

*Prosecutors' Policy Recommendations
on Serious, Violent, and Habitual
Youthful Offenders*

166791



prepared by

American Prosecutors Research Institute
Alexandria, Virginia



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Preface

One of the gravest problems facing society today is the steady increase of juvenile crime. The current juvenile justice system suffers from the public perception that there are no real consequences for juveniles involved in criminal acts. Unfortunately, there is some truth to that perception. The juvenile codes of our states were designed to deal with juvenile problems of a different era (*e.g.*, truancy). These codes were adopted at a time when there were no latchkey kids; juveniles did not seek gang participation as a substitute for family support and children were not desensitized to violence. When juvenile codes were adopted, children still had heroes for role models and a fear of punishment. Today such concepts are not incorporated into children's attitudes. These factors must be addressed by eliminating confidentiality in juvenile proceedings and access to juvenile records, creating the means to act swiftly and surely in juvenile matters and re-establishing consequences for bad acts. The question remains . . . how?

Individual states cannot agree on a model code approach to juvenile issues. Prosecutors need to look at specific legislative recommendations that can be incorporated into their own state statutes. The impact of serious, violent or habitual juvenile offenders requires prosecutors to examine policies and find systemic solutions to what is perceived as a crisis. Prosecutors can foster minimum standards of performance for those responsible for promulgating policy functions. A manual of resources, programs, legislation and policy considerations will help provide information for the formulation of policy, training and program ideas as well as support for leaders who want to improve the system.

In order to reverse the juvenile crime wave, I believe we really have to bite the bullet on a generation. Prosecutors must focus on re-allocating resources to deal with the expectations of parents and the attitudes and morals of those under age eight. We must find a balance between prevention and punishment. It is time to collaborate on the issues concerning serious, violent or habitual juvenile offenders who bring fear to the general public and danger to our neighborhoods.

Prosecutors, police and judges need the authority to require accountability on the part of parents and guardians, as well as juveniles, particularly those who are repeat offenders. These same officials must have the discretion to proceed against a juvenile as an adult when appropriate. Some young offenders, when convicted as adults, should be eligible for intermediate alternatives that give them a chance to "earn" their way out of the adult sentencing system. It is clear, however, that punishment for illegal acts must become swift and meaningful.

Three generations of system personnel have been trained to coddle children, so that now it is too late to reform them. This treatment ignores the fact that children need discipline, consistency and rules that are meaningful to both the rule maker and the follower.

Having served as chairman of the Juvenile Advisory Committee for the National District Attorneys Association (NDAA) for eight years, served on the faculty for the National Juvenile and Family Court Judges Conference for fourteen years, prosecuted juveniles and implemented programs for juveniles for sixteen years and worked with legislation on these issues for sixteen years, I have come to one very basic conclusion: We have created our serious violent offenders by ignoring them when they were first caught. We now need to overcome three generations of the attitude that "it's someone else's fault" and establish an understanding that we are each responsible for our own acts. The juvenile codes of the future need to focus on rewards for successes and accountability for actions. This change requires the support of consequences for behavior, good or bad.

Introduction

In the late 1800s, juvenile courts were established as an alternative to the adult criminal justice system. The juvenile justice system was designed specifically to meet the needs of nonviolent juvenile offenders and children at risk of becoming juvenile delinquents. Historically, juvenile crimes were considered "youthful indiscretions," warranting lenient treatment and rehabilitative responses. Unlike the offense based adult system, the juvenile justice system is offender based, focusing on rehabilitation rather than punishment.

In the first half of the 1990s, there was a sharp increase in serious and violent juvenile crime. A parallel increase in the number of juveniles taken into custody ensued, as well as an increase in the number of juveniles waived or transferred to the adult criminal justice system. Prosecutors responded by becoming more actively involved in juvenile prosecutions and in development of legislative and programmatic responses to combat the rapid rise in juvenile crime.

While juvenile and family courts usually are successful in meeting the goals of the original juvenile courts and in handling routine juvenile cases, these courts and other agencies involved in the juvenile justice system are challenged to establish new ways of organizing and focusing the resources of the juvenile justice system to address serious, violent and habitual juvenile offenders. Within the American juvenile justice system, there is an inherent dichotomy between the serious and violent juvenile offenders who are a threat to public safety, and the nonviolent offenders who are in need of services. The original goal of the juvenile justice system was to serve as a limited, substitute parent (*parens patriae*) for "wayward" youth, focusing on rehabilitative efforts. The juvenile justice system was not designed to address increasing numbers of violent juvenile offenders committing serious "adult" crimes in the community.

