The juvenile delinquency court's written findings and orders should be stated in language understandable by the parents and youth, and with enough detail to support the court's actions. The juvenile delinquency court's findings and orders should be set out in writing and made available to all legal parties and key participants at the conclusion of the hearing. The findings and orders should include:

- All persons present at the hearing;
- If parties were absent, whether they were provided with appropriate notice;
- A statement of the reason for the hearing, specifically the allegation against the youth, the prosecutor's motion to waive juvenile delinquency court jurisdiction and transfer the case to criminal court, that rights and possible consequences were reviewed, and that evidence was presented to determine probable cause;
- A statement that the court found probable cause to believe that the youth committed the offense;
- A description of how the case meets the statutory requirements for a mandatory judicial waiver;
- Granting of the prosecutor's motion to waive juvenile delinquency court jurisdiction and transfer the case to criminal court as a mandatory judicial waiver; and
- Orders that arrangements be made to notify the criminal court of the transfer and, if necessary, orders that arrangements be made to transfer the youth from juvenile custody to criminal custody.

If a representative of the applicable law enforcement agency is not present at the hearing, the juvenile delinquency court should send timely written notice of the waiver decision to law enforcement.

3. If the Juvenile Delinquency Court Finds Probable Cause and the Case Is a Discretionary Judicial Waiver

Once the juvenile delinquency court judge has determined probable cause on a discretionary judicial waiver and made the necessary written findings (see end of this section), the court must move to the second phase of the process – the determination of whether the juvenile delinquency court should retain jurisdiction or transfer the case to criminal court. In order to determine the answer to this question, the juvenile delinquency court needs physical, social, and forensic evaluations. If these evaluations have been completed, the juvenile delinquency court is ready to move into the second phase of the process and to determine whether to retain or waive jurisdiction. This phase is described in Section H of this chapter.

If the evaluations are not completed, the juvenile delinquency court judge continues the case for a second hearing. If the recommendations described in Section B of this chapter have been followed, and if the youth has had an extensive history with the juvenile delinquency court, the physical and social evaluations have been completed and appointments for the forensic evaluation have been set. Under these circumstances, the hearing should be set within 10 business days

of the determination of probable cause. However, if the youth is new to the juvenile delinquency court, additional time may be required to gather all information the forensic examiner will need and to complete the forensic evaluation. Under these circumstances, a continuance not to exceed four weeks may be required.

- Information Needed and Questions that Need To Be Answered

  The juvenile delinquency court will need additional information if the case must be continued to complete evaluations:

  - If the youth is in detention or on probation, did the detention screens, youth's behavior, or probation information indicate any physical or mental issues that need to be immediately addressed, and if so, are they being addressed?
  - If the youth is in detention, or if the juvenile delinquency court is considering detaining a youth not previously placed in detention,[13] is there reliable information to support a determination that the youth needs to be in secure or non-secure detention or can the youth be released with or without restrictions?[14] Issues that should be considered in making this decision include:
    - Is there reason to believe the youth might present a danger to the physical safety of the community, or to reoffend upon release?
    - Is there reason to believe the youth might have contact with the alleged victim or potential witnesses upon release?
    - Is there reason to believe that the youth may not appear for court proceedings, attend probation meetings or other obligations, or otherwise fail to comply with the court's orders?
    - Does the youth have a history of engaging in behaviors that will endanger himself or herself, or has the youth made statements leading to a reasonable belief that he or she will engage in such behaviors?
    - Does the youth have any medical, physical, or mental health issues, including a trauma history, that places the youth's safety in question in a detention setting?
    - Is detention necessary to hold the youth accountable for violations of probation or other court orders?
    - Is there an environment adequately structured by family, community, school, or other support systems to enable the youth to avoid harmful behaviors and associations? In considering this question, the juvenile delinquency court must ensure that disproportionate minority contact is not an unintended result of a negative determination. The court should ensure that family group conferencing and other means are used to identify all available family members and to create a supervision plan, and that appropriate resources exist to provide support to families when detaining the youth is not in the youth's best interest.
  - If the youth will continue to be detained, have the parent's or legal guardian's questions about detention, including visitation, been answered?
  - Is there a possibility that title IV-E funded services may need to be continued or required if the juvenile delinquency court decides to retain jurisdiction?[15]

- Written Findings and Orders

  The juvenile delinquency court's written findings and orders should be stated in language understandable by the parties and with enough detail to support the court's actions. The juvenile delinquency court's findings and orders should be set out in writing and made available to all legal parties and key participants at the conclusion of the hearing. The findings and orders should include:

  - All persons present at the hearing;
  - If parties were absent, whether they were provided with appropriate notice;
  - A statement of the reason for the hearing, specifically the allegation against the youth, the prosecutor's motion to waive juvenile delinquency court jurisdiction and transfer the case to criminal court, that rights and possible consequences were reviewed, and that evidence was presented to determine probable cause;
  - A statement that the court found probable cause to believe the youth committed the offense; and
  - Description of how the case meets the statutory requirements for a discretionary judicial waiver.

  If a second hearing will be required, the findings and orders must also include:

  - Orders that arrangements be made to complete the necessary evaluations, including designating who has responsibility for ensuring completion, what qualified practitioners will conduct the evaluations, and any dates that have already been set;
  - If the youth is in detention, either the reasons why it is necessary to continue to detain the youth, or an order to release the youth specifying any restrictions;

- If the youth is not in detention, description of any restrictions placed on the youth until the next hearing;
- If the juvenile delinquency court believes there is any possibility that title IV-E funds will be used for the youth's placement or services, or if title IV-E funds are currently being used for the youth's placement or services that may continue to be needed if the court decides to retain jurisdiction, a determination as to what reasonable efforts were and are being made to keep the youth in the home or to return the youth to the home;[16]
- A date for the next hearing within 10 business days if the youth is known to the juvenile delinquency court or not more than 20 business days if the youth is new to the juvenile delinquency court; and
- The date when the evaluations will be provided to the prosecutor and youth's counsel for review prior to the next hearing.

G. THE EVALUATIVE PROCESS FOR THE JUVENILE DELINQUENCY COURT TO DECIDE WHETHER TO RETAIN JURISDICTION OR WAIVE JURISDICTION AND TRANSFER TO THE CRIMINAL COURT ON A DISCRETIONARY WAIVER[17]

1. Factors that Should Be Considered in the Decision To Retain or Waive Jurisdiction

Juvenile delinquency court judges have the difficult task of determining whether a youth will remain in the juvenile justice system where rehabilitation is the stated focus or whether they will be sent to criminal courts where crime control and punishment are central aims. State statutes vary on the extent to which they explicitly outline the factors that should be considered in decisions to waive juvenile delinquency court jurisdiction and transfer a youth to criminal court. Although juveniles are transferred to criminal court who have been charged with property, drug, and public order offenses, the juveniles most likely to be waived and transferred are those who have long court histories or those who injure victims.[18]

Recent studies have found that three broad factors capture the types of information juvenile delinquency courts should consider when making decisions as to whether the court should retain or waive jurisdiction.[19] They are:

- Dangerousness – Research indicates that committing extremely violent crimes and having a prior history of frequent violence are related to a youth's continued violence and severe antisocial behavior.[20] Indicators of the degree of dangerousness include:
  - The degree of violence involved in the current offense, including whether the juvenile used a weapon and the degree of injury suffered by any victims.
  - The degree of violence involved in past offenses.
  - The extent to which violence was unprovoked.
  - The extent to which the offense was planned and premeditated.
  - Whether the incident was gang-related.
- Sophistication/Maturity – Whether or not the youth is perceived to be mature reflects the degree to which the youth understands the nature and consequences of the behavior. Higher levels of sophistication and maturity would be factors weighing in favor of transfer of jurisdiction. Factors frequently considered in weighing the degree of sophistication/maturity include:
  - Whether the youth knew the norms of the behavior, was able to identify alternative actions, but still engaged in premeditated and sophisticated crimes.
  - Whether there were co-offenders, and if so, the relative involvement of the juvenile to the seriousness of the offense and the relative age of the youth to the co-offenders.
  - Whether the youth is physically or developmentally immature.
  - Whether there is a history of trauma that may have impaired or arrested the youth's development. Trauma includes victimization, exposure to violence in the home, school or community, witnessing suicides or homicides, and witnessing residential fires or other disasters.
  - Whether the youth has some degree of mental retardation or developmental disabilities.
- Amenability to Treatment – Does the juvenile delinquency court believe the youth can benefit from treatment available in the juvenile delinquency system, considering the time the youth remains under the jurisdiction of the juvenile delinquency court and the level of security needed to provide a reasonable assurance of community safety? Indicators of the degree to which the youth would be amenable to treatment within the juvenile justice system include:
  - Whether the youth has a prior record of serious adjudicated delinquency offenses and appropriate service interventions that have or have not been successful in changing offending behavior.
  - Whether there are appropriate services and disposition alternatives available in the criminal justice system for dealing with the youth's problems.
  - Whether the youth has a mental illness or trauma history that can benefit from mental health treatment.

- Whether the youth has a substance abuse problem that can benefit from substance abuse treatment.
- Whether the youth acknowledges his or her involvement in prior adjudicated offenses, takes responsibility for the actions, and exhibits a desire to change.
- Whether the youth's prior behavior shows indicators of consideration and tolerance of others and involvement in prosocial behaviors.

The comprehensiveness of these three factors, and the need for physical, social, and forensic evaluations to provide adequate information to identify and weigh the factors in favor of transfer as opposed to the factors against transfer, require that each individual case be carefully and individually assessed.

2. Evaluations Needed To Provide Information to the Juvenile Delinquency Court Regarding the Factors that Should Be Considered in the Decision to Retain or Waive Jurisdiction

Three evaluations are necessary to provide the needed information to the juvenile delinquency court judge so that the judge can make the decision to retain jurisdiction or to waive jurisdiction and transfer to criminal court. These evaluations are a social evaluation, a physical evaluation, and a forensic evaluation.

- The Social Evaluation - Unless this is the youth's first offense, it is probable that the youth has already been active with probation services and a social evaluation (also called a social history) has already been completed. It is important that the individual completing the social evaluation identifies prior information, including prior mental health evaluations, and that this information is included in the background information provided for the forensic evaluation. Components of a social evaluation include:

  - Description of the family situation in which the youth resides, including the family's court history, strengths and problems of the situation, and whether there is any history of trauma;
  - Description of the situation of any parent or sibling with whom the youth does not reside and the strengths and problems of the situation, including whether there is any history of trauma;
  - Description of any other significant individuals of influence in the youth's life, both positive and negative, including peer groups and gang membership;
  - Description of current and prior offenses;
  - Description of the youth's school history and current status including any special strengths, problems, or learning needs;
  - Description of past and current problems of the youth including substance abuse, mental health issues, mental retardation, medical problems, education problems, trauma history, etc.;
  - Description of any prosocial activities with which the youth is or has been involved;
  - Description of services, both non-residential and residential, that the youth is or has been involved in, whether they were or were not court ordered, and the youth's response to those services;
  - Description of the youth's adjustment to the detention environment, if applicable;
  - Whether the youth has been involved with the neglect or abuse jurisdiction of the juvenile court, and if so, a summary as to the reason for the involvement, a description of services and placements provided, the youth and family's responses, and the current reunification or permanency plan, if applicable; and
  - Any other information that would assist the mental health examiner and the court in assessing the youth's level of dangerousness, sophistication/maturity, and amenability to treatment in the juvenile delinquency system.

  The designated juvenile delinquency system staff, usually a probation officer, should review all prior social evaluations and add any supplemental information that has occurred since the last social evaluation was completed. The purpose of the social evaluation is to provide information regarding the issues listed above. The evaluation should not recommend whether or not the youth should be transferred to criminal court.

- The Physical Evaluation - Since the youth is probably in juvenile detention due to the degree of severity of the offense, the youth should have had a physical examination at the time of the detention admission. If the admission examination was not comprehensive or not conducted by a physician, an additional examination will be needed. This examination, conducted by a physician, along with any other pertinent medical information included in the social evaluation should present a current and complete picture of the youth's physical condition, including any physical maturity issues and any current medical issues or needs.
- The Forensic Evaluation - The final evaluation necessary to provide information to the juvenile delinquency court concerning the decision to waive and transfer is the forensic evaluation. Although a mental health screen was done at the time of detention intake, and a mental health evaluation may have been completed in the past, the foren-

sic mental health evaluation is much more in-depth. The social and physical evaluations should be provided in advance to the examiner who will conduct the forensic evaluation.

The mental health professional conducting the forensic evaluation examines the youth in the context of the specific factors that the court must consider in deciding whether to retain jurisdiction or waive jurisdiction and transfer to criminal court, specifically dangerousness, sophistication/maturity, and amenability to treatment in the juvenile justice system. Whether the issue of competency to stand trial has or has not been raised, the evaluation should determine the degree to which the youth understands the charges and is competent to stand trial. The role of the clinician is to address all of these specific issues, not to recommend whether the youth should or should not be transferred to criminal court.

The mental health professional performing this evaluation must have experience in the field of forensic evaluations and in child/adolescent evaluations. The clinician must be knowledgeable about the structure of the juvenile justice system, adolescent offenders, and relevant laws. The clinician must understand child and adolescent development and psychopathology, cultural influences, if appropriate, and the impact of environmental factors such as victimization or other trauma, educational opportunities, and family dynamics. The evaluator must know the services and environments that exist in both the juvenile justice system and the adult system (although it is important to note that a juvenile should never be waived to the adult system because the resource is not, but should be, available in the juvenile justice system). The evaluator must understand the factors that the juvenile delinquency court judge must consider in making the decision, and must be able to communicate the evaluation results with regard to these factors, so that adequate detail is presented to the juvenile delinquency court judge, the prosecutor, and defense counsel. If a youth exhibits cognitive deficits or learning disorders, and if the evaluator does not have experience in these particular fields, additional evaluative resources may be necessary so that the impact of the deficits on behavioral and emotional functioning can be determined.[21]

Juvenile delinquency court judges should not allow these evaluations to be conducted in a rote fashion for all youth. They should require that the individual's circumstances and history determine the components of the forensic evaluation and that forensic evaluators are well-informed regarding current research.

H. CONDUCTING THE SECOND PHASE OF THE PROCESS TO DECIDE WHETHER TO RETAIN JUVENILE DELINQUENCY COURT JURISDICTION OR WAIVE JURISDICTION AND TRANSFER TO CRIMINAL COURT

Prior to this point, the juvenile delinquency court has held the probable cause phase on the prosecutor's motion to waive juvenile delinquency court jurisdiction and has determined probable cause on an offense that qualifies for a discretionary judicial waiver. Social, physical, and forensic evaluations have been completed and provided to the court, the prosecutor, and counsel for the youth in advance of the hearing. The second and final phase regarding whether to retain juvenile delinquency court jurisdiction or to waive jurisdiction and transfer the case to criminal court is ready to proceed. Based on the evidence presented during this phase, the juvenile delinquency court judge must look at the factors weighing for and against the prosecutor's motion to waive juvenile delinquency court jurisdiction and decide whether to grant or deny the prosecutor's motion to transfer the case to criminal court. The judge must decide this question using a standard of clear and convincing evidence.

1. Who Should Be Present

The following individuals should be present during the phase to determine whether the juvenile delinquency court will retain or waive jurisdiction:

- The judge or judicial officer who is assigned to the family;
- The youth who has been charged with the violation of law;
- The parent or legal custodian of the youth, including the child's caseworker if under custody to the child protection agency, and an *in loco parentis*, if applicable;
- If the youth is living with someone other than the parent or legal custodian (e.g., non-custodial relative, foster parent), the caretaker of the youth;
- Counsel representing the youth;
- Prosecuting attorney;
- Victim and victim advocate, if the victim chooses to be present;
- Witnesses to be called by the prosecutor;
- Witnesses to be called by the defense, if

applicable;

- The youth's probation officer, or other person who prepared the social evaluation;
- Certified interpreters if the youth, parent, custodian, victim, or any witnesses do not speak English or are hearing impaired; and
- Court security and other court staff as required, including stenographic staff or recording technology.

2. Information the Juvenile Delinquency Court Should Have

The following information should be available to the juvenile delinquency court for the second phase of the process to determine whether to retain or waive jurisdiction:

- The petition, affidavit, waiver motion, and any other pertinent filed motions or reports concerning the alleged law violation;
- A record of the juvenile delinquency court's decisions and orders from prior hearings on the current charge and information on prior offenses;
- The social, physical, and forensic evaluations;
- A list of witnesses that the prosecution and counsel for the youth plan to call;
- Any additional evaluative information that the prosecutor or counsel for the youth intends to submit as evidence; and
- A victim impact statement.

3. Presentation of the Social, Physical, and Forensic Evaluations

The evaluation reports should be provided to the prosecutor and counsel for the youth not less than three days before the hearing. It is recommended that the social and physical evaluations be provided to the prosecutor and counsel for youth prior to the forensic evaluation in order to provide as much review and preparation time as possible. It is important that the prosecutor and youth's counsel have sufficient time to determine whether they will stipulate to the evaluations or whether they wish to challenge the conclusions by either questioning the evaluator or presenting additional information through written reports or testimony. If they plan to question the evaluator, subpoenas must be issued in sufficient time for the witnesses to be present to testify. If additional written reports are to be presented by the prosecutor or youth's counsel, they should similarly have been provided to all parties prior to the hearing.

The judge may request the probation officer or other individual who prepared the social evaluation to summarize the information presented in the three evaluations. If so, the prosecutor and counsel for the youth should have the opportunity to question the preparer.

4. Presentation of the Prosecutor's Case in Support of the Motion to Waive and Transfer Juvenile Delinquency Court Jurisdiction

All testimony presented at the waiver hearing should be under oath and subject to cross-examination. Only evidence that would be admissible in a juvenile delinquency court disposition hearing should be admissible in the hearing to determine whether to waive or retain jurisdiction.

If the parties have stipulated to the evaluation reports, the prosecutor may not need to present any additional evidence. If the evaluation reports do not support the prosecutor's motion, the prosecutor may call additional witnesses at this time to challenge the conclusions of the evaluations. The prosecutor should have discussed with the victim whether she or he wishes to testify, and if so, the prosecutor should call the victim at this time. After each witness' testimony, the defense should have the opportunity to cross-examine.

5. Presentation Through Counsel of the Youth's Case Against the Motion To Waive and Transfer Juvenile Delinquency Court Jurisdiction

As with the prosecutor's evidence, any evidence presented by counsel for the youth should be under oath and subject to cross-examination. Only evidence that would be admissible in a juvenile delinquency court disposition hearing should be admissible in the waiver hearing. After any witness' testimony on behalf of the youth, the prosecutor should have the opportunity to cross-examine.

If the parties have stipulated to the evaluation conclusions, there may be no additional evidence to present. If there is evidence that counsel for the youth can present to defend his or her client against waiver, or to challenge the information in the evaluations, it should be presented at this time. Counsel should present an alternative plan for the court to consider that would continue juvenile delinquency court jurisdiction.

The therapeutic jurisprudence model recommends that the youth prepare, with appropriate assistance, a rehabilitation plan to present to the prosecutor and to the court that articulates why he or she is amenable to juvenile rehabilitation. The plan would include definition of behaviors that need to be changed, history of how the behavior developed, and what the youth believes is necessary to assist him or her in changing the behavior, including relapse prevention interventions. Developing the plan provides the youth an

opportunity to reflect on and define the problem, and is a useful tool for the court to use in assessing the youth's amenability to treatment in the juvenile delinquency system.

At the conclusion of the youth's case, the prosecutor may present a rebuttal. The prosecutor and counsel for the youth may present closing arguments.

I. QUESTIONS THAT MUST BE ANSWERED DURING THE RETAIN OR WAIVE PHASE

In order to ensure that all issues have been covered at the hearing to determine whether to retain jurisdiction or waive jurisdiction and transfer to criminal court, the juvenile delinquency court judge should know the answers to the following questions before making the decision:

1. With whom does the youth live and who has legal custody?
2. If a parent or legal custodian is not present, were they properly served? If so, why are they not present?
3. Have all pending motions been identified and addressed?
4. Were the prosecutor and counsel prepared for the hearing? Has all appropriate evidence been introduced?
5. Has the prosecutor presented clear and convincing evidence that the case should be transferred to the criminal court, considering the youth's dangerousness, sophistication/maturity, and amenability to treatment in the juvenile delinquency system?
6. Are the immediate needs of the youth being addressed?

J. WRITTEN FINDINGS AND ORDERS RELATED TO THE SECOND PHASE OF THE PROCESS

The juvenile delinquency court's written findings and orders should be stated in language understandable by the parties and with enough detail to support the court's actions. The court's findings and orders should be set out in writing and made available to all parties and key participants at the conclusion of the hearing. If the judge needs further time to review the evidence in order to make a decision, the case should be continued for no more than three business days, at which time the court renders its decision.

1. If the Juvenile Delinquency Court Denies the Motion To Waive Juvenile Delinquency Court Jurisdiction and Transfer the Case to Criminal Court

If the juvenile delinquency court denies the motion, the juvenile delinquency court judge should proceed to take a plea on the petition. If the youth denies the offense, pre-trial issues should be addressed.[23] The juvenile delinquency court judge should determine whether to continue to hold the youth in detention or release the youth with or without restrictions. If the youth is released, and if the victim is not in court when this decision is made, the prosecutor or probation officer should notify the victim of the youth's release. The juvenile delinquency court judge should set the case for trial no later than 10 business days if the youth remains in detention, and no later than 20 business days if the youth is released from detention.

If the juvenile delinquency court believes there is any possibility that title IV-E funds will be used for the youth's placement or services, or if title IV-E funds are currently being used for the youth's placement or services that may continue to be needed, a determination as to what reasonable efforts were, and are being made to keep the youth in the home or to return the youth to the home must be made in order to retain title IV-E eligibility for funding.[24]

If the youth through counsel admits all counts of all petitions, the youth should complete and sign a plea petition that, in addition to listing rights, has a statement of admission and describes what occurred. The youth should recite the facts of the offense and the court should accept the admission and adjudicate the youth. Since social, physical, and mental evaluations have already occurred, it is likely that the juvenile delinquency court can immediately move to the disposition phase. The probation officer that prepared the evaluative information for the waiver hearing should include a disposition recommendation if the court decides to retain jurisdiction. See *Chapter VII: The Disposition Hearing* for the juvenile delinquency court disposition process.

If disposition cannot be made at this time, the disposition hearing should be set for a future date. Prior to setting the disposition hearing, the juvenile delinquency court judge must decide whether the youth should continue to be detained because he or she is a danger to self or others or at risk of absconding, or whether the youth should be released with or without restrictions pending the disposition hearing. If the youth is held, the disposition hearing should be set as soon as possible within five business days, unless additional information is needed that will take a longer period to obtain, then the hearing should be set within 10 business days.

If the youth is not detained, the disposition hearing should be set as soon as possible within 10 business days, unless additional information will take a longer period to obtain. Under no circumstances should the disposition hearing be set for a period longer than 20 business days.

- The written findings and orders, if the juvenile delinquency court denies the motion to waive jurisdiction, should include:

  - All persons present at the hearing;
  - If parties were absent, whether they were provided with appropriate notice;
  - A statement of the reason for the hearing, specifically the allegation against the youth, that probable cause has been established, and that the prosecutor has filed a motion to waive juvenile delinquency court jurisdiction and transfer the case to criminal court;
  - A statement that the court has denied the motion and the specific reasons for the court's finding;
  - Either the reasons why it is necessary to continue to detain the youth or an order to release the youth specifying any restrictions;
  - If the youth is not in detention, description of any restrictions placed on the youth until the next hearing;
  - If the court believes there is any possibility that title IV-E funds will be used for the youth's placement or services, or if title IV-E funds are currently being used for the youth's placement or services, findings of fact as to what reasonable efforts were, and are being made to keep the youth in the home or to return the youth to the home;
  - Any evaluations or services that the youth needs prior to the next hearing and who is responsible to obtain them; and
  - If the youth denies the offense:

    - A description of the pre-trial issues that were addressed, identification of any pre-trial issues that still need to be addressed, and the expectation of how these remaining issues will be resolved; and the date and time for the trial and any additional pre-trial hearing if necessary.

  - If the youth admits the offense, either the court's disposition orders (See *Chapter VII: The Disposition Hearing*) or the date and time for the disposition hearing.

2. If the Juvenile Delinquency Court Grants the Motion To Waive Juvenile Delinquency Court Jurisdiction and Transfer the Case to Criminal Court

- Interlocutory Appellate Review – Refer to Section F (2).
- Transfer to Criminal Court – Refer to Section F (2).
- The written findings and orders when the juvenile delinquency court grants the motion to waive jurisdiction and transfer to criminal court should include:

  - All persons present at the hearing;
  - If parties were absent, whether they were provided with appropriate notice;
  - A statement of the reason for the hearing, specifically the allegation against the youth, that probable cause has been established on the prosecutor's motion to waive juvenile delinquency court jurisdiction and transfer the case to criminal court, and that the purpose of the hearing was to determine whether to waive and transfer;
  - A statement that the court has granted the motion and the specific reasons for the court's finding; and
  - Orders that arrangements be made to notify the criminal court of the transfer and if necessary, orders that arrangements be made to transfer the youth from juvenile custody to criminal custody.

  If a representative of the applicable law enforcement agency is not present at the hearing, the prosecutor should send timely written notice of the waiver decision to law enforcement. If the victim of the offense did not attend the hearing, the prosecutor or probation officer should notify the victim of the juvenile delinquency court's decision.

A chart of steps and time lines on hearings on a motion to waive juvenile delinquency court jurisdiction and transfer jurisdiction to the criminal court follows.

Endnotes

[1] Concepts in this section have been drawn from multiple sources including:

- Snyder, H., & Sickmund, M. (1999). *Juvenile Offenders and Victims: 1999 National Report.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention.
- Sickmund, M., Snyder, H., & Poe-Yamagata, E. (2000). *Juvenile Transfers to Criminal Court in the 1990's: Lessons Learned From Four Studies.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

[2] Mershon, J. (1991). *Juvenile Justice: The Adjudicatory and Dispositional Process.* Reno, NV: National Council of Juvenile and Family Court Judges.

[3] Key Supreme Court cases are discussed more fully in the Appendices.

[4] Between 1992 and 1995, 40 states and the District of Columbia changed their laws to restrict juvenile delinquency court jurisdiction in the most serious cases in a variety of ways. The David and Lucile Packard Foundation. (1996). *The Future of Children: The Juvenile Court, 6*(3).

[5] In 2002, the National Center for Juvenile Justice reported:

- All states have a mechanism to prosecute juveniles in criminal court, and every state allows juveniles under the age of 16 to be tried in criminal court for certain offenses.
- 46 states have discretionary and/or mandatory judicial waiver.
- 15 states have prosecutorial waiver.
- 29 states have mandatory exclusions from juvenile delinquency court.
- 25 states have reverse waiver provisions from criminal court to juvenile delinquency court.
- 23 states have no minimum age for juvenile waiver.
- 2 states (Kansas and Vermont) have a minimum age of 10, and 3 states (Colorado, Montana and Missouri) have a minimum age of 12.

[6] See subsequent sections in this chapter for more information on making this determination.

[7] Torbet, P., Gable, R., Hurst, H., Montgomery, I., Szymanski, L., & Thomas, D. (1996). *State Responses to Serious and Violent Juvenile Crime.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

[8] The National District Attorneys Association policy is: *For serious, violent or habitual offenders, where factually appropriate, prosecutors should be given the discretion to file such cases in adult court without judicial intervention.* Prosecutors agree that decisions to waive and transfer should be made on a case-by-case basis and not be mandatory based on the charge.

[9] Howell, J. C. (2003). *Preventing & Reducing Juvenile Delinquency: A Comprehensive Framework.* Thousand Oaks, CA: Sage.

[10] An example of clearly defined discovery rules from the San Francisco County Superior Court can be found online at: http://sfgov.org/site/uploadedfiles/courts/rule_13.pdf.

[11] Shepherd, R. E. (Ed.). (1996). *Juvenile Justice Standards Annotated: A Balanced Approach.* Chicago, IL: American Bar Association.

[12] Concepts excerpted from *Juvenile Justice Standards Annotated: A Balanced Approach.* [Standards Relating To Transfer Between Courts: Waiver.] Supra note 11.

[13] If the youth was not previously detained, and the juvenile delinquency court decides to detain at this point, the title IV-E eligibility determination of "contrary to the youth's welfare" should be made if there is any possibility that the youth, if not transferred to criminal court, might be eligible for title IV-E funding for services. See Chapter II, Section I, and the Appendices for more information.

[14] If the youth is released and the victim is not in court when this decision is made, the prosecutor or probation officer should notify the victim of the youth's release.

[15] If so, the juvenile delinquency court must make the determination of "Reasonable Efforts." See Chapter II, Section I, and the Appendices for more information.

[16] Ibid.

[17] Concepts in this section have been excerpted from:

- Salekin, R. T., Yff, R. M., Neumann, C. S., Leistico, A. R., & Zalot, A. A. (2002). Juvenile transfer to adult courts: A look at the prototypes for dangerousness, sophistication-maturity, and amenability to treatment through a legal lens. *Psychology, Public Policy, and Law, 8,* 373-410.
- Adams, K. J., Brooks, K., & Rose, J. (Eds.). (2001). *The Special Needs Of Youth In The Juvenile Justice System: Implications For Effective Practice.* Covington, KY: Children's Law Center.
- Snyder, H., & Sickmund, M. (1999). *Juvenile Offenders and Victims: 1999 National Report.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

[18] Statistics on juveniles who are transferred to the criminal court by the juvenile delinquency court show that these youth generally display the following characteristics:

- Waived cases generally involve males age 16 or older; and approximately 50% are white.
- Juveniles who have long juvenile delinquency court histories or who injure victims are most likely to be waived to criminal court.
- Approximately half of juveniles transferred to criminal court make bail or are otherwise released from confinement prior to the disposition of their case.
- More than half of the juveniles who are transferred to criminal court plead guilty.
- Trials are held in 10% of juvenile transfer cases, and four of five trials result in guilty verdicts.
- Approximately 70% of convicted transfer youth are sentenced to incarceration.
- The average maximum prison sentence for transferred juveniles convicted of felonies is approximately nine years.

Snyder, H., & Sickmund, M. (1999). *Juvenile Offenders and Victims: 1999 National Report.* Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

[19] Supra note 17.

[20] Salekin, R. T., Yff, R. M., Neumann, C. S., Leistico, A. R., & Zalot, A. A. (2002). Juvenile transfer to adult courts: A look at the prototypes for dangerousness, sophistication-maturity, and amenability to treatment through a legal lens. *Psychology, Public Policy, and Law, 8,* 373-410.

[21] Additional resources used in this section include:

- Grisso, T. (1998). *Forensic Evaluation of Juveniles.* Sarasota, FL: Professional Resource Press.
- Grisso, T. (2000). Forensic clinical evaluations related to waiver of jurisdiction. In J. Fagan & F. E. Zimring (Eds.), *The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court* (Chapter 9). Chicago, IL: University of Chicago Press.

- Barnum, R. (1987). Clinical evaluation of juvenile delinquents facing transfer to adult court. *Journal of the American Academy of Child and Adolescent Psychiatry, 26*, 922-925.

Also refer to Grisso, T. (2005). *Clinical Evaluations for Juveniles' Competence to Stand Trial: A Guide for Legal Professionals.* Sarasota, FL: Professional Resource Press.

[22] Therapeutic jurisprudence is the study of the role of the law as a therapeutic agent. It suggests that legal rules, legal procedures, and the roles of lawyers and judges may be viewed as social forces that can produce therapeutic or anti-therapeutic consequences. [Mescall, T. J. (1999). *Legally Induced Participation and Waiver of Juvenile Courts: A Therapeutic Jurisprudence Analysis.* 48 Revista Juridica Universidad de Puerto Rico.] Additional resources include Winick, B. J., & Wexler, D. B. (2003). *Therapeutic Key: Therapeutic Jurisprudence and the Courts*; Wexler, D. B. (1990). *Therapeutic Jurisprudence: The Law as a Therapeutic Agent*; the recently published problem-solving and judicial manual *Judging for the 21st Century: A Problem-Solving Approach* (2005), available at http://www.nji.ca/Public/publication.htm; and the therapeutic jurisprudence website: http://www.therapeuticjurisprudence.org.

[23] See Chapter IV, Section D (7) for the issues that need to be addressed.

[24] Supra 13 for more information.

[25] The therapeutic jurisprudence model suggests that after any plea of admit, it is important for the youth to personally acknowledge his or her accountability. For example, the court might require the youth to take the stand, under oath, state that he or she did commit the crime and exactly how it was committed.

Chart of Steps and Time Lines on Hearings on a Motion To Waive Juvenile Delinquency Court Jurisdiction and Transfer Jurisdiction To Criminal Court

PRIOR PROCESS STEPS: 1)The petition has been filed, determined legally sufficient and handled formally. 2) Counsel has been appointed. 3) An initial or detention hearing has been held at which time the prosecutor filed a motion to waive juvenile delinquency court jurisdiction and transfer jurisdiction to criminal court. 4) Pre-trial issues were addressed. 5) Social, mental, and physical examinations may have been ordered if the case is a discretionary waiver. Typically the youth is in detention and this hearing is set within 10 business days of the detention hearing. 6) The prosecutor and counsel for the youth have prepared their cases and issued subpoenas for all witnesses and records.

PROBABLE CAUSE PHASE

1. Alleged offense, rights, and process are reviewed.
2. Prosecutor presents case for probable cause.
3. Counsel may present case against probable cause.
4. Rebuttal and closing arguments.

Does the court find probable cause?

NO →

1. The allegation is dismissed.
2. If the youth is in detention and there are no additional pending petitions, the youth is immediately released.
3. If the youth is in detention and there are additional pending petitions, determine if the youth needs to remain in secure on non-secure detention. If title IV-E funding is being used or may be used in the future, make the "reasonable efforts" determination.
4. Generate the written findings and orders and distribute to all parties and key participants.

YES

Is the offense a mandatory judicial waiver?

YES

1. Explain process for appellate review.
2. Determine whether the youth will remain in juvenile detention, be released, or be transferred to the adult facility.
3. Generate the written findings and orders and distribute to all parties and key participants.
4. Notify the criminal court.

NO →

Have social, physical, and forensic evaluations been completed and distributed to all parties prior to the hearing?

YES

PHASE TO DETERMINE WHETHER TO WAIVE JURISDICTION

1. Presentation of evaluations.
2. Prosecutor presents case.
3. Counsel presents youth's case.
4. Rebuttal and closing arguments.

Is there clear and convincing evidence in favor of the prosecutor's motion?

NO

Take a plea on the petition.

Does the youth admit?

YES

Proceed to Disposition (See Chapter VII.)

NO

1. Determine whether the youth should remain in secure on non-secure detention.
2. If title IV-E eligible, make required determinations.
3. If the youth is held, set the trial no later than 10 business days.
4. If the youth is released, set the trial no later than 20 business days.
5. Settle all pre-trial issues.
6. Generate the written findings and orders and distribute to all parties and key participants.

YES

1. Explain process for appellate review.
2. Determine whether the youth stays in juvenile detention or is transferred to adult facility.
3. Generate written findings and orders and distribute to all parties and key participants.
4. Notify criminal court.

NO

1. Order social, physical, and forensic evaluations.
2. Determine whether the youth should remain in secure or non-secure detention.
3. If title IV-E, make required determinations.
4. Continue not more than two weeks unless no prior social history/mental health evaluation, and then not more than four weeks, for hearing to determine waiver of jurisdiction.
5. Generate the written findings and orders and distribute to all parties and key participants.

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CHART OF STEPS AND TIME LINES FOR THE TRIAL/ADJUDICATION HEARING....129

The *JUVENILE DELINQUENCY GUIDELINES* is intended to be used by courts and other juvenile delinquency system stakeholders to assist their efforts to improve practice. The *GUIDELINES* is aspirational - they focus on what should be as opposed to what is. Every effort has been made to make the *GUIDELINES* practical and usable, and to ground recommendations in the most current research and promising practices available at the time of development.

Some jurisdictions are already following many of the recommendations. Some jurisdictions may find it extraordinarily challenging to follow the recommendations. Regardless of jurisdictional status and resources, it is hoped that the *GUIDELINES* will provide a common vision and motivational framework for those working toward an improved juvenile delinquency system.

As jurisdictions strive to implement the *GUIDELINES* with training and technical assistance from the NCJFCJ, juvenile delinquency system practitioners from all situations - urban, rural, suburban, and with varying degrees of resources - will be able to create and share successful implementation methods.

Chapter VI describes the juvenile delinquency court process that determines whether a youth who has denied the allegations of delinquency will be found to have committed the offense.

Chapter IV: The Detention and Initial Hearing described the process leading up to and including the youth entering a plea to the petition. If the youth denied the allegations, the case was either referred for a dispute resolution alternative or set for trial. If set for trial, pre-trial issues, including discovery, were discussed and resolved either at the initial or detention hearing or at a subsequent pre-trial hearing. Because discovery delays and disputes are a common cause of unnecessary continuances and delayed trials, the juvenile delinquency court clearly defined discovery obligations and held prosecutor and defense counsel to these defined obligations.[1] The juvenile delinquency court, the prosecutor, and counsel for the youth agreed on a date for the trial, and the juvenile delinquency court judge determined the amount of time necessary to set aside for the trial based on the number of prosecutor and counsel for the youth witnesses and the nature of their testimony. The juvenile delinquency court judge ensured that a sufficient amount of consecutive trial time was scheduled on the court's docket.

In some juvenile delinquency court jurisdictions, youth have the right to request a trial by jury under certain circumstances. In most jurisdictions, however, a judge or judicial officer determines the facts in most trials.

A. PURPOSE OF THE TRIAL/ADJUDICATION HEARING

The purpose of this hearing is for the juvenile delinquency court judge to determine if the prosecutor has proven the allegations of the petition beyond a reasonable doubt. This determination is made based on evidence presented by the prosecutor and defense evidence presented by counsel for the youth, if defense chooses to present evidence. If the judge determines that the allegations are true with regard to the alleged offense or a lesser offense, the case moves forward to the disposition phase, which is discussed in the next chapter. If the judge determines that the allegations are not true, the petition is dismissed.

B. TIMING OF THE TRIAL/ADJUDICATION HEARING

If the youth is in detention, the trial was scheduled no more than 10 business days from the detention hearing. If the youth is not in detention, the trial was scheduled no more than 20 business days from the initial hearing. In both instances, the trial was scheduled for a sufficient amount of consecutive time to complete the trial.

Some cases may necessitate a longer period of preparation between the detention or initial hearing and the trial.[2] Examples of situations that may need more time include cases with complex discovery issues, when laboratory tests are needed to determine illegal substances or to determine if a bullet came from a specific gun, or when a victim is hospitalized due to injuries from the alleged offense. The juvenile delinquency court judge should carefully review the reasons for requests to set trial dates beyond the recommended time lines. The juvenile delinquency court judge must ensure that the reasons for the request are valid and not because the juvenile delinquency system has failed to design and implement achievable expeditious processes. When additional time is requested because each day is being used to perform a process step, no time is being spent on waiting lists, and prosecutor and counsel workloads are reasonable, an extension is probably necessary. If there are repeated trial delays due to system inefficiencies, judicial leadership will be required to improve efficiency. Data about the delayed cases should be collected to determine the causes of the problem and the juvenile delinquency court judge should convene representatives from each involved system to design and implement a new process that will eliminate the delays.

In order for the prosecutor and youth's counsel to meet these recommended time lines and exercise due diligence in preparing for the proceeding, both must have been involved in case preparation since before the detention or initial hearing.[3] Consequently, they have had sufficient time to learn about the youth and the case. At the time the petition was filed, the prosecutor identified the key trial witnesses and was able to predict within a two-week period, when the case would probably be set for trial. This predictive ability enabled the prosecutor to alert potential witnesses to when they might be needed, and determine how to work with witness schedules. Since counsel for the youth was appointed prior to the first hearing, counsel has also had time to assess trial strategy. Counsel for the youth alerted potential witnesses and determined scheduling conflicts. When the prosecutor and counsel are appointed in this manner, they have between two and six weeks, depending on whether the youth is detained, to prepare for trial. With the exceptions previously noted, this should provide sufficient time to meet this recommended time line in most cases.

In order for juvenile delinquency court dockets to be available to meet these recommended time lines, there must be sufficient numbers of judges and judicial officers to meet docketing needs, and the judges and judicial officers must have organized dockets, with time-specific hear-

ings. They must be able to use their management information systems to predict approximately how many cases will go to trial in a year, the amount of docket time necessary to handle these trials, and consequently, the amount of time that must be kept available on juvenile delinquency court dockets for trials. In addition, in order to maintain manageable and organized dockets, juvenile delinquency court judges must maintain scheduled hearing dates, eliminate unnecessary continuances, and start hearings when scheduled.

An organized and controlled trial court hearing process can occur when a juvenile delinquency court diligently pursues excellence in implementing the following seven *Key Principles*:

- ***Juvenile Delinquency Court Judges Should Engage in Judicial Leadership and Encourage System Collaboration***
- ***Juvenile Delinquency Systems Must Have Adequate Staff, Facilities, and Program Resources***
- ***Juvenile Delinquency Court Judges Should Ensure Their Systems Divert Cases to Alternative Systems Whenever Possible and Appropriate***
- ***Youth Charged in the Formal Juvenile Delinquency Court Must Have Qualified and Adequately Compensated Legal Representation***
- ***Juvenile Delinquency Courts Should Render Timely and Just Decisions and Trials Should Conclude Without Continuances***
- ***Juvenile Delinquency Court Judges Should Hold Their Systems and the Systems of Other Juvenile Delinquency Court Stakeholders Accountable***
- ***Juvenile Delinquency Court Judges Should Ensure the Court Has an Information System That Can Generate the Data Necessary to Evaluate Performance***

There are many ways that a juvenile delinquency system can increase efficiencies and improve timeliness without having to add significant additional resources. A court can free existing resources for reallocation by:

- Reducing the number of cases heard on formal dockets by diverting less serious cases to community resources or lower cost juvenile delinquency court alternatives;
- Using dispute resolution alternatives to reduce the number of trials; and
- Eliminating unproductive time throughout the system such as unnecessary continuances and unnecessary waiting time.

The resources can be shifted to implement some of the *DELINQUENCY GUIDELINES* recommendations.

C. LEGAL REPRESENTATION[4]

A case should not go to trial in the juvenile delinquency court without a prosecutor and counsel for the youth who are qualified and who have exercised due diligence in preparing for the proceeding. When a juvenile delinquency court has implemented ***Key Principle 7: Youth Charged in the Formal Juvenile Delinquency Court Must Have Qualified and Adequately Compensated Legal Representation***, qualified counsel was appointed for the youth prior to the detention or initial hearing.[5]

Prior to the trial, counsel completed all of the following responsibilities:

- Investigated all circumstances of the allegations;
- Sought discovery of any reports or other evidence to be submitted to or considered by the juvenile delinquency court at the trial;[6]
- If circumstances warrant, requested appointment of an investigator or expert witness to aid in the preparation of the defense and for any other order necessary to protect the youth's rights; and
- Informed the youth of the nature of the proceedings, the youth's rights, and the consequences if the youth is adjudicated on the petition.

It is very important that the parents or legal custodian have someone they can go to with questions prior to the hearing and that they are informed of the nature of the proceedings, the youth's rights, their rights, and the consequences if the youth is adjudicated on the petition. Although counsel for the youth's primary responsibility is to the youth client, in most instances it is in the youth's best interest that his or her parents also be informed. Consequently, in most cases, in order to serve the client's needs, counsel must include the parent. In some instances, such as when a parent is the victim, it may not be appropriate for counsel for the youth to engage the parent. In this instance, the prosecutor would be the most appropriate person to inform the parents of the proceedings, their rights, the youth's rights, and the consequences if the youth is adjudicated on the petition, since the parent will probably be a prosecution witness.

D. PLEA AGREEMENTS[7]

Prosecutors, counsel, and the juvenile delinquency court judge should give the use of plea

agreements careful thought. They should ensure that the process does not give the youth the impression that he or she will not be held responsible for an offense, or that the plea agreement process is a way of manipulating the juvenile delinquency system for gain. It may be appropriate for a prosecutor to enter into a plea agreement because the evidence is weak. However, plea agreements should never change the nature of the offense – e.g., it may be appropriate to agree to reduce a sexual offense to a lesser sexual offense, but it would not be appropriate to agree to reduce a sexual offense to a non-sexual offense. Part of the role of counsel for the youth is to tell the youth that he or she should not expect gain in exchange for a plea agreement. Counsel must also advise the youth that the juvenile delinquency court has the final determination over whether to accept the plea agreement. One way to counteract the impression that the process can be manipulated for gain is to refer to the plea agreement as an *accountability agreement.*

When a plea agreement is appropriate, the prosecutor and counsel for the youth should negotiate plea agreements prior to the time the trial is set. The *DELINQUENCY GUIDELINES* recognizes that either the prosecutor or counsel for the youth who have not previously reached a plea agreement may be more willing to do so when either discovers that a key witness has not appeared for the trial; however, this circumstance should be the exception. It is unacceptable practice for last minute plea agreements to occur because the prosecutor or counsel for the youth has not adequately prepared in advance of the trial. It is also unacceptable practice to wait routinely to first address the question of a plea agreement until the day of the trial.

The prosecutor should communicate with the victim when engaging in plea agreement discussions and permit the victim to provide input. The victim impact statement should be used and any monetary losses incurred should be identified during the negotiations. Restitution, when appropriate, should be included in any proposed plea agreement.

Generally, the juvenile delinquency court judge should not be involved in plea agreement discussions. Plea agreements may not include any agreements or promises with regard to the juvenile delinquency court's disposition. The juvenile delinquency court judge should have full discretion to order the disposition that best meets the needs of the youth and community.

One of the challenges juvenile delinquency courts face in setting and keeping timely trial hearing starting times is last minute plea negotiating between the prosecutor and counsel for the youth. This practice is often due to the failure to exercise diligence in preparing for the proceeding before arriving on the day the hearing is set, often caused by unmanageable caseloads. This practice not only prevents the specific hearing from starting on time, but also sets a pattern of significant delay for all subsequent hearings. This practice violates ***Key Principle 9: Juvenile Delinquency Courts Should Render Timely and Just Decisions and Trials Should Conclude Without Continuances***.

The juvenile delinquency court administrative judge should, using judicial leadership, state and consistently enforce clear expectations regarding plea agreements. The expectation should be that juvenile delinquency court judges will not allow the plea agreement process to delay the court's schedule of hearings or cause unnecessary continuances.

E. CONDUCTING THE TRIAL/ADJUDICATION HEARING

Juvenile delinquency courts should ensure that proper security is in place and that courtroom and waiting areas are conducive to safety and respect for witnesses and family members. There should be two separate waiting areas, one for the victim and other prosecution witnesses, and one for the defense witnesses and youth's family. A victim advocate should accompany the victim during the trial process. Witnesses for both the prosecution and counsel for the youth, as well as the victim and victim advocate, may be excluded from the courtroom during trial testimony. This makes it very important that the waiting areas are separated and supervised to prevent inappropriate behavior.

The juvenile delinquency court judge must explain and maintain strict courtroom decorum and behavioral expectations for all participants, including the attorneys, victims, witnesses, the public, and the press. Juvenile delinquency court administrative judges must ensure that the juvenile delinquency court is a place where all youth, families, victims, witnesses, and other system participants are treated with respect, dignity, and courtesy. The manner in which the juvenile delinquency court judge or judicial officer sets the tone in trials can have a significant influence on whether the youth, parent, victim, and witnesses perceive the process to be objective and fair. When parents perceive that they and their child have been treated with respect, dignity and courtesy at the trial or adjudication hearing, they are more likely to support and participate in the court's disposition orders.

Some juvenile delinquency courts have found showing videos in the waiting areas of the court that explain the process, courtroom decorum, and behavioral expectations is effective in communicating expectations to all participants. Other juve-

nile delinquency courts provide brochures that explain trial issues and expectations in easily understandable terminology and in the various languages of significant populations in the community.

1. Who Should Be Present

The following individuals should be present at the trial/adjudication hearing:

- The judge who is assigned to the family;
- The youth who has been charged with the violation of law;
- The parent or legal custodian of the youth, including the child's caseworker if under custody to the child protection agency and an *in loco parentis*, if applicable;
- If the youth is living with someone other than the parent or legal custodian (e.g. non-custodial relative, foster parent), the caretaker of the youth;
- Counsel representing the youth;
- Prosecuting attorney;
- Prosecution witnesses, including the victim;
- Victim advocate;
- Witnesses to be called on behalf of the youth, if applicable;
- Certified interpreters if the youth, parent, custodian, victim, or any witness does not speak English or is hearing impaired; and
- Court security and other court staff as required, including stenographic staff or recording technology.

It is not a good use of probation officers' time to require that they attend lengthy trials, unless they must be there as a witness.

2. Information the Juvenile Delinquency Court Should Have

At the start of the trial, the following information should be available:

- The petition, affidavit, and any motions concerning the alleged law violation(s);
- A record of the juvenile delinquency court's decisions and orders from any prior hearings on the current charge;
- If a plea agreement is proposed, the plea petition and plea agreement;
- A list of witnesses that the prosecution plans to call;
- A list of witnesses that counsel for the youth plans to call, if applicable; and
- If the youth is on probation or engaged in services, information from the probation officer or service provider regarding any cultural or disability issues that would assist the judge or judicial officer in successfully communicating with the youth and family.

The following information should be available at the *conclusion of the trial* so that, if the youth is adjudicated, the juvenile delinquency court judge can decide whether the youth will continue to be held in or placed in secure or non-secure detention, or released with or without restrictions:

- Information regarding the youth's prior involvement with the court, including any other pending charges and whether the youth is under the abuse and neglect jurisdiction of the juvenile court.[8]
- Whether title IV-E funds are being used for the youth's placement or services or whether there is a possibility that title IV-E funds might need to be used for the youth's placement or services if adjudicated on the charges.[9]
- Information regarding the youth's adjustment in detention and any issues of concern.
- If the youth is on probation and in detention, information from the probation officer that may be pertinent to the decision of whether the youth needs to continue to be held or should be considered for release.

If the juvenile delinquency court anticipates that the case will move immediately into the disposition phase following the trial if the youth is adjudicated, additional information is required, as defined in *Chapter VII: The Disposition Hearing*, and the probation officer should be present.

3. If a Plea Agreement Has Been Proposed

If a plea agreement has been proposed, the prosecutor and counsel for youth should submit to the juvenile delinquency court judge, at least one week before the scheduled trial, a proposed plea agreement and a signed plea petition that, in addition to listing rights waived, has a section completed by the youth that describes what occurred, that has a statement of admission, and that is signed by the youth. The juvenile delinquency court judge should immediately review the plea petition and proposed plea agreement to determine if there is a probability that it will be rejected and the trial will go forward. If it appears that the judge will accept the proposal, the judge and courtroom staff will be able to reassign most of the docket time previously set aside for the trial. At the previously scheduled trial time, the plea agreement and reasons for the agreement should be presented to the juvenile delinquency court judge on the record with the youth present, prior to the juvenile delinquency court's acceptance of a change in plea.

The juvenile delinquency court judge should only accept a plea if it is made "knowingly" and "voluntarily." While communicating with the youth to determine her or his level of understanding, the juvenile delinquency court judge should consider factors such as the youth's chronological age, the youth's present grade level in school or highest grade level achieved while in school, whether the youth can read and write, and whether the youth has suffered recent or repeated and severe trauma.

When a plea agreement has been proposed, the juvenile delinquency court judge should:

- Address the youth directly regarding the nature of the allegations using appropriate language to communicate effectively with the youth;
- Explain to the youth the rights that are waived by a plea agreement, including the youth's right to confront adversary witnesses through counsel by cross-examination, the burden on the prosecution to prove the case against the youth beyond a reasonable doubt, the privilege against self incrimination, the right to appeal, and any other rights created by state constitution or statute that the youth waives through a plea, including the right to trial by jury. Inform the youth that these rights are lost by an admit plea;
- Inform the youth of the possible consequences of the plea, including the range of dispositions available to the court;
- Ask the youth open-ended questions to determine his or her level of understanding of this information (e.g., what made you decide to change your plea to admit? What do you think will happen to you if I accept your plea?);
- Using open-ended questions, ask the youth if the youth knows what she or he agreed to;
- Ask the youth whether any promises or inducements or any force or threats were used to obtain the plea and if not, accept the plea agreement; and
- In order to reinforce the youth's acceptance of responsibility for the behavior, the juvenile delinquency court may require the youth to take the stand, under oath, and state that he or she committed the offense and state exactly how it was committed.[10]

Refer to Appendix D for a detailed listing of due process rights and other issues that the juvenile delinquency court judge should cover.

If the juvenile delinquency court judge accepts the plea admission and plea agreement, and if all information and necessary persons are present, the hearing can move to the disposition phase. See *Chapter VII: The Disposition Hearing* for the steps in the disposition phase. If additional information or persons are needed, the disposition hearing should be set for a future date. If the youth is detained, the juvenile delinquency court judge must decide whether to continue detaining the youth or whether to release the youth with or without restrictions pending the disposition hearing. Once this decision is made, the disposition hearing date can be set. If the youth continues to be held in secure detention, the disposition hearing should be set as soon as possible within five business days, unless additional information is needed that will take a longer period to obtain. If more time is needed, the hearing should be set within 10 business days.

If the youth is released from detention, the disposition hearing should be set as soon as possible within 10 business days, unless additional information will take a longer period to obtain. Unless there are exceptional circumstances, the disposition hearing should not be set for a period longer than 20 business days from the trial date.

4. Reading of the Petition, Explanation of Rights, and Explanation of the Hearing Process if a Plea Agreement Has Not Been Proposed

To ensure that the parent and youth understand the juvenile court proceedings, the juvenile delinquency court should begin the hearing by reading the petition that describes the offense the youth is alleged to have committed and reviewing all of the youth's due process rights. The court should explain the trial process and the burden of proof that the court will use to decide whether to adjudicate the youth on the alleged offense(s). The court should explain the possible consequences if the youth is adjudicated.

5. Presentation of the Prosecutor's Case For Adjudication

All evidence presented at the trial should be under oath and subject to cross-examination. The prosecutor should be required to present evidence of responsibility with regard to the alleged offender's identity as the perpetrator and as to every element of the offense. After each witness' testimony, counsel for the youth should have the opportunity to cross-examine.

Unless waived by counsel, the statements of a juvenile or other information or evidence derived directly or indirectly from statements made during the juvenile delinquency court intake or detention processing of the case should not be admissible at the trial. These statements made to a probation, intake, or detention officer should not be admis-

sible because the youth should be encouraged to disclose fully to these professionals to ensure all important information related to immediate needs is made available, without the concern that the statements might later be used against her or him at trial.

6. Presentation of the Youth's Case Against Adjudication

The burden of proof is on the prosecutor and consequently the youth is not required to present any witnesses or to prove that he or she did not commit the alleged offense. Counsel for the youth may choose to present evidence that challenges the evidence of the prosecutor or proves the youth's innocence.

As with the prosecutor's evidence, any evidence presented by counsel for the youth should be under oath and subject to cross-examination. After any witness testimony on behalf of the youth, the prosecutor should have the opportunity to cross-examine.

At the conclusion of the youth's case, the prosecutor may present a rebuttal. Then the prosecutor and counsel for the youth may present closing arguments.

F. QUESTIONS THAT MUST BE ANSWERED

In order to ensure that all issues have been covered at the trial/adjudication hearing, the juvenile delinquency court judge or judicial officer should know the answers to all of the following questions before concluding the hearing. The trial should not begin unless: 1) all necessary parties are present or properly served if not present; and, 2) all pending motions have been identified and addressed. Initially, the judges' focus is on whether the prosecutor has proven that the youth committed the alleged offense. If the judge adjudicates the youth, the answers to the remaining questions are necessary to determine the next step.

1. Questions That Must be Answered at the End of the Trial To Determine if a Youth Should Be Adjudicated Delinquent

- Were the prosecutor and counsel prepared for the hearing and has all appropriate evidence been introduced?
- Based on the evidence presented, did the prosecutor prove every element of the alleged offense beyond a reasonable doubt?

2. Questions That Must be Answered if the Youth Is Adjudicated Delinquent To Determine the Next Step:

- Are the immediate needs of the youth being addressed?
- If the youth is in detention, is there reliable information to support that the youth needs to remain detained in secure or non-secure detention or can the youth be released with or without restrictions? Issues that should be considered in making this decision include:
  - ➢ Is there reason to believe the youth might present a danger to the physical safety of the community, or to reoffend upon his or her release?
  - ➢ Is there reason to believe the youth might have unwanted contact with the victim or witnesses upon his or her release?
  - ➢ Is there reason to believe that the youth may not appear for court proceedings, attend probation meetings or other obligations, or otherwise fail to comply with the court's orders?
  - ➢ Does the youth have a history of engaging in behaviors that will endanger himself or herself, or has the youth made statements leading to a reasonable belief that he or she will engage in such behaviors?
  - ➢ Does the youth have any medical, physical, or mental health issues, including a trauma history that places the youth's safety in question in a detention setting?
  - ➢ Is detention necessary to hold the youth accountable for violations of probation or other court orders?
  - ➢ Is there an environment adequately structured by family, community, school or other support systems to enable the youth to avoid harmful behaviors and associations? In considering this question, the juvenile delinquency court must ensure that disproportionate minority contact is not an unintended result of a negative determination. The court must ensure that family group conferencing is used when appropriate to identify all available family members and to create a supervision plan, and that appropriate resources exist to provide support to families when detaining the youth is not in the youth's best interest.
- If the youth will continue to be detained, have the parent's or legal guardian's questions about detention, including visitation, been answered?
- Should the youth be released, with or without restrictions, or moved from secure to non-secure detention? If the youth is released, and the victim is not in court when this decision is made, the prosecutor or probation officer should notify the victim of the youth's release.
- Are title IV-E funds being used for the youth's placement or services and thus will findings of reasonable efforts need to be made? If so, has information been presented that will enable the court to make the appropriate determinations?[11]

G. WRITTEN FINDINGS AND ORDERS

1. If the Juvenile Delinquency Court Dismisses the Petition

After presentation of the prosecutor's case for adjudication and the youth's case against adjudication, the juvenile delinquency court must decide if the allegations of the petition have been proven beyond a reasonable doubt. If the juvenile delinquency court judge (or jury if applicable) is not persuaded, the petition alleging delinquency should be dismissed. If the youth has been detained in juvenile detention, he or she should be immediately released from detention unless also being held on other delinquency charges.

The juvenile delinquency court's written findings and orders should be stated in language understandable by the parties and with enough detail to support the court's actions. The juvenile delinquency court's findings and orders should be set out in writing and made available to all legal parties and key participants at the conclusion of the hearing. The findings and orders should include:

- All persons present at the hearing.
- If parties were absent, whether they were provided with appropriate notice.
- A statement of the reason for the hearing, the allegation against the youth, and that rights and possible consequences were reviewed.
- A statement that the court *did not* find the youth to be delinquent.
- Dismissal of the petition.
- Release of the youth from custody or identification of other pending petitions requiring continued confinement and the next hearing date on those petitions.

2. If the Juvenile Delinquency Court Adjudicates the Youth

The juvenile delinquency court judge should adjudicate the youth delinquent if, after presentation of all evidence, the juvenile delinquency court judge is persuaded that the allegations of the petition have been proven beyond a reasonable doubt. If the judge is persuaded that the evidence supports an offense of a lesser degree, the juvenile delinquency judge should adjudicate the youth delinquent on the reduced charge. If all information and necessary persons are present, the hearing should move to the disposition phase. See Chapter VII: The Disposition Hearing for the processes involved in the disposition phase.

If additional information or persons are needed, the disposition hearing should be set for a future date. If the youth is detained, the juvenile delinquency court judge must decide whether the youth should continue to be detained or whether the youth should be released with or without restrictions pending the disposition hearing. Once this decision is made, the disposition hearing date can be set.

If the youth is detained, the disposition hearing should be set as soon as possible within five business days, unless additional information is needed that will take a longer period to obtain. If additional time is required, the hearing should be set within 10 business days. If the youth is released from detention, the disposition hearing should be set as soon as possible within 10 business days, unless additional information will take a longer period to obtain. Under no circumstances should the disposition hearing be set for a period longer than 20 business days.

The juvenile delinquency court's written findings and orders should be stated in language understandable by the parties and with enough detail to support the court's actions. The juvenile delinquency court's findings and orders should be set out in writing and made available to all legal parties and key participants at the conclusion of the hearing. The findings and orders should include:

- All persons present at the hearing;
- If parties were absent, whether they were provided with appropriate notice;
- A statement of the reason for the hearing, the allegation against the youth, and that rights and possible consequences were reviewed;
- If a plea agreement was accepted, incorporate the agreement into the record as presented or as modified;
- A statement that the juvenile delinquency court found the youth to be delinquent and the specific reasons for the court's finding;
- If the youth is in detention, either the reasons why it is necessary to continue to detain the youth or an order to release the youth specifying any restrictions;
- If the juvenile delinquency court believes there is any possibility that title IV-E funds will be used for the youth's placement or services, or if title IV-E funds are currently being used for the youth's placement or services, determinations as to what reasonable efforts were and are being made to keep the youth in the home or to return the youth to the home;[12]
- If the youth is not in detention, description of any restrictions placed on the youth until the next hearing;
- Any evaluations or services that the youth needs prior to the next hearing and who is responsible to obtain them; and

- The date and time for the disposition hearing.

If the hearing has moved into the disposition phase, the items that need to be included are outlined in *Chapter VII: The Disposition Hearing*. A chart of steps and time lines for the trial/adjudication hearing follows.

Endnotes

[1] An example of clearly defined discovery rules from the San Francisco County Superior Court can be found online at: http://sfgov.org/site/uploadedfiles/courts/rule_13.pdf.

[2] The National District Attorneys Association policy is that: "Detention cases should receive priority treatment. An adjudicatory hearing should be held within 30 days if the juvenile is held in detention pending trial or within 60 days if the juvenile is arrested and released." *Resource Manual and Policy and Positions on Juvenile Crime Issues.* p.6-7. (2002).

[3] Refer to Chapter III, Section C(3), for information regarding recommended systems that enable the youth's counsel to become involved prior to the first hearing.

[4] This section should not be interpreted as an all-inclusive list of the responsibilities of counsel for the youth. For a complete list, refer to the ABA Standards of Representation or the NACC guidelines.

[5] Supra note 3.

[6] Refer to Chapter IV, Section D(7), for how pre-trial issues were addressed in hearings prior to the date of the trial.

[7] This section was written with the assistance of Patricia Puritz of the American Bar Association, Juvenile Justice Center.

[8] The 2002 reauthorization of the Juvenile Justice and Delinquency Prevention Act requires that states receiving funds under the Act implement systems to ensure that public child welfare records are available to the juvenile delinquency court for the purposes of establishing and implementing treatment plans for juvenile offenders.

[9] For additional information about title IV-E eligibility requirements for delinquent youth, refer to Chapter II, Section I, *Summary of Title IV-E in the Juvenile Delinquency System* and *Flowchart of Juvenile Delinquency Court Hearing Requirements if a Delinquent Youth Is To Be Eligible for Title IV-E Funding*, and Appendix J, *Title IV-E in the Juvenile Delinquency System.*

[10] Newman, D. J. (1966). Conviction: *The Determination of Guilt or Innocence Without Trial* as referred to in Wexler, D. B. (1993). Therapeutic jurisprudence and the criminal courts. *William and Mary Law Review, 35*, 279-299.

[11] Supra note 9.

[12] Ibid.

Chart of Steps and Time Lines for the Trial/Adjudication Hearing

PRIOR PROCESS STEPS: 1) The petition has been filed, determined legally sufficient, and handled formally; 2) Counsel has been appointed; 3) An initial or detention hearing has been held and the youth has entered a plea of deny; 4) Discovery and pre-trial issues were covered at the initial or detention hearing or subsequent hearing if necessary; 5) The youth may be placed in secure or non-secure detention (in which case the trial is set within two weeks of the detention hearing) or the youth is not detained (in which case the trial is set not later than four weeks from the initial hearing); and, 6) Both counsel and prosecutor have prepared for the trial, determined whether a plea agreement will be proposed, and if not, have subpoenaed witnesses to testify.

Has a plea agreement been reached to propose to the court?

NO → The trial commences:
1. Alleged offense, rights, and process reviewed.
2. Prosecutor presents case.
3. Counsel for the youth may present case.
4. Rebuttal.
5. Closing arguments.

YES → Does the court approve the plea agreement?

NO → The trial commences (as above)

YES → Is information for disposition available?

YES → Proceed to Disposition – See Chapter VII

NO →
1. Continue for disposition hearing.
2. If youth is in detention, determine if the youth needs to remain in secure or non-secure detention.
3. If youth remains in detention, set disposition hearing not more than two weeks.
4. If youth is not in detention, set the disposition hearing not more than four weeks.
5. If title IV-E eligible, make "reasonable efforts" determination.
6. Generate the written findings and orders and distribute to all parties and key participants.

Have the allegations been proven beyond a reasonable doubt?

YES → Is information for disposition available?

NO →
1. The petition is dismissed.
2. If the youth is in detention and there are no additional pending petitions, the youth is immediately released.
3. If the youth is in detention and there are additional pending petitions, determine if the youth needs to remain in secure or non-secure detention. If title IV-E eligible, make "reasonable efforts" determination.
4. Generate the written findings and orders and distribute to all parties and key participants.

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The *JUVENILE DELINQUENCY GUIDELINES* is intended to be used by courts and other juvenile delinquency system stakeholders to assist their efforts to improve practice. The *GUIDELINES* is aspirational - they focus on what should be as opposed to what is. Every effort has been made to make the *GUIDELINES* practical and usable, and to ground recommendations in the most current research and promising practices available at the time of development.

Some jurisdictions are already following many of the recommendations. Some jurisdictions may find it extraordinarily challenging to follow the recommendations. Regardless of jurisdictional status and resources, it is hoped that the *GUIDELINES* will provide a common vision and motivational framework for those working toward an improved juvenile delinquency system.

As jurisdictions strive to implement the *GUIDELINES* with training and technical assistance from the NCJFCJ, juvenile delinquency system practitioners from all situations - urban, rural, suburban, and with varying degrees of resources - will be able to create and share successful implementation methods.

Chapter VII describes the process the juvenile delinquency court uses to determine the appropriate disposition for an adjudicated delinquent youth. Prior to the disposition hearing, a youth charged in the formal juvenile delinquency court with a violation of the law either admitted the offense, or the juvenile delinquency court judge determined the youth committed the offense at trial. The disposition process concludes when the juvenile delinquency court judge makes the disposition order and determines whether post-disposition review is appropriate.[1]

This chapter also describes the disposition options a juvenile delinquency court needs in order to achieve its goals, and discusses the importance of research in determining what interventions produce favorable outcomes for delinquent youth.

Depending on the seriousness of the offense, the youth's history of prior delinquency adjudications, whether there are indicators of potentially serious treatment issues, and the amount of information already available to the juvenile delinquency court, the disposition process can be clear cut or complex. When juvenile delinquency courts have implemented ***Key Principle 6: Juvenile Delinquency Court Judges Should Ensure Their Systems Divert Cases to Alternative Systems Whenever Possible and Appropriate***, the cases that reach disposition in the formal delinquency court are serious or chronic offenses. Many will require in-depth investigation to determine the most appropriate disposition.

At the time a youth was adjudicated delinquent, the juvenile delinquency court judge determined if additional information was needed in order to select the appropriate disposition. If no additional information was needed, the juvenile delinquency court moved directly into the disposition phase after adjudicating the youth delinquent. Holding the disposition hearing sequentially with the adjudication hearing is recommended only under specific circumstances. Examples where it would be appropriate to hold the two hearings sequentially include:

- The youth admits the offense at the initial hearing and is already on probation as the result of a prior delinquency adjudication. Current information, including probation's recommended disposition, is available at the hearing.
- The prosecutor requested juvenile jurisdiction be waived on a discretionary judicial waiver, and the juvenile delinquency court denied the request and adjudicated the youth at trial, or the youth admitted the offense. Because social, physical, and forensic evaluations were completed for the transfer hearing, it is probable that the juvenile delinquency court has sufficient information to move directly to disposition.[2]
- The parents and youth agreed to a pretrial evaluation or the youth was evaluated for competency to stand trial and found to be competent, the evaluation is available and includes recommendations on treatment services, and no further information is needed for disposition.
- The youth does not have extensive prior delinquencies and does not show indicators of potentially serious treatment issues, and probation appears to be the appropriate disposition.
- The juvenile delinquency court has structured its system so that the probation department has the authority to determine and implement non-placement terms of probation. Instead of referring the case to probation for investigation and continuing the case for disposition, the court places the youth on probation with no further hearings. Probation determines the specific terms of probation, using a structured process that includes victim interviews, validated screening and assessment tools, and structured guidelines to determine the appropriate probation response.

The terms of probation are incorporated into probation rules which are approved by the juvenile delinquency court judge. The prosecutor and counsel for youth are notified of the specific terms of probation and can challenge probation's decision if they disagree. Since probation remains involved, they monitor to ensure that services are delivered and the terms are complied with, and if not, the probation officer either signs a violation or requests juvenile delinquency court review.

The juvenile delinquency court judiciary supports this system because the judge and judicial officers participated in developing the system, and because ongoing evaluation shows this approach is as effective as practice prior to its implementation. Consequently, the judiciary has confidence that the design of the system is resulting in good decisions and do not feel it necessary to have another hearing to approve a probation department recommendation. In a jurisdiction with a population of a half million, this practice has eliminated the need for 900 additional hearings per year.[3]

***The DELINQUENCY GUIDELINES does not recommend* the practice of conducting predisposition investigations prior to adjudica-**

tion, except in formal cases where the youth and attorney have indicated the charges will not be contested. Some jurisdictions have adopted the practice of conducting pre-disposition investigations, when there has not been an admission, prior to adjudication to ensure that information is available upon adjudication and the juvenile delinquency court can move directly to disposition. There are two reasons why this practice is not recommended.[4] First, a juvenile delinquency court should not require a youth and family to share the personal and intrusive information necessary for a pre-disposition investigation if the youth has not been adjudicated on an offense. Second, if the juvenile delinquency court judge determines the youth did not commit the offense, or the offense does not result in probation or placement, the time and resources spent on the investigation were used unnecessarily.

If the juvenile delinquency court judge determined at the adjudication hearing that a separate disposition hearing was needed, the juvenile delinquency court judge issued orders regarding what additional information was needed, who was to obtain the information, and the date the case was to return to court for the disposition hearing. The juvenile delinquency court's orders probably included an order for a pre-disposition investigation and may also have included orders to conduct social, mental health, substance abuse, sex offender, educational, physical, or other evaluations. Examples where it would be appropriate to hold a separate disposition hearing include:

- The youth is new to the juvenile delinquency court on a very serious offense and has indicators of potentially serious treatment issues; or
- The youth is on probation, has failed to meet conditions of probation, has committed another serious offense, and social and other necessary evaluations have not previously been obtained or need to be updated and supplemented.

All of the 16 *Key Principles* listed in *Chapter I: Foundations for a Juvenile Delinquency Court of Excellence* apply to the disposition phase of the juvenile delinquency court process.

- ***Juvenile Delinquency Court Judges Should Engage in Judicial Leadership and Encourage System Collaboration***
- ***Juvenile Delinquency Systems Must Have Adequate Staff, Facilities, and Program Resources***
- ***Juvenile Delinquency Court Judges Should Ensure Their Systems Divert Cases to Alternative Systems Whenever Possible and Appropriate***

Only through system collaboration can necessary evaluative, education, treatment, and placement options be available and accessible in a reasonable timeframe. Similarly, only through system collaboration will comprehensive and coordinated services be available from multiple-child serving systems to meet the needs of youth with multiple issues. In order to have the resources necessary to provide effective services to the youth with the most serious needs, a juvenile delinquency court must manage its intake and divert less serious cases to community resources. A sustainable collaborative environment will not likely occur without the active leadership of the juvenile delinquency court administrative judge.

