



ENHANCED JUVENILE JUSTICE GUIDELINES

Improving Court Practice in Juvenile Justice Cases



NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

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The National Council of Juvenile and Family Court Judges® (NCJFCJ) provides cutting-edge training, wide-ranging technical assistance, and research to help the nation’s courts, judges, and staff in their important work. Since its founding in 1937 by a group of judges dedicated to improving the effectiveness of the nation’s juvenile courts, the NCJFCJ has pursued a mission to improve courts and systems practice and raise awareness of the core issues that touch the lives of many of our nation’s children and families.

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In 2005, the National Council of Juvenile and Family Court Judges (NCJFCJ) published the Juvenile Delinquency Guidelines to guide court improvement in handling of juvenile delinquency cases. This seminal publication outlined best practices, which could be used to help courts identify problem areas, to plan for change, and to implement improvement that was critically needed.

In 2017, NCJFCJ determined that it was necessary to revisit the Juvenile Delinquency Guidelines to ensure that this vital resource remained relevant. In the years between the original publication of the Juvenile Delinquency Guidelines and this update, the juvenile justice field had taken several leaps forward in understanding youth and responding to delinquent behavior. Changes in court practice, advances in brain science and the understanding of adolescent development as well as juvenile specific rulings from the Supreme Court were the driving forces behind this update. The NCJFCJ would like to thank the State Justice Institute for providing the funding to complete these changes.

A Publication Update Committee of national experts and judges was assembled to identify areas of the document requiring an update. It was through the efforts of this committee that the Enhanced Juvenile Justice Guidelines was completed. Without their hard work and dedication this publication would not have been possible. NCJFCJ would also like to extend our deepest appreciation to the original development committee who gave generously of their time and energy to the creation of the Juvenile Delinquency Guidelines. Finally, NCJFCJ would like to acknowledge two subject matter experts who lent their expertise to this updated publication. Gina Vincent, Ph.D. who provided expert content and feedback regarding screening and assessment of youth and Kristan N. Russell, M.A. who developed the recommendations for the treatment of juvenile sex offenders. 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.

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ENHANCED JUVENILE JUSTICE GUIDELINES

GUIDING PRINCIPLES

The Key Principles of the Enhanced Juvenile Justice Guidelines fall into two broad categories – fairness, equity and procedural justice and the pursuit of excellence. Fairness, equity and procedural justice address deals with those principles relating to the treatment of youth, families, and victims within the juvenile justice system. The pursuit of excellence addresses those principles that related to the improvement of the juvenile justice system itself.

FAIRNESS, EQUITY, AND PROCEDURAL JUSTICE

- All members of the juvenile justice court shall work to promote equity and impartiality when working with youth of color.
- All members of the juvenile justice court shall treat youth, families, crime victims, witnesses, and others with respect, dignity, courtesy, and cultural understanding.
- Juvenile justice court judges should ensure their systems divert cases to alternative systems whenever possible and appropriate.
- Youth charged in the formal juvenile justice court must have qualified and adequately compensated legal representation.
- Juvenile justice court judges should ensure crime victims have access to all phases of the juvenile justice court process and receive all services to which they are entitled by law.
- Juvenile justice courts should render timely and just decisions, and trials should conclude without continuances.
- Juvenile justice system staff should engage parents and families at all stages of the juvenile justice court process to encourage family members to participate fully in the development and implementation of the youth's intervention plan.
- The juvenile justice court should engage the school and other community support systems as stakeholders in each individual youth's case.
- The juvenile justice court should understand adolescent development and hold youth accountable in developmentally appropriate ways.
- Juvenile justice court judges should ensure court dispositions are individualized and include graduated responses, both sanctions and incentives.

PURSUIT OF EXCELLENCE

- Juvenile justice court judges should engage in judicial leadership and encourage system collaboration.
- Juvenile justice systems must have adequate staff, facilities, and program resources.
- Juvenile justice courts and juvenile abuse and neglect courts should have integrated one family-one judge case assignments.
- Juvenile justice 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 justice court judges should hold their systems and the systems of other juvenile justice court stakeholders accountable.
- Juvenile justice 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 justice court judges should ensure effective post-disposition review is provided to each youth as long as the youth is involved in any component of the juvenile justice system.
- The juvenile justice 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.



I.

INTRODUCTION

CHAPTER I:

INTRODUCTION

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 2005, with the publication of *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases*, (JDG) the NCJFCJ has worked with juvenile justice courts to promulgate best practices in juvenile delinquency proceedings. The purpose of the Juvenile Delinquency Guidelines was to set forth the essential elements of effective practice for the court processes that are involved in the handling of juvenile delinquency cases. It identified 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, as well as post-disposition review of the reentry process for youth returning to the community from out-of-home placement. Courts that implemented the Juvenile Delinquency Guidelines committed to:

- Adhere to, and be guided by, the key principles of the Juvenile Delinquency Guidelines;
- Analyze practice and results of their existing court processes and identify improvement opportunities;
- Implement process improvement, measure results, and share their experiences with other juvenile courts; and
- Commit to and promote systems change both within their own jurisdiction, and at the state, regional, and national levels.
- However, in the intervening decade, much has changed in juvenile justice – from landmark Supreme Court decisions that ended the death penalty and solitary confinement for juveniles to changes in practice as a result of brain science. In order for the JDG to remain the defining resource for juvenile justice professionals, NCJFCJ undertook the steps necessary to update this seminal document – the result is the **ENHANCED JUVENILE JUSTICE GUIDELINES**.

A. HISTORICAL PERSPECTIVE

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 justice 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.”¹ The court was charged with promoting the welfare of children in trouble, avoiding the stigma of crime and criminality, and “as far as practical, treat children not as criminals but as children in need of aid, encouragement and guidance.”² 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 justice 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 justice court considers the facts of the offense when determining the proper disposition of a juvenile justice case, the juvenile justice 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 justice 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:³

- *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 justice court. Aggregately, these rights are referred to as due process rights.
- *In re Winship* (1970) changed the burden of proof from a 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 justice court purpose clauses began to use words such as “punishment” and “accountability,” and juvenile justice 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 justice 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 justice court, juvenile offenders have represented all ethnic backgrounds and all socioeconomic levels. However, the juvenile justice court has been challenged throughout its years with the dynamic of racial and ethnic disparities 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 racial and ethnic disparities where they exist– 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 justice court system so that the youth's best interests would be considered when the juvenile justice 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 justice courts were "soft" in their responses to serious crime. From 1988 to 1994, juvenile arrests for violent crimes increased 62%.⁴ In response to this escalation, legislatures significantly modified juvenile justice 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 justice court; and 4) "toughening" juvenile justice court sanctions.

The first significant change in juvenile justice court practice addressed youth who had committed serious crimes and changed state statutes regarding who should be handled in juvenile justice 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 justice court jurisdiction in the most serious cases in three ways:⁵

- 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.⁶
- Removing or reducing discretion from juvenile justice court judges over whether to keep youth under the jurisdiction of the juvenile justice 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 justice 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 justice court. There was also an increase in the number of offenses included in this category.

The second significant change in juvenile justice court practice occurred in the area of confidentiality protections. Prior to the 1990s, juvenile justice 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 justice 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 justice court practice resulted in routine involvement of the prosecutor in the juvenile justice court. Prior to *In re Gault*, prosecutors seldom appeared on juvenile justice cases except, on occasion, to help the probation department address legal matters. Over the past 30 years, more prosecutors have participated in juvenile justice 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 justice case at every stage of the proceedings. This development has led to the juvenile justice court resembling the adult criminal process in several respects, specifically the growth of the adversarial process in the juvenile justice court and the practice in many jurisdictions of extensive use of plea negotiating.

The fourth change in juvenile justice court practice toughened the sanctions available to juvenile justice 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.⁷ 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, justice 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.⁸

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. Continuing this trend *Graham v. Florida*, U.S. Supreme Court, 560 U.S. (2010) and *Miller v. Alabama*, U.S. Supreme Court, 567 U.S. (2012) held that youth could not be sentenced to life without parole, regardless of the crime.

B. PURPOSE OF THE ENHANCED JUVENILE JUSTICE GUIDELINES

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 justice court system needs guidelines that will help them improve practice. They need guidelines that will address both the enduring problems of justice and emerging innovations as well as 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 justice courts, which was the original Juvenile Delinquency Guidelines. Subsequent changes in practice resulted in the ENHANCED JUVENILE JUSTICE GUIDELINES.

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

The scope of the JUVENILE JUSTICE GUIDELINES begins at the point when an affidavit alleging a violation of the law is brought to the juvenile justice court. It ends upon completion of all juvenile justice hearings on a petition, including post-disposition review hearings.

The JUSTICE 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 JUSTICE GUIDELINES speaks only to the juvenile justice court processes involved with youth who are alleged to have committed illegal behaviors. The JUSTICE 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 justice jurisdiction. The JUSTICE GUIDELINES does not recommend against the practice of status offenders being under the abuse and neglect jurisdiction. The JUSTICE GUIDELINES does recommend, however, that only law-violating juveniles should be under the justice jurisdiction of the juvenile court.

All juvenile justice 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 justice courts have jurisdiction over status offenses. Many juvenile justice courts have jurisdiction over juvenile traffic offenses. The JUSTICE GUIDELINES recommends that juvenile justice courts use informal systems with status offenders.

In Chapter 2, important general issues not already covered in the Key Principles are briefly presented. All persons involved in any justice 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 JUSTICE GUIDELINES is to emphasize their importance, to summarize the issues, and to identify additional references for in-depth study.

Chapter 3 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 justice 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 4 through 11 describe the process of each of the hearings that are part of the formal juvenile justice 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 justice court should have, as well as the decisions the juvenile justice 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 Justice 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 Justice Court Order
- Probation and Parole Violations

The JUSTICE GUIDELINES ends with a final chapter on the pursuit of excellent.

It is important to note that the juvenile justice court judges and other juvenile justice system professionals who collaborated on the development of the original Juvenile Delinquency

Guidelines and the update to the JUSTICE GUIDELINES understand that many juvenile justice courts will not be able to implement all of the recommendations. All juvenile justice 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 12, examples of how juvenile justice courts have made these transitions are described.

The JUSTICE GUIDELINES is intended to be used by courts and other juvenile justice system stakeholders to assist their efforts to improve practice. The JUSTICE GUIDELINES is aspirational – focusing on what should be as opposed to what is. Every effort has been made to make the JUSTICE 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 JUSTICE GUIDELINES provides a common vision and motivational framework for those working toward an improved juvenile justice system.

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

¹ 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.

² Erikson, E. (1968). *Identity, youth and crisis*. New York: Norton.

³ 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.

⁴ 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.

⁵ 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.

⁶ 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.

⁷ Zingraff, M., Leiter, J., Myers, K., & Johnson, M. (1993). Child maltreatment and youthful problem behavior. *Criminology*, 31, 173-202.

⁸ Tolan, P. H., Gorman-Smith, D., & Henry, D. B. (2002). Linking family violence to delinquency across generations. *Children's Services*, 5, 273-284.



II.

**GENERAL COURT
PROCESS ISSUES**

CHAPTER II: GENERAL COURT PROCESS ISSUES

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 1 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 racial and ethnic disparities. 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 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 justice courts, outlining their purposes and procedures, and defining the limits of their powers. 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.¹ For the purposes of this document, we will refer to the delinquency jurisdiction as juvenile justice court. Regardless of what the court is called, the following tenets should apply to all courts that handle juvenile delinquency cases:

- The juvenile justice court should have original and exclusive jurisdiction and authority to coordinate all matters affecting children and families in delinquency cases.²
- The juvenile justice court should have the stature of general trial courts.³

- The juvenile justice 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.⁴

Although all juvenile justice 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 justice 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

All states set age boundaries separating a youth's delinquent behavior from that which would be criminal if committed by an adult. Every state sets an upper age limit beyond which the juvenile justice court loses jurisdiction over new offenses, and criminal court jurisdiction commences. This upper age limit varies in each state, with most states selecting the 18th birthday as the boundary between delinquent and criminal conduct.⁵ States with upper age limits under 18 have passed legislation, spurred by advances in adolescent brain science and developmental research which highlighted the many differences between youth and adults, to increase the upper age.⁶ Some states have even considered upper age limits beyond the 18th birthday.⁷ All 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 but can extend to age 24 or higher in some states,⁸ is to enable continued correctional commitment or supervision beyond the upper age of jurisdiction. Some states also set a lower age limit, typically the 10th birthday, below which a child cannot be charged with a delinquency offense; however, most states do not specify a lower age in statute.⁹ For more details on the upper, lower, and extended juvenile court jurisdictions in each state visit <http://www.jjgps.org/jurisdictional-boundaries>.

The JUVENILE JUSTICE GUIDELINES recommends that all youth who have not yet turned 18 should be under the original jurisdiction of the juvenile justice court. The U.S. Supreme Court stated in *Roper v. Simmons* (2005): "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.”¹⁰ The U.S. Supreme Court, in a series of decisions, has acknowledged that youth are less culpable than adults due to differences in decision-making skills, ability to recognize risk, and forethought for future consequences and therefore deserve less punishment, signaling that adult punishments for youth are problematic.¹¹

2. Status Offenses

The second jurisdictional area of variation is whether the juvenile justice 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, consumption of alcohol, and the consumption of marijuana (in states that have legalized marijuana for recreational use).

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 justice court judge.

Most states retain some type of status offense jurisdiction, either as a matter of dependency or delinquency. However, most states have also increased diversion options and have encouraged diversion of these cases from the formal 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 justice courts should have processes for handling status offenses that include the following guidelines:

RESOLUTION REGARDING JUVENILE JUSTICE COURTS AND SCHOOLS PARTNERING TO KEEP KIDS IN SCHOOL AND OUT OF COURT¹²

RESOLUTION REGARDING EFFORTS TO ENSURE AVAILABILITY OF EVIDENCE-BASED SERVICES TO MEET THE NEEDS OF STATUS OFFENDERS AND THEIR FAMILIES¹³

NCJFCJ supports the reauthorization of the JJCPA act and the removal of the VCO exception which currently allows status offenders to be detained if they violate an existing court order.¹⁴

The juvenile justice court must acknowledge that the most effective solutions for the problems underlying status offenses involve evidence-based services to the child and family within the community. Specific to truancy, the focus should be to keep kids in school and out of court. There is a role for the juvenile justice court in status offenses, but it is limited and restrained.

- Aim to resolve all status offense matters through the provision of voluntary diversion services.¹⁵
- Not securely detain or confine youth at any point in the status offense process.¹⁶

Juvenile justice courts should divert status offense cases to alternative systems whenever possible and appropriate. Juvenile justice courts should limit formal processing of petitions to cases where it is apparent that law enforcement diversion, prosecutor diversion, or juvenile justice court diversion to community services has failed to protect, or will be ineffective in protecting, the community from significant risk of harm. Juvenile justice courts should encourage law enforcement and prosecutors to consider diversion for every status offender, every first-time, non-violent misdemeanor offender, and other offenders as appropriate.¹⁷ For more details on the labels applied to youth who commit status offenses, age boundaries for status offense juvenile court jurisdiction, and reported data on status offenses in each state, visit <http://www.jjgps.org/status-offense-issues> For more information on addressing Status Offenses, please see the Coalition for Juvenile Justice's Status Offense Guidelines.

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 justice court.

For those juvenile justice courts that have jurisdiction over traffic offenses, extensive resources are required to manage this offense category, and these offenses are often processed and docketed separately from other delinquency offenses. The number of traffic offenses can be a significant portion of all petitions filed in the juvenile justice court.

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 a fine without attending court. The philosophy behind this method of intervention in the juvenile 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 justice 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 otherwise 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 JUVENILE JUSTICE 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, substance-related reckless operation, underage driving without a license, reckless driving, and vehicular homicide should be filed in the juvenile justice 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 justice 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-or-drug-related traffic offenses, they should receive a significant response with a strong education and counseling component.¹⁸

4. Juvenile Justice 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 prosecutorial 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 1992.¹⁹ For more details on the provisions around transferring youth to adult court in

each state visit <http://www.ijgps.org/jurisdictional-boundaries#transfer-provisions?year=2016&type=1>

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 justice court or transferred to criminal court is best made by a juvenile justice 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 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 justice court or transfer the case to the criminal court.

Accordingly, prosecutorial selection of adult jurisdiction, mandatory transfers, and automatic exclusions are not recommended.²⁰ Such practices can place juvenile justice court 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 justice 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 raise questions about the effectiveness of the system.²¹

The decision-making processes that result in the release of a youth from state correction institutions are complex and vary widely across the country. In 22 states, the state corrections agency decides when youth are released from commitment, while the juvenile justice court has sole authority to determine release in only 10 states. The state agency and the juvenile justice court share this responsibility in 11 states.²² For more details on who has the authority to release youth from state youth correction facilities each state, visit <http://www.ijgps.org/juvenile-justice-services#release-decision>.

The juvenile justice court's role in transitioning youth from commitment facilities back to their home communities is often dependent on how reentry services are administered. Reentry services for youth leaving state commitment are most often administered by state level juvenile correction agencies or share the responsibility with local juvenile justice courts. Aftercare services are administered solely at the local level by juvenile justice courts or probation departments in only five states.²³ For more details on who administers reentry services in each state, visit <http://www.ijgps.org/juvenile-justice-services#basic-services?filter=reentry>

Juvenile justice court judges should ensure effective post-disposition review is provided to each youth involved in the juvenile justice system as long as the youth is involved in any component of the system. Effective oversight ensures that youth and parents comply with juvenile justice court orders and that service providers follow through with timely, necessary services. The court should ensure that barriers to successful re-entry such as housing are addressed at the outset. In addition, as part of its oversight the court should work with their local school district to ensure seamless reintegration into an education program including class credit for schooling completed while in a facility. Court orders should always be reasonable, necessary, and supported by evidence.

Juvenile justice courts should use their statutory oversight authority to the fullest extent possible. The juvenile justice 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 justice court does not have oversight authority, the court should work together with the governmental systems that do have oversight authority to ensure that all youth involved in the juvenile justice system 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 justice court judges should work collaboratively to improve existing systems. When necessary, juvenile justice court judges should advocate for changes in state law to provide judicial oversight authority to the juvenile justice court.²⁴

B. CONFIDENTIALITY OF HEARINGS, DOCUMENTS, AND RECORDS

Confidentiality, as it relates to juvenile justice courts, is another area of juvenile process that has undergone significant change over time and continues to evolve. Historically, the juvenile justice court closed its proceedings, documents, and records, ostensibly to protect youth from the stigma of public knowledge of their court involvement and to reduce trauma to the youth. The historical position shifted to a more open process due to the belief that public access and openness are preferred, unless there is a clear reason why a youth would be harmed by openness. In many states there continues to be a mix between open and closed courts and an uncertainty about which is most appropriate for youth. It is important for courts to be thoughtful about their purpose and intent whether they are conducting open or closed hearings. Of paramount importance, regardless, is to protect the youth's private information and mitigate unintended consequences regarding the release of information. A cautious approach should be taken with regard to those legislative mandates that have led to fewer confidentiality protections such as:

- **Fingerprinting** – All jurisdictions have a statute or court rule that governs the fingerprinting of juveniles, under specified circumstances and most states restrict the taking of fingerprints in some way, often based on age and offense criteria.²⁵
- **Photographs** – Most states have laws permitting or requiring photographs of youth who are arrested for delinquent behavior be taken with at the same time as their fingerprints at the time of arrest.²⁶
- **DNA Samples** – Nearly every state collects DNA from some category of juveniles. As of 2011, nineteen states collect only from juveniles convicted of an offense in the adult criminal court, while 30 states authorize DNA collection from juveniles processed in juvenile justice courts.²⁷

Many juvenile justice 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 justice court process is through extreme cases reported in the media, the community often makes erroneous assumptions about how – and whether – the system works. This has resulted in pressure for legislative change based on incomplete and inaccurate information. Openness of hearings is more likely to provide a complete and accurate picture of the system.

At the same time, courts can take a more cautious approach toward open records and documents to ensure there are opportunities for expungement and sealing.

The confidentiality discussion generally falls into four categories: 1) Who is permitted to attend juvenile justice court hearings?; 2) What information is made available to the juvenile justice 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 justice court legal records?

1. Juvenile Justice Court Hearings²⁸ – The JUVENILE JUSTICE GUIDELINES-recommended practice regarding openness of juvenile 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 youth and that the youth's interests outweigh the public's interests.

The primary reason for requiring closed juvenile justice court proceedings has been to protect youth from the stigma of court involvement. Juvenile justice court judges from many courts that permit 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 Justice Court and Who Has Access to this Information? – This confidentiality category asks two important questions: a) What information should be provided to the juvenile justice 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 justice 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 justice 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 justice 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 justice 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 justice 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 justice 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, amended in 2013), 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).

The most important of the federal laws bearing on the confidentiality of information and records concerning juveniles are the following:

[Freedom of Information Act of 1966 \(5 U.S.C. Sec. 552\(a\)\(2\); 45 C.F.R. Part 5b\)](#)

[Privacy Act of 1974 \(5 U.S.C. Sec. 522\(a\); 1 C.F.R. Sec. 425.1 et seq.\)](#)

[Youth Corrections Act of 1977 \(18 U.S.C. Sec. 5005 et seq.; 28 C.F.R. Sec. 524.20 et seq.\)](#)

[Family Educational Rights and Privacy Act of 1974 \(20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99\)](#)

[Improving America's Schools Act of 1994 \(P.L. 103.302\)](#)

[Computer Matching and Privacy Protection Act of 1988 \(5 U.S.C. 552a\)](#)

Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act (1970) and Drug Abuse and Treatment Act (1972) (42 U.S.C. Sec. 290ee-3; 42 C.F.R. Sec. 2.1 et seq.)

Child Abuse Prevention and Treatment and Adoption Reform Act (1977) (42 U.S.C. Sec. 5106a(b)(4); 45 C.F.R. Sec. 1350.14(j))

All of these laws and regulations significantly limit the information that can be shared with others about a youth 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 youth's consent if authorized by an appropriate court order.

Juvenile justice courts may internally create another barrier to the timely provision of complete information. Some juvenile justice courts do not have procedures to incorporate knowledge from abuse and neglect cases into the delinquency disposition process. Courts that use the recommended practice 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 justice 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 justice court is for juvenile justice 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 that smooth linkages exist regarding appropriate information-sharing between system stakeholders. The board or committee presents their recommendations to the juvenile justice 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 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 justice court and others; 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 rules should establish that counsel for youth automatically has access to all case-specific information provided to the juvenile justice court.

Regarding what information should be available to victims, the general public, or media representatives who may attend open juvenile justice court hearings, an effective practice used by many juvenile justice 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 youth 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 justice 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 Among Agencies and Organizations Involved with the Youth and Juvenile Delinquency Court Personnel Regarding a Youth’s Behavior and Needs?²⁹

Confidentiality laws need not impede information exchanges among those who make up the system of care for a delinquent youth. *The 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:³⁰

- 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 inter-agency agreements or memoranda of understanding?

These considerations should be documented in a Memoranda of Understanding between the participating agencies. A sample Memoranda can be found here:

https://www.reclaimingfutures.org/sites/default/files/documents/Rfreport_lglprimer02.pdf

It is important to assess implementation policies and practices of each agency or organization that interfaces with the juvenile justice 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.³¹

4. Juvenile Justice Court Legal Records

Legal records in the juvenile justice 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.³²

In addition to the public and media, juvenile justice 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 justice court records of criminal defendants at some point in the judicial process.³³

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 youth reaches the age of majority or as otherwise set by state statute. The questions facing juvenile justice 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?