In June 1995, the American Prosecutors Research Institute (APRI) convened an advisory group of seven prosecutors to discuss current issues in the prosecution of serious, violent and habitual juvenile offenders. These prosecutors began developing an ongoing resource manual to set out specific policy issues for prosecutors to consider in their leadership roles in the evolving juvenile justice system. The group consisted of the Honorable James Backstrom, County Attorney, Dakota County, Minnesota; Susana Foster, Assistant District Attorney, Orleans Parish, New Orleans, Louisiana; the Honorable Steven Hilbig, Criminal District Attorney, San Antonio, Texas; Mark McDonnell, Assistant District Attorney, Multnomah County, Oregon; Jay Plotkin, Assistant State Attorney, Jacksonville, Florida; Robert Scott, Assistant County Attorney, Anoka County, Minnesota; George West, Assistant District Attorney, Dallas, Texas; Diana Burleson and Merri Hankins, members of APRI staff; Charles "Bud" Hollis, Bureau of Justice Assistance; and Ann Taylor, National Institute of Justice. Members of the original group were joined by the Honorable Gus Sandstrom, District Attorney, Pueblo, Colorado, in October 1995, to review the initial recommendations and finalize the manual.

The advisory group expressed frustration at the barriers, both real and artificial, that inhibit the successful prosecution of serious, violent or habitual youthful offenders. The group agreed that a resource manual that addressed issues in juvenile prosecution would be helpful. The policies set out in this manual are those that arose from discussions among the members of the advisory group and do not represent any formal policies of prosecutors nationwide. The contents of this manual do not supersede any formal policies of NDAA's Juvenile Justice Advisory Committee or any other groups organized to speak on behalf of prosecutors.

This publication is intended as a resource manual for prosecutors. It can be used to suggest legislative changes. It delineates general policies for consideration on a variety of topics. It directs readers to available resources. It compiles ideas currently used in various jurisdictions. Prioritization of current resources, identification of new approaches to the juvenile crime problem and education of the public regarding prosecutors' perspectives are ongoing tasks that can be supplemented by this resource manual.

This manual focuses on the serious, violent or habitual juvenile offender. Before deciding what the applicable policies should be, it is important to define who is a serious, violent or habitual juvenile offender. The group reached a consensus that these categories of offenders include the following (please note that these categories are not mutually exclusive):

- A serious offender is a first time offender who commits multiple felony offenses, a major economic crime, repeated misdemeanor crimes of violence, or other offenses defined by a local jurisdiction as serious;
- A violent offender is one involved in the commission of a felony crime of violence; and
- An habitual juvenile offender is one who was found guilty of at least two prior felonies.

Organization Priorities

The impact of crime on a victim and society is not related to the age of the offender. Juveniles can scar victims physically, emotionally, and mentally, and endanger the bonds and values of the community to the same degree as adults. A juvenile defendant may have a better chance of rehabilitation than an adult offender. However, there is also the risk that a juvenile will become a habitual offender, if not stopped early in his or her criminal career. Such risks and rewards require the expertise of an experienced prosecutor, the use of vertical prosecution where possible, and fast-tracking of the serious, violent or habitual offender.

Juvenile prosecution is a priority which requires experienced prosecutors.

To the extent possible, vertical prosecution should be used in processing cases involving serious, violent or habitual juvenile offenders.

Recognizing the importance of expediency for all juveniles, efforts should be made to fast-track cases involving serious, violent or habitual juvenile offenders.

Commentary

Juvenile court cases have historically been assigned to entry-level prosecutors. In some prosecutors' offices, the "kiddie court" assignments are regarded as assignments for those with social service goals and those who are not tough enough on "real" criminals. The nation now is aware that the single most important judicial focus may be on the juvenile court. Juvenile cases are difficult technically. The presentation of evidence and dispositional alternatives requires expertise that new, undertrained or less experienced prosecutors cannot provide. If prosecutors are to have an impact on juvenile behavior, have the ability to recommend consequences for individual juveniles, or affect gang activity and the "at-risk" serious, violent or habitual offender, the "kiddie court" approach must be eliminated.

The NDAA's *National Prosecution Standards* set forth the minimum expectations of a prosecutor's duties related to juvenile proceedings. The importance of those expectations cannot be understated now that the public recognizes that juveniles are committing "real" crimes, not just "delinquent acts." The goals of those standards cannot be met without the elected or appointed prosecutor directing the level of priority for the juvenile process and the assignment of those deputies who are skilled at handling these cases.

Juveniles who commit criminal offenses require special attention. It is vital to have a single, trained, experienced deputy who can evaluate the case, the juvenile's criminal and social history and the alternatives that will result in justice.

Without vertical prosecution and continuity in handling a juvenile case, the impact of the system will diminish. The lack of continuity resulting from using different prosecutors may reduce chances for meaningful consequences and rehabilitative success. Vertical prosecution sends a message that the prosecution will stand firm and will expect a court to impose sanctions for a specific incident. The advisory group noted that it may be beneficial to have one person responsible for ensuring that a juvenile answer for his or her behavior. Continuity can be achieved by assigning all probation violations and future cases to one prosecutor.

Time is a major consideration in handling juvenile cases. Children often fail to remember their actions from as recently as one hour earlier. In addition, the longer it takes to impose consequences, the more likely it is that the juvenile will wonder if anyone cares. The long-term message is lost on the child. Juveniles at risk, and especially those who fit the definition of "serious, violent or habitual," need a system that responds rapidly to their actions.