- ***Juvenile Delinquency Courts and Juvenile Abuse and Neglect Courts Should Have Integrated One Family-One Judge Case Assignments***
- ***Juvenile Delinquency Court Judges Should Have the Same Status as the Highest Level of Trial Court in the State and Should Have Multiple Year or Permanent Assignments***
- ***Juvenile Delinquency Court Judges Should Hold Their Systems and the Systems of Other Juvenile Delinquency Court Stakeholders Accountable***
- ***Juvenile Delinquency Court Judges Should Ensure the Court Has an Information System That Can Generate the Data Necessary To Evaluate Performance, Facilitate Information-Sharing with Appropriate Agencies, and Manage Operations Information***
- ***The Juvenile Delinquency Court Judge Is Responsible To Ensure That the Judiciary, Court Staff, and all System Participants are Both Individually Trained and Trained Across Systems and Roles***

Making effective disposition orders requires knowledge of the youth's and family's strengths and needs, and requires consistency of response over time. When a delinquent youth is also adjudicated abused or neglected, the same judge should handle disposition planning on both issues in order to provide consistency and avoid contradictory responses. Engaging the family and obtaining their cooperation with the juvenile delinquency court's disposition is more likely to occur when there is a relationship between the family and the juvenile delinquency court judge.

Making effective disposition orders requires training and experience in child and youth development and cultural issues, and knowledge of available resources and whether outcomes have

shown that the resources are effective. Producing outcome information requires adequate information systems. Without the wisdom and knowledge that come from the combination of these five principles, the juvenile delinquency court will not be able to best serve the treatment needs of the delinquent youth and the safety needs of the community.

- ***Youth Charged in the Formal Juvenile Delinquency Court Must Have Qualified and Adequately Compensated Legal Representation***
- ***Juvenile Delinquency Courts Should Render Timely and Just Decisions and Trials Should Conclude Without Continuances***
- ***All Members of the Juvenile Delinquency System Shall Treat Youth, Families, Crime Victims, Witnesses, and Others With Respect, Dignity, Courtesy and Cultural Understanding***
- ***Juvenile Delinquency Court Judges Should Ensure Court Dispositions are Individualized and Include Graduated Responses, Both Sanctions and Incentives***
- ***Juvenile Delinquency System Staff Should Engage Parents and Families at all Stages of the Juvenile Delinquency Court Process to Encourage Family Members to Participate Fully in the Development and Implementation of the Youth's Intervention Plan***
- ***The Juvenile Delinquency Court Should Engage the School and Other Community Support Systems as Stakeholders in Each Individual Youth's Case***
- ***Juvenile Delinquency Court Judges Should Ensure Crime Victims Have Access to all Phases of the Juvenile Delinquency Court Process and Receive All Services to Which They Are Entitled by Law***
- ***Juvenile Delinquency Court Judges Should Ensure Effective Post-Disposition Review Is Provided to Each Delinquent Youth as Long as the Youth Is Involved in Any Component of the Juvenile Justice System***

Determining the best disposition for a delinquent youth requires that the juvenile delinquency court involve all appropriate individuals in gathering information and making disposition recommendations. Counsel for the youth plays an important role in this process, since one of counsel's responsibilities is to ensure that all significant needs of the adjudicated delinquent youth are brought to the attention of the juvenile delinquency court during the disposition phase. The juvenile delinquency court's most effective method of significantly changing the behavior of youth is to work with and support strong and caring families, effective school systems, and other community support systems. Consequently, their information and recommendations should also be a part of the process to determine the best disposition for the youth. Whenever a juvenile delinquency court can obtain the "buy-in" of youth and family by considering their opinions, needs, recommendations, and preferences, and give them options to choose from, the court enhances the youth's chances of a successful outcome.

Timely justice is important because for youth the consequences of the behavior need to be as close to the offense as possible in order to have maximum impact. In order to render just decisions, juvenile delinquency courts must ensure that the court's disposition is:

- In line with the circumstances of the individual offense;
- In line with dispositions of similar offenses, or that the evidence supports why it is not;
- Minimizes the possibility of bias; and
- Individualized to meet the unique needs of the youth.

In order to be effective, interventions must be designed with appropriate developmental and cultural understanding and designed to expose offenders to the impact of crime on victims. In multi-ethnic jurisdictions, juvenile delinquency court administrative judges should lead efforts to ensure that all major ethnic groups are represented in the juvenile delinquency court's staff and in the array of service providers available to implement the court's dispositions. Dispositions will only be effective if the juvenile delinquency court ensures that the youth and parents, probation, and service providers follow through with court orders.

Together, these *Key Principles* create the foundation of a juvenile delinquency court disposition of excellence that will best serve the needs of delinquent youth and the safety of the community.

A. PURPOSE OF THE DISPOSITION HEARING

The purpose of the disposition hearing is to determine what the juvenile delinquency court judge will require of the adjudicated youth and his or her family as a result of the youth's responsibility for violating the law. The disposition hearing is the heart of the juvenile justice system. It is the time at which individualized justice is dispensed and when problem-solving for a particu-

lar youth and family is addressed. Appropriate dispositions are designed to help the juvenile delinquency court to achieve the following goals:[5]

- ***Increase safety in communities by supporting and implementing both effective delinquency prevention strategies as well as a continuum of effective and least intrusive responses to reduce recidivism;***
- ***Hold juvenile offenders accountable to their victims and community by enforcing completion of restitution and community service requirements; and***
- ***Develop competent and productive citizens by advancing the responsible living skills of youth within the jurisdiction of the juvenile delinquency court.***

Appropriate dispositions should be selected from a list of graduated responses and should be the least restrictive in type and duration that the juvenile delinquency court believes will accomplish its goals for the youth. Effective dispositions are matched to supervision levels and programs that correspond to the youth's risk of reoffending and need levels and the youth's cultural background. Effective dispositions are most likely to be selected when probation has used validated assessments to assist in identifying the recommended plan. Juvenile delinquency court judges should be able to explain to the youth and family why the specific disposition was selected and the objectives the court expects the youth to accomplish as a result of the disposition.

Juvenile delinquency court judges should know that the services they are ordering are effective. Juvenile delinquency courts must have access to outcome data and research that shows the services the juvenile delinquency court judge orders produce positive behavior change in delinquent youth and reduce recidivism. Juvenile delinquency court judges and juvenile delinquency court staff should visit the services and facilities they use and review the outcomes and accreditation reports of these services at least annually. They can then assure youth and parents that the services are effective and appropriately managed. Outcomes of routinely used service providers should be shared with all juvenile delinquency system participants and the public. If services are unable to produce successful outcomes, the juvenile delinquency court should not order a youth or parents to engage in those services.

The juvenile delinquency court must do everything possible to have the necessary array of effective services to meet the needs of the youth it serves. This is an important area where strong judicial leadership is required in order to lead collaborative efforts with other youth serving systems toward this end. Juvenile delinquency court judges should convene the leadership of youth systems that serve delinquent youth on a regular basis to review accessibility, quantity of services, and outcomes. These forums enable youth system leaders to learn the challenges each system faces, to identify and prioritize necessary improvements, to identify programs that work and programs that do not work, and to make the case for funding additions or shifts when needed.

Juvenile delinquency courts must have the authority, under statute or rule, to order an individualized disposition based on the evidence and determined to be reasonable and necessary for the child and family before it.[6] Operationally, this means that juvenile delinquency judges should, when appropriate:

- Specify types of services that are to be provided to a delinquent youth.
- Reject the use of a specific service provider, if evaluation indicates the provider is not achieving appropriate outcomes.
- Subpoena agency leaders, including education and school district staff, and use the court's contempt powers, if recalcitrant youth system participants have the ability and resources to cooperate yet, nonetheless, choose not to. Some states, such as California, have statutes in order to facilitate coordination and cooperation among government agencies that permit the juvenile delinquency court, after giving notice and an opportunity to be heard, to join an agency in the juvenile court proceeding if the court determines the agency has failed to meet a legal obligation to provide services to the minor.[7]

It is not appropriate, however, for juvenile delinquency court judges to order youth system agencies and organizations to use a specific provider for a court ordered service. It is also not appropriate for judges to reject the recommendation of the youth system agency or provider if their recommendation is supported by evidence and can be shown to be reasonable and appropriate.

When data shows that public funding is being used to fund youth systems that continue to either fail to provide needed services or provide services that are not producing successful outcomes, juvenile delinquency court presiding judges should take the initiative to intervene with state and local public funding sources and push for development of plans to improve the current systems. This may require shifting funding from one youth agency to another or to the juvenile delin-

quency court in order to enable timely and appropriate service delivery to delinquent youth. The *DELINQUENCY GUIDELINES* emphasizes, however, that when juvenile delinquency courts are funded to provide services, they must hold themselves equally accountable for accessibility and outcomes and share evaluations of their services with all system participants.

B. TIMING OF THE DISPOSITION HEARING

As previously discussed, the disposition hearing may be held sequentially with the adjudication hearing if all persons and information are available to the court when the youth is adjudicated. If additional information is needed or additional persons are required, the disposition hearing should be held at a subsequent date and time. If the youth is detained, the disposition hearing should be set as soon as possible and preferably within five business days of the adjudication hearing, unless additional information is needed that will take a longer period to obtain. If additional time is required and the youth is detained, the disposition hearing should be set as soon as possible and preferably within 10 business days after the adjudication hearing.

If the youth is not detained, the disposition hearing should be set as soon as possible and preferably within 10 business days from the adjudication hearing, unless additional information will take a longer period to obtain. It should be very rare that circumstances require the juvenile delinquency court to set the disposition hearing for up to 20 business days from the adjudication hearing, for a youth who is not detained.

When a pre-disposition investigation is required between the adjudication hearing and the disposition hearing, and social, mental health, or other evaluations are needed, the juvenile delinquency court should have systems in place to meet recommended hearing timelines. When additional time is required to obtain necessary information, the youth is in secure detention, and there is no reason to believe that the youth's disposition will be secure placement, the juvenile delinquency court should release the youth either to the parent or legal custodian, with or without restrictions, or to a non-secure detention alternative.

C. LEGAL REPRESENTATION

Youth appearing before the formal juvenile delinquency court should be represented by qualified counsel at all hearings (Key Principle 7). Counsel for the youth plays an important role in the disposition hearing with the responsibility to ensure that all significant needs relating to the delinquent behavior of the adjudicated delinquent youth have been brought to the attention of the juvenile delinquency court. If additional evaluations or expert witnesses are needed to aid in the preparation of the disposition hearing, counsel is responsible to request this assistance at the end of the adjudication hearing.

Prior to the disposition hearing, counsel for the youth should fully explain the possible disposition options to the youth and the youth's parents or legal custodian. Counsel should ask them what options they feel would be most appropriate and which service providers the youth and family will feel most comfortable working with. It is important to note, however, that counsel for the youth is not obligated to present the view of the parent, if this view is in opposition to the view of counsel's client.[8]

D. THE PRE-DISPOSITION INVESTIGATION [9]

When a juvenile delinquency court practices ***Key Principle 6: Juvenile Delinquency Court Judges Should Ensure Their Systems Divert Cases to Alternative Systems Whenever Possible and Appropriate*** and only the more serious and chronic cases come before the formal juvenile delinquency court, determining the appropriate disposition will often require significant additional information. In most juvenile delinquency courts, cases of serious offenders are referred to probation departments for the purposes of: 1) evaluating the risk of reoffending, needs, and strengths of the youth and family; 2) identifying victim needs and concerns; 3) identifying mitigating and aggravating circumstances; 4) matching probation's appraisal with available disposition alternatives; and, 5) recommending the appropriate court response. The *DELINQUENCY GUIDELINES* refers to this process as the pre-disposition investigation. It is also called a probation investigation in many jurisdictions.

Because of the impact this investigation has on the youth, and if juvenile delinquency courts are consistent and unbiased as to ethnicity, the person conducting the pre-disposition investigation should use validated assessment instruments, standard criteria, and consistent guidelines in making the disposition recommendation. The process should include a grid that matches youth and family risks, needs, and strengths with disposition alternatives.[10] The investigator must be careful to include only verifiable information in the investigation, to carefully document who provided the information, to identify those who agree with the recommended disposition, to present the opinions of those who disagree with the recommended disposition, and to explain why the recommended disposition will best meet the needs of the youth and provide community safety.

Probation must use appropriate releases of

information when gathering pre-disposition investigation information. Pre-disposition investigations should include the following:

- Information that currently exists within juvenile delinquency court records including police reports, past offenses, assessments, past service provider reports, and evaluations;
- Information that exists regarding abuse and neglect, both from juvenile court records and child protection agency records, and the reunification or permanency plan that has been approved by the abuse and neglect court, if applicable;[11]
- Contacting the prosecutor and counsel for the youth for additional information, and their perspectives and recommendations;
- Interviewing the youth and parents or legal custodian, preferably at their home, to collect information on the strengths, resources, needs, and recommendations of the youth and family. These interviews should be conducted to convey respect for the family and interest in their opinions and suggestions, and to build a foundation that will maximize their support. The persons conducting these interviews must be experienced in cultural issues that pertain to the family. Information collected during the interview should include:
  - The living and work situation of any parent or sibling with whom the youth does or does not reside, including strengths, relevant problems, and any trauma that the family has experienced. Trauma can include victimization, exposure to violence in the home, school, or community, witnessing suicides or homicides, and witnessing residential fires or other disasters;
  - Identification of significant individuals of influence in the youth's life, both positive and negative;
  - The youth's past and current problems, including substance abuse, mental health issues, trauma and victimization, mental retardation, and developmental disabilities;
  - School history including grades failed, special learning needs, behavior, grades, attendance, and current school functioning in all of the same areas;
  - Talents and prosocial activities with which the youth is or has been involved, including cultural and religious affiliations, volunteer activities, recreation, sports, employment, and the youth's career goals;
  - Health history of the youth, and any pertinent health issues within the family; and
  - Why the family and youth believe the youth broke the law, and what they think would help the youth develop the strengths and skills to avoid further illegal behavior.
- Information from the victim regarding his or her relationship to the offender, injuries or losses, restitution requests, concerns including perceived risk of being re-victimized, and desire to participate in the disposition hearing;
- Information from motor vehicle records, if applicable;
- Information from the school on attendance, behavior, performance, strengths, and special learning needs; comparing the school information provided by the parents and the information provided by the school will be a helpful indicator as to whether the parent and school are effectively communicating;
- Information from any service providers involved with the youth and family, including description of services, both non-residential and residential, that the youth or siblings are, or have been involved in, whether they were or were not court ordered, and the response to those services;
- Information from the staff of any organizations the youth is involved with;
- If the youth is Native American, information, recommendations, and available resources from the tribe or inter-tribal council;
- Assessing the attitude of the youth and family toward the offense and other problem behavior that has been identified in family, school, and agency contacts; and assessing their willingness to engage in services that will change the problem behavior and strengthen their problem-solving ability;
- Assessing protection of community issues, risk of reoffending issues, and needs using a validated risk assessment tool; and
- Recommendations for disposition.

When a juvenile delinquency court has implemented ***Key Principle 6: Juvenile Delinquency Court Judges Should Ensure Their Systems Divert Cases to Alternative Systems Whenever Possible and Appropriate***, many youth entering the formal juvenile delinquency court will have either an undiagnosed psychiatric disorder, a history of exposure to some type of trauma, or both.[12] Consequently, the disposition investigation should include a current mental health and trauma assessment. For adolescents, a mental health evaluation that is more than 12 months old may not be a valid indicator of the youth's current mental health status as youth change more quickly than adults.

When information collected in the investigation, or the facts of the offense indicate, additional evaluations should be conducted to fully

diagnose existing or suspected problems and make treatment recommendations. Additional evaluations that may be indicated include:

- Sex Offender
- Substance Abuse
- Special Learning Needs
- Neurological
- Physical

Juvenile delinquency court judges and pre-disposition investigators should always identify specific questions that they want the clinician to address in their assessment report.

Upon completion of all necessary interviews, document reviews, and evaluations, the pre-disposition investigator should complete a standardized process that guides the recommendation that the pre-disposition investigator will present to the juvenile delinquency court at the disposition hearing. The written investigation report should clearly and concisely summarize the information leading to the recommended disposition, explaining why the particular recommendation was selected, what the disposition will accomplish, and all recommended restrictions, sanctions, and services. If probation, intensive in-home services, or placement is recommended, a proposed plan should be submitted as a part of the report.

This proposed plan should incorporate ***Key Principle 12: Juvenile Delinquency Court Judges Should Ensure Court Dispositions are Individualized and Include Graduated Responses, Both Sanctions and Incentives***. The term "graduated responses," also referred to as "graduated sanctions," describes a response model that includes both sanctions and incentives in a multi-tiered continuum of interventions. The model emphasizes the need to hold each juvenile offender accountable for any and all offenses committed, provides a continuum of services that can respond effectively to the individual needs of each offender, uses graduated sanctions and positive reinforcement, and promotes the use of progressively more severe sanctions when needed for repeat offenders. Graduated sanctions should include sanctions that the probation officer can implement without a court hearing for minor violations of the plan and sanctions that must be judicially approved prior to implementation. ***The DELINQUENCY GUIDELINES recommends* that only judges or judicial officers should have the authority to place a youth in detention as a sanction**. Consequently, detention placement should be a sanction that must be judicially approved and cannot be implemented by probation.

Graduated responses should vary according to the severity, frequency, and degree of violence of the offense, and the special needs, strengths, and circumstances of the youth. Research shows that graduated responses are more effective when they include both consequences and nurturing and encouraging existing strengths of the youth.[13] Research also shows that responses are more effective when they enable youth to actively practice and demonstrate skills in a way that strengthens a community connection.[14] The graduated sanctions model couples sanctions and incentives with a range of effective service interventions that address underlying problems in order to prevent the youth's return to the juvenile delinquency court system.[15]

A proposed probation plan should include the following components:

- The level of supervision the youth will receive, who will provide the supervision, and the projected length of supervision if terms are complied with;
- The documented education plan for the youth that will help to ensure success in the school environment and that has been created in partnership with the youth's school;
- Expectations with regard to work, if applicable;
- The services that will be provided to assist the youth to learn new attitudes and competencies resulting in law-abiding behaviors and to assist the youth with any special issues; who will provide the services, when the services will begin, and the specific expectations of youth and parent or legal custodian with regard to these services;
- A plan of graduated sanctions and incentives with specificity regarding which sanctions can be implemented by the probation officer and which require approval by the juvenile delinquency court judge;[16]
- Any recommended restrictions on the youth's behavior such as house arrest, electronic monitoring, curfew, or persons the youth is not to associate with;
- Description of any monetary damages suffered by the victim, identification of personal insurance or state victim fund payments that will offset the damages, a recommendation of the amount of restitution the youth will be expected to pay, and a plan regarding how the youth will be held accountable for restitution through monetary payment or community service. For offenses with large monetary damages, it is important for pre-disposition investigators and juvenile delinquency court judges to discuss with the victim a realistic compensation amount from the youth and to assist the victim in accessing any other compensation options available;
- Any additional expectations for the youth regarding understanding the impact of vic-

timization and providing compensatory community service; and

- Any recommendations of orders that should be made regarding the parent, such as attending a parental responsibility training program, participating in services, aiding in the enforcement of the juvenile delinquency court's orders on their child, liability for restitution, payment for the costs of services, or criminal responsibility for failing to supervise their delinquent child.[17]

Removal from the home, whether in community, non-secure, or secure placement, is the most restrictive and costly disposition that the juvenile delinquency court can impose. If the pre-disposition investigator recommends placement, the investigator should explain how she or he has carefully considered why removal from home is necessary, and where the youth will reside upon completion of placement.[18] The proposed plan, referred to as the initial reentry plan, should include the following components:

- The level of supervision that will be provided by the placement;
- The services that the placement will provide to the youth during the time the youth is in placement that will lead to successful return to the community, including the plan for engagement in community services as soon as possible after placement;
- The education plan for the youth including how information will be obtained from the prior school, what remediation and credit recovery will be provided, and what interventions will ensure successful transition to the community school upon release; if the youth is on an Individual Education Plan (IEP), the plan should specify the date an IEP conference will be held not later than one week after the youth is placed;
- The person to whom the youth is expected to be released upon completion of the program;
- The services that will be provided and the expected participation of the future custodian during the time the youth is in placement, including involvement in treatment services and visitation; recommendations of orders that should be made regarding the parent or legal custodian, such as attending a parental responsibility training program, aiding in the enforcement of the juvenile delinquency court's orders regarding their child, liability for restitution, payment for the costs of services, or criminal responsibility for failing to supervise their delinquent child;[19]
- If the future custodian is not the parent, the expected participation of the parent during the time the youth is in placement, including involvement in treatment services and visitation;
- A plan of graduated sanctions and incentives with specificity regarding which sanctions can be implemented by the probation officer and which require approval by the juvenile delinquency court judge;
- How it will be determined that the youth is ready for release; and
- At what point during the placement the finalized reentry plan will be developed and provided to the juvenile delinquency court.

The pre-disposition investigator should include the participation of the youth and parent in developing the proposed plan to the maximum degree possible. Active involvement in negotiating and designing the plan, even giving the youth and parent choices with regard to minor details can positively impact adherence and favorable outcomes.[20] If probation is the recommended plan, a helpful method of promoting cognitive self-change is to give the youth and parent responsibility to identify what happened that led up to the youth's offense, what circumstances can be expected to occur in the future that could lead to repeated criminal behavior, and how the youth will avoid or cope with these situations without violating the law.[21] When youth and parent suggest plan components that the investigator knows are not appropriate and will not be acceptable to the juvenile delinquency court judge, the investigator can use this opportunity to explain the juvenile delinquency court's perspective and concerns and ask the youth and parent to suggest modifications that would address the juvenile delinquency court's concerns. Whenever the youth is Native American and affiliated with a local tribe, the appropriate tribal representative should also be involved in developing the proposed plan.

The pre-disposition investigator should provide the pre-disposition report, recommendations, and the proposed probation or initial reentry plan to the prosecutor and counsel for the youth not less than three days before the disposition hearing. When a mental health or other clinical evaluation is needed, the pre-disposition investigator should forward the social and physical evaluations to the prosecutor and counsel for youth at the same time they are forwarded to the clinician. Once the clinician has completed the evaluation, and if the report will not be available for several days, the pre-disposition investigator should give verbal information regarding the clinical report with probable recommendations to the prosecutor and counsel for youth as soon as practicable, in order to provide as much review and preparation time as possible.

E. DISPOSITION CONTROL OVER THE PARENTS OF ADJUDICATED YOUTH[22]

In all states, the parents of a delinquent youth can be held liable for the costs of confinement and the costs of services provided to their child. These costs can include child support while in an institution, costs of probation supervision, costs of treatment or other services, cost of transportation to treatment or services, court costs, and legal fees. Many states have additional statutes that provide the juvenile delinquency court with the authority to hold parents responsible in the following ways:

- Require them to participate in family treatment, counseling, and probation appointments with their children;
- Make the parent liable for restitution to the victim of a delinquent act committed by their child;
- Make the parent a party to the action and require them to attend juvenile court hearings;
- Require the parent to aid in the enforcement of court orders concerning their delinquent child's rehabilitation program, with failure to aid potentially resulting in contempt proceedings and sanctions against the parent;
- Allow public disclosure of the parent's name if his or her child commits a specified serious offense;
- Require them to attend a court-approved parental responsibility training or parent education programs; and
- Hold them criminally responsible for failing to supervise a child who commits delinquent acts.

The pre-disposition investigator or prosecutor should recommend the juvenile delinquency court judge make orders against the parent, if the juvenile delinquency court has statutory authority, when they believe the order is necessary to protect the community, assist the youth in changing delinquent behaviors, or repair damage to the victim. However, the pre-disposition investigator, prosecutor, and juvenile delinquency court judge should carefully consider the impact on the youth of a parental sanction, so that unintended negative consequences do not result, such as:

- The court orders a significant amount of support while the youth is in placement and paying the support negatively impacts the parent's ability to provide for the needs of the remaining family members; and
- A parent of a youth has a history of physical violence against the youth, the court orders the name of the parent to be publicly disclosed, and as a result, the parent's physical violence against the youth increases.

Juvenile delinquency courts should have policies with regard to the circumstances that must exist for a parental sanction to be ordered. The juvenile delinquency court should define situations that might result in waiving the sanction, so that the juvenile delinquency court ensures the sanctions are fairly and consistently applied. If the juvenile delinquency court intends to hold parents responsible for contributing to the costs of placement or services, the court should obtain or prepare a schedule of payments that will be ordered based on household income. The juvenile delinquency court should consistently follow the schedule for all youth unless documented special circumstances apply (e.g., a disabled sibling whose medical care requires a large portion of household income).[23]

F. CONDUCTING THE DISPOSITION HEARING

1. Who Should Be Present

The victim should always be invited to testify at any disposition hearing as to the harm suffered from the offense. There should be two separate waiting areas, one for the victim and other prosecution witnesses, and one for the defense witnesses and youth's family. If the victim chooses to attend, a victim advocate should accompany the victim during the disposition hearing. The following individuals should be present at the disposition hearing:

- The judge who is assigned to the family;
- The youth who has been adjudicated on the violation of law;
- The parent or legal custodian of the youth, including the child's caseworker, if under custody to the child protection agency; and an *in loco parentis*, if applicable.
- If the youth is living with someone other than the parent or legal guardian, the caretaker of the youth (e.g., non-custodial relative, foster parent);
- Counsel representing the youth;
- Prosecuting attorney;
- The victim and victim advocate, if the victim wishes to participate;
- Certified interpreters if the youth, parent, custodian, victim, or a witness does not speak English or is hearing impaired;
- The probation officer or other person who conducted the pre-disposition investigation, if applicable; and
- Court security and other court staff as required, including stenographic staff or recording technology.

2. Information the Juvenile Delinquency Court Should Have

At the start of the disposition hearing, the following information should be available to the juvenile delinquency court and should have been previously provided to the prosecutor and counsel for the youth:

- The petition, affidavit, motions, and findings and orders from the prior hearings in the case;
- Information regarding any cultural or disability issues that would assist the judge in successfully communicating with the youth and family;
- The pre-disposition report, recommendation, and proposed probation or initial reentry plan, if applicable;
- Copies of all evaluations, reports, or other source documents referenced in the pre-disposition report;
- Whether title IV-E funds are or will be used for the youth's recommended placement or services;
- The current court approved reunification or permanency plan, if the youth is also under the abuse and neglect jurisdiction;[24]
- A victim impact statement that includes any damages and documented costs for which a restitution order is requested; and
- A list of any witnesses that either the prosecutor or counsel for the youth intends to call to testify.

The pre-disposition investigator should provide the pre-disposition report, recommendations, and the proposed probation or initial placement and reentry plan to the prosecutor and counsel for the youth not less than three business days before the disposition hearing.

3. Presentation of Disposition Testimony and Recommendations from the Pre-Disposition Investigator, Prosecutor, and Counsel for the Youth[25]

As previously noted, prior to the juvenile delinquency court disposition hearing, the pre-disposition report, recommendation, and proposed plan was provided to the prosecutor and counsel for the youth. The prosecutor has discussed the report with the victim, determined the victim's response to the recommendation, and whether the victim wishes to attend and participate in the hearing. The prosecutor has also determined whether he or she agrees with the pre-disposition recommendation or will present a different recommended disposition. The prosecutor has determined whether he or she will call witnesses to testify as to the appropriateness of their recommendation or to challenge the conclusions or recommendations of the pre-disposition report.

Counsel for the youth has discussed the pre-disposition report, recommendations, and plan with the youth and family to determine their responses. Counsel has determined whether to agree with the recommendation or to present a different recommended disposition. Counsel has determined whether to call witnesses to testify as to the appropriateness of her or his recommendation or to challenge the conclusions or recommendations of the pre-disposition report.

Consequently, all parties are prepared at the disposition hearing to proceed with the following steps:

- The juvenile delinquency court judge reads the offense and summarizes, or asks the pre-disposition investigator to summarize, the pre-disposition recommendation and reasons for the recommendation. The prosecutor and counsel for youth have the opportunity to ask the investigator questions.
- The prosecutor indicates agreement or disagreement with the recommendation and presents any evidence or testimony accordingly. If the victim has chosen to testify, the prosecutor calls the victim at this time. If the victim has chosen not to participate, the prosecutor reads the victim impact statement into the record. Counsel for the youth has the opportunity to cross-examine evidence or testimony presented by the prosecutor.
- Counsel for the youth indicates agreement or disagreement with the recommendation and presents any evidence or testimony accordingly. The prosecutor has the opportunity to cross-examine any evidence or testimony presented by counsel for the youth.
- The juvenile delinquency court judge gives the parents, custodian, and the youth, and if the youth is Native American, the tribal representative the opportunity to address the court.

G. QUESTIONS THAT MUST BE ANSWERED

In order to ensure that the juvenile delinquency court judge has covered each important issue at the disposition hearing, the judge should know the answers to the following questions before deciding the juvenile delinquency court's disposition and concluding the hearing:

1. What level of intervention is required in order to protect community safety while the

youth is engaged in services to promote behavior change?

2. What are the youth's special treatment needs (e.g., mental health, substance abuse, sexual offending, physical health, etc.), that must be addressed in order for the youth to change his or her behavior?
3. What is the youth's education situation and what must be done to maximize success in the school environment? If the youth is not currently succeeding, has an assessment for special education services been conducted? If not, why not?[26] If the youth has an Individual Education Plan (IEP), is the parent fully participating in the IEP process? If not, who would be appropriate to appoint to teach the parent how to fully participate or to serve as the youth's education representative?
4. What are the youth, family, and community strengths that can assist the youth in making the necessary behavior change?
5. What family and community issues are likely to impede the youth in implementing necessary behavior change and should the juvenile delinquency court judge consider any orders specific to the parent?
6. What victim issues should be taken into consideration and should restitution be ordered?
7. What is the least restrictive disposition in type and duration that will provide community safety, hold the youth accountable, assist the youth to learn new attitudes and competencies resulting in law-abiding behaviors, and repair the damage caused by the offense?
8. Does this disposition meet the test of an individualized service plan that meets the specific needs of the youth?
9. Is this disposition commensurate with the offense, and have offenses with similar circumstances generally received similar court responses? If not, can the court clearly explain the reasons it is choosing the disposition, and that the reasons are supported by evidence?
10. Are there any statutory collateral restrictions that the adjudication and disposition invokes (e.g., if the offense is a sex offense, are there any registration or restriction requirements)?
11. If the recommended disposition is probation, does the proposed probation plan cover all necessary components, meet the needs of the youth and victim, and provide for community safety?
12. If the recommended disposition is placement, is it clear why placement is necessary; and does the proposed initial reentry plan cover all necessary components, meet the needs of the youth and victim, and provide for community safety?
13. Can the services begin immediately, and if not, how long will it be before services can begin? If the service needs are intensive, and the delay will be more than a few weeks, are there less intensive interim services that can be provided?
14. If the youth is in detention and the disposition cannot be immediately implemented, is there reliable information to support the youth's continued placement in secure or non-secure detention until the disposition can be implemented, or can the youth be released with or without restrictions? If the youth is released and the victim is not in court when this decision is made, the prosecutor or probation officer should notify the victim of the youth's release. Issues that should be considered in making this decision include:

    - If the youth is moving to a secure placement, is it in the youth and community's best interest to continue to detain the youth?
    - Is the disposition a non-secure placement? If so, is there reason to believe that the youth presents a danger to the physical safety of the community or is likely to reoffend if released prior to a representative from the non-secure placement meeting with the youth to engage the youth in the placement plan? Except in very unusual circumstances, a youth should be held in secure detention no more than five additional days under these circumstances.
    - Is the disposition a community intervention or probation? If so, is there reason to believe that the youth will not engage in the intervention if released prior to the probation officer or a representative from the community service meeting with the youth to engage the youth? Except in very unusual circumstances, a youth should be held in secure detention no more than three additional days under these circumstances.
    - Does the youth have any medical, physical, or mental health issues, including a trauma history, that places the youth's safety in question in a detention setting?

15. If the youth continues to be detained, have the parent's or legal custodian's questions about detention, including visitation, been answered?
16. Are or will title IV-E funds be used for the youth's placement or services?

17. Should a progress hearing or progress conference be set, or a progress report ordered?

H. DETERMINING WHETHER PROGRESS HEARINGS, PROGRESS CONFERENCES, OR PROGRESS REPORTS WILL BE PART OF THE DISPOSITION ORDER

When the juvenile delinquency court's order includes placement or specific services, the court should consider whether it is necessary to set a progress hearing or progress conference, or order that a progress report be submitted in order to comply with ***Key Principle 13: Juvenile Delinquency Court Judges Should Ensure Effective Post-Disposition Review Is Provided to Each Delinquent Youth as Long as the Youth Is Involved in Any Component of the Juvenile Justice System***.

Situations in which a progress hearing or progress conference should be set, or progress report should be submitted include:

- Any time the juvenile delinquency court places the youth outside of the home in a community placement or a secure or non-secure correctional placement over which the juvenile delinquency court has oversight authority;
- When the youth has committed a serious offense and the juvenile delinquency court has ordered treatment services; or
- Any other circumstances where the juvenile delinquency court judge has questions about the follow through of the parent, youth, or service provider and believes the juvenile delinquency court needs to continue to monitor the disposition plan to ensure its completion.

If the juvenile delinquency court judge decides to order a progress report as opposed to set a conference or hearing, the juvenile delinquency court judge will not have the ability to see and interact with the youth. Consequently, it is important that there be a person who is not employed by the placement or service who will conduct a face-to-face assessment with the youth and service provider to prepare the progress report. When the juvenile delinquency court's disposition includes probation, and when probation departments have reasonable caseloads that allow them to do substantive probation work, a progress report can be appropriate because the probation officer can conduct an in-person assessment. When the court does not have access to an independent third party to do the assessment, the court should set a progress conference or a progress hearing.

The timing of post-disposition review varies significantly depending upon individual case circumstances. Timing and process for the different types of post- disposition review are covered in *Chapter IX: Post-Disposition Review Of Delinquent Youth Who Remain In Home With Court Ordered Services and Chapter X: Post Disposition Review Of Delinquent Youth Placed Out Of The Home By Juvenile Delinquency Court Order.*

I. WRITTEN FINDINGS AND ORDERS

When the juvenile delinquency court judge believes that all issues have been considered in determining the appropriate disposition, the juvenile delinquency court judge should state for the record and in the presence of the youth, parents, and legal custodian, the precise terms of the court's disposition. The juvenile delinquency court judge should explain the reasons for selecting the disposition, the objectives the disposition should achieve, and what the court expects from the youth, parent, and legal custodian in carrying out the disposition. The juvenile delinquency court judge should advise the youth, parent, legal custodian, and anyone involved in providing services in the court's disposition, of the consequences of failing to comply with the orders. The judge should provide an opportunity for the youth, parent, and legal custodian to ask any final clarifying questions, and then should review the right to appeal.

If the juvenile delinquency court judge decides to detain the youth pending implementation of the disposition, the judge should set a date that is within one week for release, and give the probation officer the responsibility to ensure the release occurs as planned or to report back to the juvenile delinquency court if there are problems with the release. If a date certain within one week cannot be set for release because the youth is on a secure placement waiting list, the juvenile delinquency court judge should schedule regular progress reports until an acceptable date has been set for the youth's transfer to the placement. The juvenile delinquency court judge should also ensure that the youth is getting interim services for education, physical, mental health, and other immediate needs.

If the youth has committed a serious offense, is in non-secure detention or is not detained, has been found to need treatment for mental illness, substance abuse, or sex offending behavior, is on a waiting list to begin treatment, and a date certain for treatment to begin has not been set, the juvenile delinquency court judge should schedule progress hearings or reports regularly until either the services begin or an acceptable date is set for services to begin. If service needs are intensive, and the delay will be more than a few weeks, the

juvenile delinquency court judge should ensure that less intensive interim services are provided.

The juvenile delinquency court's written findings and orders should be stated in language understandable by the youth and family and with enough detail to support the court's actions. The juvenile delinquency court's findings and orders should be set out in writing and made available to all legal parties and key participants at the conclusion of the hearing. The findings and orders should include:[27]

- All persons present at the hearing;
- If parties were absent, whether they were provided with appropriate notice;
- A statement of the reason for the hearing;
- The disposition ordered by the court, a summary of the reasons this disposition was selected, and what is to be accomplished as a result of the disposition;
- Any additional services that are part of the disposition, who is to provide the services, and when the services will start;
- Any court ordered expectations of the youth, parent, or legal custodian while the youth is receiving services;
- Any sanctions ordered by the court, including fines, court costs, and restitution;
- If the youth is in detention, either the reasons why it is necessary to continue to detain the youth in secure or non-secure detention or an order to release the youth specifying any restrictions;
- If title IV-E funds are or will be used for the youth's placement:
  - ➢ A temporary commitment of the youth to the juvenile delinquency court or probation agency that has a title IV-E agreement, or to the child protection agency, unless the parent has signed an agreement for care.
  - ➢ Findings of fact as to what reasonable efforts were and are being made to keep the youth in the home or to return the youth to the home.
  - ➢ Approval of a case plan or an order that the case plan be submitted to the juvenile delinquency court within 60 days of the youth's placement in the title IV-E eligible placement or service.
  - ➢ The date of a review hearing within six months of the date the youth was placed in eligible foster care or within six months of the 60th day that the youth was removed from the home. A child is considered to have entered foster care on the date the court found that the delinquent youth was also an abused or neglected youth or 60 days from the actual removal, whichever is first. If a youth was moved from ineligible care (such as detention) into foster care within 60 days after removal from home, the clock starts 60 days after removal. If a youth was moved from ineligible care into foster care more than 60 days after removal from the home, the clock starts when the child was moved into foster care.
- If the disposition is probation or placement, approval of a probation or initial reentry plan that is incorporated by reference into the court's orders;
- The date and time of the progress hearing or conference, or the date a progress report is due, if applicable; and
- Appeal rights and process.

J. FINAL APPEALABLE ORDER

The juvenile delinquency court's disposition order is a final appealable order. By their nature, appeals create another layer of process and delay between the youth's offense and the consequences of that offense. Even with fast tracking of juvenile cases, as recommended in the next chapter, appeals can still take months. Consequently, the juvenile delinquency judge should do everything possible to ensure that the juvenile delinquency court does not err in process nor create circumstances due to lack of clear communication that would create the necessity of counsel filing an appeal. It is important to clarify that this statement is not intended to discourage appeals where they are needed for counsel to adequately represent her or his client, protect the client's rights, or refine points of law.

***The DELINQUENCY GUIDELINES recommends* the following so that juvenile delinquency courts avoid unnecessary appeals due to juvenile delinquency court process error or deficits in communication:**

- **Ensuring qualified representation of parties throughout the delinquency case;**
- **Conducting procedurally correct hearings and being scrupulous about due process and evidentiary rulings;**
- **Ensuring all parties, including victims, are afforded the opportunity to speak and make recommendations at the disposition hearing;**
- **Ensuring the juvenile delinquency court sets forth, where required, the reasons why the adjudication was made and why the specific disposition was ordered; and**
- **Making clear written findings and orders and distributing them at the end of each hearing.**

A chart of the steps and time lines for the disposition hearing follows.

Chart of Steps and Time Lines for the Disposition Hearing

PRIOR PROCESS STEPS: The petition was determined legally sufficient and handled formally. Counsel was appointed. One of the following has occurred:

1. **The youth admitted the offense at the initial or detention hearing.**
2. **The youth denied the offense, but a plea agreement or dispute resolution alternative was successfully reached.**
3. **A trial was held and the youth was found to have committed the offense.**
4. **The court has denied a prosecutor's motion to waive jurisdiction and transfer the case to the adult system, and the youth has admitted the offense.**

Does the court have sufficient information to determine the appropriate disposition?

NO

1. Refer the case for pre-disposition investigation.
2. If the youth is in detention, determine whether he or she needs to continue to be detained.
3. If yes, set the disposition hearing in five and not more than 10 business days.
4. If no, set the disposition hearing within 10 and not more than 20 business days.
5. Generate the written findings and orders and distribute to all parties and key participants.

YES

1. Presentation of the pre-disposition report and/or recommendations.
2. Presentation of testimony or other information from the prosecutor including either testimony from the victim if the victim chooses, or a victim impact statement.
3. Presentation of testimony or other information from counsel for the youth.
4. The court gives the youth, parents, custodian the opportunity to address the court.
5. The court decides the appropriate disposition.

If the requested disposition includes probation, intensive in-home services, or placement, the probation officer submits a probation or initial reentry plan to the court, prosecutor, and counsel at least three days prior to the disposition hearing.

If the disposition includes a service that cannot be immediately implemented, the court should monitor the case either by progress hearings or progress reports to ensure timely access to services.

If the requested disposition includes placement, or if the offense is very serious and the court has ordered treatment services, or if the court has question about follow-though by the parent, youth, or a needed service, the court should continue to monitor the case either by progress hearings, progress conferences, or progress reports to ensure follow-through.

IF TITLE IV-E FUNDS WILL BE USED FOR THE PLACEMENT OR SERVICE,

- Commit the youth to the custody of the title IV-E agency or the juvenile court or probation agency that has a title IV-E agreement, unless the parent has signed a voluntary agreement for care;
- Approve a case plan or make an order that the case plan be submitted to the juvenile delinquency court within 60 days of the youth's placement in the title IV-E eligible placement or service;
- Set a date for a review hearing within six months of the date that the youth was placed in eligible foster care or within 60 days of removal from home, whichever comes first;
- Set a date for a permanency hearing within 12 months of the date that the youth was placed in eligible foster care or within 12 months of the date of removal from home, whichever comes first.

IN ALL CASES:

1. If the youth is in detention and will continue to be held for services to begin, continue the case for not more than 10 business days for a hearing or report on progress.
2. Generate the written findings and orders and distribute to all parties and key participants.

K. DISPOSITION INTERVENTIONS EVERY JUVENILE DELINQUENCY COURT SHOULD HAVE AVAILABLE

A juvenile delinquency court needs to have sufficient and accessible disposition services so that it can be reasonably assured it can meet the needs of delinquent youth in its jurisdiction. Meeting these needs includes disposition alternatives that:

- Are in the least restrictive setting which will provide community safety;
- Will hold the youth accountable;
- Will assist the youth to learn new attitudes and competencies resulting in law-abiding behaviors;
- Will repair the damage caused by the offense to the extent possible;
- Are timely with no or short waiting lists;
- Understand the various cultures of the jurisdiction; and
- Include service options which are delivered by members of significant ethnic groups in the jurisdiction.

All disposition services do not need to be, nor should be, delivered by the juvenile delinquency court. Six of the *Key Principles* are particularly pertinent to the creation of juvenile delinquency systems that have necessary disposition services:

Key Principle 1: Juvenile Delinquency Court Judges Should Engage in Judicial Leadership and Encourage System Collaboration

Key Principle 2: Juvenile Delinquency Systems Must Have Adequate Staff, Facilities, and Program Resources

Key Principle 8: Juvenile Delinquency Court Judges Should Ensure Crime Victims Have Access to All Phases of the Juvenile Delinquency Court Process and Receive All Services to Which They Are Entitled by Law

Key Principle 10: Juvenile Delinquency System Staff Should Engage Parents and Families at all Stages of the Juvenile Delinquency Court Process To Encourage Family Members To Participate Fully in the Development and Implementation of the Youth's Intervention Plan

Key Principle 11: The Juvenile Delinquency Court Should Engage the School and Other Community Support Systems as Stakeholders in Each Individual Youth's Case

Key Principle 12: Juvenile Delinquency Court Judges Should Ensure Court Dispositions Are Individualized and Include Graduated Responses, Both Sanctions and Incentives

It is not likely that a juvenile delinquency court will have the quantity and quality of disposition resources it needs unless the court does two things: 1) controls its intake by referring the less serious offenses to informal systems operated by the community; and, 2) collaborates with other child serving organizations in the community. The following disposition options should be available to the juvenile delinquency court in sufficient quantity to ensure that they are readily accessible when needed:

1. **Probation**[28] – In the majority of cases, probation is the juvenile delinquency court's disposition.[29] According to the *Desktop Guide for Good Juvenile Probation*, good juvenile probation practice is mission-driven, performance-based, and outcome-focused. This means that probation department policies and procedures are designed to help the juvenile delinquency court reach its goals, that probation plans move youth from objective to objective toward those goals, and that the probation department systematically measures intervention results.

   As a disposition, probation not only provides the services of monitoring and supervision, but also serves as a connector for the youth and family to needed services provided by others. Within the probation service of supervision, there should be varying levels, including intensive probation supervision for high risk offenders. When a probation officer supervises a youth who resides at home, the officer, the youth and family, and other service providers should have developed a probation plan which the juvenile delinquency court judge approved.[30] A probation officer may also supervise a youth in placement, in which case the officer, youth, family, and placement worker develop an initial reentry plan.[31]

   It is not effective to run probation programs that see youth once a month or focus entirely on surveillance.[32] These types of programs cannot help juvenile offenders learn new attitudes and competencies that will result in law-abiding behavior. "Surveillance only" probation programs succeed with youth who would probably not have re-offended without intervention. Youth who are not likely to re-offend should be handled

through informal options using community resources. They should not be placed on probation.

In order for a juvenile delinquency court to ensure that probation services meet the individual needs of youth and that delinquent youth leave the juvenile delinquency system more capable of living within the law and more productively than when they entered, probation departments must have the following components to select from in creating probation plans:

- Skill-building interventions to provide competency development;
- Cognitive interventions that teach different ways to think, make decisions, and solve problems;
- Strength-based approaches that identify the strengths and resources of the youth, family, and community and build upon them;
- Culturally competent services and decision points that ensure fair and consistent decision-making and minimize the possibility of bias, services that are designed with appropriate cultural understanding, and service providers who represent significant ethnic groups in the jurisdiction;
- Programs for female offenders that take into account their distinctively different causes for delinquency, understand the impact of victimization, and provide opportunities to develop trusting relationships;
- Programs for very young aggressive offenders that early and accurately identify which of these youth are likely to graduate to serious and violent offending and incorporate interventions to address the maltreatment that the majority of these youth have experienced;
- Programs for offenders who are victims of physical or sexual abuse that address the past abuse. This approach is an essential component of services provided to the female offender and very young aggressive offender, but should also be available to any youth with a history of child abuse or neglect; and
- Timely access to services that will meet the mental health, substance abuse, sex-offending, and educational needs of delinquent youth as defined in subsequent subsections 4 through 10.

2. **Restitution Programs** – Some juvenile delinquency courts order restitution only to later set aside the orders because the youth does not have the money to comply. When this happens, the youth is not held accountable nor does the victim receive appropriate compensation. In order to hold youth accountable and repair damage to victims, juvenile delinquency courts should have programs for youth to earn money to pay restitution. Restitution programs can be implemented by entering into janitorial, recycling, graffiti removal, or other paid service contracts with public or private agencies in order to provide stipends to youth. The stipends are deposited into their restitution accounts and forwarded to the victim. Some juvenile delinquency courts may have access to other types of funding that can be used to provide stipends to youth for performing public service, with the stipends deposited into their restitution accounts and forwarded to the victim. Other juvenile delinquency courts provide or access job development services for individual youth and make arrangements for a percentage of the youth's pay to be allocated to their restitution account, monitoring to ensure that the payments are made.[33]

3. **Community Service** – Meaningful community service is an important tool for juvenile delinquency courts to hold a youth accountable and to help repair damage caused by the offense, particularly when the victim of the offense is the community as opposed to an individual (e.g., vandalism to school or other public property). When the community sees youth working to repair the harm they inflicted on the community, the community views youth as assets. If designed well, community service can also provide an opportunity to assist youth to learn new attitudes and competencies resulting in law-abiding behaviors. Community service also provides youth who cannot pay their court ordered fines and costs a mechanism to work off their court obligations and can improve academic and workplace skills.

   In order for community service to provide an opportunity to assist youth to learn new attitudes and competencies resulting in law-abiding behaviors, the service must be meaningful. Community service should be designed to lead groups of youth through project-based service learning activities where they identify a problem, address it, and evaluate the impact on the community and themselves.[34] Community service can also be designed to show youth that they have something to give that will help others less fortunate and provide the opportunity to re-connect in a positive way with mem-

bers of the community.[35]

4. **Mental health evaluation and treatment which includes individual therapy, family therapy, group therapy, acute care facilities,[36] and services for youth with co-occurring disorders (e.g., mental health and substance abuse issues)** – A substantial number of youth who come before juvenile delinquency courts have mental health issues, including histories of trauma and victimization.[37] The behavior of these youth will not significantly improve unless the underlying mental health issues are addressed. Most mental health issues can be successfully treated with appropriate interventions.

   Youth with mental health treatment needs should be identified as early as possible when they enter the juvenile delinquency system.[38] Juvenile delinquency court staff should use screening instruments that will enable early identification of youth with possible mental health issues and refer these youth for more in-depth evaluation by trained mental health professionals. These professionals will differentiate between the three broad classes of mental health issues. If the disorder is biologically based (e.g., bipolar disorders, schizophrenia, major depression) there are very effective treatments, most of which include medication. If the problem behavior is reactive to trauma or victimization that the youth has experienced in the past or is experiencing in the present, successful treatment depends on identifying the traumas and counteracting maladaptive coping strategies. If the problem behavior is a result of budding characterological problems, which is rare, sophisticated community-based interventions such as multisystemic therapy, wrap-around services, and therapeutic foster care have been shown to be effective. Congregating youth with juvenile criminality escalates their antisocial behavior and there is no evidence that incarcerating them decreases their antisocial trajectory.

   When involved in less serious offenses, youth with mental health treatment needs should be served through the informal system and referred to mental health agencies for treatment. When youth with mental health treatment needs engage in more serious offenses and come before the formal juvenile delinquency court, evaluation recommendations regarding mental health treatment services should be incorporated into the juvenile delinquency court disposition and the court should monitor to ensure follow-through.[39]

   Juvenile delinquency courts should not allow juvenile detention facilities to put youth and staff at risk by being inappropriately used as acute care mental health facilities. If this is happening in a jurisdiction, the juvenile delinquency court administrative judge should convene a task force to identify an appropriate mental health facility to provide for the needs of these youth.

5. **Substance abuse[40] evaluation and treatment that includes individual and group counseling, drug testing, day treatment, and residential treatment** – A substantial number of youth who come before juvenile delinquency courts have substance abuse issues including alcohol abuse and drug abuse. The behavior of these youth will not significantly improve unless the underlying substance abuse issues are addressed.[41] Allowing a youth to "graduate" to adult criminal behavior and end up in jail due to untreated substance abuse costs a community about $40,000 annually. Adolescent drug treatment programs cost only $3,000 to $12,500 a year and research suggests that adolescent drug treatment works.[42]

   Juvenile delinquency system staff should use screening instruments that will identify youth with possible drug and alcohol abuse at the earliest opportunity and refer these youth for more in-depth evaluation by trained substance abuse professionals. Since withdrawal syndromes can constitute a medical emergency, detention intake must have the capacity to identify and assess youth who are under the influence of alcohol and drugs so that they can obtain appropriate medical intervention.

   Substance abuse professionals can identify youth whose substance abuse requires treatment as opposed to those youth whose illegal activity requires education and accountability but not treatment. It is important to note that the nature of the youth's offense will not provide clarity on treatment needs. Many youth who need substance abuse treatment do not have drug offenses. Youth involved in drug trafficking, on the other hand, rarely use illegal substances to the point of dependence, and rather than treatment, need to be held accountable for their illegal behavior. Although infrequent, it is very important to identify intravenous use of drugs by a youth and to address it immediately and aggressively. Once such an

addiction is established, it is essentially intractable and may persist into adulthood.

When a substance abuse evaluation of an adjudicated delinquent youth recommends treatment, the treatment should be incorporated into the juvenile delinquency court disposition and the court should monitor to ensure follow through. Information on juvenile delinquency drug dockets can be found in Chapter II, Section J, Specialty Dockets.

When probation officers are involved in conducting drug and alcohol testing, they should receive in-depth training in substances of abuse, systems of drug use, methodologies for testing, protocols for ensuring that a specimen is valid, legal issues to consider so that results will be likely to withstand legal challenge, and what to do in response to both positive and negative test results.[43]

Juvenile delinquency courts should not allow juvenile detention facilities to put youth and staff at risk by being inappropriately used as detoxification facilities for alcohol or drug abuse. If this is happening in a jurisdiction, the juvenile delinquency court administrative judge should convene a task force to identify an appropriate substance abuse detoxification facility to provide for the needs of these youth.

6. **Sex offender treatment that includes group therapy, day treatment, and residential treatment**[44] – The evaluation and treatment of sex offending behavior is a complex field of knowledge that requires specific training and skills. A majority of adult sex offenders began their sexually abusive behavior in their youth and a majority of sex offenders report a history of sexual abuse. Juvenile sex offenders are more responsive to treatment than adults and have a relatively low recidivism rate if they receive appropriate treatment. It is very important to identify sex offenders who are acting out sexual offenses that were perpetrated on them when they were younger and sexual offenses that may currently be occurring against them.

   Some sex offenses are youthful exploration or indiscretions. When a youth's sexual behavior is abusive-reactive or simply curious (and perhaps co-occuring with mental retardation or developmental delays), it is very important for the juvenile justice system not to harm the child further by inadvertently putting the youth together with serious and aggressive sexual offenders.

   Some offenses that are not sex offenses have sexual abuse as the underlying dynamic. Some sex offenses are calculated and repetitive behaviors. In the case of true sexual obsession or compulsions, expert psychiatric or psychological expertise is required and the youth should not continue along a dispositional path until the dynamics that underlie the sexual offending are clear. Sex offenders with calculated and repetitive behaviors should be court ordered into treatment and monitored for follow through.

   Typically, sexually abusive youth have multiple diagnoses. Consequently, it is important to adequately evaluate sex-offending behaviors to identify those offenders who are likely to repeat the behavior, to identify all diagnostic issues, and to engage the offenders in appropriate holistic treatment at the earliest possible identification point. When sex offenders with high-risk characteristics are identified early, group therapy and day treatment programs can be effective in changing behavior, as well as effective in providing community safety, avoiding the high cost of residential treatment.

7. **Education evaluation, tutoring, remediation, education interventions, and alternative education environments** – Marginal and difficult youth who are behind in school, have poor attendance, and have behavioral problems, place demands on public school systems that often do not have the support resources available to help. Learning disabilities occur frequently in the juvenile offender population and can be a contributing factor to behaviors such as lack of impulse control, poor perception of social cues, and diminished ability to learn from experience which may predispose them to delinquent behavior. Since learning disabilities can be hard to diagnose and often go unrecognized, these youth can be inappropriately labeled as behavior problems as opposed to identified and treated as learning disabled.

   The reaction of some schools to these challenging youth is to manage their behavior by removing them from the school environment. This is done through suspensions, expulsions, or allowing these youth to stop attending without consequence. Sometimes schools may unnecessarily criminalize school misbehavior by filing delinquency petitions in the juvenile delinquency court. Sometimes, however, the behavior is so severe that the school has no alternative but

to file a delinquency petition.

If youth involved in serious delinquent behavior are not successfully engaged in the education system, it is not likely that their delinquent behavior will stop, and it is likely that it will escalate. Similarly, youth whose behavior problems are a result of learning disabilities as opposed to delinquency, if not successfully diagnosed and intervened, are likely to become delinquent.

It is critical for juvenile delinquency court judges to demonstrate judicial leadership and engage school systems to collaborate with the juvenile delinquency court to:

- Commit to keeping school misbehavior and truancy out of the formal juvenile delinquency court by ensuring early identification of, and appropriate educational assistance for, youth with learning disabilities; by early identification of attendance problems and immediate engagement by the school and community to address the underlying issues causing the problem; through teacher training in behavior management, the impact of poverty on communication and interrelationships of children and families, and de-escalating conflict; and by ensuring the school is following federal and state laws on expulsion and suspension.
- Work together with educators and representatives of mental health, substance abuse, and other community services to address the needs of those youth engaged in acting out behavior within the school setting.
- Ensure that lines of communication are open between school staff and probation staff, setting the expectation of a close working relationship between them.
- Work together to ensure that delinquent youth, whether residing in the home, in juvenile detention facilities, in community placements, or re-entering the community after completing residential or correctional placement are being appropriately educated; and to successfully re-engage these youth in school or in alternative learning environments that will enable these youth to succeed educationally.

In some juvenile delinquency courts a representative from the school system is located in the court to coordinate and facilitate information-sharing between the two systems, to be at court hearings when needed, and to problem-solve individual youth education issues.

A collaborative model with potential involves the creation of a team, led by a school district administrator experienced with youth who have behavioral issues, a juvenile delinquency court representative, a child welfare representative, and a representative from mental health. The team identifies youth who rise to the level of suspension, expulsion, delinquency, and placement. They prepare an educational plan with each youth and parent and support the school the youth is enrolled in to implement the plan successfully. If a youth is placed in detention, foster care, or correctional placement, the team and the plan follow the youth, and the team participates in reentry planning to ensure a successful return to the community school after placement.

8. **Mental retardation and developmental disabilities evaluation and treatment** – Evaluating and providing appropriate services to youth with mental retardation or developmental disabilities is a significant challenge for most juvenile delinquency courts. Depending on the severity of the impairment, these youth may be unable to benefit from many of the services used by the juvenile delinquency court. Consequently it is very important to identify whether these issues exist as soon as possible and to obtain thorough evaluations from specialists in these fields.

It is important to do everything possible to support the families of these youth so that placement does not become necessary. This is not only in the best interest of the youth, but it can be very difficult to reintegrate a youth with severe disabilities back into the home after a separation. Most delinquent youth with significant mental retardation or developmental disabilities can live successfully with their families when provided with wraparound interdisciplinary services and coordinated case management. (See subsection 10.)

9. **Day and evening treatment centers**[47] – These centers can be very effective for youth who engage in unacceptable behavior at certain times of the day because of a lack of internal controls or a lack of external supervision. They can be equally effective as placement step down centers, easing the transition from the very structured placement environment to the less structured community environment. Without the option of day and evening treatment centers, youth needing substantial levels of

supervision are likely to end up in more expensive residential placement or to remain in expensive residential placement longer than would be necessary if this step down option were available. With day and evening treatment centers, youth can receive skill-building and cognitive interventions, educational support, and mental health, substance abuse, and sex offender services while remaining in their home and remaining engaged with their family.

These programs can be designed to address a specific treatment need or can be delivered geographically with all child serving systems bringing their treatment component to one center. Day programs can be offered during the school day for youth who are suspended, expelled, or who have dropped out of school; and, by extending their hours, the same centers can offer programming before and after school and on weekends for in-school youth who need to learn how to handle unsupervised time without engaging in delinquent activity.

10. **Wrap-around interdisciplinary services and coordinated case management for youth with multiple needs** – Every juvenile delinquency court has juvenile offenders who are involved with several child serving agencies at the same time because of multiple treatment needs. Typical examples are the juvenile offender who has serious mental health and substance abuse problems or the juvenile offender with borderline mental retardation and sex-offending behavior. These youth are expensive to serve, and consequently agencies short on resources can become involved in the counterproductive "He's your responsibility, not ours" argument, also known as competition not to serve.

Youth with multiple needs cannot be successfully served with the needed resources unless all involved agencies, the juvenile delinquency court, and the probation officer, participate in coordinated treatment planning, and contribute resources to the coordinated wrap-around plan. Wrap-around interventions make an unconditional commitment to create services on a "one child at a time" basis to support normalized and inclusive options for the child with complex needs. Wrap-around interventions:

- Create a child and family team composed of the people that know the youth best to design an individualized plan; the plan is needs driven, strengths based, and focused on normalization.
- Services within the plan are based in natural home environments.
- Services are comprehensive and designed with cultural understanding.
- The plan is financially supported by a flexible funding mechanism.

Probation officers must be willing to be a partner in a child and family team, not only sharing responsibility but also "power." In order to be successfully involved in wrap-around services and coordinated case management, one individual from the child and family team must serve the role as the care manager to prevent contradictory and confusing communication between youth, family, and service providers. This individual may be the probation officer or may be an individual representing a primary treatment component of the service plan.

Through judicial leadership and collaboration, several juvenile delinquency courts have successfully created or participated in wrap-around service systems where they coordinate services to youth with multi-system needs. A few juvenile delinquency courts have taken the concept an additional step and created pooled funding systems of care for these youth.[48]

11. **Placement resources including foster home care, community placements, residential treatment and non-secure and secure correctional placements**[49] – Juvenile delinquency courts require access to a range of placement alternatives for youth who need to be removed from their homes, in order to provide community safety, while they are receiving services. However, when the juvenile delinquency court orders the placement of a juvenile offender outside of the home, it is important for the court to carefully consider whether this option, the most restrictive and expensive of disposition options, is necessary. According to the NCJFCJ publication, *The Role of the Juvenile Court in Reentry*:

> *Due to the absence of alternatives, many juvenile justice systems have historically relied on social control through the use of restrictive out of home placements for chronic or serious offenders. But studies have shown that juvenile facilities are housing many youth who pose no significant threat to community safety and who could be managed as effectively in less restrictive and less costly programs.*

When juvenile offenders are "sent away" to

"do their time" and then released and returned to the community without preparation, monitoring, and services, any positive changes that may have occurred within the institutional structure are likely to disappear when the institutional structure is withdrawn. Old habits and associations reassert themselves.

When a juvenile delinquency court pre-disposition investigator recommends placement of a youth as a disposition, and when a juvenile delinquency court judge makes the final decision on the recommended disposition, both should ensure that placement is the least restrictive disposition that will provide community safety, hold the youth accountable, assist the youth to learn new attitudes and competencies resulting in law-abiding behaviors, and repair the damage caused by the offense. The pre-disposition investigator and the juvenile delinquency court judge should be able to articulate why services cannot be safely provided to the youth without removal from the home, through day or evening treatment centers, wrap-around services, or other services combined with probation and coordinated case management.

> *All things being equal, treatment programs run in the community are likely to be more effective in reducing recidivism than similar programs provided in institutions.*[50]

Section D of this chapter describes the contents of the initial reentry plan that is approved by the juvenile delinquency court judge when making a disposition of placement. When the juvenile delinquency court judge orders placement as the disposition, the judge should monitor the case until the youth has successfully reintegrated into the community. Chapter X describes the juvenile delinquency court judge's responsibility for post-disposition review while the youth is in court ordered placement and upon reentry to the community.

L. RESEARCH ON THE IMPACT OF JUVENILE DELINQUENCY COURT DISPOSITION INTERVENTIONS

As juvenile delinquency courts and system practitioners tackle the dilemma of repeat offenders, the challenge of public scrutiny over whether juvenile delinquency courts and systems have value, and the increased demands on limited resources, make it extremely important to understand whether a particular intervention produces positive outcomes for delinquent youth. As a result, more focus is being placed on conducting research to examine and answer the questions of what works, what does not work, and what holds promise in the variety of interventions for delinquent youth. However, very few juvenile delinquency court dispositions and programs have been evaluated using scientifically recognized standards and methodologies, including repeated tests under similar and different social settings. Where research exists, it is focused on the short term. Research on the long term impact of interventions is very limited. This makes it difficult to obtain adequate evidence to establish what does and does not work.

New research is completed every year that adds to our knowledge base. One excellent resource for current research regarding the success of interventions with delinquent youth is an initiative of the Center for the Study and Prevention of Violence (CSPV), at the University of Colorado at Boulder, referred to as *Blueprints for Violence Prevention*. *Blueprints* identifies programs that have been effective in reducing adolescent violent crime, aggression, delinquency, and substance abuse. As of this writing, this source has identified 11 prevention and intervention programs that meet a strict scientific standard of program effectiveness. Program effectiveness is based upon an initial review by the CSPV and a final review and recommendation from a distinguished panel comprised of seven experts in the field of violence prevention. A description of these 11 programs is included in the Appendices of this document. Another 21 programs have been identified as promising programs and can be found on the *Blueprints* website.[51] To date, more than 600 programs have been reviewed, and the CSPV continues to look for programs that meet the selection criteria.

It addition to identifying model programs and providing training and technical assistance to help sites choose and implement a set of demonstrated effective programs with a high degree of integrity, the CSPV also monitors the quality of replication. The CSPV conducts detailed and comprehensive process evaluation at each site and collects useful data for screening potential replicators, including organizational capacity needed, funding stability, commitment, and resources, required for a high probability of success.

It is important to note that interventions are contextual in that no one approach will work with all youth all of the time. One of the many aspects of context that must be considered is the dynamic between youth and those adults providing services. Within groups of delinquent youth there is wide variation.

In order to operate as a juvenile delinquency court of excellence, juvenile delinquency court staff and juvenile delinquency system participants must stay current on new research in the field.[52]

Endnotes

[1] In 2000, probation was the disposition in 63% of all adjudicated delinquency cases and placement was the disposition in 24% of all adjudicated delinquency cases. The remaining 13% were other court ordered sanctions such as community service or restitution, including 3% dismissed or otherwise released. (Adapted from Puzzanchera, C., Stahl, A., Finnegan, T., Tierney, N., and Snyder, H. (Forthcoming). *Juvenile Court Statistics 2000.* Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention.)

[2] See *Chapter VI: Hearings on Motions To Waive Juvenile Delinquency Court Jurisdiction and Transfer Jurisdiction to Criminal Court*, for more information.

[3] For more information, contact the Lucas County Juvenile Court. See "Resources" in the Appendix for contact information

[4] The *Juvenile Justice Standards* of the Criminal Justice Section of the American Bar Association, and the *Desktop Guide to Good Juvenile Probation Practice*, also do not recommend pre-adjudication probation investigations.

[5] See Chapter I: Foundations for a Juvenile Delinquency Court of Excellence

[6] National Council of Juvenile and Family Court Judges' Key Issues Curriculum Enhancement Project, Faculty Consortium (1989). *Judicial Authority and Responsibility: 18 Recommendations on Issues in Delinquency and Abuse/Neglect Dispositions, 40*(2) Recommendation No. 7, at p. 9.

[7] California Welfare and Institutions Code, §§ 362(a) and 727(a).

[8] The parent will have the opportunity to present their view during the social evaluation and during the disposition hearing. See subsequent sections.

[9] Significant portions of this section come from Griffin, P. & Torbet, P. (2002). *Desktop Guide to Good Juvenile Probation Practice.* Pittsburgh, PA: National Center for Juvenile Justice.

[10] An example of a disposition matrix can be obtained from: of National Council of Juvenile and Family Court Judges (2003). *Graduated Sanctions for Juvenile Offenders: A Program Model and Planning Guide.* Reno, NV: Juvenile Sanctions Center. (p. 87)

[11] The 2002 reauthorization of the Juvenile Justice and Delinquency Prevention Act requires that states receiving funds under the Act implement systems to ensure that public child welfare records are available to the juvenile delinquency court for the purposes of establishing and implementing treatment plans for juvenile offenders.

[12] "Although less than 3% of youth in the juvenile justice system have serious emotional disturbances such as psychosis, bipolar disorder, or borderline personality disorder, as many as one in five have a psychiatric disorder that usually has not been diagnosed or treated. Such disorders may not prevent the youth from functioning adequately most of the time in most settings, but periodically severely exacerbates behavior or adjustment problems, and can benefit from community-based mental health services." (Source: Dr. Julian Ford, Director of the Center for Trauma Response, Recovery and Preparedness, University of Connecticut.) Trauma includes abuse and neglect, exposure to domestic violence, community violence, and school violence, witnessing suicides, homicides, residential fires, and other disasters. (Source: National Center for Child Traumatic Stress, UCLA Neuropsychiatric Institute and the Duke University Medical Center.)

[13] Clark, M. D. (2001). Change-focused youth work: The critical ingredients of positive behavior change. *Journal of the Center for Families, Children & the Courts, 3,* 59-72.

[14] Bazemore, G., Nissen, L., & Dooley, M. (Fall 2000). Mobilizing social support and building relationships: Broadening correctional and rehabilitative agendas, *Corrections Management Quarterly, 4*(4), 10-21.

[15] Supra note 10.

[16] For information on how to create a plan with graduated sanctions and incentives, see note 15.

[17] Refer to the next section of this chapter for more information, and to the Appendices for a 2004 Summary of Statutes Regarding Dispositional Control Over the Parents of Delinquent Youth

[18] Refer to Section J (10) of this chapter for additional information regarding placement dispositions.

[19] Supra note 17.

[20] Meichenbaum, D. &.Turk, D.C. (1987), *Facilitating Treatment Adherence: A Practitioner's Guidebook.* New York: Plenum Press; as referenced in D.B. Wexler (1993). Therapeutic jurisprudence and the criminal courts, *William & Mary Law Review, 35,* 279-299.

[21] Wexler, D.B. (2001). Robes and rehabilitation: How judges can help offenders "make good." *Court Review, 38,* 18-23.

[22] Information in this section was provided by the Honorable Leonard P. Edwards, Judge of the Santa Clara County Superior Court, San Jose, California. Additional information on specific state statutes is included in the Appendices.

[23] An additional resource: Davies, H.J. & Davidson, H.A. (2001). *Parental Involvement Practices of Juvenile Courts.* Washington, DC: ABA Center on Children and the Law.

[24] Supra note 11.

[25] Portions of this section have been excerpted from *Juvenile Justice Standards* of the Criminal Justice Section of the American Bar Association.

[26] The juvenile delinquency court may need to give parents information about how to demand an assessment for special education services for their child pursuant to IDEA, PL 105-17 of 1997 (Section 1414) or, if their child does not qualify for special education, whether Section 504 of the Rehabilitation Act of 1973 applies requiring appropriate accommodations as required. See the Appendices for sample forms.

[27] See the Appendices for a sample dispositional entry.

[28] Significant portions of this section have been excerpted from Griffin, P. & Torbet, P. (2002). *Desktop Guide to Good Juvenile Probation Practice.* Pittsburgh, PA: National Center for Juvenile Justice.

[29] Supra note 1.

[30] Refer to the Pre-disposition Investigation section in this chapter and to Chapter II, Section E, *Using Screening Tools to Help Make Key Decisions* for more information.

[31] Refer to the Pre-disposition Investigation section in this chapter for information on these plans.

[32] Andrews, D. A., Zinger, I., Hoge, R. D., Bonta, J., Gendreau, P., & Cullen, F. T. (1990). Does correctional treatment work: A clinically relevant and psychologically informed meta-analysis. *Criminology, 28*(3), 369-404.

[33] The Utah State Juvenile Court Restorative Justice Committee has implemented a statewide restitution and community service program that the National Center of Juvenile Justice has determined to be effective. See the Resource section in the Appendices for contact information.

[34] See the Appendices, Organizations and Resources for a list and description of websites with information on volunteering and service learning.

[35] Supra note 33.

[36] Refer to subsection 10 for issues the juvenile delinquency court should consider regarding using out-of-home placement.

[37] A very conservative research estimate states that 20% of juvenile offenders are **mentally ill**; a study in Santa Clara County (San Jose), California, found that on a specific day, 215 of 301 youth detained in secure detention were in the county's mental health services database and half had conditions that generally require medication. (*Juvenile Court Targets Mental Illness*, San Jose Mercury News, February 24, 2001).

Estimates of less serious illness are in the range of 40% to 70%. Pumariega, A. J., Atkins, D. L., Rogers, K., Montgomery, L., Nybro, C., Caesar, R., & Millus, D. (1999). Mental health and incarcerated youth II: Service utilization. *Journal of Child and Family Studies, 8*, 205–215. A Cook County mental health study found that nearly two-thirds of boys and nearly three-quarters of girls detained in the Chicago juvenile facility had at least one psychiatric disorder. Teplin, L. A., Abram, K. M., McClelland, G. M., Dulcan, M. K., & Mericle, A. A. (2002). Psychiatric disorders in youth in juvenile detention. *Archives of General Psychiatry, 59*, 1133-1143. Also see note 12.

[38] See Chapter II, Section E. *Using Screening Tools To Help Make Key Decisions.*

[39] Supra note 13.

[40] Substance abuse includes drug abuse and alcohol abuse.

[41] National Center of Juvenile Justice data through 2000 indicates the number of **drug cases** handled by the juvenile delinquency courts increased by more than 200% between 1991 and 2000. Stahl, A., Finnegan, T., & Kang, W. (2002). *Easy Access to Juvenile Court Statistics.*

A major longitudinal study noted that delinquent behavior and substance abuse clearly overlap regardless of age, gender, or ethnicity. Huizinga, D., Loerber, R., & Thornberry, T. (1995). *Urban Delinquency and Substance Abuse: Initial Findings.* Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

A 2002 federally funded study of youth in Cook County juvenile detention (Chicago, Illinois) found that approximately 50% of juvenile offenders have diagnosable substance use disorders in need of treatment. Teplin, L. A., Abram, K. M., McClelland, G. M., Dulcan, M. K., & Mericle, A. A. (2002). Psychiatric disorders in youth in juvenile detention. *Archives of General Psychiatry, 59*, 1133-1143.