Core Principles for Record Protections³⁴

- Youths' law enforcement and court records should not widely available and never available online.
- Sealed records should be completely closed to the general public.
- Expungement means that records should be electronically deleted and physically destroyed, however a record stripped of all personal information should be retained for research purposes.
- Records of any offense may be eligible for expungement.
- Youth should be eligible for expungement at the time their cases are closed.
- There should be no costs or fees associated with the expungement process.
- The sealing and expunging of records should be automatic – i.e., youth need not do anything to initiate the process, and youth are notified when the process is completed.

- If sealing or expungement is not automatic, the process for obtaining expungement should include youth-friendly forms and is simple enough for youth to complete without the assistance of an attorney and there should be at least one designated entity or individual is responsible for informing youth about the availability of sealing or expungement; eligibility criteria; and how the process works.
- Sanctions should be imposed on individuals and agencies that unlawfully share confidential or expunged juvenile record information or fail to comply with expungement orders.

Judges and Juvenile Justice Court Personnel should:³⁵

- Ensure confidentiality of proceedings and information regarding juvenile records during and after proceedings and in accordance with state law.
- Inform youth of the consequences of their juvenile adjudications.
- Inform youth at their adjudication and disposition hearing of their right to sealing or expungement.
- Inform youth of their jurisdiction's procedures for sealing or expungement of records.
- Inform youth in writing, when they become eligible for expungement by application, that they have the right to petition for expungement and how to do it.
- Create youth-friendly sealing or expungement application forms that youth can complete on their own without the assistance of an attorney.
- Process petitions or applications for expungement free of charge.
- Ensure that juvenile record information is made available only in compliance with state law.
- Establish procedures for informing youth of their eligibility for expungement.
- Develop materials and information packets that explain the consequences of juvenile adjudications, record retention, and the right to expungement for distribution to youth and their families at disposition and when their cases are closed.
- Provide youth with notice and verification that their records have been expunged.

C. THE IMPORTANCE OF TIMELINESS IN THE JUVENILE JUSTICE 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. Advances in brain science and technology have led to a better understanding of how the adolescent brain develops and functions. Adolescents' brains continue to mature until their early- to mid-20s, leading to significant cognitive and behavioral differences between adolescents and adults. Adolescents are more likely to be influenced by peers, engage in risky and impulsive behaviors, experience mood swings, and over- or under-react to situations.³⁶ Many youth who become involved in the juvenile justice 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, which 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 justice 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 justice 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 justice court. Effective case management does not end until the final juvenile justice court order has been complied with and the case terminated. Examination of the following issues and processes will assist a juvenile justice 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 case-loads 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 justice court's response is swift, and needed services are readily available. These principles are easily measured with properly designed management information systems. Juvenile justice courts

should set expected timeframes, as described in Chapters 3 – 11 of the GUIDELINES, and regularly review data on the length of time between the referral or petition, the first hearing, and each subsequent hearing, as well as 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 justice court hearings start at the scheduled time;
- Whether juvenile justice 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 justice 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 justice 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) can result in a case being tried on two separate occasions if aggrieved parties request a completely new trial before a judge. This process can result in 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 justice 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 justice 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 justice courts can ensure citizens are not inappropriately being denied access to the juvenile justice court by monitoring citizen complaints of denied access to determine if policy adjustments need to be made.
- Collaboration among the juvenile justice court, police, prosecutors, and community services provides a broad range of informal programs available to successfully divert all but the most serious charges.
- Juvenile justice courts work 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 decrease. This frees both time and monetary resources for police, prosecutors, and the juvenile justice 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 justice court date using a pre-determined system provided and approved by the juvenile justice court.³⁷ 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.
- Two public defenders and two prosecutors are assigned to each juvenile justice courtroom.³⁸ 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 justice 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 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 justice 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 justice court trial before a judicial officer and a repeat of the trial before the judge.

- Courtrooms have direct access to the juvenile justice court's management information systems, which can select the next juvenile justice court hearing date given certain parameters. The system generates waiver forms and the written juvenile justice 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. Increasingly these systems also have the capacity to send electronic notifications via text message or email to the parties involved.
- Probation officers have assigned days in juvenile justice 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 justice 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 justice 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 to determine 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 500,000, this practice has eliminated the need for 900 additional juvenile justice court hearings per year.

Finally, juvenile justice courts cannot have effective docketing and case management systems if they do not have sufficient judicial resources to manage the juvenile justice 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 timelines. Similar work has also occurred in the juvenile justice court. By identifying the number and type of cases that come before the juvenile justice 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 justice court to manage its caseload can be determined.³⁹

E. USING SCREENING AND ASSESSMENT TOOLS TO INFORM KEY DECISIONS⁴⁰

There are a variety of validated risk screening and assessment tools that can be used by the court to determine a youth's risk of reoffending. Risk assessment instruments (often referred to as risk-needs assessments) also provide information that can be used to determine potential interventions that may prevent further delinquent behavior. These screening and assessment tools (also referred to as structured decision-making, or SDM) should guide juvenile system decisions. Probation officers should use screening and assessment tools to prepare disposition recommendations for the juvenile court judge and to design effective case plans for the youth they serve.

Using risk screening and assessment tools:

- Introduces greater consistency and equity to the decision-making process;
- Focuses limited system resources on the highest risk offenders, while reducing the unnecessary use of secure detention, residential treatment, and correctional placements;
- Ensures that decisions are based both on concerns for community safety and concerns about the youth's needs that relate to delinquent behavior and necessary treatment interventions;
- Provides 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
- Provides a standardized method of important data collection that can provide the prevalence of some problem areas across youth so resources can be planned accordingly.

Differences Between Screening and Assessment

While the terms screening and assessment are often used interchangeably they actually are very different.⁴¹ In addition, the terms have both legal and clinical meanings and justice involved youth may receive both legal and clinical screening and assessment.

Screening refers to a short tool that can be administered with little to no training. A risk screening tool can provide the court with the information regarding a youth's risk for reoffending but will not provide any information about why the youth is at risk of reoffending. A clinical screening tool may provide the court (or treatment provider) with information regarding the likelihood of a substance use or mental health disorder (depending on the tool used). In either case, a screening tool will provide the juvenile court with information that can be used to determine if further assessment is warranted.

Assessment tools are generally much longer than screening tools and should be administered by someone who has been trained in their use. And as with screening tools, assessments have both a legal and clinical definition. A legal assessment is concerned with identifying dynamic risk factors that may influence whether a youth continues to commit delinquent acts (criminogenic needs), which provides direction as to the targets for the youth's interventions. A clinical assessment is designed to determine the extent of a substance abuse or mental health problem and provide information regarding level of care or service placement. It should be noted that there is overlap in the type of questions and domains that legal and clinical assessments investigate, but the methods, purposes, and impact on delinquent behaviors differ.

Evidence-Based or Validated Tools

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 and assessment tools, it is important to determine if the tool has undergone rigorous development and review. But, selecting and using a validated tool isn't enough.⁴²

An important part of validity has to do with standardization. A tool has been developed to be used in a specific way. If it is not, that can invalidate the results. For example, if the manual states that the items of the risk assessment tool are to be rated based on an interview with the

youth in addition to collateral information, but the user only conducts an interview with the youth and does not obtain collateral information, then the process is invalid. For another example, if a self-report questionnaire is intended to be filled out by a youth on his/her own, but the user instead reads the questions to the youth and circles the answers based on what the youth says aloud, this is not an evidence-based method. This is because if research has shown a tool to have good validity when used in a specific way, it is unknown whether the tool will remain valid if used differently.

Applying an evidence-based approach to the risk assessment process seeks to improve the chances for a meaningful judgment about the future risk that a case poses. When considering the use of standardized risk screening and assessment, it is essential that juvenile courts build in a set of policies and procedures for using these instruments.⁴³ These policies and procedures should include 1) an overview of the validated tools used; 2) a description of when and who will administer each tool; and 3) a description of how the information will be used to inform decision making. These policies and procedures should further include mechanisms for administrative overrides, both mandatory and discretionary. Mandatory overrides reflect policy positions. For example, a juvenile 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 tool.

It is by having a robust series of policies and procedures, combined with continuous quality assurance and supervisory oversight, for using validated screening and assessment tools that courts can rely on the objective legitimacy of the data and can subsequently feel confident in the decisions made as a result.

Matching Youth to Services

The ideal outcome of evidence-based risk assessment is linking the needs of youth with proper services that meet their criminogenic needs. First, youth at the highest overall level of risk for reoffending should receive the most intensive services, and those with the least risk should receive the least intensive. Second, good matching between criminogenic needs and the nature of the services that youth are provided has been shown to be considerably more important in reducing reoffending and improving public safety than merely providing “more” services.⁴⁴ In fact, mandating the youth’s participation in too many services can have unintended negative consequences (e.g., inability to attend all services because of time or transportation obstacles).

Probation officers should perform a “reality check” when designing case plan services to ensure that youth aren’t overloaded – no more than two to three services at any given time is recommended.

Matching services to youths risk/needs requires a systematic process. One approach some agencies have used is to create a Service Referral Matrix that categorizes services according to a low, moderate, or high level of intensity within each criminogenic need area.⁴⁵ The criminogenic need areas are dictated by the risk assessment tool in place. Commonly these areas include aggression, substance abuse, family problems, school/educational needs, antisocial peer associations, and antisocial attitudes or disruptive behaviors. As risk or need increases, the matrix reflects an increased intensity of services that would be appropriate for referral. Thus the matrix can be used to identify proper services based on the individual youth’s criminogenic need areas (guides selection of the type of service) and level of risk for reoffending (relates to the necessary intensity of the service).

Screening and Assessment for Mental Health, Trauma, and Substance Abuse

While not primary drivers of immediate criminogenic activity, the juvenile court would be remiss not to address underlying conditions that could lead to negative life outcomes including long-term justice system involvement.

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. The reasons for the high prevalence are complicated and difficult to disentangle. For some youth, traumatic experiences and mental health issues may be connected to further delinquent behavior and for others it will not.

Youth with mental health issues or histories of abuse, neglect, and other traumatic experiences may require targeted and intensive intervention, particularly if these issues interfere with their ability to benefit from other interventions that target their criminogenic needs. Screening for these important factors should occur early in the juvenile court process, but clinical assessment from a trained professional is essential to establish the severity of the mental health issues and a potential connection to delinquent behavior. Serious substance abuse issues are well-documented risk factors for continued delinquent behavior that require effective intervention. It is important to note that information a youth reveals during the assessment process should not

be used against her or him at trial. Otherwise, the youth will not likely disclose important information related to immediate needs.

It is important to recognize that criminogenic need and behavioral health conditions (i.e. mental health, substance abuse, and trauma) can interact in complex ways. It is important to identify and address the presence of each but to not make a priori assumptions as to how one might affect the other. This is best done by identifying the levels of concern or risk in each domain and thoughtfully assessing how each domain impacts the others. It is well worth considering if a given mental health condition, traumatic stress or substance abuse may or may not be driving the delinquent behavior. This is especially worth considering, given that the bulk of persons with significant mental health concerns do not commit crime and are in fact more likely to be victims of crime. Some hypothetical examples of the complex situations are as follows:

- A youth with a significant mood disorder might be arrested for violent outbursts at home. When this youth is treated with the appropriate medication the outbursts subside. This example typifies the need for behavioral health diversion programs with minimal juvenile justice system involvement in for some youth.
- A youth with diagnosed mental health conditions, a severe trauma history, and significant gang involvement might be arrested for burglary and armed robbery as part of organized gang activities. This youth also shows high criminogenic needs in the areas of aggression, antisocial attitudes, and antisocial peer associations. Certainly the diagnosed behavioral health and trauma concerns should be treated. However, it is not a given that successful treatment would lead to reduction in the risk to reoffend in and of itself. Interventions used to address criminogenic needs would be needed to specifically target the risk of reoffending. In turn treating the behavioral health needs might assist a youth to better engage in this traditional programming to address the risk of re-offense. This example typifies the need for a strong collaborative approach involving intensive interventions in the juvenile justice and mental health systems. It is also likely that the juvenile justice interventions will be the most crucial to reduce the risk of re-offense.

In summary, thorough screening and assessment leads to a comprehensive intervention that address the various need areas and there interactions.

For more information about the use of research based risk assessment tools and mental health screening tools used in each state, visit <http://www.jigps.org/juvenile-justice-services#evidence-based-practices?tabId=2&view=risk-instruments>

F. RACIAL AND ETHNIC DISPARITIES

The term racial and ethnic disparities refers to situations where a particular group is over-represented at various stages of the juvenile justice system than is represented in the general population. Depending on the population characteristics of juvenile system jurisdictions, racial and ethnic disparities 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 inequity tends to increase as a minority youth penetrates further into the system.

Although racial and ethnic inequities are well documented in all parts of the juvenile justice system, determining the causes is more difficult. The Alliance for Racial Equity in Child Welfare concluded in its 2010 publication, *Policy Actions to Reduce Racial Disproportionality and Disparities in Child Welfare*:

The causes of disproportionality and disparities are complex, multi-layered, and not completely understood. The efforts of the legislative and executive branches illustrate the importance of leaders – state officials, courts, families, child advocates, faith communities, child welfare staff – working together to understand this phenomenon. Only through an understanding of the origins of racial disproportionality and disparities can effective programs, services, supports, and policies be developed to eliminate the problem.⁴⁶

In 1993, when modifications to the Juvenile Justice and Delinquency Prevention Act added reporting requirements regarding disproportionate minority confinement, juvenile justice courts questioned whether a problem existed.⁴⁷ Studies conducted by juvenile justice 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 justice courts.⁴⁸ Other studies, however, indicated that:

- Racial and ethnic disparities were 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, race, and age, formal intake outcomes (case filing, detention) were more common for African American male youth than for whites.⁴⁹
- Two-thirds of existing studies found that ethnic status influenced decision-making within the juvenile justice system.⁵⁰
- As a result of these and other studies, many juvenile justice courts looked harder at the data to determine if there were causal factors that were under the juvenile justice court's control.⁵¹ The Juvenile Detention Alternatives Initiative (JDAI), funded by the Annie E. Casey Foundation, promoted local system strategies to reduce minority overrepresentation.⁵² This important initiative has helped juvenile justice courts examine policies, procedures, practices, and programs, as well as to identify and address many elements of racial and ethnic disparities over which the court does have control.

Examples include:

- Multiple points of subjective rather than objective decision-making produced inequities;
- 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 justice 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:

- Implicit bias on the part of juvenile justice court practitioners including judges, intake workers, prosecutors, etc. when working with youth of color.⁵³
- Differential processing (differing dispositions and placements in the courts and correctional systems) for minority youth by the juvenile justice system⁵⁴

- Administrative policies, such as zero-tolerance in schools that unintentionally propel minorities into the juvenile justice system⁵⁵
- Juveniles of color are generally under-served 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.⁵⁶
- African American adolescents with mental health problems, particularly males, are more likely to be referred to juvenile justice court rather than the treatment system.⁵⁷
- 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 justice court.⁵⁸

Although it remains true that societal issues may subject minority youth to risk factors for delinquency, ongoing work in many juvenile justice court jurisdictions shows that the practices of individual justice agencies can exacerbate or alleviate the disparity at each decision point.⁵⁹

Examples of practices that juvenile justice 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;
- Collecting, analyzing, and monitoring data from all decision points to ensure that all youth are treated fairly. Decision points include arrest, referral, diversion, detention, petition, delinquent, probation, confinement and transfer to adult court;
- Ensuring that race and ethnicity data are routinely and accurately collected from youth and families in juvenile justice courts. The minimum race/ethnicity categories for data reported to the federal government include American Indian/Alaskan Native, Asian, Black, Hispanic/Latino, Native Hawaiian/Pacific Islander, and White. Local jurisdictions may provide additional detail as need.
- Contacting your state or local DMC coordinator, if your state participates in the JJDPA act, to inquire about DMC data they report to the federal government that might reflect local county detail.
- Creating multidisciplinary task forces that include minority representatives to monitor racial and ethnic disparities, and involving minority representatives in developing and implementing community-based alternatives to formal court processing;⁶⁰

- 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;⁶¹
- Ensuring that minority practitioners are represented in direct service delivery and in critical decision-making ranks of the juvenile justice process;⁶²
- 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;⁶³
- 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;⁶⁴
- Using validated, objective, and culturally unbiased screening and assessment instruments at all decision points;
- 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;⁶⁵ and
 - Examining personal biases and prejudices to understand and moderate their impact on judicial decision-making.⁶⁶

G. ACCESS TO JUVENILE JUSTICE IRRESPECTIVE OF SEXUAL ORIENTATION, GENDER IDENTITY, AND GENDER EXPRESSION (SOGIE)

Youth who are lesbian, gay, bisexual, transgender, queer or questioning, and gender non-conforming (LGBTQ-GNC) are over-represented in the juvenile justice system.

- While LGBTQ-GNC youth make up between 5%-7% of the nation's youth population,⁶⁷ they make up approximately 20% of the juvenile detention population.⁶⁸
- As with racial and ethnic disparities, youth who are LGBTQ-GNC are often marginalized because of implicit bias by system actors. This marginalization is compounded for LGBTQ-GNC youth of color.⁶⁹

- LGBTQ-GNC youth are more frequently detained for status offenses and for non-violent offenses.⁷⁰
- When detained, these youth are at greater risk for abuse and suicide.⁷¹

The Juvenile Defender Center and the National Council of Juvenile and Family Court Judges have published the Access to Juvenile Justice Irrespective of Sexual Orientation, Gender Identity, and Gender Expression (SOGIE) Benchcard with the following recommendations:

- Do not make assumptions regarding sexual orientation or gender identity.
- Examine any attitudes, beliefs, or biases that you may consciously or unconsciously hold.⁷²
- Use developmentally appropriate language, and ensure knowledge and use of current and appropriate terminology relevant to working with LGBTQ-GNC individuals.⁷³
- Support individuals' expression of gender identity by using their preferred names and pronouns of choice.⁷⁴
- Keep gender expression and identity confidential when it is not relevant to the court proceeding.
- Be mindful of the unintended consequences of "outing" a child.⁷⁵
- Respect the privacy rights of all LGBTQ-GNC youth, and never disclose a youth's sexual orientation or gender identity unless the youth has given you permission to do so, either through counsel or through direct communication.
- Allow transgender and gender non-conforming people to wear clothing that matches their gender identity or expression.
- Demand professionalism and prohibit use of derogatory pronouns, including "he-she" and "it" in reference to LGBTQ-GNC individuals. Instead, ensure that everyone in court uses an individual's chosen pronouns, such as he, she, they, or ze.
- Proactively address any homophobic or transphobic comments or actions made by anyone in the courtroom.
- Ensure that all juvenile justice professionals treat LGBTQ-GNC individuals with fairness, dignity, and respect, including prohibiting any attempts to ridicule or change a youth's sexual orientation or gender identity.
- When an LGBTQ-GNC youth is involved in both the juvenile justice and child welfare systems, determine whether the services identified for the youth are appropriate for the identified needs.⁷⁶

- When the source of a delinquency charge against an LGBTQ-GNC youth originates from an existing child welfare placement, or where safety issues exist in the current child welfare placement, require alternative placements be evaluated and presented to the court.
- Become familiar with laws and policies that protect SOGIE, and have resources available in the courtroom to share with LGBTQ-GNC youth and their families, as well as juvenile justice court actors and treatment providers.

To view the entire benchcard [click here](#).

H. DISPUTE RESOLUTION ALTERNATIVES⁷⁷

Alternative methods of resolving disputes allow parties to settle a potential or existing legal matter outside of a formal juvenile justice 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 justice 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 GUIDELINES uses the term dispute resolution alternatives, or DRA, to emphasize the difference. Dispute resolution alternatives can be used in the juvenile justice court system both as an informal diversion and a formal intervention. When a dispute resolution alternative is used in a formal court case, the proposed resolution is presented to the juvenile justice court judge for approval.

In many juvenile justice courts, dispute resolution alternatives have met with enormous support, success, and growth. Dispute resolution alternatives can be successfully used in the juvenile justice 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 justice 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 justice 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 family violence situations and identifying family supports for a youth when the parents are not able to provide adequate support or supervision.⁷⁸
- **Accountability Boards or Community 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 misdemeanor 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 justice 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 justice court for resolution;
- It is less expensive as attorneys may not need to be involved and juvenile justice court costs are often reduced;
- It generally takes fewer hours to complete the process than attending multiple juvenile justice court hearings, and
- Participating in the process teaches youth and families a method for resolving problems in the future.

Advantages for the juvenile justice court include:

- Reduced docket time required for judges, enabling the juvenile justice court to have more time to hear cases; and
- Conservation of scarce juvenile justice 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 justice court judge for formal cases involving family conflict. Following are examples of how dispute resolution alternatives have been used in several juvenile justice courts:

- Georgia's Juvenile Justice Reform Law (JJRL), implemented in 2014, formally incorporated mediation into the Georgia juvenile code. Any juvenile matter may be referred to mediation by a judge or court designee. Cases are screened by the judge or the court designee to determine: 1) Whether the case is appropriate for mediation; 2) Whether a need for emergency relief makes referral inappropriate until the request for relief is heard by the court; and 3) Whether the parties agree to mediate.⁷⁹
- Nebraska's Victim Youth Conferencing (VYC) is one of several restorative dialogue models allowing young people and those that they have harmed to attempt to repair the harm resulting from an offense through safe, constructive dialogue. Trained facilitators first meet individually with the victim and the youth to listen to the stories of each and to determine whether a joint VYC conference is appropriate and whether

each individual voluntarily wishes to participate. If so, the VYC facilitator convenes a joint conference in which the victim and youth are guided to talk about the offense and its impacts, offer apologies, and propose a reparation plan. If agreed to, the plan is signed and tracked for completion and fulfillment. Data from participants indicate high success:⁸⁰

- 93% of completed VYC's resulted in a reparations agreement for the juvenile to make amends.
- 85% of reparations agreements were successfully fulfilled by juveniles and 5% were in process.
- A full 100% of victims and 97% of juveniles and their parents would recommend participating in VYC to others in similar situations.
- The State of Oregon has 16 community dispute resolution centers in 24 counties. The centers, supported by nearly 500 volunteers, are used as part of a graduated response effort at the front end of the juvenile justice system to divert cases. Between 2013 and 2015, dispute resolution centers handled more than 14,000 cases with a settlement rate of 78%.⁸¹

Dispute resolution alternatives are valuable tools that juvenile justice courts can use to divert cases to alternative systems whenever possible and appropriate. When the juvenile justice court and community work together to create community resources for dispute resolution, juvenile justice 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.

I. INTERSTATE COMPACT FOR JUVENILES (ICJ) AND INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN (ICPC)⁸²

There are two interstate compacts that mandate interstate procedures in the juvenile justice 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.

1. **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, and the U.S. Virgin Islands, – that provides a procedural means to regulate the movement across state lines of juveniles who are under court supervision or who have runaway. It is estimated that ICJ handles the transfer of supervision and returns of more than 7000 juvenile offenders and non-offenders annually.⁸³

The purpose of the ICJ is to ensure that adjudicated youth and status offenders are provided adequate supervision and services; or return youth who have absconded, escaped, or run away, and ensure that public safety interests are protected. The ICJ achieves its purpose by providing an agreed system for:⁸⁴

- 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 non-delinquent 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 each compacting state and territory, a Compact Administrator is responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of the Compact and the rules adopted by the Interstate Commission for Juveniles. Compact Administrators (along with their deputies and designees) work with other state and local officials.

The ICJ Rules set forth requirements for transfer of supervision and return of runaways; probation/parole absconders; escapees; accused delinquents; and status offenders. The Commission also provides standardized forms and a national data system for effective

exchange and tracking of related information. Additional resources, include a Bench Book and Bench Cards, are available at www.juvenilecompact.org.