These offenders set an example for others. Therefore, the system needs to demonstrate that the community has expectations of behavior, will not tolerate violations of these expectations, and will swiftly sanction any violations. When the incident is far removed from the process, no such demonstration can be successful.

Decision to Prosecute

The authority to charge or not charge is profound. Such discretionary decisions require legal expertise, consistency of purpose, and accountability.

All allegations of criminal conduct by juveniles should be forwarded to prosecutors by law enforcement agencies.

A prosecutor should make all charging decisions, including diversion.

Commentary

The discretionary decision to charge or not charge is at the heart of the prosecutorial function.¹ The decision to divert a case is a charging decision because it is a determination that sufficient evidence exists to file a charge in court, as well as the recognition that the goals of prosecution can be reasonably reached through diversion. The prosecutor is the appropriate person to review charging decisions.

- Prosecutors have a responsibility to represent the state in court on juvenile cases and therefore, should have the right to determine what cases are filed in that court.
- Prosecutors are unable to utilize an effective prosecution policy or effectively implement prosecution standards without control over the charging decision.
- Prosecutors are trained on the legal aspects of the charging process.
- Prosecutors give public safety a high priority in their decision making process.
- Prosecutors take into consideration the interests of the victim and follow procedures for exchanging information with victims.
- Prosecutors have access to both the criminal and social background of the juvenile.
- Prosecutors are more easily accountable to the public than are other individuals in the juvenile justice system.

¹See *Brown v. Dayton Hudson*, 314 N.W.2d 210 (Minn. 1981).

Having the court, probation or screening officers determine what violations of law should be charged creates the appearance that the court is not a neutral fact-finder. To remedy the appearance of a conflict of interest, courts should avoid direct involvement or supervision over the charging decision. Having prosecutors handle this function, as they are trained to do in all adult cases, creates greater accountability to the victim and to the public.

Where probation or screening officers are under the supervision of an entity other than the court, the conflict of interest argument is nullified. However, accountability remains difficult to establish. A prosecutor is elected or appointed with the chief responsibility to prosecute. This responsibility includes implementing a prosecutorial policy and making discretionary charging decisions that reflect statutory mandates and legitimate community goals. The prosecutor is directly accountable to the electorate or the appointing authority. Probation and screening officers are not elected and usually are not directly responsible to an appointing authority for charging decisions.

See Appendix A for information on legislative plans and NDAA prosecution standards.

Adult vs. Juvenile Prosecution

In a poll conducted in 1993, 73 percent of those surveyed across the United States said that "violent juveniles should be treated as adults rather than as defendants in lenient juvenile courts."² This poll is evidence of a rapidly changing philosophy in our society concerning the need to hold serious, violent, and habitual offenders appropriately accountable for their crimes. In many cases, doing so involves the need to prosecute these offenders as adults.

For serious, violent, and habitual offenders fourteen years of age or older, legislation should provide for mandatory prosecution in adult court, or alternatively, prosecutors should have the discretion to file such cases in adult court without judicial intervention.

The primary factors affecting decisions to transfer the juvenile to the adult system should be the seriousness of the crime, the threat to public safety, and the certainty of punishment.

Once a juvenile proceeding is filed in adult court and there is a finding of probable cause in adult court for the offense, all further prosecutions of the same youth should occur in adult court.

Commentary

The threat to public safety must be the paramount concern when addressing any criminal offender, whether the offender is an adult or juvenile. Juveniles who commit crimes usually are subject to the jurisdiction of juvenile court. In certain situations, depending on the seriousness of the crime, the age of the juvenile and other relevant factors, the juvenile offender may be tried in adult criminal court. This process is commonly referred to as transfer, waiver, or certification, depending on the jurisdiction. Whether a juvenile offender should be prosecuted in adult court is one of the most critical decisions facing the juvenile justice system.

²Sam Vincent Meddis, Poll: *Treat Juveniles the Same as Adult Offenders*, USA Today, Oct. 29, 1993, at 1A.

Three statutory methods generally are used to transfer a juvenile case to adult court (a state may use one or a combination):

- ➡ The legislature mandates the transfer of a juvenile case to adult court (for example, by setting the minimum age at which a juvenile may be transferred to adult court or by specifying that if a juvenile commits a certain crime, the case will be tried in adult court);
- ➡ The prosecutor has the discretion to determine whether to transfer a juvenile case to adult court; or
- ➡ The juvenile court judge is vested with the discretion to determine whether a juvenile case should be transferred to adult court.

The advisory group concluded that, given the sharp increase in violent crime among juvenile offenders and the importance of holding these offenders appropriately accountable for their actions, juveniles fourteen years of age or older who commit crimes of violence should automatically be transferred to adult court for prosecution. The consensus was that the same should be true for other serious, violent, and habitual offenders. Juvenile offenders who commit multiple prior felonies show by their own actions that the juvenile court sanctions previously imposed did not rehabilitate them. This behavior should no longer be tolerated. Punishment, as imposed through adult sentences in the form of incarceration, becomes appropriate for a juvenile offender with multiple prior juvenile convictions.