[42] Reclaiming Futures, a national program of the Robert Wood Johnson Foundation. See the Appendices for contact information.

[43] Supra note 28.

- For information on youth drug programming see Crowe, A. H. & Schaefer, P. J. (1992). How to do it right: Ten principles for identifying and intervening with drug-involved youth. *Perspectives 20*(1), 37-43. (American Probation and Parole Association).
- For information on how to recognize drug impairment - International Association of Chiefs of Police: Drug Recognition Experts Section: http://www.theiacp.org.

[44] For more information, contact the National Center for the Sexual Behavior of Youth, the University of Oklahoma Health Sciences Center at www.ncsby.org.

[45] Recidivism rates are 2% to 19% as reported in note 42.

[46] Supra note 28.

[47] The concept of day and evening reporting centers was introduced in Chapter IV as an alternative to detention. The concept is not limited to that particular application and is also an important disposition intervention.

[48] Refer to Chapter XII for more information on juvenile delinquency court involvement in collaborations to serve multiple need youth.

[49] If the placement will be made using title IV-E funding, the juvenile delinquency court must ensure that all of the determinations and requirements of title IV-E are met. See Chapter II, Section I: Title IV-E in the Juvenile Delinquency Court, earlier sections and charts of this chapter, and Appendix J: Title IV-E in the Juvenile Delinquency System for details on the determinations and requirements. Title IV-E funding may not be used for placements operated primarily to detain adjudicated delinquent youth.

[50] Greenwood, P .W. (1996). Responding to juvenile crime: Lessons learned. *The Future of Children, 6*(3), 75-85.

[51] http://www.colorado.edu/cspv/blueprints/index.html.

[52] Another website in existence at the time of publication of the *DELINQUENCY GUIDELINES* is the Office of Juvenile Justice and Delinquency Prevention Model Programs Guide at http://www.dsgonline.com. In addition, there is an effort underway by the Department of Justice, Health and Human Services, and the Department of Education to launch a mutually repository of best practice information which should become available in 2005. Other references for "what works" and what "doesn't work" include:

- Griffin, P. & Torbet, P. Eds. (2002). *Desktop Guide to Good Juvenile Probation Practice.* Pittsburgh, PA: National Center for Juvenile Justice.
- Boesky, L.M. (2002) *Juvenile Offenders With Mental Health Disorders: Who Are They and What Do We Do With Them?* Lanham, MD: American Correctional Association,.
- Grisso, T. (2002). Using what we know about child maltreatment and delinquency. *Children's Services: Social Policy, Research, and Practice, 5*(4), 299-305.
- Haugaard, J.J., & Feerick, M. (2002). Interventions for maltreated children to reduce their likelihood of engaging in juvenile delinquency. *Children's Services: Social Policy, Research, and Practice, 5*(4), 285-297.
- Howell, J.C. (2003). *Preventing and Reducing Juvenile Delinquency: A Comprehensive Framework.* Thousand Oaks, CA: Sage Publications.
- Saunders, B.E., Berliner, L. & Hanson, R.F. (Eds.) (2004). *Child Physical and Sexual Abuse: Guidelines for Treatment,* (Revised Report: April 26, 2004), Charleston, SC: National Crime Victims Research and Treatment Center available at http//www.musc.edu/cvc/.

CHAPTER VIII: THE APPEALS PROCESS[1]

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The *JUVENILE DELINQUENCY GUIDELINES* is intended to be used by courts and other juvenile delinquency system stakeholders to assist their efforts to improve practice. The *GUIDELINES* is aspirational - they focus on what should be as opposed to what is. Every effort has been made to make the *GUIDELINES* practical and usable, and to ground recommendations in the most current research and promising practices available at the time of development.

Some jurisdictions are already following many of the recommendations. Some jurisdictions may find it extraordinarily challenging to follow the recommendations. Regardless of jurisdictional status and resources, it is hoped that the *GUIDELINES* will provide a common vision and motivational framework for those working toward an improved juvenile delinquency system.

As jurisdictions strive to implement the *GUIDELINES* with training and technical assistance from the NCJFCJ, juvenile delinquency system practitioners from all situations - urban, rural, suburban, and with varying degrees of resources - will be able to create and share successful implementation methods.

This chapter addresses what occurs after the juvenile delinquency court has entered a final appealable order and the juvenile delinquency court judge instructs the parties regarding their right to appeal. It also addresses interlocutory appellate review. The chapter discusses:

- How juvenile delinquency courts should respond when an appeal is filed;
- Why avoiding extensive delays is important for youth;
- Interlocutory appellate review;
- The appellate court process; and
- Proposed appellate court initiatives.

A. THE APPELLATE COURT

Appeals from juvenile delinquency court decisions are usually filed with state intermediate appellate courts in those states that have such courts. In those states without intermediate appellate courts, juvenile delinquency court appeals are filed with the states' highest appellate court, usually designated as the Supreme Court. All appellate courts operate in multiple-judge panels, although the number of judges on a panel may vary from state to state. The jurisdiction of such courts may also vary. For example, some may hear only civil appeals, others only criminal appeals. In most, if not all states that have intermediate courts of appeal, there is discretionary review of appellate court decisions by the states' highest appellate court. The caseloads of appellate courts are mainly comprised of adult criminal and civil cases.

In most states, there are no separate rules of appellate procedure for juvenile court appeals. Instead, they are governed by the same rules that apply to appeals from criminal and civil courts. There are relatively few appeals from juvenile delinquency court decisions. Although not all jurisdictions maintain statistics identifying juvenile court appeals, there are fewer appeals from juvenile delinquency court decisions, with appeals from juvenile dependency court abuse and neglect cases greatly outnumbering juvenile court delinquency appeals.

Although the appellate process has changed little over the years, some appellate courts have recently established procedures to expedite juvenile and family court neglect and abuse cases. During the 1990s, juvenile and family courts made efforts to expedite the juvenile and family court processes impacting timely permanency for abused and neglected children. These juvenile and family courts quickly determined that the appellate process was not able to continue to expedite the process when an appeal was filed. Children languished in foster care without permanency while the case worked its way through the court of appeals. In the latter half of the decade, juvenile and family court judges began collaborating with appellate court judges to expedite abuse and neglect appeals, most specifically appeals on termination of parental rights cases. In a relatively short period of time, 43 states implemented some aspect of an expedited appellate procedure using internal operating procedure, court rule, or statute.[2] The hope is that the *DELINQUENCY GUIDELINES* will cause a similar change in the timeframes of juvenile delinquency court appeals.

To move in this direction, juvenile delinquency court administrative judges and court administrators must take a leadership role in approaching the administrative judges and court administrators of intermediate appellate courts to request support to expedite the appellate process. Juvenile delinquency court administrative judges should offer their assistance, providing information to judges and staff of appellate courts regarding the importance of avoiding lengthy delays in juvenile court delinquency appeals. Juvenile delinquency court judges should work with appellate court judges and state court administrative offices to develop procedures that will expedite the disposition of juvenile delinquency appeals.

B. WHY TIMELINESS IS IMPORTANT[3]

As discussed in Chapter II, Section C, the juvenile justice process will not achieve its goals if the process is not timely. For all youth, adolescence can be a very difficult period of physical, intellectual, emotional, and social growth. For youth who do not have a safe and nurturing social environment, substantial developmental delays can result, particularly in the area of cognitive development, trust development, and feelings of security. Most adolescents acquire the ability to think beyond the present reality and deduce future conditions by the age of 16. However, these abilities are especially dependent on environmental support. Without the support of a safe and nurturing social environment, these abilities may not be acquired until the late teens or twenties.[4] Many youth who become involved in the juvenile delinquency court, both pre-adolescents and adolescents, have not yet developed the ability to think beyond the present and to connect present acts with future consequences. Because their concept of the passage of time is not fully developed, the prolonged uncertainty of not knowing what will happen can be frightening and further damage the youth's cognitive development and levels of trust and security.

Because of these developmental dynamics, timeliness throughout the juvenile justice process is critical for two reasons:

- One purpose of the juvenile justice process is to teach offenders that illegal behavior has consequences and that anyone who violates the law will be held accountable. A youth with delayed cognitive development who must wait a significant period of time between offense and consequence may not be able to sufficiently connect the two events. As a result, the intended lesson of consequences and accountability is lost and the consequences will not likely change future behavior.
- If the juvenile justice process is not timely, many youth will experience prolonged uncertainty. Prolonged uncertainty can increase anxiety. Increased anxiety can negatively impact trust and a sense of fairness. If a youth does not perceive the juvenile justice system to be predictable and fair, then the system's goal of changing behavior is less likely to be achieved.

Throughout the *DELINQUENCY GUIDELINES* the importance of the timeliness of juvenile delinquency court processes has been emphasized. If the recommendations of the *DELINQUENCY GUIDELINES* have been implemented, the juvenile delinquency court process from the filing of the petition to completion of the disposition hearing has been reduced in length of time to:

- One week for a youth arrested and placed in detention who admits the allegations;
- One to four weeks for a youth arrested and placed in detention who denies the allegations;
- One to five weeks for a youth not detained who admits the allegations;
- Three to six weeks for a youth transferred to adult court on a discretionary waiver and transfer; and
- Three to eleven weeks for a youth not detained who denies the allegations.

The use of appellate trial *de novo* practices in delinquency matters is not recommended. Trial *de novo* results in duplicative efforts and delays final resolution of the case. In order to shorten the time as much as possible, counsel for youth should file the appeal as soon as possible and in no case, more than 30 days from disposition. If the appeal process is not timely, in addition to disrupting the youth's connection of offense and consequence, the juvenile delinquency court's disposition orders may be completed before the court of appeals rules on the matter, in essence, making the issue of a remedy moot for the youth.

C. ORDERS THAT CAN BE APPEALED

Most states' rules and statutes require that appeals be taken from final orders. If the appeal does not meet this criterion, it will likely be rejected or dismissed, unless it is an appropriate interlocutory appeal (see next section). Definitions of final orders of the juvenile delinquency court vary from state to state, but will usually include any order finding lack of jurisdiction and any order of disposition after adjudication.

Just as a party cannot appeal a criminal conviction until after sentencing, a party cannot appeal an adjudication of delinquency until after the juvenile court has issued a disposition order. Exception to this rule occurs when the court of appeals has agreed to hear certain types of interlocutory orders or writs, such as decisions to waive jurisdiction and transfer to the adult court. An adjudication of delinquency without a disposition is not a final order for purposes of appeal.[5]

D. INTERLOCUTORY APPEALS AND WRITS[6]

Historically, parties could not appeal a judge's ruling if it was not a "final appealable order." However, certain decisions, such as the decision to waive jurisdiction and transfer a youth to the criminal court, have such potentially serious consequences that counsel for the youth should have the opportunity to request appellate review of the decision prior to the final appealable order. In the case of waiver and transfer, the final appealable order would not occur until the criminal court has completed the case.[7] Consequently, states have crafted a process, whether by statute, rule, or case law, to allow a party to immediately attempt to challenge the judge's adverse ruling before the case proceeds. The process is generally called an interlocutory appeal or a writ. The process can provide quicker relief than would be available by appeal.[8]

If a youth, the victim, or the prosecutor believes that the juvenile delinquency court judge exceeded legal authority, abused discretion, or made an error of law, and the ruling is not a "final appealable order," but impacts the remainder of the case, the party may file an interlocutory appeal. A petition for interlocutory appeal can also be filed if the issue is of first impression, has statewide interest or importance, or resolves a matter of public significance. It can also be filed if the regular appellate remedy will be too slow in coming or is otherwise inadequate. A juvenile delinquency court decision to waive jurisdiction and transfer the case to the criminal court is an example of an interlocutory order that the appellate court should, upon request, agree to review.

The petitioner should also consider filing a motion to stay the adjudication or other hearing

to allow the appellate court the time to resolve the interlocutory issue before the matter proceeds. It is important to know an individual state's rules since some appellate courts will not entertain a request for a stay unless it was first made before the juvenile delinquency court judge and denied. When filing a motion to stay on an interlocutory appellate review, it is important to include in the motion the date of the adjudication or the hearing sought to be stayed.

Each state will have rules governing the petition process, e.g., how the caption is styled, the length of the pleading, and what information is required. At a minimum, the petition should include a complete statement of petitioner's position, including what is at stake in the litigation, what occurred in the court below, and why it is appropriate for the appellate court to take jurisdiction over the interlocutory appeal.

The appellate court can summarily deny the petition. It will, however, rarely grant the petition without considering a response. Generally, the appellate court will issue a briefing order detailing the time the response and reply are due, whether there will be oral argument, and when the court will conference to decide the case.

At conference, the appellate court can deny jurisdiction and return the matter back to the juvenile delinquency court judge; it can accept jurisdiction and grant some or all of the requested relief; or, it can deny relief. Once the appellate court has ruled, and if it is the intermediate appellate court, the petitioner can petition the state supreme court. Individual state rules and procedures have to be meticulously followed.

E. ISSUES RAISED ON APPEAL

Issues raised on appeal are likely to be either challenges to factual findings, legal decisions by the juvenile delinquency court, or allegations of ineffective counsel. Findings of fact by the juvenile delinquency court are reviewed under an abuse of discretion standard of review. Challenges to factual findings are usually couched as a challenge to the sufficiency of the evidence supporting those findings. In some states, the standard of review for sufficiency of the evidence challenged is proof beyond a reasonable doubt.[9] In others, the standard of review for sufficiency of the evidence challenged is when taking the evidence in the light most favorable to the judgment, a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt.[10]

Juvenile delinquency court judges are accorded discretion in evidentiary decisions, such as admissibility of evidence. Appellate review of these decisions is under an abuse of discretion standard.[11]

Questions of law decided by the juvenile delinquency court are reviewed by the appellate court *de novo* under a correction of error standard of review. These issues are most likely to involve constitutional rights and statutory interpretation.

F. RESPONSIBILITIES OF THE JUVENILE DELINQUENCY COURT REGARDING THE APPEALS PROCESS[12]

When the juvenile delinquency court enters a final appealable order, the judge or judicial officer should immediately inform all parties, both verbally and in writing, of their right to appeal and the time limits for filing an appeal. If the juvenile delinquency court accepted waiver of counsel, the youth and parents should be informed of their right to counsel to assist in the filing of the appeal. Parties should be informed of their right to court transcripts. If inadequate representation by counsel is an issue on appeal, procedures should be in place to avoid further delay in appointing new counsel.

When an appeal is filed in a juvenile delinquency court case, the juvenile delinquency court responsibilities include:

- Ensuring that an efficient process exists for record and transcript preparation and transmission to the appellate court. This includes having adequate technology for recording proceedings so transcripts can be prepared in a timely and accurate manner. This also includes ensuring that all discussions and hearings relevant to a decision and possible appeal are on the record, including conferences in chambers; and
- Determining whether the parties will agree to proceed upon a written, stipulated statement of the facts and procedural development, in lieu of a transcript.

G. RESPONSIBILITIES OF COUNSEL FOR YOUTH REGARDING THE APPEALS PROCESS

Counsel for the youth is responsible to review the juvenile delinquency court's orders of adjudication and disposition critically. Counsel must explain the orders to the youth, doing everything possible to help the youth understand the nature and impact of each component of the juvenile delinquency court's orders. It is counsel's responsibility to explain to the youth the right to appeal, the pros and cons of filing an appeal, and counsel's opinion as to the likely outcome of an appeal.

Although counsel is not required to explain appeal issues to the youth's parents, in most instances it will be helpful to the youth if the parents also understand all of these issues.

Consequently, in order to best represent the client, counsel should, unless contraindicated, include the parents in explanations and recommendations regarding the appellate process.

H. STAYS OF DISPOSITION

State statutes vary regarding whether the juvenile delinquency court has continuing jurisdiction, once an appeal is filed, to rule on a request for stay of disposition during the appellate process. In other states, a request for stay must be filed directly with the appellate court. In some states, the appellate court will not hear a request for stay unless it has previously been heard and denied in the trial court. The practice in some jurisdictions is for counsel to notify the trial court of its intent to appeal and request the trial court to grant a stay, prior to counsel filing the appeal.

Every youth should have the opportunity to have a request for stay to be thoughtfully considered and promptly decided. If a stay is granted, and if the youth is being held in secure or nonsecure detention, the court with jurisdiction should immediately address the question of whether the youth should continue to be held pending the appeal or released with or without restrictions. If a stay is granted, the youth should be released from detention unless the disposition that was ordered by the court involves secure placement, the juvenile delinquency court has reason to believe that the youth would flee the jurisdiction or not appear before the court when notified, or there is evidence indicating that the youth would likely engage in illegal or dangerous activities if released. If the court with jurisdiction grants a stay but does not release the youth from secure detention, if the disposition that the court ordered is time limited, and if the appeal is denied, then the time spent in secure detention should be credited toward the juvenile delinquency court disposition.

If the court with final decision-making authority denies a request for stay, it is important that the juvenile delinquency court has continuing jurisdiction over the disposition orders that are under appeal. The juvenile delinquency court must be able to appropriately respond if any party does not follow the disposition orders.

I. THE APPELLATE COURT PROCESS AND RECOMMENDED TIMEFRAMES

The standard appellate process can be slow, depending on the caseload and processes of a particular appellate court. For a juvenile, the typical lengthy appellate process may mean years in limbo. Appellate courts should attempt to expedite all matters involving juveniles. When the youth has been granted a stay and is being held in secure detention, the appellate court should afford the appeal the speediest treatment possible.[13]

Timely resolution of juvenile cases should be a goal of appellate courts. Juvenile delinquency court judges should offer to provide information to judges and staff of appellate courts about why timeliness is important in resolving juvenile delinquency appeals.[14] Four steps will aid appellate courts in providing timely decisions on juvenile court appeals:

- The appellate court should establish by court rule, court practice, or legislation, a process that identifies juvenile appeals and gives them priority. Appellate courts have the responsibility to create, implement, and monitor an efficient juvenile appellate process. Identification can be accomplished by requiring that the appellant complete a docketing statement that clearly identifies the case as a juvenile case. Based on statistical data, the appellate court administrator should allocate a sufficient amount of space on the appellate court docket so that adequate time is guaranteed to be available. This will ensure that juvenile cases can be heard at the earliest practicable time.
- The appellate court should establish timeframe requirements, including the preparation of the record and the filing of briefs, that will shorten the process to the minimum possible length of time, and strictly enforce the timeframes. Extensions of time are rarely justified and when parties attempt to use delay tactics they only lengthen the time during which the youth is in limbo. Only in extraordinary circumstances should the appellate court grant extensions of time.
- After stipulated facts, the record, and the transcript are transmitted and briefs have been filed, the appellate court should either hear oral argument, if necessary, or proceed to a decision at the earliest possible time. Matters should be considered without oral argument, when appropriate. Oral argument usually benefits the appellate court only in cases involving issues of first impression and other issues of law.
- When the appellate court decision is final, the appellate court should promptly release its decision and written opinion.[15]

Appellate courts should work with juvenile delinquency courts to develop a method of access to unpublished juvenile delinquency court cases. This will provide juvenile delinquency court judges and judicial officers the best information available upon which to base their decisions.

The DELINQUENCY GUIDELINES recom-

***mends* that the highest appellate court of the state set and monitor a standard for the maximum number of days between the time of the filing of a notice of juvenile delinquency appeal, and the time the opinion is issued by the appellate court, for various types of juvenile delinquency appeals. *The DELINQUENCY GUIDELINES recommends* not more than 120 days when the full appellate process, including oral arguments, is necessary. The goal for sua sponte summary decisions and expedited review of interlocutory orders is 30 days. The goal for the appellate process when oral arguments are not necessary is 60 to 90 days**. Appellate courts have shown that a short turn around time is achievable in abuse and neglect appeals. It is also achievable in juvenile delinquency appeals.

J. CONDUCTING THE APPELLATE COURT HEARING

After the transcript or an agreed-upon statement has been prepared, the record has been transmitted, and all briefs have been filed, the appellate court should hear the case as soon as possible. If oral argument is not necessary it should be possible for the assigned judges to conference the case immediately. The appellate court should be responsible for having docket time available and should not contribute to delays. Differentiated case processing tracks should be established for juvenile delinquency cases and neglect and abuse cases, as compared to criminal and civil cases.

The goal of expedited appeals will be undermined if the appellate court delays in the preparation of the final decision. The appellate court should issue a decision as soon as possible after hearing the case or reviewing the briefs in a case without oral argument. The issuance of juvenile delinquency appellate opinions should be given high priority. Appellate courts should differentiate between fully developed opinions that provide legal analysis and precedent for future cases, and memorandum decisions resolved by settled applicable law. Memorandum decisions should generally be relatively short and should result in a shorter time for completion and distribution.

It is important to ensure that the local prosecutor has a system to notify the victim both of the filing of the appeal and of the decision of the appellate court.

K. PROPOSED APPELLATE COURT INITIATIVES

Appellate courts can shorten the time to finalize resolution of juvenile delinquency cases by requiring attorneys to file short briefs outlining what the issues are and why the juvenile delinquency court was wrong. The state can file a short response, setting forth its arguments and citing any relevant cases. Appellate courts should have procedures for early detection of jurisdictional flaws and completely non-meritorious appeals and quickly dispose of them using sua sponte summary disposition.

Appellate courts should also work closely with juvenile delinquency courts to coordinate and improve operations, including transcript preparation and transfer of the record on appeal. An understanding of the problems encountered by each court will make it possible to implement improvements.

Appellate courts should also look at existing procedures to expedite appeals of child abuse and neglect cases to determine if some of those procedures could be incorporated in delinquency cases.[17]

Finally, appellate courts should work with juvenile delinquency courts, prosecutors, and public defenders to design an expedited appellate review of interlocutory orders to waive juvenile delinquency court jurisdiction and transfer a youth to criminal court. This should be a streamlined and speedy memorandum review process that would allow counsel for the youth's memoranda to be reviewed within two weeks. This review would determine whether the juvenile delinquency court should move forward with transfer to the criminal court, or whether there is reason for additional appellate consideration.

Endnotes

[1] Honorable Pamela Greenwood, Judge, Utah Court of Appeals, was a primary author of this chapter. Honorable Maurice Portley, Judge, Arizona Court of Appeals, was a significant contributor.

[12] Keith, A.L. & Flango, C.R. (2nd Edition, 2004). *Expediting Dependency Appeals: Strategies to Reduce Delay.* Arlington, VA: National Center for State Courts.

[3] Resources used for this section include:

- *ADOPTION AND PERMANENCY GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* (2000). Reno, NV: National Council of Juvenile and Family Court Judges.
- Griffin, P. & Torbet, P. Eds. (June 2002). *Desktop Guide to Good Juvenile Probation Practice.* Pittsburgh, PA: National Center for Juvenile Justice.
- Butts, J., & Halemba, G. (1996). *Waiting for Justice: Moving Young Offenders Through the Juvenile Court Process.* Pittsburgh, PA: National Center for Juvenile Justice.

[4] Grisso, T. & Schwartz, R. (eds.) (2000). *Youth on Trial: A Developmental Perspective on Juvenile Justice.* Chicago, IL: The University of Chicago Press.

[5] In re Appeal in Maricopa County, Juvenile Action No. J-78151-S, 580 P.2d 781, 782 (Ariz. Ct. App. 1978) (noting that "an order adjudicating a juvenile delinquent was not a final order"). When a juvenile who is adjudicated delinquent is required to pay restitution, the Arizona Court of Appeals has held that a restitution order, entered after the adjudication and disposition orders, was the final order from which the juvenile's appeal would run.

In re Eric L., 943 P.2d 842, 844 (Ariz. Ct. App. 1997). Daniel v. State, 983 S.W.2d 146, 147 (Ark Ct. App. 1998) (noting that court had no authority to review appellant's appeal because he appealed from adjudication order instead of disposition order).

A.N. v. State, 666 So.2d 928, 930 (Fla. Dist. Ct. App. 1995) (noting that right of appeal does not attach until "entry of the order of disposition in a delinquency case").

In re Doe, 74 P.3d 998, 1003 (Haw. 2003) (holding that "in a juvenile delinquency proceeding . . ., an order of adjudication is not a final order from which a party may perfect the right to appeal").

Matter of Patrick V., 222 A.D.2d 1120 (N.Y. App. Div. 1992) (noting that temporary disposition adjudging minor delinquent not a final order of disposition, and therefore, no right of appeal existed).

In re Laney, 577 S.E.2d 377, 379 (N.C. Ct. App. 2003) (rejecting appeal from adjudication of delinquency because "adjudication of delinquency is not a final order" (quotations and citations omitted).

[6] Linda Szymanski, Director of Legal Research of the National Center for Juvenile Justice, was helpful in compiling information.

[7] Refer to Chapter V, Section F (2)(a) regarding interlocutory appeals on waiver and transfer decisions.

[8] An example is the California Rule of Court 39.1B, which addresses extraordinary writ procedures to ensure, that appeals are heard in a timely fashion.

[9] Pack v. State, 41 S.W.3d 409, 414 (noting that "in resolving the question of the sufficiency of the evidence in a juvenile delinquency case, the standard of review is the same as in a criminal case"); In re Timothy F., 681 A.2d 501, 506 (Md. 1996) (noting that "the delinquent act, like the criminal act, must be proven beyond a reasonable doubt," and therefore, the same standard of review applies in both criminal and juvenile cases); State v. Hough, 585 N.W.2d 393, 396 (Minn. 1998) (noting that a review of sufficiency-of-the-evidence claim in a juvenile delinquency bench trial is under the same standard of review as a jury verdict in criminal cases); In re York, 756 N.E.2d 191, 194-95 (Ohio 2001) (using same standard of review for juvenile's sufficiency-of-the-evidence claim as that which would have been used in a criminal case).

[10] In re William G., 192AZ, 208, 212, 963 P. 2d, 287,291 (app.1997).

[11] State v. Chapple, 125 Ariz. 281, 197 n. 18, 660 P.2d 1208, 1224 n. 18 (1983) (discussing vagaries and meaning of "abuse of discretion").

[12] Portions of this section have been taken from: Shepherd, R. E. (Ed.) (1996). *Juvenile Justice Standards Annotated: A Balanced Approach.* Chicago, IL: American Bar Association.

[13] Some states, such as Colorado and Arizona, currently expedite these appeals, as required by statute or court practice. See, e.g., Colo. Rev. Stat. § 19-2-903 (1), 2003 ("Appeals shall be advanced on the calendar of the appellate court and shall be decided at the earliest practical time.").

[14] See Section A: Why Timeliness Is Important.

[15] The Minnesota Supreme Court issues its order immediately on deciding the case, often on the day of argument. Detailed opinions, when necessary, follow at a later date.

[16] Supra notes 13 and 15.

[17] Iowa has had such a system for several years (Iowa Code § 232; Rule 6.5 Iowa Rules of Appellate Procedure). Utah has just adopted new statutory provisions and rules modeled after the Iowa system (Utah Code Ann. § 78-3a-909 (2004); Rules 52 et seq. Utah Rules of Appellate Procedure; Rules 52, 53 Utah Rules of Juvenile Procedure). California has a speedy writ process whereby the courts of appeal must respond to all writs within 120 days with written opinions (California Rule of Court 39.1B, West, St. Paul, MN, 2004). An excellent resource is Expediting Dependency Appeals: Strategies to Reduce Delay, Supra note 2.

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CHART OF STEPS AND TIME LINES FOR POST-DISPOSITION REVIEW OF DELINQUENT YOUTH WHO REMAIN IN HOME WITH COURT-ORDERED SERVICES....173

The *JUVENILE DELINQUENCY GUIDELINES* is intended to be used by courts and other juvenile delinquency system stakeholders to assist their efforts to improve practice. The *GUIDELINES* is aspirational - they focus on what should be as opposed to what is. Every effort has been made to make the *GUIDELINES* practical and usable, and to ground recommendations in the most current research and promising practices available at the time of development.

Some jurisdictions are already following many of the recommendations. Some jurisdictions may find it extraordinarily challenging to follow the recommendations. Regardless of jurisdictional status and resources, it is hoped that the *GUIDELINES* will provide a common vision and motivational framework for those working toward an improved juvenile delinquency system.

As jurisdictions strive to implement the *GUIDELINES* with training and technical assistance from the NCJFCJ, juvenile delinquency system practitioners from all situations - urban, rural, suburban, and with varying degrees of resources - will be able to create and share successful implementation methods.

The next two chapters of the *JUVENILE DELINQUENCY GUIDELINES* address juvenile delinquency court post-disposition review. This chapter addresses progress hearings, case conferences, progress reports, and dispute resolution alternatives regarding delinquent youth who remain in the home with court ordered services as the juvenile delinquency court's disposition. Chapter X addresses the post-disposition review of delinquent youth who the juvenile delinquency court has placed outside of the home by court order.

This chapter does not address specialty dockets often called "Drug Courts" or "Mental Health Courts." Specialty dockets include a court review component that is more intensive than the review process addressed in this chapter. Specialty dockets are discussed in Chapter II, Section J and are similar to the juvenile delinquency court reentry reviews for high risk youth described in Chapter X.

As discussed in *Chapter VII: The Disposition Hearing,* the juvenile delinquency court should determine at the disposition hearing whether it is necessary to review the implementation of the court's disposition orders as recommended in ***Key Principle 13: Juvenile Delinquency Court Judges Should Ensure Effective Post-Disposition Review Is Provided to Each Delinquent Youth as Long as the Youth Is Involved in Any Component of the Juvenile Justice System***.

The juvenile delinquency court should review the implementation of the court's disposition orders when the youth remains in the home with court-ordered community services under the following circumstances:

- The youth has committed a serious offense and the juvenile delinquency court has ordered treatment services;
- The youth is on a waiting list for court-ordered treatment services; and
- When the juvenile delinquency court has questions about the follow-through of the parent, youth, or service provider, and believes the juvenile delinquency court needs to continue to monitor the disposition plan to ensure its completion.

All parties and key participants who were involved in hearings prior to and including the disposition hearing should be involved in post-disposition review, including the prosecutor and counsel for the youth.

A. THE PURPOSE OF POST-DISPOSITION REVIEW OF YOUTH WHO REMAIN IN THE HOME WITH COURT-ORDERED SERVICES

The purpose of post-disposition review, whether by progress report, progress conference, dispute resolution alternative, or progress hearing, is to:

- Determine if the youth, parent, and legal custodian are following through with the juvenile delinquency court's orders;
- Ensure that the probation officer and service providers are providing the services that have been ordered by the court, and that the youth is making progress as a result of these services;
- Determine if changes to the approved probation plan or other court orders should be made;
- Resolve disputes related to the implementation of the court-ordered disposition and the court approved probation plan; and
- Reinforce positive change on the youth and parent's behalf.

In some states, the juvenile delinquency court can join as parties government agencies, education, and private service providers who have a legal responsibility to provide a service. The juvenile delinquency court must give them notice and an opportunity to be heard. This is a valuable method to engage education administrators, service providers, and representatives of government agencies that do not appear to be providing needed services and to encourage them to fulfill their statutory duties.[1]

B. SELECTING THE METHOD OF POST-DISPOSITION REVIEW

***The DELINQUENCY GUIDELINES recommends* several different post-disposition review methods for delinquent youth. *The GUIDELINES recommend* progress reports, progress conferences, case staffings, and dispute resolution alternatives, in addition to juvenile delinquency court progress hearings**. Each of the alternative methods to a juvenile delinquency court hearing fulfills the purpose of post-disposition review. When the juvenile delinquency court judge is not directly involved in the review, he or she receives a report and can accept the report or set the case for a review hearing.

Progress reports, which are paper reviews, are appropriate when a probation officer can conduct a face-to-face assessment with the youth, parents, school, service providers, and any other appropriate person or entity and prepare the progress report for the juvenile delinquency court judge. If the juvenile delinquency court judge ordered services but did not place the youth on probation, the juvenile delinquency court's method of review should be an in-person alternative, such

as a progress hearing, case staffing, or a progress conference, as opposed to a paper review.

Consistent use of paper review through progress reports, however, carries the risk that the review may become a rote process with no depth. On the other hand, the formality and adversarial nature of formal court hearings may inhibit the free sharing of concerns. The juvenile delinquency court judge may decide to participate in post-disposition monitoring, but under a less formal atmosphere than a juvenile delinquency court hearing, by selecting a progress conference or case staffing as the method of post-disposition review.

In progress conferences and case staffings, the juvenile delinquency court notifies all legal parties and key participants of the conference or staffing. The conference or staffing is held in a meeting room, as opposed to courtroom, and is not as formal as a juvenile delinquency court hearing. Issues can be defined and discussed, as opposed to sworn testimony given on the record. The juvenile delinquency court judge may attend but is not the facilitator. The facilitator should be trained to assume an objective third-party role. Probation officers, probation supervisors, and community volunteers can be trained as facilitators for this purpose. When juvenile delinquency courts use these methods of post-disposition review, it is important for the judge and probation representative ensure a less formal and non-adversarial atmosphere is established and maintained.

Other recommended methods of post-disposition review that are in-person, provide excellent methods of resolving problems in a non-adversarial atmosphere, but are not attended by the juvenile delinquency court judge are dispute resolution alternatives (DRA).[2] DRAs were discussed in Chapter II, Section G. Two of these alternatives are particularly useful for post-disposition review:

- Negotiation (AKA mediation) – If the youth, parent, or service provider has unsuccessfully attempted to resolve a conflict regarding the court's disposition orders, negotiation may be an effective way to address the concern and reach a mutually acceptable solution. Negotiation is more likely to enhance cooperation as opposed to deepening the wedge between individuals of different opinions that can occur with the adversarial court process.
- Family Conferencing – This technique is useful in multiple circumstances. One example is a parent whose child has multiple needs and is overwhelmed with all that needs to be done. A family conference can be called to bring together additional family and friend support systems to help the parent with the plan to meet the youth's needs. A second circumstance where a family conference would be helpful is when the youth is making gains but the parent or legal guardian is not. A family conference could assist in identifying alternative family support resources for the youth.

When negotiation or family conferencing is used as a method of post-disposition review, a probation officer or child protection worker participates along with the youth, parent, legal custodian, and service provider representatives. The prosecutor and counsel for the youth are always invited to negotiation interventions; however, they would be notified of, but not invited to family conferencing, unless the youth or family asked them to attend. The juvenile delinquency court judge would not attend either of these interventions but would receive a written report providing information on progress and any recommended changes in the court approved probation plan. If the judge is not satisfied with the report, she or he can set a review hearing.

C. TIMING OF POST-DISPOSITION REVIEW OF YOUTH WHO REMAIN IN HOME WITH COURT-ORDERED SERVICES

When a youth is on a waiting list for court-ordered treatment services, the juvenile delinquency court should closely monitor the situation until services begin. Since the adjudicated youth has been determined to need the service to change the problem behavior, service delays increase the likelihood of additional delinquent behavior. It may be necessary for the juvenile delinquency court to set restrictions on the youth's activities, such as curfew, house arrest, or electronic monitoring, so that the youth's opportunities to engage in the problem behavior are limited until the youth has engaged in treatment. If the service needs are intensive, and the delay will be more than a few weeks, every effort should be made to provide less intensive services until the preferred service can begin. Juvenile delinquency court judges should not allow youth to remain on waiting lists for extensive periods of time and should continue monitoring through progress reports until there is an acceptable date set for the service to begin.

When youth routinely wait long periods for services, the juvenile delinquency court judge should take a leadership role to convene a task force of appropriate stakeholders for the purpose of determining what is causing the delay. Waiting lists that are consistently a specific period of time can be eliminated without the addition of long-term resources. For example, if the waiting list for substance abuse intake appointments is always

four weeks, adding or reallocating resources for a short period of time can clear the backlog. Meanwhile, new intakes can be immediately assigned to existing resources. The system becomes timely and can remain timely with the same amount of resources as when it was backlogged. If the delay keeps growing longer, there are either insufficient resources, or the intake process needs to be managed differently. For example, a lower resource screening tool can be implemented if many current cases are found not to need treatment, or an intake process can be designed that is effective while consuming fewer resources.

When the juvenile delinquency court judge decides to continue monitoring post-disposition progress after a youth has become engaged in court-ordered services, the first review, whether by hearing, conference, staffing, or report, should occur within the first 60 days. Subsequent reports or reviews should be held at least every 90 days until no longer needed. The exact timing of post-disposition review is very individual to case circumstances. If a youth is in a placement prevention service funded by title IV-E, such as wraparound services or other intensive home based services, a case plan must be approved within 60 days of beginning the service, and court review must occur within six months of date the youth began services.[3] A permanency hearing must occur within 12 months of the date the youth began services.[4]

If the juvenile delinquency court judge decides to review a case post-disposition, the date and method of review should be set at the disposition hearing. Review hearings can be set at the time of disposition, or, if the juvenile delinquency court sets a method of review other than a hearing, the prosecutor, the youth through counsel, a party, or key participant may file a motion for the court to set a progress hearing, if he or she feel it is needed.

When the juvenile delinquency court orders non-placement treatment services the court will usually also place the youth on probation and approve a probation plan. This plan should incorporate ***Key Principle 12: Juvenile Delinquency Court Judges Should Ensure Court Dispositions are Individualized and Include Graduated Responses, Both Sanctions and Incentives*** and specify the consequences of technical violations of the plan. The plan should give the probation officer the authority to implement incentives and specified sanctions, but should require the juvenile delinquency court judge's approval for other sanctions, such as the use of secure or non-secure detention. ***The DELINQUENCY GUIDELINES recommends*** **that only judges or judicial officers should have the authority to place a youth in detention**. When the juvenile delinquency court approved probation plan requires court approval for the probation officer to implement a sanction, the probation officer should request a review hearing. If the youth has allegedly committed a new misdemeanor or felony offense, a new delinquency petition should be filed. If the youth repeatedly commits technical violations of probation, and the sanctions incorporated into the plan have been exhausted, the probation officer should file a probation violation. Probation violations are covered in Chapter XI.

In some cases, progress can be encouraged and promoted by holding a review hearing, staffing, or case conference to recognize the gains made by youth and parents. When juvenile delinquency courts follow ***Key Principle 3: Juvenile Delinquency Courts and Juvenile Abuse and Neglect Courts Should Have Integrated One Family-One Judge Case Assignments***, and when probation officers and counsel for the youth have caseloads that allow them to become substantively involved in a case, the juvenile delinquency court judge, probation officer, or counsel for the youth will be able to discern whether and when it is likely that praise and support from the juvenile delinquency court judge will have a positive impact on the youth and family.

D. LEGAL REPRESENTATION DURING POST-DISPOSITION REVIEW

Key Principle 7: Youth Charged in the Formal Juvenile Delinquency Court Must Have Qualified and Adequately Compensated Legal Representation, not only states that all youth must be represented by counsel in the formal juvenile delinquency court but that counsel should be involved in every juvenile delinquency court hearing. A juvenile delinquency court that has incorporated this *Key Principle* ensures that counsel stays assigned to a case when a progress report due date, progress conference, or progress hearing is set at disposition.

In order for counsel to be effective at this stage of the juvenile delinquency court process, counsel must not only rely on the information provided by the probation officer, but should also independently speak with the youth, the youth's parent or legal custodian, and the service provider.

E. PROCEDURES FOR PROGRESS REPORTS AS A METHOD OF POST-DISPOSITION REVIEW

Usually a probation officer will prepare and submit the progress report. In preparing the report, the probation officer should address each of the issues identified in Section A: Purpose of

Post-Disposition Review, by collecting information from all involved individuals and law enforcement. The probation officer should provide copies of the report to the juvenile delinquency court two weeks prior to the juvenile delinquency court's scheduled review of the report. The juvenile delinquency court should immediately forward the report to the prosecutor, counsel for the youth, parent, legal custodian, service provider, and tribal council representative, if applicable. Each legal party and key participant should have the opportunity to prepare a response to the report if they choose to do so, and to submit the response for the juvenile delinquency court judge's consideration at the same time the judge reviews the progress report.

If the youth, parent, probation officer, and service provider are complying with the juvenile delinquency court's orders, no additional services are needed, and no concerns have been expressed, the juvenile delinquency court judge should either order another post-disposition review or end the juvenile delinquency court's involvement in the post-disposition review of this case. The court should immediately provide a written finding and order to all legal parties and key participants.

If the youth is not making progress, the parent is not complying, the probation officer or the service provider is not complying, or if the probation officer, prosecutor, legal counsel, tribal court representative, or service provider has a concern he or she wish the court to address, the juvenile delinquency court judge should set the case for a progress hearing, progress conference, case staffing, or dispute resolution alternative within two weeks.

F. PROCEDURES FOR PROGRESS REVIEW CONFERENCES, CASE STAFFINGS, AND DISPUTE RESOLUTION ALTERNATIVES AS METHODS OF POST-DISPOSITION REVIEW

When the juvenile delinquency court has set any of these methods for post-disposition review, the probation officer should ensure that the youth, parents, legal custodian, prosecutor, counsel for the youth, tribal representative, if applicable, and primary service providers are included. The probation officer or prosecutor should contact law enforcement to determine if they have had any recent contacts with the youth. The juvenile delinquency court judge may choose to attend a case conference or staffing. If the juvenile delinquency court judge does not attend the intervention, the probation officer or the facilitator should prepare a written progress report to submit to the juvenile delinquency court judge for review and approval.

In all of these options for post-disposition monitoring, if the intervention results in a recommended change in the juvenile delinquency court's disposition orders or approved probation plan, either the mediator, facilitator, probation officer, prosecutor, or counsel for the youth, should be specifically designated to create a recommendation, agreed to by the legal parties and key participants, and submit the recommendation to the juvenile delinquency court judge for consideration. If any party or the judge objects to the recommended changes, or if the judge is not satisfied with the progress as described in the report, the juvenile delinquency judge should set the matter for a review hearing within two weeks.

G. CONDUCTING REVIEW HEARINGS

1. Who Should Be Present

The following individuals should be present at a review hearing:

- The judge who is assigned to the family;
- The delinquent youth;
- The parent or legal custodian of the youth, including the youth's caseworker if under custody to the child protective agency;
- If the youth is living with someone other than the parent or legal custodian, the caretaker of the youth (e.g., non-custodial relative, foster parent);
- Counsel representing the youth;
- Prosecuting attorney;
- Tribal council representative, if applicable;
- Certified interpreters, if the youth, parent, or custodian do not speak English or are hearing impaired;
- The probation officer;
- Service provider representatives and education representatives, as appropriate; and
- Court security and other court staff as required, including stenographic staff or recording technology.

2. Information the Juvenile Delinquency Court Should Have

Designated juvenile delinquency court staff should ensure that the following information is available to the juvenile delinquency court judge, legal parties, and key participants:

- The disposition order and all reports that were used in making the disposition order;
- A copy of the court ordered probation plan;
- The current court approved reunification or permanency plan, if the youth is also under the abuse and neglect jurisdiction;[5]
- Information regarding any cultural or hand-

icap issues that would assist the judge in successfully communicating with the youth and family;

- Progress reports regarding the services being provided to the youth and family, including education services, and the degree to which the youth and family are participating in, and responding to, the services;
- Information from law enforcement regarding any new contacts with the youth; and
- Whether title IV-E funds are being used for the youth's services.

3. Presentation of Recommendations from the Probation Officer, Prosecutor, Counsel for the Youth, and Other Key Participants

As previously noted, prior to the progress hearing, the juvenile delinquency court provided the progress report and recommendations to the prosecutor and counsel for the youth. Counsel has discussed the reports with the youth, parent, and legal custodian. If appropriate, the prosecutor has discussed non-confidential portions of the report with the victim. The prosecutor and counsel have determined whether they agree with the reports or will present other information either by report or through testimony.

Consequently, all parties are prepared at the review hearing to proceed with the following steps:

- The juvenile delinquency court judge summarizes, or asks the probation officer or the child protection caseworker to summarize, progress and recommendations. The prosecutor and counsel for youth have the opportunity to question the probation officer or caseworker.
- The prosecutor indicates agreement or disagreement with the information and presents any additional information or testimony, if needed, including questions or concerns from the victim.
- Counsel for the youth indicates agreement or disagreement with the report and presents any additional information or testimony, if needed.
- The juvenile delinquency court judge gives the parent, legal custodian, service providers, tribal council representative, if applicable, and youth the opportunity to address the court.

As noted in ***Key Principle 12: Juvenile Delinquency Court Judges Should Ensure Court Dispositions Are Individualized and Include Graduated Responses, Both Sanctions and Incentives***, research suggests that graduated responses are most effective when they include both consequences and incentives that nurture and encourage the youth's strengths. If the youth and parent have made progress, the juvenile delinquency court should speak specifically to the youth and parents, providing praise and encouragement for the gains. If the youth or parent has not made progress, the juvenile delinquency court should admonish the appropriate individual, implement a sanction if appropriate, and clearly state the realistic consequences of a continued lack of progress or compliance. The juvenile delinquency judge should provide an opportunity for the youth and parent, legal guardian, or custodian to ask questions.

H. QUESTIONS THAT MUST BE ANSWERED

In order to ensure that all important issues have been covered at the progress hearing, the juvenile delinquency court judge should know the answers to all of the following questions before deciding the court's response and concluding the hearing:

1. If the youth continues on a waiting list for services, what if anything can be done to expedite the youth's entry into the needed service including finding another service provider? What services are or can be provided in the interim?
2. If the youth continues on a waiting list for services, and is being held in secure or non-secure detention, is there reliable information to support the youth's need for continued placement in secure or non-secure detention until the disposition can be implemented, or can the youth be released with or without restrictions? ***The DELINQUENCY GUIDELINES does not recommend*** **that a youth be held in secure detention when the juvenile delinquency court has ordered community services except in very rare circumstances**. In most situations, release with or without house arrest or electronic monitoring should be sufficient.
3. If the service has started, has the youth complied with the court's orders? If not, is it because:

   - The services were available and accessible but the youth refused to participate;
   - The services have not been easily accessible;
   - There are transportation issues;
   - The services are not meeting the youth's

needs, including the youth's cultural needs; or
- Some other reason.

4. Have the parents, legal guardian, or custodian complied with the court, and services expectations of involvement? If not, is it because:

   - They refused to participate;
   - The services have not been easily accessible, e.g., appointments are only available during the workday;
   - Transportation issues;
   - A lack of cultural understanding on the part of service providers; or
   - Some other reason.

5. If the youth and parent have complied with expectations, is the youth's problem behavior improving?
6. If the family situation contributed to the problem, is the family situation improving?
7. What is the youth's education situation? Is the youth engaged in an education environment that can meet the youth's needs, including credit recovery, remediation, tutoring, and services for any special learning or behavioral needs? Is the youth progressing? If not, why not, and what needs to be done to remedy the situation? If the youth has been expelled or suspended, was due process given to the youth?
8. Is a change of plan needed, and if so, what services or restrictions are no longer needed or what additional services or restrictions need to be added?[7]
9. Are there outstanding restitution or court fines and costs, and if so, what is the youth's plan to take care of these responsibilities?
10. Are title IV-E funds being used for the youth's services? If so, are all of the requirements of title IV-E being met?
11. Should another progress hearing be set, a progress report ordered, or should a progress conference, case staffing or dispute resolution alternative be set?

I. WRITTEN FINDINGS AND ORDERS

Once the juvenile delinquency court judge believes that all issues have been considered and all necessary information has been shared, the juvenile delinquency court judge should make the appropriate orders.

The juvenile delinquency court's written findings and orders should be stated in language understandable by the youth and family and with enough detail to support the court's actions. The juvenile delinquency court's findings and orders should be set out in writing and made available to all legal parties and key participants at the conclusion of the hearing. The progress hearing written findings and orders should include:

- All persons present at the hearing;
- If parties were absent, whether they were provided with appropriate notice;
- A statement of the reason for the hearing;
- The orders of the court and the reasons for those orders;
- Any modifications to the court-ordered probation plan, and if additional services are part of the orders, who is to provide the services and when the services will begin;
- Any new court-ordered expectations of the youth and parent or custodian during the time that community services are being delivered;
- If the youth is in detention, either the reasons why it is necessary to continue to detain the youth in secure or non-secure detention or an order to release the youth specifying any restrictions;
- If title IV-E funds are or will be used for the youth's services:

  - ➢ Findings of fact as to what reasonable efforts were and are being made to keep the youth in the home.
  - ➢ Either changes to the case plan or confirmation that the case plan remains in effect as previously approved.
  - ➢ Either identification of this hearing as the six-month review hearing, the date of a review hearing that will be held within six months of the date the youth began title IV-E eligible services that will serve as the six month review hearing; or the date that the six-month review was previously held.
  - ➢ The date of a permanency hearing that is within 12 months of the date the youth began title IV-E eligible services.[8]

- The date, time, and method of the next post-disposition review, or the termination of the juvenile delinquency court's involvement in post-disposition review of this case.

Endnotes

[1] See California Welfare and Institutions Code §§ 362 (a) and 727 (a).

[2] See Chapter II, Section G, for an explanation of the term "dispute resolution alternative" as compared to the term "alternative dispute resolution."

[3] Title IV-E administrative costs may be claimed for youths considered a candidate for foster care, i.e., for those youth who are at serious risk of removal from home as evidenced by the state agency either pursuing his or her removal from the home, or making reasonable efforts to prevent the removal. A juvenile delinquency court should refer to experts on title IV-E funding at their Department of Health and Human Services Regional Office before instituting any local change in practice in the use of title IV-E for non-placement services. See Chapter II, Section I: Title IV-E in the Juvenile Delinquency Court and Appendix J: Title IV-E in the Juvenile Delinquency System for information about requirements for the use of title IV-E funding.

[4] Refer to Appendix K: Permanency Hearing for Delinquent Youth Receiving Title IV-E Funding.

[5] The 2002 reauthorization of the Juvenile Justice and Delinquency Prevention Act requires that states receiving funds under the Act implement systems to ensure that public child welfare records are available to the juvenile delinquency court for the purposes of establishing and implementing treatment plans for juvenile offenders.

[6] Clark, M. D. (2001). Change-focused youth work: The critical ingredients of positive behavior change. *Journal of the Center for Families, Children & the Courts, 3*, 59-72. The full text of *Key Principle 10* can be found in Chapter I, Section C.

[7] The juvenile delinquency court should not order a more restrictive disposition, or secure or non-secure detention, unless the restriction is part of the court approved service plan of graduated responses. If a more restrictive disposition is required, the prosecutor should file a probation violation or, if applicable, a new misdemeanor or felony charge.

[8] For information on how to conduct a permanency hearing, refer to the Appendices.

Chart of Steps and Time Lines of Post-Disposition Review of Delinquent Youth Remaining in Home with Court Ordered Services

PRIOR PROCESS STEPS: The petition was filed, determined legally sufficient, and handled formally. Counsel was appointed. The youth was adjudicated delinquent as a result of admission or trial. The juvenile delinquency court judge placed the youth on probation, approved a probation plan, and ordered post-disposition review.

What is the method of post-disposition review?

Post-Disposition Progress Report

1. Probation officer prepares report.
2. Court provides report to prosecutor, counsel, parent or guardian, and service providers 10 days prior to the court review date.
3. Court reviews report and any responses.

Are parties in agreement and is there progress?

YES

1. The court approves the report and either:
   - Sets another progress report, progress conference, progress staffing or progress hearing, or
   - Terminates involvement in post- disposition review.
2. The court generates written findings and orders and distributes to all legal parties and key participants

NO

The court sets a progress hearing, a progress conference, a progress staffing, or a dispute resolution alternative.

Post-Disposition Case Conference, Case Staffing, or Dispute Resolution Alternative

1. Court notifies prosecutor, counsel for the youth, parents, youth, and service providers.
2. Participants in the intervention decide whether to request a change in the court's orders.
3. Designated person prepares report and submits it to the juvenile delinquency court.

Do all parties, key participants, and the judge agree with the report and any recommended changes?

YES

1. The court approves the report and either:
   - Sets another progress report, progress conference, progress staffing or progress hearing, or
   - Terminates involvement in post-disposition review.
2. The court generates written findings and orders and distributes to all legal parties and key participants.

NO

The court sets the case for a progress hearing.

Post-Disposition Progress Hearing

1. Presentation of the progress report.
2. Prosecutor's response.
3. Counsel for the youth's response.
4. Youth, parents, custodian, service provider, and tribal representative response.
5. The court decides whether to change the court's prior orders.
6. The court decides whether to continue post-disposition review by progress conference, progress staffing, or a dispute resolution alternative; or whether to terminate the court's involvement in post- disposition review.
7. The court generates written findings and orders and distributes to all legal parties and key participants.

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The *JUVENILE DELINQUENCY GUIDELINES* is intended to be used by courts and other juvenile delinquency system stakeholders to assist their efforts to improve practice. The *GUIDELINES* is aspirational - they focus on what should be as opposed to what is. Every effort has been made to make the *GUIDELINES* practical and usable, and to ground recommendations in the most current research and promising practices available at the time of development.

Some jurisdictions are already following many of the recommendations. Some jurisdictions may find it extraordinarily challenging to follow the recommendations. Regardless of jurisdictional status and resources, it is hoped that the *GUIDELINES* will provide a common vision and motivational framework for those working toward an improved juvenile delinquency system.

As jurisdictions strive to implement the *GUIDELINES* with training and technical assistance from the NCJFCJ, juvenile delinquency system practitioners from all situations - urban, rural, suburban, and with varying degrees of resources - will be able to create and share successful implementation methods.

Chapter IX addressed juvenile delinquency court post-disposition review of delinquent youth who remain in their homes after disposition with court ordered services. This chapter addresses post-disposition review of youth whose juvenile delinquency court disposition orders are placement. This chapter includes all juvenile delinquency court ordered placements, including placements in juvenile delinquency court operated facilities, community or residential treatment facilities, and state youth authority correctional institutions. It includes community and residential treatment placements of delinquent youth that are financed by the juvenile delinquency court, the child protection agency, or the state youth authority. Some community placements may be funded through title IV-E.

State juvenile delinquency system structures vary significantly with regard to which governmental entity provides case management during placement and after reentry to the community. In some states, probation officers employed by the juvenile delinquency court do all case management of youth in placement, including youth returning to the community after correctional placement in state youth authority institutions. In some states, child protection caseworkers handle case management of youth in community placement and probation is not involved, while in others there may be both probation officers and child protection caseworkers, or only probation officers. In some states, state youth authority staff handle case management of youth in correctional institutions and state youth authority parole officers handle supervision upon reentry to the community. The *DELINQUENCY GUIDELINES* does not recommend one specific system. Instead, it **recommends that a designated case manager, whether probation officer, child protection agency caseworker, or state youth authority corrections or parole officer, be identified and that the designated person is responsible for placement and reentry planning and implementation, and for reporting progress to the juvenile delinquency court.**

Key Principle 13 states: Juvenile Delinquency Court Judges Should Ensure Effective Post-Disposition Review Is Provided to Each Delinquent Youth as Long as the Youth Is Involved in Any Component of the Juvenile Justice System. In all states, the juvenile delinquency court has the authority to conduct post-disposition reviews when placements are implemented by the juvenile delinquency court or the child protection agency. In many states, however, the juvenile delinquency court has partial or no statutory authority to conduct post-disposition reviews when placements are implemented through the state youth correctional authority.[1] Juvenile delinquency courts should use their statutory oversight authority to the fullest extent possible in reviewing placed youth. If the juvenile delinquency court does not have oversight authority, it should work together with the governmental systems that do have oversight authority to ensure that all delinquent youth are being held accountable and are receiving needed services in a timely fashion. If youth are frequently recidivating because they have not received needed services, juvenile delinquency court judges should work collaboratively to improve existing systems. When necessary, juvenile delinquency court judges should advocate for changes in state law to provide judicial oversight authority to the juvenile delinquency court.[2]

Research does not exist that proves whether juvenile delinquency court monitoring of the correctional reentry process is more effective than a state youth authority-managed reentry process. Research does agree that the recidivism rate among juvenile parolees is unacceptably high and that the decision-making authority over the aftercare continuum is fragmented and contributes to high failure rates.[3] In 2003, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) funded a juvenile delinquency court reentry project through the National Council of Juvenile and Family Court Judges as part of OJJDP's Serious and Violent Offender Reentry Initiative. The project published *Reconnecting: The Role of the Juvenile Court in Reentry* in 2004[4], which discusses and describes a juvenile delinquency court reentry model for high risk to reoffend youth coming out of placement. The book offers specific recommendations on planning, implementing, and operating a juvenile reentry process through the juvenile delinquency court.

The *REENTRY* publication proposes a strategy that is a combination of practices and procedures developed by drug and other specialty or problem-solving courts[5] and by the Intensive Aftercare Program (IAP).[6] The *REENTRY* publication suggests that the juvenile delinquency court is in a position to achieve overarching case management to improve the often fragmented approach to the continuum of reentry. The OJJDP encourages the development of juvenile delinquency court oversight of the correctional reentry process, in hopes that data will be generated to evaluate the effectiveness of, and refine the components of, the juvenile delinquency court reentry approach. The recommendations in this chapter regarding the reentry process for high risk to reoffend youth originate with *Reconnecting: The Role of the Juvenile Court in Reentry.*

The recommendations in this chapter of the *DELINQUENCY GUIDELINES* address only those juvenile delinquency systems where the juvenile delinquency court has authority over the post-disposition review of youth placed by court order

through the state youth authority. This authority may be statutory or as a result of a cooperative agreement with the state youth authority.

All parties and key participants who were involved in hearings prior to and including the disposition hearing should be involved in post-disposition review, including the prosecutor and counsel for the youth.

A. COMPONENTS OF POST-DISPOSITION REVIEW OF YOUTH PLACED OUT OF THE HOME BY JUVENILE DELINQUENCY COURT ORDER[7]

Placement away from the home, regardless of type of placement, is the most restrictive and costly disposition that the juvenile delinquency court can impose. If placement was ordered at the disposition hearing, it is imperative that the juvenile delinquency court carefully considered, at that time, why removal from the home was necessary, what changes the youth should make while in placement, and the plan regarding where the youth will reside upon completion of placement. In order to ensure that placing the youth has the greatest chance for success, the juvenile delinquency court approved a detailed initial reentry plan at the disposition hearing (*see Chapter VII: The Disposition Hearing*). The plan included the following components:

- The level of supervision that will be provided by the placement;
- The services that the placement will provide to the youth during the time the youth is in placement that will lead to successful return to the community, including the plan for engagement in community services as soon as possible after placement;
- The education plan for the youth including how information will be obtained from the prior school, what remediation and credit recovery will be provided, and what interventions will ensure successful transition to the community school upon release; if the youth is on an Individual Education Plan (IEP), the plan should specify the date an IEP conference will be held, not later than one week after the youth is placed;
- The person to whom the youth is expected to be released upon completion of the program;
- The services that will be provided and the expected participation of the future custodian during the time the youth is in placement, including involvement in treatment services and visitation; and recommendations of orders that should be made regarding the parent or legal custodian, such as attending a parental responsibility training program, aiding in the enforcement of the juvenile delinquency court's orders regarding their child, liability for restitution, payment for the costs of services, or criminal responsibility for failing to supervise their delinquent child;
- If the future custodian is not the parent, the expected participation of the parent during the time the youth is in placement, including involvement in treatment services and visitation;
- A plan of graduated sanctions and incentives with specificity regarding which sanctions can be implement by the probation officer and which require approval by the juvenile delinquency court judge;
- How it will be determined that the youth is ready for release; and
- At what point during the placement the finalized reentry plan will be developed and provided to the juvenile delinquency court.

In approving the initial placement and reentry plan, the juvenile delinquency court ensured that ***Key Principle 12: Juvenile Delinquency Court Judges Should Ensure Court Dispositions are Individualized and Include Graduated Responses, Both Sanctions and Incentives***, was incorporated into the plan, since research suggests that graduated responses are more effective when they include both consequences and incentives that nurture and encourage the strengths of the youth.[8]

The juvenile delinquency court judge's post-disposition review of a youth placed by court order involves four components:

- Ensuring the initial reentry plan is being implemented, needed services are being provided, and the youth is making progress, or that the plan is modified if needed;
- Ensuring the placement is helping the youth prepare for a return to a less structured life in the community; and that when the placement is in or near the community to which the youth will return, the preparation includes short home visits or day passes to test the youth's readiness to deal with the additional freedom of life in the community;
- Ensuring a final reentry plan that addresses the youth's needs is developed with sufficient time to ensure all needed post-release services are in place at the time of placement release; and
- Ensuring the finalized reentry plan is fully and timely implemented.

In every case where the juvenile delinquency court orders placement and has post-disposition review authority, the court should provide effec-

tive post-disposition review until the youth has been released from placement, successfully reintegrated into the community, and has shown sustained progress. Prior to ending juvenile delinquency court reentry review, the court should ensure that community support services are prepared to continue beyond juvenile delinquency court case termination as long as needed by the youth and family.

If title IV-E funds are used for the placement, there are additional post-disposition review components that are required. The juvenile delinquency court judge must:

- Determine what reasonable efforts are being made to return the youth to the home or to finalize an alternate permanency plan at every juvenile delinquency court hearing.
- Hold a court review within six months of the date the youth was placed in eligible foster care. A child is "considered to have entered foster care" on the date the court found that the delinquent youth was also an abused or neglected youth or 60 days from the actual removal, whichever is first. If a youth was moved from ineligible care (such as detention) into foster care within 60 days after removal from home, the clock starts 60 days after removal. If a youth was moved from ineligible care into foster care more than 60 days after removal from the home, the clock starts when the child was moved into foster care.
- Hold a permanency hearing within 12 months of the date the youth was placed in eligible foster care. See the appendix titled *Permanency Hearings For Delinquent Youth Receiving Services Through Title IV-E Funding* for a description of the permanency hearing.

B. INTENSITY OF REVIEW AND LEVEL OF RISK TO REOFFEND

The level of risk of reoffending, as measured at the time the finalized reentry plan is developed, should determine the intensity of post-disposition review subsequent to release from placement. The majority of youth who are placed as a result of the juvenile delinquency courts' disposition orders are determined to be at high risk of reoffending at the time the placement decision is made. Otherwise, community treatment services would have been ordered instead of placement. Research indicates that serious, high risk to reoffend offenders benefit from high intensity aftercare monitoring although lower risk to reoffend youth subjected to intensive community supervision tend to do worse than if supervised at a lower intensity level.[9]

Many youth will move from a high risk to reoffend status at placement to a lower risk to reoffend status as they near reentry. Experience indicates that many serious high risk to reoffend youth committed to the state youth authority remain high risk to reoffend when they are released. This may be because youth committed to the state youth authority are the highest risk to reoffend of all delinquent youth. Additional factors may include limited therapeutic treatment available in some youth correctional facilities, and statutes in some states that determine release date based on set amounts of time attached to specific offenses as opposed to degree of behavior change. In order to determine the appropriate intensity of reentry case monitoring and juvenile delinquency court review, the juvenile delinquency court must ensure that the placing entity has reassessed the level of risk to reoffend at the time final aftercare planning begins.

The primary differences in the juvenile delinquency court's post-disposition review of lower and high risk to reoffend youth who have been placed out of the home by court order occur in the community reintegration phase. The juvenile delinquency court's post-disposition review of low risk to reoffend youth as compared to high risk to reoffend youth is contrasted in the following chart.

LOW RISK TO REOFFEND YOUTH	HIGH RISK TO REOFFEND YOUTH
Judicial intervention is used primarily to resolve problem issues or modify court approved plans.	Intensive judicial supervision occurs throughout the entire reentry and adjustment process.
Case staffings, case conferences, and dispute resolution alternatives are used in lieu of court hearings, with the judge reviewing a report of the intervention and only scheduling a hearing if he or she is not satisfied with the recommendations.	If dispute resolution alternatives, case staffings, or case conferences are held, they are followed by a court hearing where the youth and parent appear before the juvenile delinquency court judge.
The juvenile delinquency court expects the final reentry plan to focus primarily on treatment needs and less on surveillance.	The juvenile delinquency court expects the final reentry plan to have equal emphasis on treatment and surveillance and expects restraints such as house arrest, electronic monitoring and step-down placement will be in place at the time of release from the placement.
Reentry planning and monitoring is usually the responsibility of a probation officer or child protection worker.	Reentry planning and monitoring is the responsibility of a formal reentry team that uses a team approach to formulating treatment plans and responding to compliance issues. The team is coordinated by a designated case manager and includes law enforcement. This team is similar to the model used by drug and mental health specialty dockets.
The reentry process de-emphasizes the youth's identification with the juvenile delinquency system, shifting the youth's focus of identification, support, encouragement, and praise from the juvenile delinquency court to individuals and organizations within the community.	The reentry process uses the juvenile delinquency court judge as the main authority figure for offender accountability, for determining sanctions and incentives, and as a significant figure in the youth's life to deliver praise and encouragement, and to share in celebration.

C. PURPOSE OF POST-DISPOSITION REVIEW OF YOUTH PLACED OUT OF THE HOME BY JUVENILE DELINQUENCY COURT ORDER

Four components of juvenile delinquency court post-disposition placement review were described in Section A of this chapter. The purposes of these four components are to:

- Ensure the placement provider, probation officer, child protection worker, and corrections system staff is providing the services that have been ordered by the court, and that the services are available in a timely manner;
- Determine if the youth and parent or legal guardian are following through with the juvenile delinquency court's orders;
- Ensure that the youth and parent are making progress, or if not, appropriate responses occur;
- Resolve disputes regarding placement and reentry planning and approve modifications to the court approved plan as needed; and
- Reinforce positive change of the youth and parents.

In some states, the juvenile delinquency court can join as parties government agencies, education, and other organizations who have a legal responsibility to provide a service. The juvenile delinquency court must give them notice and an opportunity to be heard. This can be a valuable method to engage service providers, education systems, and agencies that do not appear to be providing needed services, and to encourage

them to fulfill their statutory duties.[10] However, the juvenile delinquency court's role during the period of placement or institutionalization is not to oversee or manage the day-to-day administration of the placement or corrections facility. The placement facility must be able to control allocation of resources and staff, maintain discipline, and have flexibility in responding to the youth's issues promptly as they arise.

D. LEGAL REPRESENTATION DURING POST-DISPOSITION REVIEW

Key Principle 7: Youth Charged in the Formal Juvenile Delinquency Court Must Have Qualified and Adequately Compensated Legal Representation not only states that all youth should be represented by counsel in the formal juvenile delinquency court but that the same counsel should be involved at every hearing. A juvenile delinquency court should ensure that counsel remains active when a youth is placed out of the home under the continuing jurisdiction of the juvenile delinquency court.

In order for counsel to be effective at this stage of the juvenile delinquency court process, counsel must not only be informed by the case manager, but also should independently speak in-depth with the youth, the youth's parent, legal custodian, future physical custodian, probation officer, child protection worker, and placement staff.

E. SELECTING THE METHOD OF POST-DISPOSITION REVIEW

***The DELINQUENCY GUIDELINES recommends* several different post-disposition review methods for youth who have been placed by the juvenile delinquency court. *The GUIDELINES recommends* progress reports, progress conferences, case staffings, and dispute resolution alternatives, in addition to juvenile delinquency court progress hearings, for youth who have been placed in the community and for youth who are reassessed as low risk to reoffend at the point of reentry planning**. Each of the alternative methods to a juvenile delinquency court hearing fulfills the purpose of post-disposition review. In some of these methods, the juvenile delinquency court judge is not directly involved in the review. When this is the case, the judge receives a report and either approves the reports or sets the case for a review hearing.

It is appropriate for the juvenile delinquency court to order a progress report, as opposed to setting a progress hearing, case staffing, or conference, if there is a person who is not employed by the placement provider who can conduct a face-to-face assessment with the youth, parents, placement staff, and any other appropriate person or entity; and prepare a progress report for the juvenile delinquency court. When the juvenile delinquency court's placement plan includes oversight by a probation officer or child protection agency caseworker, ordering a progress report can be appropriate because the probation officer or agency caseworker can conduct an in-person progress assessment. When the juvenile delinquency court does not have access to a probation officer, child protection agency caseworker, or other third party to do a thorough placement progress assessment, the juvenile delinquency court should not rely on paper review of a progress report prepared by the placement. Instead, the court should set a progress hearing, case staffing, or a progress conference as the method of post-disposition review.

The *DELINQUENCY GUIDELINES* does not recommend sole use of paper review through progress reports. This carries the risk that the review may become a rote process with no depth. On the other hand, the formality and adversarial nature of a juvenile delinquency court hearing may inhibit the free sharing of concerns. The juvenile delinquency court judge may decide to participate in post-disposition monitoring, but under a less formal atmosphere than a juvenile delinquency court hearing, by selecting a progress conference or case staffing as the method of post-disposition review.

In progress conferences and case staffings, the juvenile delinquency court notifies all legal parties and key participants of the conference or staffing. The conference or staffing is held in a meeting room, as opposed to courtroom, and is not as formal as a juvenile delinquency court hearing. Issues can be defined and discussed, as opposed to sworn testimony given on the record. The juvenile delinquency court judge may attend, but is not the facilitator. The facilitator should be trained to assume an objective third party role. Probation officers, probation supervisors, and community volunteers can be trained as facilitators for this purpose. When a juvenile delinquency court uses progress conferences or case staffings as post-disposition review, it is important for the judge and probation officer to ensure a less formal and non-adversarial atmosphere is established and maintained.

Other recommended methods of post-disposition review that are conducted in-person and provide excellent methods of resolving problems in a non-adversarial atmosphere, but are not attended by the juvenile delinquency court judge, are dispute resolution alternatives (DRA).[11] DRAs were discussed in Chapter II, Section G. Two of these alternatives are particularly useful for post-disposition review:

- Negotiation (AKA Mediation) - If the place-

ment provider has unsuccessfully attempted to resolve a conflict regarding the initial or final reentry plan, negotiation may be an effective way to address the concern and reach a mutually acceptable solution. Negotiation is more likely to enhance cooperation as opposed to deepening the wedge between individuals of different opinions that can occur with the adversarial court process.

- Family Conferencing – Prior to beginning home visits and as a part of reentry planning, a family conference could be called to develop a structure of support and relapse prevention. If the youth is making gains in placement, but a parent, legal custodian, or future custodian is not, a family conference may assist in identifying and engaging alternative family support resources for the youth. If the youth has run away from the placement, a family conference can be effective to develop a family intervention plan to find and return the youth to the placement.

In all of these examples of dispute resolution alternatives, a probation officer or child protection worker participates along with the youth, parent, legal custodian, future custodian, and placement staff. The prosecutor and counsel for the youth are always invited to negotiation interventions. However, they would be notified of, but not invited to, family conferencing, unless the youth or family asked them to attend. The juvenile delinquency court judge does not attend these interventions but receives a written report providing information on progress and any recommended changes in the court approved plan. If the juvenile delinquency court judge is not satisfied with the report, the judge should set the case for a review hearing.

F. TIMING OF POST-DISPOSITION REVIEW OF YOUTH IN PLACEMENT

1. Youth Placed by the Juvenile Delinquency Court in Court or Community Operated Placements and Youth Who Are Reassessed as Low Risk to Reoffend When the Final Reentry Plan Is Prepared

When a youth is on a waiting list for placement services, the juvenile delinquency court should closely monitor the situation until the youth is placed. If the situation is serious enough to require placement, it is probable that the youth will be detained in secure or non-secure detention or shelter care, or be at home on house arrest or electronic monitoring to decrease the likelihood of additional delinquent behavior prior to placement. If the delay in placement will be more than a few weeks, the juvenile delinquency court judge should make every effort to ensure that interim treatment services are provided until the youth can enter placement. A juvenile delinquency court judge should not allow a youth to remain on a waiting list for extensive periods of time, should ensure services are provided during the waiting period, and should continue to closely monitor the case until there is an acceptable date set for the placement to begin.

Once the youth has entered placement, and up to the point of the submission of the finalized reentry plan, the juvenile delinquency court should use one of the methods of review described in Section E not less than every 90 days. The exact timing of post-disposition review is very individual to case circumstances; for example, when a youth is having serious difficulties engaging in the placement and is repeatedly violating placement rules, or when a parent is refusing to engage in required placement services, more frequent review is warranted. If the youth is in short-term placement, such as a 60-day placement intervention, at least one review should occur at or before the placement midpoint. When a youth's placement is outside of the community and transporting the youth to court would be difficult and expensive, using video or telephone conferencing of the youth and placement staff for a progress hearing, progress conference, or case staffing is a viable alternative to an in-person appearance.