2. The Interstate Compact for the Placement of Children (ICPC)⁸⁵ – 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.⁸⁶ 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 or 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. For resources on interjurisdictional placement under ICPC see <https://www.childwelfare.gov/topics/permanency/interjurisdictional/icpc/> and <http://icpcstatepages.org/>

J. TITLE IV-E IN THE JUVENILE JUSTICE SYSTEM

The Title IV-E program may appropriately serve certain youth in the juvenile justice 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 justice 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 justice 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 justice courts, and juvenile probation departments to ensure Title IV-E protections for delinquents and status offenders.

If a juvenile justice 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.⁸⁷ 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** – Excluding voluntary placements, a child’s removal from the home must be the result of a judicial determination that continuation in the home is contrary to the welfare of the juvenile and that reasonable efforts were made to prevent removal.⁸⁸
- **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** – provisional kin, fictive kin, a licensed foster family home, or another state agency licensed facility. If this determination is not made in the first court ruling removing the child from the home, the agency is not eligible 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 justice court must also make a written finding that reasonable efforts were made to prevent or eliminate the need for removal within 60 days of the child’s removal from his/her home. If this determination is not made within the required time, the agency is not eligible for Title IV-E foster care maintenance payments for the duration of that stay in foster care. If the child remains in the out-home placement, the court shall make a finding to finalize a permanent plan at least once every 12 months of removal and thereafter until permanency is achieved.⁸⁹ If this finding is not made within the timeframe required, the agency is not eligible for Title IV-E funds until the agency receives a reasonable effort finding to finalize a permanency plan from the Court.⁹⁰ These judicial findings must be explicitly documented in a court order and made on a case-by-case basis.

Good practice requires that services provided to youth in the juvenile 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.⁹¹

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 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. The recent adoption of the Family First Prevention Services Act (FFPSA) has broadened the scope of Title IV-E funds. The FFPSA was signed into law as part of the Bipartisan Budget Act on February 9, 2018. This act, which is effective October 1, 2019, reforms Title IV-E and Title IV-B of the Social Security Act to prevent children from entering foster care by allowing federal reimbursement for mental health services, substance use treatment, and in-home parenting skill training. It also seeks to improve the well-being of children already in foster care by incentivizing states to reduce placement of children in congregate care. For more information on FFPSA, visit <http://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx>

There are various federal laws that detail how the state agency and the courts handle cases involving a child who is placed in foster care. For further information about the legal requirements, proceedings and best practices see the *NCJFCJ's Enhanced Resource Guidelines Improving Court Practice in Child Abuse and Neglect Cases* at <http://www.ncjfcj.org/sites/default/files/%20NCJFCJ%20Enhanced%20Resource%20Guidelines%2005-2016.pdf>. The *Enhanced Resource Guidelines* covers all stages of the court process, from the preliminary protective hearing until juvenile and family court involvement has ended, which leads to the child safely being returned home or placed in a new, secure and legally permanent home.

K. SPECIALTY DOCKETS

The final general issue addressed in this chapter is the juvenile justice 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 justice court. The specialty docket concept started in the adult system with drug courts.

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. 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.⁹² Juvenile justice 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. [The Juvenile Drug Treatment Court Guidelines](#), published in 2016, provide research-based best practices for juvenile drug treatment courts.

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

- Early screening of individuals entering the juvenile justice 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 justice 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 justice 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 justice 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.

¹ Snyder, H., & Sickmund, M. (1999). *Juvenile offenders and victims: 1999 national report*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

² 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.

³ National Council of Juvenile and Family Court Judges. (1984). *The juvenile court and serious offenders*. Reno, NV: Author.

⁴ *Supra* note 1.

⁵ As of 2016, 42 states set the highest age a minor's conduct can be labeled delinquent at the 18th birthday, 7 states at the 17th birthday and 2 states at the 16th birthday. Juvenile Justice Geography, Policy, Practice & Statistics. Online. Available <http://www.jjgps.org/jurisdictional-boundaries#delinquency-age-boundaries?year=2016&ageGroup=1> Developed by the National Center for Juvenile Justice (NCJJ), with funding from the John D. and Catherine T. MacArthur Foundation.

⁶ Legislation passed in 4 states will increase the number of states selecting the 18th birthday to 46 by 2020. Juvenile Justice Geography, Policy, Practice & Statistics. Online. Available <http://www.jjgps.org/jurisdictional-boundaries#delinquency-age-boundaries?year=2016&ageGroup=1> Developed by the National Center for Juvenile Justice (NCJJ), with funding from the John D. and Catherine T. MacArthur Foundation.

⁷ Schiraldi, V., & Western, B. (2015). *Time to rethink the age of adult court jurisdiction*. Available at: <http://centerforjustice.columbia.edu/files/2015/11/Time-to-Rethink-the-Age-of-Adult-Court-Jurisdiction.pdf>

⁸ Juvenile Justice Geography, Policy, Practice & Statistics. Online. Available at: <http://www.jjgps.org/jurisdictional-boundaries#delinquency-age-boundaries?year=2016&ageGroup=2>. Developed by the National Center for Juvenile Justice (NCJJ), with funding from the John D. and Catherine T. MacArthur Foundation.

⁹ *Ibid.*

¹⁰ *Roper v. Simmons*, 541 U.S. 1040 (2005); *Graham v. Florida*, U.S. Supreme Court, 560 U.S. (2010); *Miller v. Alabama*, U.S. Supreme Court, 567 U.S. (2012).

¹¹ *Ibid.*

¹² NCJFCJ. (2012). Resolution Regarding Juvenile Courts and Schools Partnering to Keep Kids in School and Out of Courts. Available at:

http://www.ncjfcj.org/sites/default/files/RESOLUTION%20Partnering%20to%20Keep%20Kids%20in%20School%20and%20Out%20of%20Court_fnl-3-21-12.pdf

¹³ NCJFCJ. (2010). Resolution Regarding Efforts to Ensure Availability of Evidence-Based Services to Meet the Needs of Status Offenders and Their Families. Available at: http://www.ncjfcj.org/sites/default/files/evidence-based%2520services.7.10.final_.pdf

¹⁴ NCJFCJ. (2010). Resolution Supporting Reauthorization of JJDP Act and Elimination of VCO Exception. Available at: <http://www.ncjfcj.org/sites/default/files/vcoresolution3-10.pdf>

¹⁵ Coalition for Juvenile Justice. (2013). *National standards for the care of youth charged with status offenses*.

Available at:

[http://www.juvjustice.org/sites/default/files/ckfinder/files/National%20Standards%20for%20the%20Care%20of%20Youth%20Charged%20with%20Status%20Offenses%20FINAL\(1\).pdf](http://www.juvjustice.org/sites/default/files/ckfinder/files/National%20Standards%20for%20the%20Care%20of%20Youth%20Charged%20with%20Status%20Offenses%20FINAL(1).pdf)

¹⁶ *Ibid.*

¹⁷ Mulvey, Ed. (2011). *Highlights from pathways to desistance: A longitudinal study of serious adolescent offenders*.

Office of Juvenile Justice and Delinquency Prevention. Available at: <https://www.ncjrs.gov/pdffiles1/ojjdp/230971.pdf>

¹⁸ 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.

¹⁹ *Supra* note 8.

²⁰ *Supra* note 8.

²¹ *Supra* note 18.

²² *Supra* note 8.

²³ *Supra* note 8.

²⁴ See NCJFCJ's resolution for more regarding the independent oversight --

http://www.ncjfcj.org/sites/default/files/Fnl_AdoptedResolutionOversightYouthConfinementFacilities7-2017.pdf 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 Szymanski, L. (2005). Fingerprinting of alleged or adjudicated juvenile delinquents. *NCJJ Snapshot*, 10(12).

Pittsburgh, PA: National Center for Juvenile Justice.

²⁶ 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.

²⁷ Samuels, J. E., Dwyer, A. M., Halberstadt, R., & Lachman, P. (2011). *Collecting DNA from juveniles*. Washington, DC: Urban Institute.

²⁸ *Supra* note 8.

²⁹ Griffin, P. (2000). *Separate tables: Interagency information sharing in real life*. Pittsburgh, PA: National Center for Juvenile Justice.

³⁰ Significant portions of this section have been excerpted from: Jones, B. E. (2002). *In Brief: Information Sharing and Confidentiality*, Vol. One. Portland, OR: Reclaiming Futures.

³¹ English, A., & Tereszkievicz, L. (1988). *School-based health clinics: Legal issues*, 33-34. San Francisco: 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.

³² *Supra* note 7.

³³ Office of Juvenile Justice and Delinquency Prevention [NCJRS]. *Juvenile justice reform initiatives in the states 1994-1996*.

³⁴ Shah, R., & Fine, L. (2014). *Juvenile records: A national review of state laws on confidentiality, sealing and expungement*. Philadelphia: Juvenile Law Center.

³⁵ *Ibid.*

³⁶ Scoot, E., & Steinberg, L. (2008, Fall). Adolescent development and the regulation of youth crime. *The Future of Children*, 18(2): 15-33.

³⁷ See Chapter 4, Section C (1), for details regarding how such a system can work and preserve prosecutorial review, informal diversion, and one youth-one judge.

³⁸ In very rural or frontier jurisdictions, this may not be possible.

³⁹ 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 12, Section D, Caseloads and Workloads.

⁴⁰ NCJFCJ would like to thank Gina Vincent, Ph.D., President National Youth Screening & Assessment Partners, LLC for her assistance with the development of this section.

⁴¹ Grisso, T., Vincent, G. M., & Seagrave, D. [Eds.] (2005). *Mental Health Screening and Assessment for Juvenile Justice*. New York: Guilford Press. & Vincent, G. M. (2011). *Screening and Assessment in Juvenile Justice Systems: Identifying Mental Health Needs and Risk of Reoffending*. Washington, DC: Technical Assistance Partnership for Child and Family Mental Health.

⁴² Vincent, G. M., Guy, L. S., & Grisso, T. (2012). *Risk Assessment in Juvenile Justice: A Guidebook for Implementation*. Chicago, IL: John D. & Catherine T. MacArthur Foundation. www.NYSAP.us

⁴³ *Ibid.*

⁴⁴ Peterson-Badali, M., Skilling, T., & Hoqanee, Z. (2015). Implementation of risk assessment in case management for youth in the justice system. *Criminal Justice and Behavior*, 42(3), 304-320. doi: 10.1177/0093854814549595 & Vieira, T. A., Skilling, T. A., & Peterson-Badali, M. (2009). Matching court-ordered services with treatment needs. *Criminal Justice and Behavior*, 36(4), 385-401. doi:10.1177/0093854808331249

⁴⁵ *Supra* note 42.

⁴⁶ Alliance for Racial Equity in Child Welfare. (2010). Policy actions to reduce racial disproportionality and disparities in child welfare. Available at: <http://www.ncjfcj.org/sites/default/files/Policy%20Actions%20to%20Reduce%20Racial%20Disproportionality%20and%20Disparities.pdf>

⁴⁷ 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.

⁴⁸ 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.

⁴⁹ 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.]

⁵⁰ Pope, C., & Feyerherm, W. (1991). *Minorities and the juvenile justice system*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention. Pope, C., & 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].

⁵¹ In 2001, the State of Alaska found that some factors leading to disproportionate minority contact were outside of their jurisdiction: socioeconomic, 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*.

⁵² For more information about JDAI, see www.aecf.org/initiatives/jdai.

⁵³ National Research Council. (2013). *Reforming juvenile justice: A developmental approach*. Committee on Assessing Juvenile Justice Reform, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, & Julie A. Schuck, Eds. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ National Mental Health Association. (2000). *Mental health and youth of color in the juvenile justice system*. www.nmha.org/children/justjuv/colorjj.cfm

⁵⁷ 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.

⁵⁸ Gibbs, J., & Huang, L. (1998). *Children of color: Psychological interventions with culturally diverse youth*. San Francisco, CA: Jossey-Bass.

⁵⁹ *Supra* note 47.

⁶⁰ National Juvenile Justice Network. (2014). *Reducing racial and ethnic disparities in juvenile justice systems: Promising practices*. Available at: <http://www.njjn.org/uploads/digital-library/RED-Policy-Update-0914-FINAL.pdf>

- ⁶¹ National Council of Juvenile and Family Court Judges. (1990). *Minority youth in the juvenile justice system: A judicial response*. [Vol. 41(3A).] Reno, NV: Author.
- ⁶² *Supra* note 48.
- ⁶³ 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.
- ⁶⁴ *Supra* note 47.
- ⁶⁵ *Supra* note 47.
- ⁶⁶ NCJFCJ. (2013). *Courts catalyzing change in the Model Courts ~ The first five years*. Available at: <http://www.ncifci.org/sites/default/files/CCC~The First Five Yearsmebeditword%202182014.pdf>
- ⁶⁷ Irvine, A. (2010). "We've had three of them": Addressing the invisibility of lesbian, gay, bisexual and gender non-conforming youths in the juvenile justice system. *Columbia Journal of Gender and Law*, 19, 675; Department of Justice, Office of Juvenile Justice and Delinquency Prevention. (2014). *Model programs guide literature review: LGBTQ youths in the juvenile justice system*. Available at: <https://www.ojdp.gov/mpq/litreviews/LGBTQYouthsInTheJuvenileJusticeSystem.pdf>.
- ⁶⁸ Irvine, A., & Canfield, A. (2016). The overrepresentation of lesbian, gay, bisexual, questioning, gender nonconforming and transgender youth within the child welfare to juvenile justice crossover population. *Journal of Gender, Social Policy and the Law*, 24, 243, 248. See also Bianca, D. M., Wilson et al. (2017). Disproportionality and disparities among sexual minority youth in custody. *Journal of Youth and Adolescence*, 46, 1547. (LGBTQ and particularly LGBTQ youth of color are over-represented in the juvenile justice system).
- ⁶⁹ *Supra* note 68.
- ⁷⁰ *Supra* note 68.
- ⁷¹ Jones, M., & Poe-Yamagata, E. (2000). *Building blocks for youth, and justice for some: Differential treatment of minority youth in the justice system*. Available at: http://www.nccdglobal.org/sites/default/files/publication_pdf/justice-for-some.pdf.
- ⁷² Implicit biases are held by all people, even those with commitments to impartiality such as judges. Implicit associations do not necessarily align with consciously held or declared beliefs. See Video: Hidden Injustice: Bias on the Bench (American Bar Association), <http://www.americanbar.org/diversity-portal/diversityinclusion-360-commission/implicit-bias.html> (last visited March 27, 2017). See also The Equity Project, *Toward Equity: A training curriculum for understanding sexual orientation, gender identity, and gender expression and developing competency to serve lesbian, gay, bisexual, and transgender youth in the juvenile justice system*, available at: http://www.equityproject.org/wp-content/uploads/2015/01/Equity_Curriculum_Complete.pdf [Hereinafter *Toward Equity*].
- ⁷³ For key terms and relevant terminology glossaries, see source cited *supra* Additional Resources.
- ⁷⁴ Meyer, Walter III et al., The Harry Benjamin International Gender Dysphoria Association's Standards of Care for Gender Identity Disorders 9 (6th ed. 2001), available at: <http://www.cpath.ca/wp-content/uploads/2009/12/WPATHsocv6.pdf>. See also DeCrescenzo, T., & Mallon, G.P. (2000). *Serving transgender youth: The role of the child welfare system*. (Child Welfare League of America).
- ⁷⁵ Common feelings associated with coming out include loss of relationships and friendships, rejection, being kicked out of the house, and not having financial support for food, clothing, or school. *Toward Equity*, *supra* note 66, at 16, 22-23.
- ⁷⁶ *Supra* 72.
- ⁷⁷ 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.]
- ⁷⁸ 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).
- ⁷⁹ O.C.G.A. §§ 15-11-20 through 25.
- ⁸⁰ State of Nebraska Judicial Branch. (2017). *VYC fact sheet with statistics and basic information*. Available at: https://supremecourt.nebraska.gov/sites/default/files/Programs/mediation/NE_VYC_Fact_Sheet_dd_rev_Oct_2017.pdf
- ⁸¹ Oregon Office for Community Dispute Resolution. 2013-15 Biennial Report. Available at: https://law.uoregon.edu/images/uploads/entries/2013-15_Biennial_Report.pdf
- ⁸² NCJFCJ position statement on ICPC. Available at: <http://www.ncifci.org/sites/default/files/resolutionICPC2.pdf>
- ⁸³ 2017 Annual Report, Interstate Commission for Juveniles. Online at <https://www.juvenilecompact.org/sites/default/files/2017-10/FY2017AnnualReport.pdf>
- ⁸⁴ Excerpted from the Interstate Compact for Juveniles, Article I – Findings and Purpose.

⁸⁵ 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)].

⁸⁶ 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.

⁸⁷ 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.

⁸⁸ See 42 U.S.C.A. Section 672 (a)(2)(A)(ii).

⁸⁹ See 42 U.S.C.A. Section 671 (a)(15)(C) and 45 C.F.R. Section 1356.21(b)(2).

⁹⁰ 45 C.F.R. Section 1356.21(b)(2)(i).

⁹⁰ 45 C.F.R. Section 1356.21(d)

⁹¹ See 42 U.S.C. section 672.

⁹² 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*.



III.

**INITIATING THE
JUVENILE JUSTICE
COURT PROCESS**

CHAPTER III: INITIATING THE JUVENILE JUSTICE COURT PROCESS

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

The chapter also extensively discusses alternatives to handling cases through the formal juvenile justice 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 justice 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 justice court judge and other juvenile justice system stakeholders to work together to prevent youth from being unnecessarily involved in the juvenile justice court and unnecessarily placed in detention. It is especially important for juvenile justice system professionals to work diligently to reduce racial and ethnic disparities in incarceration as youth of color are still incarcerated at a higher rate than their white peers despite decades of reform efforts.²

The written allegation that begins the juvenile justice court process is a document that explains the facts and circumstances of the alleged law violation and provides identifying information regarding the youth 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 JUVENILE JUSTICE 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 JUVENILE JUSTICE GUIDELINES uses the term “petition” to refer to this second document.

In some juvenile justice courts, the person completing the affidavit also files the petition at the same time, and both documents begin the juvenile justice court process. In other courts, the affidavit is filed with the juvenile justice court and then forwarded to the prosecutor or handled by juvenile justice court intake to make the decisions of legal sufficiency and formal or informal processing. If the prosecutor or juvenile justice court intake decides to pursue formal action, the prosecutor or juvenile justice 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 justice 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 justice 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 justice court. The juvenile justice 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 community will be adversely affected if the youth remains in the community until appearing before the juvenile justice court. However, in an increasing number of jurisdictions, law enforcement must request permission to detain the youth. In this circumstance, detention intake would conduct a detention risk screening that would determine whether the youth’s offense and history indicated a level of risk that would require detention.

- 3) The third circumstance is when the police have been unable to locate the youth and believe that the community will be adversely affected if the youth remains in the community until appearing before the juvenile justice court. The police file the affidavit with a request for the issuance of a warrant or writ for the youth's arrest. In this situation, once the arrest warrant is issued, the juvenile justice court does not become further engaged until the youth is arrested and brought to the juvenile justice court.

The juvenile justice court process subsequent to law enforcement bringing a youth to the juvenile justice 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 justice 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 juvenile justice 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 2, 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 2, Section E, describes different factors that should be built into screening tools for use at different points in the juvenile justice court process. When juvenile justice 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 justice 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 guesswork. They should be determined by written criteria that are aligned with the law and the goals and key principles of the juvenile justice court. The criteria should give structure and consistency to decision-making, without eliminating discretion.³

Whether the juvenile justice court or the facility is operated by another entity, system stakeholders 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 2, Section C, many youth who become involved in the juvenile justice 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.⁴ As a result, if the juvenile justice court process is not timely, the intended lesson of consequences and accountability is lost, and the juvenile justice 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 justice

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, do the facts establish a violation of the law; 2) whether the alleged offense is within the statute of limitations; 3) whether the alleged offense occurred within the geographic jurisdiction of the juvenile justice 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 justice charge should not be referred for formal processing or informal diversion if the allegation is not legally sufficient.

The JUVENILE JUSTICE GUIDELINES recommends: When juvenile justice courts use intake staff or probation officers to review affidavits and file complaints, misdemeanors and low-risk offenders should be diverted to appropriate interventions. The prosecutor should sign off on a petition prior to filing for gross misdemeanors and felonies, but the prosecutor should also have the option to review any affidavit that the intake officer declined to, and have the ability to override the intake decision.⁵ If not well-designed, this process could take significant time to move between the juvenile justice court and prosecutor. The most efficient way to handle this first step in the juvenile justice court process, in order to reduce the length of time between the presentation of the allegation to the juvenile justice court and the youth's first contact from the formal or informal 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 timeline.

In some juvenile justice courts, all citizens are allowed direct access to the formal juvenile justice court process, and the court will accept all affidavits for formal processing without screening for legal sufficiency. Some juvenile justice 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 justice court's resources and can unreasonably require a youth and family to appear before the juvenile justice court. If citizens are complaining that law enforcement is not filing affidavits when they should, the juvenile justice court administrative judge should contact the head of the law enforcement agency and request that a group of citizens, law enforcement, and juvenile justice 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 JUVENILE JUSTICE COURT SYSTEM

A significant percentage of juvenile justice cases are, and should be, handled informally. Most juvenile justice 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.⁶

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. The Juvenile Justice Guidelines emphasizes the diversion of cases whenever possible and appropriate. Juvenile justice systems should strive to limit formal processing of petitions to cases where it is apparent that law enforcement diversion, prosecutor diversion, or juvenile justice court diversion to community services⁷ 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 justice court for a delinquent or status offense never return on a subsequent offense.⁸ 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 justice 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 justice courts to have sufficient resources to deal effectively with more serious offenders, the juvenile justice court should not use unnecessary resources on less serious offenders.

Juvenile justice courts should encourage law enforcement and prosecutors to consider diversion for every status offender, every first-time, non-violent misdemeanor offender, and other offenders as appropriate. Juvenile justice court judges should engage the community,⁹ law enforcement, and the prosecutor in the development of diversion programs, including dispute resolution alternatives. Juvenile justice 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 2, Section E, and earlier in this chapter, the prosecutor or juvenile justice 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 justice courts should regularly review their data regarding which youth are being diverted and ensure that equity of access is available to all youth regardless of race, ethnicity, sexual orientation or identity, or gender.

Juvenile justice systems should maximize diversion opportunities so that most minor offenders with no serious prior involvement with the juvenile justice 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 juvenile justice court system. Where a jurisdiction's statutory timeframes are shorter than those recommended, the statutory timeframes should be followed. A juvenile justice court with technology resources as recommended in the Key Principles, will be able to track these steps to ensure timeframes are being met. Listed below are the process steps and recommended timelines 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 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 justice 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).

If the review determines that the case should be handled formally, the prosecutor should file the petition with the juvenile justice court immediately, so that the juvenile justice 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 Juvenile Justice 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: victim-

offender mediation and other restorative justice practices should be incorporated whenever possible. The victim's viewpoint and desires should be carefully weighed (Days 4 and 5).¹⁰

- 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, parent, or custodian, and tribal or Alaska Native entity (as appropriate), 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).
- Youth and their parents or guardians who are being diverted from formal processing should be informed, either in person or in writing, of their right to refuse diversion and demand a formal hearing. Determine if the youth accepts responsibility for the offense. If the youth refuses diversion, 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. Depending on policies in the jurisdiction, this may mark the end of the diversion and close the case. In other jurisdictions, the prosecutor or juvenile justice 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. Regardless of the process, case termination or referral for formal prosecution should be completed within two days of the receipt of the diversion services report.

In some juvenile justice courts, a successful diversion does not show on the youth's record because a petition was never filed. In other juvenile justice 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 and/or record sealing.

2. Diversion Options

There are many diversion options used by juvenile justice courts. There are also many diversion options used by police, schools, prosecutors, and other agencies in lieu of referring the case to the juvenile justice court. Most diversion options fall into one of three categories: 1) informal juvenile justice 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 2, Section G.