The advisory group also concluded that the primary factors affecting the decision to transfer a juvenile to the adult court system include the seriousness of the crime, the threat to public safety and the certainty of punishment. The traditional role of the juvenile justice system, placing rehabilitation and the interests of the child first, is no longer applicable in the case of serious, violent, or habitual offenders. A significant percentage of violent crimes are committed by juvenile offenders.³

Once a juvenile case has been transferred to adult court for prosecution, the advisory group suggested that prosecutions for any additional crimes committed by the youth also should occur in adult court, regardless of the seriousness of the offense. The group added the notion of "probable cause" to the policy to address those situations in which a juvenile who is prosecuted as an adult is acquitted for the most serious crime, but convicted of a lesser offense. In such a case, the acquittal on the more serious charge should not keep future offenses involving the youth out of adult court, because a finding of probable cause concerning the commission of the more serious offense previously was made by a court or grand jury.

³In 1992, 18 percent of all Violent Crime Index offenses were committed by juvenile offenders. Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, *1992 Juvenile Arrests*, Fact Sheet No. 13 (May 1994). The Violent Crime Index is a combination of the crimes of murder, forcible rape, robbery, and aggravated assault. *Id.*

Obviously, if evidence is brought forth resulting in the dismissal of such charge before trial, or if evidence brought forth at trial leads a judge to conclude that probable cause no longer exists as to the more serious offense in question, this logic would not hold. Thus, no automatic presumption of adult prosecution in future cases should apply.

The advisory group was somewhat divided on the appropriate treatment of a juvenile tried in an adult court and convicted only of a lesser offense. All agreed that the trial judge should impose a sentence, but some prosecutors felt the juvenile should be punished as an adult for the lesser offense. Others believed that the judge should have the option to sentence a juvenile under the provisions of the juvenile laws in such circumstances.

See Appendix B for a list of resources and statutory chart concerning waiver and transfer issues.

Detention

The need for adequate funding to ensure available detention facilities for serious, violent, and habitual offenders is an important juvenile justice issue. Detention facilities are necessary to protect the community, provide safety for the victim, assure the offender's appearance at trial, and provide appropriate punishment for serious, violent, and habitual juvenile offenders. In the days when juveniles were, for the most part, committing relatively minor offenses and the strictly rehabilitative mode of the juvenile courts was still appropriate, secured detention only was used in the most extreme cases. Unfortunately, the dramatic increase in the number of juvenile offenders coupled with the increasingly violent nature of their crimes demands that we bring issues such as punishment and public safety to the forefront. If we are to provide appropriate punishment for serious, violent, and habitual juvenile offenders and maximize public protection, we must address the issue of detention for juveniles and adults both before and after adjudication. Federal regulations concerning detention of juveniles have a negative effect on local resources and public safety and need to be amended.

Adequate detention space is necessary to protect the public from the serious, violent, and habitual offenders.

Secured detention should be an available punishment option for serious, violent, and habitual juvenile offenders.

It is necessary to revise regulations that require "sight and sound" separation of juveniles and adults to allow juvenile and adult offenders in the same age range to be housed together.

Commentary

In 1991, an estimated 123,120 juveniles were arrested in the United States for violent offenses.⁴ In the juvenile justice system in 1990, it was estimated that there were 47,899 secured beds available to house these dangerous offenders.⁵ It is clear that more secured beds are necessary to protect the public. Furthermore, detention is a concern during both pretrial and post-trial. If the number of secured beds equalled the number of serious, violent, and habitual juveniles awaiting trial, the number of violent crimes committed by these juveniles would decrease.

⁴*Id.*

Once a serious, violent, or habitual offender is found guilty, we must have both the mechanisms and the resources to place this juvenile in a secure facility. The ability to do so is often hampered by "sight and sound" regulations. These restrictions originated in the Juvenile Justice and Delinquency Prevention Act of 1974 (the "Act"), 42 U.S.C. § 5633 *et seq.* The Act attempted to regulate the housing of juveniles by establishing standards which states must meet in order to be eligible for federal formula grant funds. In 1980, the Act was amended to specify that juveniles charged with criminal acts "shall not be detained or confined in any institution in which they have contact with adult [inmates]."⁶ In today's world of limited resources, it is counterproductive to set up artificial barriers between a sixteen-year-old armed robber treated as a juvenile and a seventeen-year-old armed robber processed as an adult. Assuming treatment objectives are not compromised, joint housing of same-age offenders convicted of similar crimes is sensible. "Sight and sound" regulations increase the costs of operation for both the juvenile and adult systems, resulting in higher taxes without providing tangible benefits to the public.

There is a legitimate need to keep young offenders separate from older offenders. However, this need is met by statewide housing regulations. Federal limitations should not be a barrier. Detaining serious, violent and habitual offenders is in the best interest of society. Society, however, must supply the resources and eliminate the hindrances necessary to accomplish this goal.

Sample legislation: Juvenile Justice Act Requirements, 28 C.F.R. § 31.303 (1995).
Colo. Rev. Stat. § 19-2-203 (1994). Fla. Stat. ch. 39-042 (1994).