The probation officer, child protection worker, parole officer, or placement facility worker should submit a final reentry plan to the juvenile delinquency court as early as possible but not later than 30 days prior to the anticipated date reentry visits will begin. To meet this timeline, the placement will need to begin reentry planning not less than 60 days prior to the anticipated date reintegration visits will begin. The exception to this time frame is when placements are 60 days or less, in which case, the juvenile delinquency court judge should determine a shorter time frame.

When a final reentry plan is submitted to the juvenile delinquency court judge for approval, and if all participants are in agreement, a hearing is not necessary unless the individual circumstances indicate a hearing would be of benefit. If participants are not in agreement with the reentry plan, the juvenile delinquency court should set a hearing within two weeks of receiving notification of the disagreement.

The first juvenile delinquency court review of a low risk to reoffend youth's reentry adjustment should occur by one of the recommended methods no later than two weeks after release. In some cases it may be advantageous for the youth and

family to appear before the juvenile delinquency court, and in others it may not be advantageous. At a *minimum*, however, the juvenile delinquency court judge should ensure, through the report of a probation officer or child protection agency caseworker, that all components of the reentry plan are operational and that the parent and youth are appropriately engaged in the plan.

During the reentry period, the juvenile delinquency court judge should review the case by one of the recommended methods in Section E at least every 90 days until reentry has been successfully sustained. If at any point the youth, parent, probation officer, or service provider is allegedly not following through with the placement plan, the juvenile delinquency court judge should set a hearing for the earliest possible time, but not more than two weeks from the time the juvenile delinquency court was notified of the potential problem.

If the juvenile delinquency court judge has been reviewing the case through court review hearings, the final progress hearing should occur when the youth has sustained the behavior specified in the reentry plan for the period of time that was originally set or modified due to problems in adjustment.

If the juvenile delinquency court judge has been reviewing the case through a method that did not involve direct contact between the youth and family and the juvenile delinquency court judge, a final hearing is not necessary, but the juvenile delinquency court judge should send the youth and family a congratulatory letter.

It is important for the juvenile delinquency court judge to remember that if title IV-E funds are used for the placement, there are additional hearings that are required, specifically:

- A juvenile delinquency court review must be held within six months of the date of placement in eligible foster care or within six months of the 60th day of removal from the home, whichever comes first.
- A permanency hearing must be held within 12 months of the date of placement in eligible foster care or within 12 months of the 60th day of removal from the home, whichever comes first. See the appendix titled *Permanency Hearings For Delinquent Youth Receiving Services Through Title IV-E Funding* for a description of the permanency hearing.

2. Youth Committed by the Juvenile Delinquency Court to the State Youth Authority and Youth Placed in the Community Who Are Reassessed as High Risk To Reoffend when the Finalized Reentry Plan Is Prepared

During the period of institutionalization with the state youth authority, *Reconnecting: the Role of the Juvenile Court in Reentry* recommends that the youth authority provide progress reports to the juvenile delinquency court every 90 days. The reentry case manager should provide the final reentry plan to the juvenile delinquency court as early as possible but not later than 30 days prior to the anticipated date reintegration visits will begin. To meet this timeline, the placement will need to begin final reentry planning not less than 60 days prior to the anticipated date reintegration visits will begin. If the juvenile delinquency court judge and all legal parties and key participants agree with the final reentry plan, a hearing is not necessary, and a reentry hearing should be set no later than the day that the offender is released from the state correctional institution. If the juvenile delinquency court judge, a legal party, or key participant disagrees with the final reentry plan, a hearing should be set within two weeks, and if this hearing is within two weeks of the proposed release from placement, the hearing can also serve as the reentry hearing.

For the first 30 days following the youth's release, the juvenile delinquency court judge should calendar the case for weekly progress hearings with mandatory attendance by the youth and family (if reunification has or will occur), and participants of the reentry team, including prosecutor and counsel for the youth. These hearings should be set at a time when they least interfere with youth and family responsibilities such as school, work, or counseling.

Post-release juvenile delinquency court review hearings should be set at regular intervals - shorter intervals at the outset, and longer ones as the youth is successfully adjusting in the community. Juvenile delinquency court review hearings should continue until the youth has sustained the behavior specified in the reentry plan for the period of time that was originally set or modified due to problems in adjustment. The final post-release hearing on the juvenile delinquency reentry docket should be a celebration of the youth's successful reentry to the community and the termination of the juvenile delinquency court's reentry case monitoring.

G. PROCEDURES FOR PROGRESS REPORTS AS A METHOD OF POST-DISPOSITION REVIEW

When the juvenile delinquency court orders a progress report and the probation officer, child protection caseworker, or correctional worker submits the report to the juvenile delinquency court judge, the juvenile delinquency court should immediately provide copies of the report to the prosecutor, counsel for the youth, parent or legal custodian, future custodian, the tribal coun-

cil representative, if applicable, and the placement provider. Each of these individuals should have the opportunity to prepare a response to the report if they choose to do so, and to submit the response to the juvenile delinquency court. The juvenile delinquency court should give two weeks for submission of responses, and then the juvenile delinquency court judge should review the report and all responses.

If the youth, parent, and placement provider are complying with the juvenile delinquency court's orders and making progress, no additional services are needed, and no concerns have been expressed, the juvenile delinquency court should either order another progress report or set a date that the designated case manager should submit the final reentry plan to the juvenile delinquency court. The juvenile delinquency court should immediately provide a copy of the written findings and orders to all legal parties and key participants, including the placement or correctional facility.

The juvenile delinquency court should set the case for a progress hearing, progress conference, case staffing, or dispute resolution alternative within two weeks if:

- The youth is not making progress;
- The parent, legal custodian, or future custodian is not complying with court orders;
- The placement provider, service providers, or probation officer is not complying with court orders; or
- If the prosecutor, legal counsel, the probation officer, the child protection caseworker, the placement provider, or tribal court representative, if applicable, has a concern he or she wish the juvenile delinquency court to address.

H. PROCEDURES FOR PROGRESS CONFERENCES, CASE STAFFINGS, AND DISPUTE RESOLUTION ALTERNATIVES AS A METHOD OF POST-DISPOSITION REVIEW

When the juvenile delinquency court uses any of these alternatives for post-disposition review, the youth, parent, legal custodian, future custodian, tribal representative, if applicable, and placement staff should always be included. The juvenile delinquency court judge may choose to attend a case conference or staffing. If the juvenile delinquency court judge does not attend the meeting, the probation officer or the facilitator should prepare a written report to submit to the juvenile delinquency court judge for review and approval. If the report raises concerns, the judge should set the case for a review hearing.

In all of these options for post-disposition monitoring, if the meeting results in a recommended change in the juvenile delinquency court's disposition orders or approved initial or final reentry plan, the case manager, the prosecutor, or counsel for youth, should create a proposed change recommendation (a motion and proposed order, if an attorney) signed by all the parties, present this recommended change to any absent parties for comment and then to the juvenile delinquency court judge for approval. If any party or the judge objects to the recommended changes, or if the judge is not satisfied with the progress as described in the report, the juvenile delinquency judge should set the matter for a review hearing within two weeks.

I. CONDUCTING REVIEW HEARINGS

1. Who Should Be Present

The following individuals should be present at post-disposition review hearings of youth placed by court order:

- The judge who is assigned to the family;
- The delinquent youth, in-person or by video or telephone conferencing;
- The parent or legal custodian, or future custodian of the youth including the child's caseworker if under custody to the child protective agency;
- Placement facility staff, either in-person or by video or telephone conferencing;
- An education representative;
- Counsel representing the youth;
- Prosecuting attorney;
- Case manager;
- The probation officer or correctional authority representative;
- Certified interpreters, if the youth, parent, or custodian does not speak English or is hearing-impaired;
- A representative from the youth's tribal council, if applicable; and
- Court security and other court staff as required, including stenographic staff or recording technology.

2. Information the Juvenile Delinquency Court Should Have

The following information should be available to the juvenile delinquency court, the prosecutor, and youth's counsel at a post-disposition review hearing:

- The dispositional order and all reports that were used in making the dispositional order, including the court-approved initial reentry plan;
- Information regarding any cultural or dis-

ability issues that would assist the judge in successfully communicating with the youth and family; and

- A comprehensive progress report regarding the services and interventions provided by the placement, including education services; and the youth and parent's involvement in, and response to, those services.

3. Presentation of Recommendations from the Probation Officer, Prosecutor, Counsel for the Youth, and Other Key Participants

As previously noted, prior to the progress hearing, the progress report and recommendations were provided to the prosecutor and counsel for the youth. Counsel has discussed the reports with the case manager, probation officer, child protection worker, or corrections authority staff, and with the youth and parents. If appropriate, the prosecutor has discussed non-confidential portions of the report with the victim. The prosecutor and counsel have determined whether they agree with the reports or will present other information, either by report or through testimony.

Consequently, all parties are prepared at the progress hearing to proceed with the following steps:

- The juvenile delinquency court judge asks the case manager to summarize progress and make recommendations. The prosecutor and counsel for youth have the opportunity to question the case manager.
- The prosecutor indicates agreement or disagreement with the report and presents additional information or testimony, if needed, including questions or concerns from the victim. Counsel for the youth has the opportunity to cross-examine any witnesses or challenge any reports presented by the prosecutor.
- Counsel for the youth indicates agreement or disagreement with the report and presents any additional information or testimony, if needed. The prosecutor has the opportunity to cross-examine any witnesses or challenge any reports presented by counsel for the youth.
- The juvenile delinquency court judge gives the parents, legal custodian, future physical custodian, placement provider, the youth, and tribal council representative, if applicable, the opportunity to address the court.

In keeping with the plan of graduated responses, when the youth and parent have made progress, the juvenile delinquency court judge should speak specifically to the youth and parents, providing praise, encouragement, and other incentives as appropriate to the gains. If the youth or parent has not made progress, the juvenile delinquency court judge should admonish the appropriate individual, implement a sanction if appropriate, and clearly state the realistic consequences of a continued lack of progress or compliance.

J. QUESTIONS THAT MUST BE ANSWERED

In order to ensure that all issues have been covered at the progress hearing, the juvenile delinquency court judge should know the answers to all of the following questions before deciding the court's response and concluding the hearing:

- If the youth continues on a placement waiting list:
  - ➢ What, if anything, can be done to expedite the youth's entry into placement and what services are or will be provided in the interim?
  - ➢ If the youth is being held in secure or non-secure detention, is there reliable information to support the youth's need for continued placement in secure or non-secure detention until the placement can be implemented, or can the youth be released under house arrest or electronic monitoring? Issues that should be considered in making this decision include:
    - Is there reason to believe that the youth will not report to the placement if released?
    - Is there reason to believe that the youth will reoffend if released on house arrest or electronic monitoring?
    - Does the youth have any medical, physical or mental health issues, including a trauma history, that places the youth's safety in question in a detention setting?
  - ➢ If the youth is in detention and continues to be detained, have the parents' or legal guardian's questions about detention, including visitation, been answered?
- If the placement has been made, has the youth complied with the court's expectations? If not, why not?
- Have the parents, legal custodian, and future custodian complied with the court and placement's expectations of involvement? If not, why not?
- Is the youth making progress?
- If the family situation contributed to the problem, is the family situation improving?
- If the youth is institutionalized through the state youth authority, and if the youth was under the custody of the child protection

agency prior to institutionalization, is the child protection agency maintaining contact and will it be prepared to resume custody at the appropriate time? Will the youth need transitional planning under title IV-E or help with independent living? Are opportunities under the Chafee Act appropriate?[12]

- What is the youth's education situation? Is the youth fully engaged in an education environment that is meeting the youth's needs, including credit recovery, remediation, tutoring, and services to address any special learning needs, and is the youth progressing educationally?
- Is a change of plan needed and if so, what services, sanctions, incentives, or restrictions are no longer needed and what additional services or graduated sanctions or incentives should be added?
- Are there outstanding restitution, court fines, or court costs, and if so, is the placement assisting the youth to address these responsibilities?
- Has final planning for reentry begun? If not, when will it begin? When will the final reentry plan be ready to submit to the juvenile delinquency court?
- Is the placement being funded through title IV-E, and if so, what requirements and determinations need to be addressed?
- When should another progress hearing, progress report, case staffing, progress conference, or date for submission of the final reentry plan be set?

K. WRITTEN FINDINGS AND ORDERS

Once the juvenile delinquency court judge believes that all issues have been considered and all necessary information has been shared, the juvenile delinquency court judge should make the appropriate orders, explaining the orders to those present and the reasons for the orders. It is important that the juvenile delinquency court judge and all parties remember that the role of the juvenile delinquency court during the period of placement or institutionalization is not to oversee or manage the day-to-day administration of the institution's program. The placement or institution must be able to control allocation of resources and staff, maintain discipline, and have flexibility in responding to the offender's issues promptly as they arise.

The juvenile delinquency court's written findings and orders should be stated in language understandable by the youth and family and with enough detail to support the court's actions. The juvenile delinquency court's findings and orders should be set out in writing and made available to all legal parties and key participants at the conclusion of the hearing. The review hearing findings and orders should include:

- All persons present at the hearing;
- If parties were absent, whether they were provided with appropriate notice;
- A statement of the reason for the hearing;
- The orders of the juvenile delinquency court and the reasons for those orders;
- If the youth remains on a waiting list for placement and is in detention, either the reasons why it is necessary to continue to detain the youth in secure detention, or an order to move the youth to non-secure detention or shelter care, or an order to release the youth specifying any restrictions;
- Any modifications to the initial reentry plan that do not violate the parameters of the placement or the institution's responsibility;
- If the placement is funded through title IV-E:
  - ➢ What reasonable efforts are being made to return the youth to the home or achieve the permanency plan?
  - ➢ If the required six-month review hearing has not yet been held, either identify this hearing as the required six-month review hearing or set a date within six months of the date the youth was placed in eligible foster care or within six months of the 60th day that the youth was removed from home for the required six-month review.
  - ➢ Restatement of the date of the previously set permanency hearing that is within 12 months of the date the youth was placed in eligible foster care or within 12 months of the 60th day that the youth was removed from home.[13]
- Either the date and time of the next review hearing, progress report, case staffing, progress conference, or the date a final reentry plan is to be submitted to the juvenile delinquency court.

L. THE REENTRY PROCESS

When a youth is removed from the home, if the youth is to sustain the progress made while in placement upon return to the community, a carefully planned reentry process is necessary. The reentry process, regardless of level or type of community placement, residential treatment, or correctional placement, refers specifically to those activities and tasks that:[14]

- Prepare out-of-home placed juveniles for reentry into the specific communities to which they will return;
- Establish the necessary arrangements and linkages with the full range of public and private sector organizations and individuals

in the community who can address known risk to reoffend and protective factors; and
- Ensure the delivery of prescribed services and supervision in the community.

1. The Final Reentry Plan

Final reentry planning begins well before the youth is to be released from placement. If the youth is required to initiate the process of finalizing the reentry plan by proposing, with appropriate assistance, his or her recommended relapse prevention plan, the juvenile delinquency court judge will have the opportunity to see the degree of cognitive change that has occurred and assess the youth's readiness for release back into the community.[15]

A youth should not be released from placement until there is a final reentry plan in place that has been approved by the juvenile delinquency court judge and communicated to all involved individuals, and all community services in the plan are ready to commence. This does not mean the juvenile delinquency court should allow a youth to spend an unnecessary extension of time in placement because others have failed to plan properly for his or her reentry into the community. Rather, this process reinforces the importance of timely and thorough juvenile delinquency court review of youth in placement, and places the responsibility on the juvenile delinquency court judge to ensure the juvenile delinquency system does not fail in its responsibilities to the youth and community.

The final reentry plan should be prepared after a reassessment of the youth's risk to reoffend, needs, and strengths. The case manager, who could be a probation officer, parole officer, child protection caseworker, or placement representative, leads the final reentry planning process. The youth, parent, or legal custodian to whom the youth will return, aftercare service provider representatives, and tribal council representative, if applicable, should be involved in the process. The prosecutor should be invited and should communicate with the victim and law enforcement to ensure that their issues are addressed, and that the victim and law enforcement are aware of the planned release.[16] Counsel for the youth should also be invited to participate. When the youth remains at high risk to reoffend, a cross-disciplinary team of law enforcement, juvenile justice system professionals, and local treatment providers, led by a reentry case manager, is responsible to work closely with the juvenile delinquency court judge to finalize the reentry plan and manage reentry. The reentry case manager may be a probation officer, a parole officer, or the primary community treatment provider.

The final reentry plan should include:

- A current assessment of the youth's risk to reoffend, needs, and strengths;
- To whom the youth will be released and the approximate date;
- A plan of increasing periods of time the youth will spend in this home or step-down facility leading up to the release date in order to prepare the youth for the transition and the expectations of the changed environment;
- If the youth will return to the family, what preparation has and will occur to assist the family in preparing for and successfully responding to the youth's return;
- If the youth is ready for reentry but the family is not ready, the transitional placement for the youth, how the youth has been prepared for, and will ease into, the new environment, and whether the youth needs to be connected or reconnected to the child protection agency;
- If the youth remains high risk to offend, what levels of supervision and monitoring, such as house arrest, electronic monitoring, and step-down placement are required;
- Services, service provider, initial service date, and frequency of all treatment services that the youth, parent, or legal custodian, and physical custodian are expected to participate in post-release;
- The school or education program that the youth will attend after release, and the preparation that has occurred or will occur before release between the education staff of the placement and the education staff of the new school or educational program. This preparation should include at least one visit by the youth to the new school setting. The plan should state the date the youth will begin the new school or program and the name of the contact person from the school or program who will ensure records are transferred, the youth is smoothly integrated, and any special educational needs are addressed, and who will commit to supporting the youth's education success. If the youth has an Individual Education Plan (IEP), the plan should specify the date an IEP conference will be held prior to the youth's release;
- Community activities that will be available to the youth to support the youth's areas of interest and skills, and to assist the youth to establish positive relationships with other youth and adults in the community, including cultural and faith based activities, if appropriate; and how linkages will be made between the youth and persons from these activities prior to reentry;
- Any necessary victim-protection provisions;

- The status of unpaid court fines, costs, and restitution, and the plan for the youth to complete these obligations;
- The extent and frequency of support and monitoring that will be provided to the youth and family, and who will provide case coordination;
- A behavioral contract that includes a plan of graduated responses, including incentives and sanctions; and specification of which responses the case coordinator can implement without court approval, and which responses require court approval prior to implementation; ***the DELINQUENCY GUIDELINES recommends* that only judges or judicial officers should have the authority to place a youth in detention as a sanction**. Consequently, detention placement should be a sanction that must be judicially approved and cannot be implemented by a probation officer;
- A recommendation for the frequency of progress reports, case staffings, progress conferences, or progress hearings post-release; and
- A recommendation as to how long court monitoring should occur if the youth complies with the reentry plan.

Once the reentry plan has been drafted, two steps must occur: First, the plan must be submitted to the juvenile delinquency court judge, all parties, and other key participants in order to determine if there are any objections or issues regarding the plan. Second, if there are issues, there must be sufficient time to set a hearing on the issues prior to the time that reintegration visits begin. A reentry plan usually will take approximately 30 days to prepare. If there are issues the juvenile delinquency court must address, the time from submitting the plan, distributing the plan for comment, determining that a hearing needs to be held, and holding the hearing, will usually take approximately 30 days. A youth in placement should not begin reintegration visits until the juvenile delinquency court judge has approved the final reentry plan and all needed community services are in place. Consequently, for placements that exceed 60 days, the juvenile delinquency court judge should ensure that the placement facility begins final reentry planning not later than 60 days before reintegration visits are anticipated to begin. The juvenile delinquency court should ensure the final reentry plan is submitted to the court not less than 30 days before reentry visits are planned and should ensure that all necessary community support services will be ready to begin the date the youth is released.

When a placement is less than 60 days, the initial placement and reentry plan should cover all of the issues described in this section for the final reentry plan. A final version of the reentry plan should be provided to the court two to four weeks prior to the planned reentry.

2. Juvenile Delinquency Court Approval of the Proposed Reentry Plan

a. **Low Risk to Reoffend Youth** - For youth who are low risk to reoffend at the time of reentry, if the juvenile delinquency court judge or any legal parties or key participants have concerns regarding the reentry plan, the juvenile delinquency court judge should determine whether to set a hearing, case staffing, progress conference, or dispute resolution alternative to address the concerns. The juvenile delinquency court should set a date within two weeks for the appropriate intervention.

If a juvenile delinquency court hearing is required to approve the reentry plan, the process described in *Section I: Conducting Progress Review Hearings* should be followed. The focus of the hearing is on the proposed finalized reentry plan and what modifications are requested. At the end of the hearing, the juvenile delinquency court judge generates written findings and orders that approve a final reentry plan, either as proposed or as modified, and distributes the findings and orders immediately to all legal parties and key participants.

If the plan is acceptable to everyone when distributed and no hearing is required, the juvenile delinquency court judge should generate a copy of the written findings and orders that approve the proposed final reentry plan and immediately provide the findings and orders to all legal parties and key participants.

When the plan is approved, either by report or by hearing, the juvenile delinquency court judge should set a date as close as possible to, but not later than two weeks from the date the youth will be released, for a reentry progress report, case staffing, progress conference, or reentry hearing.[17] The juvenile delinquency court should not allow a youth to be released from placement prior to the final reentry plan being approved by the juvenile delinquency court judge, the plan being provided to all involved persons and services, and confirmation that all services will be ready to implement the date the youth is released. The juvenile delinquency court judge is

responsible to ensure the youth's release is not delayed because the juvenile delinquency system failed in its reentry responsibilities to the youth and community.

b. **High Risk to Reoffend Youth**[18] - If the juvenile delinquency court judge, legal parties, and key participants agreed with the reentry plan for a high risk to reoffend youth, the plan was approved without a hearing. At the time of plan approval, the juvenile delinquency court should set a hearing not later than the date of release to review the plan with all participants, to ensure that all components of the plan are in place and ready to begin, and to ensure that all persons involved in the reentry plan are aware of their responsibilities. The hearing follows the same basic processes described in Section I: Conducting Progress Review Hearings. If a hearing was required on the proposed final reentry plan, and if that hearing was within two weeks prior to the youth's release date, the hearing can serve as both the hearing to approve the plan and the release hearing.

The juvenile delinquency court should not allow a high risk to reoffend youth to be released from placement prior to the juvenile delinquency court holding a release hearing to ensure that all persons involved in the reentry plan are aware of their responsibilities and all services in the plan are ready to implement the date the youth is released. The juvenile delinquency court judge is responsible to ensure the youth's release is not delayed because the juvenile delinquency system failed in its reentry responsibilities to the youth and community.

3. Juvenile Delinquency Court Monitoring After the Youth's Return to the Community

a. **Low Risk to Reoffend Youth** - For youth who are low risk to reoffend at the time of reentry, it may be advantageous in some cases for the youth and family to appear before the juvenile delinquency court judge for post-release hearings. In most cases, however, hearings will not be needed as the goal for a low risk to reoffend youth is to de-emphasize identification with the juvenile delinquency system and shift the youth's focus of identification, support, encouragement, and praise to individuals and organizations within the community. The juvenile delinquency court judge should ensure through the report from the case manager, within 10 business days of the release, that all components of the reentry plan are operational, and that the parent and youth are appropriately engaged.

In monitoring reentry, the juvenile delinquency court should continue to keep in mind ***Key Principle 10: Delinquency Courts Should Use Individualized and Graduated Responses, including Graduated Sanctions and Incentives, and Comprehensive Case Management***, to ensure that not only consequences, but also incentives that nurture and encourage existing strengths of the youth and family, are occurring.

The juvenile delinquency court should review progress not less than every 90 days and have a mechanism to ensure that it knows as soon as possible when the youth, parent, legal custodian, physical custodian, or service providers who are part of the reentry plan are not following through as expected. This mechanism could be more frequent court review, or a standing order that the case manager, who is responsible for implementing the reentry plan, immediately notify the juvenile delinquency court judge when problems occur. If there are problems with follow through, the juvenile delinquency court judge should, as soon as possible, set a review hearing, case staffing, progress conference, or dispute resolution alternative to take action about the problem. If a hearing is set, the juvenile delinquency court judge should follow the process described in the prior sections of this chapter for review hearings.

The juvenile delinquency court judge should continue to provide reentry monitoring until the youth has sustained the behavior specified in the reentry plan for the period of time that was originally set or modified due to problems in adjustment. At the time the juvenile delinquency court judge is ready to terminate reentry monitoring, the judge should ensure that community support services are prepared to continue beyond juvenile delinquency court case termination as long as needed by the youth and family. At the final reentry review, the juvenile delinquency court judge should celebrate with the youth and family either at a final hearing or conference if the juvenile delinquency court judge has participated in person in case monitoring, or with a congratulatory letter from the juvenile delinquency court judge to the youth and family if monitoring has been through progress reports.

b. **High Risk to Reoffend Youth**[19] - Subsequent to the juvenile delinquency court

release hearing, the juvenile delinquency court judge should set post-release reentry progress hearings at regular intervals - shorter intervals at the outset, and longer ones as the youth successfully adjusts to the community. For the first 30 days following the youth's release, the case should be calendared for weekly progress hearings with mandatory attendance by the youth and family (if reunification has or will occur), and participants of the reentry team, including prosecutor and counsel for the youth. These hearings should be set at a time when they least interfere with youth and family responsibilities such as school, work, or counseling.

The purpose of these hearings is to establish a track record for timely accomplishment of employment, education, counseling, and other objectives, and to ensure that the youth, parent or legal custodian, physical custodian, and service providers are following the reentry plan. The juvenile delinquency court judge should follow the processes described in the prior sections of this chapter for review hearings, except that at the end of each hearing, another hearing should be set.

At post-release juvenile delinquency court reentry hearings for high risk to reoffend youth, the juvenile delinquency court judge should explicitly and tangibly recognize each successful milestone, immediately address setbacks, and apply graduated responses, both incentives and sanctions. In order to be effective, sanctions must be imposed promptly following a failure to comply with expectations.

Setbacks should be expected and planned for. Zero tolerance policies for youth on intensive reentry supervision are destined to fail. Juvenile delinquency courts should differentiate between technical and substantive violations during reentry. Technical violations such as curfew violations and failure to report on the assigned date or time should be addressed through planned and graduated responses that are identified in the behavioral contract of the finalized reentry plan. Repeated technical violations beyond those covered in the plan should result in a probation or parole violation. Probation and parole violations are discussed in Chapter XI. If a youth allegedly commits a new misdemeanor or felony offense, the prosecutor should file a new delinquency petition specifying the alleged offense.

Progress hearings should continue until the youth has sustained the behavior specified in the reentry plan for the period of time that was originally set or modified due to problems in adjustment. Prior to ending juvenile delinquency court reentry review, the juvenile delinquency court judge should ensure that community support services are prepared to continue beyond juvenile delinquency court case termination as long as needed by the youth and family.

The final reentry hearing on a high risk to reoffend youth should be a celebration of the youth's successful reentry to the community, and the termination of the juvenile delinquency court's reentry review. The reentry case manager should ensure that those individuals important to the youth and family are invited to attend this final juvenile delinquency court hearing.

At the final hearing, the juvenile delinquency court judge should invite the youth and parent or legal guardian to summarize his or her progress and future plans and to thank those who assisted in his or her success. The judge should give the youth a physical token, such as a plaque, key chain, inspirational picture, or diploma as a tangible acknowledgement of successful completion of reentry, and congratulate the youth on his or her accomplishments. Applause is very appropriate.

NOTE: A juvenile delinquency court that wishes to improve upon an existing juvenile reentry docket or create a new juvenile reentry docket should refer directly to *Reconnecting: the Role of the Juvenile Court in Reentry*. It covers substantial additional material including detailed recommendations on the planning, implementation, and ongoing operation of a juvenile reentry docket. *REENTRY* also includes the actions the juvenile delinquency court judge and the reentry team should take at each stage in the reentry process.

A chart of steps and time lines for post-disposition review of delinquent youth placed out of the home by juvenile delinquency court order follows.

Endnotes

[1] Four states have statutes that give juvenile delinquency courts significant influence or authority over the handling of state committed youth from the beginning to the end of the process. Forty-one states are widely varied in the extent of judicial involvement in commitment, release and reentry; however, they give the juvenile delinquency court some influence or authority over parts of the process. (National Council of Juvenile and Family Court Judges (2004). *Reconnecting: The Role of the Juvenile Court in Reentry.* Reno, NV: Author.)

[2] It is important to note that such activities cannot be supported with federal funds due to the requirements of 18 U.S.C. § 1913.

[3] Each year more than 2,000 youthful offenders are released from the California Youth Authority where the majority of youth are committed for violent crimes. The recidivism rate of parolees, after an expenditure of $48,400 per youth, is 91% within three years. (Byrnes, M., Macallair, D. & Shorter, A.D. (August 2002) *Aftercare as Afterthought: Reentry and the California Youth Authority.* Report prepared for the California State Senate Joint Committee on Prison and Construction Operations. San Francisco, CA: Center on Juvenile and Criminal Justice.) Re-referral and arrest rates for youth released from state juvenile justice programs in Ohio measured nine months after release is 46% and in Texas, measured 12 months after release is 47%; re-commitment or incarceration rates for youth released from state juvenile justice programs in Texas measured 36 months after release is 49%. (*National Comparisons from State Recidivism Studies,* Prepared by the Bureau of Data and Research of the Florida Department of Juvenile Justice, Management Report Number 99-13, October 1999.)

[4] National Council of Juvenile and Family Court Judges (2004). *Reconnecting: The Role of the Juvenile Court in Reentry.* Reno, NV: Author.

[5] Drug and other specialty or problem-solving courts are referred to in this publication as "Specialty Dockets" which are addressed in Chapter II, Section J.

[6] See Yeres, S. (Ed.) (March 2003). *Juvenile Drug Courts: Strategies in Practice.* Washington, DC: National Drug Court Institute & National Council of Juvenile and Family Court Judges; and Altschuler, D. M. & Armstrong, T. L. (2001). *Managing Aftercare Services for Delinquents.*

[7] Portions of this section are excerpted from Supra note 4.

[8] Clark, M.D. (2001). Change-focused youth work: The critical ingredients of positive behavior change, *Journal of the Center for Families, Children and the Courts, 3,* 59-74.

[9] Andrews, D.A., Zinger, I., Hoge, R.D., Bonta, J., Gendreau, P., & Cullen, F.T. (1990). Does correctional treatment work? A clinically relevant and psychologically informed meta-analysis. *Criminology 28*(3), 369-404; Baird, S.C. (1983). *Report on Intensive Supervison Programs in Probation and Parole.* Washington, DC: National Institute of Corrections; Clear, T.R. & Hardyman, P.L. (1990). The new intensive supervision movement. *Crime and Delinquency 36,* 42-60; Erwin, B.S. & Bennett, L. (1987). *New Dimensions in Probation: Georgia's Experience With Intensive Probation Supervision.* Research in Brief. Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

[10] Cal. Welf. & Inst. Code §§ 362 (a) and 727 (a).

[11] See Chapter II, Section G. for an explanation of the term "dispute resolution alternative" as compared to the term "alternative dispute resolution."

[12] In December of 1999, the Foster Care Independence Act of 1999 was signed into law. Title I of the Act is the Chafee Foster Care Independence Program (CFCIP). This legislation helps ensure that young people involved in the foster care system get the tools they need to make the most of their lives. They may have opportunities for additional education or training, housing assistance, counseling, and other services. For more information: www.cwla.org/advocacy/indlivhr3443.htm.

[13] See Appendix K for how to conduct a permanency hearing for a delinquent youth.

[14] Altschuler, D. M. & Armstrong, T. L. (2001). Reintegrating high-risk juvenile offenders into communities: Experiences and prospects. *Corrections Management Quarterly, 5*(3), pg. 73; and Zimmerman, Hendrix, Moeser, & Roush (Eds.), (July 2004). *Desktop Guide to Reentry for Juvenile Confinement Facilities,* East Lansing, MI: Center for Research and Professional Development, Michigan State University.

[15] Wexler, D.B. (Spring 2001). Robes and rehabilitation: How judges can help offenders "make good." *38 Court Review 18,* 3-4.

[16] In some states when release to the community is about to take place, the victim of the crime has a right to be notified and to be present for a hearing. In these states, the prosecutor should communicate with the victim regarding the planned release and determine whether the victim desires to be present at a hearing. If so, the prosecutor should ensure that this information is noted in the plan presented for juvenile delinquency court approval so the juvenile delinquency court knows to set a hearing. If the victim does not want to be involved in a hearing, other methods of review and approval may be considered.

[17] Supra note 15.

[18] Supra note 6.

[19] Supra note 6.

Chart of Steps and Time Lines for Post-Disposition Review of Delinquent Youth Placed Out of the Home by Juvenile Delinquency Court Order

PRIOR PROCESS STEPS: The petition was filed, determined legally sufficient, and handled formally. Counsel was appointed. The youth was adjudicated delinquent as a result of admission or trial. The juvenile delinquency court judge placed the youth in a community placement, residential treatment center, or correctional placement as its disposition, with a court-approved initial placement and reentry plan. The juvenile delinquency court has ongoing jurisdiction for post-disposition review, either by statute or cooperative agreement with the state youth authority.

Is the youth placed through the juvenile delinquency court or the child protection agency?

YES

Is the youth on a waiting list?

YES

The court closely monitors the case until the youth is placed.

NO

The court reviews the case through hearings, reports, case staffings, case conferences, or dispute resolution alternatives not less than every 90 days until the finalized reentry plan is submitted not less than 30 days prior to beginning of reentry visits

If the placement is funded by title IV-E:

- Determine reasonable efforts at each hearing
- Hold court review within six months of eligible foster care
- Hold permanency hearing within 12 months of eligible FC

NO

The youth is committed to the state youth authority (SYA) for correctional placement. The SYA provides progress reports to the juvenile delinquency court each 90 days until the finalized reentry plan is submitted, not less than 30 days prior to the planned return to the community.

Are legal parties and other key individuals and service providers in agreement with the finalized reentry plan?

NO

The court schedules a hearing within two weeks, and prior to the youth's release from placement.

YES

The court approves the finalized reentry plan as submitted if all are in agreement, or as submitted or revised at the hearing if all were not in agreement.

Is the youth high risk to reoffend?

NO

- Court approves the final reentry plan by entry.
- Court review progress report, case staffing, or conference within two weeks of youth's return to the community.
- Court review by above methods or alternative dispute resolution until youth has successfully adjusted and court terminates case.
- Court conveys congratulations.

YES

- Court release hearing no later than the day youth is released from institution to review reentry plan and ensure services are in place.
- Court review hearings every week for next 30 days.
- Court review not less that every 30 to 60 days until youth has successfully adjusted and court is ready to terminate the case.
- At final court review hearing celebrate success.

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The *JUVENILE DELINQUENCY GUIDELINES* is intended to be used by courts and other juvenile delinquency system stakeholders to assist their efforts to improve practice. The *GUIDELINES* is aspirational - they focus on what should be as opposed to what is. Every effort has been made to make the *GUIDELINES* practical and usable, and to ground recommendations in the most current research and promising practices available at the time of development.

Some jurisdictions are already following many of the recommendations. Some jurisdictions may find it extraordinarily challenging to follow the recommendations. Regardless of jurisdictional status and resources, it is hoped that the *GUIDELINES* will provide a common vision and motivational framework for those working toward an improved juvenile delinquency system.

As jurisdictions strive to implement the *GUIDELINES* with training and technical assistance from the NCJFCJ, juvenile delinquency system practitioners from all situations - urban, rural, suburban, and with varying degrees of resources - will be able to create and share successful implementation methods.

This chapter addresses the juvenile delinquency system's response to a youth who has been placed on probation or parole, and who *is committing technical violations of the court approved plan.* Technical violations are defined as violations that are not new alleged criminal acts. Examples of technical violations include failure to report to probation or parole appointments, failure to attend court ordered services, or being absent without leave from court-ordered step-down placement.

If a youth on probation or parole commits a new criminal act, the prosecutor should not generally approve a probation or parole violation, but instead should file a petition alleging the violation of law. Filing both a petition for an alleged new criminal act and a probation violation alleging that the youth violated probation or parole by committing the alleged criminal act is duplicative and uses unnecessary additional resources.

All juvenile delinquency systems use probation as a common delinquency disposition with probation supervised by probation officers. The probation officer may be an employee of the juvenile delinquency court or a separate government unit. In some juvenile delinquency systems, probation officers are responsible for reentry supervision when youth are released from community or institutional placement through the state youth authority. In some juvenile delinquency systems employees of the state youth authority are responsible for reentry supervision when youth are released from community or institutional placement through the state youth authority. These individuals are often called parole officers and the reentry supervision period called parole. A youth involved in reentry can be on probation or parole. With respect to parole violations, this chapter addresses only those situations where the juvenile delinquency court has jurisdiction over the period of parole.

Juvenile delinquency systems vary significantly regarding how they handle probation and parole violations, and what burden of proof is required. For example:

- In some states, the burden of proof on a violation is lower than on a delinquency petition and may be either preponderance of the evidence or clear and convincing.
- In some states, a probation or parole violation is handled in the same manner as a delinquency petition, with the same standard of proof of beyond a reasonable doubt. Testimony from the probation or parole officer, parent, or a service provider is usually sufficient to establish this burden of proof.
- In some states, a juvenile delinquency court may impose any disposition on a probation or parole violation that it could have imposed on the original petition.
- In some states, the juvenile delinquency court may suspend a commitment to the state youth authority, place the youth on probation as an alternative, and subsequently revoke the suspension of the state youth authority commitment if the juvenile delinquency court finds that the youth violated probation. However, the juvenile delinquency court may not impose a commitment to the state youth authority on a probation violation or on the previous petition, if it did not order the suspended sentence as part of the original disposition.

This chapter describes the juvenile delinquency court hearing process on a probation or parole violation *when the juvenile delinquency system has a lesser burden of proof and requirements for handling probation and parole violations as compared to a new delinquency petition alleging a misdemeanor or felony,* and *when the juvenile delinquency court has reentry supervision authority for youth on parole.* A juvenile delinquency court that has the same burden of proof and requirements for handling probation and parole violations as it does for a new delinquency petition alleging a misdemeanor or felony, should use the procedures described in Chapters III, IV, VI and VII.

A. DETERMINING WHETHER TO FILE A PROBATION OR PAROLE VIOLATION OR REQUEST A REVIEW HEARING

At the time the juvenile delinquency court judge placed a youth on probation or parole, the judge approved a probation or finalized reentry plan, and the plan became part of the juvenile delinquency court's orders. The specifics of these plans are discussed in Chapter VII, Section D and Chapter X, Section J (1). The plan incorporated ***Key Principle 12: Juvenile Delinquency Court Judges Should Ensure Court Dispositions are Individualized and Include Graduated Responses, Both Sanctions and Incentives***. The juvenile delinquency court approved plan stated clear consequences for technical violations of the plan and these consequences became progressively more severe for repeated violations. For example, the plan may have stated that the first time the youth violates curfew the probation or parole officer will place the youth on one week of house arrest, and the second curfew violation will result in two weeks of house arrest.

The court approved plan also stated what sanctions the probation or parole officer had the authority to impose and what sanctions required juvenile delinquency court approval prior to implementation. Additional examples of proba-

tion or parole officer imposed sanctions include restrictions on the youth's use of a car, restrictions on social activities, or imposition of community service hours. Examples of sanctions that should require the approval of the juvenile delinquency court judge before implementation include placing the youth on electronic monitoring, requiring the youth to report to a day or evening reporting center, or placing the youth outside of the home.

In many juvenile delinquency courts probation and parole violations are over-filed, i.e., probation officers or prosecutors file probation or parole violations for minor violations. This is not a good use of the juvenile delinquency court's resources. The juvenile delinquency court judge should require the probation or parole department to submit plans for court approval that include sanctions that a probation officer can implement without returning the youth to court for minor violations.

When the consequence for a technical violation is included in the court approved plan, but must be imposed by the juvenile delinquency court judge, a request for a review hearing is the appropriate method to bring the matter before the court. This process is described in Chapters IX and X. *If the desired consequence to a technical violation is not specified in the court-approved plan, if the consequence is the filing of a violation, or if the probation officer wishes to place the youth in detention, the probation or parole officer should file a violation in order to bring the matter before the court.*

***The DELINQUENCY GUIDELINES recommends* that only judges or judicial officers should have the authority to place a youth in detention on a probation or parole violation.** The probation or parole officer should have the option to file the violation and request that the juvenile delinquency court judge issue a warrant for the youth's arrest, or to file the violation and summon the youth to a juvenile delinquency court hearing.

B. LEGAL REPRESENTATION

As stated in ***Key Principle 7: Youth Charged in the Formal Juvenile Delinquency Court Must Have Qualified and Adequately Compensated Legal Representation***, all youth should be represented by counsel in the formal juvenile delinquency court and counsel should be involved at every hearing. The same attorney who represented the youth on the petition that resulted in the court order of probation or parole should represent the youth on a probation or parole violation.

C. CONDUCTING HEARINGS ON PROBATION OR PAROLE VIOLATIONS

1. Purpose of the Hearing

The purpose of a hearing on a probation or parole violation is for the juvenile delinquency court judge to determine:

- Did the youth commit the alleged violation?
- If the youth committed the alleged violation, were the services as defined in the juvenile delinquency court-approved plan made available to the youth and parent or physical custodian?
- What is the appropriate response or consequence if the youth committed the violation?

2. Timing of the Hearing

The hearing on a probation or parole violation, if the youth has been summoned to the juvenile delinquency court, should be set as soon as the juvenile delinquency court can notify all required participants and preferably within two weeks after the violation occurred. If the juvenile delinquency court judge issued a warrant, and the youth was arrested and placed in detention, the hearing should be held the next court day, but no later than 48 hours after placement in detention (excluding Saturdays, Sundays, and legal holidays). Consequences of a violation must be imposed as close as possible to the commission of the violation in order to maximize behavior change.

3. Who Should Be Present

The following individuals should be present at a probation or parole violation hearing:

- The judge who is assigned to the family;
- The youth who is on probation or parole;
- Counsel who represented the youth on the law violation that resulted in probation or parole;
- The prosecuting attorney who represented the youth on the law violation that resulted in probation or parole;
- The parent, legal custodian, and physical custodian of the youth, including the child's caseworker if under custody to the child protective agency;
- The probation or parole officer;
- Any education institution representative, service provider, or other person pertinent to the alleged violation, or pertinent to issues with regard to the juvenile delin-

quency court-approved plan;
- Certified interpreters, if the youth, parent, or custodian do not speak English or are hearing impaired;
- A representative from the youth's tribal council, if applicable; and
- Court security and other court staff as required including stenographic staff, or recording technology.

4. Information the Juvenile Delinquency Court Should Have

The following information should be available to the juvenile delinquency court, the prosecutor, and youth's counsel at a probation or parole violation hearing:

- A copy of the petition alleging the probation or parole violation;
- The disposition order and all reports that were used in making the disposition order including the court-approved plan;
- A comprehensive progress report regarding the services and interventions provided to the youth and family, including education services; and the youth and parent's involvement in, and response to those services.

5. Reading of the Violation and Explanation of the Hearing Process

The juvenile delinquency court judge should begin the hearing by reading the violation the youth is alleged to have committed, and explaining the process and the burden of proof that the juvenile delinquency court judge will use to decide whether the youth committed the alleged violation. The juvenile delinquency court judge should explain the possible consequences if the court finds the youth committed the violation.

6. Presentation of Information Regarding the Alleged Violation

The prosecutor should call on the appropriate individuals to provide information that supports the commission of the alleged violation. Sworn testimony is not required unless requested by counsel for the youth. Counsel for the youth has the opportunity to ask questions related to the information presented.

The youth's counsel, if desired, should call on individuals to provide information that supports a finding that the youth did not commit the alleged violation. The prosecutor has the opportunity to ask questions related to the information presented.

After all information has been presented regarding the alleged violation, the juvenile delinquency court judge must find whether or not the prosecutor has proven that the youth committed the violation.

7. Presentation of Progress Related to the Court Approved Plan and Sanction Recommendations

The probation or parole officer presents information regarding the services and interventions that have been provided as required by the court-approved plan, including education services. The probation or parole officer describes the youth's, parent's, and physical custodian's involvement in, and response to those services, and makes a recommendation. The prosecutor and counsel for the youth have the opportunity to ask questions and present their recommendations if different from the probation or parole officer's recommendation.

The juvenile delinquency court judge gives the parents, legal custodian, physical custodian, the youth, service representatives, and tribal council representative, if applicable, the opportunity to address the court with information, recommendations, and questions.

In keeping with the plan of graduated responses, where the youth and parent have made progress, the juvenile delinquency court judge should speak specifically to the youth and parents, providing praise, encouragement, and other incentives as appropriate to the gains. Where the youth or parent has not made progress, the juvenile delinquency court should admonish the appropriate individual, implement a sanction if appropriate, and clearly state the realistic consequences of a continued lack of progress or compliance.

D. QUESTIONS THAT MUST BE ANSWERED

In order to ensure that all issues have been covered at the probation or parole violation hearing, the juvenile delinquency court judge should know the answers to all of the following questions before deciding the court's response to the violation and concluding the hearing:

- In what ways has the youth complied and not complied with the juvenile delinquency court-approved plan and what sanctions and incentives have previously been implemented?
- Have the parents or physical custodian complied with the juvenile delinquency court-approved plan? If not, why not?
- Have the service providers and probation or parole officer complied with the court approved plan? If not, why not?
- If the family situation contributed to the problem, is the family situation improving?
- What is the youth's education situation? Is the youth fully engaged in an education environment that is meeting the youth's needs, including credit recovery, remediation, tutoring, and services to address any special learning needs; and is the youth progressing?
- Is a change of plan needed? If so, what services, sanctions, incentives, or restrictions are no longer needed or what additional services or sanctions should be added?
- Are there outstanding restitution, court fines, or court costs, and if so, have payments been made?
- Is the youth involved in placement or services funded through title IV-E, and if so, what requirements and determinations need to be addressed?
- Should the court set a review hearing, progress report, case staffing, or progress conference?

E. WRITTEN FINDINGS AND ORDERS

Once the juvenile delinquency court judge or judicial officer believes that all issues have been considered and all necessary information has been presented, the juvenile delinquency court judge should make the appropriate orders, explaining the orders to those present and the reasons for the orders. The juvenile delinquency court's written findings and orders should be stated in language understandable by the youth and family and with enough detail to support the court's actions. The juvenile delinquency court's findings and orders should be set out in writing and made available to all legal parties and key participants at the conclusion of the hearing. The findings and orders should include:

- All persons present at the hearing;
- If parties were absent, whether they were provided with appropriate notice;
- A statement of the reason for the hearing and the violation that was alleged;
- A statement that the juvenile delinquency court found the youth to have committed the violation and the specific reasons for the court's finding, or a statement that the court did not find the youth to have committed the violation and dismissal of the violation;
- If the court found the youth committed the violation, the orders of the court and the reasons for those orders, including any modifications to the court approved plan;
- If title IV-E funds are being used:
  - ➢ What reasonable efforts are being made to return or maintain the youth in the home or achieve the permanency plan.
  - ➢ If the required six-month review hearing has not yet been held, either identify this hearing as the required six-month review hearing or set a date within six months of the date the youth was placed in eligible foster care or within six months of the 60th day that the youth was removed from home for the required six-month review.
  - ➢ Restatement of the date of the previously set permanency hearing that is within 12 months of the date the youth was placed in eligible foster care or within 12 months of the 60th day that the youth was removed from home for the required six-month review.[1]
- A statement that the youth continues under the status of probation or parole, if applicable, and the date and time of the next progress hearing, progress report, case staffing, or progress conference regarding the youth.

A chart of steps and time lines for probation and parole violations follows.

Endnotes

[1] See the Appendices for how to conduct a permanency hearing on a delinquent youth.

Chart of Steps and Time Lines for Probation or Parole Violations

PRIOR PROCESS STEPS: The petition was filed, determined legally sufficient and handled formally. Counsel was appointed. The youth was adjudicated delinquent as a result of admission or trial. The juvenile delinquency court judge placed the youth on probation and approved a probation or initial reentry plan; or released the youth from placement with the state youth authority, placed the youth on a parole status and approved a plan. The plan included graduated responses with sanctions for failure to comply with the plan.

Has the youth allegedly committed a new offense that is a misdemeanor or felony offense?

YES → The prosecutor should file a new petition of delinquency alleging the misdemeanor or felony offense.

NO → Has the youth allegedly committed a technical violation of a component of the court approved plan and must the court approve implementation of the sanction for the behavior specified in the plan?

YES → The prosecutor files a request for review hearing to bring the matter before the judge. See Chapters IX and X.

NO → Has the youth committed a technical violation or series of technical violations and sanctions are not specified in the plan, or the sanction specified is that a violation will be filed?

YES → Is the burden of proof and process for a probation or parole violation different than it is for a new felony or misdemeanor petition?

YES →

1. The prosecutor approves a probation or parole violation.
2. The court sets a hearing as soon as parties can be notified and not more than two weeks from when the violation occurred, unless the youth is in detention when the hearing is set the next court day; and notifies all legal parties and key participants.

At the Hearing:

1. The judge reads the alleged violation and explains process, burden of proof and possible consequences.
2. The prosecutor presents information and counsel for the youth asks any questions.
3. Counsel for the youth presents information and the prosecutor asks any questions.
4. The court decides whether the violation occurred.
5. The probation or parole officer presents a progress report and recommendations.
6. All legal parties and key participants have the opportunity to speak.
7. The court recognizes any gains made and either imposes the appropriate sanctions in response to the violation, or dismisses the violation if not supported by the information presented at the hearing.
8. The court identifies the date and method of the next post-disposition review.
9. The court generates written findings and orders and distributes to all legal parties and key participants.

NO → File a probation or parole violation and follow the process described in Chapters III, IV, VI and VII.

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Some jurisdictions are already following many of the recommendations. Some jurisdictions may find it extraordinarily challenging to follow the recommendations. Regardless of jurisdictional status and resources, it is hoped that the *GUIDELINES* will provide a common vision and motivational framework for those working toward an improved juvenile delinquency system.

As jurisdictions strive to implement the *GUIDELINES* with training and technical assistance from the NCJFCJ, juvenile delinquency system practitioners from all situations - urban, rural, suburban, and with varying degrees of resources - will be able to create and share successful implementation methods.

The following statement was made at the beginning of each chapter of the *DELINQUENCY GUIDELINES*:

> *The JUVENILE DELINQUENCY GUIDELINES is intended to be used by courts and other juvenile delinquency system stakeholders to assist their efforts to improve practice. The GUIDELINES is aspirational - they focus on what should be as opposed to what is. Every effort has been made to make the GUIDELINES practical and usable, and to ground recommendations in the most current research and promising practices available at the time of development.*
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>
> *As jurisdictions strive to implement the GUIDELINES, with training and technical assistance from NCJFCJ, juvenile delinquency system practitioners from all situations - urban, rural, suburban, and with varying degrees of resources - will be able to create and share successful implementation methods.*

Some juvenile delinquency courts may erroneously believe that the expectations of the *DELINQUENCY GUIDELINES* are so far out of reach that they will not even try to implement them. Other juvenile delinquency courts will want to find out how they can be selected as model courts to implement the *DELINQUENCY GUIDELINES*. In the Introduction, the *DELINQUENCY GUIDELINES* stated:

> *It is important to note that the juvenile delinquency court judges, and other juvenile delinquency system professionals, who collaborated on the development of the DELINQUENCY GUIDELINES understand that many juvenile delinquency courts will not be able to implement all of the recommendations. All juvenile delinquency courts, however, should be able to implement some of the recommendations and show increased effectiveness and efficiency as a result. Some of the recommendations require transition funding to initially implement the practice, but then show sufficient cost reductions to allow the practices to continue without permanent cost increases. Some recommendations require resource shifts to implement. Other recommendations can be implemented without cost.*

This final chapter of the *DELINQUENCY GUIDELINES: Improving Court Practice in Juvenile Delinquency Cases* provides ideas to help juvenile delinquency courts along the journey toward becoming juvenile delinquency courts of excellence. In this chapter, a variety of topics are addressed, including judicial leadership and collaboration, goals for hearing timelines, assessing current operations for strengths and opportunities for improvement, information on caseloads and workloads, the design of management information systems in the juvenile delinquency court of excellence, and resource issues.

A. JUDICIAL LEADERSHIP AND ESTABLISHING THE COLLABORATIVE ENVIRONMENT NECESSARY FOR A JUVENILE DELINQUENCY COURT OF EXCELLENCE

1. Key Principle 1: Juvenile Delinquency Court Judges Should Engage in Judicial Leadership and Encourage System Collaboration – *The juvenile delinquency court judge should regularly convene system stakeholders and the community to promote mutual respect and understanding within the juvenile delinquency court system, and to work together to improve the system. The juvenile delinquency court judge and court administrator should engage the state chief justice and state court administrator in system collaboration.*

In addition to state and local judiciary, juvenile delinquency court stakeholders include state court administrators, law enforcement officers, detention and juvenile delinquency court intake staff, prosecutors, public defenders and the defense bar, probation officers, detention workers, substance abuse and mental health treatment providers, education administrators and teachers, workforce development professionals, child welfare workers, representatives of community agencies, crime victims, crime victim advocates, victim service providers, legislators, and the members of the community at large. If a state uses a judicial assignment system, it is important that both the judge who is responsible for assignments and the judges assigned to juvenile delinquency court are involved in juvenile delinquency court judicial leadership and system collaboration.

Juvenile delinquency court judges should regularly appear in their communities for the purpose of promoting better understanding and support. They should inform community members of the juvenile delinquency court's goals and the issues associated with youth, families and crime victims in the juvenile delinquency court

system. Judges should encourage the development of successful programs, including volunteer and faith-based programs, to assist children and families within the juvenile delinquency court. Juvenile delinquency court judges should be willing to be engaged by system participants and community members to discuss juvenile delinquency court issues and the work of others on behalf of children and families.[1]

State leaders should consider creating juvenile justice commissions and juvenile court judges should consider creating statewide juvenile court judges organizations for the purpose of providing leadership and influence at the state level.[2] Supreme court chief justices and state court administrators should be involved in juvenile delinquency court leadership and support efforts, and should empower judges at the local level to engage in leadership and collaboration activities.

2. The Juvenile Delinquency Court Judge as a Transformational Leader of Systems Improvement

Many juvenile delinquency courts will require major system improvement to implement the *DELINQUENCY GUIDELINES*. System improvement is not easy and it is not fast. It is a long-term commitment that involves multi-year and multi-systems improvement processes. Strong judicial leadership is absolutely essential for a juvenile delinquency court to undertake the challenges of implementing the *DELINQUENCY GUIDELINES*.

> *Transformational leadership drives meaningful systems improvement. Drawing upon the perspectives and experiences of system stakeholders, a transformational leader encourages and facilitates the emergence of a new vision – a vision of an "ideal system" that is significantly more desirable than the current system and one that cannot be approached without a fundamental shift in philosophy and organizational practice. Transformational leaders must be both creative, in order to inspire, and courageous, in order to encourage implementation. It takes courage to lead systemic improvement efforts and it requires instilling courage in others. Thus to succeed, a leader must be a visionary, a strategist, an informer, a teacher, and a motivator. Transformational leaders instill meaning in systems improvement efforts.*[3]

A juvenile delinquency court judge who is a transformational leader exhibits the following characteristics:[4]

- Makes a personal commitment to facilitating systems improvement and accepts the inherent risk, responsibility, and accountability;
- Is creative and innovative;
- Facilitates the development of a collective vision and mission for reform;
- Convenes multiple stakeholders and treats all system stakeholders with respect;
- Creates a safe environment in which stakeholders can work actively and participate collaboratively in the reform process;
- Facilitates the collective development of improvement goals and strategies to achieve those goals; and
- Engages in outreach activities to the local community.

Judges at the local and state level have the ability, based on credibility and respect for the judiciary, to convene key players and motivate them to engage in system problem solving.

For many juvenile delinquency court judges, the role the *DELINQUENCY GUIDELINES* describes will be uncomfortable. Many juvenile delinquency court judges see their role as trying cases, not transforming the community. Yet the role of the juvenile delinquency court judge is not the role of a traditional judge. It combines judicial, administrative, collaborative, and advocacy components.[5] To fulfill the mandate of the juvenile delinquency court judge, the judge must be prepared to assume new roles, many of which are performed outside the courtroom.

3. Building Juvenile Delinquency System Collaboration

Although judicial leadership is critically important to the improvement process, it is not enough. Meaningful and sustainable systems improvement can only occur through concerted collaborative efforts on the part of all system professionals. The juvenile delinquency court judge must set the lead by committing his or her time and the time of juvenile delinquency court staff to collaboration efforts; but all relevant juvenile delinquency court stakeholders must become involved and make a commitment of time, effort, and resources.

Before engaging staff from the juvenile delinquency court and stakeholder organizations in improvement efforts, it is critical that the juvenile delinquency court judge has engaged executive level decision-makers from each stakeholder organization and obtained their commitment to the effort. It is equally critical that the executive leadership of each organization expresses endorsement of the effort within their organization and describes the goal of bringing together juvenile delinquency system staff, across all stakeholder organizations, to assess, design, and

implement system improvement.

Once all stakeholder leaders have endorsed the collaboration and selected internal staff to lead the effort, both leadership and staff should examine basic tenets about collaboration and improvement. They need to understand:[6]

- Systems improvement is a process. Like any process it is filled with stops and starts, roadblocks and challenges, diversions, and missteps. This is a normal part of the process; it is to be expected. Rather than feel defeated or frustrated by the challenges and resistance encountered along the way, the team should celebrate them and learn to use them. They are signs of improvement and evidence that the system is moving.
- Systems improvement is people-driven. Organizations and systems are not "things," they are a collection of people organized in some form for some purpose. Without people, the system does not exist. Consequently, in system improvement, "we" are changing "us." The hearts and minds of the people involved need to be engaged.
- Systems improvement is an emotional process and likely to be filled with emotional swings at the individual, institutional, and systemic levels. Expect and anticipate the emotional impact of the process and learn how to manage interactions in productive ways. This is especially true when the reforms and innovations being adopted may be perceived as threatening to people's jobs, positions, status, authority, resources, and routine.

Implementation of the *DELINQUENCY GUIDELINES* will probably mean redistribution of resources in many juvenile delinquency court systems. This dynamic must be handled with care by remaining focused on creating a system that maximizes community safety and helps delinquent youth to become law abiding citizens. As resources are redistributed, every effort should be made to redistribute staff accordingly, whenever possible. The team building required for success is an evolutionary process. The collaborative work team needs to move to a point where the group is more than the sum of its individual parts and has an identity of its own. The group needs to be able to openly discuss issues and concerns, challenge each other's core philosophies and practices, and engage in meaningful dialogue. Relationships and trust must be developed. Even with the general vision created by the executive leaders, reaching a consensus at the work team level about what should improve and how it should improve will not be an easy process. From time to time the executive leaders will need to make resource decisions and clear roadblocks. Both executive leaders and the collaborative work teams must constantly remain focused toward better outcomes for delinquent youth and enhanced community safety.

As the collaboration moves forward, the executive level decision makers and collaboration team leaders should meet together regularly to review the work, recommendations, and outcomes of this effort, and to ensure accountability. Part of the responsibility of the executive leaders is to help staff identify and celebrate the achievement of each success along the improvement process.

If the use of collaborative teams is not an existing practice in a juvenile delinquency system, the juvenile delinquency court judge should meet with the leaders of each of the delinquency system stakeholders, begin building coalitions, and invite the leaders to join with the judge in a systems improvement effort. To succeed, the juvenile delinquency court judge must be willing to give the stakeholders a meaningful role, a strong voice, and a real opportunity to make a contribution. The judge must be inclusive and broad based, develop shared responsibility, and develop shared credit for success.[7]

4. Ideas for Judicial Leadership and Collaborations

In the final sections of this chapter, there are many examples of process improvement brought about through judicial leadership and system collaboration that have resulted in improved outcomes. Additional ideas to provide food for thought and discussion are described below.

- The local administrative juvenile delinquency court judge and local juvenile delinquency court administrator contact the state court of appeals administrative judge and state court administrator and request a meeting to discuss the timeframes that currently exist for deciding juvenile delinquency court appeals. They agree to engage prosecutors and counsel for youth in an effort to streamline the process.
- The juvenile delinquency court judge was very concerned about delinquent youth being expelled from the public school system or being allowed to stop attending without any consequence. She contacted the superintendent of schools and invited her to lunch. They reviewed data the juvenile delinquency court judge had gathered to show the extent of the problem. They agreed to collaborate in order to increase education success for delinquent youth with behavior problems by creating a specially

trained team of school staff and probation to identify and "take on" delinquent youth on probation who had been suspended or expelled and any delinquent youth returning to community schools after placement.

The superintendent assigned a district administrator who was experienced with youth with behavioral and learning issues and the juvenile delinquency court judge assigned an experienced probation officer with a background in special needs youth to lead the effort. The judge and superintendent contacted child welfare and mental health executives and convinced them to join the effort, and they assigned staff members to join the team.

Appropriate youth were identified by, and assigned to, the team. The team partnered with youth, parents, and home school staff to design a success plan for each youth. The plan provided resources to the staff of the home school to support their efforts to keep the youth in school and help the youth succeed. If one of the team's youth is placed in detention, foster care, or correctional placement, or if the youth changes schools, the team and the plan follow the youth. The team participates in reentry planning for youth in placement to ensure a successful return to the community school after placement.

In addition to accomplishing the goal to increase education success for delinquent youth, the effort reduces the school's expulsion numbers, increases their graduation rate, decreases the level of teacher and administrator frustration, reduces probation officer frustration, and reduces delinquency recidivism. The reduction in the number of expulsion hearings frees district staff time to participate in the project. The decreased level of teacher and administrator frustration, as well as the new skills learned from the success team, causes the number of expulsions to decrease beyond the delinquent youth involved in the project. The reduction in delinquency recidivism reduces the probation caseload, and a reduction in the amount of time spent unproductively by probation staff attempting to deal with the school problems of these youth under the prior system frees probation staff to participate in the project. Over time, the overall resource allocation of school and probation resources remains the same.

- After a detained youth attempted suicide, the juvenile delinquency court judge invited the mental health executive to a meeting to discuss how they could work together to try to prevent this from happening again. They agreed to charge a team with creating a better system.

The team selected a screening tool capable of identifying risk of suicide and taught the detention intake staff to administer and interpret it. When a youth is found to be at potential risk of suicide, detention calls the mental health youth crisis team. The team comes to the detention center, assesses the youth, and determines whether the youth is at serious risk of suicide. If so, they arrange for the youth's immediate transfer to an acute psychiatric care facility.

If the team does not believe the youth is at serious risk of suicide, the team designs a behavior monitoring and intervention plan for detention staff, assigns a team member to visit the youth in detention on a daily basis as long as needed to monitor the youth's status, and to be on call in case detention staff observe the warning signs identified in the plan as indicators of escalation of suicide risk. The team member also works with counsel for youth, the probation officer, and the juvenile delinquency court judge to design a disposition plan that will provide the mental health services needed by the youth, and ensures appropriate interventions are in place when the youth is released from detention.

B. THE DELINQUENCY GUIDELINES RECOMMENDED TIME LINES FOR FORMAL JUVENILE DELINQUENCY COURT HEARINGS

Key Principle 9 states that Juvenile Delinquency Courts Should Render Timely and Just Decisions and Trials Should Conclude Without Continuances. The *DELINQUENCY GUIDELINES* sets goals for the timing of each hearing in the juvenile delinquency court. At the end of each chapter of the *DELINQUENCY GUIDELINES*, there is a detailed process chart of the steps covered in the chapter. The chart in this section depicts the time line that begins when the juvenile delinquency court holds the first hearing, and ends when the juvenile delinquency court completes the disposition or waiver hearing. It is important to point out what is not included in the chart:

- The two to five days that may be used prior to a petition being formally accepted on a youth who is not detained, during which time the decisions of legal sufficiency and whether to handle the case formally or to

divert the case to informal resources are made are not included;

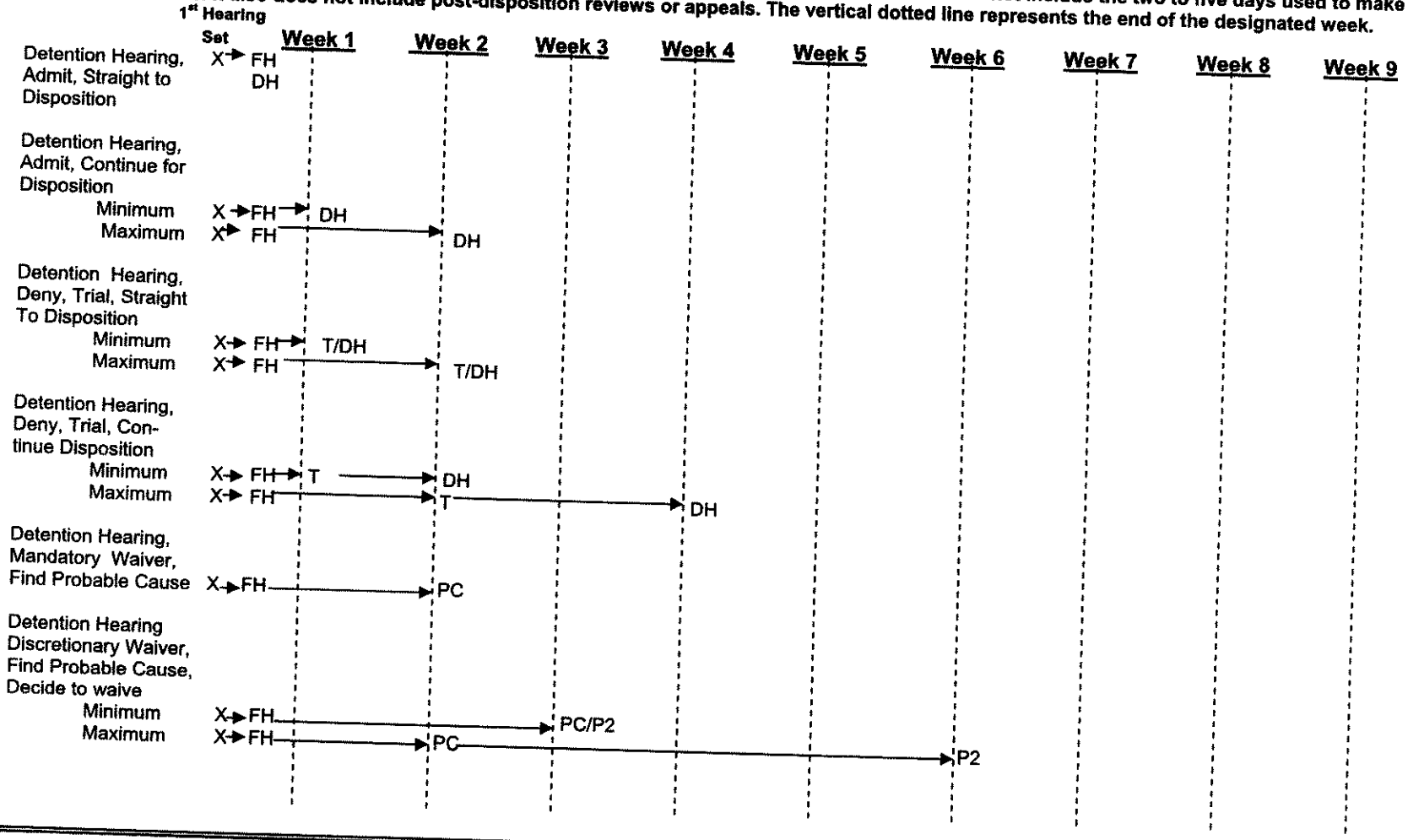
- The one to two days between receiving the affidavit and selecting the first hearing date on a case that is summoned to court are not included;
- Post-disposition review is not included due to the individual nature of the timing of post-disposition review; and
- Appellate review is not included.

All hearings in each type of delinquency case are charted by weeks. If the goals of the *DELINQUENCY GUIDELINES* have been reached, the majority of cases in the juvenile delinquency court will be reduced in length of time to:

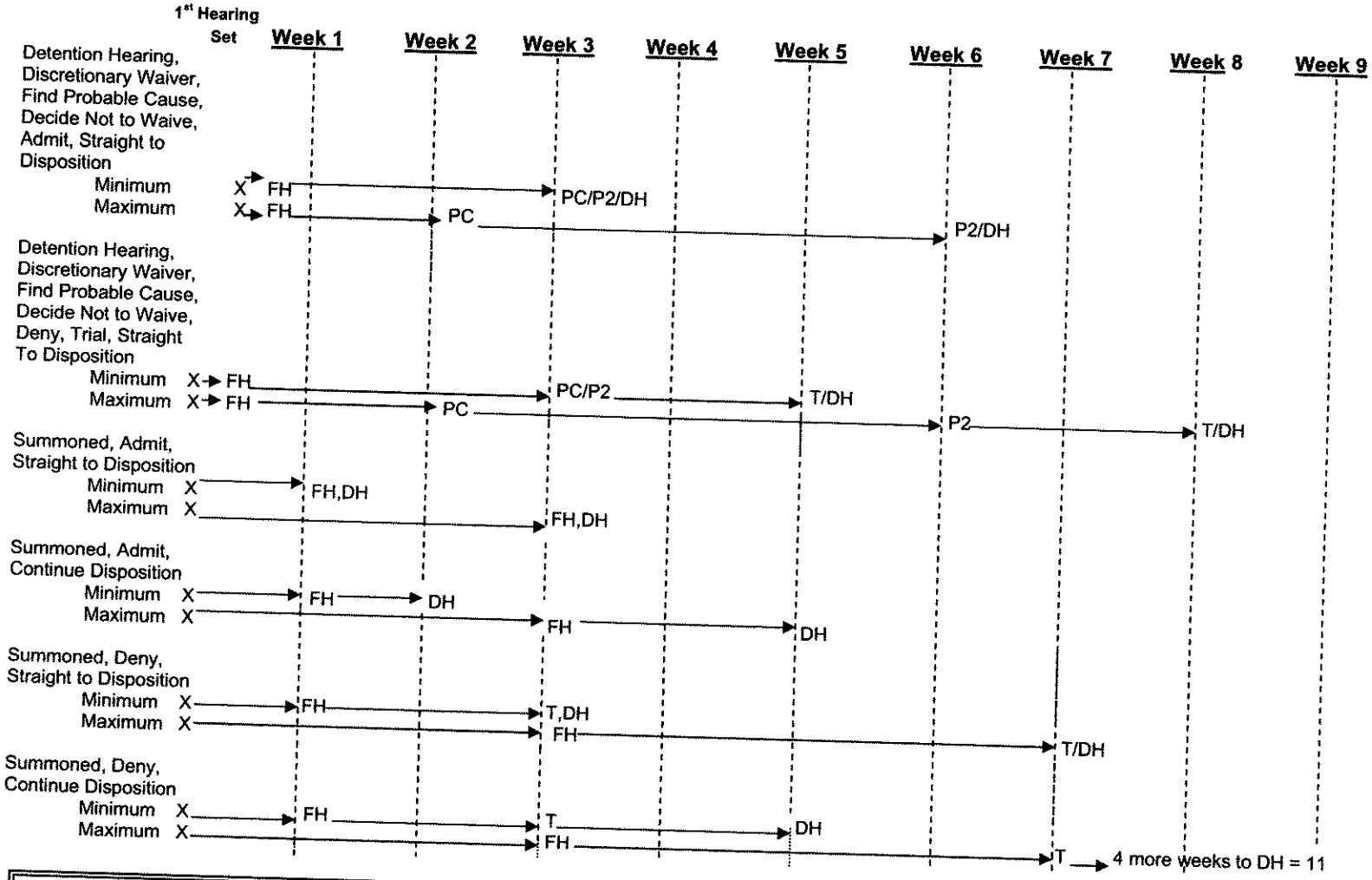
- One day to two weeks for a youth arrested and placed in detention who admits the allegations;
- One week to four weeks for a youth arrested and placed in detention who denies the allegations;
- One week to five weeks for a youth not detained who admits the allegations;
- Three weeks to six weeks for a youth transferred to adult court on a discretionary waiver and transfer; and
- Three weeks to 11 weeks for a youth not detained who denies the allegations.