Other diversion options include:

- **Youth (AKA Teen) Courts¹¹**

Youth courts, also called peer courts and teen courts, were developed in the 1980s as an alternative to the traditional juvenile justice court system for younger and less serious offenders.¹² By 2008, there were over 1,200 youth courts in operation in the U.S. and over 1,700 globally.¹³ The popularity was driven by the juvenile justice court's need to focus resources on increased numbers of serious, violent, and chronic juvenile offenders, thereby requiring alternative systems for less serious offenders, as well as by positive anecdotal reports from those involved with this peer-centered approach.

Although youth courts often go by various names, they often take one of four operational models¹⁴:

- **Adult Judge Model**
- **Youth Judge Model**
- **Peer Jury Model**
- **Youth Tribunal Model**

The primary goal of most youth courts is to determine a fair and appropriate disposition for youth who admit to the charge(s). According to guiding principles, dispositions should be designed to address needs of the victim/community, be based on restorative justice principles, and promote positive youth development.¹⁵ Common dispositions in youth courts include community service, paying restitution, writing formal apologies, and serving on a subsequent youth court jury.

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 justice 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 justice court relationships, encouraging greater respect for the law among youth, and promoting volunteerism among both adults and youth.

Despite the popularity of youth courts, few studies have examined their effects on youth, and thus far the results are mixed. A comprehensive analysis of four sites indicated that youth courts are a promising alternative to traditional juvenile court processing as each site demonstrated low recidivism rates.¹⁶ However, another study demonstrated less favorable outcomes for youth court participants when compared to formally processed youth.¹⁷ However, youth court participants may benefit in other ways, such as satisfaction with the overall experience, increased knowledge of the legal system, and improved attitudes towards authority.¹⁸

- **Other Informal Juvenile Justice Courts**

Informal juvenile justice 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 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.

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 justice 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 justice 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 justice court proceedings may be held in the juvenile justice court building, a community or municipal center, or a school. Informal juvenile justice 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 justice court resources can be avoided. Informal juvenile justice court proceedings use fewer resources than formal hearings because they do not involve a prosecutor and defense attorneys, multiple hearings, and are not conducted by higher paid judicial staff.

Some informal juvenile justice 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 justice court.

- **Educational Programs**

Many juvenile justice 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 justice 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 justice 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 justice 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 justice 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, family 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 JUVENILE JUSTICE SYSTEM

In some juvenile justice 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 justice 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 justice court.
- The arrested youth is brought to detention, the affidavit is filed, and the police request the youth be detained until the juvenile justice court hearing.
- The petition is filed and a warrant issued for the youth's arrest.¹⁹

1. The Juvenile Justice 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 justice 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 or within the timelines provided by state statute.

Based on the hearing timeline parameters built into the juvenile justice court's management information system, the system should generate the earliest appropriate date and specific time for the initial juvenile justice court hearing on the appropriate judge's docket.

By entering the youth's name in the juvenile justice 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 justice case. It is not effective juvenile justice court practice for child protection and juvenile justice 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.²⁰

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 justice court.
- The juvenile justice 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 justice 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. ***The JUVENILE JUSTICE 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 justice court's legal file. This includes the affidavit and petition and any other appropriate information that has been provided to the juvenile justice court, including reports from failed diversion interventions.

When juvenile justice 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 justice court judges should require their systems to be timely, and if they are not, the judges should engage juvenile justice 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 justice 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 justice court resources, and delay timely justice. Such systems end up with unnecessary continuances, jeopardize family resources due to extensive waiting times (like missing work and school, transportation and parking costs), and are disrespectful to its citizens. Examples of the way one juvenile justice court accomplishes timely process, diversion, and one family-one judge in situations where the juvenile justice court accepts a formal petition without arrest or warrant are as follows:

- 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 justice 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 justice 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 justice court's management information system that selects court dates by the assigned judge.

- As soon as the affidavit is filed with the juvenile justice 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 affidavits 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 justice 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. The next step in the process of engaging the formal system is the initial hearing, which is described in Chapter 4.

2. The Youth Is Delivered to Juvenile Justice 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 juvenile justice court process is engaged. In the situation where a warrant was issued upon the initial filing of the formal petition because the youth 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 justice 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 justice court is responsible for determining

whether to hold or release, and if released, contacting 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 justice systems have options for both secure and non-secure detention and minimize the practice of police delivering a youth to the juvenile justice 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 justice 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 justice 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. Fingerprinting and photographing alleged delinquent youth assists the juvenile justice court to accurately identify repeat offenders who may give false identification. Note, that fingerprints and photographs should be maintained confidentially. See Chapter 2 Section B for more information on these practices.
- 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 provide 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 justice court operates both the intake and detention

centers of the juvenile justice 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 JUVENILE JUSTICE 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. 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 2, Section E (1) that is completed on every youth, to ensure consistency in decision-making.²¹ As described in more detail in Chapter 2, 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. Courts should be particularly cognizant of the specific needs of lesbian, gay, bisexual, transgender, queer or questioning, and gender non-conforming youth.

- 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 justice 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 justice 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 justice 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 justice 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 justice 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 justice court intake. If there is a 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 justice system lose 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 JUVENILE JUSTICE GUIDELINES recommends that, wherever possible, a juvenile justice 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 justice 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, tribal entity (as appropriate) and custodian. Explain the circumstances and charges, when to appear for the juvenile justice 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, tribal official (as appropriate), 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.²² The substance abuse screen may include a breathalyzer or urinalysis. Administering breathalyzers and urinalyses serve both to ensure the safety of the youth

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. ***The JUVENILE JUSTICE 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 justice 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 justice 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 justice 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, developmentally delayed, 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 justice court processes 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 justice court hearings.

Although *In re Gault*²³ mandated that accused juveniles have the right to the assistance of defense counsel to safeguard legal interests, the right to effective counsel remains underutilized.²⁴ Too often juvenile justice court judges' and judicial officers' inquiries regarding the right to and desire for counsel are absent or not thorough, resulting in waiver of counsel. However, this is a detrimental practice. It is vitally important that youth are represented by counsel, and it is the responsibility of juvenile court judges and judicial officers to ensure that their inquiries are as fulsome as possible. At the very least, youth should be afforded a meaningful opportunity to consult with counsel prior to any consideration of waiving that right. Juveniles who are not represented by counsel are not likely to effectively exercise their other due process rights.²⁵

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.²⁶ Other findings from the study of state juvenile justice 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.²⁷ Juvenile justice 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 justice courts have found that providing counsel facilitates earlier resolution of cases.²⁸

Many juvenile justice courts have systems that provide access to counsel the day of the detention or initial hearing. However, most juvenile justice 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 justice 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 the amount of time spent on a case to a minimum. This causes processes to be developed that discourage youth and families from requesting counsel; and,
- A belief by juvenile justice 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 in the appointment of counsel is unfortunate. First, it makes it difficult for juvenile justice 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 justice court hearing without prior consultation with counsel. There is currently a movement toward appointing counsel for all youth regardless of income. The latest JJDPa reauthorization states that "publicly supported court-appointed legal counsel with experience representing juveniles in juvenile justice proceedings."

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

- The juvenile justice 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.²⁹
- Drafting a memorandum of understanding between the juvenile justice court and public defender that allows 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 justice court will generate an order on every formal case stating that

if a youth qualifies, the juvenile justice 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 justice court to consider prior to the first hearing and that the request will be favorably received.
- The juvenile justice 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 facility, advises youth and family of their rights prior to the juvenile justice court hearing, and collects information for the first hearing.³⁰

Juvenile justice 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 justice 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.³¹

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

Juvenile justice courts should have a continuum of options for youth who, for community safety reasons, should not be released to their parent or custodian without restrictions after arrest. Juvenile justice courts should also have an alternative to secure detention for youth who cannot be released because parents, custodians, or relatives cannot be located.³² This continuum is necessary in order to ensure that the juvenile justice court is effectively protecting both the youth and the community. Secure detention is unnecessary for and can be potentially harmful to 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 justice 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 as 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 justice courts have been very successful in using alternatives 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.

Alternatives to secure detention, moving from those designed for youth at a lower risk to reoffend to those at a higher risk to reoffend, generally fall into one of three broad categories.³³

- **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.
- **Shelter care** – 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 family 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.³⁴

The Juvenile Detention Alternatives Initiative (JDAI),³⁵ launched in 1992, is a nationwide effort to eliminate unnecessary secure detention of youth. Supported by the Annie E. Casey Foundation, JDAI has reduced the reliance on detention for youth awaiting court hearings or placement to facilities while simultaneously ensuring public safety and safeguarding taxpayer dollars. JDAI has grown rapidly since its inception, becoming the most widely replicated juvenile justice reform initiative in the United States. As of 2018, JDAI is in use in over 300 local jurisdictions across 39 states and the District of Columbia.

2. Managing the Detention Census³⁶

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. 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 bedspace.³⁷ At the time of this update (2018), many detention centers are closing because of fewer youth being placed in detention facilities.³⁸ However, it is important that judges and other judicial officers remain aware of the census and condition of their detention facilities. Judges should conduct regular visits to the facilities as a function of due diligence.

Juvenile justice courts, and the intake and detention facilities that support them, must 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. When juvenile justice courts have options other than secure detention, they 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 justice 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:³⁹

- 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 justice court staff the judge's expectation to keep detention within the established acceptable population boundary.

- Involving representatives of all juvenile justice court divisions, detention, police, victims, child welfare agency, prosecutors, counsel for youth, and community leaders in examining a crowding problem and creating a continuum of options to solve the problem.
- Ensuring that no predisposition youth is held in detention without a timely pending court date.⁴⁰
- 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 justice court order specifies a reasonable end date for the detention. In addition the facility must have adequate services (education, counseling, etc.) to develop the youth's competency.
- 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 those 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. Once youth are released courts should employ a robust system to support youth's appearance in court – reminders, transportation, etc., so youth do not need to be held for failure to appear unless they intentionally abscond. Juvenile justice courts should measure and monitor the number of youth who abscond or fail to appear in court to ensure that release options are not used inappropriately.

3. Restrictions on Holding Juveniles in Adult Jails⁴¹

The Juvenile Justice and Delinquency Prevention Act of 1974, and subsequent modifications to that Act in 2002,⁴² 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:

- **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 non-status 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 existing acceptable alternative placement available, and conditions of distance to be traveled do not allow for juvenile justice 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 justice 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 non-offenders 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 justice 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 juvenile detention or correctional facility, and the constitutional rights of the youth, when making the determination of where the transferred youth should be detained.⁴³

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

¹ OJJDP Statistical Briefing Book. Online. Available:

<https://www.ojjdp.gov/ojstatbb/offenders/ga03201.asp?qaDate=2016>. Released on October 22, 2018.

² Bell, J. (2017). *Repairing the breach: A brief history of youth of color in the justice system*. Oakland, CA: W. Haywood Burns Institute for Youth Justice, Fairness, and Equity.

³ National Center for Juvenile Justice. (2002). *Desktop guide to good juvenile probation practice*. Pittsburgh, PA: Author.

⁴ *Roper v. Simmons*, 541 U.S. 1040 (2005). *Graham v. Florida*, U.S. Supreme Court, 560 U.S. (2010). *Miller v. Alabama*, U.S. Supreme Court, 567 U.S. (2012).

⁵ National District Attorneys Association. (2009). *National prosecution standards, third ed.*, 92.9. Available at: <https://www.ndaa.org/pdf/NDAA%20NPS%203rd%20Ed.%20w%20Revised%20Commentary.pdf>

⁶ *Supra* note 1.

⁷ When the child is an Indian child or Alaskan Native, his or her tribal entity should receive notice early in the process of the affidavit/petition in order to provide culturally appropriate and responsive community services.

⁸ Snyder, H., & Sickmund, M. (1999). *Juvenile offenders and victims: 1999 national report*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

⁹ When the child is Indian or Alaskan Native, his or her community should always be considered.

¹⁰ *Supra* note 2.

¹¹ 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*.
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- ¹³ *Ibid*.
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- ¹⁷ Stickle, W., Connell, N., Wilson, D. M., & Gottfredson, D. C. (2008). An experimental evaluation of teen courts. *Journal of Experimental Criminology*, 4, 137-63.
- ¹⁸ *Supra* note 7.
- ¹⁹ In 2015, 82% 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 24% 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.
- ²⁰ Wiig, J. K., & Tuell, J. A., with Heldman, J. K. (2013). *Guidebook for juvenile justice and child welfare system coordination and integration: Framework for improved outcomes* (3rd ed.). Robert F. Kennedy Action Corps and Child Welfare League of America.
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- ³¹ *Supra* note 2.
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- ³⁴ 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.

³⁵ Annie E. Casey Foundation. (1999). *Overview: The JDAI story: Building a better juvenile detention system*.

Available at: <http://www.aecf.org/resources/overview-the-jdai-story/>

³⁶ 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 & Sickmund, *supra* note 8.

³⁷ McCord, J., Widom, C. S., & Crowell, N. A. (Eds.). (2001). *Juvenile crime, juvenile justice*. Washington, DC: National Academy Press.

³⁸ Hockenberry, S., Wachter, A., & Sladky, A. (2016). *Juvenile residential facility census, 2014: Selected findings*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

³⁹ Also, refer to Roush, D. W. (1996). *Desktop guide to good juvenile detention practice*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

⁴⁰ 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.

⁴¹ 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 & Sickmund, *supra* note 7; 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.

⁴² Pub. L. No. 107-273, 116 Stat. 1758. The Act can be accessed through the Office of Juvenile Justice and Delinquency Prevention website at: <https://www.ojjdp.gov/about/legislation.html>

⁴³ 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. Available at: <https://www.justice.gov/crt/special-litigation-section>.

- The Council of Juvenile Correctional Administrators Performance-Based Standards addresses 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. Available at: <http://cjca.net/index.php/initiatives/performance-based-standards-pbs>.



IV.

**DETENTION OR
INITIAL HEARING**

CHAPTER IV: DETENTION OR INITIAL HEARING

This chapter describes the first hearing on a formally processed juvenile justice petition. Prior to this point, an affidavit was filed and determined to be legally sufficient. The prosecutor or juvenile justice court staff decided to handle the case formally in the juvenile justice court, and a petition alleging delinquency was filed. If the youth was summoned to juvenile justice court after the petition was filed, the JUVENILE JUSTICE GUIDELINES refers to the youth's first appearance in juvenile justice court as the "initial hearing." If the youth is in detention, the JUVENILE JUSTICE GUIDELINES refers to the first hearing as the "detention hearing." Although most juvenile justice 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 justice 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 requirements; and, 2) the need to determine whether the youth will continue to be detained if the hearing is a detention hearing.

In juvenile justice courts where counsel is appointed and has met with the youth prior to the detention or initial hearing, a single hearing can often cover issues of detention 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 some juvenile justice 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 justice court docket time, and conserves prosecutor and counsel time.

Whenever practical, 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. For this reason some jurisdictions have

established courtrooms inside the detention center or otherwise accommodate detention hearings at night and on weekends which reduces crowding and lengths of stay.

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 and has had adequate opportunity to meet with the youth and prepare for the hearing;
- 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 justice 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 held in secure detention, placed in a non-residential detention alternative, or released with or without restrictions pending the next [hearing](#); and
- 9) If the youth is in 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, determining whether remaining at home is contrary to the youth's welfare and whether reasonable efforts have been made to prevent removal and return the youth to the home.²

B. TIMING OF THE DETENTION OR INITIAL HEARING

The detention hearing should be held the first business day following the youth's detention and not more than 48 hours after the youth has initially been detained. Intervening weekends and holidays should not extend this 48 hours.³ ***The JUVENILE JUSTICE GUIDELINES recommends that juvenile justice 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 justice 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 justice 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 3, 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 3, Section D (1)], the initial hearing could be held within two weeks of the date the affidavit and petition were filed. If the juvenile justice 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 typical initial hearing, some juvenile justice 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 the threshold for detention. 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 justice court of excellence, counsel is appointed prior to the detention or initial hearing, and has adequate time to prepare for the hearing as well as to help the youth understand the charges and proceedings. Chapter III, Section D (3) gives several examples of how to set up such a system. ***The JUVENILE JUSTICE 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 justice court systems. Delays make it difficult for juvenile justice 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. Delays in appointment of counsel can interact with a youth's trauma history, and the anxiety about the unknown outcomes can seriously exacerbate the youth's symptoms. Families who can afford private counsel do not have these barriers and rarely appear at the first juvenile justice court hearing without prior consultation with counsel. There is currently a movement toward appointing counsel for all youth regardless of income -- the latest JJDPa reauthorization states that "publicly supported court-appointed legal counsel with experience representing juveniles in juvenile justice proceedings should be appointed for youth."

If it is not possible for a youth and family to contact counsel prior to the first juvenile justice 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 justice courts, a staff person from the juvenile justice 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

justice court assesses attorney fees. To make this system work, the juvenile justice court has agreements with private counsel who regularly appear before the juvenile justice court to sign in when they are in the juvenile justice court, and to make themselves available, if possible, to pick up these cases.

When juvenile justice systems have effective management information systems, the juvenile justice court and public defender can use data to understand their caseloads and plan ahead to ensure that all youth have access to counsel and apportion adequate resources are available to enable this system to function effectively.

The JUVENILE JUSTICE GUIDELINES recommends the combination of all plea and pre-trial 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 justice court hearing without the benefit of counsel. Second, it eliminates an additional hearing on every juvenile justice court justice 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 justice court decisions;
- Docket time is conserved;
- Prosecutor and counsel time is conserved; and
- If the youth is in detention, the number of detention days is reduced, assisting with detention census control, and minimizing the harm to the youth caused by detention.

D. CONDUCTING THE DETENTION OR INITIAL HEARING

The first contact between families and the juvenile justice 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 justice court process, it is important to create an atmosphere of respect, dignity, courtesy, and [cultural](#) understanding. At this entry point, the juvenile justice court can exhibit these qualities in many ways:

- By providing a clean, orderly, attractive, comfortable, and safe waiting area for the youth and family;

- By providing separate entrances and waiting areas for crime victims who may be attending the hearing;
- By providing private, clean, orderly, attractive, comfortable, and safe areas for the family to meet with counsel;
- By providing simple to understand materials that explain the juvenile justice 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 creating a trauma-responsive court that seeks to minimize trauma triggers and includes psychoeducational material;
- By being respectful of a youth's gender identity by not making assumptions about a person's gender and using a person's preferred pronouns during the [hearing](#);
- By ensuring all justice system participants show respect for everyone who comes into the juvenile justice court;
- By beginning the hearing at the scheduled time;
- By involving all family members who are present in the courtroom, 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 justice court gives parents, custodians, tribal representatives (as applicable), and other individuals pertinent to the issues an opportunity to speak; and
- By checking with youth and family members at the conclusion of the hearing to see if they have any questions and make sure they understand everything that is expected of them moving forward. It is particularly important to be sure they know the next key dates (e.g., of appointments with service providers or probation and court hearings) and where those key events will take place.

In some juvenile justice courts, brochures and other explanatory materials are available in the waiting areas. In other juvenile justice courts, videotapes are played in the waiting areas that explain to youth and families their rights and what will occur in the juvenile justice 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 justice 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 of the child protection agency and a representative from the youth's tribal entity (if applicable);
- Guardian ad Litem or CASA as applicable;
- 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 justice 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 adult 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 1, Section D for a more detailed explanation of this role).

2. Information the Juvenile Justice 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 justice court, including any other pending charges, and whether the youth is under the court's abuse and neglect jurisdiction or child welfare agency's jurisdiction;⁴
- 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 detention, placed in a residential detention alternative, 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;
- If the youth has an IEP or 504 plan that would require accommodations by the court;
- Information about trauma history, mental health needs, or prior mental health hospitalizations;
- The parent's position on whether the youth is welcome back at home under parental supervision; and
- If the youth is in 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 justice 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 every day. It is important to read the petition and explain it in plain language and restate in different words if necessary.

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 and simplify language 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 justice 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 of the offense should also be reviewed. Depending on state statutes, other rights or issues may need to be reviewed. If no counsel is involved, the judge will need to take extra care to ensure the youth and parents understand their rights. 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. If the prosecutor has requested that the juvenile justice court waive jurisdiction and transfer the case to the criminal court, the juvenile justice court should explain the process it will use to rule on the motion, and the potential consequences if the court grants the motion.

When qualified counsel is involved, the juvenile justice 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 individual 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 justice 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 justice 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, or developmental delays or disabilities. Using the clinician's assessment of the decisional capacity of the youth, the juvenile justice court judge determines whether the youth is competent to stand trial.

A juvenile justice court judge and counsel generally assume a youth is competent to stand trial. However, when counsel, prosecutor, or the juvenile justice court judge observe indicators that competency to stand trial may be an issue, each is obligated to pursue the question further. Judges may want to ask as a matter of course if there is a reason to request a clinical assessment. 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 younger than 15;
- The juvenile has a history of developmental delays, 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 justice 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 justice 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 as possible for the assessment and report to be completed. If the youth is in detention, the need for continued detention 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 justice 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 justice 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 justice 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 justice 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 justice 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 justice court judge must decide whether the youth should continue to be detained in secure detention because he or she is a danger to self or others or is at risk of absconding or reoffending;¹¹ whether the youth should be placed in a detention alternative; or whether the youth should be released with or without restrictions pending the disposition hearing. Judges should be aware of the detention criteria within their states and work within those guidelines. 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 7: The Disposition Hearing.** If additional information or persons are needed:
 - The disposition hearing should be set for a future date.
 - 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 7: 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 Justice 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 justice court judge, parties, and key participants should discuss

whether dispute resolution alternatives are appropriate as opposed to setting the case for trial.¹² If a dispute resolution alternative is appropriate, the parties should agree on the specifics of the dispute resolution alternative, and the juvenile justice 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 justice court that resolution has not been possible. If there is a proposed resolution, the juvenile justice court must determine whether to approve the proposal and make it a court order. If the juvenile justice 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 justice court order. **See Chapter 9: Post-Disposition Review** for more information on the next steps in the juvenile justice court process.

If dispute resolution alternatives are not appropriate, have failed to produce an agreed proposal, or have produced a proposal but the juvenile justice 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 justice 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:

- Determining the necessity or desirability of amendments to the pleadings;
- Discussing the possibility of obtaining stipulations of fact and documents that will avoid unnecessary proof;
- Identifying 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 justice court rule and as properly requested as soon as possible as well as pursue discovery under informal procedures as appropriate;
- Identifying expert witnesses;
- Exchanging names of witnesses to be called during the trial and the general nature of their expected testimony;
- Setting 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 justice court cases. Juvenile justice 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 justice court should make it clear to all system participants that, within the juvenile justice court's discovery rules, disputes and delays will not be tolerated.¹³

The juvenile justice 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 justice 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 no later than 20 business days if the youth is not detained. It is important that the juvenile justice court judge or judicial officer ensures that a sufficient amount of consecutive trial time is set aside on the juvenile justice court's docket so that it will not be necessary to continue the trial in progress. 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 justice 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 detention or whether the youth can be released with or without restrictions.¹⁴ 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.¹⁵

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?
- Is the youth a member of a Native American or Alaskan Native Tribe?
- 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 justice 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?
- Is the youth homeless or at risk of homelessness?
- What is the makeup of the youth's household? Who lives with the youth?
- 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 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 justice court proceedings, attend probation meetings or other obligations, or otherwise fail to comply with the juvenile justice 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 place the youth's safety in question in a detention setting?
 - Does the youth identify as lesbian, gay, transgender, queer, or gender non-conforming which 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 justice court must ensure that racial and ethnic disparities are 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.
- Will the conditions in the detention center or merely being separated from family cause harm, including trauma, for the youth?
 - 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 justice court must know additional information as outlined in **Chapter 7: The Disposition Hearing**.