Recent case law on "sight and sound" regulations:

Horn by Parks v. Madison County Fiscal Court, 22 F.3d 653 (6th Cir. 1994).

See Appendix C for statutory chart on detention.

⁵ Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, *Juveniles Taken into Custody: Fiscal Year 1993* 78 (1995).

⁶*Id. as amended by Act of December 8, 1980, P.L. 96-509, 94 Stat. 2775 (1980).*

Sentencing

An important aspect of any juvenile justice system is the sanction component for delinquent conduct. The focus of this manual is on the serious, violent, and habitual offender whose crimes demand strong sanctions. However, some degree of flexibility is necessary in any sentencing structure to match the appropriate sanction to the criminal conduct and offender. If a goal of the juvenile justice system is to change behavior, then consequences for criminal conduct must be predictable and enforced uniformly. This is true whether the sanction is a diversion program that aims to rehabilitate or treat the offender, or a correctional program setting designed primarily to protect the public.

In 1992, more than 1,471,200 juveniles were arrested for delinquency crimes.⁷ Of that number, 37 percent were released without the imposition of any formal or informal sanction. Fifty-one percent were required to appear before a judge to answer formal charges. Fifty-four percent of all juveniles referred to the courts that year were placed in any correctional setting, and only 2 percent were referred to the adult system for trial.

Juvenile sentences should emphasize accountability for the juvenile's conduct, taking into account the need for public safety, the offender's prior criminal history, and the nature of the offense.

Prosecutors should work toward implementing statutory and judicial policies that place public safety and accountability for behavior as principal goals. Prosecutors should recognize that community involvement is necessary to crime prevention.

Prosecutors should take an active role in determining dispositional alternatives available for juvenile offenders.

Definite consequences including the use of detention space, should be in place for juveniles who violate conditions of probation.

If a juvenile's sentence is subject to modification under a state statutory scheme, no modification of the sentence should take place without the involvement of the prosecutor.

⁷Delinquency offenses are defined as "acts committed by juveniles that could result in criminal prosecution when committed by an adult." Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, *Juvenile Court Statistics 1992* 5 (1995).

Commentary

The advisory group reached a consensus that regardless of whether the juvenile or adult justice system is used by the individual states to adjudicate serious, violent or habitual juvenile offenders, meaningful sanctions should apply. Unfortunately, many states do not have sufficient resources to ensure that serious, violent, or habitual offenders are placed in a correctional setting. Juvenile codes that are primarily concerned with the best interest of the child at sentencing should be repealed. For these offenders, age alone should not be a mitigating factor in the prosecutor's recommended disposition or the court's sentencing order. The advisory group does not recommend probation for serious, violent, or habitual offenders.

While there is a need to rehabilitate less serious juvenile offenders, an important aspect of rehabilitation includes punishment. Adequate resources are necessary for courts to punish offenders and utilize other effective sanctions. Failure to provide consequences for noncompliance of parole or probation conditions endangers the public, creates an image that the system is "soft," and increases the likelihood that at-risk youth will become more serious, violent, or habitual in their behavior.

Sample Legislation: Fla. Stat. ch. 39.054 (1994 & Supp. 1995).
Minn. Stat. § 260.193 (1994 & Supp. 1995).
Tex. Fam. Code Ann. § 54.04 (1995).

See appendix D for statutory chart on sentencing.

Terminology

Historically, the juvenile justice system has employed its own terminology, ignoring parallel terminology in the adult criminal justice system. This practice, in addition to confidentiality requirements, protected the juvenile from public scrutiny. However, incompatible terminology unduly complicates juvenile proceedings for the juvenile and other members of the public, including witnesses and victims. Incompatible terminology also contributes to the belief that the system does not provide the same degree of accountability as the adult system.

The juvenile justice system should use terms consistent with the adult criminal justice system.

Commentary

The use of euphemisms in the juvenile justice system minimizes the seriousness of the juvenile's conduct, misleads offenders, and confuses the public. The use of consistent terms in both the juvenile and adult criminal systems will make the juvenile system easier to understand for the juvenile, the victim, and the general public. Different terminology is appropriate in child protection cases (e.g., dependency or neglect) and non-criminal status offense cases (e.g., truancy or curfew violations) to describe and promote the goals of those cases and to distinguish them from criminal violations.

Today, the social welfare philosophy has radically changed legal practice. Criminal acts by juveniles are no longer crimes, but rather, euphemistic "causes of action." Juveniles caught in the act of crime cannot be jailed, but only momentarily detained. Instead, juveniles demand "services" and receive "treatment." Even the petition's traditional style is altered from the normal "State versus Defendant" to the *parens patriae* form of, "In the matter of (juvenile's name)." The juvenile is not considered an accused, but merely a "child" Criminal charges are presented merely by filing a "petition" rather than by indictment or information. The hearing is not considered a trial, but an "adjudicatory hearing." Juveniles are thus "adjudicated" rather than convicted of crimes. Courts are thus unable to impose judgment and sentence, but only "disposition." Most importantly, punishment is forbidden.⁸

⁸Edward L. Thompson, *Juvenile Delinquency: A Judge's View of Our Past, Present, and Future*, 46 Okla. L. Rev. 655, 657-58 (1993).