The *DELINQUENCY GUIDELINES* Time Line Goals for Formal Juvenile Delinquency Court Hearings

The time line starts after the decisions of legal sufficiency and formal/diversion have been made. It does not include the two to five days used to make these decisions. It also does not include post-disposition reviews or appeals. The vertical dotted line represents the end of the designated week.



KEY:
FH – First hearing, which is either a detention hearing or an initial hearing
T – Trial
DH – Disposition Hearing
PC – Probable cause hearing on a motion to waive and transfer
P2 – Phase 2 (amenability) on a discretionary motion to waive and transfer



KEY:
FH – First hearing, which is either a detention hearing or an initial hearing
T – Trial
DH – Disposition Hearing
PC – Probable cause hearing on a motion to waive and transfer
P2 – Phase 2 (amenability) on a discretionary motion to waive and transfer

C. ASSESSING STRENGTHS AND OPPORTUNITIES FOR IMPROVEMENT

Once the juvenile delinquency court judge has made a personal commitment to implement some or all of the principles in the *DELINQUENCY GUIDELINES*, the judge should engage the executive leadership of stakeholder organizations in improvement efforts. The juvenile delinquency court judge should request stakeholder representatives to join juvenile delinquency court staff on a team to assess the efficiency and effectiveness of the current juvenile delinquency court system. The individuals involved in this team must have the authority to make decisions of major improvement within their organization, and be willing to open up their organizations to critical review of their structures and practices. The charge of the team is to:

- Review and discuss the *DELINQUENCY GUIDELINES*;
- Reach consensus on the measurable outcomes the juvenile delinquency system should accomplish. Outcomes measure whether safety in communities is increasing by supporting and implementing both effective delinquency prevention strategies as well as a continuum of effective and least intrusive responses to reduce recidivism; whether juvenile offenders are being held accountable to their victims and communities by enforcing completion of restitution and community service requirements; and whether competent and productive citizens are being developed by advancing responsible living skills of youth within the jurisdiction of the juvenile delinquency court;
- Look at existing data to compare what outcomes the system is currently achieving as compared to the vision of success;
- Develop teams to assess critically areas of current operations that are not meeting the vision of success;
- Convene the team and executive leadership to discuss team findings and recommendations, to celebrate those areas that are meeting the vision of success, and to identify and prioritize areas needing improvement.
- Identify through the NCJFCJ and other juvenile justice organizations whether there are other juvenile delinquency courts that have successfully addressed the areas that the leadership and team have prioritized for improvement. If so, learn from their success.
- Assign improvement areas to appropriate teams and reconvene 30 days later to review the team's goals, objectives, methods of measuring performance, and timelines; and
- Team leaders and stakeholder executives continue to meet at least quarterly to monitor team progress, problem solve system barriers, adjust plans as needed, and monitor improved outcomes.

The juvenile delinquency system should be willing to share their improvement experiences with other juvenile delinquency courts.

D. CASELOADS AND WORKLOADS[8]

Key Principle 2: Juvenile Delinquency Systems Must Have Adequate Staff, Facilities, and Program Resources *states in part that juvenile delinquency systems must have sufficient numbers of qualified judges, judicial officers, probation officers, case management staff, intake staff, prosecutors, public defenders, and victims' advocates to create manageable caseloads and timely process.*

Many organizations have looked at the issue of determining how many cases juvenile judges, probation officers, prosecutors, and other professionals in court systems can reasonably handle. Most studies have come to consensus on several points:

- A common reaction from courts not performing well on measures of court performance is that they lack the resources necessary to perform well. Conversely, some courts perform well given roughly the same resources, leading some to conclude that resource levels do not affect performance. While the availability of sufficient resources does not guarantee good performance or positive outcomes, the lack of adequate resources will almost always hamper a court's performance.[9]
- The process of setting caseload standards must include workload. Caseload is only one part of workload. Workload includes not only time spent on cases, both in and out of the courtroom, but also non-case related activities such as evaluating aggregate results, leading and participating in collaborative efforts to improve the system, participating in training, and educating the community at large.
- Different types of cases take different amounts of time. It is not sufficient to take an overall average of hours per case, times the total number of cases. The system must determine both how much time a type of case averages, as well as what percentage of cases fall into the particular case type. Using probation as an example, there are high-intensity cases, medium intensity cases, and low intensity cases, each requiring different amounts of hours per month. In order to complete the calculation for time spent on

caseload, you must know the percentage of cases that fall into each intensity category as well as the hour per case.

- It is not feasible to develop national caseload and workload standards because structures, goals, responsibilities, and procedures vary significantly from jurisdiction to jurisdiction. Examining and setting caseload and workload standards must take place at the local level and information developed at the national and state level must be translated to the unique context of the local jurisdiction.[10]
- Measuring how a person in a specific position is currently spending time is helpful in identifying areas where the position requirements can be restructured to become more time productive; however, to determine what a reasonable workload looks like, it is important to measure not what is currently happening, but what should be happening in the system you aspire to.

There are different methods of determining how much time cases and other work activities need. A totally subjective approach of isolated individuals trying to estimate time on task will usually result in over-focusing on the problem cases and overstating needed time. The generally recommended method of estimating time on task is a combination of gathering objective data through time study and weighted caseloads, and gathering subjective data using the Delphi method. The Delphi method brings together groups of experienced individuals who identify specific tasks they perform and estimate the amount of time they spend or should spend completing each task, using group process led by a facilitator.

Juvenile delinquency systems can use the following steps to determine caseloads and workloads for a particular system role, e.g., juvenile delinquency court judge, prosecutor, counsel for youth, or probation officers:[11]

1. The juvenile delinquency court administrative judge convenes system representatives across roles and decides what changes will be made to improve the current system. A flowchart is created for the improved system that identifies the points of change between the current system and the improved system.
2. Each system representative convenes a steering committee of experienced professionals who guide the workload study of their specific role.
3. The steering committee identifies what workload components not related to the handling of cases should be included in the workload study.
4. Building from the system flowchart created in step 1, the individual steering committee designs a flowchart of their specific caseload responsibilities, as they will be in the improved system.
5. The team identifies the average amount of time required for each step in the caseload flowchart using a combination of time study and Delphi method. For the steps that are the same in the improved system as in the current system, a time study should be used. For the steps that will be changed in the improved system, the Delphi method should be used.
6. Determine the different types of cases and the average frequency of occurrence for each step in each type of case.
7. Multiply the amount of time in step 5 by the number of occurrences in Step 6.
8. Determine the percentage of each case type, as it will exist in the improved system. Start by looking at current percentages and then factor changes that will be caused by the improved system. As an example, a juvenile delinquency court now diverts 5% of cases to community diversion and handles 95% of the cases in the formal system. In the improved system, all status offenses and first time misdemeanants will be diverted. In your current system, status offenses and first time misdemeanants total 30% of all cases. Therefore, you use 30% as your projection for diverted cases in your caseload study.
9. Using the percentage from step 8, determine the number of cases that will annually fall into that case type.
10. Multiply the amount of time for each case type from step 7 by the number of cases for that case type from step 9. This gives you the total number of hours that need to be available in the system for caseload activities for this role (i.e., 10,000 hours are needed to cover all case related judicial responsibilities).
11. Through time study and Delphi method, determine the amount of time required for the non-case related items identified in step 3.
12. Add this time to the hours in step 10.
13. Determine the number of hours available annually per FTE for each specific position (e.g., if a judge gets 6 weeks of paid time off for vacation and sick leave, gets 12 holidays, and is expected to works a 40 hour work week, the judge works 218 days or 1,744 hours per year). Divide the total number of hours from step 12 by the number of hours available per year per position. This will give you the number of staff required to fulfill this role in the improved system (e.g., if 12,000 hours are needed to cover case and non-case judicial responsibilities from step 12, then 12,000 divided by 1,744 means the system needs 7 FTE judicial staff).

If your committee determines that more staff will be required in this role than dollars are available, the committee's next step is to determine if adjustments can be made in time per task that will be least likely to impact outcomes. On the other hand, if the committee determines that system improvements have reduced the amount of staff that will be needed, which is very likely to happen in some of the roles, resources have been identified that can be reallocated to another role in the system whose responsibilities have increased, instead of decreased.

Once each steering committee has completed its work, the system representatives from step 1 reconvene to discuss the results. It is highly likely that some roles will need more resources and some roles will need fewer resources. This is the process point that requires unwavering focus on the mission to create the best possible system for the community. Unless system representatives and steering committee members resist the urge to protect their own turf and inflate time needed to do their job to "protect" their jobs, and are willing to support resource shifts, embarking on a workload study will be futile. Similarly, having only those roles whose responsibilities will increase under the new system engage in the workload study produces data of minimal value because there may be insufficient dollars to enable increased resources without identifying areas that now need fewer resources. The examples in section F of this chapter clearly show how juvenile delinquency system improvements create opportunities to free resources from one area to shift to other areas and improve outcomes.

The next step in the assessment process is for the system representatives to jointly determine the transition steps from the current system to the new system, to create a transition plan, and to present the plan to the entity or entities that control the financial resources of the systems. In order to successfully accomplish the workload assessments in a systems improvement effort, the juvenile delinquency system must have strong judicial leadership, a commitment to system collaboration, and an unwavering commitment to provide the best juvenile delinquency system possible to youth and the community.

E. MANAGEMENT INFORMATION SYSTEM DESIGN AND REPORTS

Key Principles 14 and 15 of the *JUVENILE DELINQUENCY GUIDELINES: Improving Court Practice in Juvenile Delinquency Cases* state:

> ***Juvenile Delinquency Court Judges Should Hold Their Systems and the Systems of Other Juvenile Delinquency Court Stakeholders Accountable*** – *Juvenile delinquency court judges should ensure that the juvenile delinquency system has measurable goals, key principles, and objectives that serve as standards against which system performance is measured, and that an annual delinquency system "report card" is made available to stakeholders and the public.*
>
> ***Juvenile Delinquency Court Judges Should Ensure the Court Has an Information System That Can Generate the Data Necessary To Evaluate Performance, Facilitate Information Sharing with Appropriate Agencies, and Manage Operations Information*** – *Juvenile delinquency court staff should regularly generate aggregate data for monitoring and managing court performance, and the judiciary and other appropriate court staff should be able to use the system to obtain case tracking and case management data on* individual cases as well as manage other operation information needs such as property and evidence.

The juvenile delinquency court of excellence designs its management information system to accomplish two primary, very important, but different purposes – individual case tracking and case management, and aggregate performance outcome data.

1. Individual Case Tracking and Case Management

The first major purpose of management information system design is to enable individual case tracking and case management. Examples of what the components of this part of the system should be able to do include:

- Accept electronic filing of affidavits and petitions, linking a new filing with any other pending filings.
- Link information on family groups, abuse and neglect cases, and any other type of petitions handled by the juvenile delinquency or family court, such as child support, domestic relations, etc.
- Schedule petitions for hearings on the assigned juvenile delinquency court judge's docket, within specific date and time parameters, and generate the summons and all other information that should be sent with the summons.
- Manage hearing schedules of judges, prosecutors, public defenders, and probation officers, to enable courtroom staff to schedule the next hearing at the end of each hearing

a during time open to all four parties or key participants.

- Produce juvenile delinquency court written findings and summaries at the end of each hearing from data entered into the system by the judge or courtroom staff during the hearing. Refer to the sample disposition order in Appendix E.
- Organize current individual case activity including disposition orders, services, detention records, and individual case progress records.
- Provide access to judges, probation officers, and other approved key participants, at various security levels, to current and complete information on the status and progress of each alleged or adjudicated delinquent youth and each case, including all file documents, and all hearing activity, both date and purpose.
- Link juvenile delinquency court orders of restitution, fines, and court costs to the current status of payment on these accounts.
- Archive documents.

It is important to note that this is not intended to be a complete list of the tracking and case management functions that should be part of the juvenile delinquency court's management information system capability.[12]

2. Performance and Outcome Data

The second major purpose that the management information system of the juvenile delinquency court of excellence must be designed to accomplish is to produce aggregate information. This information has two purposes:

- To measure the juvenile delinquency court's annual activity (e.g., how many complaints were handled, how much restitution was collected, how many youth were diverted). Many state juvenile delinquency court statutes require the juvenile delinquency court to publish an annual report that measures activity. (These numbers also are needed to measure outcomes but are not in and of themselves outcome measurements); and
- To measure whether or not the juvenile delinquency court is accomplishing its goals and objectives (e.g., what percentage of restitution ordered was collected, what percentage of youth were diverted and were not charged with subsequent offenses, what percentage of victims rated their court experience as positive). These percentages become outcome measures when compared with numerical goals that have been set by the system. Few, if any, state statutes require the juvenile delinquency court to publish whether it is accomplishing its goals. Without a performance measurement system in place, the juvenile delinquency system will not know what works, for whom, and in what circumstances.

Most juvenile delinquency management information systems can report how many petitions were filed, with how many counts, and for what types of law violations; how many boys and girls committed the offenses and their ethnicity; and what dispositions the juvenile delinquency court ordered. **Relatively few systems, however, can produce all of the information needed to measure to what extent the juvenile delinquency court is progressing in achieving its goals**.

With increased scrutiny by legislatures, Congress, and other key policy makers, and with widely publicized but rare tragedies of individual offenders, juvenile delinquency courts need to be able to produce clear data about the norms of the system's performance. Without a performance measurement system in place, the juvenile delinquency court will be forever vulnerable to critics.[13] In addition, systematic evaluation helps improvement agents increase their accountability, articulate the value of their efforts, and compare the effectiveness of different improvement strategies. Good data and performance measurement are essential for the long term expansion and sustainability of successful reform efforts. In the current fiscal environment, funding for improvements is possible only with compelling and objective evidence that improvements will achieve concrete and favorable results to enhance community safety by changing the law breaking behavior of delinquent youth.[14]

The juvenile delinquency court judge should lead a collaborative effort of all delinquency system stakeholders to establish and articulate clearly delinquency system goals. The juvenile delinquency court and each system stakeholder should subsequently establish aligned goals and objectives so that the juvenile delinquency court and all system stakeholders are moving in the same direction and can measure and report progress. The juvenile delinquency court should measure the outcomes of all routinely court ordered services to ensure they are effective. Examples of the type of data that the aggregate part of the juvenile delinquency court management information system should be able to provide includes:

- The amount of time between each hearing or process step, the total time from affidavit to disposition and from disposition to case

closure, aggregately and by judge to determine if the system is timely;

- The number of, lengths of time, and reasons for continuances, aggregately and by specific judge, prosecutor, and public defender which are components that determine whether the system is timely;
- Comparison of detainment and court-ordered dispositions for youth with similar charges and characteristics, aggregately and by detention intake staff and judge to determine whether the system is just;
- The percentage of cases diverted to informal resources that never return to the court system after completing the diversion intervention; and of those that do return, analysis by type of offending behavior, length of time between completing diversion and return to the system, service intervention, and service provider to determine if diversion is successful and for whom;
- Who is filing status offenses and for what reasons to determine if the resources of the juvenile delinquency court are being used appropriately;
- The percentage of youth who are adjudicated on one petition but never return to the juvenile delinquency court system after completing their court-ordered disposition; and of those who recidivate, analysis by type of offending behavior, length of time between completing disposition and return to the system, and what service interventions and service provider were used to determine if the system is preventing recidivism;
- The percentage of youth brought to juvenile detention but not admitted, who brought them, why they were not admitted, and an analysis of whether those youth eventually ended up in detention prior to completion of the disposition hearing, and if so, why, to determine if resources are being used efficiently;
- Analysis of whether disproportionate minority contact is occurring at any juvenile delinquency court decision point to determine if the equitability of system decision making processes need to be further explored;
- Analysis of the number of offenses by number of offenders to determine the percentage of youth responsible for the majority of offenses and their characteristics to determine where the system's resources are needed most;
- Cohort data on specific groups of youth, for instance, of youth who were eight to 10 years old when they had their first juvenile delinquency court contact, how many were also abused and neglected, what was their offending behavior, who filed the petition, what was the juvenile delinquency court's intervention, and the cohort's rate of recidivism to understand the characteristics of the youth the system serves; and
- Comparisons of recidivism by risk of reoffending and disposition intervention to determine what works for whom.

It is important to note that this is not intended to be a complete list of the aggregate outcome data that should be available through the juvenile delinquency court's management information system.[15]

3. Juvenile Delinquency Court Report Cards

***The DELINQUENCY GUIDELINES recommends* that the juvenile delinquency court produce an annual "Report Card" that measures progress toward goals**. The juvenile delinquency court should select several goals and objectives that reflect the overall goals of the court, as well as goals related to improvement initiatives. Examples of overall goals are:

- *The juvenile delinquency court has increased safety in communities by supporting and implementing both effective delinquency prevention strategies as well as a continuum of effective and least intrusive responses to reduce recidivism*, as measured by:
  - The juvenile crime rate;
  - The percentage of youth who recidivate; and
  - A reduction in the number of instances of recidivating for youth who do recidivate.
- *The juvenile delinquency court held juvenile offenders accountable to their victims and community by enforcing completion of restitution and meaningful community service requirements*, as measured by:
  - The percentage of restitution dollars paid as compared to those ordered;
  - The cost of collecting the restitution dollars and net proceeds;
  - The percentage of community service hours completed as compared to those ordered; and
  - The percentage of victims satisfied.
- *The juvenile delinquency court helped develop competent and productive citizens by advancing the responsible living skills of youth within the jurisdiction of the juvenile delinquency court*, as measured by:

- Increased skill levels of youth at the end of their informal or formal juvenile delinquency court involvement (as measured by a validated pre- and post-test of specified skills);
- Increased school attendance; and
- Increased resistance to drugs and alcohol.

Examples of improvement initiative goals that a system might select for focus include:

- *Are more youth being diverted to the informal system and fewer youth being handled by the formal system*, as measured by:
  - The percentage of legally sufficient affidavits handled informally and formally this year as compared to previous years or to the goal set by the juvenile delinquency court.
- *Are the youth diverted to the informal system being diverted successfully*, as measured by:
  - The percentage of informal diversions not successfully completed (successfully completed defined as meeting the stated expectations); and
  - The percentage of successfully diverted youth who recidivate within 12 months.
- *Is the secure detention population decreasing because more youth are being successfully handled in non-secure detention facilities and has this either maintained or decreased costs*, as measured by:
  - Comparison of number of youth in secure detention;
  - Percentage of formal petitions detained;
  - Number of secure detention diversions who subsequently end up in secure detention during the course of the court's handling of the petition; and
  - Total costs of detention and detention alternatives as compared to a prior period of time.
- *Are fewer continuances being granted and is this resulting in a more timely system*, as measured by:
  - The percentage of cases with continuances;
  - The median and range of number of continuances on cases with continuances; and
  - The median time between the petition filing and disposition as compared to a prior period of time.

The report card information should not be interspersed with the facts and figures of the juvenile delinquency court's activity as reported in the annual report. The report card should either be a separate report, or should be the first section of the annual report in order to give it the appropriate emphasis and keep it from getting "lost" in pages of numbers. Ideally, the report card should be two to four pages, limit its reporting to six to eight primary measures, and report the data through easy to read graphs that show performance over time.[16]

In addition to the summarized Report Card that is distributed to the public that highlights the most important outcomes, the juvenile delinquency court judge and stakeholders should regularly look at more detailed information to measure outcomes and progress toward goals such as:

- Percentage of youth successfully completing each disposition category, including probation, placements, and other frequently used dispositions; and
- Percentage of youth who recidivate while under probation supervision.

F. FINDING THE RESOURCES

A juvenile delinquency court may hesitate to move forward in implementing the recommendations of the *DELINQUENCY GUIDELINES* because the court assumes that significant additional resources will be required. The *DELINQUENCY GUIDELINES* states throughout this book that some of the recommendations require initial transition funding to implement the practice, but then show sufficient cost reductions to allow the practices to continue without permanent cost increases. Some recommendations require resource shifts to implement. Other recommendations can be implemented without cost. It will not be an easy task to implement these recommendations without adding new resources, but it can be substantially done with reprioritization and working through some difficult decisions. An example of a court that has literally done more with less is the Clark County Department of Juvenile Justice Services in Las Vegas, Nevada. Their experience has been described in *Resource Reallocation: The Clark County Experience.*[17]

Throughout the chapters of the *DELINQUENCY GUIDELINES*, examples of ways to implement improved practices without long term increased system costs have been given. Those examples are consolidated in this section of the last chapter of the *DELINQUENCY GUIDELINES.*

1. Freeing Resources for Reallocation by Controlling the Number of Formal Cases

One study in the 1970s revealed that in a particular juvenile delinquency court, 80% of the offenses were committed by 20% of arrested youth.[18] A more recent study in 1999 showed that in another juvenile delinquency court jurisdiction, 60% of arrested first offenders did not return on a subsequent offense, 26% of arrested offenders returned on a second or third offense, and 14% of arrested offenders returned for four or more offenses.[19] When a juvenile delinquency court can identify, using a validated intake screening tool, those youth who are *not* likely to reoffend, and divert them from the formal system to informal diversion, a significant amount of juvenile delinquency court resources will be freed for reallocation. These resources include docket time, intake and docketing staff resources from fewer new formal petitions, reduced demands on prosecutors and counsel for youth, and reduced demands on probation. Well-designed informal diversion holds youth accountable for their offending behavior yet is significantly less expensive than formal case processing. Some of the saved resources can be reallocated to fund and expand diversion options, which will enable even more youth to be diverted from the formal system. Other saved resources can be reallocated to the formal system to improve outcomes.

Key Principle 6 states: Juvenile Delinquency Court Judges Should Ensure Their Systems Divert Cases to Alternative Systems Whenever Possible and Appropriate *– Juvenile delinquency courts should limit formal processing of petitions to cases where it is apparent that law enforcement diversion, prosecutor diversion, or juvenile delinquency court diversion to community services, has failed to protect, or will be ineffective in protecting the community from significant risk of harm.*

Juvenile delinquency courts should encourage law enforcement officers and prosecutors to consider diversion for every status offender, every first-time and non-violent misdemeanant offender, and other offenders as identified by a validated risk of reoffending screen as low risk to reoffend. Juvenile delinquency court judges should engage community members, law enforcement officers, and the prosecutors to develop diversion programs, including dispute resolution alternatives. Juvenile delinquency court judges should participate in the creation and ongoing monitoring of these programs to ensure that they are successfully diverting appropriate alleged juvenile offenders.

Collaboration between the juvenile delinquency court, law enforcement, prosecution, and community services can provide a broad range of informal programs needed to successfully divert all but the more serious charges. Examples of practices that can increase the number of cases successfully handled by informal diversion resources include:

- Many community law enforcement agencies have committed to the concept of community oriented problem solving (COPS). These law enforcement agencies include as part of their mission the responsibility to get to know members of the community using methods not necessarily considered "traditional." Congruent with this method of policing is operating youth diversion programs, where community police interact with at risk youth in activities such as washing police cars, cleaning up public community areas, and performing meaningful community service activities for needy members of the community in lieu of formal referrals to the juvenile delinquency court. These programs can be very successful in holding low-risk youth accountable for offenses in an informal way and helping youth to reconnect in a more positive way with their communities.
- In Cook County (Chicago, Illinois), the prosecutor's office is responsible to screen all affidavits for legal sufficiency and to divert all appropriate cases from the formal system. The prosecutor uses victim-offender conferencing as a diversion option. The prosecutor also uses mediation to divert formal action on youth who are acting out in community placements.
- Many community programs are funded through a variety of resources to provide services to at risk youth. When the juvenile delinquency court and these services collaborate, the juvenile delinquency court increases resources to divert youth from the formal system, and the services save resources they would have used on marketing and recruitment to identify youth needing their services.
- In Lucas County, Ohio (Toledo), mediation has been used since 1991 to meet the demand of status offense cases brought to the juvenile delinquency court. The settlement rate has consistently exceeded 90% and has reduced the percentage of adjudicated status offenders from 26% to 5%. The percentage of status offenders placed on probation fell from 19% to less than 1%.
- Lucas County also uses mediation as an informal method to divert truancy cases. Early identification of truancy and using mediation to improve the lines of communication between teachers and parents of chil-

dren who are excessively absent from school results in a more positive relationship between the family and the school, resulting in better school attendance.

- Youth courts operate on the premise that the judgment of a juvenile offender's peers may have a greater impact than the decisions of adult authority figures. Therefore, if other teens question and confront an offending youth's behavior and attitudes, there should be a substantial rehabilitative effect. By integrating teen offenders into the jury after they have completed their sanctions, they are helped to reintegrate into the prosocial community. Youth courts save juvenile delinquency court resources because they handle a substantial number of youth offenders at relatively little cost due to using primarily volunteer youth and adults.
- In Marion County (Indianapolis, Indiana), dispute resolution alternatives were first used within the formal juvenile delinquency court system. They were subsequently transitioned to the school, community, and police as an informal intervention to prevent cases from entering the juvenile delinquency court system as filed affidavits.
- The State of Oregon has 26 Community Dispute Resolution Centers in 20 counties. The centers are used as part of a graduated response effort at the front end of the juvenile delinquency system to divert cases. Early data shows a reduction in recidivism between 79% and 65% one year after completion of the program.[20]
- Connecticut has established a statewide Juvenile Mediation Program for minor delinquency cases. Probation officers, trained to maintain a neutral facilitator role, serve as mediators to assist parents and children in resolving the interfamily conflicts underlying the problematic behavior. Communications during the process are strictly confidential with only the terms of the agreement presented to the juvenile delinquency court judge. An evaluation of the first year of the program found that 85% of the minor delinquency cases brought to this program were resolved through mediation.[21]
- Juvenile delinquency courts or community organizations can use community volunteers in Better Business Bureau arbitration model dispute resolution alternatives, and students at local colleges of law can provide informal mediation as volunteers.

When the juvenile delinquency court, key stakeholders, and community leaders work together and create community resources for diversion to informal resources, juvenile delinquency courts can conserve more expensive resources to provide more comprehensive services for more serious cases.

2. Freeing Resources for Reallocation by Controlling the Detention Census

Due to the physical features of secure detention and the staffing demands to ensure youth safety, secure detention facilities are expensive to operate. Several studies have found evidence that detention rates vary in direct proportion to the availability of detention beds.[22] Reductions in detention population can be accomplished while still providing community safety when juvenile delinquency courts, and the intake and detention facilities that support them, have processes in place to ensure that only those youth who require secure detention are entered into secure detention, and that these youth are released appropriately in a timely fashion.[23] Controlling detention intake, and thereby reducing the necessary bed capacity of a juvenile detention facility, can save significant costs in staffing, as well as eliminate the cost of expanding existing detention facilities. Juvenile delinquency systems can manage their detention population without putting the community at risk, without building bigger facilities, and without filling every available secure detention bed.

An effective system to manage secure detention intake and a system to ensure that detained youth are released in a timely fashion will make the most significant impact on keeping the detention population within capacity. This can be accomplished by:

- Using validated risk of reoffending screens at detention intake to determine which youth can be safely released or diverted to non-secure options. In 1992 in Multnomah County, Oregon (population 650,000) the average pre-and post-adjudication detention population was 96 youth, approximately 75% of whom were probation violations. After implementing a detention risk assessment and other recommendations of the *DELINQUENCY GUIDELINES*, the daily average was reduced to 22 youth.
- Setting a maximum acceptable secure detention daily population; communicating the number of youth in detention along with the number of openings in the various non-secure detention options daily to judges and probation officers; ensuring less expensive non-secure options are available with sufficient capacity so that some openings always exist; and regularly reinforcing to all juvenile delinquency court staff the judge's expectation to keep detention within the estab-

lished acceptable population boundary.

- Involving representatives of juvenile delinquency court divisions, detention, law enforcement, victim advocacy groups, child welfare agency, prosecution, counsel for youth, and the community in examining an overcrowding problem and creating a continuum of options to solve the problem.
- Ensuring that no pre-disposition youth is held in detention without a timely pending court date.
- If statutes allow detention to be used as a disposition consequence, having clear guidelines regarding when it is appropriate to use detention in this manner, for how long, and requiring that the juvenile delinquency court order specifies a reasonable end date for the detention.
- Holding weekly meetings led by the administrative judge and including invited representatives of all pertinent system participants, including judicial officers, probation officers, detention intake staff, detention management staff, prosecutor, counsel for youth, child welfare representatives, and school administrators, to review any youth who is in detention post-adjudication. The purpose of the review is to keep everyone focused on this high priority issue, to ensure that there is a valid reason to continue to hold every youth, and to ensure that systems involved in setting up disposition services are acting in a timely fashion, so that no youth remains in secure detention longer than is absolutely necessary. Ancillary benefits of this process are helping participants increase their understanding of the type of youth who should be held in secure detention, as well as improving inter-system relationships and collaboration.
- Developing a continuum of options to secure detention that will enhance community safety, keep youth who need crisis mental health or substance abuse detoxification facilities out of secure detention, help youth build skills, and conserve resources. Examples of continuums that can reduce the detention population, maintain community safety, reduce costs, and thereby release funds for reallocation, include:

➢ Lucas County Juvenile Court (Toledo, Ohio), an urban and suburban area with a population of approximately one-half million has a detention facility that could house 125 youth, however, it averages a daily population of 60. This enables three units to remain closed at significant savings. A portion of these savings fully funds a three-tiered system of alternative detention levels. When a youth is arrested and brought to the detention facility, a risk of reoffending screen is completed which places the youth in one of three levels:

Level 1 is secure detention.

Level 2 is a detention reporting center. Youth in school are required to report to a center 34 hours a week, and youth not attending school are required to report to the center 51 hours a week. While at the reporting center, youth are involved in structured programming that includes a "thinking error" behavioral management program, tutoring, job readiness, basic living skills, community service, recreation, and drug testing.

Level 3 is home detention. Youth have a minimum of two surveillance contacts per day and six hours of weekly programming at the detention reporting center.

Level 2 and Level 3, referred to as community detention, together average a cost that is less than one-third the cost of Level 1. Level 2 and Level 3 options have a capacity of 55 youth per day. In 83% of cases, youth successfully completed all three requirements of the community detention program which are: 1) appearing at all juvenile delinquency court hearings as scheduled; 2) not engaging in behavior that results in additional charges while in community detention; and 3) not exhibiting behavior in community detention that would require placement into secure detention.

➢ The Circuit Court of Cook County, Juvenile Delinquency Division (Chicago, Illinois), a very large urban juvenile delinquency court, decided it needed alternatives to secure detention when the 500-bed detention facility was consistently running at 800 youth per day. This jurisdiction has a population of approximately six million. With assistance from the Annie E. Casey Foundation, they instituted a continuum of options to secure detention that resulted in reducing the secure detention population to an average of 475 youth per day. When the grant ended, more than enough resources were being saved annually from reduced secure detention staffing costs to continue to support the cost of the continuum of options.

A risk of reoffending screen is used at detention intake to determine which

option should be used. As in Lucas County success is defined by three factors: 1) appearing at all juvenile delinquency court hearings as scheduled; 2) not engaging in behavior that results in additional charges while in community detention; and 3) not exhibiting behavior that would require placement into secure detention. The options included in this continuum and the percentages of youth who successfully complete each alternative to secure detention are:

Juvenile Delinquency Court Notification – the focus of this intervention is to keep out of detention those youth who do not appear for juvenile delinquency court, have arrest warrants issued as a result, and are usually held in secure detention after the warrant has been served. Many of these youth are in this predicament because of a lack of discipline by parents or youth in managing their appointments and obligations, as opposed to intentionally ignoring the juvenile delinquency court. Additional written and telephone reminder notices to all youth in advance of every pre-adjudication court hearing have reduced the number of youth who are placed in secure detention for this reason.

Community Outreach Supervision – Ten hours of random direct supervision contacts are made with youth by agencies within the community. Success rate is 94%.

Home Confinement – Youth receive two random home visits by a probation officer every three days during the evening and weekend, as well as random telephone voice verification approximately five times a week. Success rate is 94%.

Evening Reporting Center – Home confinement is combined with a requirement to report to a center five days a week from 4:00 P.M. to 9:00 P.M. There are five centers in different areas of the city operated by community organizations. Success rate is 95%.

Electronic Monitoring – Youth are placed at home on electronic monitoring supervised through collaboration between probation and the sheriff's office. Success rate is 96%.

Staff-secure Shelter – These shelters are designed for youth who are pending adjudication and disposition, and for youth awaiting non-secure placement. The shelters are operated by community agencies. Success rate is 96%.

- A study in North Carolina examined 19 alternatives to detention programs around the state, both in cities and rural areas.[24] All programs included careful screening for admission, intensive monitoring and supervision, small caseloads with individualized attention, strict rules for compliance and curfew, contacts at nights and weekends, verification of compliance at home and school, inclusion of supportive community resources, and rapid placement into secure confinement if needed.

  The study found the programs to provide less restrictive options to secure detention in a cost-effective manner without compromising public safety. Over 75% of the youth in the alternative programs successfully avoided secure detention. Of the less than 25% of youth that ended up in secure detention, less than 5% committed new offenses while in the program. The remainder failed due to technical program violations.

- Using family conflict resolution to create a release plan for youth being held in secure detention on domestic violence charges. This empowers the family in crisis to identify and select, with the approval of the juvenile delinquency court judge, the conditions of the child's release from detention and to create plans that will prevent future acts of violence.

In addition to these examples that control the detention census, for youth who are in detention between the time that the petition is filed and the juvenile delinquency court finalizes disposition, decreasing the length of time of the hearing process decreases the number of detention bed days, and therefore reduces the detention census.

3. Freeing Resources for Reallocation by Reducing Paperwork

The volume of paper that goes through most juvenile delinquency systems is huge. If a juvenile delinquency court can reduce this volume, it saves on paper expense, copying expense, and on space if files are maintained by hard copy instead of electronically, and reduces resources needed for records staff. In addition to reducing the number of formal cases, which was discussed in subsection 1 of this Section, and also results in fewer petitions to docket, issue summons, and process findings and orders, other examples of practices that can reduce paperwork include:

- Issuing only one warrant (writ) or one probation or parole violation at any given time on a youth, as opposed to multiple warrants and multiple probation violations simultaneously.
- Using one filing with multiple counts as opposed to multiple individual filings for related incidents. This reduces the amount of paperwork flowing through the system and reduces instances of multiple concurrent warrants. When this system is used, it is important to track both filings and counts per filing in the juvenile delinquency court's management information system.
- Police serving the summons. In some jurisdictions, as soon as the police complete their investigation and decide to file an affidavit without a request to detain the youth, the police officer assigns the initial juvenile delinquency court date using a predetermined system provided and approved by the juvenile delinquency court.[25] Police give the parent and youth written notice of the court date. This reduces the amount of time between the time the charge is filed and the first court date, and eliminates court resources used for setting initial hearings and handling service of the summons. Police are willing to serve this role because it enhances the impact on the offending youth by significantly reducing the amount of time between the offense and the juvenile delinquency court's response.
- Courtroom equipment has direct access to the juvenile delinquency court's management information systems and can select the next available juvenile delinquency court date given certain parameters at the end of each hearing. The management information system generates all needed paperwork, including the written juvenile delinquency court findings and orders for immediate distribution to parties. The written findings and orders serve as notification of the next hearing date and time and no additional service is required. The information system archives the information eliminating the necessity of further handling or recording of the paperwork.
- Recording hearings by using the most current technology. If a case goes to the court of appeals, the record is transmitted electronically.

4. Reducing Demands on Docket Time

Docketed hearing time impacts the number of judges and judicial officers, courtroom support staff, security personnel, prosecutors, and counsel for youth needed by a juvenile delinquency court. Reducing the amount of docket time required in a juvenile delinquency court system can either enable current staff to have the time to meet the recommendations of the *DELINQUENCY GUIDELINES* or it can reduce staffing needs in some areas to allow reallocation of resources in other areas. Examples in the prior subsections of this section that also reduce demands on docket time include reducing the number of formal cases and using dispute resolution alternatives instead of trials. Other examples of how juvenile delinquency courts can reduce the amount of docket time needed to handle delinquency cases include:

- Eliminating unnecessary hearing continuances, which reduces the number of hearings per case (and the length of time a detained youth is in detention) by:
  - ➢ Using the juvenile delinquency court's management information system to manage docket time, not only for the judge, but also the prosecutor, public defender, and probation officer to ensure that conflicting hearings are not set.
  - ➢ Setting subsequent hearings at the end of each hearing, with all parties and key participants committing to the time and date and then holding parties and key participants to their commitment.
  - ➢ Consolidating all pending petitions when a new petition is set for the first hearing so that multiple hearings on the same youth, on different petitions, and on different dates, are not necessary. Although an individual hearing will require a longer setting, the sum of docket time when petitions are consolidated is less than if they are held separately. In addition, the number of times parties and key participants must come to the court and the time spent on travel to and from the juvenile delinquency court are reduced.
  - ➢ Assigning two public defenders and two prosecutors to each juvenile delinquency courtroom. While one case is being heard, final preparation is being completed on the next case. This practice eliminates unnecessary continuances because counsel is not available, enhances the flow of cases, and allows for time specific case calendaring. It increases the number of cases that can be heard in a day, because it reduces judicial courtroom "down time"- time when the juvenile delinquency judge is waiting for a case to be called. When the number of

formal cases is reduced by diversion to informal resources, fewer cases require formal juvenile delinquency court resources because the front door is managed so that only the more serious cases are handled formally. The juvenile delinquency court needs fewer hearings and fewer courtrooms, and has higher productivity per courtroom. Overall, no additional prosecutors or public defenders were required when the Circuit Court of Cook County, Juvenile Delinquency Division (Chicago, Illinois) implemented this procedure.

- Implementing systems that allow counsel to become engaged in advance of the initial hearing, thereby preventing the need to continue a case for arraignment or first appearance of counsel. This method potentially saves one hearing on every new petition (see the next subsection).
- When a youth is adjudicated and the judge anticipates that the disposition will not be removal of the youth from the home, instead of referring the case to probation for investigation and continuing the case for disposition, the juvenile delinquency court judge refers the case to the probation department without setting a separate disposition hearing. The probation department has a structured process using validated screening and assessment tools and structured guidelines that determines the probation response. The probation plan is forwarded to the prosecutor, counsel for the youth, and the juvenile delinquency court judge for review and determination as to whether post-disposition review is needed. Because judges and hearing officers participated in developing the system and are confident that the design of the system will result in good decisions, they do not feel it necessary to have another hearing to approve probation's recommendation. In a jurisdiction with a population of one-half million, this practice has eliminated the need for 900 additional juvenile delinquency court hearings per year.
- On discretionary motions to waive juvenile delinquency court jurisdiction and transfer the case to the criminal court, some juvenile delinquency court systems use the time between the detention hearing and the probable cause hearing to both prepare evidence for probable cause and to conduct social, physical, and mental evaluations. This requires only one hearing which is bifurcated into the probable cause phase and the retain or waive phase. If a juvenile delinquency court's percentage of denying motions to waive juvenile court jurisdiction and transfer to criminal court is low, this system saves the setting of two separate hearings and conserves docket resources. Although the one hearing will require a longer setting, the sum of docket time will be less than if two separate hearings are held. In addition, the number of times parties and key participants must come to the court and the time spent on travel to and from the juvenile delinquency court is reduced.

- In systems with *De novo* hearings, eliminating the possibility that two trials could be necessary. This can be accomplished by implementing a pretrial conference system that requires parties to come together for a settlement conference. If a case results in a settlement, the parties present the settlement to the juvenile delinquency judicial officer on the same day as the settlement conference. If the parties cannot settle a case, it is then scheduled for a trial before a juvenile delinquency court judge for a date and time specific hearing with an appropriate number of hours allotted on consecutive days. This eliminates the possibility of both a trial before a judicial officer and a trial before the judge.

5. Finding the Resources To Provide Counsel for Youth on Every Formal Case

Key Principle 7 states Youth Charged in the Formal Juvenile Delinquency Court Must Have Qualified and Adequately Compensated Legal Representation. *Alleged and adjudicated delinquent youth must be represented by well-trained attorneys with cultural understanding and manageable caseloads. Juvenile delinquency court administrative judges are responsible to ensure that counsel is available to every youth at every hearing, including post-disposition reviews and re-entry hearings.*

On the rare occasion when the court accepts a waiver of the right to counsel, the court should take steps to ensure that the youth is fully informed of the consequences of the decision. A waiver of counsel should only be accepted after the youth has consulted with an attorney about the decision and continues to desire to waive the right.

This recommendation is anticipated to be one of the more controversial recommendations of

the *DELINQUENCY GUIDELINES* because juvenile delinquency systems may believe they simply do not have the resources to comply. In addition, juvenile delinquency court personnel have sometimes perceived that when counsel represents youth, the court process is delayed and made more cumbersome. In contrast to this perception, juvenile delinquency courts have found that providing qualified counsel facilitates earlier resolution of summoned cases.[26]

When juvenile delinquency courts do not create systems that enable counsel to be appointed and engaged in advance of the initial hearing, they cause additional unnecessary hearings to be set. Families who can afford private counsel do not have these barriers and rarely appear at the first juvenile delinquency court hearing without prior consultation with counsel.

The two reasons that juvenile delinquency courts who implement the recommendations of the *DELINQUENCY GUIDELINES* will be able to find the resources to meet this key principle have both been discussed in previous subsections:

- Significantly reducing the number of formal petitions, and consequently significantly reducing the number of cases where the appointment of counsel is needed.
- By implementing the resource saving processes described in *Section 4: Reducing Demands on Docket Time,* the court further decreased the number of times counsel must appear on each case.

When a juvenile delinquency court improves its system in these ways, there is a strong likelihood that existing resources for appointment for counsel for youth can handle a greater percentage of formal cases with reduced caseloads that allow a higher degree of quality. An example of a court that has successfully made this transition is one of the largest juvenile delinquency courts in the country, Circuit Court of Cook County in Chicago, Illinois.

6. Reducing Demands on Probation Resources

A high percentage of juvenile delinquency cases use the resources of the probation department. If probation officers do not have caseloads that allow them to perform substantial probation work, the juvenile delinquency court will not be able to accomplish the recommendations of the *DELINQUENCY GUIDELINES* regarding probation. Juvenile delinquency court probation departments that have high officer caseloads resulting in once a month meetings with probationers, do not change youth behavior nor significantly impact recidivism.

One of the solutions to this resource problem is the same as mentioned in most of the prior resource sections - if a juvenile delinquency court manages intake and diverts most status offenses and first time non-violent misdemeanors to informal community resources, the demand on probation services will be significantly reduced. Probation officers can then focus on the 20% to 40% of youth who are responsible for 60% to 80% of law violations, instead of expending resources on youth who would not recidivate, even if not placed on probation.[27] These probable non-recidivating youth can be identified with a good degree of accuracy when juvenile delinquency systems use a validated risk of reoffending screening tool at intake, and divert those youth who score as low risk to reoffend to community resources. When juvenile delinquency court dockets are so full that in many less serious cases a 10-minute hearing occurs and ends with case closure, the court cannot expect to change youth behavior or impact recidivism. Less expensive informal systems can both ensure that these youth are held accountable for their offending behavior and ensure that service needs are identified and met.

Another way of freeing probation officer time to do substantive probation casework that has already been mentioned is by referring the case to the probation department without setting a separate disposition hearing on non-placement cases (see subsection 4). Additional practices to consider to free probation time to do substantive probation casework include:

- Not requiring probation officers to attend lengthy probable cause hearings on motions to waive juvenile delinquency court jurisdiction and transfer to criminal court. Generally the probation officer's presence is not needed, unless he or she is required to testify, or unless the case is a discretionary waiver and the necessary evaluations are available to move directly into the second phase of the proceeding if probable cause is established. Probation can convey any needed information to the juvenile delinquency court judge by written report or electronically through the court's management information system.
- Not requiring probation officers to attend trials. Generally, the probation officer's presence is not needed, unless she or he is required to testify, or unless the case will move immediately into the disposition phase if the youth is adjudicated. In many instances, the probation officer can convey disposition recommendations by written report or electronically through the court's management information system.
- Managing the docketing process through the

management information system, so that probation officers have assigned days in juvenile delinquency court (i.e., scheduled one day a week) so that they can spend more time in the field and plan their time more efficiently.

- Management information systems, directly accessible by the juvenile delinquency court judge or hearing officer, that routinely convey probation reports and recommendations to the judge in most cases. This system releases the probation officer from needing to be in the courtroom unless there is a specific reason requiring the probation officer's presence (e.g., the recommendation is placement, or parties disagree with the probation recommendation).

Some juvenile delinquency courts may not consider these opportunities because they are foreign to current jurisdictional practices. However, if a juvenile delinquency court desires to conserve system resources and stretch the resources it has to produce the most impact, it should objectively evaluate the benefits of having probation officers in the courtroom as observers for extended periods of time as this can consume as much as 40% of a probation officer's time.

7. Decreasing Costs of Care

When the juvenile delinquency court diverts less serious youth to informal resources, the result will be that a higher percentage of the youth who appear before the formal delinquency court will have significant service needs. Consequently, it is important for juvenile delinquency courts to look for opportunities to decrease the cost of providing needed care to delinquent youth. Examples of ways to provide positive youth outcomes while reducing costs include:

- When sex offenders with high-risk characteristics are identified early, using group therapy and day treatment programs can be effective in changing behavior, as well as effective in providing community safety and avoiding the high cost of residential treatment.
- Using day and evening treatment centers for youth needing substantial levels of supervision instead of more expensive residential placement.
- Using day and evening treatment centers as a step down option for residential care to reduce lengths of stay in more expensive residential placement.
- Ensuring that when the juvenile delinquency court orders the placement of a juvenile offender outside of the home, the judge has carefully considered whether this option, the most restrictive and expensive of disposition options, is necessary. According to the NCJFCJ publication, *The Role of the Juvenile Court in Reentry*:

> *Due to the absence of alternatives, many juvenile justice systems have historically relied on social control through the use of restrictive out of home placements for chronic or serious offenders. But studies have shown that juvenile facilities are housing many youth who pose no significant threat to community safety and who could be managed as effectively in less restrictive and less costly programs.*

- Establishing a specialized mental health docket; for example the juvenile mental health court in Santa Clara County (San Jose) California was established through the realignment of existing resources and did not require significant new financial resources or personnel for its operation.[28] It was modeled after a program in Milwaukee, Wisconsin that was able to reduce the average cost per mentally ill juvenile offender from more than $6,000 per month to less than $3,200 over a six year period.
- Using less expensive wrap-around services instead of placement. Juvenile delinquency courts that have successfully implemented wrap-around service collaborations and pooled funding for youth with multiple needs and multiple system involvement include:

  - Marion County Juvenile Court in Indianapolis, Indiana has involved the juvenile delinquency court, child welfare agency, mental health department, corrections department, and education system in pooled funding since 1995. The Indiana University School of Education found that youth involved in the project demonstrated improved behavior over time and function better in the home, school, and community. The care management organization reports 80% of participating children demonstrated improvement in functioning.
  - Milwaukee County Juvenile Court in Milwaukee, Wisconsin has implemented Wraparound Milwaukee, which involves juvenile justice, child welfare, and education systems. The 2002 Annual Report states that youth enrolled for one year or more functioned better in school, at home, and in the community upon disenrollment; re-offense rates continued to

drop even up to three years after leaving the program; the average number of youth in costly restrictive residential treatment placements dropped in 2002 from 80 placements at the start of the year to only 42 youth at the end of 2002; and the average monthly cost to serve a youth was only $4,350 per month compared to over $7,300 per month if that youth was in a residential treatment placement, or over $6,000 per month if that youth was in a juvenile correctional facility.

➢ Hamilton County Juvenile Court in Cincinnati, Ohio has collaborated with the child protection agency, the mental retardation and developmental disabilities board, the mental health agency, and the alcohol and drug addiction services agency to use pooled funding for multiple-system youth since 1995. The system has maintained funding for this population at the same actual dollar amount over nine years without reducing the level of service or outcomes.

8. Finding New Funding Streams

With resources shrinking and competition for those resources increasing, it is difficult for juvenile delinquency courts to find new funding streams. Suggestions for exploring new revenue possibilities include:

- **Government Grants** – Juvenile delinquency courts should stay abreast of government grant opportunities, federal, state, and local. They should engage in collaborations with other organizations that serve delinquent youth and apply for available funding. It is always important when applying for grants, whether government or foundation, to ensure that the project will be able to become self-sustaining when the grant money ends.
- **Private Charity Foundations** - Although some private foundations may fund significant juvenile delinquency court system improvement initiatives, many private foundations are reluctant to fund government initiatives, and are not willing to fund operating costs. Juvenile delinquency courts are likely to be most successful in tapping into private foundation grants if they develop initiatives in collaboration with non-profit service organizations. For example, if a juvenile delinquency court wanted to increase informal diversion options or create community operated options to secure detention, the court could collaborate with one or several non-profit organizations that possess the knowledge and skills needed to provide the service or that already provide a similar service but would need to expand capacity. The non-profit organization, with the support of the juvenile delinquency court judge, could apply for start-up or bridge funding from private charity foundations to begin the effort, with long-term funding provided by the savings the juvenile delinquency court generates over time.

  Another possible method of tapping into private charity foundation funding might be to create a "Friends of the Court" organization, separately incorporated, that could identify needs of delinquent youth which private charity foundations would consider funding.
- **Assessing Costs to Parents** - In all states, the parents of a delinquent youth can be held liable for the costs of confinement and the costs of services provided to their child. These costs can include child support while in a placement, costs of probation supervision, costs of treatment or other services, cost of transportation to treatment or services, court costs, and legal fees. It is important for a juvenile delinquency court to monitor the amount of revenue generated from assessing costs to parents, as compared to the costs to the court to generate the revenue, to ensure cost effectiveness.
- **State and Local Bar Associations** – Many states and communities have bar associations that raise funds and provide volunteers to support projects related to the law. Juvenile delinquency courts could tap into these resources, not only to recruit volunteer lawyers to represent delinquent youth or to volunteer as mediators, but also as a funding source for applicable projects.
- **Law Enforcement Sales of Confiscated or Unclaimed Property** – In some communities, law enforcement agencies may commit to donating a portion of its sales proceeds to fund initiatives that reduce juvenile delinquency.
- **Donated Jury Fees** – In some communities, the jury commission offers jurors the opportunity to donate all or part of their jury duty compensation to fund initiatives that reduce juvenile delinquency.

G. FINAL COMMENTS

Various stakeholders involved in abuse and neglect system reform through the National Council of Juvenile and Family Courts Judges Victims Act Model Courts Project have made the following comments:

- *It is the judge who brings us to the table and enables us to work together. He is always the one who stresses that we are there to make improvements for kids....he genuinely cares about the lives of the children that come to the court system and expresses that concern to others to get their buy-in. He has the ability to get people to feel good about improvement, that what they are doing is important, and that it matters.*
- *A lot of our collaboration success has to do with our judge...because we have a judge leading our committee, our work has some weight in the community...more than any other committee would. It is the judge's leadership style that makes us all want to be there and be a part of it.*
- *The judge can bring major stakeholders to the table. She has the authority of the bench.*
- *There is a lot of respect for the court and the power of the court...and the court has high expectations for all of the stakeholders involved...this is the only way we can accomplish these kinds of reform.*

Endnotes

[1] Refer to Section B, of this chapter regarding how a juvenile delinquency court judge can engage in judicial leadership and collaboration without violating judicial canons on *ex parte* communication. It is important to note that legislative lobbying activities cannot be supported with federal funds due to the requirements of 18 USC § 1913.

[2] Pennsylvania is an example of a state with a juvenile justice commission, and Louisiana and Ohio are examples of states with strong statewide juvenile and family court judge's associations.

[3] National Council of Juvenile and Family Court Judges (January 2000). *Child Victims Act Model Courts Project Status Report 1999.* Technical Assistance Bulletin, IV(1). Reno, NV: Author.

[4] Supra note 3.

[5] Judge Leonard Edwards (1992). The juvenile court and the role of the juvenile court judge. *Juvenile and Family Court Journal*, (43)2, 25.

[6] Dobbin, S. A., Gatowski, S. I, & Maxwell, D., (April 2004). *Building a Better Collaboration: Facilitating Change in the Court and Child Welfare System.* Technical Assistance Bulletin, VIII(2). Reno, NV: National Council of Juvenile and Family Court Judges.

[7] In addition to the resource referenced in note 3, another excellent resource is the curriculum published by the National Council of Juvenile and Family Court Judges entitled *Court, Agency and Community Collaboration* (2000). The curriculum content applies equally well to facilitating improvement in the juvenile delinquency court system as in the abuse and neglect system.

[8] Resources used for this section include:

- Dobbin, S. A., & Gatowski, S. I. (January 2001). Judicial Workload Estimates: *Redefining the Concept of "Judicial Work."* Technical Assistance Bulletin, V(1). Reno, NV: National Council of Juvenile and Family Court Judges.
- Annooshepoor, H., Durkin, M., Flango, V. E., Gatowski, S.I., Hardin, M., Hemrich, V., Lukowski, G., Mentaberry, M., Rubio, D., Steketee, M. W., & Uekert, B. (2004). *Building A Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases.* ABA Center on Children and the Law, National Center for State Courts, & National Council of Juvenile and Family Court Judges.
- American Prosecutors Research Institute (2002). *How Many Cases Should A Prosecutor Handle? Results of the National Workload Assessment Project.* Alexandria, VA: Author.
- Griffin, P. & Torbet, P. (2002). *Desktop Guide to Good Juvenile Probation Practice.* Pittsburgh, PA: National Center for Juvenile Justice.

[9] Supra note 8.

[10] Supra note 8.

[11] The National Center for State Courts conducts on site workload evaluations. For contact information, see the appendices.

[12] The National Center for State Courts Technology Services has produced detailed juvenile function requirement standards which are accessible in both PDF and Word format on their website: www.ncsconline.org.

[13] Maloney, D. & Harp, C. (2003). *Measuring Impact The Next and Necessary Step.* Alexandria, VA: American Prosecutors Research Institute; also refer to *Performance Measures for the Juvenile Justice System: A National Demonstration Project.* Alexandria, VA: American Prosecutors Research Institute & National Center for Juvenile Justice.

[14] Supra note 5.

[15] Supra note 11.

[16] Samples of report cards can be obtained from Allegheny County Juvenile Court, Pittsburgh, Pennsylvania and the South Carolina Department of Juvenile Justice. It should be noted that these report cards follow some, but not all of the recommendations in this section of the *DELINQUENCY GUIDELINES.*

[17] Lowe, C. S. (2004). Resource Reallocation: The Clark County Experience. *Juvenile Sanctions Center Training and Technical Assistance Program Bulletin, 2*(4).

[18] Hamilton County Juvenile Court, Cincinnati, Ohio.

[19] A study of the population of Maricopa County in Phoenix Arizona captured the complete juvenile court careers of more than 150,000 youth born between 1962 and 1977, youth who reached age 18 between 1980 and 1995. As reported in: Snyder, H. & Sickmund, M. (September 1999). *Juvenile Offenders and Victims: 1999 National Report.* Pittsburgh, PA: National Center for Juvenile Justice.

[20] Umbreit, M., Coates, R., & Vos, B. (2001) Juvenile Victim Offender Mediation in Six Oregon Counties. Salem, OR: Oregon Dispute Resolution Center; as reported in: National Council of Juvenile and Family Court Judges (2003). *Graduated Sanctions for Juvenile Offenders: A Program Model and Planning Guide.* Reno, NV: Author.

[21] D'Amico, S.A. (1986). The development and evaluation of a court-connected juvenile mediation program. *Juvenile and Family Court Journal, 37*(5), 7-13.

[22] Kramer, J. H. & Steffensmeier, D. J. (1978). The differential detention/jailing of juveniles: A comparison of detention and nondetention courts. *Pepperdine Law Review, 5*(3), 795-807; Lerman, P. (1977). Discussion of differential selection of juveniles for detention. *Journal of Research in Crime and Delinquency, 14*(2), 166-172; Pawlak, E. J. (1977). Differential selection of juveniles for detention. *Journal of Research in Crime and Delinquency, 14*(2), 152-165; as referenced in National Research Council and Institute of Medicine (2001) *Juvenile Crime, Juvenile Justice.* McCord, J., Widom, C. S., & Crowell, N.A. (Eds). Washington, DC: National Academy Press.

[23] In 1998, overcrowding in public detention centers was the norm rather than the exception, with 70% of publicly held juveniles in facilities operating above their rated capacities. Most detainees were held for very short periods in connection with nonviolent and often minor offenses. Historically, juveniles have often been held in secure detention for reasons having nothing to do with risk of reoffending or absconding. Some states allow secure detention to be used as a dispositional order. This further exacerbates over-crowding.

[24] Land, K., McCall, P. L., Williams, J. R., & Ezell, M. (1992). Intensive supervision of status offenders: Evidence on continuity of treatment effects for juveniles and a "Hawthorne Effect" for counselors. In J. McCord & R. Tremblay (Eds.), *Preventing Antisocial Behavior: Interventions From Birth Through Adolescence* (pp. 339-349). New York: Guilford; referenced in National Research Council and Institute of Medicine (2001) *Juvenile Crime, Juvenile Justice.* J. McCord, C. S. Widom, & N. A. Crowell, (Eds.). Washington, DC: National Academy Press.

[25] See Chapter IV, Section C(1) for details regarding how such a system can work and preserve prosecutorial review, informal diversion and one youth/one judge.

[26] A study in Lucas County Juvenile Court determined that when counsel was present at the initial hearing (does not include detention hearings), 78% of cases were resolved at that hearing. Consequently, no additional docket time was required. Because fewer hearings needed to be scheduled, the juvenile delinquency court was able to meet docketing time frames as required by the state Supreme Court without adding additional staff. As reported in the *2001 Annual Report,* Juvenile Division of the Lucas County Court of Common Pleas, Toledo, Ohio.

[27] Supra notes 17 and 18.

[28] Arrendondo, D. E., Kumli, K., Soto, L., Colin, E., Ornellas, J., Davilla, R., Edwards, L. P., & Human, E. M. (Fall 2001). Juvenile mental health court: Rationale and protocols. *Juvenile and Family Court Journal, 52*(4), 1-19.

The terms listed below have been defined for the purpose of clarifying their meaning within the JUVENILE DELINQUENCY GUIDELINES. Jurisdictions use different terms, and the same term may have different meanings in different jurisdictions. In order to ensure understanding of the recommended practices of the DELINQUENCY GUIDELINES, the following terms, ***as used in this document****, are defined below.*

Accountability Boards – trained community members sit as a panel to provide a mechanism for informal diversion and immediate sanctioning, usually to first or second time status or misdemeanant offenders.

Adjudication Hearing – the hearing at which the juvenile delinquency court judge or judicial officer determines that a juvenile is responsible for the offense that has been filed.

Adoption and Safe Families Act (ASFA) – federal legislation passed in 1997 that clarified and added to P.L. 96-272 regarding safety issues as related to reunification, required permanency timeframes, and speeding the process of finding permanent homes for abused and neglected children; applies to a delinquent youth who is also abused, neglected, or dependent, and who is receiving services funded through title IV-E.

Affidavit – the document completed by law enforcement that describes the circumstances of the offense the youth is alleged to have committed. Also referred to as the Police Report, the Case Summary, and the Probable Cause Statement. When formally filed with the court it is combined with a petition (see Petition).

Aftercare – see Reentry.

Arrest – a person with legal authority, usually law enforcement, takes a juvenile or adult into involuntary custody for questioning or detainment.

Assessment Tools – in-depth information gathering and diagnostic instruments, used by trained professionals to determine needs, diagnoses, and strengths.

Balanced and Restorative Justice (BARJ) – a justice system model that gives equal consideration to community safety, offender accountability, and competency development.

Blended Sentencing – the imposition of both juvenile and adult sentences concurrently by the juvenile delinquency court under certain circumstances.

Bind-over – see Waiver.

Capias – see Warrant.

Caretaker or Physical Custodian – a person who has physical custody but not legal custody of a youth such as a foster parent, placement facility, or relative without legal custody.

Case Summary – see Affidavit.

Certification – see Waiver.

Citation – see Summons.

Collocated Facilities – facilities that are located in the same building, or are part of a related complex of buildings located on the same grounds. Used in the *DELINQUENCY GUIDELINES* in reference to juvenile detention facilities collocated with adult jails.

Commissioner – see Judicial Officer.

Community Reintegration – see Reentry.

Competency – a legal threshold requirement, imposed by society, for an individual to retain decision-making power in a particular activity or set of activities. A judge determines legal competency. There are many different aspects of legal competency, and an individual may be competent for one purpose but not for another.

Competency to Stand Trial – whether a person has the ability to understand the nature of court proceedings and to assist counsel with his or her defense. Based on a clinician's assessment of decisional capacity, the judge decides whether a person is competent to stand trial.

Complaint – see Petition.

Community Service – a program of meaningful activities through which youth identify community needs and contribute time and skills to address the needs. Particularly helpful as a strategy for youth to correct or restore harm inflicted on the community.

Concurrent Jurisdiction – see Prosecutorial Waiver.

Court Entry – see Written Findings and Orders.

Court Order – see Written Findings and Orders.

Cultural Understanding – the basic ability of people within organizations to recognize, interpret, and correctly react to people, incidences, or situations that are open to misunderstanding due to cultural differences. Requires familiarization with cultural characteristics, values, beliefs, and behaviors of others.

Decisional Capacity – the mental ability to understand the nature and effects of one's acts; a medical-legal construct that is determined by a clinician; as used in this document, clinicians with specialized training and experience in forensic evaluation of juveniles assess the decisional capacity of a youth with regard to a youth's ability to stand trial.

Delinquency Hearings – a series of proceedings presided over by a juvenile delinquency court judge or judicial officer to respond to a petition alleging a juvenile law violation. In the *DELINQUENCY GUIDELINES*, these hearings are called: Detention Hearing; Initial Hearing; Hearing to Waive Juvenile Delinquency Court Jurisdiction and Transfer to Criminal Court; Trial/Adjudication Hearing; Disposition Hearing; Court of Appeals Hearing; Post-disposition Review Hearings; Probation or Parole Violation Hearings; and Reentry Hearings.

Delinquent Youth – a minor who has committed an act, which under the laws of the jurisdiction would be a crime if committed by an adult.

Delphi Method – bringing together groups of experienced individuals who identify specific tasks they perform and estimate the amount of time they spend completing each task, using group process led by a facilitator for the purpose of determining how much time cases and other work activities need.

***De novo* Hearing** – a second hearing; a system where a judicial officer, as opposed to a judge, first hears the facts of a case, and if a party does not agree to the finding, he or she can request that the hearing be heard anew in front of a judge for a new determination of the facts.

Dependent Youth – the term used by some jurisdictions to describe a young person subject to the jurisdiction of the court because of child abuse, neglect, or lack of proper care.

Detention – the legally-authorized temporary custody of juveniles who are accused of illegal conduct subject to the jurisdiction of the court and who require a restricted environment for their own or the community's protection while pending legal action.

Detention Hearing – the first juvenile delinquency court hearing regarding an alleged delinquent youth who was placed in detention at the time the affidavit and petition were filed or at the time the youth was arrested on a warrant.

Direct File – see Statutory Exclusion.

Discretionary Judicial Waiver – the juvenile delinquency court judge has the authority to make the decision on a motion filed by the prosecutor whether to waive juvenile delinquency court jurisdiction and transfer the case to criminal court or to retain jurisdiction, if the juvenile delinquency court finds probable cause.

Disposition Hearing – the hearing at which the juvenile delinquency court makes orders regarding the consequences an adjudicated youth receives as a result of the law violation. Similar to the term "Sentencing" used in the adult criminal justice system.

Disproportionate Minority Contact – a larger proportion of a particular group is found at various stages of the juvenile justice system than is represented in the general population. Depending on the population characteristics of juvenile justice system jurisdictions, disproportionate minority contact may be found involving African Americans, Native Americans, Hispanics and other minority ethnicities.

Dispute Resolution Alternatives (DRA) – methods of resolving disputes that allow parties to settle a potential or existing legal matter outside of the juvenile delinquency courtroom. This term is used in the JUVENILE DELINQUENCY GUIDELINES instead of the more commonly used term Alternative Dispute Resolution (ADR) to distinguish between ADR which is used between two or more equal individuals, as opposed to DRA which is used between a juvenile who has violated the law and the victim of that violation.

Diversion to Informal Resources – In less serious offenses, if the youth admits responsibility, and if agreed to by the youth and parent, the case is handled through non-judicial alternative services. If the service is successfully completed, either the petition is dismissed or not filed. Even though the youth admits the offense, there should be no legal record of delinquency.

Dual Status – a juvenile court designation for an abused, neglected, or dependent youth who is also a delinquent youth. This status is coupled with the practice that the youth remains both an abused, neglected, or dependent youth and a delinquent youth, as opposed to the delinquent designation eliminating the abused, neglected, or dependent designation.

Expungement – the erasure or destruction of juvenile delinquency court records, under certain circumstances, once a juvenile reaches the age of majority, or as otherwise set by state statute. When a record is expunged, it is as if it never occurred as far as the juvenile delinquency court is concerned.

Family Group Conferencing/Family Conflict Resolution – a process involving the engagement of immediate and extended family members and close friends to meet with a trained facilitator and design solutions for a youth, that they agree to implement to resolve a problem. Although this method is most often used in conjunction with abuse, neglect, or dependency proceedings, they are also useful in delinquency proceedings when there are problems within the family structure.

Filing – see Petition.

Formal Court Action – a petition alleging delinquent behavior is set for a hearing before a judge or judicial officer. If the youth admits the offense or is found to have committed the offense at trial, the offense becomes a part of the youth's official juvenile delinquency court record.

Graduated Responses – an accountability based, graduated series of sanctions and incentives, combined with treatment and services, applicable to youth within the juvenile justice system. It holds juveniles accountable for their actions, protects communities from the effects of juvenile delinquency by providing appropriate sanctions for every act for which a juvenile is adjudicated delinquent, induces law-abiding behavior, and prevents subsequent involvement with the juvenile justice system. Also referred to as "graduated sanctions" and "graduated consequences."

Hearing Officer – see Judicial Officer.

In Loco Parentis – in place of a parent; a person appointed by the juvenile delinquency court to stand in place of the parent when an alleged delinquent youth's parent or legal guardian is unable to provide appropriate parental support and advice during the juvenile delinquency court process, and no other relative or other adult with a positive relationship with the youth is available.

Informal Hearings – a method of diversion from the formal juvenile delinquency court that follows a quasi-hearing protocol, with hearings held in a room resembling a courtroom, allegations read to participants, the youth questioned regarding the incident and admitting or denying the allegations; and the parent, school staff, and other appropriate key participants speaking about the youth's behavior in general. If the youth admits the allegations, the informal hearing officer makes a disposition using the power that was granted through the youth's and parents' consent to have the charge handled informally.

Initial Hearing – the first juvenile delinquency court hearing regarding an alleged offense and the youth was not placed in detention at the time the affidavit and petition were filed.

Interlocutory Appeal – Historically, parties could not appeal a judge's ruling if it was not a "final appealable order." However, certain decisions, such as the decision to waive jurisdiction and transfer a youth to the criminal court, have such potentially serious consequences that counsel for the youth should have the opportunity to request appellate review of the decision prior to the final appealable order. The process is generally called an interlocutory appeal or a writ. The process can provide quicker relief than would be available by appeal.

Interstate Compacts – agreements between two or more states that bind them to the compact's provisions. Compacts are subject to substantive principles of contract law and compacting states are bound to observe the terms of their agreements, even if those terms are inconsistent with other state laws. Compacts may not be unilaterally renounced by a member state, except as provided by the compacts themselves. Congress and the courts can compel compliance with the terms of interstate compacts, which is why compacts are considered the most effective means of ensuring interstate cooperation.

Judicial Officer – a lawyer appointed by a juvenile delinquency court judge to hear juvenile delinquency petitions. May be referred to as Commissioner, Magistrate, Master, Referee, or Hearing Officer. Whenever the *DELINQUENCY GUIDELINES* uses the term "judge," the term is inclusive of judicial officers.

Juvenile – a youth under the age of majority. The *DELINQUENCY GUIDELINES* recommends that the age of majority be 18.

Juvenile Holdover Program – a physically non-secure detainment option that may be staff secure or non-secure and provides options to detaining a youth in physically secure detention pending the next step in the juvenile delinquency court process.

Key Participants – persons involved in juvenile delinquency court hearings who are not legal parties, but whose involvement is necessary and who participate in the hearing and receive copies of the juvenile delinquency courts written findings and orders. Examples include caretakers, service providers, school representatives, parents, etc.

Legal Guardian – an adult who is not the biological parent, or a licensed child caring agency, who has been given legal authority by a court to provide care and custody of a child.

Legal Sufficiency – the facts stated in the affidavit, which if proven to be true, would establish that a law violation occurred, the alleged offense is within the statute of limitations, the alleged offense occurred within the geographic jurisdiction of the juvenile delinquency court, and the alleged offense is within the legal jurisdiction of the court.

Magistrate – see Judicial Officer.

Mandatory Judicial Waiver – the juvenile delinquency court is required to transfer the case to criminal court upon motion of the prosecutor if the juvenile delinquency court judge finds probable cause and the alleged offense is specified by state statute as a mandatory waiver.

Master – see Judicial Officer.

Mediation – see Negotiation.

Model Court – a juvenile court jurisdiction, comprised of a lead judge and multidisciplinary team, selected by the National Council of Juvenile and Family Court Judges to participate as a model for systems change and court improvement in abuse and neglect cases with the Victims Act Model Courts Project.

Multi-systemic Therapy – an intensive family and community-based treatment that addresses the multiple determinants of serious criminal behavior in juvenile offenders. MST targets chronic, violent, or substance-abusing juvenile offenders at high risk of out-of-home placement and their families. MST strives to promote behavior change in a youth's natural environment, using the strengths of each system (e.g., family, peers, school, neighborhood, indigenous support network) to facilitate change. The major goals of MST are to empower parents with the skills and resources needed to address independently the difficulties that arise in raising teenagers and to empower youth to cope with family, peer, school, and neighborhood problems.

Needs Assessment – one tool in the Structured Decision-Making process. It identifies the offender's specific needs and provides part of the foundation for the case plan.

Negotiation (AKA mediation) - a dispute resolution alternative where a neutral facilitator assists parties in coming to an agreement that is acceptable to all by identifying issues that need to be resolved and empowering participants to negotiate workable solutions. Parties can significantly control the outcome of their case as opposed to the outcome being mandated solely by the juvenile delinquency court judge.

Non-Secure Detention – a facility that is not physically or staff secure and is used to detain an alleged or adjudicated delinquent youth until the juvenile delinquency court orders the youth's release. See Detention.

Original Jurisdiction – jurisdiction in the first instance; the *DELINQUENCY GUIDELINES* recommends that the juvenile delinquency court be a court of original jurisdiction, meaning that the juvenile delinquency court should have the authority to hear all matters within its geographical jurisdiction that have to do with alleged delinquent behavior of a person who has not reached the age of majority; accordingly, the *DELINQUENCY GUIDELINES* recommends that all decisions regarding whether a youth's case should be handled in the juvenile court or the criminal court should be made by a juvenile delinquency court judge.

Peer Courts – see Youth Courts.

Permanency Planning Hearing – In any case where services for a delinquent youth are being funded by title IV-E, the state agency must obtain a judicial determination that it made reasonable efforts to finalize the permanency plan for delinquent and status offenders within twelve months from the date the child is considered to have entered foster care. Title IV-E requires the agency and court to document an individual, compelling reason for establishing a permanency plan other than reunification, adoption, legal guardianship, or placement with a fit and willing relative.

Petition – the document that specifies the violation of law and state statute number described in

the affidavit that the youth is alleged to have committed. The prosecutor files the petition. Also referred to as a complaint or filing. A probable cause statement or affidavit, usually filed by the police, accompanies the petition (see Affidavit).

Police Report – see Affidavit.

Post-disposition Review – hearings held after the juvenile delinquency court has ordered probation, treatment services, or placement, to ensure that the youth, parents, probation, service, and placement providers are following through with the court ordered plan. This review can be through progress reports, progress staffings or conferences, progress hearings, or dispute resolution alternatives.

Prima Facia – at first sight; on the face of it; a fact presumed to be true unless disproved by some evidence to the contrary.

Probable Cause Statement – see Affidavit.

Prosecutorial Waiver – the prosecutor has the authority to decide whether to file a charge in the juvenile delinquency court or the criminal court if the alleged offense falls within offense and age parameters established by state statutes. Concurrent jurisdiction is another term used for prosecutorial waiver.