F. WRITTEN FINDINGS AND ORDERS

The juvenile justice 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 justice 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 justice 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 justice 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 justice 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 7: The Disposition Hearing**.

G. DATA COLLECTION

To accurately monitor and report on the use of detention and help improve court performance and youth outcomes, it is important to routinely collect data regarding the detention/initial hearing. This includes the dates and outcomes of important events including the detention hearing, detention admission and release, as well as any detention review hearing dates. Additional data collection should include presence and type of defense counsel at the detention/initial hearing and the date and outcome of any competency to stand trial or detention risk assessments. Some of these elements may require close collaboration and data sharing between the juvenile justice court and the detention facility.

¹ See Chapter 2, Section G.

² Refer to Chapter 2, Section I, Summary of Title IV-E in the Juvenile Delinquency System.

³ County of Riverside v. McLaughlin (finding “[w]here an arrested individual does not receive a probable cause determination within 48 hours, the calculus changes. In such a case, the arrested individual does not bear the burden of proving an unreasonable delay. Rather, the burden shifts to the government to demonstrate the existence of a bona fide emergency or other extraordinary circumstance. The fact that in a particular case it may take longer than 48 hours to consolidate pretrial proceedings does not qualify as an extraordinary circumstance. Nor, for that matter, do intervening weekends.”).

⁴ 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.

⁵ 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; Buckles, V. D. (Spring, 2005). Decisional capacity and understanding of informed consent. *Human Studies Committee of the Washington University Medical Center Newsletter*.

⁶ Texas Council for Developmental Disabilities Criminal Competency Position Statement. (2003).

⁷Grisso, 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 5.

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 Youth who are homeless or who are at risk of being trafficked should not be detained in secure placement. For those youth, the court should work to locate a stable housing situation.

¹² See Chapter 2, Section G, Dispute Resolution Alternatives for more information regarding DRA options.

¹³ 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.

¹⁴ See Chapter 5 for specific issues that could be considered in making this decision.

¹⁵ *Supra* note 2 for additional information.



V.

**WAIVER AND
TRANSFER HEARINGS**

CHAPTER V:

WAIVER AND TRANSFER HEARINGS

This chapter describes the process of determining whether the juvenile justice 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 justice court 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 justice offenders, *Kent v. United States* (1966), states that:

“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 2, Section A (4), Juvenile Justice 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.³

State laws [provide](#) for multiple ways for a juvenile charged with a serious offense to come under the jurisdiction of the criminal court:⁴

- **Discretionary Judicial Waiver** – If a motion to waive is filed by the prosecutor, the juvenile justice court judge has the authority to make the decision whether to waive juvenile justice court jurisdiction and transfer the case to criminal court or to retain jurisdiction. With discretionary waivers, both the prosecutor and the juvenile justice 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 justice 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 justice court or be transferred to the criminal court. 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 justice 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.⁵ 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 justice court is required to transfer a case to criminal court if the juvenile justice court judge finds probable cause, and the alleged offense is specified by state statute eligible for a mandatory waiver. In mandatory judicial waivers, neither the prosecutor nor the juvenile justice court judge has discretion or authority not to waive the youth to the criminal court after probable cause is established. Though the prosecutor does have some control in his or her charging decision. The mandatory judicial waiver process consists of only one decision, the determination of probable cause.
- **Prosecutor Discretion** – The prosecutor has the authority to decide whether to file the charge in the juvenile justice 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 prosecutor discretion. Some states refer to this as prosecutor “direct filing” in criminal court, which could also include the prosecutor’s actions under statutory exclusion provisions described below.
- **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 justice court judge. As with mandatory judicial waiver, the prosecutor does have charging authority which can affect statutory exclusion. 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 decline jurisdiction and transfer the case of a juvenile to the juvenile justice court.

- **Blended Sentencing** – In some states, the juvenile justice court has a dispositional mechanism to impose criminal sentencing in a juvenile matter. This mechanism is called “blended sentencing” and gives the juvenile justice 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.

For more information on the provisions and pathways associated with the transfer of youth to adult criminal court as well as who makes the transfer decision in each state, visit JJGPS.ORG.

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 justice 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 justice court or transferred to criminal court is best made by a juvenile justice 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 justice court or transfer the case to the criminal court.

The JUVENILE JUSTICE 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 justice court judge.⁶ 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 JUVENILE JUSTICE GUIDELINES recommends, as discussed in Chapter 2, Section A: Jurisdiction and Authority, that juvenile justice court jurisdiction should be in effect until at least a youth's 18th birthday.***

Finally, the JUVENILE JUSTICE 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 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.⁷

A. PURPOSE OF THE HEARING PROCESS ON MOTIONS TO WAIVE JUVENILE JUSTICE COURT JURISDICTION AND TRANSFER JURISDICTION TO CRIMINAL COURT

Prior to this point in the juvenile justice court process, an affidavit and justice 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 justice 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 justice court cases, have been avoided. The juvenile justice court, by statute and court rule, has specifically defined obligations with regard to discovery. As a result; only under the most unusual circumstances is it necessary for the juvenile justice court to be involved in discovery disputes. The presiding judge over the juvenile justice 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 are covered in **Chapters 3 and 4**. The case is now before the juvenile justice court to determine whether or not to grant the prosecutor's motion to waive juvenile justice court jurisdiction and transfer the youth to criminal court.

At hearings on motions to waive and transfer, the juvenile justice 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 justice 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 justice court's role is completed. However, if the juvenile justice court finds probable cause and the case is a discretionary judicial transfer, the court must make a second decision – whether or not the juvenile justice 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 justice court should retain or waive jurisdiction, the juvenile justice 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 JUSTICE 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 justice courts set two separate hearings, the first to establish probable cause, and the second to determine whether to retain or waive juvenile justice court jurisdiction. The social, physical, and forensic evaluations are conducted between the first and second hearings. Other juvenile justice 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 justice 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 justice court needs to produce quality social, physical, and forensic evaluations. If the percentage of motions denied is low, and if the juvenile justice 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 is 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 3, 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 justice court judge finds probable cause and orders the forensic evaluation.

In the juvenile justice court the JUVENILE JUSTICE 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 justice court has available experienced mental health clinicians either employed by the juvenile justice 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 justice 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 justice 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 justice court finds it necessary to frequently grant continuances beyond 10 business days, the juvenile justice court should carefully review the reasons for needing additional time to ensure that the reasons are valid and not because the juvenile justice 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 justice 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 justice 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 justice courts, current state law mandates even shorter timeframes, which juvenile justice 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 justice 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 justice court process, *Kent v. United States* (1966) required the appointment of counsel in cases where the juvenile justice court was considering waiver of juvenile justice court jurisdiction and transfer to criminal court.

Ideally, counsel should be appointed for the youth prior to the detention or initial hearing. If, this is not possible 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 justice court decides to waive jurisdiction and transfer the youth to the criminal court, including lengthy incarceration, possible physical and sexual victimization in adult jails or prisons, harmful disruptions in social development and identity formation⁸ during late adolescence, and fewer treatment or rehabilitative options in adult prisons, 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, developmental delays, 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 justice court or criminal court.

Prior to the probable cause hearing on a motion to waive juvenile justice 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.⁹

D. CONDUCTING THE PROBABLE CAUSE PHASE ON MOTIONS TO WAIVE JUVENILE JUSTICE COURT JURISDICTION AND TRANSFER JURISDICTION TO CRIMINAL COURT

Because of the seriousness of hearings on waiver and transfer, juvenile justice 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 justice 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 justice court judge should explain and maintain strict courtroom decorum and expectations for all participants, including the attorneys, the public, and the press. The juvenile

justice 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 justice 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 Justice 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 justice 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 justice court proceedings, the juvenile justice 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 judge should explain how the court will determine if there is probable cause and how the hearing will proceed. The 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.

4. Presentation of the Prosecutor's Case for Probable Cause¹⁰

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 justice 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 justice 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, QUESTIONS, AND FINDINGS AND ORDERS RELATED TO THE PROBABLE CAUSE PHASE

1. Findings and Orders if the Juvenile Justice Court Does Not Find Probable Cause

If the juvenile justice 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 justice 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 justice 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 justice 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 justice petitions requiring detainment and the date of the next hearing on the pending petitions.

2. If the Juvenile Justice Court Finds Probable Cause and the Case Is a Mandatory Judicial Waiver

If the juvenile justice court is persuaded that probable cause exists to believe that the youth committed the offense, the juvenile justice 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 justice court's decision if counsel believes that the juvenile justice 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 justice 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 justice 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 justice court should move forward with transfer to the criminal court, the juvenile justice 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 justice court's finding of probable cause on the justice 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 justice 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 requires that regardless of whether a youth has been charged as an adult the youth should not be held with adults.

Youth have a constitutional right to reasonable safety, adequate medical and mental health care, rehabilitative treatment, and mandatory education. Unless the juvenile justice 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 justice 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 with a separate area for youth.

- **Written Findings and Orders**

The juvenile justice 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 justice 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 justice 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 justice 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 justice court should send timely written notice of the waiver decision to law enforcement.

3. If the Juvenile Justice Court Finds Probable Cause and the Case Is a Discretionary Judicial Waiver

Once the juvenile justice 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 justice court should retain jurisdiction or transfer the case to criminal court. In order to determine the answer to this question, the juvenile justice court needs physical, social, and forensic evaluations. If these evaluations have been completed, the juvenile justice 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 justice 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 justice 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 justice court, additional time may be required to gather all information the forensic examiner will need 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
 - If the youth is in detention or on probation, did the detention screening instrument(s), 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 justice court is considering detaining a youth not previously placed in detention,¹¹ is there reliable information to support a determination that the youth needs to be in secure detention, placed in a residential detention alternative, or can the youth be released with or without restrictions?¹² 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 place 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 justice court must ensure that racial and ethnic disparities are 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 justice court decides to retain jurisdiction?¹³

- **Written Findings and Orders**

The juvenile justice 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 justice 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 justice 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 justice 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;¹⁴
- A date for the next hearing within 10 business days if the youth is known to the juvenile justice court or not more than 20 business days if the youth is new to the juvenile justice 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 JUSTICE COURT TO DECIDE WHETHER TO RETAIN JURISDICTION OR WAIVE JURISDICTION AND TRANSFER TO THE CRIMINAL COURT ON A DISCRETIONARY WAIVER¹⁵

1. Factors that Should Be Considered in the Decision to Retain or Waive Jurisdiction

Juvenile justice 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 he or she will be sent to criminal court 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 justice 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 judicially waived and transferred are those who have long court histories or those who injure victims.¹⁶ Recent studies have found that three broad factors capture the types of information juvenile justice courts should consider when making decisions as to whether the court should retain or waive jurisdiction.¹⁷ 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.¹⁸ Although only a very small fraction of youth with delinquent histories are chronically violent.¹⁹ 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; and
 - 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; and

- Whether the youth has some degree of developmental delays or developmental disabilities.
- **Amenability to Treatment** – Does the juvenile justice court believe the youth can benefit from treatment available in the juvenile justice system, considering the time the youth remains under the jurisdiction of the juvenile justice 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 justice 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; and
 - 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 Justice 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 justice 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, developmental delays, 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 justice 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, 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 justice system.

The designated juvenile justice 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 justice 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 forensic 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 justice court judge must consider in making the decision and be able to communicate the evaluation results with regard to these factors so that adequate detail is presented to the 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.²⁰

Juvenile justice 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 JUSTICE COURT JURISDICTION OR WAIVE JURISDICTION AND TRANSFER TO CRIMINAL COURT

Prior to this point, the juvenile justice court has held the probable cause phase on the prosecutor's motion to waive juvenile justice 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 justice 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 justice court judge must look at the factors weighing for and against the prosecutor's motion to waive juvenile justice 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 justice 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, as well as a tribal representative, 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 Justice Court Should Have

The following information should be available to the juvenile justice 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 justice 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 Justice 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 justice 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 Justice 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 justice 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 justice court jurisdiction.

The therapeutic jurisprudence model²¹ 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 justice 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 justice court judge should know the answers to the following questions before making the 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? If so, why are they not present?
- Have all pending motions been identified and addressed?
- Were the prosecutor and counsel prepared for the hearing? 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 justice system?
- Are the immediate needs of the youth being addressed?

J. WRITTEN FINDINGS AND ORDERS RELATED TO THE SECOND PHASE OF THE PROCESS

The juvenile justice 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 Justice Court Denies the Motion To Waive Juvenile Justice Court Jurisdiction and Transfer the Case to Criminal Court

If the juvenile justice court denies the motion, the juvenile justice court judge should proceed to take a plea on the petition. If the youth denies the offense, pre-trial issues should be addressed.²² The 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 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 justice 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.²³

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 justice 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 7: The Disposition Hearing for the Juvenile Justice 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 justice 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. If 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 justice 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 justice court jurisdiction and transfer the case to criminal court;
- Either the reasons why it is necessary to continue to detain the youth or an order to release the youth specifying 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 his or her 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, as well as 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 7: The Disposition Hearing**) or the date and time for the disposition hearing.

2. If the Juvenile Justice Court Grants the Motion To Waive Juvenile Justice 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, if the juvenile justice 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 justice court jurisdiction and transfer the case to criminal court;
 - 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 justice 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 justice court's decision.

K. DATA COLLECTION

To ensure that youth waived to adult court are a rare event and that all youth are treated fairly during the process, it is important to collect data that describes how often and under which circumstances waivers are applied. This includes dates and outcomes of probable cause hearings, if the juvenile justice court retains jurisdiction or if the youth is waived to adult court and if so by which waiver type. Analyzing this data by youth demographics (age, race, etc) and offense detail will provide greater clarity on the application of waivers to adult court. Visit JJGPS.ORG for state examples of reported data on youth waived to adult court.

¹ Concepts in this section have been drawn from multiple sources including:

- Snyder, H., & Sickmund, M. (2006). *Juvenile offenders and victims: 2006 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 1990s: 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 Juvenile Justice Geography, Policy, Practice & Statistics. Available at: <http://www.jjgps.org/jurisdictional-boundaries#compare-transfer-provisions?age=-1&action=2&year=2016&state=52&offense=-1>. Developed by the National Center for Juvenile Justice (NCJJ), with funding from the John D. and Catherine T. MacArthur Foundation.

⁴ *Ibid.* Available at: <http://www.jjgps.org/jurisdictional-boundaries#transfer-provisions?year=2016&type=1>.

⁵ 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.

⁶ The National District Attorneys Association policy is: The transfer of cases to criminal court should be reserved for the most serious, violent, and chronic offenders. Prosecutors should make transfer decisions on a case-by-case basis and take into account the individual factors of each case including, among other factors, the gravity and violent nature of the current alleged offense, the record of previous delinquent behavior of the juvenile charged, and the availability of adequate treatment, services and dispositional alternatives in juvenile court.

⁷ Mulvey, E. P., & Schubert, C. A. (2012). *Transfer of juveniles to adult court: Effects of a broad policy in one court*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

⁸ *Ibid.*

⁹ Puritz, P., Thurau, L., & Goldberg, S. (2012). *National juvenile defense standards*.

¹⁰ Concepts excerpted from *Juvenile justice standards annotated: A balanced approach*. [Standards Relating To Transfer Between Courts: Waiver.]

¹¹ If the youth was not previously detained, and the juvenile justice 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 2, Section I, for more information.

¹² 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.

¹³ If so, the juvenile justice court must make the determination of “Reasonable Efforts.” See Chapter 2, Section I for more information.

¹⁴ *Ibid.*

¹⁵ 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.



VI.

TRIAL/ADJUDICATION HEARING

CHAPTER VI:

TRIAL/ADJUDICATION HEARING

Chapter 6 describes the juvenile justice court process that determines whether a youth who has denied the allegations of justice will be found to have committed the offense.

Chapter 4: 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 justice court should clearly define discovery obligations and hold prosecutor and defense counsel to these defined obligations. The juvenile justice court, the prosecutor, and counsel for the youth agreed on a date for the trial, and the juvenile justice court judge determined the amount of time necessary to set aside for the trial based on the number of prosecution and defense witnesses and the nature of their testimony. The juvenile justice court judge ensured that a sufficient amount of consecutive trial time was scheduled on the court's docket.

In some juvenile justice 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 justice 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 youth is adjudicated, and the case moves forward to the disposition phase, which is discussed in the

next chapter. If the judge determines that the allegations are not proven beyond a reasonable doubt, the petition is dismissed.

B. TIMING OF THE TRIAL/ADJUDICATION HEARING

If the youth is in detention, the trial should be scheduled no more than 10 business days from the detention hearing. If the youth is not in detention, the trial should be scheduled no more than 20 business days from the initial hearing. In both instances, the trial should be scheduled for a sufficient amount of consecutive time to complete the trial.¹

Some cases may necessitate a longer period of preparation between the detention or initial hearing and the trial. 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 justice court judge should carefully review the reasons for requests to set trial dates beyond the recommended timelines. The juvenile justice court judge must ensure that the reasons for the request are valid and not because the juvenile justice system has failed to design and implement achievable expeditious processes. When additional time is requested because of process steps rather than on waiting for assessments or other information gathering, and prosecutor and counsel workloads are reasonable, an extension is probably necessary, but judges should be aware of the process time and any inefficiency. If there are repeated trial delays due to system inefficiencies, judicial leadership will be required to improve efficiency. Data on the delayed cases should be collected and analyzed to determine the causes of the delays and the juvenile justice court judge should convene representatives from each involved system to look for solutions that will eliminate the delays. Analyzing data on cases that proceed without delays can help identify solutions.

In order for the prosecutor and youth's counsel to meet these recommended timelines and exercise due diligence in preparing for the proceeding, both must have been involved in case preparation since before the detention or initial hearing.² 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 determined 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 timeline in most cases.

In order for juvenile justice court dockets to be available to meet these recommended timelines, 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 hearings. 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 justice court dockets for trials. In addition, in order to maintain manageable and organized dockets, juvenile justice court judges must maintain scheduled hearing dates, eliminate unnecessary continuances, and start hearings when scheduled.

There are many ways that a juvenile justice 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 justice 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 JUVENILE JUSTICE GUIDELINES' recommendations.

C. LEGAL REPRESENTATION³

A case should not go to trial in the juvenile justice court without a prosecutor and counsel for the youth who are qualified and who have exercised due diligence in preparing for the proceeding. Qualified counsel should be appointed for the youth prior to the detention or initial hearing.⁴

Prior to the trial, counsel will have 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 justice court at the trial;⁵
- 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, the parents are party to the petition; if this is the case, counsel should explain what that means and what the parents' rights and responsibilities are. 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

When a plea agreement is appropriate, the prosecutor and counsel for the youth should negotiate the plea agreement prior to the time the trial is set. The JUVENILE JUSTICE 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. Restitution is often paid through community service rather than the youth or parents paying directly. In that way there is no undue burden on low-income [families](#).

Generally, the juvenile justice court judge should not be involved in plea agreement discussions. Plea agreements may not include any agreements or promises with regard to the juvenile justice court's disposition. The judge should have full discretion to order the disposition that best meets the needs of the youth and community.

One of the challenges juvenile justice 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.

The juvenile justice court administrative judge should, using judicial leadership, state and consistently enforce clear expectations regarding plea agreements. The expectation should be that juvenile justice 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 justice 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 justice 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 justice court administrative judges must ensure that the juvenile justice 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 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 justice courts have found that 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 juvenile justice 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 of the child protection agency and an in loco parentis, and a representative from the youth's tribal entity (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 Justice 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 justice 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 justice court judge can decide whether the youth will continue to be held in or placed in 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;⁶
- 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;⁷
- Information regarding the youth’s adjustment in detention and any issues of concern; and
- 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 justice 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 7: 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 justice 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, has a statement of admission, and is signed by the youth. The 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 judge on the record with the youth present, prior to the juvenile justice court’s acceptance of a change in plea.

The decision to plead guilty or not is the responsibility of the youth, and the juvenile justice 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 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 justice 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 right 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, and any collateral consequences of an adjudication;
- 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; and
- 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.

Refer to Appendix D for a detailed listing of due process rights and other issues that the juvenile justice court judge should cover.

If the juvenile justice court judge accepts the plea admission and plea agreement, and if all the information and necessary persons are present, hearing can move to the disposition phase. **See Chapter 7: 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 justice 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.

Questions to Ask Regarding Detained Youth

- If the youth is in detention, is there reliable information to support that the youth needs to remain detained in 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, based on a validated risk, need, responsivity instrument, the youth might present a danger to himself or the community or pose a flight risk and might not appear for future court proceedings.
 - Is there reason to believe the youth might have unwanted contact with the victim or witnesses upon his or her release?
 - 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 place the youth's safety in question in a detention setting?
 - Does the youth identify as lesbian, gay, transgender, queer, or gender non-conforming which 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 justice court must ensure that racial and ethnic disparities are 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 appropriate determinations?

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 justice 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. Using developmentally appropriate language free of courtroom jargon, 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 justice 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 admissible 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 after which the youth's counsel would have the opportunity to present further evidence in response to the 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 justice 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 Before Adjudicating a Youth Delinquent:

- Were the prosecutor and defense 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:

- If the youth is in detention, is there reliable information to support that the youth needs to remain detained, 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 place the youth's safety in question in a detention setting?
 - Does the youth's sexual orientation or gender non-conforming identity place the youth's safety in question in the 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 justice court must ensure that racial and ethnic disparities are 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 appropriate determinations.⁸

G. WRITTEN FINDINGS AND ORDERS

1. If the Juvenile Justice Court Dismisses the Petition

After presentation of the prosecutor's case for adjudication and the youth's case against adjudication, the juvenile justice court must decide if the allegations of the petition have been proven beyond a reasonable doubt. If the juvenile justice 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 justice 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 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; and
- 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 Justice Court Adjudicates the Youth

The juvenile justice court judge should adjudicate the youth delinquent if, after presentation of all evidence, the 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 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 7: 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 justice 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 justice 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. They should be made available to all legal parties and key participants at the conclusion of the hearing and 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 justice 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 justice 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;⁹
- 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 7: The Disposition Hearing**.

H. DATA COLLECTION

To ensure timely processing of youth in juvenile justice courts and to better understand the decisions made by the court, it is important to collect and monitor data regarding the adjudication hearing. This includes the date and outcome of the adjudication hearing as well as the presence of and type of defense attorney at the hearing.

¹ 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).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."

² Refer to Chapter 3, Section C(3), for information regarding recommended systems that enable the youth's counsel to become involved prior to the first hearing.

³ 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 Role of Juvenile Defense Counsel in Delinquency Court and the National Juvenile Defense Standards, both produced by the National Juvenile Defender Center.

⁴ *Ibid.*

⁵ Refer to Chapter 4, Section D(7), for how pre-trial issues were addressed in hearings prior to the date of the trial.

⁶The 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.

⁷ For additional information about Title IV-E eligibility requirements for delinquent youth, refer to Chapter 2, Section I.

⁸ *Supra* note 7.

⁹ *Ibid.*



VII.
DISPOSITION
HEARING

CHAPTER VII: DISPOSITION HEARING

Chapter 7 describes the process the juvenile justice court uses to determine the appropriate disposition for an adjudicated youth. Prior to the disposition hearing, a youth charged in the formal juvenile justice court with a violation of the law either admitted the offense or the juvenile justice court judge determined the youth committed the offense at trial. The disposition process concludes when the juvenile justice court judge makes the disposition order and determines whether post-disposition review is appropriate. This chapter also describes the disposition options a juvenile justice court needs in order to achieve its goals and discusses the importance of research in determining what interventions produce favorable outcomes for youth.