Statements by Juveniles

Statements, admissions, and confessions of juveniles constitute vital evidence, as is the case with adults. Juveniles are entitled to the same constitutional protections as adults. When juveniles give statements and make admissions or confessions, they should be afforded the same procedural protections as adults. The totality-of-the-circumstances test affords sufficient protections by allowing individualized protection of the right without bestowing additional protections on an entire class in which certain individuals may not warrant protection.

When taking statements, prosecutors should give the same protections to both juveniles and adults. Admissibility of such statements in court should be based on the totality-of-the-circumstances.

Commentary

Both juveniles and adults are entitled to the same constitutional rights as set forth in *Miranda v. Arizona*.⁹ The *Miranda* advisory, limited to statements of custodial interrogation by police, assures that suspects in custody give statements voluntarily with knowledge of the right to remain silent and the right to counsel. *Miranda* rights can be waived if the waiver is made knowingly, voluntarily, and intelligently. A juvenile's age should not create a presumption that the youth being questioned did not understand and, thus, voluntarily waived his or her *Miranda* rights. A juvenile's age also should not result in the need for additional criteria to determine whether the youth's *Miranda* rights were properly waived.

The totality-of-the-circumstances test is appropriate for determining if the waiver and the statement were voluntary and also if that waiver was made knowingly, voluntarily and intelligently. The totality-of-the-circumstances test looks at "the particular facts and circumstances surrounding that case, including the background, experience and conduct of the accused." *Edwards v. Arizona*.¹⁰ The test was applied to juveniles in *Fare v. Michael C.*¹¹ In *Fare*, the Court explained:

⁹384 U.S. 1 (1967).

¹⁰451 U.S. 477, 482 (1981).

¹¹442 U.S. 707, 725 (1979).

The totality-of-the-circumstances approach is adequate to determine whether there has been a waiver even where the interrogation of juveniles is involved. We discern no persuasive reasons why any other approach is required where the question is whether a juvenile has waived his rights, as opposed to whether an adult has done so. The totality approach permits - indeed it mandates - inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights Where the age and experience of a juvenile indicate that his request for his probation officer or his parents is, in fact, an invocation of his right to remain silent, the totality approach will allow the court the necessary flexibility to take this into account in making a waiver determination. At the same time, that approach refrains from imposing rigid restraints on police and courts in dealing with an experienced older juvenile with an extensive prior record who knowingly and intelligently waives his Fifth Amendment rights and voluntarily consents to interrogation.¹²

The presence of a parent or guardian during custodial interrogation is a consideration in the totality-of-the-circumstances analysis.¹³ A juvenile's relationship with his or her parent or guardian may be tenuous at best. Many youths live independently. A parent may not be a "friendly advisor" to his or her child. The totality-of-the-circumstances test takes into consideration all of these factors in determining whether the child voluntarily gave the statement and whether a waiver was made knowingly and intelligently.

The exclusionary rule, as established by case law, should be similar in application for adults and juveniles. Concepts such as "the doctrine of the fruit of the poisonous tree," "purging the taint," "good faith exception," and impeachment should apply to both juveniles and adults in similar circumstances. Statutes and court rules concerning the admissibility of statements of a juvenile should be consistent with those applicable to adults.

See Appendix E for state statutory comparisons on statements made by a juvenile.

¹²*Id.* at 725-26.

¹³*See generally, id.*

Parental Responsibility

Lawmakers concerned with the effect of juvenile crime on public safety continue to search for ways to reduce it. Some legislators propose penalizing the parents of child offenders.¹⁴ The traditional common law rule is that no one is responsible for the negligent acts of another.¹⁵ "However, an exception is made when a special relationship, such as that of parent and child, exists between the parties. When this relationship is present, the common law imposes an affirmative duty on parents to supervise and control their children."¹⁶ Should prosecutors as a matter of policy support increasing liability of parents in the criminal context for the actions of their children?

Parents or legal guardians should be required to participate in the judicial process and the disposition of juvenile cases.

Without diminishing the responsibility of the juvenile, parents should be held financially accountable for damages caused by their children and for the costs associated with the prosecution, placement, and treatment of their children.

Commentary

Laws penalizing parents of child offenders are, in part, designed to shift the burden of controlling delinquent behavior from state governments to parents.¹⁷ These laws take various forms. Some states impose parental responsibility in situations where there is notice and an opportunity to control.¹⁸ Other states limit parental liability to those situations in which parents take some direct action that contributes to the delinquency of their children.¹⁹

The advisory group recognized the merit in the trend toward parental liability. However, it is important to recognize that children are individuals and control their own decisions and actions.²⁰ Many parents, despite their best efforts, simply cannot control their children. Each state should work toward balancing the use of parental liability as a means to force parents to control their children, holding juveniles personally accountable for their actions, and making victims whole.