Reentry – comprehensive services provided to a youth returning to the community from a secure or non-secure out of home placement. The services include: 1) preparation prior to release; 2) establishing the necessary arrangements and linkages with the full range of public and private sector organizations and individuals in the community that can address known risk and protective factors; and 3) ensuring the delivery of prescribed services and supervision in the community. Also referred to as "community reintegration" and "aftercare."

Reentry Docket – specialized dockets to hear post-disposition review hearings on high risk youth returning to the community from placement, using the same structure as a specialty docket.

Reentry Team – a multidisciplinary team including representatives from education, vocational, residential, mental health, substance abuse, counseling, and probation to work with a youth who has been placed by court order. The team develops an individualized reentry plan, monitors service delivery, and makes recommendations to the juvenile delinquency court.

Referee – see Judicial Officer.

Releasing Authority – entity responsible for determining when and how a youth is returned to the community from a correctional facility; the entity sets the conditions of release and supervision, reviews progress, and determines violations and their disposition.

Reverse Waiver – see Statutory Exclusion.

Risk to Reoffend – determining the level of supervision needed to protect community safety as determined by applying a research-based screening tool. Its ultimate purpose is classification, and it can be applied at various decision points.

Screening Tools – instruments that are designed to be administered to every youth entering a specific phase of the juvenile justice system, that can be administered by trained individuals who are not clinicians, and that take a short period of time to administer (generally between 10 and 20 minutes). They are designed to assist in decision making and to identify the need for a more in depth assessment.

Sealing Records – removing records of delinquent youth who have not reached the age of majority from normal review or examination except by court order or by designated officials.

Secure Detention Facility – a locked facility that has physical features that restrict the egress and movement of juveniles who are detained in the facility. See Detention.

Secure Correctional Facility – a locked facility that has physical features that restricts the egress and movement of adjudicated delinquent juveniles who are held in the facility as the juvenile delinquency court's disposition.

Service Learning – a teaching strategy that combines meaningful community service with curriculum based learning.

Specialty Dockets – also called "specialty courts" and includes mental health, drug, and reentry dockets or courts; the docket is focused on a single offense type and is characterized by closer judicial involvement with the offender, a treatment-team approach to rehabilitation, highly intensive supervision, comprehensive treatment of youth and family, a system of clear goals and rewards, and prompt interventions.

Staff-secure Detention – an unlocked facility that has sufficient staff to restrict the egress and

movement of juveniles who are held in the facility pending the next phase of the court process. See Detention.

Status Offender – a juvenile who has committed an offense that would not be considered an offense if committed by an adult (i.e. truancy, runaway, incorrigible). In this document, this term does not include abused and neglected youth.

Statutory Exclusion – state statutes that require certain offenses be directly filed in the criminal court if allegedly committed by a juvenile of a certain age. Another term used for statutory exclusion is direct file. Exclusions are generally limited to capital crimes, murders, and other serious offenses against persons. Where statutory exclusion exists, state statutes may allow "reverse waiver" which gives the criminal court discretion to waive jurisdiction and transfer the case of a juvenile to the juvenile delinquency court.

Step-Down – movement of a youth from a more structured residential facility to a less structured residential facility or day treatment program as a part of community reintegration.

Strengths Assessment – a standardized instrument or tool used to determine offender and family assets. It is one factor that drives the individual case plan.

Structured Decision-Making – An objective approach to delinquent offender classification, taking into account offender strengths, risk of reoffending, and needs.

Summary of Proceedings – see Written Findings and Orders

Summons – the document provided to an alleged delinquent youth and parents that orders them to appear before the juvenile delinquency court at a specific date and time to respond to a specific alleged violation of the law.

Teen Courts – see Youth Courts

Title IV-E – The Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272) authorized the title IV-E program to benefit children who have been subjected to abuse or neglect in their homes (42 U.S.C. § 670, et seq.). Some youth in the juvenile delinquency system are appropriately served by the title IV-E program as well. This federal funding stream can help pay the costs of placement for eligible youth, and in states with title IV-E waivers, can help pay the costs of placement prevention services.

Transfer – see Waiver.

Valid Court Order – a court order given by a juvenile delinquency court judge or judicial officer to a juvenile who has been brought before the formal delinquency court.

Validated – In the context of screening and assessment tools, validity refers to the extent an instrument actually and consistently measures what it claims to measure. Establishing validity is an ongoing and complex process that requires the involvement of a trained researcher familiar with test theory, psychometrics, scale development, and validation methodology. In selection of screening tools, it is important to determine if the tool has undergone rigorous development and review.

Victim-Offender Conferencing – this intervention generally occurs after a voluntary admission of guilt by the offender and uses trained facilitators to guide dialogue between the victim and offender. The process is victim focused. The purposes of the dialogue are to teach responsibility to the offender and provide the offender with an opportunity to repair harm in a manner that is acceptable to both parties (and the juvenile delinquency court in formal cases). Also called "victim impact panels."

Waiver – or waive jurisdiction; refers to the transfer of a youth from juvenile delinquency court to criminal court. Also referred to as a "certification," "transfer," "relinquishment of jurisdiction," or a "bind-over." Can be mandatory, or discretionary.

Warrant – an order for the arrest of a youth on an alleged law violation or failure to appear at court. Also referred to as a "writ," "capias," or "take into custody order."

Weighted Caseload Method – a method used to translate the number of court cases into workload assessment by applying an average unit of time associated with the processing of a case of a particular type and multiplying that by the number of filings of that type of case in a given year. The result provides an estimate of the amount of time is required to process those cases.

Wrap-Around Services – a method of service delivery highlighted by commitment to create services on a "one child at a time" basis to support normalized and inclusive options for the child with complex needs. Wrap-around interventions create a child and family team composed of the people that know the youth best to design an individualized plan that is needs driven, strengths based, and focused on normalization; services

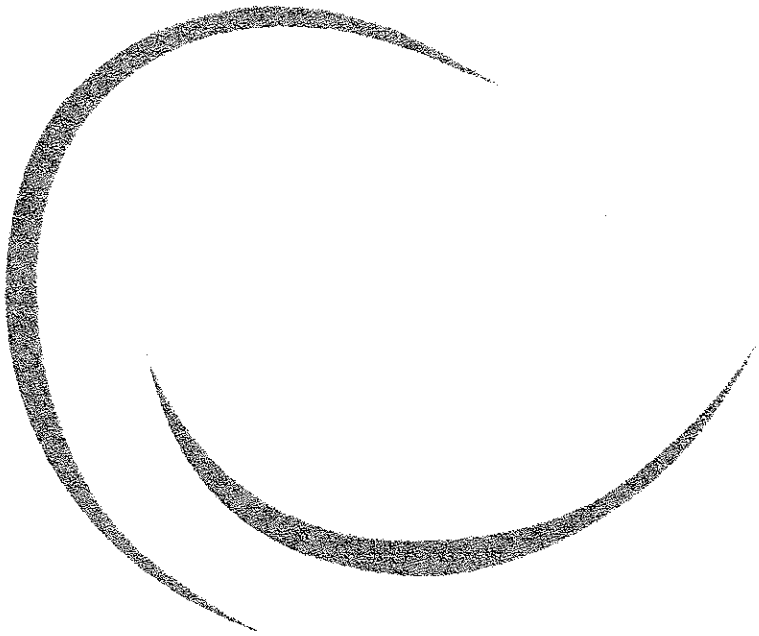
within the plan are based in natural home environments, comprehensive and delivered with cultural understanding, and financially supported by a flexible funding mechanism.

Writ – see Warrant.

Written Findings and Orders – the document that records the decisions made by the court at the delinquency hearing, which is distributed to legal parties and key participants at the end of each juvenile delinquency court hearing. Also referred to as court entry, "court's orders," "minutes," or "written summary of proceedings."

Youth Courts – an informal diversion option structured like a court hearing that operates on the premise that the judgment of a juvenile offender's peers may have a greater impact than the decisions of adult authority figures. Therefore, if other teens question and confront an offending youth's behavior and attitudes, there should be a significant rehabilitative effect. Also referred to as Teen Courts and Peer Courts.

In order to maintain the most up-to-date resources, all Appendices for the *JUVENILE DELINQUENCY GUIDELINES* can be retrieved online at www.ncjfcj.org.



CASELAW

APPENDIX B: KEY SUPREME COURT CASES AFFECTING THE RIGHTS OF JUVENILE OFFENDERS[1]

1. ***Kent v. United States*, 383 U.S. 541 (1966)**
   - Transfer to adult court must consider due process and fair play
   - Child must be represented by an attorney
   - Attorney must have access to juvenile records of child

2. ***In re Gault*, 387 U.S. 1 (1967)**
   - Juvenile must have notice of the charges, in writing, sufficiently particular to indicate offense(s) charged and conduct alleged, and sufficiently in advance of the hearing to allow preparation
   - Juvenile must be notified of the right to counsel, either hired by them or appointed by the court
   - Juvenile has the right to confront the accuser(s)
   - Juvenile has the right to avoid self-incrimination
   - Juvenile has the right to cross examine witnesses

3. ***In re Winship*, 397 U.S. 358 (1970)** – Standard of proof for juvenile proceedings is proof beyond a reasonable doubt.

4. ***McKeiver v. Pennsylvania*, 403 U.S. 528 (1971)** – No right to trial by jury in juvenile proceedings.

5. ***Breed v. Jones*, 421 U.S. 519 (1975), superceded by statute in *Barker v. Estelle*, 913 F.2d 1433 (1989)** – Double jeopardy attaches with juvenile adjudication of delinquency.

6. ***Swisher v. Brady*, 438 U.S. 204 (1978)** – Double jeopardy does not attach with *de novo* hearing or supplemental findings by judge after trial before a master.

7. ***Fare v. Michael C.*, 442 U.S. 707 (1979)** – Juvenile's request for probation officer rather than attorney during questioning does not trigger application of Miranda rule; police are not required to stop questioning of juvenile.

8. ***Schall v. Martin*, 467 U.S. 253 (1984)** – New York State statute permitting preventative pre-trial detention for juveniles is valid under the Due Process clause of the Fourteenth Amendment.

9. ***New Jersey v. T.L.O.*, 469 U.S. 325 (1985)** - Replaced "probable cause" with "reasonableness" as the standard for student searches on school grounds.

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[1] Griffin, P. & Torbet, P. (2002). *Desktop Guide to Good Juvenile Probation Practice*. Pittsburgh, PA: National Center for Juvenile Justice.

10. ***Thompson v. Oklahoma*, 487 U.S. 815 (1988)** – Eighth and Fourteenth Amendments prohibit the execution of a person who was under 16 years of age at the time of his or her offense.

11. ***Stanford v. Kentucky*, 492 U.S. 361 (1989), overruled by *Roper v. Simmons*, 125 S.Ct. 1183 (2005)** – Execution of a person who was 16 or 17 years of age at the time of his or her offense does not offend the Eighth Amendment's prohibition against "cruel and unusual punishment."

12. ***Roper v. Simmons*, 125 S.Ct. 1183 (2005)** – Overturned the previous decision in Stanford v. Kentucky, deciding that national consensus has determined that the death penalty is a disproportionate punishment for juveniles, and that youth under the age of 18 are categorically excluded from capital punishment.

Supreme Court of the United States
Richard E. GERSTEIN, State Attorney for Eleventh Judicial Circuit of Florida, Petitioner,
v.
Robert PUGH et al.

No. 73-477.
Argued March 25, 1974.
Reargued Oct. 21, 1974.
Decided Feb. 18, 1975.

Florida prisoners brought class action, under the Civil Rights Act, against various Dade County judicial and prosecutorial officials claiming a constitutional right to a judicial hearing on the issue of probable cause for pretrial detention and requesting declaratory and injunctive relief. The United States District Court for the Southern District of Florida, 355 F.Supp. 1286, rendered judgment for plaintiffs, and defendants appealed. The Court of Appeals, 483 F.2d 778, affirmed in part and vacated in part. The State Attorney's petition for writ of certiorari was granted. The Supreme Court, Mr. Justice Powell, held that habeas corpus was not the exclusive remedy, that claim was not barred by the equitable restrictions on federal intervention in state prosecutions, that conviction of named plaintiffs did not moot the claims of the unnamed class members, that standards and procedures for arrest and detention are derived from the Fourth Amendment and its common-law antecedents, that such Amendment requires a judicial determination of probable cause as a prerequisite to an extended restraint of liberty following arrest, that prosecutor's assessment of probable cause does not alone meet the constitutional requirements, that Florida procedure whereby a person arrested without a warrant and charged by information may be jailed without an opportunity for probable cause determination is unconstitutional, that pretrial detention without an opportunity for such a hearing does not void a following conviction and that a probable cause determination is not a 'critical stage' in the proceedings requiring appointed counsel.

Affirmed in part, reversed in part, and remanded.

Mr. Justice Stewart filed an opinion concurring in Parts I and II of the opinion and in which Mr. Justice Douglas, Mr. Justice Brennan and Mr. Justice Marshall joined.

West Headnotes

[1] Indictment and Information 210 ⚷3

210 Indictment and Information
210I Necessity of Indictment or Presentment
210k3 k. Offenses Which Must Be Prosecuted by Indictment. Most Cited Cases

Under Florida law, indictments are required only for prosecution of capital offenses; prosecutors may charge all other crimes by information. 33 West's F.S.A. Rules of Criminal Procedure, rule 3.140(a).

[2] Habeas Corpus 197 ⚷271

197 Habeas Corpus
197I In General
197I(C) Existence and Exhaustion of Other Remedies
197k271 k. In General. Most Cited Cases (Formerly 197k3)

Habeas corpus was not the exclusive remedy for challenging Florida procedure whereby a person arrested without a warrant and charged by information could be jailed without an opportunity for a probable cause determination where the suing Florida prisoner sought only declaratory and injunctive relief and release was neither asked nor ordered. West's F.S.A. § 907.045; 33 West's F.S.A. Rules of Criminal Procedure, rules 3.122, 3.131(a), 3.140(a), 3.160.

[3] Courts 106 ⚷508(7)

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106 Courts
106VII Concurrent and Conflicting Jurisdiction
106VII(B) State Courts and United States Courts
106k508 Injunction by United States Court Against Proceedings in State Court
106k508(2) Restraining Particular Proceedings
106k508(7) k. Criminal Proceedings. Most Cited Cases

The Younger doctrine, which imposes equitable restraints on federal intervention in state prosecutions, did not bar claims for federal relief as regards Florida procedures whereby a person arrested without a warrant and charged by information may be jailed without an opportunity for a probable cause determination since injunctive relief was not directed at state prosecutions as such but only at legality of pretrial detention without a judicial hearing, an issue that could not be raised in defense of a criminal prosecution; an order requiring such hearings could not prejudice the conduct of a trial on the merits. 33 West's F.S.A. Rules of Criminal Procedure, rule 3.140(a); 28 U.S.C.A. § 1343(3); 42 U.S.C.A. § 1983; U.S.C.A.Const. Amends. 4, 14.

[4] Federal Courts 170B ⚷1008

170B Federal Courts
170BIX District Courts
170BIX(B) Three-Judge Courts
170Bk1008 k. Necessity That Injunction Be Sought and Available. Most Cited Cases
(Formerly 106k101.5(4))

Ruling, on remand, that the amended Florida criminal procedural rule continued the unconstitutional practice of retaining, without a judicial determination of probable cause, an individual charged by information was not outside the jurisdiction of a single-judge district court since such ruling was in nature of declaratory judgment, in that the original complaint in Florida of prisoner's Civil Rights Act suit did not seek injunctive relief, practice of denying preliminary hearings was embodied only in judicial decisions and original injunctive decree was never amended to incorporate the holding on remand. 33 West's F.S.A. Rules of Criminal Procedure, rules 3.130(b), 3.131, 3.131(b), 3.140(a); 28 U.S.C.A. § 1343(3); 42 U.S.C.A. § 1983; U.S.C.A.Const. Amends. 4, 14.

[5] Federal Civil Procedure 170A ⚷186.10

170A Federal Civil Procedure
170AII Parties
170AII(D) Class Actions
170AII(D)3 Particular Classes Represented
170Ak186.10 k. Prisoners and Inmates. Most Cited Cases
(Formerly 170Ak181)

Conviction of the named plaintiffs, who brought Civil Rights Act class action challenging constitutionality of Florida procedures whereby a person arrested without a warrant and charged by information could be jailed without an opportunity for probable cause determination, did not moot the claims of the unnamed class members since the case fell within exception to general rule, in that such claim was distinctly capable of repetition yet evading review, there was a continuing class of persons suffering such deprivation and the representative plaintiffs' attorney had other clients with a continuing live interest in the case. 33 West's F.S.A. Rules of Criminal Procedure, rule 3.140(a); 28 U.S.C.A. § 1343(3); 42 U.S.C.A. § 1983; U.S.C.A.Const. Amends. 4, 14.

[6] Arrest 35 ⚷58

35 Arrest
35II On Criminal Charges
35k58 k. Grounds and Purpose in General. Most Cited Cases

Both the standards and procedures for arrest and detention are derived from the Fourth Amendment and its common-law antecedents. U.S.C.A.Const. Amend. 4.

[7] Arrest 35 ⚷63.4(2)

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35 Arrest
35II On Criminal Charges
35k63 Officers and Assistants, Arrest Without Warrant
35k63.4 Probable or Reasonable Cause
35k63.4(2) k. What Constitutes Such Cause in General. Most Cited Cases

The standard for arrest is probable cause, defined in terms of facts and circumstances sufficient to warrant a prudent man in believing that the suspect had committed or was committing an offense. U.S.C.A.Const. Amend. 4.

[8] Arrest 35 ⚷63.4(1)

35 Arrest
35II On Criminal Charges
35k63 Officers and Assistants, Arrest Without Warrant
35k63.4 Probable or Reasonable Cause
35k63.4(1) k. Grounds for Warrantless Arrest in General. Most Cited Cases

The probable cause standard for arrest, like those for searches and seizures, represents a necessary accommodation between the individual's right to liberty and the state's duty to control crime. U.S.C.A.Const. Amend. 4.

[9] Searches and Seizures 349 ⚷104

349 Searches and Seizures
349II Warrants
349k103 Authority to Issue
349k104 k. Impartial Magistrate Requirement. Most Cited Cases
(Formerly 349k3.5)

To implement the Fourth Amendment's protection against unfounded invasions of liberty and privacy, it is required that the existence of probable cause be decided by a neutral and detached magistrate whenever possible. U.S.C.A.Const. Amend. 4.

[10] Arrest 35 ⚷62

35 Arrest
35II On Criminal Charges
35k62 k. Authority to Arrest Without Warrant in General. Most Cited Cases

Although maximum protection of individual rights can be assured by requiring a magistrate's review of the factual justification prior to any arrest, such a requirement would constitute an intolerable handicap for legitimate law enforcement; however, an arrest warrant is preferred when feasible. U.S.C.A.Const. Amend. 4.

[11] Arrest 35 ⚷63.4(1)

35 Arrest
35II On Criminal Charges
35k63 Officers and Assistants, Arrest Without Warrant
35k63.4 Probable or Reasonable Cause
35k63.4(1) k. Grounds for Warrantless Arrest in General. Most Cited Cases

A policeman's on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of crime and for a brief period of detention to take the administrative steps incident to arrest; however, once the suspect is in custody the reasons that justify dispensing with the magistrate's neutral judgment evaporates and the suspect's need for a neutral determination of probable cause increases significantly. U.S.C.A.Const. Amend. 4.

[12] Arrest 35 ⚷70(1)

35 Arrest
35II On Criminal Charges
35k70 Custody and Disposition of Prisoner
35k70(1) k. In General. Most Cited Cases
(Formerly 349k7(1))

Criminal Law 110 ⚷223

110 Criminal Law
110XII Pretrial Proceedings
110k222 Necessity and Requisites of Preliminary Examination
110k223 k. Nature and Necessity. Most Cited Cases

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Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint on liberty following arrest. U.S.C.A.Const. Amend. 4.

[13] Searches and Seizures 349 ⚷113.1

349 Searches and Seizures
349II Warrants
349k113 Probable or Reasonable Cause
349k113.1 k. In General. Most Cited Cases
(Formerly 349k113, 349k7(5))

The common law is a valuable guide in interpretation of the probable cause requirement of Fourth Amendment. U.S.C.A.Const. Amend. 4.

[14] Arrest 35 ⚷70(2)

35 Arrest
35II On Criminal Charges
35k70 Custody and Disposition of Prisoner
35k70(2) k. Presentation to Magistrate, Etc.; Arraignment. Most Cited Cases
(Formerly 35k70)

Criminal Law 110 ⚷239

110 Criminal Law
110XII Pretrial Proceedings
110k239 k. Discharge of Accused. Most Cited Cases

Criminal Law 110 ⚷240

110 Criminal Law
110XII Pretrial Proceedings
110k240 k. Holding Accused to Answer. Most Cited Cases

At common law, it was customary, if not obligatory, for an arrested person to be brought before a justice of the peace shortly after arrest so that the justice "could examine" the prisoner and the witnesses to determine whether there was reason to believe the prisoner had committed a crime; if such reason was found, the suspect would be committed to jail or bailed pending trial and if no such reason was found he would be discharged from custody. U.S.C.A.Const. Amend. 4.

[15] Criminal Law 110 ⚷231

110 Criminal Law
110XII Pretrial Proceedings
110k229 Conduct of Preliminary Examination
110k231 k. Presence and Rights of Accused. Most Cited Cases

At common law, the examination of an arrested person by a justice of the peace was inquisitorial and the witnesses were questioned outside the prisoner's presence. U.S.C.A.Const. Amend. 4.

[16] Habeas Corpus 197 ⚷469

197 Habeas Corpus
197II Grounds for Relief; Illegality of Restraint
197II(B) Particular Defects and Authority for Detention in General
197k469 k. Bail. Most Cited Cases
(Formerly 197k25.1(3), 197k33)

The initial common-law determination of probable cause to commit an arrestee to jail or bail could be reviewed by higher court on a writ of habeas corpus. U.S.C.A.Const. Amend. 4.

[17] Arrest 35 ⚷70(1)

35 Arrest
35II On Criminal Charges
35k70 Custody and Disposition of Prisoner
35k70(1) k. In General. Most Cited Cases
(Formerly 349k7(1))

Criminal Law 110 ⚷223

110 Criminal Law
110XII Pretrial Proceedings
110k222 Necessity and Requisites of Preliminary Examination
110k223 k. Nature and Necessity. Most Cited Cases

Although a conscientious decision that the evidence warrants prosecution affords a measure of

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protection against unfounded detention, the prosecutor's assessment of probable cause, standing alone, does not meet the requirements of the Fourth Amendment and is insufficient to justify restraint of liberty pending trial. U.S.C.A.Const. Amend. 4.

[18] Criminal Law 110 ⚷223

110 Criminal Law
110XII Pretrial Proceedings
110k222 Necessity and Requisites of Preliminary Examination
110k223 k. Nature and Necessity. Most Cited Cases

Florida procedure whereby a person arrested without a warrant and charged by information may be jailed or subjected to other restraints pending trial without any opportunity for probable cause determination is unconstitutional. West's F.S.A. § 907.045; 33 West's F.S.A. Rules of Criminal Procedure, rules 3.122, 3.131(a), 3.140(a), 3.160; U.S.C.A.Const. Amends. 4, 14.

[19] Criminal Law 110 ⚷217

110 Criminal Law
110XII Pretrial Proceedings
110k215 Preliminary Warrant or Other Process
110k217 k. Issuance. Most Cited Cases

Probable cause for issuance of an arrest warrant must be determined by someone independent of the police and prosecution. U.S.C.A.Const. Amend. 4.

[20] Criminal Law 110 ⚷223

110 Criminal Law
110XII Pretrial Proceedings
110k222 Necessity and Requisites of Preliminary Examination
110k223 k. Nature and Necessity. Most Cited Cases

Although prosecutor's assessment of probable cause is not alone sufficient to justify restraint on liberty pending trial, the Constitution does not require judicial oversight of the decision to prosecute by information, and a conviction will not be vacated on the ground that the defendant was detained pending trial without a probable cause determination. U.S.C.A.Const. Amend. 4.

[21] Indictment and Information 210 ⚷41(1)

210 Indictment and Information
210IV Filing and Formal Requisites of Information or Complaint
210k41 Preliminary Proceedings
210k41(1) k. In General. Most Cited Cases

A judicial probable cause hearing is not prerequisite to prosecution by information. U.S.C.A.Const. Amend. 4.

[22] Criminal Law 110 ⚷99

110 Criminal Law
110VIII Jurisdiction
110k99 k. Mode of Acquiring Jurisdiction. Most Cited Cases

Illegal arrest or detention does not void a subsequent conviction. U.S.C.A.Const. Amend. 4.

[23] Criminal Law 110 ⚷223

110 Criminal Law
110XII Pretrial Proceedings
110k222 Necessity and Requisites of Preliminary Examination
110k223 k. Nature and Necessity. Most Cited Cases

An arrestee may challenge the probable cause for his pretrial confinement; however, his conviction will not be vacated on ground that he was detained pending trial without such a determination. U.S.C.A.Const. Amend. 4.

[24] Criminal Law 110 ⚷223

110 Criminal Law
110XII Pretrial Proceedings
110k222 Necessity and Requisites of Preliminary Examination

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110k223 k. Nature and Necessity. Most Cited Cases

The probable cause determination, as an initial step into criminal justice process, may be made by judicial officer without an adversary hearing. U.S.C.A.Const. Amend. 4.

[25] Criminal Law 110 ⚷230

110 Criminal Law
110XII Pretrial Proceedings
110k229 Conduct of Preliminary Examination
110k230 k. In General. Most Cited Cases

Single issue at a pretrial detention hearing is whether there is probable cause for detaining the arrested person pending further proceedings; such issue can be determined reliably by the use of informal procedures. U.S.C.A.Const. Amend. 4.

[26] Criminal Law 110 ⚷223

110 Criminal Law
110XII Pretrial Proceedings
110k222 Necessity and Requisites of Preliminary Examination
110k223 k. Nature and Necessity. Most Cited Cases

Standard for determining whether to detain an arrested person pending further proceedings is the same as that for arrest, i. e., probable cause to believe the suspect has committed a crime. U.S.C.A.Const. Amend. 4.

[27] Indictment and Information 210 ⚷39

210 Indictment and Information
210IV Filing and Formal Requisites of Information or Complaint
210k39 k. Authority to File. Most Cited Cases

A prosecutor has a professional duty not to charge a suspect with crime unless he is satisfied of probable cause.

[28] Criminal Law 110 ⚷232

110 Criminal Law
110XII Pretrial Proceedings
110k229 Conduct of Preliminary Examination
110k232 k. Representation by Attorneys. Most Cited Cases

Because of its limited function and nonadversary character, the probable cause determination is not a critical stage in the prosecution that would require appointed counsel. U.S.C.A.Const. Amend. 4.

[29] Criminal Law 110 ⚷1718

110 Criminal Law
110XXXI Counsel
110XXXI(B) Right of Defendant to Counsel
110XXXI(B)2 Stage of Proceedings as Affecting Right
110k1718 k. Critical Stages. Most Cited Cases
(Formerly 110k641.3(2), 110k641.3)

A "critical stage" in the prosecution requiring appointed counsel includes those pretrial procedures which will impair a defense on the merits if the accused is required to proceed without counsel.

[30] Arrest 35 ⚷70(1)

35 Arrest
35II On Criminal Charges
35k70 Custody and Disposition of Prisoner
35k70(1) k. In General. Most Cited Cases
(Formerly 349k7(1))

The Fourth Amendment probable cause determination is addressed only to pretrial custody. U.S.C.A.Const. Amend. 4.

[31] Criminal Law 110 ⚷223

110 Criminal Law
110XII Pretrial Proceedings
110k222 Necessity and Requisites of Preliminary Examination
110k223 k. Nature and Necessity. Most Cited Cases

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There is no single preferred pretrial procedure for determining probable cause for detaining an arrested person pending further proceedings; nature of the determination usually will be shaped to accord with the state's pretrial procedure viewed as a whole; flexibility and experimentation by the state is desirable. U.S.C.A.Const. Amend. 4.

[32] Criminal Law 110 ⚷223

110 Criminal Law
110XII Pretrial Proceedings
110k222 Necessity and Requisites of Preliminary Examination
110k223 k. Nature and Necessity. Most Cited Cases

Criminal Law 110 ⚷228

110 Criminal Law
110XII Pretrial Proceedings
110k222 Necessity and Requisites of Preliminary Examination
110k228 k. Time for Examination. Most Cited Cases

Whatever procedure a state may adopt for making a pretrial determination of probable cause for detaining an arrested person pending further proceedings, it must provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty; such determination must be made by a judicial officer either before or promptly after arrest. U.S.C.A.Const. Amend. 4.

[33] Criminal Law 110 ⚷223

110 Criminal Law
110XII Pretrial Proceedings
110k222 Necessity and Requisites of Preliminary Examination
110k223 k. Nature and Necessity. Most Cited Cases

Probable cause determination is not a constitutional prerequisite to the charging decision; it is required only for those suspects who suffer restraint of liberty other than the condition that they appear for trial. U.S.C.A.Const. Amend. 4.

[34] Criminal Law 110 ⚷223

110 Criminal Law
110XII Pretrial Proceedings
110k222 Necessity and Requisites of Preliminary Examination
110k223 k. Nature and Necessity. Most Cited Cases

A significant restraint of liberty is the key factor in defining which kind of pretrial release and what degree of conditional liberty require a prior probable cause determination. U.S.C.A.Const. Amend. 4.

[35] Arrest 35 ⚷70(1)

35 Arrest
35II On Criminal Charges
35k70 Custody and Disposition of Prisoner
35k70(1) k. In General. Most Cited Cases
(Formerly 349k7(1))

Criminal Law 110 ⚷223

110 Criminal Law
110XII Pretrial Proceedings
110k222 Necessity and Requisites of Preliminary Examination
110k223 k. Nature and Necessity. Most Cited Cases

Fourth Amendment requires a timely judicial determination of probable cause as a prerequisite to detention. U.S.C.A.Const. Amend. 4.

****858** Syllabus[FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

***103** 1. The Fourth Amendment requires a judicial determination of probable cause as a pre-

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requisite to extended restraint of liberty following arrest. Accordingly, the Florida procedures challenged here whereby a person arrested without a warrant and charged by information may be jailed or subjected to other restraints pending trial without any opportunity for a probable cause determination are unconstitutional. Pp. 861-866.

(a) The prosecutor's assessment of probable cause, standing alone, does not meet the requirements of the Fourth Amendment and is insufficient to justify restraint of liberty pending trial. Pp. 864-865.

(b) The Constitution does not require, however, judicial oversight of the decision to prosecute by information, and a conviction will not be vacated on the ground that the defendant was detained pending trial without a probable cause determination. Pp. 865-866.

2. The probable cause determination, as an initial step in the criminal justice process, may be made by a judicial officer without an adversary hearing. Pp. 866-869.

(a) The sole issue is whether there is probable cause for detaining the arrested person pending further proceedings, and this issue can be determined reliably by the use of informal procedures. Pp. 866-867.

(b) Because of its limited function and its nonadversary character, the probable cause determination is not a 'critical stage' in the prosecution that would require appointed counsel. Pp. 867-868.

483 F.2d 778, affirmed in part, reversed in part, and remanded.

***104** Leonard R. Mellon for petitioner.

Raymond L. Marky, Tallahassee, Fla., for the State of Florida, as amicus curiae, by special leave of Court.

Bruce S. Rogow, Coral Gables, for respondents.

Paul L. Friedman, Washington, D.C., for the United States, as amicus curiae, by special leave of Court.

***105** Mr. Justice POWELL delivered the opinion of the Court.

The issue in this case is whether a person arrested and held for trial under a prosecutor's information is constitutionally entitled to a judicial determination of probable cause for pretrial restraint of liberty.

I

In March 1971 respondents Pugh and Henderson were arrested in Dade County, Fla. Each was charged with several offenses under a prosecutor's information. [FN1] Pugh was denied bail because one of the charges against him carried a potential life sentence, and Henderson remained in custody because he was unable to post a $4,500 bond.

FN1. Respondent Pugh was arrested on March 3, 1971. On March 16 an information was filed charging him with robbery, carrying a concealed weapon, and possession of a firearm during commission of a felony. Respondent Henderson was arrested on March 2, and charged by information on March 19 with the offenses of breaking and entering and assault and battery. The record does not indicate whether there was an arrest warrant in either case.

****859** [1] In Florida, indictments are required only for prosecution of capital offenses. Prosecutors may charge all other crimes by information, without a prior preliminary hearing and without obtaining leave of court. Fla.Rule Crim.Proc. 3.140(a) ; State v. Hernandez, 217 So.2d 109 (Fla.1968); Di Bona v. State, 121 So.2d 192 (Fla.App.1960). At the time respondents were arrested, a Florida rule seemed to authorize adversary preliminary hearings to test probable cause for detention in all cases. Fla.Rule Crim.Proc. 1.122 (before amendment in 1972). ***106** But the Florida courts had held that the filling of an information foreclosed the suspect's

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right to a preliminary hearing. See State ex rel. Hardy v. Blount, 261 So.2d 172 (Fla.1972).[FN2] They had also held that habeas corpus could not be used, except perhaps in exceptional circumstances, to test the probable cause for detention under an information. See Sullivan v. State ex rel. McCrory, 49 So.2d 794, 797 (Fla.1951). The only possible methods for obtaining a judicial determination of probable cause were a special statute allowing a preliminary hearing after 30 days, Fla.Stat.Ann. s 907.045 (1973),[FN3] and arraignment, which the District Court found was often delayed a month or more after arrest. Pugh v. Rainwater, 332 F.Supp. 1107, 1110 (S.D.Fla.1971).[FN4] As a result, a person charged by information could be detained for a substantial period solely on the decision of a prosecutor.

FN2. Florida law also denies preliminary hearings to persons confined under indictment, see Sangaree v. Hamlin, 235 So.2d 729 (Fla.1970); Fla.Rule Crim.Proc. 3.131(a) but that procedure is not challenged in this case. See infra, at 117 n. 19.

FN3. This statute may have been construed to make the hearing permissive instead of mandatory. See Evans v. State, 197 So.2d 323 (Fla.App.1967); Fla.Op.Atty.Gen. 067-29 (1967). But cf. Karz v. Overton, 249 So.2d 763 (Fla.App.1971). It may also have been superseded by the subsequent amendments to the Rules of Criminal Procedure. In re Florida Rules of Criminal Procedure, 272 So.2d 65 (Fla.1972).

FN4. The Florida rules do not suggest that the issue of probable cause can be raised at arraignment, Fla.Rule Crim.Proc. 3,160, but counsel for petitioner represented at oral argument that arraignment affords the suspect an opportunity to 'attack the sufficiency of the evidence to hold him.' Tr. of Oral Arg. (Mar. 25, 1974) at 17. The Court of Appeals assumed, without deciding, that this was true. 483 F.2d 778, 781 n. 8 (C.A.5 1973).

[2] Respondents Pugh and Henderson filed a class action against Dade County officials in the Federal District ***107** Court,[FN5] claiming a constitutional right to a judicial hearing on the issue of probable cause and requesting declaratory and injunctive relief.[FN6] Respondents Turner and Faulk, also in custody under informations, subsequently intervened.[FN7] Petitioner Gerstein, the State Attorney for Dade County, was one of several defendants.[FN8]

FN5. The complaint was framed under 42 U.S.C. s 1983, and jurisdiction in the District Court was based on 28 U.S.C. s 1343 (3).

FN6. Respondents did not ask for release from state custody, even as an alternative remedy. They asked only that the state authorities be ordered to give them a probable cause determination. This was also the only relief that the District Court ordered for the named respondents. 332 F.Supp. 1107, at 1115-1116 (S.D.Fla.1971). Because release was neither asked nor ordered, the lawsuit did not come within the class of cases for which habeas corpus is the exclusive remedy. Preiser v. Rodriguez, 411 U.S. 475, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973); see Wolff v. McDonnell, 418 U.S. 539, 554, 555, 94 S.Ct. 2963, 2973, 41 L.Ed.2d 935 (1974).

FN7. Turner was being held on a charge of auto theft, following arrest on March 11, 1971. Faulk was arrested on March 19 on charges of soliciting a ride and possession of marihuana.

FN8. The named defendants included justices of the peace and judges of small-claims courts, who were authorized to hold preliminary hearings in criminal cases, and a group of law enforcement officers with

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power to make arrests in Dade County. Gerstein was the only one who petitioned for certiorari.

[3] After an initial delay while the Florida Legislature considered a bill that would have afforded preliminary hearings****860** to persons charged by information, the District Court granted the relief sought. Pugh v. Rainwater, supra. The court certified the case as a class action under Fed.Rule Civ.Proc. 23(b)(2), and held that the Fourth and Fourteenth Amendments give all arrested persons charged by information a right to a judicial hearing on the question of probable cause. The District Court ordered the Dade County defendants to give the named plaintiffs an immediate preliminary hearing to determine probable ***108** cause for further detention. [FN9] It also ordered them to submit a plan providing preliminary hearings in all cases instituted by information.

FN9. The District Court correctly held that respondents' claim for relief was not barred by the equitable restrictions on federal intervention in state prosecutions, Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971). The injunction was not directed at the state prosecutions as such, but only at the legality of pretrial detention without a judicial hearing, an issue that could not be raised in defense of the criminal prosecution. The order to hold preliminary hearings could not prejudice the conduct of the trial on the merits. See Conover v. Montemuro, 477 F.2d 1073, 1082 (CA3 1972); cf. Perez v. Ledesma, 401 U.S. 82, 91 S.Ct. 674, 27 L.Ed.2d 701 (1971); Stefanelli v. Minard, 342 U.S. 117, 72 S.Ct. 118, 96 L.Ed. 138 (1951).

The defendants submitted a plan prepared by Sheriff E. Wilson Purdy, and the District Court adopted it with modifications. The final order prescribed a detailed post-arrest procedure. 336 F.Supp. 490 (SD Fla.1972). Upon arrest the accused would be taken before a magistrate for a 'first appearance hearing.' The magistrate would explain the charges, advise the accused of his rights, appoint counsel if he was indigent, and proceed with a probable cause determination unless either the prosecutor or the accused was unprepared. If either requested more time, the magistrate would set the date for a 'preliminary hearing,' to be held within four days if the accused was in custody and within 10 days if he had been released pending trial. The order provided sanctions for failure to hold the hearings at prescribed times. At the 'preliminary hearing' the accused would be entitled to counsel, and he would be allowed to confront and cross-examine adverse witnesses, to summon favorable witnesses, and to have a transcript made on request. If the magistrate found no probable cause, the accused would be discharged. He then could not be charged with the same offense by complaint or information, but only by indictment returned within 30 days.

***109** The Court of Appeals for the Fifth Circuit stayed the District Court's order pending appeal, but while the case was awaiting decision, the Dade County judiciary voluntarily adopted a similar procedure of its own. Upon learning of this development, the Court of Appeals remanded the case for specific findings on the constitutionality of the new Dade County system. Before the District Court issued its findings, however, the Florida Supreme Court amended the procedural rules governing preliminary hearings statewide, and the parties agreed that the District Court should direct its inquiry to the new rules rather than the Dade County procedures.

Under the amended rules every arrested person must be taken before a judicial officer within 24 hours. Fla.Rule Crim.Proc. 3.130(b). This 'first appearance' is similar to the 'first appearance hearing' ordered by the District Court in all respects but the crucial one: the magistrate does not make a determination of probable cause. The rule amendments also changed the procedure for preliminary hearings, restricting them to felony charges and co-

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difying the rule that no hearings are available to persons charged by information or indictment. Rule 3.131; see In re Rule 3.131(b), Florida Rules of Criminal Procedure, 289 So.2d 3 (Fla.1974).

[4] In a supplemental opinion the District Court held that the amended rules had not answered the basic constitutional objection, since a defendant charged by information still could be detained ****861** pending trial without a judicial determination of probable cause. 355 F.Supp. 1286 (SD Fla.1973). Reaffirming its original ruling, the District Court declared that the continuation of this practice was unconstitutional.[FN10] The Court of Appeals ***110** affirmed, 483 F.2d 778 (1973), modifying the District Court's decree in minor particulars and suggesting that the form of preliminary hearing provided by the amended Florida rules would be acceptable, as long as it was provided to all defendants in custody pending trial. Id., at 788-789.

FN10. Although this ruling held a statewide 'legislative rule' unconstitutional, it was not outside the jurisdiction of a single judge by virtue of 28 U.S.C. s 2281. The original complaint did not ask for an injunction against enforcement of any state statute or legislative rule of statewide application, since the practice of denying preliminary hearings to persons charged by information was then embodied only in judicial decisions. The District Court therefore had jurisdiction to issue the initial injunction, and the Court of Appeals had jurisdiction over the appeal. On remand, the constitutionality of a state 'statute' was drawn into question for the first time when the criminal rules were amended. The District Court's supplemental opinion can fairly be read as a declaratory judgment that the amended rules were unconstitutional; the injunctive decree was never amended to incorporate that holding; and the opinion in the Court of Appeals is not inconsistent with the conclusion that the District Court did not enjoin enforcement of the statewide rule. See 483 F.2d, at 788-790. Accordingly, a district court of three judges was not required for the issuance of this order. See Kennedy v. Mendoza-Martinez, 372 U.S. 144, 152-155, 83 S.Ct. 554, 559-560, 9 L.Ed.2d 644 (1963); Flemming v. Nestor, 363 U.S. 603, 606-608, 80 S.Ct. 1367, 1370-1371, 4 L.Ed.2d 1435 (1960).

[5] State Attorney Gerstein petitioned for review, and we granted certiorari because of the importance of the issue.[FN11] ***111** 414 U.S. 1062, 94 S.Ct. 567, 38 L.Ed.2d 467 (1973). We affirm in part and reverse in part.

FN11. At oral argument counsel informed us that the named respondents have been convicted. Their pretrial detention therefore has ended. This case belongs, however, to that narrow class of cases in which the termination of a class representative's claim does not moot the claims of the unnamed members of the class. See Sosna v. Iowa, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975). Pretrial detention is by nature temporary, and it is most unlikely that any given individual could have his constitutional claim decided on appeal before he is either released or convicted. The individual could nonetheless suffer repeated deprivations, and it is certain that other persons similarly situated will be detained under the allegedly unconstitutional procedures. The claim, in short, is one that is distinctly 'capable of repetition, yet evading review.'

At the time the complaint was filed, the named respondents were members of a class of persons detained without a judicial probable cause determination, but the record does not indicate whether any of them were still in custody awaiting trial when

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the District Court certified the class. Such a showing ordinarily would be required to avoid mootness under Sosna. But this case is a suitable exception to that requirement. See Sosna, supra, 419 U.S. at 402 n. 11, 95 S.Ct. at 559 n. 11; cf. Rivera v. Freeman, 469 F.2d 1159, 1162-1163 (CA9 1972). The length of pretrial custody cannot be ascertained at the outset, and it may be ended at any time by release on recognizance, dismissal of the charges, or a guilty plea, as well as by acquittal or conviction after trial. It is by no means certain that any given individual, named as plaintiff, would be in pretrial custody long enough for a district judge to certify the class. Moreover, in this case the constant existence of a class of persons suffering the deprivation is certain. The attorney representing the named respondents is a public defender, and we can safely assume that he has other clients with a continuing live interest in the case.

II

As framed by the proceedings below, this case presents two issues: whether a person arrested and held for trial on an information is entitled to a judicial determination of probable cause for detention, and if so, whether the adversary hearing ordered by the District Court and approved by the Court of Appeals is required by the Constitution.

A

[6][7][8] Both the standards and procedures for arrest and detention have been derived from the Fourth Amendment and its common-law antecedents. See Cupp v. Murphy, 412 U.S. 291, 294-295, 93 S.Ct. 2000, 2003, 36 L.Ed.2d 900 (1973); Ex parte **862Bollman, 4 Cranch 75, 2 L.Ed. 554 (1807); Ex parte Burford, 3 Cranch 448, 2 L.Ed. 495 (1806). The standard for arrest is probable cause, defined in terms of facts and circumstances 'sufficient to warrant a prudent man in believing that the (suspect) had committed or was committing an offense.' *112 Beck v. Ohio, 379 U.S. 89, 91, 85 S.Ct. 223, 225, 13 L.Ed.2d 142 (1964). See also Henry v. United States, 361 U.S. 98, 80 S.Ct. 168, 4 L.Ed.2d 134 (1959); Brinegar v. United States, 338 U.S. 160, 175-176, 69 S.Ct. 1302, 1310-1311, 93 L.Ed. 1879 (1949). This standard, like those for searches and seizures, represents a necessary accommodation between the individual's right to liberty and the State's duty to control crime.

'These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice.' Id., at 176, 69 S.Ct. at 1311.

[9] To implement the Fourth Amendment's protection against unfounded invasions of liberty and privacy, the Court has required that the existence of probable cause be decided by a neutral and detached magistrate whenever possible. The classic statement of this principle appears in Johnson v. United States, 333 U.S. 10, 13-14, 68 S.Ct. 367, 369, 92 L.Ed. 436 (1948):

'The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protectionconsists *113 in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the of-

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ficer engaged in the often competitive enterprise of ferreting out crime.'

See also Terry v. Ohio, 392 U.S. 1, 20-22, 88 S.Ct. 1868, 1879-1880, 20 L.Ed.2d 889 (1968). FN12

FN12. We reiterated this principle in United States v. United States District Court, 407 U.S. 297, 92 S.Ct. 2125, 32 L.Ed.2d 752 (1972). In terms that apply equally to arrests, we described the 'very heart of the Fourth Amendment directive' as a requirement that 'where practical, a governmental search and seizure should represent both the efforts of the officer to gather evidence of wrongful acts and the judgment of the magistrate that the collected evidence is sufficient to justify invasion of a citizen's private premises or conversation.' Id., at 316, 92 S.Ct., at 2136.

[10] Maximum protection of individual rights could be assured by requiring a magistrate's review of the factual justification prior to any arrest, but such a requirement would constitute an intolerable handicap for legitimate law enforcement. Thus, while the Court has expressed a preference for the use of arrest warrants when feasible, Beck v. Ohio, supra, 379 U.S. at 96, 85 S.Ct., at 228; Wong Sun v. United States, 371 U.S. 471, 479-482, 83 S.Ct. 407, 412-414, 9 L.Ed.2d 441 (1963), it has never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant. See Ker v. California, 374 U.S. 23, 83 S.Ct. 1623, 10 L.Ed.2d 726 (1963); ****863**Draper v. United States, 358 U.S. 307, 79 S.Ct. 329, 3 L.Ed.2d 327 (1959); Trupiano v. United States, 334 U.S. 699, 705, 68 S.Ct. 1229, 1232, 92 L.Ed. 1663 (1948). FN13

FN13. Another aspect of Trupiano was overruled in United States v. Rabinowitz, 339 U.S. 56, 70 S.Ct. 430, 94 L.Ed. 653 (1950), which was overruled in turn by Chimel v. California, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969).

The issue of warrantless arrest that has generated the most controversy, and that remains unsettled, is whether and under what circumstances an officer may enter a suspect's home to make a warrantless arrest. See Coolidge v. New Hampshire, 403 U.S. 443, 474-481, 91 S.Ct. 2022, 2042-2045, 29 L.Ed. 564 (1971); id., at 510-512 and n. 1, 91 S.Ct., at 2060-2061 (White, J., dissenting); Jones v. United States, 357 U.S. 493, 499-500, 78 S.Ct. 1253, 1257, 2 L.Ed.2d 1514 (1958).

[11][12] Under this practical compromise, a policeman's on-the-scene assessment of probable cause provides legal justification***114** for arresting a person suspected of crime, and for a brief period of detention to take the administrative steps incident to arrest. Once the suspect is in custody, however, the reasons that justify dispensing with the magistrate's neutral judgment evaporate. There no longer is any danger that the suspect will escape or commit further crimes while the police submit their evidence to a magistrate. And, while the State's reasons for taking summary action subside, the suspect's need for a neutral determination of probable cause increases significantly. The consequences of prolonged detention may be more serious than the interference occasioned by arrest. Pretrial confinement may imperil the suspect's job, interrupt his source of income, and impair his family relationships. See R. Goldfarb, Ransom 32-91 (1965); L. *Katz,* Justice Is the Crime 51-62 (1972). Even pretrial release may be accompanied by burdensome conditions that effect a significant restraint of liberty. See, e.g., 18 U.S.C. ss 3146(a)(2), (5). When the stakes are this high, the detached judgment of a neutral magistrate is essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty. Accordingly, we hold that the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty fol-

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lowing arrest.

[13][14][15][16] This result has historical support in the common law that has guided interpretation of the Fourth Amendment. See Carroll v. United States, 267 U.S. 132, 149, 45 S.Ct. 280, 283, 69 L.Ed. 543 (1925). At common law it was customary, if not obligatory, for an arrested person to be brought before a justice of the peace shortly after arrest. 2 M. Hale, Pleas of the Crown 77, 81, 95, 121 (1736); 2 W. Hawkins, Pleas of the Crown 116-117 (4th ed. 1762). See also Kurtz v. Moffitt, 115 U.S. 487, 498-499, 6 S.Ct. 148, 151-152, 29 L.Ed. 458 (1885).[FN14] The justice of ****864** the peace ***115** would 'examine' the prisoner and the witnesses to determine whether there was reason to believe the prisoner had committed a crime. If there was, the suspect would be committed to jail or bailed pending trial. If not, he would be discharged from custody. 1 M. Hale, supra, at 583-586; 2 W. Hawkins, supra, at 116-119; 1 J. Stephen, History of the Criminal Law of England 233 (1883).[FN15] The initial determination of probable cause also could be reviewed by higher courts on a writ of habeas corpus. 2 W. Hawkins, supra, at 112-115; 1 J. Stephen, supra, at 243; see Ex parte Bollman, 4 Cranch, at 97-101. This practice furnished the model for criminal procedure in America immediately following the adoption of the ***116** Fourth Amendment, see Ex parte Bollman, supra;[FN16] Ex parte Burford, 3 Cranch 448, 2 L.Ed. 495 (1806); United States v. Hamilton, 3 Dall. 17, 1 L.Ed. 490 (1795), and there are indications that the Framers of the Bill of Rights regarded it as a model for a 'reasonable' seizure. See Draper v. United States, 358 U.S., at 317-320, 79 S.Ct., at 335-336 (Douglas, J., dissenting).[FN17]

FN14. The primary motivation for the requirement seems to have been the penalty for allowing an offender to escape, if he had in fact committed the crime, and the fear of liability for false imprisonment, if he had not. But Hale also recognized that a judicial warrant of commitment, called a mittimus, was required for more than brief detention.

'When a private person hath arrested a felon, or one suspected of felony, he may detain him in custory till he can reasonably dismiss himself of him; but with as much speed as conveniently he can, he may do either of these things.

'1. He may carryhim to the common gaol, . . . but that is now rarely done.

'2. He may deliver him to the constable of the vill, who may either carry him to the common gaol, . . . or to a justice of peace to be examined, and farther proceeded against as case shall require. . . .

'3. Or he may carry him immediately to any justice of peace of the county where he is taken, who upon examination may discharge, bail, or commit him, as the case shall require.

'And the bringing the offender either by the constable or private person to a justice of peace is most usual and safe, because a gaoler will expect a Mittimus for his warrant of detaining.' 1 M. Hale, Pleas of the Crown 589-590 (1736).

FN15. The examination of the prisoner was inquisitorial, and the witnesses were questioned outside the prisoner's presence. Although this method of proceeding was considered quite harsh, 1 J. Stephen, supra, at 219-225, it was well established that the prisoner was entitled to be discharged if the investigation turned up insufficient evidence of his guilt. Id., at 233.

FN16. In Ex parte Bollman, two men charged in the Aaron Burr case were committed following an examination in the Circuit Court of the District of Columbia. They filed a petition for writ of habeas cor-

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pus in the Supreme Court. The Court, in an opinion by Mr. Chief Justice Marshall, affirmed its jurisdiction to issue habeas corpus to persons in custody by order of federal trial courts. Then, following arguments on the Fourth Amendment requirement of probable cause, the Court surveyed the evidence against the prisoners and held that it did not establish probable cause that they were guilty of treason. The prisoners were discharged.

FN17. See also N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution 15-16 (1937). A similar procedure at common law, the warrant for recovery of stolen goods, is said to have furnished the model for a 'reasonable' search under the Fourth Amendment. The victim was required to appear before a justice of the peace and make an oath of probable cause that his goods could be found in a particular place. After the warrant was executed, and the goods seized, the victim and the alleged thief would appear before the justice of the peace for a prompt determination of the cause for seizure of the goods and detention of the thief. 2 M. Hale, supra, at 149-152; T. Taylor, Two Studies in Constitutional Interpretation 24-25, 39-40 (1969); see Boyd v. United States, 116 U.S. 616, 626-629, 6 S.Ct. 524, 530-531, 29 L.Ed. 746 (1886).

B

[17][18][19] Under the Florida procedures challenged here, a person arrested without a warrant and charged by information may be jailed or subjected to other restraints pending trial without any opportunity for a probable cause determination.[FN18] Petitioner defends this practice on the ***117** ground that the prosecutor's decision to file an information is itself a determination of probable cause that furnishes sufficient reason to detain a defendant pending trial. Although a conscientious decision that the evidence warrants prosecution affords a measure of protection against unfounded detention, we do not think prosecutorial judgment standing alone meets the requirements of the Fourth Amendment. Indeed, we think the Court's previous decisions compel disapproval of the Florida procedure. In Albrecht v. United States, 273 U.S. 1, 5, 47 S.Ct. 250, 251, 71 L.Ed. 505 (1927), the Court held that an arrest warrant issued solely upon a ****865** United States Attorney's information was invalid because the accompanying affidavits were defective. Although the Court's opinion did not explicitly state that the prosecutor's official oath could not furnish probable cause, that conclusion was implicit in the judgment that the arrest was illegal under the Fourth Amendment.[FN19] More recently, in Coolidge v. New Hampshire, 403 U.S. 443, 449-453, 91 S.Ct. 2022, 2029-2031, 29 L.Ed.2d 564 (1971), the Court held that a prosecutor's responsibility to law enforcement is inconsistent with the constitutional role of a neutral and detached magistrate. We reaffirmed that principle in ***118**Shadwick v. City of Tampa, 407 U.S. 345, 92 S.Ct. 2119, 32 L.Ed.2d 783 (1972), and held that probable cause for the issuance of an arrest warrant must be determined by someone independent of police and prosecution. See also United States v. United States District Court, 407 U.S. 297, 317, 92 S.Ct. 2125, 2136, 32 L.Ed.2d 752 (1972).[FN20] The reason for this separation of functions was expressed by Mr. Justice Frankfurter in a similar context:

FN18. A person arrested under a warrant would have received a prior judicial determination of probable cause. Under Fla.Rule Crim.Proc. 3.120, a warrant may be issued upon a sworn complaint that states facts showing that the suspect has committed a crime. The magistrate may also take testimony under oath to determine if there is reasonable ground to believe the complaint is true.

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FN19. By contrast, the Court has held that an indictment, 'fair upon its face,' and returned by a 'properly constituted grand jury,' conclusively determines the existence of probable cause and requires issuance of an arrest warrant without further inquiry. Ex parte United States, 287 U.S. 241, 250, 53 S.Ct. 129, 131, 77 L.Ed. 283 (1932). See also Giordenello v. United States, 357 U.S. 480, 487, 78 S.Ct. 1245, 1250, 2 L.Ed.2d 1503 (1958). The willingness to let a grand jury's judgment substitute for that of a neutral and detached magistrate is attributable to the grand jury's relationship to the courts and its historical role of protecting individuals from unjust prosecution. See United States v. Calandra, 414 U.S. 338, 342-346, 94 S.Ct. 613, 617-619, 38 L.Ed.2d 561 (1974).

FN20. The Court had earlier reached a different result in Ocampo v. United States, 234 U.S. 91, 34 S.Ct. 712, 58 L.Ed. 1231 (1914), a criminal appeal from the Philippine Islands. Interpreting a statutory guarantee substantially identical to the Fourth Amendment, Act of July 1, 1902, s 5, 32 Stat. 693, the Court held that an arrest warrant could issue solely upon a prosecutor's information. The Court has since held that interpretation of a statutory guarantee applicable to the Philippines is not conclusive for interpretation of a cognate provision in the Federal Constitution, Green v. United States, 355 U.S. 184, 194-198, 78 S.Ct. 221, 227-229, 2 L.Ed.2d 199 (1957). Even if it were, the result reached in Ocampo is incompatible with the later holdings of Albrecht, Coolidge, and Shadwick.

'A democratic society, in which respect for the dignity of all men is central, naturally guards against the misuse of the law enforcement process. Zeal in tracking down crime is not in itself an assurance of soberness of judgment. Disinterestedness in law enforcement does not alone prevent disregard of cherished liberties. Experience has therefore counseled that safeguards must be provided against the dangers of the overzealous as well as the despotic. The awful instruments of the criminal law cannot be entrusted to a single functionary. The complicated process of criminal justice is therefore divided into different parts, responsibility for which is separately vested in the various participants upon whom the criminal law relies for its vindication.' McNabb v. United States, 318 U.S. 332, 343, 63 S.Ct. 608, 614, 87 L.Ed. 819 (1943).

[20][21][22][23] In holding that the prosecutor's assessment of probable ***119** cause is not sufficient alone to justify restraint of liberty pending trial, we do not imply that the accused is entitled to judicial oversight or review of the decision to prosecute. Instead, we adhere to the Court's prior holding that a judicial hearing is not prerequisite to prosecution by information. Beck v. Washington, 369 U.S. 541, 545, 82 S.Ct. 955, 957, 8 L.Ed.2d 98 (1962); Lem Woon v. Oregon, 229 U.S. 586, 33 S.Ct. 783, 57 L.Ed. 1340 (1913). Nor do we retreat from the established rule that illegal arrest or detention does not void a subsequent conviction. Frisbie v. Collins, 342 U.S. 519, 72 S.Ct. 509, 96 L.Ed. 541 (1952); Ker v. Illinois, 119 U.S. 436, 7 S.Ct. 225, 30 L.Ed. 421 (1886). Thus, as the ****866** Court of Appeals noted below, although a suspect who is presently detained may challenge the probable cause for that confinement, a conviction will not be vacated on the ground that the defendant was detained pending trial without a determination of probable cause. 483 F.2d, at 786-787. Compare Scarbrough v. Dutton, 393 F.2d 6 (CA5 1968), with Brown v. Fauntleroy, 143 U.S.App.D.C. 116, 442 F.2d 838 (1971), and Cooley v. Stone, 134 U.S.App.D.C. 317, 414 F.2d 1213 (1969).

III

Both the District Court and the Court of Appeals held that the determination of probable cause must be accompanied by the full panoply of ad-

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versary safeguards-counsel, confrontation, cross-examination, and compulsory process for witnesses. A full preliminary hearing of this sort is modeled after the procedure used in many States to determine whether the evidence justifies going to trial under an information or presenting the case to a grand jury. See Coleman v. Alabama, 399 U.S. 1, 90 S.Ct. 1999, 26 L.Ed.2d 387 (1970); Y. Kamisar, W. LaFave & J. Israel, Modern Criminal Procedure 957-967, 996-1000 (4th ed. 1974). The standard of proof required of the prosecution is usually referred to as 'probable cause,' but in some jurisdictions it may approach a prima facie case of guilt. ***120** ALI, Model Code of Pre-arraignment Procedure, Commentary on Art. 330, pp. 90-91 (Tent. Draft No. 5, 1972). When the hearing takes this form, adversary procedures are customarily employed. The importance of the issue to both the State and the accused justifies the presentation of witnesses and full exploration of their testimony on cross-examination. This kind of hearing also requires appointment of counsel for indigent defendants. Coleman v. Alabama, supra. And, as the hearing assumes increased importance and the procedures become more complex, the likelihood that it can be held promptly after arrest diminishes. See ALI, Model Code of Pre-arraignment Procedure, supra, at 33-34.

[24][25][26] These adversary safeguards are not essential for the probable cause determination required by the Fourth Amendment. The sole issue is whether there is probable cause for detaining the arrested person pending further proceedings. This issue can be determined reliably without an adversary hearing. The standard is the same as that for arrest.[FN21] That standard-probable cause to believe the suspect has committed a crime-traditionally has been decided by a magistrate in a nonadversary proceeding on hearsay and written testimony, and the Court has approved these informal modes of proof.

FN21. Because the standards are identical, ordinarily there is no need for further investigation before the probable cause determination can be made.

'Presumably, whomever the police arrest they must arrest on 'probable cause.' It is not the function of the police to arrest, as it were, at large and to use an interrogating process at police headquarters in order to determine whom they should charge before a committing magistrate on 'probable cause.'' Mallory v. United States, 354 U.S. 449, 456, 77 S.Ct. 1356, 1360, 1 L.Ed.2d 1479 (1957).

'Guilt in a criminal case must be proved beyond a reasonable doubt and by evidence confined to that which long experience in the common-law tradition, ***121** to some extent embodied in the Constitution, has crystallized into rules of evidence consistent with that standard. These rules are historically grounded rights of our system, developed to safeguard men from dubious and unjust convictions, with resulting forfeitures of life, liberty and property.

'In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The ****867** standard of proof is accordingly correlative to what must be proved.' Brinegar v. United States, 338 U.S., at 174-175, 69 S.Ct. 1302, 1310, 93 L.Ed. 1879.

Cf. McCray v. Illinois, 386 U.S. 300, 87 S.Ct. 1056, 18 L.Ed.2d 62 (1967).

[27] The use of an informal procedure is justified not only by the lesser consequences of a probable cause determination but also by the nature of the determination itself. It does not require the fine resolution of conflicting evidence that a reasonable-doubt or even a preponderance standard demands, and credibility determinations are seldom crucial in deciding whether the evidence supports a reason-

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able belief in guilt. See F. Miller, Prosecution: The Decision to Charge a Suspect with a Crime 64-109 (1969).[FN22] This is not to say that confrontation and ***122** cross-examination might not enhance the reliability of probable cause determinations in some cases. In most cases, however, their value would be too slight to justify holding, as a matter of constitutional principle, that these formalities and safeguards designed for trial must also be employed in making the Fourth Amendment determination of probable cause.[FN23]

FN22. In Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972), and Gagnon v. Scarpelli, 411 U.S. 778, 93 S.Ct. 1756. 36 L.Ed.2d 656 (1973), we held that a parolee or probationer arrested prior to revocation is entitled to an informal preliminary hearing at the place of arrest, with some provision for live testimony. 408 U.S., at 487, 92 S.Ct., at 2603; 411 U.S., at 786, 93 S.Ct., at 1761. That preliminary hearing, more than the probable cause determination required by the Fourth Amendment, serves the purpose of gathering and preserving live testimony, since the final revocation hearing frequently is held at some distance from the place where the violation occurred. 408 U.S., at 485, 92 S.Ct., at 2602; 411 U.S., at 782-783, n. 5, 93 S.Ct., at 1759-1760. Moreover, revocation proceedings may offer less protection from initial error than the more formal criminal process, where violations are defined by statute and the prosecutor has a professional duty not to charge a suspect with crime unless he is satisfied of probable cause. See ABA Code of Professional Responsibility DR 7-103(A) (Final Draft 1969) (a prosecutor 'shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause'); American Bar Association Project on Standards for Criminal Justice, The Prosecution Function ss 1.1, 3.4, 3.9 (1974); American College of Trial Lawyers, Code of Trial Conduct, Rule 4(c) (1963).

FN23. Criminal justice is already overburdened by the volume of cases and the complexities of our system. The proceeding of misdemeanors, in particular, and the early stages of prosecution generally are marked by delays that can seriously affect the quality of justice. A constitutional doctrine requiring adversary hearings for all persons detained pending trial could exacerbate the problem of pretrial delay.

[28][29][30] Because of its limited function and its nonadversary character, the probable cause determination is not a 'critical stage' in the prosecution that would require appointed counsel. The Court has identified as 'critical stages' those pretrial procedures that would impair defense on the merits if the accused is required to proceed without counsel. Coleman v. Alabama, 399 U.S. 1, 90 S.Ct. 1999, 26 L.Ed.2d 387 (1970); United States v. Wade, 388 U.S. 218, 226-227, 87 S.Ct. 1926, 1931-1932, 18 L.Ed.2d 1149 (1967). In Coleman v. Alabama, where the Court held that a preliminary hearing was a critical stage of an Alabama prosecution, the majority and concurring opinions identified two critical factors that distinguish the Alabama preliminary hearing from the probable cause determination required by the Fourth Amendment. First, ***123** under Alabama law the function of the preliminary hearing was to determine whether the evidence justified charging the suspect with an offense. A finding of no probable cause could mean that he would not be tried at all. The Fourth Amendment probable cause determination is addressed only to pretrial custody. To be sure, pretrial custody may affect to some extent the defendant's ability to ****868** assist in preparation of his defense, but this does not present the high probability of substantial harm identified as controlling in Wade and Coleman. Second, Alabama allowed the sus-

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pect to confront and cross-examine prosecution witnesses at the preliminary hearing. The Court noted that the suspect's defense on the merits could be compromised if he had no legal assistance for exploring or preserving the witnesses' testimony. This consideration does not apply when the prosecution is not required to produce witnesses for cross-examination.

[31][32][33][34] Although we conclude that the Constitution does not require an adversary determination of probable cause, we recognize that state systems of criminal procedure vary widely. There is no single preferred pretrial procedure, and the nature of the probable cause determination usually will be shaped to accord with a State's pretrial procedure viewed as a whole. While we limit our holding to the precise requirement of the Fourth Amendment, we recognize the desirability of flexibility and experimentation by the States. It may be found desirable, for example, to make the probable cause determination at the suspect's first appearance before a judicial officer,[FN24] ***124** see McNabb v. United States, 318 U.S., at 342-344, 63 S.Ct., at 613-614, or the determination may be incorporated into the procedure for setting bail or fixing other conditions of pretrial release. In some States, existing procedures may satisfy the requirement of the Fourth Amendment. Others may require only minor adjustment, such as acceleration of existing preliminary hearings. Current proposals for criminal procedure reform suggest other ways of testing probable cause for detention.[FN25] Whatever ***125** procedure a State may adopt, it must provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint****869** of liberty,[FN26] and this determination must be made by a judicial officer either before or promptly after arrest.[FN27]

FN24. Several States already authorize a determination of probable cause at this stage or immediately thereafter. See, e.g., Hawaii Rev.Stat. ss 708- 9(5), 710-7 (1968); Vt. Rules Crim.Proc. 3(b), 5(c). This Court has interpreted the Federal Rules of Criminal Procedure to require a determination of probable cause at the first appearance. Jaben v. United States, 381 U.S. 214, 218, 85 S.Ct. 1365, 1367, 14 L.Ed.2d 345 (1965); Mallory v. United States, 354 U.S., at 454, 77 S.Ct., at 1359.

FN25. Under the Uniform Rules of Criminal Procedure (Proposed Final Draft 1974), a person arrested without a warrant is entitled, 'without unnecessary delay,' to a first appearance before a magistrate and a determination that grounds exist for issuance of an arrest warrant. The determination may be made on affidavits or testimony, in the presence of the accused. Rule 311. Persons who remain in custody for inability to qualify for pretrial release are offered another opportunity for a probable cause determination at the detention hearing, held no more than five days after arrest. This is an adversary hearing, and the parties may summon witnesses, but reliable hearsay evidence may be considered. Rule 344.

The ALI Model Code of Pre-arraignment Procedure (Tent. Draft No. 5, 1972, and Tent. Draft No. 5A. 1973) also provides a first appearance, at which a warrantless arrest must be supported by a reasonably detailed written statement of facts. s 310.1. The magistrate may make a determination of probable cause to hold the accused, but he is not required to do so and the accused may request an attorney for an 'adjourned session' of the first appearance to be held within two 'court days.' At that session, the magistrate makes a determination of probable cause upon a combination of written and live testimony:

'The arrested person may present written and testimonial evidence and arguments for his discharge and the state may present

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additional written and testimonial evidence and arguments that there is reasonable cause to believe that he has committed the crime of which he is accused. The state's submission may be made by means of affidavits, and no witnesses shall be required to appear unless the court, in the light of the evidence and arguments submitted by the parties, determines that there is a basis for believing that the appearance of one or more witnesses for whom the arrested person seeks subpoenas might lead to a finding that there is no reasonable cause.' s 310.2(2) (Tent. Draft No. 5A, 1973).

FN26. Because the probable cause determination is not a constitutional prerequisite to the charging decision, it is required only for those suspects who suffer restraints on liberty other than the condition that they appear for trial. There are many kinds of pretrial release and many degrees of conditional liberty. See 18 U.S.C. s 3146; American Bar Association Project on Standards for Criminal Justice, Pretrial Release s 5.2 (1974); Uniform Rules of Criminal Procedure, Rule 341 (Proposed Final Draft 1974). We cannot define specifically those that would require a prior probable cause determination, but the key factor is significant restraint on liberty.

FN27. In his concurring opinion, Mr. Justice STEWART objects to the Court's choice of the Fourth Amendment as the rationale for decision and suggests that the Court offers less procedural protection to a person in jail than it requires in certain civil cases. Here we deal with the complex procedures of a criminal case and a threshold right guaranteed by the Fourth Amendment. The historical basis of the probable cause requirement is quite different from the relatively recent application of variable procedural due process in debtor-creditor disputes and termination of government-created benefits. The Fourth Amendment was tailored explicitly for the criminal justice system, and its balance between individual and public interests always has been thought to define the 'process that is due' for seizures of person or property in criminal cases, including the detention of suspects pending trial. Part II-A, supra. Moreover, the Fourth Amendment probable cause determination is in fact only the first stage of an elaborate system, unique in jurisprudence, designed to safeguard the rights of those accused of criminal conduct. The relatively simple civil procedures (e.g., prior interview with school principal before suspension) presented in the cases cited in the concurring opinion are inapposite and irrelevant in the wholly different context of the criminal justice system.

It would not be practicable to follow the further suggestion implicit in Mr. Justice STEWART's concurring opinion that we leave for another day determination of the procedural safeguards that are required in making a probable-cause determination under the Fourth Amendment. The judgment under review both declares the right not to be detained without a probable-cause determination and affirms the District Court's order prescribing an adversary hearing for the implementation of that right. The circumstances of the case thus require a decision on both issues.

***126** IV

[35] We agree with the Court of Appeals that the Fourth Amendment requires a timely judicial determination of probable cause as a prerequisite to detention, and we accordingly affirm that much of the judgment. As we do not agree that the Fourth Amendment requires the adversary hearing outlined in the District Court's decree, we reverse in part and

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remand to the Court of Appeals for further proceedings consistent with this opinion.

It is so ordered.

Affirmed in part, reversed in part, and remanded.

Mr. Justice STEWART, with whom Mr. Justice DOUGLAS, Mr. Justice BRENNAN, and Mr. Justice MARSHALL join, concurring.

I concur in Parts I and II of the Court's opinion, since the Constitution clearly requires at least a timely judicial determination of probable cause as a prerequisite to pretrial detention. Because Florida does not provide all defendants in custody pending trial with a fair and reliable determination of probable cause for their detention, the respondents and the members of the class they represent are entitled to declaratory and injunctive relief.

Having determined that Florida's current pretrial detention procedures are constitutionally inadequate, I think it is unnecessary to go further by way of dicta. In particular, I would not, in the abstract, attempt to specify those procedural protections that constitutionally need not be accorded incarcerated suspects awaiting trial.

***127** Specifically, I see no need in this case for the Court to say that the Constitution extends less procedural protection to an imprisoned human being than is required to test the propriety of garnishing a commercial bank account, ****870** North Georgia Finishing, Inc. v. DiChem, Inc., 419 U.S. 601, 95 S.Ct. 719, 42 L.Ed.2d 751; the custody of a refrigerator, Mitchell v. W. T. Grant Co., 416 U.S. 600, 94 S.Ct. 1895, 40 L.Ed.2d 406, the temporary suspension of a public school student, Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725, or the suspension of a driver's license, Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90. Although it may be true that the Fourth Amendment's 'balance between individual and public interests always has been thought to define the 'process that is due' for seizures of person or property in criminal cases,' ante, at 869 n. 27, this case does not involve an initial arrest, but rather the continuing incarceration of a presumptively innocent person. Accordingly, I cannot join the Court's effort to foreclose any claim that the traditional requirements of constitutional due process are applicable in the context of pretrial detention.