Depending on the seriousness of the offense, the youth's history of prior juvenile justice adjudications, whether there are indicators of potentially serious treatment issues, and the amount of information already available to the juvenile justice court, the disposition process can be clear-cut or complex. When juvenile justice courts diverting cases to alternative systems whenever possible and appropriate, the cases that reach disposition in the formal juvenile justice court involve serious or chronic offenses. Many will require in-depth investigation to determine the most appropriate disposition.

At the time a youth is adjudicated, the juvenile justice court judge determines if additional information is needed in order to select the appropriate disposition. If no additional information is needed, the juvenile justice court can move directly into the disposition phase after adjudicating the youth. 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 juvenile justice 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 justice 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 justice court has sufficient information to move directly to disposition.¹

- 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 or a diversion program appears to be the appropriate disposition.
- The juvenile justice 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 justice court judge. Probation terms should not be boilerplate; instead, they should incorporate a case management plan with specific goals that have been set in coordination with the youth and his or her family. Probation conditions should be phrased in the positive, not the negative. Youth will do X, Y, Z; rather than youth will not do A,B, C. 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 justice court review.

The juvenile justice court judiciary supports this system because the judge and judicial officers participated in developing the system, and because ongoing evaluation shows this approach is an effective as practice prior to its implementation. Consequently, the judiciary has confidence that the design of the system is resulting in good decisions and does not feel it necessary to have another hearing to approve a probation department recommendation.

The JUVENILE JUSTICE GUIDELINES does not recommend the practice of conducting pre-disposition investigations prior to adjudication, 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 justice court can move directly to disposition. There are two reasons why this practice is not recommended.² First, a juvenile justice 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 justice 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 justice court judge determined at the adjudication hearing that a separate disposition hearing was needed, 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 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 justice 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.

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 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 justice court's disposition is more likely to occur when there is a relationship between the family and the juvenile justice court judge and when family and youth voice are incorporated into the development of a plan for supervision.

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.

Determining the best disposition for a youth requires that the juvenile justice 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 youth are brought to the attention of the juvenile justice court during the disposition phase. The juvenile justice 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 justice 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 justice courts must ensure that the court's disposition::

- Is in line with the circumstances of the individual offense;
- Is in line with dispositions of similar offenses, or that the evidence supports why it is not;
- Minimizes the possibility of bias; and
- Is 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. Juvenile justice court administrative judges should lead efforts to ensure that the diversity of the court's staff is representative of the community they serve. Dispositions will only be effective if the juvenile justice court ensures that the youth and parents, probation, and service providers follow through with court orders.

A. PURPOSE OF THE DISPOSITION HEARING

The purpose of the disposition hearing is to determine what the juvenile justice 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 particular youth and family is addressed. Appropriate dispositions are designed to help the juvenile justice court achieve the following goals:³

- Increase safety in communities by supporting and implementing both effective justice 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 justice 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 justice 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 risk/need assessments to assist in developing the recommended plan. Juvenile justice 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 justice court judges should know that the services they are ordering are effective. Juvenile justice courts must have access to outcome data and research that shows the services the judge orders produce positive behavior change in youth and reduce recidivism. Judges and 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 justice system participants and the public. If

services are unable to produce successful outcomes, the juvenile justice court should not order a youth or parents to engage in those services.

The juvenile justice 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 justice court judges should convene the leadership of systems that serve youth as well as youth and families 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 justice 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.⁴ Operationally, this means that juvenile justice court judges should, when appropriate:

- Specify types of services that are to be provided to a youth;
- Reject the use of a specific service provider, if evaluation indicates the provider is not achieving appropriate outcomes; and
- In extreme cases, judges should consider using the powers of the court to compel youth system participants that 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 justice 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.⁵

It is not appropriate, however, for juvenile justice 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 justice court presiding judges should advocate for the development of plans to improve funding systems and stakeholder cooperation. This may require shifting funding from one youth agency to another or to the juvenile justice court in order to enable timely and appropriate service delivery to youth. The JUVENILE JUSTICE GUIDELINES emphasizes, however, that when juvenile justice 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 longer 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 is needed. It should be very rare that circumstances require the juvenile justice 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 justice 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

justice 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 justice court should be represented by qualified counsel at all hearings. Counsel for the youth plays an important role in the disposition hearing with the responsibility to ensure that all significant needs relating to the behavior of the adjudicated youth have been brought to the attention of the juvenile justice 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. Parents will have the opportunity to present their view during the social evaluation and during the disposition hearing. See subsequent sections

D. THE PRE-DISPOSITION INVESTIGATION

When a juvenile justice court diverts cases to alternative systems whenever possible and appropriate, and only the more serious and chronic cases come before the formal juvenile justice court, determining the appropriate disposition will often require significant additional information. In most juvenile justice 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.⁶ The JUVENILE JUSTICE GUIDELINES refers to this process as the predisposition investigation. It is also called a probation investigation in many jurisdictions.

Because of the impact this investigation has on the youth, and if juvenile justice courts are consistent and unbiased as to ethnicity, gender, sexual orientation, nationality, etc., 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 matching youth and family risks, needs, and strengths with disposition alternatives.⁷ 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 obtain appropriate releases of information when gathering pre-disposition investigation information. Pre-disposition investigations should include the following:⁸

- Information that currently exists within juvenile justice 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;⁹
- 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, 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;¹⁰
 - 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 justice court is diverting cases to alternate systems whenever appropriate, youth entering the formal juvenile justice court will likely have higher levels of needs, including mental health needs and exposure to trauma. Consequently, the disposition investigation should include a current mental health and trauma assessment completed in the last 12 months.

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:

- Problem sexual behavior
- Substance abuse
- Special learning needs
- Neurological
- Physical

Juvenile justice 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 justice 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, responses, 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 graduated responses. The term “graduated responses,” previously 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 responses and positive reinforcement, and promotes the use of progressively more severe responses when needed for repeat violations. Graduated responses should include responses that the probation officer can implement without a court hearing for minor violations of the plan and responses that must be judicially approved prior to implementation. ***The JUVENILE JUSTICE GUIDELINES recommends that only judges or judicial officers should have the authority to place a youth in detention as a response.*** Consequently, detention placement should be a response 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.¹¹ 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.¹² The graduated responses model couples responses and incentives with a range of effective service interventions that address underlying problems in order to prevent the youth's return to the juvenile justice court system.¹³

A proposed probation plan should include the following components:

- Positive framing of the orders – instructions for what the youth should do rather than instructions on what the youth should not do;
- An emphasis on incentives that can be earned for meeting plan goals;
- An inclusion of pro-social activities and other skill-development services 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;
- The level of supervision the youth will receive, which 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 responses and incentives with specificity regarding which responses can be implemented by the probation officer and which require approval by the juvenile justice court judge;¹⁴
- 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 justice 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 victimization 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 justice court's orders on their child, liability for restitution, payment for the costs of services, or criminal responsibility for failing to supervise their child.¹⁵

Removal from the home, whether in community, non-secure, or secure placement, is the most restrictive and costly disposition that the juvenile justice 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.¹⁶ 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 justice court's orders regarding their child, liability for restitution, payment for the costs of services, or criminal responsibility for failing to supervise their child;¹⁷
- If youth is Native American, the steps taken to comply with the requirements of the Indian Child Welfare Act, including placement in a culturally responsive setting;
- 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 responses and incentives with specificity regarding which responses can be implemented by the probation officer or facility staff and which require approval by the juvenile justice 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 justice 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.¹⁸ When youth and parent suggest plan components that the investigator knows are not appropriate and will not be acceptable to the juvenile justice court judge, the investigator can use this opportunity to explain the court's perspective and concerns and ask the youth and parent to suggest modifications that would address the court's concerns. Whenever the youth is Native American and affiliated with a local tribe, the appropriate tribal representative should be notified at the inception of the case and 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

Dispositional control over parents of adjudicated youth is an option of last resort and contravenes the juvenile justice system's efforts to engage with parents as partners in the development of interventions for their children. In many states, the parents of a delinquent youth can be subject to juvenile court dispositional orders. Some states have additional statutes that provide the juvenile justice court with the authority to require parents to participate in family treatment or other appointments with their children, to make parents liable for restitution and payment for services, make parents party to the action, require the parents to aid in the enforcement of court orders.

The pre-disposition investigator or prosecutor can recommend the juvenile justice court judge make orders against the parent, if the juvenile justice 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 justice court judge should carefully consider the impact of such orders, so that unintended negative consequences do not result in significant financial burdens on the parents. Other unintended consequences may include parental retaliation against the child either mentally, emotionally, or physically.

Juvenile justice courts should have policies with regard to the circumstances that must exist for a parental sanction to be ordered. The juvenile justice court should define situations that might result in waiving the sanction, so that the court ensures the sanctions are fairly and consistently applied.

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, as well as a tribal representation, 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 Justice Court Should Have

At the start of the disposition hearing, the following information should be available to the juvenile justice 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;¹⁹
- 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 Youth²⁰

As previously noted, prior to the juvenile justice 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 justice 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 justice 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 justice court judge has covered each important issue at the disposition hearing, the judge should know the answers to the following questions before deciding the court's disposition and concluding the hearing:

- 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, etc.), that must be addressed in order for the youth to change his or her behavior?
- What is the youth's education status 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?²¹ 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 help the parent 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 including stable housing?
- 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 it is choosing the disposition, and that the 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 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 place the youth's safety in question in a detention setting?
- Does the youth's sexual orientation or gender non-conforming identity place the youth's safety in question in the detention setting?
- If the youth continues to be detained, have 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?

H. DETERMINING WHETHER PROGRESS HEARINGS, PROGRESS CONFERENCES, OR PROGRESS REPORTS WILL BE PART OF THE DISPOSITION ORDER

When the juvenile justice 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.

Situations in which a progress hearing or progress conference should be set or progress report should be submitted include:

- Any time the juvenile justice court places the youth outside of the home in a community placement or a secure or non-secure correctional placement over which the juvenile justice court has oversight authority;
- When the youth has committed a serious offense and the juvenile justice court has ordered treatment services; or
- Any other circumstances where the juvenile justice court judge has questions about the follow-through of the parent, youth, or service provider and believes the juvenile justice court needs to continue to monitor the disposition plan to ensure its completion.

If the juvenile justice court judge decides to order a progress report as opposed to set a conference or hearing, the 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 justice 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 9: Post-Disposition Review of Youth Who Remain in Home With Court-Ordered Services*** and ***Chapter 10: Post Disposition Review of Youth Placed Out of the Home by Juvenile Justice Court Order***.

I. WRITTEN FINDINGS AND ORDERS

When the juvenile justice court judge believes that all issues have been considered in determining the appropriate disposition, the 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 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 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 justice 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 court if there are problems with the release. If a date within one week cannot be set for release because the youth is on a secure placement waiting list, the judge should schedule regular progress reports until an acceptable date has been set for the youth's transfer to the

placement. The judge should also ensure that the youth is getting interim services for education, physical and 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 justice 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 judge should ensure that less intensive interim services are provided.

The juvenile justice 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 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 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 responses 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 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 justice 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 justice 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 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 justice 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 justice judge should do everything possible to ensure that the juvenile justice 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 JUVENILE JUSTICE GUIDELINES recommends the following so that juvenile justice courts avoid unnecessary appeals due to court process error or deficits in communication:

- Ensuring qualified representation of parties throughout the 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 justice 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.

K. DISPOSITION INTERVENTIONS EVERY JUVENILE JUSTICE COURT SHOULD HAVE AVAILABLE

A juvenile justice court needs to have sufficient and accessible disposition services so that it can be reasonably assured it can meet the needs of youth in its jurisdiction. Meeting these needs includes disposition alternatives that:

- Include a range of options allowing the court to place youth in the least restrictive setting that will provide community safety;
- Will hold the youth accountable;
- Are developmentally appropriate;
- 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.

It is not likely that a juvenile justice 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 justice court in sufficient quantity to ensure that they are readily accessible when needed:

1. **Probation**²² – In the majority of cases, probation is the juvenile justice court’s disposition.²³ According to the *Desktop Guide to Good Juvenile Probation Practice*, 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 justice court reach its goals, probation plans move youth from objective to objective toward those goals, and 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 that the juvenile justice court judge approved.²⁴ 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.²⁵

It is not effective to run probation programs that see youth once a month or focus entirely on surveillance.²⁶ 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 justice court to ensure that probation services meet the individual needs of youth and that youth leave the juvenile justice 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 behavioral 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 youth as defined in subsequent subsections 4 through 10.

2. **Restitution Programs** – Some juvenile justice 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 justice 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 justice 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 justice 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.

3. **Community Service** – Meaningful community service is an important tool for juvenile justice 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 with 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.²⁷ 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 members of the community.

4. **Mental health evaluation and treatment which includes individual therapy, family therapy, group therapy, acute care facilities,²⁸ 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 justice courts have mental health issues, including histories of trauma and victimization.²⁹ 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 justice system.³⁰ Juvenile justice court staff should use screening instruments that 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 justice court, evaluation recommendations regarding mental health treatment services should be incorporated into the juvenile justice court disposition, and the court should monitor to ensure follow-through.

Juvenile justice 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 justice 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 abuse³¹ evaluation and treatment that includes individual and group counseling, drug testing, day treatment, and residential treatment** – Youth who come before juvenile justice courts with substance abuse issues, including alcohol and drug abuse, need to be properly evaluated and referred to treatment as necessary. Addressing underlying substance abuse issues is important to ensure youth become productive law-abiding citizens.

Juvenile justice 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 symptoms 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 youth recommends treatment, the treatment should be incorporated into the juvenile justice court disposition, and the court

should monitor to ensure follow-through. Information on juvenile drug treatment court dockets can be found in **Chapter 2, 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.³²

Juvenile justice 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 justice 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. **Evidence-based sex offender treatment based on individualized needs which includes individual therapy, group therapy, family therapy, and residential treatment**³³ – The evaluation and treatment of sex offending behavior is a complex field of knowledge that requires specific training and skills. As a disposition, specialized sex offender treatment can be effective in aiding in the rehabilitative progress of youth, whereas more extreme responses such as residential placement and detention may actually disrupt rehabilitative pathways. Thus, it is critical that an individualized approach is taken to allocate resources according to need and based upon offense characteristics. Overall, research has demonstrated low recidivism rates for juvenile sexual offenders who receive appropriate treatment. Juveniles who commit sexual offenses are more responsive to treatment than adults and have an improved chance of rehabilitation.

Juvenile sexual offending may stem from a variety of reasons. Some juveniles who commit sexual offenses may have experienced a history of sexual abuse and may be acting out offenses that were perpetrated against them in the past or are happening to them currently. Many juvenile sexual offenses occur out of youthful exploration, indiscretions, curiosity, immaturity, and/or inability to understand consent. A smaller number of juvenile sexual offenses occur due to a calculated intent to harm. It is critical

to identify the motivation behind the juvenile sexual offense to distinguish between intentional sexual violence and developmental-related sexual curiosity that led to inappropriate behavior.

If the offense occurred as a result of repeating patterns of abuse that the youth has experienced themselves or due to curiosity or other developmental delay; it is possible for the juvenile justice system to further harm the youth by placing them with more serious and aggressive offenders. These youth can greatly benefit from treatment that specifically targets faulty cognitions, behavior regulation, and education around appropriate sexual behavior. As indicated, some sexual offenses may be more characteristically high-risk. These offenders can also greatly benefit from treatment that specifically targets their antisocial behaviors and problematic sexual behaviors. When evidence based treatments are implemented with juvenile sexual offenders of all types and risk levels (e.g., Cognitive Behavioral Therapy; Multisystemic Therapy for Youth with Problem Sexual Behaviors) – recidivism can be reduced, community safety can be increased, and high costs of residential treatment can be avoided.

There are extreme cases where juvenile sexual offending may be calculated, aggressive, intentional, and repetitive. In the case of true sexual obsession or compulsion, 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. It is common for sexually abusive youth to have multiple diagnoses. Consequently, it is important to adequately evaluate sexual-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 treatment at the earliest possible identification point. Thus, juvenile sexual offenders that engage in calculated, repetitive, and sexually-abusive behaviors should be court ordered into treatment and monitored for follow through.

In accordance with disposition option #4 in this list, juvenile delinquency courts should not allow juvenile detention facilities to be used as acute care mental health facilities for juvenile sexual offenders. Most juvenile sexual offenders are best managed and treated through community based treatment options. Using detention for low-risk offenders and

offenders with developmental delays is doing a disservice to the youth by not addressing their needs and putting them in a high-risk environment that may disrupt their positive trajectory toward rehabilitation.

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 justice petitions in the juvenile justice court. Sometimes, however, the behavior is so severe that the school has no alternative but to file a justice 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 court involved.

It is critical for juvenile justice court judges to demonstrate judicial leadership and engage school systems to collaborate with the juvenile justice court to:

- Commit to keeping school misbehavior and truancy out of the formal juvenile justice 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; and
- Work together to ensure that 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 justice 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 justice court representative, a child welfare representative, and a representative from mental health. The team identifies youth who rise to the level of suspension, expulsion, justice, 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. **Developmental disabilities evaluation and treatment** – Evaluating and providing appropriate services to youth with developmental disabilities is a significant challenge for most juvenile justice courts. Depending on the severity of the impairment, these youth may be unable to benefit from many of the services used by the juvenile justice 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 youth with significant 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**³⁴ – 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 justice 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 justice 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 include:

- Creating 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; and
- 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 justice courts have successfully created or participated in wrap-around service systems where they coordinate services to youth with multi-system needs. A few juvenile justice courts have taken the concept an additional step and created pooled funding systems of care for these youth.³⁵

11. **Placement resources including foster home care, community placements, residential treatment, and non-secure and secure correctional placements**³⁶ –

Juvenile justice 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 justice 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 placed outside the home 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 justice court pre-disposition investigator recommends placement of a youth as a disposition, and when a juvenile justice 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 justice 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.³⁷

Section D of this chapter describes the contents of the initial reentry plan that is approved by the juvenile justice court judge when making a disposition of placement. As previously discussed, when the judge orders placement as the disposition, the judge should monitor the case by setting review hearings and/or requiring written reports, as appropriate, until the youth has successfully reintegrated into the community. Chapter 10 describes the juvenile justice 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 JUSTICE COURT DISPOSITION INTERVENTIONS

As juvenile justice courts and system practitioners respond to juvenile offenders, the challenge of public scrutiny over whether juvenile justice courts and systems have value and the increased demands on limited budgets and resources make it extremely important to understand whether a particular intervention produces positive outcomes for 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 court-involved youth.

Each year research identifies new evidence-based and promising programs. 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 youth there is wide variation.

¹ See Chapter 6: Hearings on Motions to Waive Juvenile Delinquency Court Jurisdiction and Transfer Jurisdiction to Criminal Court, for more information.

² 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.

³ See Chapter 1: Foundations for a Juvenile Delinquency Court of Excellence.

⁴ 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. See also American Bar Association Juvenile Justice Standards: Standards Relating to Dispositional Orders. p. 21.

⁵ California Welfare and Institutions Code, §§ 362(a) and 727(a).

⁶ Griffin, P. & Torbet, P. (2002). *Desktop guide to good juvenile probation practice*. Pittsburgh, PA: National Center for Juvenile Justice.

⁷ Several examples of disposition matrices can be found in: Liberman, A., Hussemann, J., The Urban Institute, & United States of America. (2017). *Implementing evidence-based juvenile justice reforms: Demonstration sites in OJJDP's Juvenile Justice Reform and Reinvestment Initiative*.

⁸ *Supra* note 6

⁹ 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.

¹⁰ The tribal entity should receive notice of the initial petition and be provided an opportunity to participate in the judicial process leading to and including the pre-disposition information gathering phase and recommendations for a culturally responsive disposition.

¹¹ American Probation and Parole Association & National Center for State Courts. (ND). *Effective responses to offender behavior: Lessons learned for probation and parole supervision*. Available at: <http://www.appa-net.org/eWeb/docs/APPA/pubs/EROBLLPPS-Report.pdf>

¹² 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.

¹³ *Supra* note 10.

¹⁴ For information on how to create a plan with graduated sanctions and incentives, see note 7.

¹⁵ Refer to the next section of this chapter for more information.

¹⁶ Refer to Section J (10) of this chapter for additional information regarding placement dispositions.

¹⁷ *Supra* note 19. [this is only note 12.]

¹⁸ 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.

¹⁹ *Supra* note 10.

²⁰ Portions of this section have been excerpted from Juvenile Justice Standards of the Criminal Justice Section of the American Bar Association.

²¹ 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.

²² Significant portions of this section have been excerpted from Griffin & Torbet, *supra* note 6.

²³ OJJDP Statistical Briefing Book. (March 27, 2018). Available at: <https://www.ojjdp.gov/ojstatbb/probation/qa07102.asp?qaDate=2015>.

²⁴ Refer to the Pre-disposition Investigation section in this chapter and to Chapter 2, Section E, Using Screening Tools to Help Make Key Decisions for more information.

²⁵ Refer to the Pre-disposition Investigation section in this chapter for information on these plans.

²⁶ Lipsey, M. W., Howell, J. C., Kelly, M. R., Chapman, G., & Carver, D. (2010). *Improving the effectiveness of juvenile justice programs*. Washington DC: Center for Juvenile Justice Reform at Georgetown University.

²⁷ See the Appendices, Organizations and Resources for a list and description of websites with information on volunteering and service learning.

²⁸ Refer to subsection 10 for issues the juvenile justice court should consider regarding using out-of-home placement.

²⁹ Studies have shown that the prevalence of mental health disorders in juvenile justice populations vary depending on the stage of the system in which youth are assessed. Prevalence rates increase as youth are processed further in the system. Some system stages indicate mental health disorder prevalence rates as high as 70%, much higher than that of the general population. Development Services Group, Inc. (2017). *Intersection between mental health and the juvenile justice system. Literature review*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention. Available at: <https://www.ojjdp.gov/mpg/litreviews/Intersection-Mental-Health-Juvenile-Justice.pdf>

³⁰ See Chapter 2, Section E. Using Screening Tools To Help Make Key Decisions.

³¹ Substance abuse includes drug abuse and alcohol abuse.

³² *Supra* note 29.

• For information on youth drug programming, see <https://www.samhsa.gov/>

³³ For more information, see:

- Office of Justice Programs Sex Offender Management Assessment and Planning Initiative: Juvenile Section available <https://www.smart.gov/SOMAPI/contents.html#juvenile>
- Center for Sex Offender Management (CSOM): The Role of Judges in Managing Juvenile Sex Offenses Cases: Keys to Informed Decision making. Available at: http://www.csom.org/pubs/juvenile_sex_cases.pdf
- Russell, K. N., & Marsh, S. (2018). When juveniles commit sexual offenses: Considerations and recommendations for judges. *Juvenile and Family Court Journal*, 69(2), 37-48.
- DiCataldo, F. (2009). *The Perversion of Youth: Issues and Controversies in the Assessment and Treatment of Juvenile Sex Offenders*. New York: New York University Press.

³⁴ The concept of day and evening reporting centers was introduced in Chapter 4 as an alternative to detention. The concept is not limited to that particular application and is also an important disposition intervention.

³⁵ Refer to Chapter 12 for more information on juvenile justice court involvement in collaborations to serve multiple need youth.

³⁶ 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 2, Section I: Title IV-E in the Juvenile Delinquency Court, earlier sections and charts of this chapter.

³⁷ Greenwood, P. W. (1996). Responding to juvenile crime: Lessons learned. *The Future of Children*, 6(3), 75-85.



VIII.
APPEALS PROCESS

CHAPTER VIII:

APPEALS PROCESS¹

This chapter addresses what occurs after the juvenile justice court has entered a final appealable order and the juvenile justice court judge instructs the parties regarding their right to appeal. It also addresses interlocutory appellate review. The chapter discusses:

- How juvenile justice courts should respond when an appeal is filed;
- Why avoiding extensive delays is important for youth and families;
- Interlocutory appellate review;
- The appellate court process; and
- Proposed appellate court initiatives.