¹⁴Michelle L. Maute, Note, *New Jersey Takes Aim at Gun Violence by Minors: Parental Criminal Liability*, 26 Rutgers L.J. 431, 433 (1995).

¹⁵*Id.* at 438-39.

¹⁶*Id.* at 439.

¹⁷*Id.* at 434.

¹⁸*Id.* at 440.

¹⁹*Id.* at 464.

²⁰*Id.* at 446.

The advisory group concluded that effective parental responsibility laws should include the parent in the judicial process in addition to forcing parents to fulfill their parental obligations. Specifically, parents should be responsible for the following:

- Attending all court proceedings, provided that their employers allow such attendance;
- Participating in rehabilitative programs with their children;
- Paying costs associated with providing room and board for their children in the system (if financially able);
- Participating in court-ordered programs that require parental involvement;
- Performing community service with their children;
- Participating in parenting skills classes when appropriate; and
- Providing restitution, in part, to victims.

In order to ensure that parental responsibilities can be mandated, courts must have the authority to hold parents in contempt for non-compliance. Any statutory scheme must clearly delineate who in the system will be responsible to ensure parental compliance. In the final analysis, all actions taken against parents should be in addition to appropriate actions taken against juveniles, and not in place of such actions. Parental responsibility is only one of several means necessary to control serious, violent, or habitual juvenile offenders.

Sample Legislation: Fla. Stat. ch. 790 (Supp. 1995).

Ky. Rev. Stat. Ann. § 530.060(1) (Michie/Bobbs-Merrill 1990).

N.Y. Penal Law § 260.10(2) (McKinney 1989).

Tex. Fam. Code § 54.041 (1995).

See Appendix F for an analysis of state parental responsibility statutes.

Information Access

Access to all relevant data concerning a juvenile offender is critical to a prosecutor at all stages of the prosecutorial function. Charging decisions, for example, are influenced by a juvenile's prior criminal history. A juvenile's history of treatment, school misbehavior, and truancy also may affect a prosecutor's decision and the ultimate disposition recommendation. Statutes, rules, or common practice make it difficult for information concerning juveniles to be exchanged easily. The closing of juvenile court proceedings to the public and the corresponding classification of juvenile court records as confidential are two examples of practices that inhibit the free exchange of data concerning juvenile offenders. Prosecutors need national standards to develop a uniform record-keeping system pertaining to juvenile offenders.

To properly perform their prosecutorial duties, prosecutors should have complete access to, and use in court of, information and records from other agencies.

Legislation should be implemented that mandates interagency sharing of relevant information pertaining to juveniles.

Juvenile court proceedings should be open to the public.

A national uniform record keeping system for juvenile offenders should be established.

Commentary

In most jurisdictions, juvenile court proceedings are closed to the public for reasons related to the historical underpinnings of the juvenile court. Juvenile courts historically were designed to provide a more therapeutic approach to juvenile offenders, focusing on their best interests rather than protecting the public. Rehabilitation, rather than punishment, was, and in most jurisdictions still is, the primary focus of the juvenile justice system.

Because of this primary focus, privacy of juvenile court proceedings and records evolved. Criminal justice professionals viewed public access as having a negative impact on efforts to rehabilitate the youthful offender. Today, however, there is a growing perception that juvenile court proceedings should focus more on punishment and protection of the public than on rehabilitation and the child's best interests, especially in the case of the serious, violent, and habitual offender.

The public has the right to know the identities of serious, violent, and habitual offenders who commit crimes in their communities. Consequently, legislation or court rules need to be modified to open juvenile court proceedings to the public in cases involving serious, violent, and habitual offenders. The opening of juvenile court proceedings in these cases will ensure greater accountability for the juvenile offender and the process on the whole. It will also ensure greater access to juvenile court information for other agencies in the criminal justice system.²¹

One of the unfortunate results of the long-standing practice of closing most juvenile court proceedings to the public is that the quality of juvenile records is very poor. According to a 1988 study, "very few juvenile justice agencies conduct regular audits of the accuracy of their juvenile records or have any quality control policies in place. In addition, very few states have statutory procedures which permit an individual to review his or her own record to correct inaccuracies."²² These problems must be corrected.

Restrictions on access to relevant information on a juvenile's background are a detriment not only to a prosecutor but to many other agencies as well. For example, a police officer needs information about a juvenile's history of violence, possession of dangerous weapons, or gang-related activities to ensure that, when attempting to make an arrest of the youth, he or she can take proper safety precautions. A juvenile court judge or detention officer needs to know the juvenile's prior record of runaway behavior, history of violence, or suicide attempts. This information will help in determining the youth's risk of flight and harm to others or self, when considering whether the youth should be detained prior to trial. A juvenile court judge or probation/corrections officer should know a juvenile's prior record, prior placement history, record of success or failure in prior treatment programs, and record of progress in the current placement program. This information will help the officer determine a juvenile's placement following conviction and whether the juvenile is ready for discharge from the current placement program.