It is the prerogative of each State in the first instance to develop pretrial procedures that provide defendants in pretrial custody with the fair and reliable determination of probable cause for detention required by the Constitution. Cf. Morrissey v. Brewer, 408 U.S. 471, 488, 92 S.Ct. 2593, 2603, 33 L.Ed.2d 484. The constitutionality of any particular method for determining probable cause can be properly decided only by evaluating a State's pretrial procedures as a whole, not by isolating a particular part of its total system. As the Court recognizes, great diversity exists among the procedures employed by the States in this aspect of their criminal justice systems. Ante, at 868.

There will be adequate opportunity to evaluate in an appropriate future case the constitutionality of any new procedures that may be adopted by Florida in response to the Court's judgment today holding that Florida's present procedures are constitutionally inadequate.

U.S.Fla. 1975.
Gerstein v. Pugh
420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54, 19 Fed.R.Serv.2d 1499

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DIRECTIVES
&
MEMORANDUM OF AGREEMENT

DIRECTIVES
TO COMPLY WITH
MEMORANDUM OF AGREEMENT

PROBABLE CAUSE DETERMINATIONS

DIRECTIVE ONE

Magistrates shall assure that no child be detained without a finding of probable cause to believe that: (1) a delinquent act was committed, (2) the named child committed the delinquent act alleged, and (3) the alleged delinquent act is one for which Tennessee statutes, Tennessee Rules of Juvenile Procedure and Court policy permit the use of detention. See TCA 37-1-114.
(MOA, A. 1. (a) (i), page 9) [Effective on or about 3/17/2013]

DIRECTIVE TWO

A child taken into custody without a warrant shall have a probable cause determination to detain with forty-eight (48) hours of coming into Juvenile Court.
(MOA, A. 1. (a) (ii), page 9) [Effective on or about 3/17/2013]

DIRECTIVE THREE

No child shall be detained for more that forty-eight (48) hours prior to the Detention Hearing if the Court has not made a Probable Cause Determination.
(MOA, A. 1. (a) (iii), page 9) [Effective on or about 3/17/2013]

DIRECTIVE FOUR

The child shall have the opportunity to test probable cause by:

(1) Appointment of counsel;
(2) Requiring the state to produce evidence by either a live witness or an Affidavit of Complaint;
(3) Allowing defense counsel the opportunity to cross-examine witnesses and present evidence; and
(4) Maintaining a complete record of the detention hearing.

(MOA, A. 1. (a) (iv), page 9) [Effective on or about 3/17/2013]

NOTICE OF CHARGES

DIRECTIVE FIVE

Magistrates shall formally arraign children at all Detention Hearings.
(MOA, A. 1. (b) (i), page 9) [Effective on or about 3/17/2013]

DIRECTIVE SIX

Magistrates shall ensure that defense attorneys have a reasonable time within which to prepare their cases.
(MOA, A. 1. (a) (ii), page 9) [Effective on or about 3/17/2013]

TRANSFER HEARINGS

DIRECTIVE SEVEN

The Judge or a Magistrate sitting as Special Judge shall ensure transfer hearings are conducted pursuant to TCA 37-1-134.

Written findings should state there are reasonable grounds to believe that:

(1) The child committed the delinquent act;
(2) The child is not committable to an institution for persons with a developmental disability or mental illness; and
(3) The interests of the community require that the child be put under legal restraint or discipline.

Factors to be considered and documented to find the above should include:

(1) The nature and extent of the child's prior delinquency;
(2) The nature of past treatment efforts and the child's response there
(3) The child's suitability for additional treatment;
(4) The nature of the delinquent act;
(5) The child's social factors;
(6) The alternatives within the juvenile system which were considered and the rational for rejecting those alternatives; and
(7) Whether the juvenile justice system can provide rehabilitation of the juvenile.

(MOA, A.1. (c), page 11) [Effective on or about 3/17/2013]

PROTECTIONS AGAINST SELF-INCRIMINATION

DIRECTIVE EIGHT

The Prosecution shall not be allowed to call a child as a witness in the child's own adjudicatory or transfer hearing.
(MOA, A. 1. (d) (vii), page 9) [Effective on or about 1/17/2013]

DIRECTIVE NINE

Magistrates shall give oral advisement of rights against self-incrimination to any child who wishes to testify at his or her own ajudicatory or transfer hearing.
(MOA, A. 1. (d) (viii), page 9) [Effective on or about 1/17/2013]

PLEA COLLOQUIES

DIRECTIVE TEN

Magistrates shall conduct an interactive oral colloquy with the child to ensure a knowing and voluntary waiver. (MOA, A. 1. (f) (ii), page 9) [Effective on or about 6/17/2013]

RESTITUTION GUIDELINES

DIRECTIVE ELEVEN

Magistrates shall require documentation to support restitution request, allow the child time to review and present evidence in opposition, and consider ability to pay. (MOA, A. 1. (g), page 9) [Effective on or about 6/17/2013]

BOND-SETTING GUIDELINES

DIRECTIVE TWELVE

Magistrates shall ensure that reasonable bonds are set that will assure the child's appearance for court and that are not excessive or punitive.
(MOA, A. 1. (h), page 9) [Effective on or about 6/17/2013]

CONFIDENTIALITY OF JUVENILE DELINQUENCY PROCEEDINGS

DIRECTIVE THIRTEEN

Magistrates shall ensure that all detention, delinquency, and transfer matters are restricted to only those persons concerned with, or having an interest in, that particular case. (MOA, A. 1. (i), page 9) [Effective on or about 1/17/2013]

TREATMENT OF WITNESSES

DIRECTIVE FOURTEEN

Magistrates shall ensure that the integrity of witness testimony is preserved by: (a) placing witnesses under oath; and (b) sequestering witnesses.
(MOA, A.1. (k) (i), page 17) [Effective on or about 6/17/2013]

JUDICIAL BENCH CARDS

DIRECTIVE FIFTEEN

Magistrates shall reference the appropriate bench card and review same with the child during the hearing or proceedings.
(MOA, A. 1. (l), page 18) [Effective on or about 6/17/2013]

WRITTEN FINDINGS

DIRECTIVE SIXTEEN

Juvenile Court Magistrates shall produce court orders containing written findings of fact and conclusions of law.
(MOA, A. 1. (m), page 18) [Effective on or about 6/17/2013]

	Policy #0000 created 3/17/2013 Review: Annual **TRANSFER HEARING POLICY**
Chapter: Judges and Magistrates	Related Standards:

000.00 POLICY AND PURPOSE

It is the policy of the Memphis and Shelby County Juvenile Court to follow the Constitution of the United States and the laws of the State of Tennessee. In particular, this policy is created to ensure that transfer hearings are conducted in a consistent manner, ensuring the child's rights are protected at all stages of the hearing.

The purpose of this policy is to establish standards consistent with the Tennessee Supreme Court Rules and the Tennessee Rules of Juvenile Procedure and to ensure the Memphis and Shelby County Juvenile Court transfer hearings in accordance with those standards.

000.00 APPLICABILITY

This policy and procedure applies to all judicial officers of the Juvenile Court of Memphis and Shelby County. This policy will be reviewed annually and updated as needed.

000.00 EXCLUSIVITY

This has been in effect as of March 17, 2013 and will remain in effect until revoked or superseded in writing. This policy supersedes all prior Memphis and Shelby County Juvenile Court policies covering transfer hearings, and all such prior use of similar policies, whether written or verbal, are hereby revoked.

000.00 DISTRIBUTION

This policy will be distributed to all judicial officers, all other Court employees, the District Attorney, all panel attorneys, the Public Defender and will be posted on the court's web site.

000.00 SCOPE

A. This policy applies to all judicial officers of the Juvenile Court of Memphis and Shelby County.

B. This policy applies to any proceeding that takes place during a Transfer Hearing.

000.00 DEFINITIONS

A. **Child or Children** – Refers to persons less than 18 years of age involved in a delinquency proceeding, formally or informally, before JCMSC. It also includes persons under 19 years of age who remain under the jurisdiction of the juvenile court in accordance with Tenn. Code Ann. § 37-1-102 (a)(4)(B).

B. **Court**- Refers to the Juvenile Court of Memphis and Shelby County.

C. **Judge**-Means the Juvenile Court Judge elected to lead the Juvenile Court of Memphis and Shelby County, including all successors in office.

D. **Panel Attorney**-The collection of licensed attorneys not affiliated with the Public Defender's office who are selected by the court to represent children in delinquency proceedings.

E. **Prosecutor**-An attorney from the District Attorney's Office.

F. **Public Defender**-An attorney from the Public Defender's Office.

G. **Proceeding**-Any adjudicatory or pre-adjudicatory hearing (detention hearing, motion hearing, status update, etc) in which the child is present before a judge or magistrate.

H. **Self-incrimination (privilege against)**-The civil right (guaranteed by the Fifth Amendment to the United States Constitution) to refuse to answer questions or otherwise give testimony against yourself in a criminal proceeding.

I. **Transfer Hearing**-The juvenile proceeding where the Court considers whether to waive jurisdiction of a Child and to transfer the Child's case to adult criminal court.

000.00 DISSEMINATION OF POLICY AND TRAINING

A. Every judicial officer must receive a paper copy of this policy and must acknowledge that they have received a copy and have read the policy.

B. Every judicial officer must receive training on the nature, meaning and interpretation of this policy.

C. New Magistrates must be given a copy of this policy and trained on the policy by the Judge or the Judge's designee.

D. The Court may, wherever feasible, provide its own training on Transfer Hearings; or, in the alternative, judicial officers may avail themselves of any continuing legal education training specific to this core concept.

000.00 PROCEDURES

A. Initiation of Intent to Request Transfer of Child

1. In any proceeding in Juvenile Court in which a Transfer to Criminal Court is requested by the District Attorney, the District Attorney shall file a "Notice of Intent to Transfer."
2. That the "Notice of Intent to Transfer to Criminal Court" be filed with the Clerk of Court at least seven calendar days prior to the transfer hearing.
3. That the "Notice of Intent to Transfer to Criminal Court" be mailed or hand-delivered to the child and child's counsel at least seven calendar days prior to the transfer hearing.

B. Conduct of Transfer Hearing

1. In any Transfer Hearing in Juvenile Court, the Judge or Special Judge shall inform the child of the child's right against self incrimination.
2. The Judge or Special Judge shall ensure that the child has counsel, and if the child does not have counsel, inform the child his or her right to counsel if indigent.
3. The Prosecution has the burden of proving reasonable grounds that:

   a. The Child committed the delinquent act as alleged;
   b. The Child is not committable to an institution for persons with a developmental disability or mental illness if the issue is first raised by the defense.

c. The interests of the community require that the Child be put under legal restraint or discipline

4. After the Prosecution has submitted testimony and evidence to establish the grounds specified in B(3), defense counsel shall be provided the opportunity to meaningfully confront evidence presented against them, including cross-examining adverse witnesses.

5. The Judge or Special Judge shall ensure the child and defense counsel are provided the opportunity to introduce evidence on their own behalf.

6. The Judge or Special Judge must make a finding as to whether the child is committable to an institution for persons with a developmental disability or mental illness.

7. If the Court finds the child is not committable, the Prosecution may go forward with their case.

8. If the child is committable, the transfer hearing shall conclude and the matter shall be set for further review on a subsequent docket.

9. If Probable Cause is established that the child committed the delinquent act, the Prosecution may put forth testimony and evidence from any of the following factors that necessitate the child's transfer to Criminal Court and the Court shall consider those factors in the decision to transfer or not.

   a. The extent and nature of the Child's prior delinquency;
   b. The nature of past treatment efforts and the nature of the Child's response thereto;
   c. The Child's suitability for additional treatment;
   d. The nature of the delinquent act alleged;
   e. The Child's social factors;
   f. The alternatives within the juvenile justice system which were considered and the rationale for rejecting those alternatives; and
   g. The whether the juvenile court and juvenile justice system can provide rehabilitation of the juvenile.

10. Upon conclusion of the hearing, the Judge or Special Judge shall make findings on whether there are reasonable grounds to believe that: (1) the Child committed the delinquent act as alleged; (2) the Child is not committable to an institution for persons with a developmental disability or mental illness; and (3) the interests of the community require that the Child be put under legal restraint or discipline.

11. Upon conclusion of the hearing, the Judge or Special Judge shall consider and make findings, on the record, in consideration of factors relevant to his or her findings, including, but not limited to: (1) the extent and nature of the Child's

prior delinquency; (2) the nature of past treatment efforts and the nature of the Child's response thereto; (3) the Child's suitability for additional treatment; (4) the nature of the delinquent act alleged; (5) the Child's social factors; (6) the alternatives within the juvenile justice system which were considered and the rationale for rejecting those alternatives; and (7) whether the juvenile court and juvenile justice system can provide rehabilitation of the juvenile.

12. At the conclusion of the hearing, the Judge or Special Judge shall enter a written order detailing the reasons that the transfer was approved or denied. The Judge or Special Judge shall provide detailed written findings pertaining to decision to permit or deny the transfer. The Judge or Special Judge shall list the factors considered in parts 3 and 9 of this Section when creating the order.

000.00 REFERENCES

DOJ Memorandum of Agreement
Tenn. Code Ann. § 37-1-134

Policy enacted 3/17/2013

	Policy #0000 created 3/17/2013 Review: Annual
	REVIEW OF PROCEDURES
Chapter: Judges and Magistrates	Related Standards:

000.00 POLICY AND PURPOSE

It is the policy of the Memphis and Shelby County Juvenile Court to follow the Tennessee Supreme Court Rules and the Tennessee Rules of Juvenile Procedure. In particular, this policy is created to ensure that the Court conducts a proper review of Judicial Officer's adherence to the policies enacted as a result of the Agreement with the Department of Justice.

The purpose of this policy is to establish standards consistent within the Judicial Branch of the Memphis and Shelby County Juvenile Court and to ensure the Court provides proper review of those standards.

000.00 APPLICABILITY

This policy and procedure applies to Judge of Juvenile Court of Memphis and Shelby County and any Judicial Officer. This policy will be reviewed annually and updated as needed.

000.00 EXCLUSIVITY

This practice has been in effect as of March 17, 2013 and will remain in effect until revoked or superseded in writing. This policy supersedes any or all prior Memphis and Shelby County Juvenile Court policies on review of policy, and all such prior use of similar policies, whether written or verbal, are hereby revoked.

000.00 DISTRIBUTION

This policy will be distributed to all judicial officers. This policy will also be posted on the court's web site.

000.00 SCOPE

A. This policy applies to the Judge and Magistrates of the Juvenile Court of Memphis and Shelby County and any *ad hoc*, administrative or temporary judicial officers presiding in a limited capacity.

000.00 DEFINITIONS

A. Adjudicatory Hearing- Means the juvenile proceeding where the Court determines whether the allegations in the petition are true beyond a reasonable doubt.

B. Child or Children – Refers to persons less than 18 years of age involved in a delinquency proceeding, formally or informally, before JCMSC. It also includes persons under 19 years of age who remain under the jurisdiction of the juvenile court in accordance with Tenn. Code Ann. § 37-1-102 (a)(4)(B).

C. Court- Refers to the Juvenile Court of Memphis and Shelby County.

F. Judicial Officer-Means the Juvenile Court Judge, a Special Judge appointed pursuant to TCA 16-15-209, Juvenile Magistrate, and any *ad hoc*, administrative or temporary judicial officers presiding in a limited capacity.

G. Judge-Means the Juvenile Court Judge elected to lead the Juvenile Court of Memphis and Shelby County, including all successors in office.

H. Magistrate-A judicial officer appointed by the elected judge to hear any case or class of cases wherein the juvenile court has jurisdiction. A magistrate has the same authority as the judge to issue any and all process. The magistrate in the conduct of the proceedings has the powers of a trial judge.

J. Panel Attorney-The collection of licensed attorneys not affiliated with the Public Defender's office who are selected by the court to represent children in delinquency proceedings.

L. Prosecutor-An attorney from the District Attorney's Office.

M. Public Defender-An attorney from the Public Defender's Office.

N. Proceeding-Any adjudicatory or pre-adjudicatory hearing (detention hearing, motion hearing, status update, etc) in which the child is present before a judge or magistrate.

O. **Transfer Hearing**-The juvenile proceeding where the Court considers whether to waive jurisdiction of a Child and to transfer the Child's case to adult criminal court.

000.00 DISSEMINATION OF POLICY AND TRAINING

A. Every judicial officer must receive a paper copy of this policy and must acknowledge that they have received a copy and have read the policy.

B. Every judicial officer must be aware of the nature, meaning and interpretation of this policy.

C. New judicial officers must be given a copy of this policy by the Judge or the Judge's designee.

000.00 REVIEW OF DELINQUENCY CASE FILES

A. During the first full week of each month, the Judge or Judge's designee shall request from the Juvenile Court Clerk sixteen case files of juvenile delinquency proceedings that have been adjudicated and disposed in the previous month.
B. The Judge or Judge's designee shall review the case file to verify:
1. That an explanation of rights is included in the file and has been signed by the child at various stages of the court process.
2. That a copy of the charging instrument is in the case file.
3. That an order appointing counsel is included, and if the Public Defender has been appointed, notation that the Public Defender is the attorney of record.
4. That a copy of the Petition in the case file.
5. That the Petition provides a clear explanation of the charge that is alleged.
6. That the Petition has been filed seven days in advance of the adjudicatory hearing.
7. That, if a Petition has been amended, that there is evidence in the case file that the defense counsel was provided opportunity to prepare.
8. That any order of continuance contains:
   a. A list of parties present.
   b. The name of the party requesting the continuance.
   c. The reason for the continuance
   d. The date of the next hearing.
9. That an order of adjudication and disposition is in the case file.
10. That the order of adjudication and disposition contain:
    a. A list of parties present
    b. A statement of whether the petition was sustained or denied.

c. If the petition is dismissed, the Judge or Judge's designee shall ensure that there was no further court action beyond the denial of the petition pursuant to TCA 37-1-129(a)(1).

d. If the petition is sustained, the Judge or Judge's designee shall ensure that there are sufficient findings of fact and conclusions of law as to the finding of delinquency.

e. If the petition is sustained, the Judge or Judge's designee shall also ensure that there are sufficient findings of fact that explain the disposition of the matter.

f. The Judge or Judge's designee shall examine the disposition in light of the delinquency finding and may conduct further review if needed.

g. The Judge or Judge's designee shall review case files for orders of restitution to ensure that restitution was ordered in compliance with the "Restitution Guideline Policy" enacted June 17, 2013.

000.00 REVIEW OF TRANSFER CASE FILES

A. During the first full week of each month, the Judge or Judge's designee shall request from the Juvenile Court Clerk all case files of juvenile transfer proceedings that have been adjudicated and disposed in the previous month.
B. The Judge or Judge's designee shall review the case file to verify:
C. That an explanation of rights in included in the file and has been signed by the child at various stages of the court process.
D. That a copy of the Affidavit and Petitions are included in the case file.
E. That an order appointing counsel is included, and if the Public Defender has been appointed, notation that the Public Defender is the attorney of record.
F. That a copy of the Petition is in the case file.
G. That the Petition provides a clear explanation of the charge that is alleged.
H. That a "Notice of Intent to Transfer" has been filed seven days in advance of the transfer hearing.
I. That the order stemming from the transfer hearing comports with the "Transfer Hearing" policy enacted March 17, 2013 including, but not limited to:

1. A list of parties present.
2. The names of the attorneys of record.
3. Whether there was probable cause to believe the child committed the act.
4. Whether the child is committable to an institution.
5. What factors were considered to put the child under legal restraint or discipline.
6. That the factors above are contained in a thorough findings of fact and conclusions of law

000.00 CORRECTIVE ACTION

A. If, upon review by Judge or Judge's designee, a Magistrate is not fulfilling the requirements of this policy, the Judge or Judge's designee shall initiate corrective action.

B. Corrective Action shall take place in a graduated manner.

C. If the Judge or Judge's designee review discovers a failure to follow policy the Judge or Judge's designee shall first conduct a face to face meeting with the Magistrate regarding the failure to follow policy and ensure the Magistrate is aware of the policies and procedures required.

D. If the Judge or Judge's designee review discovers a secondary failure to follow policy, the Judge or Judge's designee shall again review the policy with the Magistrate and conduct three courtroom observations of the Magistrate to ensure the policies and procedures are being properly followed.

E. If a third failure to follow policy is discovered, the Magistrate shall be required to undergo a mock trial session at the direction of the Judge or Judge's designee in order to assure compliance with policies and procedures.

F. If a fourth failure to follow policies is discovered, the Magistrate shall be required to attend a state or national program focused on due process issues.

References:

DOJ Memorandum of Agreement

Policy enacted 2/14/2013

	Policy #0000 created 3/17//2013 Review: Annual
	PROBABLE CAUSE DETERMINATIONS AND DETENTION HEARINGS
Chapter: Judges and Magistrates	Related Standards:

000.00 POLICY AND PURPOSE

It is the policy of the Memphis and Shelby County Juvenile Court to follow the Constitution of the United States and the laws of the State of Tennessee. In particular, this policy is created to ensure that children who are detained receive timely probable cause determinations, that detention hearings are held in accordance with all relevant statutes and court rules, and children are provided appropriate constitutional safeguards at all detention hearings.

The purpose of this policy is to establish standards consistent with the Constitution of the United States and the laws of the State of Tennessee and to eliminate any occurrence of a child not being afforded his or her protections upon being detained in any proceeding before a judge or magistrate of this court.

000.00 APPLICABILITY

This policy and procedure applies to all judicial officers of the Juvenile Court of Memphis and Shelby County. This policy will be reviewed annually and updated as needed.

000.00 EXCLUSIVITY

This has been in effect as of March 17, 2013 and will remain in effect until revoked or superseded in writing. This policy supersedes all prior Memphis and Shelby County Juvenile Court policies covering a probable cause and detention hearings, and all such prior use of similar policies, whether written or verbal, are hereby revoked.

000.00 DISTRIBUTION

This policy will be distributed to all judicial officers, all other employees of the Court, the District Attorney, all panel attorneys, the Public Defender and will be posted on the court's web site.

000.00 SCOPE

A. This policy applies to all judicial officers of the Juvenile Court of Memphis and Shelby County.

B. This policy applies to all children who are detained without a warrant and placed in the Memphis and Shelby County Juvenile Court's detention center.

000.00 DEFINITIONS

A. **Adjudicatory Hearing**- Means the juvenile proceeding where the Court determines whether the allegations in the petition are true beyond a reasonable doubt.

B. **Administrator**-Means the director of the Detention Facility.

C. **Affidavit of Complaint ("Affidavit")**-Means a document executed under oath by a law enforcement officer with firsthand knowledge of the incident leading to the child's arrest or by an officer who communicates with a reliable source who has firsthand knowledge of the incident leading to the child's arrest and that contains the charge(s) placed against a juvenile and the facts on which the charge(s) are based.

D. **Child or Children** – Refers to persons less than 18 years of age involved in a delinquency proceeding, formally or informally, before JCMSC. It also includes persons under 19 years of age who remain under the jurisdiction of the juvenile court in accordance with Tenn. Code Ann. § 37-1-102 (a)(4)(B).

E. **Court**- Refers to the Juvenile Court of Memphis and Shelby County.

G. **Detention Hearing**-Means the juvenile proceeding where the Court accomplishes the following: arraigns the Child by informing the Child of the charges against him or her; informs the Child of the legal rights afforded him or her; and makes a decision about whether to detain the Child prior to the Adjudicatory Hearing. In order for the Court to detain a Child prior to the Adjudicatory Hearing, the Court shall find probable cause that the Child committed the delinquent act alleged.

H. **Facility**-Means the Shelby County Juvenile Detention Center, currently located at 616 Adams Ave., Memphis, TN 38105, as well as any facility that is built, leased, or otherwise used, to replace or supplement the Facility.

I. **Judicial Officer**-Means the Juvenile Court Judge, a Special Judge appointed pursuant to TCA 16-15-209, Juvenile Magistrate, and any *ad hoc*, administrative or temporary judicial officers presiding in a limited capacity.

J. **Judge**-Means the Juvenile Court Judge elected to lead the Juvenile Court of Memphis and Shelby County, including all successors in office.

K. **On Call Judicial Officer**-Means the Judicial Officer assigned to receive calls from the Detention Administrator or Administrator's designee on weekend, holidays or other days in which Court is not is session.

L. **Panel Attorney**-The collection of licensed attorneys not affiliated with the Public Defender's office who are selected by the court to represent children in delinquency proceedings.

M. **Probable Cause Determination**-Refers to the relevant portion of the Detention Hearing where the Court decides whether there is probable cause that the Child committed the delinquent act alleged.

N. **Proceeding**-Any adjudicatory or pre-adjudicatory hearing (detention hearing, motion hearing, status update, etc) in which the child is present before a judge or magistrate.

O. **Prosecutor**-An attorney from the District Attorney's Office.

P. **Public Defender**-An attorney from the Public Defender's Office.

000.00 DISSEMINATION OF POLICY AND TRAINING

A. Every judicial officer must receive a paper copy of this policy and must acknowledge that they have received a copy and have read the policy.

B. Every judicial officer must receive training on the nature, meaning and interpretation of this policy.

C. New Magistrates must be given a copy of this policy and trained on the policy by the Judge or the Judge's designee.

D. The Court may, wherever feasible, provide its own training on probable cause determination and detention hearing standards; or, in the alternative, judicial officers may avail themselves of any continuing legal education training specific to this core concept.

000.00 **PROCEDURES**

A. When a child is taken into custody without a warrant, the Court must hold a probable cause hearing within 48 hours of the child being admitted into the secure portion of the facility.

1. If a child is brought to the facility after 1:01 p.m. on a Saturday and before 10:30 a.m. on a Monday, a probable cause hearing shall be held at 1:00 p.m. on that Monday.

2. If a child is brought to the facility after 10:31 a.m. on a Monday and before 10:30 a.m. on a Tuesday, a probable cause hearing shall be held at 1:00 p.m. on that Tuesday.

3. If a child is brought to the facility after 10:31 a.m. on a Tuesday and before 10:30 a.m. on a Wednesday, a probable cause hearing shall be held at 1:00 p.m. on that Wednesday.

4. If a child is brought to the facility after 10:31 a.m. on a Wednesday and before 10:30 a.m. on a Thursday, a probable cause hearing shall be held at 1:00 p.m. on that Thursday

5. If a child is brought to the facility after 10:31 a.m. on a Thursday and before 10:30 a.m. on a Friday, a probable cause hearing shall be held at 1:00 p.m. on that Friday.

B. Standards for Finding Probable Cause

1. Prior to detaining any child, a Judicial Officer must make a determination that there is probable cause that:

   a. That a delinquent act was committed.
   b. That the named child committed the delinquent act as alleged.

C. Testing Probable Cause

1. The Court shall ensure that every child has a meaningful opportunity to test the existence of probable cause during his or her Probable Cause Determination. This shall be accomplished by:

a. Appointing a defense attorney to represent any indigent child or child whose indigence cannot be readily determined in advance of the Probable Cause Determination.
b. A child must be presumed indigent unless information to the contrary is provided to the Court.
c. Require the government to prove the existence of probable cause with reliable evidence such as a live witness or an Affidavit of Complaint.
d. The Affidavit of Complaint shall be completed and sworn to by a law enforcement officer with firsthand knowledge of the incident leading to the child being brought to the Facility by an officer who communicates with a reliable source who has firsthand knowledge of the incident leading to the child's arrest.
e. Allow defense attorneys an opportunity to challenge the government's evidence of probable cause, by cross-examining witnesses, presenting alternative testimony, or by any other appropriate means.
f. Maintain a complete record of the detention hearing.

D. Sufficiency of Affidavit of Complaint

1. If the affidavit of complaint is offered as the primary source of evidence at a probable cause hearing, the Court shall ensure that the affidavit sufficiently details that a delinquent act was committed and that the named child committed the delinquent act as alleged.
2. If the court is not satisfied that the affidavit sufficiently describes the nature of the delinquent act or fails to name the child in the complaint, the Court may either dismiss the affidavit or complaint, allow the prosecution to present live testimony if a continuance is requested or release the child, with or without bond, pending further actions of the court.
3. If the prosecution presents live witnesses, the Court shall allow the defense to cross-examine any of the prosecution's witnesses.
4. In any probable cause hearing, the Court shall allow the defense to present evidence on the child's behalf.

E. Making the Decision to Detain

1. The Judicial Officer shall only detain the child if the alleged delinquent act is one for which Tennessee statutes and Court policies permit the use of detention if there is probable cause to believe:

a. The child committed a crime against a person resulting in the serious injury or death of the victim or involving the likelihood of serious injury or death to such victim.
b. The child was in unlawful possession of a handgun or carrying of a weapon.

c. There is probable cause to believe the child has committed any other delinquent offense involving the likelihood of serious physical injury or death, or an offense constituting a felony, violation of probation or violation of aftercare, and the child:

i. Is currently on probation;
ii. Is alleged to be an escapee or absconder from a juvenile facility, institution or other court-ordered placement;
iii. Has, within the previous twelve (12) months, willfully failed to appear at any juvenile court hearing, engaged in violent conduct resulting in serious injury to another person or involving the likelihood of serious injury or death, or been adjudicated delinquent by virtue of an offense constituting a felony if committed by an adult.

d. The child is alleged to be an escapee from a secure juvenile facility or institution;
e. The child is wanted in another jurisdiction for an offense that, if committed by an adult, would be a felony in that jurisdiction;
f. There is probable cause to believe the child is an unruly child who has violated a valid court order or who is a runaway from another jurisdiction. Any detention of such a child shall be in compliance with subsection (b);
g. In addition to any of the conditions listed above, there is no less restrictive alternative that will reduce the risk of flight or of serious physical harm to the child or to others, including placement of the child with a parent, guardian, legal custodian or relative; use of any of the alternatives listed in § 37-1-116(g); or the setting of bail.

E. Record of Proceedings

1. The Court shall maintain a full record of the proceedings, including ensuring the Clerk of Court, or appropriate Court personnel, records the proceeding and that the recording is preserved.
2. The Court shall enter an order subsequent to the hearing detailing:

a. The names of the parties
b. The Attorneys of Record present or absent at the hearing.
c. A statement as to whether probable cause was found.
d. A statement as to whether the child was detained or released.

F. Detention Beyond 48 hours

1. No child shall be detained more than 48 hours prior to a detention hearing if the Court has not made a probable cause determination.
2. If a probable cause determination has not been made within 46 hours of the child being admitted into the facility, the Detention Administrator shall contact and inform the Judge or Judge's designee that a probable cause determination has not been scheduled.
3. The Judge or Judge's designee shall either schedule or conduct a probable cause hearing within the 48 hour timeframe or order the child released if a hearing cannot be held within the 48 hour timeframe.

G. Detention Occurring on Weekends or Holidays

1. If a child is detained during a timeframe in which a scheduled Probable Cause and Detention Hearing (pursuant to part A of this policy's "Procedures" section) would not take place within 48 hours, the Court shall conduct an initial probable cause determination telephonically to provide a Judicial determination of probable cause.

2. On a traditional weekend (Court is closed Saturday and Sunday) an initial probable cause determination shall take place for any child brought in after 10:31 on a Friday until 12:55 p.m. on Saturday. The hearing shall take place at 1:00 p.m. on that Saturday.

3. On an extended weekend or holiday (Thursday-Sunday or Saturday-Monday) the Court shall hold two initial probable cause determination. The first determination shall occur on the second day of the extended weekend at 1:00 and the second determination shall occur on the fourth day of the extended weekend at 1:00.

4. On any extended timeframes in which the Court is closed beyond three consecutive days, the Judge or Judge's designee shall consult with the Detention Administrator to schedule initial probable cause determination in a manner that will ensure all children detained receive a Judicial review of probable cause within 48 hours of being detained.

5. In order to comply with this portion of the policy, the Detention Administrator or Administrator's designee shall call the on-call Judicial Officer to review each child's Affidavit.

6. Upon review of the Affidavit, the Judicial Officer shall determine whether probable cause exists and whether the child shall remain detained.

7. Every child detained at an Initial Probable Cause determination shall have a full Probable Cause and Detention Hearing, including having counsel appointed for the child.

000.00 REFERENCES

DOJ Memorandum of Agreement
U.S. Const. amend. V
Tenn. Code Ann. § 37-1-134
County of Riverside v. McLaughlin, 500 U.S. 44, 111 S. Ct. 1661

Policy enacted 3/17/2013

	Policy # 0000 created 3/17/2013 Review: Annual
	AMENDING CHARGES IN PETITION
Chapter: Judges and Magistrates	Related Standards: Media Access Policy

000.00 POLICY AND PURPOSE

It is the policy of the Memphis and Shelby County Juvenile Court to follow the Tennessee Supreme Court Rules and the Tennessee Rules of Juvenile Procedure. In particular, this policy is created to ensure that all children will receive sufficient time to prepare for a hearing in the event that charges are amended.

The purpose of this policy is to establish standards consistent with the U.S. Constitution, the Tennessee Supreme Court Rules and the Tennessee Rules of Juvenile Procedure to ensure that counsel has appropriate time to prepare a defense in the event charges to a child's delinquency matter are amended and that Memphis and Shelby County Juvenile Court's policies comport with those standards.

000.00 APPLICABILITY

This policy and procedure applies to all judicial officers of the Juvenile Court of Memphis and Shelby County. This policy will be reviewed annually and updated as needed.

000.00 EXCLUSIVITY

This practice has been in effect as of March 17, 2013 and will remain in effect until revoked or superseded in writing. This policy supersedes any or all prior Memphis and Shelby County Juvenile Court policies covering the amending of charges, and all such prior use of similar policies, whether written or verbal, are hereby revoked.

000.00 DISTRIBUTION

This policy will be distributed to all judicial officers, all other Court employees, the District Attorney, all panel attorneys and the Public Defender. This policy will also be posted on the Court's web site.

000.00 SCOPE

A. This policy applies to the Judge and Magistrates of the Juvenile Court of Memphis and Shelby County and any *ad hoc*, administrative or temporary judicial officers presiding in a limited capacity.

000.00 DEFINITIONS

A. Adjudicatory Hearing- Means the juvenile proceeding where the Court determines whether the allegations in the petition are true beyond a reasonable doubt.

B. Affidavit of Complaint ("Affidavit")-Means a document executed under oath by a law enforcement officer with firsthand knowledge of the incident leading to the child's arrest or by an officer who communicates with a reliable source who has firsthand knowledge of the incident leading to the child's arrest and that contains the charge(s) placed against a juvenile and the facts on which the charge(s) are based.

D. Arraignment-Means the first appearance of child before a Judicial Officer in a delinquency proceeding where in the charges against the child are read. During arraignment a lawyer is appointed when the child cannot afford the service of a lawyer.

E. Child or Children – Refers to persons less than 18 years of age involved in a delinquency proceeding, formally or informally, before JCMSC. It also includes persons under 19 years of age who remain under the jurisdiction of the juvenile court in accordance with Tenn. Code Ann. § 37-1-102 (a)(4)(B).

F. Court- Refers to the Juvenile Court of Memphis and Shelby County.

G. Detention Hearing-Means the juvenile proceeding where the Court accomplishes the following: arraigns the Child by informing the Child of the charges against him or her; informs the Child of the legal rights afforded him or her; and makes a decision about whether to detain the Child prior to the Adjudicatory Hearing. In order for the Court to detain a Child prior to the Adjudicatory Hearing, the Court shall find probable cause that the Child committed the delinquent act alleged.

H. Facility-Means the Shelby County Juvenile Detention Center, currently located at 616 Adams Ave., Memphis, TN 38105, as well as any facility that is built, leased, or otherwise used, to replace or supplement the Facility.

I. Judicial Officer-Means the Juvenile Court Judge, a Special Judge appointed pursuant to TCA 16-15-209, Juvenile Magistrate, and any *ad hoc*, administrative or temporary judicial officers presiding in a limited capacity.

J. **Judge**-Means the Juvenile Court Judge elected to lead the Juvenile Court of Memphis and Shelby County, including all successors in office.

K. **Panel Attorney**-The collection of licensed attorneys not affiliated with the Public Defender's office who are selected by the court to represent children in delinquency proceedings.

L. **Probable Cause Determination**-Refers to the relevant portion of the Detention Hearing where the Court decides whether there is probable cause that the Child committed the delinquent act alleged.

M. **Proceeding**-Any adjudicatory or pre-adjudicatory hearing (detention hearing, motion hearing, status update, etc) in which the child is present before a judge or magistrate.

N. **Prosecutor**-An attorney from the District Attorney's Office.

O. **Public Defender**-An attorney from the Public Defender's Office.

000.00 DISSEMINATION OF POLICY AND TRAINING

A. Every judicial officer must receive a paper copy of this policy and must acknowledge that they have received a copy and have read the policy.

B. Every judicial officer must receive training on the nature, meaning and interpretation of this policy.

C. New judicial officers must be given a copy of this policy and trained on the policy by the Judge or the Judge's designee.

D. The Court may, wherever feasible, provide its own training on amending charges; or, in the alternative, judicial officers may avail themselves of any continuing legal education training specific to this core concept.

000.00 PROCEDURES

A. Amending Charges in a Petition

1. If, during the course of a child's delinquency matter, the Prosecution wishes to amend the charges that could increase the penalty of the offense, the Prosecutor shall give notice to the Probation Officer assigned to the case, the child and the child's attorney of record.

2. The Amended Petition, detailing the new charges, shall be filed at least 14 calendar days before the date of the hearing to ensure child and child's counsel had adequate time to prepare a defense to the new charges.

3. If defense counsel establishes that he or she has not had sufficient time to prepare for the hearing because of changes to the Child's charges and requests a continuance, the Court shall move the date of the Adjudicatory Hearing to provide counsel with a reasonable opportunity to prepare.

4. Child and defense counsel may at any time waive the advance notice requirement.

5. When changes are made to a Child's charges as set forth in a filed Petition prior to the Adjudicatory Hearing that reduce the charge or drop the charges, the Probation Officer assigned to the case shall provide notice of the final charges by providing copies of the amended or new Petition to the child and defense counsel within 24 hours of the change in charges.

000.00 REFERENCES

DOJ Memorandum of Agreement
Sixth Amendment to the US Constitution

Policy enacted 3/17/2013

	Policy # 0000 created 3/17/2013 Review: Annual **NOTICE OF CHARGES**
Chapter: Judges and Magistrates	Related Standards: Media Access Policy

000.00 POLICY AND PURPOSE

It is the policy of the Memphis and Shelby County Juvenile Court to follow the Tennessee Supreme Court Rules and the Tennessee Rules of Juvenile Procedure. In particular, this policy is created to ensure that all children will receive proper notice of the charges upon their being detained.

The purpose of this policy is to establish standards consistent with the U.S. Constitution, the Tennessee Supreme Court Rules and the Tennessee Rules of Juvenile Procedure and to ensure that children arraigned by the Memphis and Shelby County Juvenile Court comport with those standards.

000.00 APPLICABILITY

This policy and procedure applies to all judicial officers of the Juvenile Court of Memphis and Shelby County. This policy will be reviewed annually and updated as needed.

000.00 EXCLUSIVITY

This practice has been in effect as of March 17, 2013 and will remain in effect until revoked or superseded in writing. This policy supersedes any or all prior Memphis and Shelby County Juvenile Court policies covering arraignment of a child, and all such prior use of similar policies, whether written or verbal, are hereby revoked.

000.00 DISTRIBUTION

This policy will be distributed to all judicial officers, all other Court employees, the District Attorney, all panel attorneys and the Public Defender. This policy will also be distributed to local print and television media as well as the Juvenile Court Clerk. This policy will also be posted on the court's web site.

000.00 SCOPE

A. This policy applies to the Judge and Magistrates of the Juvenile Court of Memphis and Shelby County and any *ad hoc*, administrative or temporary judicial officers presiding in a limited capacity.

000.00 DEFINITIONS

A. Adjudicatory Hearing- Means the juvenile proceeding where the Court determines whether the allegations in the petition are true beyond a reasonable doubt.

B. Administrator-Means the director of the Detention Facility.

C. Affidavit of Complaint ("Affidavit")-Means a document executed under oath by a law enforcement officer with firsthand knowledge of the incident leading to the child's arrest or by an officer who communicates with a reliable source who has firsthand knowledge of the incident leading to the child's arrest and that contains the charge(s) placed against a juvenile and the facts on which the charge(s) are based.

D. Arraignment-Means the first appearance of child before a Judicial Officer in a delinquency proceeding where in the charges against the child are read. During arraignment a lawyer is appointed when the child cannot afford the service of a lawyer.

E. Child or Children – Refers to persons less than 18 years of age involved in a delinquency proceeding, formally or informally, before JCMSC. It also includes persons under 19 years of age who remain under the jurisdiction of the juvenile court in accordance with Tenn. Code Ann. § 37-1-102 (a)(4)(B).

F. Court- Refers to the Juvenile Court of Memphis and Shelby County.

G. Detention Hearing-Means the juvenile proceeding where the Court accomplishes the following: arraigns the Child by informing the Child of the charges against him or her; informs the Child of the legal rights afforded him or her; and makes a decision about whether to detain the Child prior to the Adjudicatory Hearing. In order for the Court to detain a Child prior to the Adjudicatory Hearing, the Court shall find probable cause that the Child committed the delinquent act alleged.

H. Facility-Means the Shelby County Juvenile Detention Center, currently located at 616 Adams Ave., Memphis, TN 38105, as well as any facility that is built, leased, or otherwise used, to replace or supplement the Facility.

I. **Judicial Officer**-Means the Juvenile Court Judge, a Special Judge appointed pursuant to TCA 16-15-209, Juvenile Magistrate, and any *ad hoc*, administrative or temporary judicial officers presiding in a limited capacity.

J. **Judge**-Means the Juvenile Court Judge elected to lead the Juvenile Court of Memphis and Shelby County, including all successors in office.

K. **Panel Attorney**-The collection of licensed attorneys not affiliated with the Public Defender's office who are selected by the court to represent children in delinquency proceedings.

L. **Probable Cause Determination**-Refers to the relevant portion of the Detention Hearing where the Court decides whether there is probable cause that the Child committed the delinquent act alleged.

M. **Proceeding**-Any adjudicatory or pre-adjudicatory hearing (detention hearing, motion hearing, status update, etc) in which the child is present before a judge or magistrate.

N. **Prosecutor**-An attorney from the District Attorney's Office.

O. **Public Defender**-An attorney from the Public Defender's Office.

000.00 DISSEMINATION OF POLICY AND TRAINING

A. Every judicial officer must receive a paper copy of this policy and must acknowledge that they have received a copy and have read the policy.

B. Every judicial officer must receive training on the nature, meaning and interpretation of this policy.

C. New judicial officers must be given a copy of this policy and trained on the policy by the Judge or the Judge's designee.

D. The Court may, wherever feasible, provide its own training on arraignment of a child; or, in the alternative, judicial officers may avail themselves of any continuing legal education training specific to this core concept.

000.00 PROCEDURES

A. Providing Copies of the Affidavit of Complaint

1. When a child is transported to the facility by law enforcement, the transporting officer must supply an Affidavit of Complaint, reciting the charges against the child and naming the child in the offense. The Affidavit must be sworn upon.

2. If a decision is made not to detain the child, the child will be released to a parent or responsible adult and the child will receive a copy of the sworn Affidavit.

3. If the child is detained at the facility pending a Probable Cause and Detention Hearing, the Detention Administrator, or the Administrator's designee shall inform the child of his rights against self-incrimination, the right to counsel and shall read the child the contents of the Affidavit.

4. Due to safety considerations, the Court cannot provide the child with a copy of the Affidavit while the child is detained in the facility.

5. Prior to the child's detention hearing, a Panel Attorney will be appointed to represent the child at the Probable Cause and Detention Hearing. That Panel Attorney will be provided a copy of the Affidavit of Complaint by the Court's probation department or by the Juvenile Defender's Office by no later than 12:00 p.m. of the day of the hearing.

6. The child's parent(s) or guardian shall also be provided a copy of the Affidavit at the first instance possible.

B. Arraignment of Child

1. If the decision to detain a child has been made, the Court shall hold a Probable Cause Hearing and Detention Hearing.
2. The Court shall first inform the child of the right against self-incrimination and the child's right to counsel throughout the proceesings.
3. At the hearing, the Judicial Officer shall arraign the child by:
   a. Asking the child if the child has had the opportunity, either in person of through counsel, to review the Affidavit.
   b. If the child has not had the opportunity to review the Affidavit, the Court shall cause the contents of the Affidavit to be read into the record.
   c. The Judicial Officer shall, regardless of the response in B(3)(a) of this section, inform the child of the charges..
   d. Upon reading the Affidavit, the Judicial Officer shall ask the child if the child understands the charges that are contained in the Affidavit.

4. At the conclusion of the hearing, a written document shall be placed in the legal file detailing that the child was given notice of the charges and his counsel was provided a copy of the Affidavit.

000.00 REFERENCES

DOJ Memorandum of Agreement
Rule 15 of the Tennessee Rules of Juvenile Procedure
Tennessee Supreme Court Rule 30
Tenn. Code Ann. § 40-10-101
Sixth Amendment to the US Constitution

Policy enacted 3/17/2013

	Policy # temp Review: Annual
	PROTECTIONS AGAINST SELF INCRIMINATION DIR 8-9
Chapter: Judges and Magistrates	Related Standards:

000.00 POLICY AND PURPOSE

It is the policy of the Memphis and Shelby County Juvenile Court to follow the Constitution of the United States and the laws of the State of Tennessee. In particular, this policy is created to ensure that children are protected against self-incrimination at any proceeding in which the child is before a judge or magistrate.

The purpose of this policy is to establish standards consistent with the Constitution of the United States and the laws of the State of Tennessee and to eliminate any occurrence of a child not being afforded his or her protections against self-incrimination in any proceeding before a judge or magistrate of this court.

000.00 APPLICABILITY

This policy and procedure applies to all judicial officers of the Juvenile Court of Memphis and Shelby County. This policy will be reviewed annually and updated as needed.

000.00 EXCLUSIVITY

This policy is in effect as of January 17, 2013 and will remain in effect until revoked or superseded in writing. This policy supersedes all prior Memphis and Shelby County Juvenile Court policies covering a child's protections against self incrimination, and all such prior use of similar policies, whether written or verbal, are hereby revoked.

000.00 DISTRIBUTION

This policy will be distributed to all judicial officers, the District Attorney, all panel attorneys, the Public Defender and will be posted on the court's web site.

000.00 SCOPE

A. This policy applies to all judicial officers of the Juvenile Court of Memphis and Shelby County.

B. This policy applies to the protection against self incrimination either by the court:

1. Notifying the child, prior to the child testifying, that the child has the right against self-incrimination; and

2. Prohibiting the prosecutor from calling the child as a witness in the child's own adjudicatory hearing.

000.00 DEFINITIONS

A. **Adjudicatory Hearing**- Means the juvenile proceeding where the Court determines whether the allegations in the petition are true beyond a reasonable doubt.

B. **Child or Children** – Refers to persons less than 18 years of age involved in a delinquency proceeding, formally or informally, before JCMSC. It also includes persons under 19 years of age who remain under the jurisdiction of the juvenile court in accordance with Tenn. Code Ann. § 37-1-102 (a)(4)(B).

C. **Court**- Refers to the Juvenile Court of Memphis and Shelby County.

D. **Judicial Officer**-Means the Juvenile Court Judge, a Special Judge appointed pursuant to TCA 16-15-209, Juvenile Magistrate, and any *ad hoc*, administrative or temporary judicial officers presiding in a limited capacity.

E. **Judge**-Means the Juvenile Court Judge elected to lead the Juvenile Court of Memphis and Shelby County, including all successors in office.

F. **Panel Attorney**-The collection of licensed attorneys not affiliated with the Public Defender's office who are selected by the court to represent children in delinquency proceedings.

G. **Prosecutor**-An attorney from the District Attorney's Office.

H. **Public Defender**-An attorney from the Public Defender's Office.

I. **Proceeding**-Any adjudicatory or pre-adjudicatory hearing (detention hearing, motion hearing, status update, etc) in which the child is present before a judge or magistrate.

J. **Self-incrimination (privilege against)**-The civil right (guaranteed by the Fifth Amendment to the United States Constitution) to refuse to answer questions or otherwise give testimony against yourself in a criminal proceeding.

K. **Transfer Hearing**-The juvenile proceeding where the Court considers whether to waive jurisdiction of a Child and to transfer the Child's case to adult criminal court.

000.00 DISSEMINATION OF POLICY AND TRAINING

A. Every judicial officer must receive a paper copy of this policy and must acknowledge that they have received a copy and have read the policy.

B. Every judicial officer must receive training on the nature, meaning and interpretation of this policy.

C. New Magistrates must be given a copy of this policy and trained on the policy by the Judge or the Judge's designee.

D. The Court may, wherever feasible, provide its own training on protections against self-incrimination; or, in the alternative, judicial officers may avail themselves of any continuing legal education training specific to this core concept.

000.00 PROCEDURES

A. Notification to Right Against Self Incrimination

1. In any proceeding in Juvenile Court, the judicial officer shall inform the child of the child's right to not engage in self incrimination.

2. The judicial officer shall make this declaration at the beginning of each proceeding and shall not proceed until the child, either through the child or the child's attorney, acknowledges the court's statement.

3. The judicial officer shall ensure that the statement is given to the child is communicated in an age appropriate manner.

B. Prohibition of Calling the Child as a Witness

1. In any proceeding in Juvenile Court, the judicial officer shall prohibit the prosecution from calling the child as a witness against the child's self interest.

2. If the prosecution calls the child as a witness in the child's own adjudicatory hearing, the court shall prohibit the child from taking the stand.

3. If a child-defendant has agreed to provide evidence as a prosecution witness, the court shall again advise the child of the child's right against self incrimination

000.00 REFERENCES

DOJ Memorandum of Agreement
U.S. Const. amend. V
Tenn. Code Ann. § 37-1-127

	Policy # temp Review: Annual
	CONFIDENTIALITY OF JUVENILE DELINQUENCY PROCEEDINGS D-13
Chapter: Judges and Magistrates	Related Standards: Media Access Policy

000.00 POLICY AND PURPOSE

It is the policy of the Memphis and Shelby County Juvenile Court to follow the Tennessee Supreme Court Rules and the Tennessee Rules of Juvenile Procedure. In particular, this policy is created to ensure that all delinquency proceedings shall be open to all persons who are properly concerned. In the discretion of the court, the general public may be excluded from any juvenile proceeding and only those persons having a direct interest in the case may be admitted.

The purpose of this policy is to establish standards consistent with the Tennessee Supreme Court Rules and the Tennessee Rules of Juvenile Procedure and to ensure the confidentiality of proceedings in the Memphis and Shelby County Juvenile Court comport with those standards.

000.00 APPLICABILITY

This policy and procedure applies to all judicial officers of the Juvenile Court of Memphis and Shelby County. This policy will be reviewed annually and updated as needed.

000.00 EXCLUSIVITY

This policy is in effect as of January 17, 2013 and will remain in effect until revoked or superseded in writing. This policy supersedes all prior Memphis and Shelby County Juvenile Court policies covering a confidentiality of juvenile delinquency proceedings, and all such prior use of similar policies, whether written or verbal, are hereby revoked.

000.00 DISTRIBUTION

This policy will be distributed to all judicial officers, the District Attorney, all panel attorneys and the Public Defender. This policy will also be distributed to local print and television media as well as the Juvenile Court Clerk. This policy will also be posted on the court's web site.

000.00 SCOPE

A. This policy applies to the Judge and Magistrates of the Juvenile Court of Memphis and Shelby County and any *ad hoc*, administrative or temporary judicial officers presiding in a limited capacity.

B. This policy applies to any delinquency proceeding in which a child is present.

000.00 DEFINITIONS

A. **Adjudicatory Hearing**- Means the juvenile proceeding where the Court determines whether the allegations in the petition are true beyond a reasonable doubt.

B. **Child or Children** – Refers to persons less than 18 years of age involved in a delinquency proceeding, formally or informally, before JCMSC. It also includes persons under 19 years of age who remain under the jurisdiction of the juvenile court in accordance with Tenn. Code Ann. § 37-1-102 (a)(4)(B).

C. **Court**- Refers to the Juvenile Court of Memphis and Shelby County.

D. **Coverage**-Means any recording or broadcasting of a court proceeding by the media using television, radio, photographic, or recording equipment.

E. **Direct Interest**-A person who meets one of the following criteria:

1. The judge, officers and professional staff of the court;

2. The parties to the proceeding and their counsel and representatives;

3. A public or private agency or institution providing supervision or having custody of the child under order of the court;

4. A court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to the proceeding in juvenile court; and

5. With permission of the court, any other person or agency or institution having a legitimate interest in the proceeding or in the work of the court.

F. **Judicial Officer**-Means the Juvenile Court Judge, a Special Judge appointed pursuant to TCA 16-15-209, Juvenile Magistrate, and any *ad hoc*, administrative or temporary judicial officers presiding in a limited capacity.

G. **Judge**-Means the Juvenile Court Judge elected to lead the Juvenile Court of Memphis and Shelby County, including all successors in office.

H. **Magistrate**-A judicial officer appointed by the elected judge to hear any case or class of cases wherein the juvenile court has jurisdiction. A magistrate has the same authority as the judge to issue any and all process. The magistrate in the conduct of the proceedings has the powers of a trial judge.

I. **Media**-Means legitimate news gathering and reporting agencies and their representatives whose function is to inform the public, or persons engaged in the preparation of educational films or recordings.

J. **Panel Attorney**-The collection of licensed attorneys not affiliated with the Public Defender's office who are selected by the court to represent children in delinquency proceedings.

K. **Properly Concerned**-A person who is connected to a case, either through the court, public or private agency, service provider or through relation to the victim or witness and does not have a direct interest in the case, or any other person deemed appropriate by the court.

L. **Prosecutor**-An attorney from the District Attorney's Office.

M. **Public Defender**-An attorney from the Public Defender's Office.

N. **Proceeding**-Any adjudicatory or pre-adjudicatory hearing (detention hearing, motion hearing, status update, etc) in which the child is present before a judge or magistrate.

O **Transfer Hearing**-The juvenile proceeding where the Court considers whether to waive jurisdiction of a Child and to transfer the Child's case to adult criminal court.

000.00 DISSEMINATION OF POLICY AND TRAINING

A. Every judicial officer must receive a paper copy of this policy and must acknowledge that they have received a copy and have read the policy.

B. Every judicial officer must receive training on the nature, meaning and interpretation of this policy.

C. New judicial officers must be given a copy of this policy and trained on the policy by the Judge or the Judge's designee.

D. The Court may, wherever feasible, provide its own training on confidentiality of juvenile delinquency proceedings; or, in the alternative, judicial officers may avail themselves of any continuing legal education training specific to this core concept.

000.00 PROCEDURES

A. Confidentiality of Juvenile Delinquency Proceedings (excluding Transfer Hearings)

1. The judicial officer shall ensure that only persons who are properly concerned in a child's case, or in the judicial officer's discretion, only person's with a direct interest in the case are admitted into any delinquency proceeding.

2. The judicial officer shall make this declaration at the beginning of each proceeding regarding this policy and shall not proceed until all attorneys of record present in the case acknowledge the judicial officer's statement.

3. The judicial officer shall ask all counsel present whether there is anyone in the court who is not properly concerned with the child's case.

4. If any counsel present states that a party is not properly concerned with the child's case, the judicial officer shall make an inquiry as to the nature of that party's relation to the case and make a determination if that party is properly concerned with the case.

5. If the judicial officer determines the party is properly concerned with the child's case, the judge judicial officer may allow the party to remain in the courtroom during the proceeding.

6. If the judicial officer determines the party is not properly concerned with the child's case, the judicial officer shall require that party to leave the courtroom.

7. If, in the discretion of the judicial officer, the nature of the case requires greater confidentiality, the judicial officer may limit the proceeding to only those parties with a direct interest in the case.

8. If judicial officer limits the proceeding to only those parties with a direct interest in the case, judicial officer shall explain those reasons on the record.

B. Confidentiality of Transfer Hearings

1. Proceedings in transfer cases shall be open to the public unless, upon the motion or request of one of the parties or upon the Judge's own initiative, the court, in balancing the respective interests of the parties to privacy and/or to a fair trial and the public's interest in open judicial proceedings, determines that a proceeding, parts of the proceeding, or phases of the proceeding, should be closed. In balancing the respective interests of the parties the court shall apply the following rules: The party seeking to close the hearing shall have the burden of proof;

   i. The juvenile court shall not close proceedings to any extent unless it determines that failure to do so would result in particularized prejudice to the party seeking closure that would override the public's compelling interest in open proceedings;
   ii. Any order of closure must be no broader than necessary to protect the determined interests of the party seeking closure;
   iii. The juvenile court must consider reasonable alternatives to closure of proceedings; and
   iv. The juvenile court must make adequate written findings to support any order of closure.

2. The Judge shall make this declaration at the beginning of each proceeding and shall not proceed until the child, either through the child or child's attorney, acknowledges the court's statement.

3. The Judge shall ensure that the statement given to the child is communicated in an age appropriate manner.

000.00 REFERENCES

DOJ Memorandum of Agreement
Rule 27 of the Tennessee Rules of Juvenile Procedure
Tennessee Supreme Court Rule 30
Tenn. Code Ann. § 37-1-153

	Policy # temp Review: Annual
	MEDIA ACCESS D-13
Chapter: Judges and Magistrates	Related Standards:

000.00 POLICY AND PURPOSE

It is the policy of the Memphis and Shelby County Juvenile Court to follow the Tennessee Supreme Court Rules and the Tennessee Rules of Juvenile Procedure. In particular, this policy is created to ensure that the media is given proper access to all delinquency proceedings. The court will at all times ensure the fair administration of justice while recognizing the media's right to access to information.

The purpose of this policy is to establish standards consistent with the Tennessee Supreme Court Rules and the Tennessee Rules of Juvenile Procedure and to ensure the Memphis and Shelby County Juvenile Court provides the media access in accordance with those standards.

000.00 APPLICABILITY

This policy and procedure applies to all judicial officers of the Juvenile Court of Memphis and Shelby County. This policy will be reviewed annually and updated as needed.

000.00 EXCLUSIVITY

This policy is in effect as of January 17, 2013 and will remain in effect until revoked or superseded in writing. This policy supersedes all prior Memphis and Shelby County Juvenile Court policies media access of juvenile delinquency proceedings, and all such prior use of similar policies, whether written or verbal, are hereby revoked.

000.00 DISTRIBUTION

This policy will be distributed to all judicial officers, the District Attorney, all panel attorneys and the Public Defender. This policy will also be distributed to local print and television media as well as the Juvenile Court Clerk. This policy will also be posted on the court's web site.

000.00 SCOPE

A. This policy applies to the Judge and Magistrates of the Juvenile Court of Memphis and Shelby County and any *ad hoc*, administrative or temporary judicial officers presiding in a limited capacity.

B. This policy applies to any delinquency proceeding in which a child is present.

000.00 DEFINITIONS

A. Adjudicatory Hearing- Means the juvenile proceeding where the Court determines whether the allegations in the petition are true beyond a reasonable doubt.

B. Child or Children – Refers to persons less than 18 years of age involved in a delinquency proceeding, formally or informally, before JCMSC. It also includes persons under 19 years of age who remain under the jurisdiction of the juvenile court in accordance with Tenn. Code Ann. § 37-1-102 (a)(4)(B).

C. Court- Refers to the Juvenile Court of Memphis and Shelby County.

D. Coverage-Means any recording or broadcasting of a court proceeding by the media using television, radio, photographic, or recording equipment.

E. Direct Interest-A person who meets one of the following criteria:

1. The judge, officers and professional staff of the court;

2. The parties to the proceeding and their counsel and representatives;

3. A public or private agency or institution providing supervision or having custody of the child under order of the court;

4. A court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to the proceeding in juvenile court; and

5. With permission of the court, any other person or agency or institution having a legitimate interest in the proceeding or in the work of the court.

F. **Judicial Officer**-Means the Juvenile Court Judge, a Special Judge appointed pursuant to TCA 16-15-209, Juvenile Magistrate, and any *ad hoc*, administrative or temporary judicial officers presiding in a limited capacity.

G. **Judge**-Means the Juvenile Court Judge elected to lead the Juvenile Court of Memphis and Shelby County, including all successors in office.

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I. **Media**-Means legitimate news gathering and reporting agencies and their representatives whose function is to inform the public, or persons engaged in the preparation of educational films or recordings.

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N. **Proceeding**-Any adjudicatory or pre-adjudicatory hearing (detention hearing, motion hearing, status update, etc) in which the child is present before a judge or magistrate.

O **Transfer Hearing**-The juvenile proceeding where the Court considers whether to waive jurisdiction of a Child and to transfer the Child's case to adult criminal court.

000.00 DISSEMINATION OF POLICY AND TRAINING

A. Every judicial officer must receive a paper copy of this policy and must acknowledge that they have received a copy and have read the policy.

B. Every judicial officer must receive training on the nature, meaning and interpretation of this policy.

C. New judicial officers must be given a copy of this policy and trained on the policy by the Judge or the Judge's designee.

D. The Court may, wherever feasible, provide its own training on confidentiality of juvenile delinquency proceedings; or, in the alternative, judicial officers may avail themselves of any continuing legal education training specific to this core concept.

000.00 MEDIA ACCESS

A. Coverage Generally.

1. Media coverage of public judicial proceedings in the courts of this State shall be allowed in accordance with the provisions of this policy and the Supreme Court Rules of Tennesse. The coverage shall be subject, at all times, to the authority of the judicial officer to:

   i. Control the conduct of the proceedings before the court;
   ii. Maintain decorum and prevent distractions;
   iii. Guarantee the safety of any party, witness, or juror; and
   iv. Ensure the fair and impartial administration of justice in the pending cause.

B. Requests for Media Coverage.

1. Requests by representatives of the media for such coverage must be made in writing to the judicial officer not less than two (2) business days before the proceeding is scheduled to begin. The judicial officer may waive the two day requirement at his or her discretion.

C. Notification of Request.

1. Notification that the media has requested such coverage shall be provided by the clerk of the particular court to the attorneys of record in the case. Such

notification may be waived by the judicial officer at the clerk's request if the request is made for media coverage of all or part of a docket.

2. If the judicial officer waives notification, the clerk shall post a notice with the docket in a conspicuous place outside the courtroom.

3. The notice must state that the proceedings will be covered by the media, and that any person may request a continuance when the docket is called.

4. Such continuance shall be granted only if the person can show that he or she was prejudiced by the lack of notice, and that there is good cause to refuse, limit, terminate or temporarily suspend media coverage pursuant to an evidentiary hearing.

D. Juvenile Court Proceedings.

1. In Juvenile Court proceedings, if the court receives a request for media coverage, the court will notify the parties and their counsel of the request, and prior to the beginning of the proceedings, the court will advise the accused, the parties and the witnesses of their personal right to object, and that if consent is given, it must be in writing.
2. Objections by a witness will suspend media coverage as to that person only during the proceeding, whereas objections by the accused in a criminal case or any party to a civil action will prohibit media coverage of the entire proceeding.

E. Print Media

1. This rule does not govern the coverage of a proceeding by a news reporter or other person who is not using a camera or electronic equipment.

000.00 REFERENCES

DOJ Memorandum of Agreement
Rule 27 of the Tennessee Rules of Juvenile Procedure
Tennessee Supreme Court Rule 30
Tenn. Code Ann. § 37-1-153

Memorandum of Agreement Regarding the Juvenile Court of Memphis and Shelby County

United States Department of Justice
Civil Rights Division
December 17, 2012

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I. Introduction

A. This Settlement Agreement ("Agreement") is entered into by the United States of America through the Department of Justice ("United States"), Shelby County, Tennessee through the County Mayor and the County Attorney, and the Juvenile Court of Memphis and Shelby County ("JCMSC" or "the Court") (collectively, the "Parties") to address the administration of juvenile justice for Children facing delinquency charges before JCMSC and the conditions of confinement of Children at the detention center operated by JCMSC.

B. This Agreement addresses the findings made during the United States' investigation of JCMSC's administration of juvenile justice and conditions of confinement pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141") and JCMSC's compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 ("Title VI").

C. On August 11, 2009, the United States notified JCMSC of its intent to investigate the Court's administration of juvenile justice and conditions of confinement. The United States conducted investigative tours in January 2010 and January 2011 with consultants in the fields of juvenile representation, statistical analysis, and juvenile protection from harm.

D. JCMSC's leadership and staff fully cooperated with the investigation, providing access to court proceedings, staff, documents, recordings or hearings, and other necessary material.

E. On April 26, 2012, the United States issued its Report of Findings, which concluded that there was reasonable cause to believe that JCMSC failed to protect the constitutional rights of Children appearing before it on delinquency matters by failing to provide constitutionally required due process, administer justice in a non-discriminatory manner, and provide reasonably safe conditions of confinement. JCMSC immediately responded by expressing its intention to thoroughly address each of the United States' conclusions and to promptly correct any deficiencies in the areas of due process and conditions of confinement. Any deficiencies in the equal protection accorded to Children appearing before JCMSC will be addressed; however, JCMSC sought to maintain non-discriminatory practices in its administration of justice. JCMSC has actively pursued and participated in multiple efforts to reduce disproportionate minority contact ("DMC") for several years.

F. Prior to the issuance of the Report of Findings, JCMSC began taking steps to address the United States' onsite recommendations, including working with the

local school systems and law enforcement agencies in early 2010 to implement a juvenile summons in lieu of arrest program for a limited number of offenses and significantly reducing its detention population. Beginning in 2007, JCMSC partnered with Memphis City Schools and the Tennessee Commission on Children and Youth ("TCCY") in developing the Schoolhouse Adjustment Program Enterprise ("SHAPE") to provide for the adjustment of four minor offenses at the school level, preventing entry into the juvenile justice system and further reducing the number of detainees. SHAPE originated as a program initiative to reduce DMC. In 2011, JCMSC contracted with the National Council of Juvenile and Family Court Judges to participate in its Juvenile Justice Model Courts Project. Also in 2011, JCMSC began working with the Annie E. Casey Foundation as a designated Juvenile Detention Alternatives Initiatives ("JDAI") site. JDAI has had successes in focusing on the detention component of the juvenile justice system, promoting reduction in reliance on secure confinement while improving public safety, and addressing the reduction of racial and ethnic disparities in juvenile justice systems. The Parties expect JCMSC to continue its work in these areas in a manner that is consistent with this Agreement.

G. As a result of the JCMSC's substantial level of voluntary cooperation and willingness to implement meaningful change without the need for contested litigation, the Parties believe this Agreement, rather than contested litigation, represents the best opportunity to address the United States' findings regarding the due process, equal protection, and facility challenges at the Court.

H. The United States recognizes that JCMSC occupies an important role in the community, addressing daily challenges with respect to its delinquency, neglect, and dependency cases and providing leadership on issues of juvenile justice to the community. JCMSC is committed to continuing its leadership role and ensuring that the constitutional rights of the Children appearing before it are respected. This Agreement reinforces JCMSC's commitment to ensuring that the Shelby County community promotes the general wellbeing of its Children.

I. The County and JCMSC recognize that, while other county agencies are not named in this Agreement, their cooperation will be required to comply with this Agreement. In the event that the County or JCMSC enters into contracts with non-governmental third parties to perform any of the obligations identified in this Agreement, the County or JCMSC will incorporate by reference the terms and conditions of this Agreement into such contracts, and will take all actions reasonably necessary to enforce such terms and conditions.

J. JCMSC is encouraged to, as has been its practice in the past, enter into agreements with other agencies to ensure that Children are being provided with sufficient alternatives to detention and that any encounters with the juvenile justice system are limited and include the safeguards of due process and equal protection.

K. The Agreement includes provisions for the protection of Children's procedural and substantive due process rights as well as their right to equal protection. These provisions work together to ensure that Children appearing before JCMSC on delinquency matters are protected by the guarantees of the United States Constitution.

L. This Agreement is not intended to have any preclusive effect except between the Parties. Should the issue of the preclusive effect of this Agreement be raised in any proceeding other than a civil action between the Parties, the Parties agree to certify that this Agreement was intended to have no such preclusive effect.

M. This Agreement is not intended to be used to prove deficiencies in the level of care provided by the County and JCMSC at the detention facility in any proceeding other than an enforcement action between the Parties.

N. No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for the purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement. This Agreement is not intended to impair or expand the right of any person or organization to seek relief against the County or JCMSC, or their officials, employees, or agents for their conduct; accordingly, this Agreement does not alter legal standards governing any such claims, including under Tennessee law.

O. This Agreement shall constitute the entire integrated agreement of the Parties. With the exception of the Report of Findings, no prior contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provisions herein in an enforcement proceeding.

II. Definitions

A. "Adjudicatory Hearing" means the juvenile proceeding where the Court determines whether the allegations in the petition are true beyond a reasonable doubt.

B. "Administrator" means the director of the Detention Facility.

C. "Affidavit of Complaint" means a document executed under oath by a law enforcement officer with firsthand knowledge of the incident leading to the child's arrest or by an officer who communicates with a reliable source who has firsthand knowledge of the incident leading to the child's arrest and that contains the charge(s) placed against a juvenile and the facts on which the charge(s) are based.

D. "Case File" means the entire record of a Child's case in juvenile court. The case file shall include Court orders, complaints, pleadings or motions, petitions, and any other documents related to a Child's delinquency proceeding.

E. "Children" or "Child" refers to persons less than 18 years of age involved in a delinquency proceeding, formally or informally, before JCMSC. It also includes persons under 19 years of age who remain under the jurisdiction of the juvenile court in accordance with Tenn. Code Ann. § 37-1-102 (a)(4)(B).

F. "Court" or "JCMSC" refers to the Juvenile Court of Memphis and Shelby County.

G. "Decision Point" refers to the major stages of the juvenile justice process. This includes juvenile arrests, referrals to juvenile court, cases diverted, cases involving secure detention prior to adjudication, cases petitioned, cases resulting in delinquent findings, cases transferred to adult criminal court, cases resulting in probation, and cases resulting in confinement in secure juvenile correctional facilities.

H. "Detention Hearing" means the juvenile proceeding where the Court accomplishes the following: arraigns the Child by informing the Child of the charges against him or her; informs the Child of the legal rights afforded him or her; and makes a decision about whether to detain the Child prior to the Adjudicatory Hearing. In order for the Court to detain a Child prior to the Adjudicatory Hearing, the Court shall find probable cause that the Child committed the delinquent act alleged.

I. "Disproportionate Minority Contact" or "DMC" is the term used to describe the overrepresentation of minority youth in the juvenile justice system.

J. "DOJ" or "United States" means the United States Department of Justice, which represents the United States in this matter.

K. "Effective Date" means the date the Parties sign this Agreement.

L. "Include" or "Including" means "include, but not limited to" or "including, but not limited to."

M. "Facility" means the Shelby County Juvenile Detention Center, currently located at 616 Adams Ave., Memphis, TN 38105, as well as any facility that is built, leased, or otherwise used, to replace or supplement the Facility.

N. "Facility Consultant" means an expert selected by the United States to assess compliance with the protection from harm components of this Agreement.

O. "Isolation" means any physical confinement initiated by a staff person that intentionally confines a Child alone in any area of the Facility, including housing or classroom areas.

P. "Judge" means the Juvenile Court Judge elected to lead the Juvenile Court of Memphis and Shelby County, including all successors in office.

Q. "Miranda rights" means the rights that protect a Child against self-incrimination as guaranteed by Miranda v. Arizona, 384 U.S. 436 (1966).

R. "Monitor" or "Monitors" means expert(s) selected to assess compliance with this Agreement.

S. "Override" means a permitted departure from the recommended action. It is particularly used when objective decision tools or decision guidelines are in place but permit the deciding official to take some action other than that recommended by the guideline or tool.

T. "Petition" means the document that, when filed, formally commences proceedings against a Child in a delinquency case. It must set forth plainly the factual and other allegations relied upon in asserting the Child is within the Court's jurisdiction and shall include a sworn statement that the allegations are true to the best of the petitioner's knowledge, ability, and belief.

U. "Policies and Procedures" means the guiding principles or processes that Court staff are required to follow. For the purposes of this Agreement, policies and procedures shall include JCMSC court rules, manuals, and administrative directives.

V. "Probable Cause Determination" refers to the relevant portion of the Detention Hearing where the Court decides whether there is probable cause that the Child committed the delinquent act alleged.