A. THE APPELLATE COURT

Appeals from juvenile justice 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 justice 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 justice 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 justice court decisions. Although not all jurisdictions maintain statistics identifying juvenile court appeals, there are fewer appeals from juvenile justice court decisions, with appeals from juvenile dependency court abuse and neglect cases greatly outnumbering juvenile court justice 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 many states made changes in the late 1990s to procedures, court rules, or statutes to expedite abuse/neglect cases.² The hope is that the JUVENILE JUSTICE GUIDELINES will cause a similar change in the timeframes of juvenile justice court appeals.

To move in this direction, juvenile justice 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 justice 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 appeals. Juvenile justice court judges should work with appellate court judges and state court administrative offices to develop procedures that will expedite the disposition of juvenile justice appeals.

B. WHY TIMELINESS IS IMPORTANT³

As discussed in **Chapter 2, 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 early twenties.⁴ Many youth who become involved in the juvenile justice 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. Timeliness of case processing is much more than a technical matter, it's a necessary component of the juvenile justice system's basic mission.⁵

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 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.⁶

Throughout the JUVENILE JUSTICE GUIDELINES, the importance of the timeliness of juvenile justice court processes has been emphasized. If the recommendations of the JUVENILE JUSTICE GUIDELINES are implemented, the juvenile justice court process from the filing of the petition to completion of the disposition hearing will be 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 juvenile justice matters is not recommended. Trial de novo, in which a new trial is held as if the previous had never happened, 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 justice 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 justice 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.⁷

D. INTERLOCUTORY APPEALS AND WRITS

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.⁸ 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.

If a youth, the victim, or the prosecutor believes that the juvenile justice 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 justice 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 justice 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 justice 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 justice court, or allegations of ineffective counsel. Findings of fact by the juvenile justice 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 justice 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 justice 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 JUSTICE COURT REGARDING THE APPEALS PROCESS¹²

When the juvenile justice 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 justice 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 justice court case, the juvenile justice 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 justice 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 justice 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 justice 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 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 justice 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 justice court disposition.

If the court with final decision-making authority denies a request for stay, it is important that the juvenile justice court has continuing jurisdiction over the disposition orders that are under appeal. The juvenile justice 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 justice court judges should offer to provide information to judges and staff of appellate courts about why timeliness is important in resolving juvenile justice 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 justice courts to develop a method of access to unpublished juvenile justice court cases. This will provide juvenile justice court judges and judicial officers the best information available upon which to base their decisions.

The JUVENILE JUSTICE GUIDELINES recommends 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 justice appeal, and the time the opinion is issued by the appellate court, for various types of juvenile justice appeals. The GUIDELINES recommends following the [model time standards developed by the National Center for State Courts](#). Appellate courts have shown that a short turnaround time is achievable in abuse and neglect appeals. It is also achievable in juvenile justice 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 justice 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 justice 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 justice cases by requiring attorneys to file short briefs outlining what the issues are and why the juvenile justice 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 justice 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.

Finally, appellate courts should work with juvenile justice courts, prosecutors, and public defenders to design an expedited appellate review of interlocutory orders to waive juvenile justice 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 justice court should move forward with transfer to the criminal court, or whether there is reason for additional appellate consideration.

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.

² Keith, A. L., & Flango, C. R. (2nd ed., 2004). *Expediting dependency appeals: Strategies to reduce delay*. Arlington, VA: National Center for State Courts.

³ Resources used for this section include:

- National Council of Juvenile and Family Court Judges. (2000). *Adoption and permanency guidelines: Improving court practice in child abuse and neglect cases*. Reno, NV: Author.
- 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: The University of Chicago Press.

⁵ Bulman, P. (2014). *Delays in youth justice*. U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention.

⁶ Van Duizend, R. (2011). *Model time standards for state trial courts*. Available at: <https://ncsc.contentdm.oclc.org/digital/collection/ctadmin/id/1836>

⁷ 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 juvenile justice case");

In re Doe, 74 P.3d 998, 1003 (Haw. 2003) (holding that "in a juvenile justice 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).

⁸ Refer to Chapter 5, Section F (2)(a) regarding interlocutory appeals on waiver and transfer decisions.

⁹ Standard of review for sufficiency varies in each state. Review your state statutes to ensure compliance.

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: 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.



IX.

**POST DISPOSITION
REVIEW (IN HOME)**

CHAPTER IX:

POST DISPOSITION REVIEW (IN HOME)

The next two chapters of the JUVENILE JUSTICE GUIDELINES address juvenile justice court post-disposition review. This chapter addresses progress hearings, case conferences, progress reports, and dispute resolution alternatives regarding youth who remain in the home with court-ordered services as the juvenile justice court's disposition. **Chapter 10** addresses the post-disposition review of youth who the juvenile justice court has placed outside of the home by court order.

This chapter does not address specialty dockets often called "Juvenile Drug Treatment 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 2, Section J** and are similar to the juvenile justice court reentry reviews for high-risk youth described in **Chapter 10**.

The juvenile justice 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 justice court has ordered treatment services;
- The youth is on a waiting list for court-ordered treatment services; and
- The juvenile justice court has questions about the ability of the youth to access and complete the services outlined in the dispositional plan.

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:

- 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 including the addition of services that might be necessary for the youth to successfully develop competencies;
- Determine if the youth, parent, and legal custodian are following through with the juvenile justice court's orders;
- 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 justice court can join as parties with government agencies, education, and private service providers who have a legal responsibility to provide a service. The juvenile justice 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 JUVENILE JUSTICE GUIDELINES recommends several different post-disposition review methods for youth. The GUIDELINES recommends progress reports, progress conferences, case staffings, and dispute resolution alternatives in addition to juvenile

justice court progress hearings. Each of the alternative methods to a juvenile justice court hearing fulfills the purpose of post-disposition review. When the juvenile justice 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 then submit the progress report to the juvenile justice court judge. If the judge ordered services but did not place the youth on probation, the 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 justice court judge may decide to participate in post-disposition monitoring, but under a less formal atmosphere than a juvenile justice 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 justice 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 justice court hearing. Issues can be defined and discussed, as opposed to sworn testimony given on the record. The juvenile justice 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 justice courts use these methods of post-disposition review, it is important for the judge and probation representative to ensure a less formal and non-adversarial atmosphere is established and maintained to meet the goal of assisting the youth and families achieve success.

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 justice court judge are dispute resolution alternatives (DRA).² DRAs are discussed in **Chapter 2, 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 and identify ways in which the court can assist the family as well. 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 justice 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 justice 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 justice 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 justice 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. Juvenile justice court judges should also remove restrictions after it is evident the youth is engaged in treatment.

When youth routinely wait long periods for services, the juvenile justice 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 back-logged. 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 justice 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 the date the youth began services.³ A permanency hearing must occur within 12 months of the date the youth began services.

If the juvenile justice 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 justice court sets a method of review other than a hearing, the

prosecutor, the youth through counsel, a party or other key participant may file a motion for the court to set a progress hearing, if they feel it is needed.

When the juvenile justice court orders non-placement treatment services, the court will usually also place the youth on probation and approve a probation plan. This plan should ensure that dispositions are individualized and include graduated responses. The plan should give the probation officer the authority to implement incentives and specified sanctions, but should require the juvenile justice court judge's approval for other responses, such as the use of secure detention. ***The JUVNEILE JUSTICE GUIDELINES recommends that only judges or judicial officers should have the authority to place a youth in detention.*** When the juvenile justice 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 petition should be filed. If the youth repeatedly commits technical violations of probation, and the responses incorporated into the plan have been exhausted, the probation officer may consider filing a probation violation. Probation violations are covered in ***Chapter 11***.

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 justice courts follow the one-family-one-judge model of 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 justice court judge, probation officer, or counsel for the youth will be able to discern whether and when it is likely that specific, targeted praise and support from the juvenile justice court judge will have a positive impact on the youth and family.

D. LEGAL REPRESENTATION DURING POST-DISPOSITION REVIEW

All youth must be represented by counsel in the formal juvenile justice court, but that counsel should be involved in every juvenile justice court hearing. In order for counsel to be effective at this stage of the juvenile justice 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 justice court two weeks prior to the juvenile justice court's scheduled review of the report. The 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 justice 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 justice court's orders, no additional services are needed, and no concerns have been expressed, the juvenile justice court judge should either order another post-disposition review or end the court's involvement in the post-disposition review of this case.

If the youth is not making progress, or if the probation officer, prosecutor, legal counsel, tribal court representative, or service provider has a concern he or she wishes the court to address, the juvenile justice 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 justice 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 justice court judge may choose to attend a case conference or staffing. If the juvenile justice court judge does not attend the intervention, the probation officer or the facilitator should prepare a written progress report to submit to the 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 justice 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 justice 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 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 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 Justice Court Should Have

Designated juvenile justice court staff should ensure that the following information is available to the juvenile justice 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;⁴
- Information regarding any cultural or handicap 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 probation department has provided the progress report and recommendations to the court, 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 justice 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 justice court judge gives the parent, legal custodian, service providers, tribal council representative, if applicable, and youth the opportunity to address the court.

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 justice 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 justice court should admonish the appropriate individual, implement responses if appropriate, and clearly state the realistic consequences of a continued lack of progress or compliance. The juvenile justice 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 justice 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 service has started, how is the youth progressing in court ordered services/obligations? Has the youth complied with the court's orders and completed the case plan objectives satisfactorily? If so, can supervision be terminated early? If the youth is not progressing, 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 outside of the youth's control.

2. 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?
3. Have the parents, legal guardian, or custodian engaged with the court and services? If not, is it because:
 - 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
 - They refused to participate.
4. If the youth and parent have complied with expectations, is the youth's problem behavior improving?
5. If the family situation contributed to the problem, is the family situation improving?
6. What is the youth's education and living 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?
7. Is a change of probation case plan needed, and if so, what services or restrictions are no longer needed, or what additional services or restrictions need to be added?⁵
8. Are there outstanding restitution or court fines and costs, and if so, what is the youth's plan to take care of these responsibilities? Can the court help facilitate options for the youth to meet these obligations?
9. 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?
10. 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 justice court judge believes that all issues have been considered and all necessary information has been shared, the judge should make the appropriate orders.

The juvenile justice court's written findings and orders should be stated in plain language understandable by the youth and family 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 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 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.
- The date, time, and method of the next post-disposition review or the termination of the juvenile justice court's involvement in post-disposition review of this case.

¹ Check your local state court regarding the ability to join entities as parties.

² See Chapter 2, 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 2, Section I: Title IV-E in the Juvenile Delinquency Court.

⁴ 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 court for the purposes of establishing and implementing treatment plans for juvenile offenders.

⁵ The juvenile court should not order a more restrictive disposition, or secure or 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.



X.

**POST DISPOSITION
REVIEW (OUT OF HOME)**

CHAPTER X:

POST DISPOSITION REVIEW (OUT OF HOME)

Chapter 9 addressed juvenile justice court post-disposition of youth who remain in their homes after disposition with court-ordered services. This chapter addresses post-disposition review of youth whose juvenile justice court disposition orders are out-of-home placement. This chapter includes all juvenile justice court-ordered placements, including placements in juvenile justice court-operated facilities, community or residential treatment facilities, and state youth correctional facilities. It includes community and residential treatment placements of youth that are financed by the juvenile justice court, the child protection agency, or the state youth authority. Some community placements may be funded through Title IV-E.

State juvenile justice 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 justice 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 handles case management of youth in correctional institutions and state youth authority parole officers handle supervision upon reentry to the community. ***The JUVENILE JUSTICE 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 justice court.***

In all states, the juvenile justice court has the authority to conduct post-disposition reviews when placements are implemented by the juvenile justice court or the child protection agency. In many states, however, the juvenile justice court has partial or no statutory authority to conduct post-disposition reviews when placements are implemented through the state youth correctional authority.¹ Juvenile justice courts should use their statutory oversight authority to the fullest

extent possible in reviewing placed youth. If the court does not have oversight authority, it should work together with the governmental systems that do have oversight authority to ensure that all 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 justice court judges should work collaboratively to improve existing systems. When necessary, juvenile justice court judges should advocate for changes in state law to provide judicial oversight authority to the juvenile justice court.²

Research indicates that the average one year re-arrest rate for youth exiting institutions is 55%, while average reconfinement rates are 24%³ highlighting the need for more coordinated services to reduce reoffending. In 2003, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) funded a juvenile justice 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* [REENTRY] in 2004,⁴ which discusses and describes a juvenile justice court reentry model for high-risk youth coming out of placement. The report offers specific recommendations on planning, implementing, and operating a juvenile reentry process through the juvenile justice court.

The REENTRY publication proposes a strategy that is a combination of practices and procedures developed by drug and other specialty or problem-solving courts⁵ and by the Intensive Aftercare Program (IAP).⁶ The REENTRY publication suggests that the juvenile justice 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 justice 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 justice 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 JUVENILE JUSTICE GUIDELINES address only those juvenile justice systems where the juvenile justice 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 JUSTICE COURT ORDER⁷

Placement away from the home, regardless of type of placement, is the most restrictive and costly disposition that the juvenile justice court can impose. If placement was ordered at the disposition hearing, it is imperative that the court carefully considered, at that time, why removal from the home was necessary, what other options were considered, what changes the youth should make while in placement, and the plan regarding where the youth will reside upon completion of placement. In addition, the court should consider 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. Courts should be particular cognizant of the specific needs and victimization risks of lesbian, gay, bisexual, transgender, queer or questioning, and gender non-conforming youth. In order to ensure that placing the youth has the greatest chance for success, the juvenile justice court approves a detailed initial reentry plan at the disposition hearing (*see Chapter 7: The Disposition Hearing*). The plan includes 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 justice court's orders regarding their child, liability for restitution, payment for the costs of services, or criminal responsibility for failing to supervise their 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 responses can be implemented by the probation officer and which require approval by the juvenile justice court judge;
- How it will be determined that the youth is ready for release and who will do it; and
- At what point during the placement the finalized reentry plan will be developed and provided to the juvenile justice court.

In approving the initial placement and reentry plan, the juvenile justice court ensures that court dispositions are individualized and that graduated responses, both sanctions and incentives, are 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 justice court judge's post-disposition review of 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 by maintaining family and community ties wherever possible; and that 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 reentry plan that addresses the youth’s needs is developed with sufficient time to ensure all needed post-release services including education, mental health/substance abuse (as applicable), counseling, etc., are in place at the time of placement release; and
- Ensuring the finalized reentry plan is fully implemented in a timely manner.

In every case where the juvenile justice court orders placement and has post-disposition review authority, the court should provide effective 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 justice court reentry review, the court should ensure that community support services are prepared to continue beyond juvenile justice 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 justice 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 justice 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 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; and
- Hold a permanency hearing within 12 months of the date the youth was placed in eligible foster care.

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 justice 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 suggests that serious, high-risk-to-reoffend offenders benefit from high intensity aftercare monitoring while lower risk-to-reoffend youth subjected to intensive community supervision tend to do worse than if supervised at a lower intensity level, indicating there is a point of diminished returns in regard to supervision level and recidivism.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 at a 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 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 justice court review, the juvenile justice 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 justice 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.

C. PURPOSE OF POST-DISPOSITION REVIEW OF YOUTH PLACED OUT OF THE HOME BY JUVENILE JUSTICE COURT ORDER

Four components of juvenile justice court post-disposition placement review were described in Section A of this chapter. The purposes of these four components are to:

- Reinforce positive change of the youth and parents;
- Ensure the placement provider, probation officer, child protection worker, and juvenile corrections system staff are 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 justice court's orders;
- Ensure that the youth and parent are making progress, or if not, appropriate responses occur; and
- Resolve disputes regarding placement and reentry planning and approve modifications to the court-approved plan as needed.

In some states, the juvenile justice court can join as parties government agencies, education, and other organizations who have a legal responsibility to provide a service. The juvenile justice 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 justice 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

Youth charged in the formal juvenile justice court must have qualified and adequately compensated legal representation in the formal juvenile justice court, and the same counsel should be involved at every hearing. A juvenile justice court should ensure that counsel remains active when a youth is placed out of the home under the continuing jurisdiction of the juvenile justice court.

In order for counsel to be effective at this stage of the juvenile justice 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 JUVNEILE JUSTICE GUIDELINES recommends several different post-disposition review methods for youth who have been placed by the juvenile justice court. The GUIDELINES recommends progress reports, progress conferences, case staffings, and dispute resolution alternatives, in addition to juvenile justice 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 justice court hearing fulfills the purpose of post-disposition review. In some of these methods, the juvenile justice court judge is not directly involved in the review. When this is the case, the judge receives a report and either approves the report or sets the case for a review hearing.

It is appropriate for the juvenile justice 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 court. When the 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 justice 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 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 JUVENILE JUSTICE 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 justice court hearing may inhibit the free sharing of concerns. The juvenile justice court judge may decide to participate in post-disposition monitoring, but under a less formal atmosphere than a juvenile justice 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 justice 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 court hearing. Issues can be defined and discussed, as opposed to sworn testimony given on the record. The 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 justice 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 justice court judge, are dispute resolution alternatives (DRA).¹¹ DRAs were discussed in Chapter 2, Section G. Two of these alternatives are particularly useful for post-disposition review:

- **Negotiation (AKA Mediation)** – If the placement 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 justice 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 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 Justice 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 justice 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 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 justice court judge should make every effort to ensure that interim treatment services are provided until the youth can enter placement. A 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 justice 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 mid-point. 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 justice 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 timeframe is when placements are 60 days or less, in which case, the judge should determine a shorter timeframe.

When a final reentry plan is submitted to the juvenile justice 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 court should set a hearing within two weeks of receiving notification of the disagreement.

The first juvenile justice 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 justice court, and in others it may not be advantageous. At a minimum, however, the juvenile justice 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 justice 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 judge should set a hearing for the earliest possible time, but not more than two weeks from the time the court was notified of the potential problem.

If the juvenile justice 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 judge has been reviewing the case through a method that did not involve direct contact between the youth and family and the judge, a final hearing is not necessary, but the judge should send the youth and family a congratulatory letter.

It is important for the juvenile justice 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 justice 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.

2. Youth Committed by the Juvenile Justice 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 justice court every 90 days. The reentry case manager should provide the final reentry plan to the 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 the final reentry planning at least 60 days prior to the anticipated date reintegration visits will begin.

If the juvenile justice 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 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 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 justice 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 justice 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 justice reentry docket should be a celebration of the youth's successful reentry into the community and the termination of the court's reentry case monitoring.

G. PROCEDURES FOR PROGRESS REPORTS AS A METHOD OF POST-DISPOSITION REVIEW

When the juvenile justice court orders a progress report, and the probation officer, child protection caseworker, or correctional worker submits the report to the juvenile justice court judge, the court should immediately provide copies of the report to the prosecutor, counsel for the youth, parent or legal custodian, future custodian, the tribal council 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 justice court. The court should give two weeks for submission of responses, and then the judge should review the report and all responses.

If the youth, parent, and placement provider are complying with the juvenile justice court's orders and making progress, no additional services are needed, and no concerns have been expressed, the court should either order another progress report or set a date that the designated case manager should submit the final reentry plan to the court. The 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 justice 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 are 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 wishes the juvenile justice court to address.

H. PROCEDURES FOR PROGRESS CONFERENCES, CASE STAFFINGS, AND DISPUTE RESOLUTION ALTERNATIVES AS A METHOD OF POST-DISPOSITION REVIEW

When the juvenile justice 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 justice court judge may choose to attend a case conference or staffing. If the judge does not attend the meeting, the probation officer or the facilitator should prepare a written report to submit to the 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 justice 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 justice 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 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 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 Justice Court Should Have

The following information should be available to the juvenile justice 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 disability 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 have been 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 justice 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 justice 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 justice 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 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 justice 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 place 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 justice 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 justice court judge believes that all issues have been considered and all necessary information has been shared, the judge should make the appropriate orders, explaining the orders to those present and the reasons for the orders. It is important that the judge and all parties remember that the role of the juvenile justice 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 offenders' issues promptly as they arise.

The juvenile justice 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 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 justice 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;
- 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 justice court.
- 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.

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 planning process should begin at placement. Reentry includes services provided while in placement, during the transition home, and while under supervision within the community.¹³ Services provided while in placement should be designed to prepare the youth to go home. A comprehensive reentry model combines research on interventions designed to change delinquent behavior with research on the amount and type of supervision provided to youth upon their return to the community.¹⁴ The reentry process, regardless of level or type of community placement, residential treatment, or correctional placement, refers specifically to those activities and tasks that:¹⁵

- 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;
- Address education, employment (if age-appropriate), mental health, substance abuse, counseling, pro-social skill development, housing, etc.; and
- Ensure the seamless delivery of prescribed services and supervision in the community.
- Reentry planning should be collaborative and include residential facility staff, juvenile probation or parole officers, mental/behavioral health service providers and other

community-based treatment providers, schools, and family members and other adults who can support the youth upon return.¹⁶

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 justice 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.¹⁷

A youth should not be released from placement until there is a final reentry plan in place that has been approved by the juvenile justice 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 justice 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 court review of youth in placement, and places the responsibility on the juvenile justice court judge to ensure the juvenile justice 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 they are aware of the planned release and that their concerns are addressed.¹⁸ 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 justice court judge to finalize the reentry plan and manage reentry.

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 and an expected length of expected supervision in the community upon release;
- A plan of increasing periods of time the youth will spend in a 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 at a 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 including transition of school records/credits. 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 at 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. The plan should also include a description of how the youth will be transported to school each day (school bus, walking, ride from family member, etc.). 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 in establishing 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 JUVENILE JUSTICE 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 justice 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 justice 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 justice 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 justice 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 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 Justice Court Approval of the Proposed Reentry Plan

- a. **Low-Risk-to-Reoffend Youth** – For youth who are at a low risk to reoffend at the time of reentry, if the juvenile justice court judge or any legal parties or key participants have concerns regarding the reentry plan, the judge should determine whether to set a hearing, case staffing, progress conference, or dispute resolution alternative to address the concerns. The court should set a date within two weeks for the appropriate intervention.

If a 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 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 justice 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 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.¹⁹

The juvenile justice court should not allow a youth to be released from placement prior to the final reentry plan being approved by the 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 judge is responsible to ensure the youth's release is not

delayed because the juvenile justice system failed in its reentry responsibilities to the youth and community.

- b. **High-Risk-to-Reoffend Youth**²⁰ – If the juvenile justice 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 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 court should not allow a high-risk-to-reoffend youth to be released from placement prior to the 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 judge is responsible to ensure the youth's release is not delayed because the juvenile justice system failed in its reentry responsibilities to the youth and community.

3. Juvenile Justice Court Monitoring After the Youth's Return to the Community

- a. **Low-Risk-to-Reoffend Youth** – For youth who are at 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 justice 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 justice system and shift the youth's focus of identification, support, encouragement, and praise to individuals and organizations within the community. The 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.

The juvenile justice 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 justice court judge when problems occur. If there are problems with follow-through, the 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 judge should follow the process described in the prior sections of this chapter for review hearings.

The juvenile justice 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 judge is ready to terminate reentry monitoring, the judge should ensure that community support services are prepared to continue beyond juvenile justice court case termination as long as needed by the youth and family. At the final reentry review, the judge should celebrate with the youth and family either at a final hearing or conference if the judge has participated in person in case monitoring, or with a congratulatory letter from the judge to the youth and family if monitoring has been through progress reports.

- b. **High-Risk-to-Reoffend Youth**²¹ – Subsequent to the juvenile justice court release hearing, the 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 justice 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 justice court reentry hearings for high-risk-to-reoffend youth, the 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, responses 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 justice 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 11. If a youth allegedly commits a new misdemeanor or felony offense, the prosecutor should file a new justice 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 justice court reentry review, the judge should ensure that community support services are prepared to continue beyond 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 justice 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 justice court hearing.

At the final hearing, the juvenile justice court judge should invite the youth and parent or legal guardian to summarize his or her progress and future plans and 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 justice 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 justice court judge and the reentry team should take at each stage in the reentry process.

¹ Some 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. Many states are widely varied in the extent of judicial involvement in commitment, release, and reentry; however, they give the juvenile justice 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 Snyder, H. N., & Sickmund, M. (2006). *Juvenile offenders and victims: 2006 national report*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

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 2, 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 supervision 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; Carter, M., & Sankovitz, R. J. (2014). *Dosage probation: Rethinking the structure of probation sentences*. Silver Spring, MD: Center for Effective Public Policy.

¹⁰ Cal. Welf. & Inst. Code §§ 362 (a) and 727 (a).

¹¹ See Chapter 2, Section G. for an explanation of the term "dispute resolution alternative" as compared to the term "alternative dispute resolution."

¹² In December 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:

<https://www.acf.hhs.gov/cb/resource/chafee-foster-care-program>

¹³ Development Services Group, Inc. (2017). *Juvenile reentry. Literature review*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention. Available at: <https://www.ojdp.gov/mpg/litreviews/Aftercare.pdf>

¹⁴ *Ibid.*

¹⁵ Altschuler, D. M., & Armstrong, T. L. (2001). Reintegrating high-risk juvenile offenders into communities: Experiences and prospects. *Corrections Management Quarterly*, 5(3), at 73; 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.

¹⁶ *Ibid.*

¹⁷ Wexler, D. B. (Spring 2001). Robes and rehabilitation: How judges can help offenders "make good." 38 *Court Review*, 18, 3-4.

¹⁸ 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 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.

¹⁹ *Supra* note 15.

²⁰ *Supra* note 4.

²¹ *Supra* note 4.



XI.

**PROBATION AND
PAROLE VIOLATIONS**

CHAPTER XI:

PROBATION AND PAROLE VIOLATIONS

This chapter addresses the juvenile justice 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 to ensure due process is maintained. 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 justice systems use probation as a common justice disposition with probation supervised by probation officers. The probation officer may be an employee of the juvenile justice court or a separate government unit. Probation services are delivered by state agencies in 22 states and by local agencies in 20 states. Nine states deliver probation services through a combination of state and local entities.¹ For youth released from community or institutional placement through the state youth authority, reentry services are state operated in 38 states, locally operated in five states, and shared between state and local agencies in eight states.² In some juvenile justice 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 justice 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 justice court has jurisdiction over the period of parole.

Juvenile justice systems vary significantly regarding how they handle probation and parole violations, and what burden of proof is required. For example:

- Technical violations and violations as a result of a new offense may be handled differently within the same jurisdiction.
- The burden of proof for a probation/parole violation may be different (less) than that of a delinquency petition.
- The burden of proof required for probation/parole revocations where the youth is returned to placement may be different from those violations that don't result in revocation.
- Probation/parole violations, including those that may result in revocation, may or may not involve a petition or formal court hearing. Sometimes these may be handled administratively by the supervising agency or probation/parole officer.
- In some states, a juvenile justice court may impose any disposition on a probation or parole violation that it could have imposed on the original petition.

Given the great variation in practice across juvenile justice systems, it's imperative to be aware of and follow the requirements and practices in your jurisdiction. Consult the court and/or state statute/legislation for additional guidance.

This chapter describes the juvenile justice court hearing process on a probation or parole violation when the juvenile justice system has a lesser burden of proof and requirements for handling probation and parole violations as compared to a new petition alleging a misdemeanor or felony, and when the juvenile justice court has reentry supervision authority for youth on parole. A juvenile justice court that has the same burden of proof and requirements for handling probation and parole violations as it does for a new petition alleging a misdemeanor or felony should use the procedures described in Chapters 3, 4, 6, and 7.

A. DETERMINING WHETHER TO FILE A PROBATION OR PAROLE VIOLATION OR REQUEST A REVIEW HEARING

At the time the juvenile justice court judge places a youth on probation or parole, the judge approves a probation or finalized reentry plan, and the plan becomes part of the juvenile justice court's orders. The specifics of these plans are discussed in Chapter 7, Section D and Chapter 10, Section J (1). The plan should be individualized and include graduated responses, both sanctions and incentives. Standard boilerplate probation conditions written in legalese aren't helpful and aren't individualized to the youth. Juvenile justice courts should instead focus probation conditions on specific needs of youth (specific, not general), identified using risk-need assessment. Good probation orders that the youth and parents can understand combined with case management can reduce technical violations.

Understanding that incentives are more effective at changing youth behavior than sanctions, the case management plan should clearly detail incentives available to the youth for compliance. For example, the plan may state that the youth is eligible for a later curfew after one month with no technical violations. The juvenile justice court-approved plan should state clear consequences for technical violations of the plan and that these consequences become 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.

Generally speaking, the probation or parole officer should have the authority to provide the majority of responses – both incentives and sanctions. But, the court-approved plan should also state what responses require juvenile justice court approval prior to implementation. Additional examples of incentives available to probation or parole officers include reduction in the number of face-to-face meetings or check-ins required, reduction in community service hours, etc. Additional examples of sanctions available to probation or parole officers 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 justice 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 justice 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 court's resources. The juvenile justice 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 justice 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 9 and 10.

The JUVENILE JUSTICE GUIDELINES recommends that youth not be placed in detention for technical violations.

B. LEGAL REPRESENTATION

All youth should be represented by counsel in the formal juvenile justice 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 justice 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 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 justice court, should be set as soon as the juvenile justice court can notify all required participants and preferably within two weeks after the violation occurred. If the juvenile justice 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. 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 community 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 justice 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 Justice Court Should Have

The following information should be available to the juvenile justice 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 justice 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 judge will use to decide whether the youth committed the alleged violation. The 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 justice 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 justice 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 justice 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 judge should address the appropriate individual, implement a response 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 justice 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 court-approved plan and what sanctions and incentives have previously been implemented?
- Have the parents or physical custodian complied with the 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 responses 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 justice court judge or judicial officer believes that all issues have been considered and all necessary information has been presented, the judge should make the appropriate orders, explaining the orders to those present and the reasons for the orders. The juvenile justice 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 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 justice 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.

¹ Juvenile Justice Geography, Policy, Practice & Statistics. Online. Available at: <http://www.jigps.org/juvenile-justice-services#basic-services?filter=probation>. Developed by the National Center for Juvenile Justice (NCJJ), with funding from the John D. and Catherine T. MacArthur Foundation.

² *Ibid.* Available at: <http://www.jigps.org/juvenile-justice-services#basic-services?filter=reentry>.



XII.

**JOURNEY TO
EXCELLENCE**

CHAPTER XII: JOURNEY TO EXCELLENCE

The following statement describes the driving principle behind the JUVENILE JUSTICE GUIDELINES:

The JUVENILE JUSTICE GUIDELINES is intended to be used by courts and other juvenile justice system stakeholders to assist their efforts to improve practice. These GUIDELINES are 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 the GUIDELINES will provide a common vision and motivational framework for those working toward an improved juvenile justice system.

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

Some juvenile justice courts may erroneously believe that the expectations of the JUVENILE JUSTICE GUIDELINES are so far out of reach that they will not even try to implement them. Other juvenile justice courts will want to find out how they can be selected as model courts to implement the JUVENILE JUSTICE GUIDELINES. In the Introduction, the JUVENILE JUSTICE GUIDELINES stated:

It is important to note that the juvenile justice court judges and other juvenile justice system professionals who collaborated on the development of the JUVENILE JUSTICE GUIDELINES understand that many juvenile justice courts will not be able to implement all of the recommendations. All juvenile justice 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. This final chapter of the JUVENILE JUSTICE GUIDELINES: Improving Court Practice in Juvenile Justice Cases provides ideas to help juvenile justice courts along the journey toward becoming juvenile justice 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 justice court of excellence, and resource issues.

A. JUDICIAL LEADERSHIP AND ESTABLISHING THE COLLABORATIVE ENVIRONMENT NECESSARY FOR A JUVENILE JUSTICE COURT OF EXCELLENCE

1. The juvenile justice court judge should regularly convene system stakeholders and the community to promote mutual respect and understanding within the juvenile justice court system, and to work together to improve the system. The juvenile justice 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 justice court stakeholders include state court administrators, law enforcement officers, detention and juvenile justice 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 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 justice court are involved in juvenile justice court judicial leadership and system collaboration.

Juvenile justice 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 justice court's goals and the issues associated with youth, families, and crime victims in the juvenile justice court system. Judges should encourage the development of effective evidence-based programs and practices to assist children and families within the juvenile justice court. Juvenile justice court judges should be willing to be engaged by system participants and community members to discuss juvenile justice 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 justice court leadership and support efforts, and should empower judges at the local level to engage in leadership and collaboration activities.

2. The Juvenile Justice Court Judge as a Transformational Leader of Systems Improvement

Many juvenile justice courts will require major system improvement to implement the JUVENILE JUSTICE 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 justice court to undertake the challenges of implementing the JUVENILE JUSTICE 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 justice 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 in 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 justice court judges, the role the JUVENILE JUSTICE GUIDELINES describes will be uncomfortable. Many juvenile justice court judges see their role as trying cases, not transforming the community. Yet the role of the juvenile justice 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 justice court judge, the judge must be prepared to assume new roles, many of which are performed outside the courtroom.

3. Building Juvenile Justice 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 justice court judge must set the lead by committing his or her time and the time of juvenile justice court staff to collaboration efforts; but all relevant juvenile justice court stakeholders must become involved and make a commitment of time, effort, and resources.

Before engaging staff from the juvenile justice court and stakeholder organizations in improvement efforts, it is critical that the juvenile justice 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 justice 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 system 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 JUVENILE JUSTICE GUIDELINES will probably mean redistribution of resources in many juvenile justice court systems. This dynamic must be handled with care by remaining focused on creating a system that maximizes community safety and helps 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 youth and enhanced community safety.

As the collaboration moves forward, the executive level decision makers and collaboration team leaders should meet 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 justice system, the juvenile justice court judge should meet with the leaders of each of the justice system stakeholders, begin building coalitions, and invite the leaders to join with the judge in a systems improvement effort. To succeed, the juvenile justice 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 justice court judge and local juvenile justice 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 justice court appeals. They agree to engage prosecutors and counsel for youth in an effort to streamline the process.
- A juvenile justice court judge was very concerned about 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 judge had gathered to show the extent of the problem. They agreed to collaborate in order to increase education success for youth with behavior problems by creating a

specially trained team of school staff and probation to identify and “take on” youth on probation who had been suspended or expelled and any 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 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 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 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 youth involved in the project. The reduction in 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 justice 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, and 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 justice 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 JUVENILE JUSTICE GUIDELINES-RECOMMENDED TIMELINES FOR FORMAL JUVENILE JUSTICE COURT HEARINGS

The JUVENILE JUSTICE GUIDELINES sets goals for the timing of each hearing in the juvenile justice court. If the goals of the JUVENILE JUSTICE GUIDELINES have been reached, the majority of cases in the juvenile justice 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.

C. ASSESSING STRENGTHS AND OPPORTUNITIES FOR IMPROVEMENT

Once the juvenile justice court judge has made a personal commitment to implement some or all of the principles in the JUVENILE JUSTICE GUIDELINES, the judge should engage the executive leadership of stakeholder organizations in improvement efforts. The judge should request stakeholder representatives to join juvenile justice court staff on a team to assess the efficiency and effectiveness of the current juvenile justice 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 JUVENILE JUSTICE GUIDELINES;
- Reach consensus on the measurable outcomes the juvenile justice system should accomplish. Outcomes measure whether safety in communities is increasing by supporting and implementing both effective justice 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 justice 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 justice 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

- Ensure that 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 justice system should be willing to share their improvement experiences with other juvenile justice courts.

D. CASELOADS AND WORKLOADS⁸

The Key Principles state in part that juvenile justice 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 court 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 hours 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.

E. MANAGEMENT INFORMATION SYSTEM DESIGN AND REPORTS

Juvenile justice court judges should ensure that the juvenile justice system has measurable goals, key principles, and objectives that serve as standards against which system performance is measured, and that an annual justice system “report card” is made available to stakeholders and the public. Juvenile justice court staff should regularly collect 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 justice 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 types of petitions handled by the juvenile justice or family court, such as child support, domestic relations, etc.;
- Schedule petitions for hearings on the assigned juvenile justice 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 justice 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;
- 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 youth and each case, including all file documents, and all hearing activity, both date and purpose;
- Link juvenile justice court orders of restitution, fines, and court costs to the current status of payment on these accounts; and
- 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 justice court's management information system capability.¹¹

2. Performance and Outcome Data

The second major purpose that the management information system of the juvenile justice court of excellence must be designed to accomplish is to produce aggregate information. This information has two purposes:

- To measure the juvenile justice court's annual activity (e.g., how many complaints were handled, how much restitution was collected, how many youth were diverted). Many state juvenile justice court statutes require the juvenile justice 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 justice 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 benchmarks that have been set by the system. Without a performance measurement system in place, the juvenile justice system will not know what works, for whom, and in what circumstances.

Most juvenile justice management information systems can report how many petitions were filed, with how many counts, and for what types of law violations; how many males and females committed the offenses and their race/ethnicity; and what dispositions the juvenile justice court ordered. Relatively few systems, however, can produce all of the information needed to measure to what extent the juvenile justice 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 justice courts need to be able to produce accurate data about the norms of the system's performance. Without a performance measurement system in place, the juvenile justice court will be forever vulnerable to critics.¹² 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 youth.¹³

The juvenile justice court judge should lead a collaborative effort of all justice system stakeholders to establish and clearly articulate justice system goals. The juvenile justice court and each system stakeholder should subsequently establish aligned goals and objectives so that the juvenile justice court and all system stakeholders are moving in the same direction and can measure and report progress. The juvenile justice 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 justice court management information system should be able to provide include:

- 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 justice court are being used appropriately;
- The percentage of youth who are adjudicated on one petition but never return to the juvenile justice 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 racial and ethnic disparities are occurring at any juvenile justice 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 justice court contact, how many were also abused and neglected, what was their offending behavior, who filed the petition, what was the juvenile justice 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 justice court's management information system.¹⁴

3. Juvenile Justice Court Report Cards

The JUVENILE JUSTICE GUIDELINES recommends that the juvenile justice court produce an annual "report card" that measures progress toward goals. The juvenile justice 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 justice court has increased safety in communities by supporting and implementing both effective justice 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 justice 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 justice court helped develop competent and productive citizens by advancing the responsible living skills of youth within the jurisdiction of the juvenile justice court, as measured by:
 - Increased skill levels of youth at the end of their informal or formal juvenile justice 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 justice 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 justice 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.

In addition to the summarized report card that is distributed to the public highlighting the most important outcomes, the juvenile justice 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 justice court may hesitate to move forward in implementing the recommendations of the JUVENILE JUSTICE GUIDELINES because the court assumes that significant additional resources will be required. The JUVENILE JUSTICE GUIDELINES states throughout 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*.¹⁵

Throughout the chapters of the JUVENILE JUSTICE GUIDELINES, examples of ways to implement improved practices without long-term increased system costs have been given.

1. Freeing Resources for Reallocation by Controlling the Number of Formal Cases

One study in the 1970s revealed that in a particular juvenile justice court, 80% of the offenses were committed by 20% of arrested youth.¹⁶ A more recent study in 1999 showed that in another juvenile justice 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.¹⁷ When a juvenile justice 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 justice 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.

Juvenile justice courts should limit formal processing of petitions to cases where it is apparent that law enforcement diversion, prosecutor diversion, or juvenile justice court diversion to community services has failed to protect or will be ineffective in protecting the community from significant risk of harm.

Juvenile justice courts should encourage law enforcement officers and prosecutors to consider diversion for every status offender, every first-time and non-violent misdemeanor offender, and other offenders as identified by a validated risk of reoffending screen as low risk to reoffend. Juvenile justice court judges should engage community members, law enforcement officers, and prosecutors to develop diversion programs, including dispute resolution alternatives. Juvenile justice 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 justice 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 the following:

- 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 justice 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.
- Many community programs are funded through a variety of resources to provide services to at-risk youth. When the juvenile justice court and these services collaborate, the juvenile justice 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.
- 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 justice court resources because they handle a substantial number of youth offenders at relatively little cost due to using primarily volunteer youth and adults.

- Juvenile justice 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 justice court, key stakeholders, and community leaders work together and create community resources for diversion to informal resources, juvenile justice 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.¹⁸ Reductions in detention population can be accomplished while still providing community safety when juvenile justice 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.¹⁹ 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 justice 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 the following:

- Using validated risk of reoffending screens at detention intake to determine which youth can be safely released or diverted to non-secure options.

- 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 justice court staff the judge's expectation to keep detention within the established acceptable population boundary.
- Involving representatives of juvenile justice 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 justice 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 community-based options to secure detention that may enhance community safety, reduce unnecessary or inappropriate use of detention, allow youth to maintain important family and community connections, 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 outright release, home confinement, day reporting centers, and

intensive supervision programs.²⁰ Youth should be placed in services and programs that are appropriately matched to their individual risk/need level.

These various types of programs produced mixed results in evaluations,²¹ however, research has indicated that the most effective programs are those administered in the community as they reduce recidivism rates and promote positive life outcomes more so than detention facilities.²² Additionally, community-based programs are generally less expensive to operate than maintaining a detention facility. Therefore, community alternatives would still provide tangible benefits even if they did not significantly reduce recidivism rates as compared to secure detention.²³

Juvenile Justice Court Notification – The focus of this intervention is to keep out of detention those youth who do not appear for juvenile justice 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 justice 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.

- Using family conflict resolution to create a release plan for youth being held in secure detention on family violence charges. This empowers the family in crisis to identify and select, with the approval of the juvenile justice 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 justice 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 justice systems is huge. If a juvenile justice court can reduce this volume, it saves on paper expense, copying expense, 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, it also results in fewer petitions

to docket, issue summons, and process findings and orders. Other examples of practices that can reduce paperwork include the following:

- 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 justice 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 justice court date using a predetermined system provided and approved by the juvenile justice court.²⁴ 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 justice court's response.
- Courtroom equipment has direct access to the juvenile justice court's management information systems and can select the next available juvenile justice court date given certain parameters at the end of each hearing. The management information system generates all needed paperwork, including the written juvenile justice 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 justice court. Reducing the amount of docket time required in a juvenile justice court system can either enable

current staff to have the time to meet the recommendations of the JUVENILE JUSTICE 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 justice courts can reduce the amount of docket time needed to handle juvenile justice 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 the following measures:
 - Using the juvenile justice 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 justice court are reduced.
 - Assigning two public defenders and two prosecutors to each juvenile justice 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 justice court 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 justice court resources because the front door is managed so that only the more serious cases are handled formally. The juvenile justice court needs fewer hearings and fewer courtrooms and has higher productivity per courtroom.

- 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 justice 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 justice 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.
- On discretionary motions to waive juvenile justice court jurisdiction and transfer the case to the criminal court, some juvenile justice 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 justice 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 justice court is reduced.
- In systems with de novo hearings, eliminating the possibility those 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 justice 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 justice 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

Alleged and adjudicated youth must be represented by well-trained attorneys with cultural understanding and manageable caseloads. Juvenile justice 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. Waiver of counsel is not a recommended practice and the court should work diligently to ensure this doesn't occur.

This recommendation is anticipated to be one of the more controversial recommendations of the JUVENILE JUSTICE GUIDELINES because juvenile justice systems may believe they simply do not have the resources to comply. In addition, juvenile justice 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 justice courts have found that providing qualified counsel facilitates earlier resolution of summoned cases.²⁵

When juvenile justice 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 justice court hearing without prior consultation with counsel.

The two reasons that juvenile justice courts who implement the recommendations of the JUVENILE JUSTICE 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; and
- By implementing the resource-saving processes described in Section 4: Reducing Demands on Docket Time, the court further decreases the number of times counsel must appear on each case.

When a juvenile justice court improves its system in these ways, there is a strong likelihood that existing resources for appointment of counsel for youth can handle a greater percentage of formal cases with reduced caseloads which allows for a higher degree of quality.

6. Reducing Demands on Probation

A high percentage of juvenile justice cases uses the resources of the probation department. If probation officers do not have caseloads that allow them to perform substantial probation work, the juvenile justice court will not be able to accomplish the recommendations of the JUVENILE JUSTICE GUIDELINES regarding probation. Juvenile justice 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 justice 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.²⁶ These low-risk youth can be identified with a good degree of accuracy when juvenile justice 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 justice 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 freeing probation time to do substantive probation casework include the following:

- Not requiring probation officers to attend lengthy probable cause hearings on motions to waive juvenile justice 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 justice 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 justice 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 justice 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 justice courts may not consider these opportunities because they are foreign to current jurisdictional practices. However, if a juvenile justice 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 justice court diverts less serious youth offenders to informal resources, the result will be that a higher percentage of the youth who appear before the formal justice court

will have significant service needs. Consequently, it is important for juvenile justice courts to look for opportunities to decrease the cost of providing needed care to youth. Examples of ways to provide positive youth outcomes while reducing costs include the following:

- 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 justice 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, *Reconnecting: 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.

- Using less expensive wrap-around services instead of placement. Juvenile justice courts that have successfully implemented wrap-around service collaborations and pooled funding for youth with multiple needs and multiple system involvement.

8. Finding New Funding Streams

With resources shrinking and competition for those resources increasing, it is difficult for juvenile justice courts to find new funding streams. Suggestions for exploring new revenue possibilities include:

- **Government Grants** – Juvenile justice courts should stay abreast of government grant opportunities – federal, state, and local. They should engage in collaborations with other

organizations that serve 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 justice court system improvement initiatives, many private foundations are reluctant to fund government initiatives and are not willing to fund operating costs. Juvenile justice 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 justice 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 justice 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 justice 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, which could identify needs of youth that private charity foundations would consider funding.

- **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 justice courts could tap into these resources, not only to recruit volunteer lawyers to represent 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 justice.

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.

¹ Refer to Section B of this chapter regarding how a juvenile justice 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, Nevada, California, and Illinois are examples of states with juvenile justice commissions, and Georgia, Louisiana, and Ohio are examples of states with statewide juvenile and family court judges 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 *Ibid.*

⁵ Edwards, L. (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 justice 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 Technology Services has produced detailed juvenile function requirement standards which are accessible in both PDF and Word format on their website: www.ncsconline.org.

¹² 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.

¹³ *Supra* note 5.

¹⁴ *Supra* note 11.

¹⁵ Lowe, C. S. (2004). *Resource reallocation: The Clark County experience.* Juvenile Sanctions Center Training and Technical Assistance Program Bulletin, 2(4). Reno, NV: National Council of Juvenile and Family Court Judges.

¹⁶ Hamilton County Juvenile Court, Cincinnati, Ohio.

¹⁷ 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.

¹⁸ 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.

¹⁹ 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 overcrowding.

²⁰ Development Services Group, Inc. (2014). *Alternatives to detention and confinement. Literature review.*

Washington, DC: Office of Juvenile Justice and Delinquency Prevention. Available at:

<https://www.ojjdp.gov/mpg/litreviews/AlternativesToDetentionandConfinement.pdf>

²¹ *Ibid.*

²² Justice Policy Institute. (2009). *The costs of confinement: Why good juvenile justice polices make good fiscal sense.* Washington, DC: Author.

²³ *Supra* note 20.

²⁴ See Chapter 4, Section C(1) for details regarding how such a system can work and preserve prosecutorial review, informal diversion, and one youth/one judge.

²⁵ 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 justice court was able to meet docketing timeframes 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.

²⁶ *Supra* notes 16 and 17.