W. "Qualified Mental Health Professional" or "QMHP" means an individual with a minimum of a masters-level education and training in psychiatry, psychology, counseling, social work, or psychiatric nursing, who is currently licensed by the

State of Tennessee to deliver those mental health services he or she has undertaken to provide.

X. "Relative Rate Index" or "RRI" means the method selected by the Department of Justice's Office of Juvenile Justice and Delinquency Prevention ("OJJDP") for the identification of DMC. This method compares the relative volume (rate) of activity for each Decision Point in the juvenile justice system for minority youth with the volume of that activity for majority youth. The RRI provides a single index number that indicates the extent to which the volume of that form of contact or activity differs for minority youth and majority youth.

Y. "Restraint" means any method that restricts or limits an individual's freedom of movement, including mechanical restraints (e.g. handcuffs, belly chains, leg shackles, and restraint chairs) and physical restraints (e.g. manual holds). The term "restraint" does not include verbal directives, room confinement or use of handcuffs or shackles for and during transport.

Z. "Serious Suicide Attempt" means a suicide attempt that is either potentially life-threatening or that requires medical treatment for serious harm.

AA. "Shall" means that the provision imposes a mandatory duty.

BB. "Shelby County Government" or "SCG" means the administrative branch of Shelby County, Tennessee under the authority of the County Mayor.

CC. "Staff" means all individuals employed by JCMSC.

DD. "Substantial compliance" means that over 90% of the substantive requirements of a provision or the Agreement have been met for both quantitative (i.e. a performance measure) and qualitative measures (i.e. consistent with the larger purpose of the Agreement).

EE. "Suicide Precautions" means any level of watch, observation, or measures to prevent self-harm to Children confined in the Facility.

FF. "Train" means to instruct in the skills addressed to a level that the trainee has the demonstrated proficiency to implement those skills as, and when, called for in the training. "Trained" means to have achieved such proficiency.

GG. "Transfer Hearing" means the juvenile proceeding where the Court considers whether to waive jurisdiction of a Child and to transfer the Child's case to adult criminal court.

HH. "Use of force" means any physical contact initiated by a staff person that intentionally restricts the movement of a Child, including a physical restraint.

III. Substantive Remedial Measures

A. Due Process

The purpose of this section is to ensure that JCMSC makes the due process rights secured and protected by the United States Constitution available to all Children involved in juvenile delinquency proceedings. To that end, JCMSC shall develop and implement policies, training, and review mechanisms that will guarantee due process for Children. JCMSC shall also establish mechanisms that will identify and correct violations of those due process rights.

1. Policies and Procedures

(a) Probable Cause Determinations

(i) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to require that prior to detaining any Child, Juvenile Court Magistrates make a determination that there is probable cause that: (1) a delinquent act was committed, (2) the named Child committed the delinquent act alleged, and (3) the alleged delinquent act is one for which Tennessee statutes and JCMSC policy permit the use of detention.

(ii) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to provide Children arrested without a warrant a Probable Cause Determination to detain within 48 hours of the warrantless arrest.

(iii) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to ensure that no Child is detained for more than 48 hours prior to the Detention Hearing if the Court has not made a Probable Cause Determination.

(iv) Within 90 days of the Effective Date, JCMSC shall ensure that every Child has a meaningful opportunity to test the existence of probable cause during his or her Probable Cause Determination by revising its policies practices and procedures to:

a. Appoint a defense attorney to represent any indigent Child or Child whose indigence cannot be readily determined in advance of the Probable Cause Determination. Children must be presumed indigent unless information to the contrary is provided to JCMSC;

b. Require the government to prove the existence of probable cause with reliable evidence such as a live witness or an Affidavit of Complaint completed and sworn to by a law enforcement officer with firsthand knowledge of the incident leading to the arrest of the Child or by an officer who communicates with a reliable source who has firsthand knowledge of the incident leading to the child's arrest;

c. Allow defense attorneys an opportunity to challenge the government's evidence of probable cause, by cross-examining witnesses, presenting alternative testimony, or by any other appropriate means; and

d. Require that a record be maintained, reflecting when defense counsel was appointed, the forms of evidence used, and whether the defense attorney challenged such evidence or presented alternative evidence. Such record should be accessible from the information and recording system.

(v) Each month, the Judge, or his or her designee, shall review a sampling of Case Files to determine whether the procedures for Probable Cause Determinations are being followed as required by this Agreement. The review shall include periodic observations of Probable Cause Determinations to ensure that Juvenile Court Magistrates and other staff follow policies, procedures, and practices required by this Agreement. If the review reveals that the procedures regarding Probable Cause Determinations have not been properly followed, the Judge shall take immediate corrective action, including a discussion with the responsible staff, to bring about compliance with the terms and requirements of this Agreement.

(b) Notice of Charges

(i) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices in accordance with Tenn. Code Ann. § 40-10-101 to ensure that Children and defense counsel receive copies of the Affidavit of Complaint as soon as it is available, but at a minimum before the Detention Hearing. JCMSC shall also ensure that Juvenile Court Magistrates formally arraign Children at all Detention Hearings.

(ii) When changes are made to a Child's charges as set forth in a filed Petition prior to the Adjudicatory Hearing that could increase the penalty, JCMSC shall provide notice of the final charges by providing

copies of the amended or new Petition upon the filing of same Petition at least 14 calendar days in advance of the hearing so that the Child and defense counsel have sufficient time to prepare for the hearing, unless the Child and defense counsel waive the advance notice. If defense counsel establishes that he or she has not had sufficient time to prepare for the hearing because of changes to the Child's charges and requests a continuance, JCMSC shall move the date of the Adjudicatory Hearing to provide counsel with a reasonable opportunity to prepare.

(iii) When changes are made to a Child's charges as set forth in a filed Petition prior to the Adjudicatory Hearing that reduce the penalty or drop the charges, JCMSC shall provide notice of the final charges by providing copies of the amended or new Petition to the Child and defense counsel upon the filing of same Petition within 24 hours of the change in charges.

(iv) Each month, the Judge, or his or her designee, shall review a sampling of Case Files to determine whether the requirements regarding notice of charges are being followed as required by this Agreement. The review shall include periodic observations of Detention and Adjudicatory Hearings to ensure that Juvenile Court Magistrates and other staff follow policies, procedures, and practices regarding notice of charges required by this Agreement. If the review reveals that the procedures have not been properly followed, the Judge shall take immediate corrective action, including a discussion with the responsible staff, to bring about compliance with the terms and requirements of this Agreement.

(c) Transfer Hearings

(i) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices in accordance with Tenn. Code Ann. § 37-1-134 and the Tennessee Rules of Juvenile Procedure, R. 24(b) to require Transfer Hearings that comport with due process requirements prior to waiving jurisdiction and ordering transfer of a Child's case to adult court. Specifically, JCMSC shall ensure that all Transfer Hearings include the following:

a. The Assistant District Attorney presents evidence in support of the petition for transfer;

b. Children have a right to an attorney whose role is to represent their stated interest;

c. Children, through their attorneys, are provided the opportunity to introduce evidence on their own behalf;

d. Children, through their attorneys, are provided the opportunity to meaningfully confront evidence presented against them, including cross-examining adverse witnesses;

e. Children are protected from self-incrimination;

f. The Judge or Juvenile Court Magistrate presiding as Special Judge makes written findings on whether there are reasonable grounds to believe that: (1) the Child committed the delinquent act as alleged; (2) the Child is not committable to an institution for persons with a developmental disability or mental illness; and (3) the interests of the community require that the Child be put under legal restraint or discipline; and

g. The Judge or Juvenile Court Magistrate presiding as Special Judge considers and documents his or her consideration of factors relevant to his or her findings, including, but not limited to: (1) the extent and nature of the Child's prior delinquency; (2) the nature of past treatment efforts and the nature of the Child's response thereto; (3) the Child's suitability for additional treatment; (4) the nature of the delinquent act alleged; (5) the Child's social factors; (6) the alternatives within the juvenile justice system which were considered and the rationale for rejecting those alternatives; and (7) whether the juvenile court and juvenile justice system can provide rehabilitation of the juvenile.

(ii) Each month, the Judge, or a designee, shall review all files related to Transfer Hearings to determine if Transfer Hearings properly follow the requirements of this Agreement. The review shall include periodic observations of Transfer Hearings to ensure that Juvenile Court Magistrates and other staff follow policies, procedures and practices required by this Agreement. If the review reveals that the Transfer Hearing procedures have not been properly followed, the Judge shall take immediate corrective action, including a discussion with the responsible staff, to bring about compliance with the terms and requirements of this Agreement.

(d) Protections Against Self-Incrimination

(i) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to prevent probation officers or any other staff

from eliciting information about Children's involvement in the alleged delinquent act or acts in question outside the presence of the Child's defense attorney.

(ii) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to notify a Child's defense attorney in writing of any probation conference or interview. The probation conference or interview shall be open to the Child's defense attorney.

(iii) Within 90 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to ensure that probation officers appropriately advise Children of their Miranda rights. The probation officer's advisement of rights shall include:

a. A description of the role of a defense lawyer;

b. A statement that the Child is entitled to the appointment of a defense attorney and that a defense attorney may be provided at no cost if the Child is eligible;

c. A statement that the Child's statements regarding the alleged offense can be included in the probation report; and

d. A statement that the Child's statement could be used against him or her by the prosecutor, probation officer, or the Magistrate Judge in further proceedings, including disposition.

(iv) JCMSC shall require probation officers to have Children document in writing their receipt and understanding of their rights against self-incrimination. JCMSC shall consider the Child's ability to understand his or her rights and ensure that the rights are explained in age-appropriate language. Children must receive the advice of counsel about their rights against self-incrimination and the meaning of any waiver before signing a waiver. Children must acknowledge their waiver in writing in order for the probation conference to proceed.

(v) JCMSC shall consider developing a partnership with a non-profit or academic organization to provide advice and support to Children during the probation intake process. Participants in this program shall be trained on the appropriate role of probation officers, the Child's right against self-incrimination, and the policies, procedures, and practices regarding protections against self-incrimination developed as part of this Agreement.

(vi) Within 30 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices in accordance with Tenn. Code Ann. § 37-1-127(b) and(e) to prohibit the adverse use of information obtained from a Child during his or her probation conference.

(vii) Within 30 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices in accordance with Tenn. Code Ann. § 37-1-127(b) to ensure that Juvenile Court Magistrates do not permit the government to call Children as witnesses in the Child's own Adjudicatory or Transfer Hearing.

(viii) Within 30 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices in accordance with Tenn. Code Ann. § 37-1-127(b) to require Juvenile Court Magistrates to give an oral advisement of rights against self-incrimination to any Child who wishes to testify at his or her own Adjudicatory or Transfer Hearings.

(ix) Each month, the Judge, or his or her designee, shall review a sampling of Case Files to determine whether the requirements of this Agreement regarding protections against self-incrimination of Children are being properly followed. The review shall include periodic observations of probation conferences by appropriate supervisory staff of the Court's Probation Department as well as periodic observations of Adjudicatory and Transfer Hearings by the Judge or his or her designee. If the reviews reveal that the procedures regarding protection against self-incrimination have not been properly followed, the Judge shall take immediate corrective action, including a discussion with the responsible staff, to bring about compliance with the terms and requirements of this Agreement.

(x) JCMSC shall immediately cease the practice of providing Visit and Contact forms to Juvenile Court Magistrates prior to Adjudicatory Hearings.

(e) Juvenile Defenders

(i) Within one year of the Effective Date, SCG shall take action to ensure independent, ethical, and zealous advocacy by the juvenile defenders representing Children in delinquency hearings. This action shall include:

a. Creating a responsibility for the supervision and oversight of juvenile delinquency representation to the Shelby County Public

Defender's Office ("SCPD") and supporting the establishment of a specialized unit for juvenile defense;

b. Supporting SCPD training for juvenile defenders, including training on trial/advocacy skills and knowledge of adolescent development;

c. Ensuring that juvenile defenders have appropriate administrative support, reasonable workloads, and sufficient resources to provide independent, ethical, and zealous representation to Children in delinquency matters. Representation of Children shall cover all stages of the juvenile delinquency case, including pre-adjudicatory investigation, litigation, dispositional advocacy, and post-dispositional advocacy for as long as JCMSC has jurisdiction over a Child; and

d. Implementing attorney practice standards for juvenile defenders; supporting the training of attorneys within the SCPD specialized unit and the independent panel system on the practice standards; and supporting supervision and evaluation of said attorneys against such practice standards.

(ii) Within one year of the Effective Date, JCMSC shall take action to ensure independent, ethical, and zealous advocacy by the juvenile defenders representing Children in delinquency hearings. This action shall include:

a. Appointing juvenile defenders to represent children at Detention Hearings and Probable Cause Determinations as early as possible, including immediately after intake staff completes required paperwork where possible;

b. Establishing a juvenile defender panel system, overseen by an independent body, to handle any delinquency cases that either pose a conflict for the specialized unit for juvenile defense or would cause the juvenile unit to breech workload restrictions required by this Agreement;

c. Supporting the promulgation and adoption of attorney practice standards for juvenile defenders; supporting the training of attorneys within the SCPD specialized unit and the independent panel system on the practice standards; and supporting supervision and evaluation of said attorneys against such practice standards; and

d. Ensuring that juvenile defenders have a confidential meeting space to confer with their clients within the Facility.

(f) Plea Colloquies

(i) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, and practices to establish a procedure for conducting plea colloquies that is age-appropriate and clear to the Child.

(ii) JCMSC shall also ensure that Juvenile Court Magistrates conduct an interactive oral colloquy with the Child that includes:

a. The nature of the delinquent act charged;

b. The Child's right to an attorney;

c. The Child's right to plead not guilty and to have an Adjudicatory Hearing instead where he or she would have the right to cross-examine adverse witnesses and the right to remain silent;

d. The Child's waiver of a right to trial on the merits and an appeal by entering a guilty plea;

(iii) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, and practices to ensure that Children have a right to counsel whenever entering a plea of guilty.

(g) Restitution Guidelines

(i) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, and practices to establish guidelines for assigning restitution to any Child adjudicated delinquent that provides the Child a meaningful opportunity to challenge the evidence of restitution.

(ii) At minimum, the restitution guidelines shall:

a. Require documentation to support the restitution request;

b. Allow Children adequate time to review the restitution request and the opportunity to introduce evidence opposing the restitution amount; and

c. Allow Children an opportunity to request an adjustment to the restitution amount by introducing evidence of any family income and/or obligations that would prevent the ability to pay the restitution amount or render the restitution amount an undue hardship.

(h) Bond-Setting Guidelines

(i) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, and practices to establish guidelines for the setting of bonds for Children charged with delinquent acts.

(ii) At minimum, the guidelines regarding bonds shall:

a. Prevent excessive bonds for Children;

b. Reasonably assure the Child's appearance for court;

c. Take into account the presumptive indigence of Children and recognize that parental income may not be available to the Child; and

d. Allow parents to file statements of indigence where appropriate.

(i) Confidentiality of Juvenile Delinquency Proceedings

(i) Within 30 days of the Effective Date, JCMSC shall revise its policies, procedures, and practices to protect the Children's confidentiality in delinquency proceedings.

(ii) The Court shall ensure, in accordance with Tenn. R. Juv. P. 27 and Tenn. Supreme Court Rule 30. C. (5) that only persons who are properly concerned in a Child's case or in the Court's discretion, only persons with a direct interest in the case, are admitted into any delinquency proceeding.

(j) Language Access Plan

(i) Within six months of the Effective Date, JCMSC shall develop a language access plan that complies with Title VI of the Civil Rights Act of 1964, as amended, (42 U.S.C. § 2000d et seq.) to ensure that persons with limited English proficiency have a meaningful access to Court proceedings. JCMSC shall assess the language needs of the Shelby County population and make summonses and other crucial court documents available in appropriate languages.

(ii) JCMSC shall implement the language access plan within one year of the Effective Date.

(k) Treatment of Witnesses

(i) Within six months of the Effective Date, JCMSC shall revise its policies, practices, and procedures on treatment of witnesses to ensure

that the integrity of witness testimony is preserved. The policy shall, at minimum, require that prior to testifying at any delinquency proceeding:

a. All witnesses are placed under oath; and

b. All witnesses are appropriately sequestered.

(l) Judicial Bench Cards

(i) Within six months of the Effective Date, JCMSC shall develop bench cards containing specific guidelines to inform Juvenile Court Magistrates about the substantive issues they need to cover during hearings in order to comply with due process requirements of the United States Constitution.

(ii) The bench cards shall be readily accessible documents that contain due process requirements, relevant case law and statutory references, and written findings Juvenile Court Magistrates shall make at the culmination of each hearing. The bench card should be made available to counsel upon request.

(iii) JCMSC shall produce bench cards for the following type of hearings and proceedings:

a. Detention Hearing, Probable Cause Determinations, and bond-settings;

b. Adjudicatory Hearings;

c. Plea Colloquies;

d. Transfer Hearings;

e. Disposition Hearings, including procedures for setting restitution; and

f. Post-dispositional Hearings;

(m) Written Findings

(i) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, and practices to require Juvenile Court Magistrates to produce court orders containing written findings of fact for each judicial decision made.

(ii) The written findings of fact shall include the relevant statutory requirements, the legal reasoning that formed the basis for the court's decision, and a narrative of the facts that the Juvenile Court Magistrate considered in reaching its conclusion.

(n) Recordings of Juvenile Delinquency Hearings

(i) Within six months of the Effective Date, JCMSC shall have all delinquency hearings, including initial Detention Hearings, Adjudicatory Hearings, Transfer Hearings, and probation revocation hearings recorded by electronic means. Privately engaged court reporters may provide written transcripts.

(ii) JCMSC shall ensure that the recordings are complete and of sufficient quality to ensure a meaningful review.

(iii) JCMSC shall make recordings accessible at no cost to defense counsel representing indigent Children.

(iv) JCMSC shall make arrangements to store each recording for two years.

2. Training

(a) Within six months of the Effective Date, JCMSC shall develop a training plan for all employees involved with its delinquency docket and submit the training plan to the Monitor and the United States for review and approval.

(b) JCMSC's training plan shall ensure that appropriate staff are trained on topics relevant to their role and responsibilities in juvenile delinquency proceedings including:

(i) Trial advocacy;

(ii) Constitutional due process requirements;

(iii) Adolescent development;

(iv) Disposition planning;

(v) Best practices in social service and therapeutic options for Children and families, including evidence-based practices;

(vi) The functional and practical purposes of the juvenile court, including the Court's ability to handle cases involving Children charged with serious or violent delinquent acts; and

(vii) The appropriate professional role of different players within juvenile proceedings.

(c) JCMSC shall implement its first training plan within 12 months of the Effective Date and shall create subsequent training plans on an annual basis thereafter.

3. Performance Metrics for Due Process Reforms

(a) In order to ensure that JCMSC's due process reforms are conducted in accordance with the Constitution, the Due Process Monitor shall assess JCMSC's progress in implementing these provisions and the effectiveness of these reforms. In addition to assessing the JCMSC's procedures, practices, and training, the Monitor shall analyze the following metrics related to due process reforms:

(i) Conduct a study measuring the length of time between arrest and, where required, a probable cause hearing over a six-month period;

(ii) Review of data maintained for probable cause hearings, including the forms of evidence used, the appointment of counsel, and whether defense counsel challenged the government's evidence or presented alternative evidence;

(iii) Review a representative sampling of Petitions, including when Petitions were made available to the defense attorney, whether changes were made to the charges, and when the defense attorney was notified of such changes;

(iv) Review of a sampling of Transfer Hearings, including whether defense counsel was present, whether defense counsel was allowed to introduce and challenge evidence, and whether the Juvenile Court Magistrate appropriately documented the bases of transfer findings as required by this Agreement;

(v) Review of the number of transfer recommendations, number of transfers ordered, and number of written findings directing transfer;

(vi) Review of the probation officer advisement of rights document, the number of Children provided with that document, whether a Child's attorney was notified about the probation conference, the number of Children who signed waivers, and whether such waivers were signed upon the advisement of counsel;

(vii) Review of the number of Children represented by counsel, the number of Children represented by the Juvenile Defender Officer or SCPD, the number of Children represented by private counsel, the stage of the juvenile justice process where counsel was appointed, and the average caseload of each Juvenile Defender representing Children at JCMSC; and

(viii) A qualitative review of the monthly supervisory reviews required for the Probable Cause Determinations, Transfer Hearings, and protections against self-incrimination. This review shall include an assessment of the number of supervisory reviews and the steps taken to address the supervisor's concerns, including informal and formal measures.

(b) JCMSC shall maintain a record of the documents necessary to facilitate a review by the Due Process Monitor and the United States in accordance with Section VI of this Agreement.

B. DMC and Equal Protection

JCMSC shall administer juvenile justice in a manner that is consistent with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. In addressing delinquency matters, JCMSC shall ensure that Children appearing before the Court receive equal protection. This shall be done in a manner that promotes community engagement and the integrity of the juvenile justice system. To accomplish this goal, JCMSC shall transform its policies, procedures, practices, and training, as they relate to all stages of the administration of juvenile justice. JCMSC shall lead the community's efforts to promote fairness in the administration of juvenile justice. To achieve this outcome, JCMSC shall develop and implement the following provisions:

1. DMC Assessment

(a) Within six months of the Effective Date, JCMSC shall identify all data collection needs to engage in a thorough evaluation of DMC at each major Decision Point along of the stages of juvenile justice.

(b) Within nine months of the Effective Date, JCMSC shall augment the appropriate data collection method to assist in its evaluation of its DMC levels, causes, and reduction. The method shall include an assessment of the following areas within JCMSC and Shelby County related to comparisons of white and African-American children, as well as any additional population groups which constitute five percent or more of the juveniles referred to JCMSC in the preceding year:

(i) Relative rate index for each Decision Point, including, but not limited to, pre-adjudication detention, diversion, and transfers;

(ii) A comparison of JCMSC, the County's, and the State's RRI with the national RRI data;

(iii) Referring agencies, types of offenses referred by each particular agency; offense severity referred by the agency; and resources offered to Children within the referring agency's jurisdiction;

(iv) Number of Children in detention over a set period of time, their risk assessment scores, the component parts of their risk assessment scores, the recommended actions from their risk assessment scores, their social factors, whether they were placed in alternative programs, and the outcomes of those alternative programs;

(v) Available diversion options for Children appearing before JCMSC. This shall account for the options available in different geographic regions of the County; and

(vi) Number of youth formally considered for transfer to adult court and the number actually certified for transfer.

(c) Within six months of the Effective Date, JCMSC shall identify staffing needs to collect, evaluate, and report DMC data as required by this Agreement. JCMSC shall assign additional staff required within nine months.

(d) Within six months of the Effective Date, the Shelby County Mayor shall appoint a coordinator responsible for oversight of the progress on reducing DMC on the part of JCMSC and other departments and agencies of Shelby County Government that he may select in the exercise of his sound discretion.

(e) Within six months of the Effective Date, JCMSC shall also identify and designate a point of contact ("POC") within each department responsible for delinquency matters before the court – including, but not limited to, probation, detention, and the Juvenile Court Magistrates – to report on and evaluate the department's DMC reduction efforts.

(f) JCMSC shall collect data and information required by this Agreement to determine where DMC occurs. This collection effort shall begin within nine months of the Effective Date. In particular, JCMSC shall determine the specific Decision Points where DMC occurs. This shall include geographic regions, referring agency (including individual schools) and the Decision Points noted in the DOJ Report of Findings, namely, detention, alternatives to detention, and transfer recommendations. An analysis of this data shall be conducted on an annual basis.

(g) Within six months of the Effective Date, JCMSC shall assess the impact of its current policies, procedures, and programs on DMC levels at each Decision Point. JCMSC shall conduct an inventory of the available services and diversion options

by race, ethnicity, and geographic region. The inventory shall measure, at minimum, the availability of family therapy, parent training, cognitive-behavioral treatment, mentoring, academic skills enhancement, afterschool recreation, vocational/job training, and wraparound services. This assessment shall include an analysis of JCMSC's current agreements with law enforcement, schools, social services agencies, and the cities and towns within Shelby County.

(h) Within nine months of the Effective Date, JCMSC shall complete and implement its strategic plan to reduce DMC. A committee shall be formed to oversee the execution of the strategic plan. The committee shall consider further development of diversion programs including community service, informal hearings, family group conferences, victim impact panels, victim-offender mediation, mentoring, teen courts, restitution, and other restorative justice strategies. The committee shall recommend changes to the plan based on experience of success or failures in implementation.

2. Policies and Procedures

(a) Within six months of the Effective Date, JCMSC shall revise its policies, procedures, practices, and existing agreements to reduce DMC at each Decision Point along the stages of juvenile justice and to encourage objective decision-making in all departments relating to its delinquency docket.

(b) JCMSC's revision of its policies, procedures, practices, and existing agreements shall include the following:

(i) Collection of data sufficient to evaluate whether the relevant policy, procedure, practice, or agreement results in DMC reduction;

(ii) A provision requiring the least restrictive options and alternatives to a detention setting to ensure DMC reductions;

(iii) Guidelines expressly identifying a list of infractions and reasons for which a Child may not be detained. This list shall prohibit detention for punishment, treatment, to meet the demands of the community, the police, a victim, or school administrators, to provide convenient access to the Child, to arrange for services, to satisfy the demands of the Child's parent(s) or guardian(s), or to facilitate the interrogation of the Child or investigation of the offense;

(iv) Guidelines expressly identifying the reasons for which a Child may be detained. This list shall include the requirement that the Juvenile Court Magistrates make a determination that there is probable cause to

believe that the Child has committed a delinquent offense for which he or she may be detained;

(v) Training and guidance on the use of existing and new objective decision-making tools; and

(vi) A requirement that a supervisory authority review all overrides within each department on, at minimum, a monthly basis.

(c) JCMSC shall reassess the effectiveness of its policies, procedures, practices, and existing agreements annually. JCMSC shall make necessary revisions to increase the effectiveness of JCMSC's DMC reduction efforts within the County.

3. DMC Reduction: Evaluation and Tools

(a) Within nine months of the Effective Date, JCMSC shall commence use of objective decision-making tools to assess necessary court services for Children, including, but not limited to, alternatives to detention, referrals for social services, and prevention and early intervention services. This requirement may not replace the necessary steps to ensure compliance with due process described in the above Section.

(b) Within nine months of the Effective Date, JCMSC shall refine its objective decision-making tools for determining whether pre-adjudication detention is necessary for a particular Child. In addition to due process considerations outlined above, JCMSC shall expressly identify a list of reasons for which a Child may not be detained. This list shall include, but is not limited to: punishment; treatment; meeting the demands of the community, the police, a victim, or school administrators; providing convenient access to the Child; arranging services for the Child; satisfying the demands of the Child's parent(s) or guardian(s); or facilitating the interrogation of the Child or investigation of the offense.

(c) Within nine months of the Effective Date, JCMSC shall implement a pilot program allowing law enforcement to phone in information about a recently arrested youth, which could lead to more youth being released with a summons and fewer transports by law enforcement to JCMSC.

(d) Within nine months of the Effective Date, JCMSC shall develop objective tools for providing pre-and post-adjudication alternatives to secure detention, probation recommendations (including initial placement, technical violations, and the level of supervision), and transfer recommendations. To assist with the expansion of services, JCMSC shall partner with other County departments and agencies as necessary to increase access to direct services within the community (including the

implementation of a pilot diversion program). JCMSC shall use the inventory of the available services and diversion options by race, ethnicity, and geographic region to inform its decision to provide or expand the required services. In particular, JCMSC shall assess the availability of house arrest, day/evening treatment centers, intensive probation, shelter care, specialized foster care, and attendant or holdover care.

(e) Within nine months of the Effective Date, JCMSC shall develop and implement a process to statistically review all transfer recommendations. The objective measure and the Transfer Hearing bench card (referenced in the due process section above) shall be evaluated to determine if there are any patterns contributing to DMC in transfer recommendations, identify the departments and particular decision-makers contributing to DMC in transfer recommendations, and develop an action plan for eliminating the pattern and reducing the factors contributing to DMC in transfer recommendations.

(f) Within nine months of the Effective Date, JCMSC shall begin implementing the revised data collection mechanism to assist in its continued evaluation of DMC levels, causes, and reduction.

(g) Within nine months of the Effective Date, each designated DMC point of contact shall begin to use the department's data to evaluate the following on a monthly basis:

(i) The relative rate index relating to the department's area of review;

(ii) A review of overrides using the objective factors developed for the department, including whether permissible overrides should be revised;

(iii) A review of the number of Children detained, in part, due to the department's actions;

(iv) A review of any explanations of such detention actions;

(v) A review of the number of Children offered non-judicial options by the department; and

(vi) A review of the effectiveness of the decision-making tools developed to ensure that decisions are not based on a Child's race or proxies for a Child's race or ethnicity.

Each month, the designated DMC point of contact shall provide a management report to the department head and to the Judge identifying conduct or decision-making that increases DMC or frustrates efforts to reduce DMC. The DMC point

of contact, department head, and Judge shall address these concerns. The DMC point of contact shall ensure that suggestions for addressing inconsistencies and overrides are communicated to the responsible JCMSC employee.

(h) On an annual basis, JCMSC shall evaluate and revise all objective decision-making tools listed above to minimize the extent, if any, to which the tool uses racial or ethnic differences (or proxies for racial and ethnic differences) as a basis for decision-making.

4. Training

(a) Within one year of the Effective Date, JCMSC shall provide all staff involved in any fashion in its delinquency docket with a minimum of sixteen hours of training on DMC in the juvenile justice system. The training shall emphasize the role of the Court, Juvenile Court Magistrates, probation, detention, and other Court personnel in reducing DMC in the juvenile justice process. The training shall include an interactive component with sample cases, responses, feedback, and testing to ensure retention. Training for all new staff shall be provided bi-annually. The training shall also address:

(i) Understanding the potential causes of DMC, including, but not limited to, institutional resources, individual decision-making, differential handling of Children based on race or ethnicity, programming options, availability of prevention and treatment options, and eligibility criteria for court services;

(ii) Using data collection methods to inform DMC reduction progress;

(iii) Understanding how bias – implicit or explicit – may impact the decision-making process;

(iv) Evaluating the availability of programs and services that take into account community resources;

(v) Using decision-making tools in a fair manner and evaluating any decision to override objective outcomes;

(vi) Understanding the importance of community engagement and awareness of racial or ethnic disparities in the treatment of Children appearing before the Court; and

(vii) Understanding the Court's oversight role on community issues impacting juvenile justice.

(b) JCMSC shall ensure that all staff involved in any fashion in the delinquency docket shall complete a minimum of four hours of refresher training on an annual basis. This refresher training shall include updates related to JCMSC's challenges and progress in reducing DMC over the prior year.

5. Performance Metrics for Equal Protection and DMC Reforms

(a) In order to ensure that JCMSC's equal protection and DMC reforms are conducted in accordance with the Constitution, the Equal Protection Monitor shall assess JCMSC's progress in implementing these provisions and the effectiveness of these reforms. In addition to assessing JCMSC's procedures, practices, and training, the Monitor shall analyze the following metrics related to the equal protection and fairness in the administration of juvenile justice:

(i) Annual analysis of the effectiveness of the data collection system;

(ii) Annual assessment of the Shelby County RRI for each Decision Point and comparison of the Tennessee and national RRI data;

(iii) Annual analysis of the factors relied upon in the pre-adjudication detention, diversion, and transfer determinations and the extent to which race remains a statistically significant factor at each of these Decision Points;

(iv) Review of the strategic plan to reduce DMC;

(v) Review of the objective decision-making tools implemented in accordance with this Agreement and a sampling of matters in which the tools were used;

(vi) Review of JCMSC's statistical review of transfer recommendations; and

(vii) Review of a representative sampling of monthly management reports generated by each department.

(b) JCMSC shall maintain a record of the documents necessary to facilitate a review by the Equal Protection Monitor and the United States in accordance with Section VI of this Agreement.

C. Protection from Harm: Detention Facility

JCMSC shall provide Children in the Facility with reasonably safe conditions of confinement by fulfilling the requirements set out below.

1. Use of Force

(a) No later than the Effective Date, the Facility shall continue to prohibit all use of a restraint chair and pressure point control tactics.

(b) Within six months of the Effective Date, the Facility shall analyze the methods that staff uses to control Children who pose a danger to themselves or others. The Facility shall ensure that all methods used in these situations comply with the use of force and mental health provisions in this Agreement.

(c) Within six months of the Effective Date, JCMSC shall ensure that the Facility's use of force policies, procedures, and practices:

(i) Ensure that staff use the least amount of force appropriate to the harm posed by the Child to stabilize the situation and protect the safety of the involved Child or others;

(ii) Prohibit the use of unapproved forms of physical restraint and seclusion;

(iii) Require that restraint and seclusion only be used in those circumstances where the Child poses an immediate danger to self or others and when less restrictive means have been properly, but unsuccessfully, attempted;

(iv) Require the prompt and thorough documentation and reporting of all incidents, including allegations of abuse, uses of force, staff misconduct, sexual misconduct between children, child on child violence, and other incidents at the discretion of the Administrator, or his/her designee;

(v) Limit force to situations where the Facility has attempted, and exhausted, a hierarchy of pro-active non-physical alternatives;

(vi) Require that any attempt at non-physical alternatives be documented in a Child's file;

(vii) Ensure that staff are held accountable for excessive and unpermitted force;

(viii) Within nine months of the Effective Date ensure that Children who have been subjected to force or restraint are evaluated by medical staff immediately following the incident regardless of whether there is a visible injury or the Child denies any injury;

(ix) Require mandatory reporting of all child abuse in accordance with Tenn. Code. Ann. § 37-1-403; and

(x) Require formal review of all uses of force and allegations of abuse, to determine whether staff acted appropriately.

(d) Each month, the Administrator, or his or her designee, shall review all incidents involving force to ensure that all uses of force and reports on uses of force were done in accordance with this Agreement. The Administrator shall also ensure that appropriate disciplinary action is initiated against any staff member who fails to comply with the use of force policy. The Administrator or designee shall identify any training needs and debrief staff on how to avoid similar incidents through de-escalation. The Administrator shall also discuss the wrongful conduct with the staff and the appropriate response that was required in the circumstance. To satisfy the terms of this provision, the Administrator, or his or her designee, shall be fully trained in use of force.

2. Suicide Prevention

(a) Within 60 days of the Effective Date, JCMSC shall develop and implement comprehensive policies and procedures regarding suicide prevention and the appropriate management of suicidal Children. The policies and procedures shall incorporate the input from the Division of Clinical Services. The policies and procedures shall address, at minimum:

(i) Intake screening for suicide risk and other mental health concerns in a confidential environment by a qualified individual for the following: past or current suicidal ideation and/or attempts; prior mental health treatment; recent significant loss, such as the death of a family member or a close friend; history of mental health diagnosis or suicidal behavior by family members and/or close friends; and suicidal issues or mental health diagnosis during any prior confinement.

(ii) Procedures for initiating and terminating precautions;

(iii) Communication between direct care and mental health staff regarding Children on precautions, including a requirement that direct care staff notify mental health staff of any incident involving self-harm;

(iv) Suicide risk assessment by the QMHP;

(v) Housing and supervision requirements, including minimal intervals of supervision and documentation;

(vi) Interdisciplinary reviews of all serious suicide attempts or completed suicides;

(vii) Multiple levels of precautions, each with increasing levels of protection;

(viii) Requirements for all annual in-service training, including annual mock drills for suicide attempts and competency-based instruction in the use of emergency equipment;

(ix) Requirements for mortality and morbidity review; and

(x) Requirements for regular assessment of the physical plant to determine and address any potential suicide risks.

(b) Within 60 days of the Effective Date, JCMSC shall ensure security staff posts are equipped with readily available, safely secured, suicide cut-down tools.

(c) After intake and admission, JCMSC shall ensure that, within 24 hours, any Child expressing suicidal intent or otherwise showing symptoms of suicide is assessed by a QMHP using an appropriate, formalized suicide risk assessment instrument.

(d) JCMSC shall require direct care staff to immediately notify a QMHP any time a Child is placed on suicide precautions. Direct care staff shall provide the mental health professional with all relevant information related to the Child's placement on suicide precautions.

(e) JCMSC shall prohibit the routine use of isolation for Children on suicide precautions. Children on suicide precautions shall not be isolated unless specifically authorized by a QMHP. Any such isolation and its justification shall be thoroughly documented in the accompanying incident report, a copy of which shall be maintained in the Child's file.

(f) Within nine months of the Effective Date, the following measures shall be taken when placing a Child on suicide precautions:

(i) Any Child placed on suicide precautions shall be evaluated by a QMHP within two hours after being placed on suicide precautions. In the interim period, the Child shall remain on constant observation until the QMHP has assessed the Child.

(ii) In this evaluation, the QMHP shall determine the extent of the risk of suicide, write any appropriate orders, and ensure that the Child is regularly monitored.

(iii) A QMHP shall regularly, but no less than daily, reassess Children on suicide precautions to determine whether the level of precaution or supervision shall be raised or lowered, and shall record these reassessments in the Child's medical chart.

(iv) Only a QMHP may raise, lower, or terminate a Child's suicide precaution level or status.

(v) Following each daily assessment, a QMHP shall provide direct care staff with relevant information regarding a Child on suicide precautions that affects the direct care staff's duties and responsibilities for supervising Children, including at least: known sources of stress for the potentially suicidal Children; the specific risks posed; and coping mechanisms or activities that may mitigate the risk of harm.

(g) JCMSC shall ensure that Children who are removed from suicide precautions receive a follow up assessment by a QMHP while housed in the Facility.

(h) All staff, including administrative, medical, and direct care staff or contractors, shall report all incidents of self-harm to the Administrator, or his or her designee, immediately upon discovery.

(i) All suicide attempts shall be recorded in the classification system to ensure that intake staff is aware of past suicide attempts if a Child with a history of suicidal ideations or attempts is readmitted to the Facility.

(j) Each month, the Administrator, or his or her designee, shall aggregate and analyze the data regarding self-harm, suicide attempts, and successful suicides. Monthly statistics shall be assembled to allow assessment of changes over time. The Administrator, or his or her designee, shall review all data regarding self-harm within 24 hours after it is reported and shall ensure that the provisions of this Agreement, and policies and procedures, are followed during every incident.

3. Training

(a) Within one year of the Effective Date, JCMSC shall ensure that all members of detention staff receive a minimum of eight hours of competency-based training in each of the categories listed below, and two hours of annual refresher training on that same content. The training shall include an interactive component with sample cases, responses, feedback, and testing to ensure retention. Training for all new detention staff shall be provided bi-annually.

(i) Use of force: Approved use of force curriculum, including the use of verbal de-escalation and prohibition on use of the restraint chair and pressure point control tactics.

(ii) Suicide prevention: The training on suicide prevention shall include the following:

a. A description of the environmental risk factors for suicide, individually predisposing factors, high risk periods for incarcerated Children, warning signs and symptoms, known sources of stress to potentially suicidal Children, the specific risks posed, and coping mechanisms or activities that may help to mitigate the risk of harm.

b. A discussion of the Facility's suicide prevention procedures, liability issues, recent suicide attempts at the Facility, searches of Children who are placed on suicide precautions, the proper evaluation of intake screening forms for signs of suicidal ideation, and any institutional barrier that might render suicide prevention ineffective.

c. Mock demonstrations regarding the proper response to a suicide attempt and the use of suicide rescue tools.

d. All detention staff shall be certified in CPR and first aid.

The Administrator shall review and, if necessary, revise the suicide prevention training curriculum to incorporate the requirements of this paragraph.

4. Performance Metrics for Protection from Harm

(a) In order to ensure that JCMSC's protection from harm reforms are conducted in accordance with the Constitution, JCMSC's progress in implementing these provisions and the effectiveness of these reforms shall be assessed by the Facility Consultant on a semi-annual basis during the term of this Agreement. In addition to assessing the JCMSC's procedures, practices, and training, the Facility Consultant shall analyze the following metrics related to protection from harm reforms:

(i) Review of the monthly reviews of use of force reports and the steps taken to address any wrongful conduct uncovered in the reports;

(ii) Review of the effectiveness of the suicide prevention plan. This includes a review of the number of Children placed on suicide precautions, a representative sample of the files maintained to reflect those placed on suicide precautions, the basis for such placement, the type of precautions taken, whether the Child was evaluated by a QMHP, and the length of time the Child remained on the precaution; and

(b) JCMSC shall maintain a record of the documents necessary to facilitate a review by the Facility Consultant and the United States in accordance with Section VI of this Agreement.

IV. Community Outreach

A. Within six months of the Effective Date, JCMSC shall develop and implement a community outreach program to keep the community informed about the progress of its reforms. The community outreach program shall include a process for updating and receiving input from a countywide juvenile justice consortium comprised of the Memphis/Shelby Juvenile Justice Board and other key stakeholders, including, but not limited to, six to nine citizens selected by the Mayor and approved by the County Commission who are reflective of the cultural and ethnic diversity of the County to include no less than two parents of children who have had delinquency matters before JCMSC, a person under the age of twenty-one (21) who has had direct contact with the juvenile justice system, and community advocates.

B. The community outreach program shall require at least one open meeting every six months for the first three (3) years of this Agreement and at least one time annually thereafter. The open meetings shall inform the public about the requirements of this Agreement, discuss JCMSC's progress in each substantive area of the Agreement, and address community concerns related to the fair administration of juvenile justice. The meetings shall be held in a location with easy access to public transportation. At least one week before the open meetings, JCMSC shall widely publicize the meetings using print media, radio, and the internet.

C. The community outreach meetings shall include summaries of reports completed pursuant to this Agreement during the period immediately prior to the meeting and inform the public of any policy changes or other significant actions taken as a result of this Agreement.

D. JCMSC shall publish on its website annual reports outlining its reform efforts in accordance with this Agreement. The annual report shall include a description of the

measures taken to address the due process and detention reforms and to reduce the level of DMC at different Decision Points.

E. The community outreach program shall include a data dashboard that directly communicates JCMSC's compliance with the provisions of this Agreement. The data dashboard shall present a snapshot of JCMSC's progress toward complying with the due process, equal protection, and protection from harm goals identified in the Agreement. JCMSC shall ensure that the data dashboard is available on a publicly accessible website that is updated on a monthly basis at minimum.

F. Within one year of the Effective Date, JCMSC shall conduct, or retain an individual or entity approved by the DOJ with expertise in social science research and statistics to conduct, a representative survey of members of the Shelby County community regarding their experiences with and perceptions of JCMSC. The community survey shall be conducted annually until the termination of this Agreement. The individual or entity conducting the annual community survey shall:

1. Develop a baseline of measures on public satisfaction with JCMSC, attitudes among court personnel, and the quality of encounters with the court by Children and their families;

2. Conduct baseline surveys of County residents, JCMSC personnel, and Children appearing before JCMSC on delinquency matters, and follow-up surveys on at least an annual basis; and

3. Ensure that the community surveys are designed to capture the opinions of community members in each demographic group and geographic region of Shelby County.

V. Technical Assistance

The United States shall, at its discretion, provide technical assistance to JCMSC for policy and procedure development in general, and in particular, for policy and procedure development for instituting a DMC assessment system and developing initial training on DMC in juvenile justice.

VI. Implementation and Monitoring

A. Implementation. JCMSC shall begin implementing this Agreement immediately upon the Effective Date. If JCMSC cannot fully implement the reforms required by this Agreement within the allotted time, JCMSC shall notify the United States in writing. All training and reform attempts initiated following issuance of the Report of

Findings, but before the Effective Date, shall be considered in the Monitors' and Facility Consultant's compliance assessments.

B. Notification. Within two weeks of the Effective Date, JCMSC shall communicate the provisions set forth in this Agreement to officials, staff, agents, and independent contractors who are involved in juvenile delinquency proceedings at the Court or who have contact with Children at the Facility.

C. Monitors and Facility Consultant. Compliance with this Agreement shall be assessed by two Monitors and a Facility Consultant. The Due Process Monitor shall be Professor Sandra Simkins and the Equal Protection Monitor shall be Professor Michael Leiber. The Facility Consultant shall be Professor David Roush. In the event that Professor Simkins or Professor Leiber is unable to serve or continue serving as a Monitor, or in the event that the Parties agree to discontinue the use of Professor Simkins or Professor Leiber as a Monitor, the parties shall confer within forty-five (45) days of being notified of the decision to discontinue use of Professor Simkins or Professor Leiber to select a new Monitor. The Monitors shall be subject matter experts, one in the area of due process in juvenile delinquency proceedings and one in the area of equal protection. If the Parties are unable to agree upon a selection of a new Monitor within 45 days, each Party shall submit two names along with resumes or curriculum vitae and cost proposals, to a neutral party, selected with the assistance of the Federal Mediation and Conciliation Service, and the neutral party shall appoint the Monitor from among the names submitted. The Parties agree to equally share the cost of the Federal Mediation and Conciliation Service. The Facility Consultant shall be a subject matter expert in the area of juvenile protection from harm.

1. SCG shall bear all reasonable fees and costs of the Monitors.

2. The Monitors shall be permitted to initiate and receive ex parte communications with all Parties.

3. The Monitors shall not make any oral or written public statements – including but not limited to statements to the press, conference presentations, lectures, or articles – with regard to: the status of JCMSC's compliance or noncompliance with this Agreement; any act or omission of JCMSC or its agents, representatives, or employees; or the terms of their employment as the Monitors unless authorized by all Parties.

4. The Monitors shall not testify in any other litigation or proceeding with regard to the status of JCMSC's compliance or noncompliance with this Agreement; any act or omission of JCMSC or its agents, representatives or employees; or the

terms of his or her employment as the Monitor, unless otherwise lawfully compelled to do so. The Monitors may testify in the event of litigation concerning JCMSC's compliance or noncompliance with this Agreement.

5. Unless such conflict is waived by both Parties, the Monitors shall not accept employment or provide consulting services that would present a conflict of interest with his or her responsibilities under this Agreement or breach the highest ethical standards, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant or such litigant's or claimant's attorney, in connection with a claim or suit against JCMSC or its departments, officers, agents, or employees concerning matters relevant to this Agreement.

6. No Party, nor any employee or agent of any Party, shall have any supervisory authority over the Monitors activities, reports, findings, or recommendations.

7. The Monitors may be terminated if the Parties agree and upon good cause shown. Good cause shall include any violation of State or federal law that reasonably calls into question the Monitors' fitness to continue serving. In the event the Parties do not agree upon the need for termination, the Parties agree to work in good faith to resolve their differences. If the Parties are unable to resolve the dispute regarding termination of a Monitor within forty-five (45) days, the Parties shall present the dispute for resolution by a neutral party, selected with the assistance of the Federal Mediation and Conciliation Service. The Parties agree to equally share the cost of the Federal Mediation and Conciliation Service.

8. Within 30 days of the receipt of written questions from the United States, the County, or JCMSC regarding the Monitors' activities in assessing compliance with this Agreement and/or JCMSC's compliance with this Agreement, the Monitors shall provide the United States, the County or JCMSC with written answers.

D. Monitors' access to JCMSC and records. To assess JCMSC's implementation of each substantive provision of this Agreement, the Monitors and Facility Consultant will regularly conduct compliance reviews to ensure JCMSC's implementation of this Agreement.

1. The first compliance review will be conducted approximately four months following the Effective Date. Thereafter, routine compliance reviews will be conducted by the Monitors and Facility Consultant approximately every six months until this Agreement is terminated. Such routine compliance reviews will assess JCMSC's compliance with each of the substantive remedial measures set forth above. The United States, the Monitors, and the Facility Consultant shall

consult with JCMSC to schedule mutually acceptable dates for the compliance reviews.

2. The United States and JCMSC may determine that additional compliance reviews are necessary due to emergent issues within JCMSC. If the United States or JCMSC believe that such additional compliance reviews are necessary, the United States, the Monitors, and the Facility Consultant shall consult with JCMSC to schedule mutually acceptable dates for such additional compliance reviews.

3. At each compliance review, the Monitors and the Facility Consultant shall have the responsibility and authority to independently observe, assess, review, and report on JCMSC's implementation and compliance with the provisions of this Agreement. To accurately assess JCMSC's progress, the Monitors and Facility Consultant shall: conduct on-site inspections; observe programs and activities; interview pertinent administrators, professional staff, direct care staff, and contractors; individually interview a sample of Children privately; and conduct detailed reviews of Children's records, case files, or other pertinent documents. The Monitors and Facility Consultant shall spend a sufficient amount of time on-site in order to accurately assess day-to-day operations and conditions. The Monitors and Facility Consultant shall be responsible for independently verifying representations from JCMSC regarding progress toward compliance, examining supporting documentation where applicable.

4. Within 60 days after each compliance review, the Monitors shall file with the Parties a final consolidated report which describes the steps taken by JCMSC to implement this Agreement, evaluates the extent to which JCMSC has complied with each substantive provision of the Agreement, cites the evidence upon which such evaluation is based, and provides recommendations. Each report shall be provided to the Parties in draft form for comment within 30 days after each compliance review, and the Parties shall have 20 days after receipt of the draft report to comment on the report before it is finalized by the Monitors. Neither Party, however, shall have authority over the Monitors' reports, findings, or recommendations. The Reports shall be made publicly available on JCMSC's website.

E. Settlement Agreement Coordinator. JCMSC or the County shall appoint an official or employee to serve as the Settlement Agreement Coordinator, whose duties shall include:

1. Developing reports regarding compliance with this Agreement and providing such reports to the United States, the Monitors, and the Facility Consultant every six

months until this Agreement is terminated. The first report shall be provided four months after the Effective Date.

2. Providing to the United States, the Monitors, and the Facility Consultant the raw data upon which each compliance report is based upon request and any reports prepared by JCMSC's technical consultants regarding compliance with this Agreement, and any other reports routinely submitted to the Settlement Agreement Coordinator regarding compliance with this Agreement.

F. United States' Access to JCMSC and Records. The United States and its staff and agents shall have full and complete access to:

1. JCMSC courtrooms, meeting rooms, and the Facility;

2. JCMSC documents and records;

3. JCMSC officials, employees, agents, and independent contractors; and

4. Children detained at the Facility, including the right to meet with Children privately.

Such access shall continue until this Agreement is terminated in accordance with the termination provisions herein. The United States shall have the right to conduct unannounced visits to the JCMSC; however, the United States shall generally coordinate the timing of its on-site visits and requests for documents so as to minimize disruption of Court operations and staff work functions.

VII. Enforcement and Termination

A. Notice Prior to Judicial Action. With the exception of conditions or practices that pose an immediate and serious threat to the life, health, or safety of a Child, if the United States believes that JCMSC has failed to substantially comply with any obligation under this Agreement, the United States shall give thirty (30) days written notice of the failure and an opportunity to take immediate steps to attain substantial compliance prior to seeking judicial enforcement of the Agreement. If the change requires approval from SCG and/or the County legislative body, the United States shall give forty-five (45) days written notice of the failure and an opportunity to take immediate steps to attain substantial compliance prior to seeking judicial enforcement of the Agreement.

B. Termination. This Agreement shall terminate in accordance with the following provisions:

1. This Agreement shall terminate when JCMSC has achieved substantial compliance with all substantive provisions of this Agreement and has maintained that substantial compliance for 12 consecutive months.

2. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure by the JCMSC to maintain substantial compliance. However, intermittent compliance during a period of sustained noncompliance shall not constitute substantial compliance. The United States, in its good faith discretion, will determine whether JCMSC has maintained substantial compliance for the one year period and any finding of substantial compliance may not be unreasonably withheld.

3. Subsections of this Agreement pertaining to specific subject matter areas may be terminated separately and independently from the provisions of the Agreement that have not yet reached substantial compliance, if JCMSC maintains substantial compliance in these areas for a period of one year.

VIII. General Provisions

A. Policies and Procedures

1. Policy and Procedure Review. All existing Policies and Procedures shall be reviewed and/or revised to ensure compliance with the substantive terms of this Agreement. Where JCMSC does not have a policy in place to comply with a substantive term, JCMSC shall generate such policy. The initial policy and procedures review shall be initiated by JCMSC officials and shall be subject to review by the United States and the Monitor.

2. Schedule for Policy and Procedure Review. Unless otherwise stated in Section III of this Agreement, JCMSC shall complete its policy review and revision within six months of the Effective Date. To accomplish this goal, JCMSC shall adhere to the Agreement regarding each substantive provision. After JCMSC completes its initial revision, JCMSC shall immediately submit the revised policies to the Monitor for review and approval. The Monitor shall, as soon as practicable but in no event more than sixty (60) days submit to JCMSC any suggested revisions to the proposed policies. Within thirty (30) days after receiving the Monitor's revisions, JCMSC shall revise the policies to incorporate the Monitor's revisions and shall resubmit the procedures to the Monitor for review and approval. The Monitor, or Facility Consultant, shall submit to JCMSC any suggested revisions to the proposed policies and procedures within thirty (30) days. This review

process shall continue until the Monitor, or Facility Consultant, has approved of all policies and procedures.

JCMSC shall provide all such documents to the United States for its review within thirty (30) days of the review and approval by the Monitors. Within forty-five (45) days of its receipt of the policies, procedures, and other written documents, the United States shall provide either written approval of each document, or written concerns or objections it has to the documents that include proposed revisions. Such approval shall not be unreasonably withheld. In the event that the United States asserts that policies, procedures, or other written documents are not in compliance with the terms of this Agreement, the Parties will confer on the matter for up to thirty (30) days.

3. The final policies and procedures shall be subject to further revision if, after review of the Internal Oversight documents, the Monitors or Facility Consultant, the United States, or JCMSC determines that the policies or procedures are not successfully solving the deficiency identified in the Report of Findings. Suggested changes made by JCMSC shall be reviewed and approved by the Monitors or Facility Consultant and the United States.

4. Policy Implementation. No later than three months after the Monitor's final approval of each policy or procedure, JCMSC shall formally adopt and begin implementing the policies and modify all orders, job descriptions, training materials, and performance evaluation instruments in a manner consistent with the revised policies and procedures. Following adoption and implementation, JCMSC shall annually review each policy and procedure and revise as necessary. Any revisions to the policies and procedures shall be submitted to the Monitor for review and approval. Unless otherwise stated, all policies and procedures shall be implemented within one year of the Effective Date.

5. Modification. Should the parties choose to modify this Agreement, they may do so by mutual agreement. Any such modifications or amendments to this Agreement shall be memorialized in writing and executed by representatives for the parties.

B. Reporting Requirements

1. Comprehensive Action Plan. Within four months of the Effective Date, JCMSC shall submit to the United States a comprehensive action plan specifying the

measures it intends to take in order to bring JCMSC into compliance with the substantive requirements of the Agreement, including anticipated timeframes for completion of each measure.

2. Compliance Report. JCMSC shall submit a bi-annual compliance report to the United States, the first of which shall be filed within six months of the Effective Date. Thereafter, the bi-annual reports shall be filed 30 days prior to the Monitors' and Facility Consultant's bi-annual compliance tour until the Agreement is terminated. Each bi-annual compliance report submitted by JCMSC shall describe the actions JCMSC has taken during the reporting period to implement this Agreement and shall make specific reference to the Agreement provisions being implemented. To the extent any provision of this Agreement is not being implemented, the compliance report shall also describe what actions, including any additional revisions to policies, procedures and practices, JCMSC will take to ensure implementation, and the date(s) by which those actions will be taken.

3. Records. JCMSC shall maintain sufficient records to document that the requirements of this Agreement are being properly implemented and shall make such records available to the United States at all reasonable times for inspection and copying. These records shall be maintained for three years. In addition, JCMSC shall maintain and submit upon request records or other documents to verify that it has taken such actions as described in the compliance reports (e.g., census summaries, policies, procedures, protocols, training materials and incident reports) and shall also provide all additional documents reasonably requested.

4. Prohibition on Retaliation. No Child, parent, staff, stakeholder, or any other person shall be subjected to retaliation in any manner for information shared with the Monitors, the Facility Consultant, or the United States in their efforts to determine compliance with this Agreement.

C. Legislative Approvals. Certain implementation provisions of the Agreement may require additional appropriation of funds and/or budgetary amendments, which shall require approval of the Shelby County Board of Commissioners. JCMSC and SCG agree to present such funding requests to the Shelby County Board of Commissioners within thirty (30) days of becoming aware of the need for such requests.

Agreed to this 17th day of December 2012

For the United States of America:

ERIC H. HOLDER, JR.
Attorney General

/s/ *Edward L. Stanton, III*
EDWARD L. STANTON, III
United States Attorney
Western District of Tennessee

/s/ *Thomas E. Perez*
THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

/s/ *Roy L. Austin, Jr.*
ROY L. AUSTIN, JR.
Deputy Assistant Attorney General
Civil Rights Division

/s/ *Jonathan M. Smith*
JONATHAN M. SMITH
Section Chief
Special Litigation Section

/s/ *Judy C. Preston*
JUDY C. PRESTON
Deputy Chief
Special Litigation Section

/s/ *Winsome G. Gayle*
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ANIKA GZIFA
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Civil Rights Division
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For SHELBY COUNTY

/s/ *Mark H. Luttrell, Jr.*
MARK H. LUTTRELL, JR.
Shelby County Mayor

/s/ *Kelly Rayne*
KELLY RAYNE
County Attorney

/s/ *Debra L. Fessenden*
DEBRA L. FESSENDEN
Assistant County Attorney/Special Appointment

/s/ *Craig Willis*
CRAIG WILLIS
Assistant County Attorney
160 N. Main
Memphis, TN 38103

For the JUVENILE COURT OF MEMPHIS AND SHELBY COUNTY

/s/ *Curtis S. Person*
HONORABLE CURTIS S. PERSON

/s/ *Larry Scroggs*
LARRY SCROGGS
CAO/Chief Counsel
616 Adams Avenue
Memphis, TN 38105

IN THE JUVENILE COURT OF MEMPHIS AND SHELBY COUNTY

IN THE MATTER OF

Docket Number _____

A Child under 18 years of age

STATEMENT OF DEFENSE COUNSEL

I_____, certify that as defense counsel, having been duly appointed by the Court on_____ ,or retained by the Child, received a copy of the Affidavit of Complaint in this matter on _____.

Having considered the allegations contained in the AFFIDAVIT OF COMPLAINT

_____ My client does not contest the sufficiency of the AFFIDAVIT OF COMPLAINT for the purposes of establishing probable cause.

_____ My client does contest a finding of probable cause based solely on the strength of the Affidavit of Complaint. I hereby respectfully request a continuance in this matter for the purpose of presenting additional proof.

Defense Counsel Signature_____ Date_____

IN THE JUVENILE COURT OF MEMPHIS AND SHELBY COUNTY

IN THE MATTER OF

Docket Number _____

A Child under 18 years of age

STATEMENT AND EXPLANATION OF RIGHTS BY PRESIDING JUDGE/ SPECIAL JUDGE/JUVENILE MAGISTRATE
DETENTION HEARINGS

As Juvenile Magistrate / Special Judge of the Juvenile Court of Memphis and Shelby County Tennessee I hereby certify that I have explained to _____,
A Juvenile charged in this Court with a delinquent act, the charges against him/her, the purpose of the detention hearing, the possible consequences of the court's ruling in this and/or subsequent proceedings and their legal rights as follows:

- ❑ The right to receive a copy of the AFFIDAVIT OF COMPLAINT before the detention hearing.
- ❑ The right to remain silent and anything you say today may be used against you in this proceeding or at trial on these charges. Do you understand what this means?
- ❑ The right to a Court appointed attorney if indigent and to have an attorney at every stage of the proceedings against you.
- ❑ The right to confront and to cross-examine the persons who prepared any police reports, probation reports or other documents submitted, as well as any witness examined by the court during the detention proceedings. Do you understand what this means?
- ❑ The right to confront and to cross examine at any subsequent hearings any witness that may be called to testify against you at those hearings. Do you understand what this means?
- ❑ The right to use the process of the court to compel the attendance of witnesses on your behalf. Do you understand what this means?
- ❑ The right to present to the court whatever relevant evidence you or your parent, guardian or legal custodian, or your attorney, desires to present. Do you understand what this means?
- ❑ If detained, you have the right to request a Rehearing before the judge of Juvenile Court within 5 days if heard first by the Magistrate. Do you understand what this means?

DO YOU UNDERSTAND THESE RIGHTS AS I HAVE READ THEM TO YOU?

Judge/ Special Judge's / Juvenile Magistrate's Signature

_____ **Date**_____

STATEMENT BY THE JUVENILE

I am the person charged in this case. I understand all the rights which the Magistrate / Special Judge explained to me and the charges against me.

Parent/Guardian Signature_____ Date_____

Juvenile's Signature_____ Date_____

Attorney Signature_____ Date_____

IN THE JUVENILE COURT OF MEMPHIS AND SHELBY COUNTY

IN THE MATTER OF

Docket Number _____

A Child under 18 years of age

STATEMENT AND EXPLANATION OF RIGHTS BY PRESIDING JUDGE / SPECIAL JUDGE / JUVENILE MAGISTRATE ADJUDICATORY HEARING

As Juvenile Magistrate / Special Judge of the Juvenile Court of Memphis and Shelby County Tennessee I hereby certify that I have explained to _____, A Juvenile charged in this Court with a delinquent act, the charges against him/her, and each of the following rights:

- ❑ The right to receive a copy of the **AFFADAVIT OF COMPLAINT/PETITION** before the hearing.
- ❑ The right **TO REMAIN SILENT AND TO NOT INCRIMINATE YOURSELF.** This means that you do not have to say anything about your part in the charges or even whether you were anywhere near where the charges happened if you do not want to. You can remain silent and say nothing. If you choose to talk about it, what you say can be used against you. Do you understand what this means?
- ❑ You have the right to either admit the charges or to deny the charges. If you deny the charges, there will be a trial to determine whether or not the charges are true beyond a reasonable doubt. At trial you have the following rights:
    1. Confront witnesses that testify against you as well as other evidence presented, which means your attorney gets to ask them questions to try and show that the charges are not true. Do you understand what this means?
    2. Compel witnesses to testify on your behalf and present other evidence which means the court can require a person, who your attorney thinks can help you show the charges are not true, to come to court and tell what they know. Do you understand what this means?
    3. You can choose to testify or not to testify at the trial. You can remain silent and not say anything if you want. If you decide not to testify, your choice will not be held against you. Do you understand what this means?
- ❑ If you admit the charges, or you are found guilty at trial, you could be sent back home with your parent under court supervision, placed on home arrest or probation, placed in the custody of the Tennessee Department of Children's Services for an indeterminate amount of time or until your 19th birthday if permitted by law. Do you understand what this means?
- ❑ If you admit the charges you are giving up your right to a trial, which means you are also giving up your right to confront witnesses, make

witnesses testify for you and to remain silent about the charges. Do you understand what this means?

- ❑ The right to ask for a Rehearing on this decision before the judge of the Juvenile Court within 5 days, if heard first by the Magistrate.
- ❑ The right to appeal this decision directly to the Criminal Court within 10 days.
- ❑ Prior findings of delinquent or unruly behavior may be used against you in determining treatment for rehabilitation at disposition. Do you understand what this means?
- ❑ This case may be used to enhance future offenses if you before the Court in the future for new offenses. Do you understand what this means?

DO YOU UNDERSTAND THESE RIGHTS AS I HAVE READ THEM TO YOU?

Judge / Special Judge's / Juvenile Magistrate's Signature

_____ **Date**_____

STATEMENT BY THE JUVENILE

I am the person charged in this case. I understand all the rights which the Magistrate / Special Judge explained to me. I also understand the charges against me.

Parent/Guardian Signature_____ Date_____

Juvenile's Signature_____ Date_____

Attorney Signature_____ Date_____

IN THE JUVENILE COURT OF MEMPHIS AND SHELBY COUNTY

IN THE MATTER OF

Docket Number _____

A Child under 18 years of age

STATEMENT AND EXPLANATION OF RIGHTS JUDGE/SPECIAL JUDGE TRANSFER HEARINGS

As Judge/ Special Judge of the Juvenile Court of Memphis and Shelby County Tennessee I hereby certify that I have explained to _____,
A Juvenile charged in this Court with a delinquent act, the charges against him/her, the purpose of the transfer hearing and each of the following rights:

- The right to receive a copy of the **AFFIDAVIT OF COMPLAINT/PETITION** and **THE NOTICE OF INTENT TO SEEK TRANSFER** before the hearing.
- The right **TO REMAIN SILENT AND TO NOT INCRIMINATE YOURSELF.** This means that you do not have to say anything about your part in the charges or even whether you were anywhere near where the charges happened if you do not want to. You can remain silent and say nothing. If you choose to talk about it, what you say at this hearing may be used against you in today's hearing. If this matter is transferred to the Criminal Court nothing you say in this proceeding can be used against you in that proceeding. Do you have any questions about what this means?
- The right to confront witnesses that testify against you, which means your attorney gets to ask them questions to try and show that the charges are not true. Do you have any questions about what this means?
- The right to compel witnesses, which means the court can require a person, who your attorney thinks can help you show the charges are not true, to come to court and tell what they know. Do you have any questions about what this means?
- The right to testify or not to testify. You can remain silent and not say anything if you want. If you decide not to testify, you choice will not be held against you. Do you have any questions about what this means?

DO YOU UNDERSTAND THESE RIGHTS AS I HAVE READ THEM TO YOU?

Judge / Special Judge's Signature _____ Date_____

STATEMENT BY THE JUVENILE

I am the person charged in this case. I understand all the rights which the Magistrate / Special Judge explained to me. I also understand the charges against me.

Parent/Guardian Signature_____ Date_____

Juvenile's Signature_____ Date_____

Attorney Signature_____ Date_____

OK
GSP

IN THE JUVENILE COURT OF MEMPHIS AND SHELBY COUNTY

IN THE MATTER OF

Docket Number _____

A child under 18 years of age

JUVENILE'S WAIVER OF HEARING ON TRANSFER

COMES NOW, Child herein, and states the he/she is alleged in this case to have committed acts of juvenile delinquency as those terms are defined and discussed under the T.C.A. §37-1-102 (b) (10). Child, **upon advise of counsel and having been fully advised of his/her rights** is **knowingly and voluntarily stipulating** that if the Prosecution were to proceed to a hearing on probable cause, the facts would show that there are reasonable grounds to believe that the Child did commit the following delinquent acts namely,

_____

_____

_____

Child further understands that under the provisions of T.C.A. §37-1-134 and T.R.J.P. Rule 24, Child would not be proceeded against by criminal prosecution as an adult until a hearing was conducted in this Juvenile Court of Memphis and Shelby County to determine if transfer of the Child from Juvenile Court to Criminal Court would be required.

Child understands that by executing this document he/she is voluntarily and knowingly waiving the following requirements: In that, the Court finds that there are reasonable grounds to believe that:

A. The Child committed the delinquent act as alleged

Child Attorney

_____ _____

B. The Child is not committable to an institution for the developmentally disabled or mentally ill.

Child Attorney

_____ _____

C. The interests of the community require that the Child be put under legal restraint or discipline.

Child _____ Attorney _____

In addition, the Child **upon advice of counsel and in writing knowingly and voluntarily waives any hearing as to the following criteria:**

1) The extent and nature of the Child's prior record

Child _____ Attorney _____

2) The nature of past treatment efforts and the nature of the Child's response thereto;

Child _____ Attorney _____

3) Whether the offense was against a person or property, with greater weight in favor of transfer given to offenses against the person;

Child _____ Attorney _____

4) Whether the offense was committed in an aggressive and premeditated manner;

Child _____ Attorney _____

5) The possible rehabilitation of the Child by use of procedures, services and facilities currently available to the court in this state;

Child _____ Attorney _____

6) Whether the Child's conduct would be a criminal gang offense, as defined in T.C.A. § 40-35-121, if committed by an adult.

Child _____ Attorney _____

Child, upon advise of counsel, voluntarily and knowingly waives any and all proceedings pursuant to T.C.A. §37-1-134; T.R.J.P. Rule 24 as they apply to transfer hearings.

WHEREFOR, Child acknowledges that based on this WAIVER OF HEARING ON TRANSFER the Court will order the Child transferred for criminal prosecution as an adult.

DATE:_____

_____
Child's Signature

_____
Attorney for Child Signature

_____
Parent(s) of Child Signature

_____
Judge / Special Judge

IN THE JUVENILE COURT OF MEMPHIS AND SHELBY COUNTY, TENNESSEE

IN THE MATTER OF:

A child under 18 years of age

AFFIDAVIT OF COMPLAINT

Personally appeared before me, _____, and made oath that on or about the _____ day of _____, 20_____, in said county within the jurisdiction of the Juvenile Court of Memphis and Shelby County, Tennessee, one _____, did unlawfully commit the offense(s)of_____

_____

_____

_____.

Further, affiant makes oath that the essential facts constituting said offense(s), the source of the affiant's information, and the reason why the affiant's information is believable concerning said facts are as follows:

_____

_____

_____

_____

_____

_____

_____

_____.

This offense(s) occurred in Shelby County, Tennessee

OATH

Before me personally appeared the affiant in the foregoing complaint, who makes oath that statements therein are true to the best of affiant's knowledge, information and belief and that said child presents a present danger to him/herself or others, said child is likely to abscond and the said child will not respond to a juvenile summons.

_____
Affiant

Sworn to and subscribed before me this _____ day of _____, 20_____.

JOY TOULIATOS, Clerk of Court

By _____D.C.

PERIODIC REVIEW

MAGISTRATE _____

TYPE OF HEARING _____

COURTROOM NUMBER _____

OBSERVED BY ☐ VIDEO ☐ IN COURTROOM

DATE _____

Attorney Present ☐ Yes ☐ No

Charging instrument ☐ Yes ☐ No

Notice Given ☐ Yes ☐ No

Advisement of rights form (Protection against self-incrimination) ☐ Yes ☐ No

Arraignment at Detention Hearing ☐Yes ☐ No Date _____

Dispositions

☐ Probable Cause (Detention Hearing) ☐ Yes ☐ No
☐ Trial
☐ Waiver and Admission
☐ Transfer

Problems Noted _____
_____
_____
_____

Actions Taken _____
_____
_____
_____

DATE _____ REVIEWED BY _____

This checklist is referenced to the MOA on Due Process, A (1) (a) (v), page 10; A (1) (b) (iv), page 11; A (1) (c) (ii), page 12; and A (1) (d) (ix), page 14. See also A (3) (ii), (iii) and (iv), page 20.

MONTHLY REVIEW

CHILD _____ DOCKET # _____

DETENTION (PROBABLE CAUSE)

- ☐ Appointment of Attorney Date_____
- ☐ Affidavit of Complaint Date Given to Child _____
  - ☐ Uncontested
  - ☐ Defense contested by: ☐ oral argument ☐ written documents ☐ live witnesses ☐ continuance for proof
- ☐ Statement of Attorney Regarding Notice and Advisement of Rights
- ☐ Rights form by Magistrate (Protection from self-incrimination)

ADJUDICATORY HEARING

- ☐ Attorney present
- ☐ Rights form (Protection against self-incrimination)
- ☐ Petition Date Filed _____ Date given to Defense _____
- ☐ Amended Petition Date Filed _____Date Defense notified_____
- ☐ Trial
- ☐ Waiver and Admission
  - ☐ Plea & Rights form
- ☐ Order

TRANSFER HEARING

- ☐ Attorney present
- ☐ Rights form (Protection against self-incrimination)
- ☐ Petition
- ☐ Notice of Intent to transfer
- ☐ Transfer ☐ Granted
  - ☐ Denied
    - ☐ Proceeded to trial
    - ☐ Reset for hearing before Magistrate
    - ☐ Guilty Plea
- ☐ Written Findings, rationale for transfer: ☐ The extent and nature of the Child's prior delinquency ☐ the nature of past treatment efforts and the nature of the Child's response thereto ☐ the Child's suitability for additional treatment ☐the nature of the delinquent act alleged ☐ the Child's social factors ☐ the alternatives within the juvenile justice system which were considered and the rationale for rejecting those alternatives ☐ whether the juvenile court and juvenile justice system can provide rehabilitation of the juvenile
- ☐ Defense Presented Evidence
  - ☐ Opposing probable cause
  - ☐ In support of continued juvenile jurisdiction

Date _____ Reviewed by _____

This checklist is referenced to the MOA on Due Process, A (1) (2) (v), page 10; A (1) (b) (iv), page 11; A (1) (c) (ii), page 12; and A (1) (d) (ix), page 14. See also A (3) (ii), (iii) and (iv), page 20.