Many juvenile justice agencies, schools, and juvenile treatment and prevention programs have goals and information needs that overlap. Without the mutual exchange of comprehensive and mandatory information concerning juvenile offenders, duplicate efforts or ignorance may exist among agencies.

Most jurisdictions collect juvenile records that document both a legal and a social history. Most agencies that come into contact with juveniles, including police, prosecutors, courts, schools, private service providers, and state or local human service agencies, keep records. Legal history records include the allegations leading to the investigation of a petition or charge, motions, court findings, and court orders. Social records include information about a juvenile's family background, such as the names of the youth's parents and their addresses and phone numbers, home environment, school attendance record, academic records, drug or alcohol abuse history, and history of abuse or neglect.

²¹It is important to note that while proceedings for serious, violent and habitual offenders should be open to the public, this should not be viewed as an endorsement by the advisory group for the use of cameras in the courtroom.

²²Etten and Petrone, *supra* note 21, at 78.

Many state and federal laws classify legal and social history data as private or confidential and restrict the exchange of such information among various agencies, including the prosecutor's office. In addition to statutory barriers to the exchange of information pertaining to juveniles, many agencies have created their own internal barriers to disclosing such information. As noted in a recent article, agencies often lack an established policy concerning information exchange and simply decline requests for data out of routine.²³ The article concludes that these non-legal barriers to information exchange are as much of a problem with sharing of relevant data on juveniles as are the legal restrictions. "[T]here are very few legal barriers to information sharing among juvenile justice agencies, but instead the barriers are often a product of long standing agency practice and mistrust among agencies."²⁴ The article contains an excellent overview of both the federal and state case law in the area of juvenile records, as well as a summary of federal statutes on the subject.

Prosecutors may wish to promote statutory provisions that address the issue of confidentiality. Proposed legislation should include language that would allow information to be exchanged to the extent necessary for the acquisition, provision, oversight, or referral of services in support among agencies; for individuals who have "a need to know" in the course of investigations; and for case management purposes in the administration of their respective programs. It is important that agencies share information to promote better public safety and the best interests of the child and his or her family.

"Case management purposes" should include assessments, evaluations, treatment, education, disposition, and placement of a child. Interagency coordination of other services that are incidental to the administration of the program should also be considered in the best interests of the child. However, authorities must take care to protect privileged information, such as psychological evaluations, that may harm the child if shared with others.

Those with "a need to know" should include agencies or individuals who care for, treat, supervise, or protect a child or have a legal responsibility to investigate allegations of abuse or criminal conduct. A single, time-limited release form should be used for voluntary cases by all agencies.

The Serious Habitual Offender Comprehensive Action Program (SHOCAP)²⁵ provides a successful example of what widespread sharing of relevant data concerning juveniles can accomplish. SHOCAP policies serve as cooperative information sharing and case management programs that promote coordination among law enforcement, prosecutors, probation, corrections and social service agencies, schools, and other community-based services. The goal of these initiatives is to enable agencies to develop comprehensive strategies to deal with serious habitual offenders on the basis of all available data concerning the youth. States without SHOCAP initiatives may wish to consider adopting such a program.²⁶

²³Tamryn J. Etten and Robert F. Petrone, *Sharing Data and Information in Juvenile Justice: Legal, Ethical, and Practical Considerations*, Juv. & Fam. Ct. J. 65 (1994).

²⁴*Id.* at 79.

²⁵The Office of Juvenile Justice and Delinquency Prevention established two demonstration projects in the early 1980's: the Serious Habitual Offender/Drug Involved Program established in the law enforcement community and the Habitual Serious and Violent Juvenile Offender Program, located within the prosecutors' offices. Fox Valley Technical College, U.S. Department of Justice, *Habitual Juvenile Offenders: Guidelines for Detention* 1 (1994). SHOCAP is an extension of these two programs. *Id.*

²⁶For more information on SHOCAP, contact Fox Valley Technical College at (800) 648-4966.

The development of a national uniform record-keeping system for juvenile offenders is essential to ensure that prosecutors and representatives from other agencies can obtain accurate and comprehensive data to assist them in carrying out their responsibilities. For example, a database for maintaining fingerprints and photographs of juvenile offenders does not exist on the state or national levels. In addition, there is no database for maintaining DNA samples of juvenile sex offenders in most jurisdictions. However, many states have such systems for adult sex offenders. These types of data are essential for law enforcement agencies that deal with serious, violent and habitual juvenile offenders.

SHOCAP legislation: Fla. Stat. ch. 39.058 (1994).

Ill. Rev. Stat. ch. 405 para. 1-8.2 (Supp. 1995).

Okla. Stat. Ann. tit. 100 § 1160.1 (West 1987 & Supp. 1995).

Va. Code. Ann. § 16.1-330.1 (Michie 1988 & Supp. 1995).

See Appendix G for more information on SHOCAP training and statutory chart on confidentiality and access to records.

Victims' Rights

Society today is demanding that victims be afforded a more meaningful role in the adjudication of adult and juvenile offenders. Victims deserve access to the juvenile justice system, and prosecutors are ready to fulfill their role in ensuring this access.

Victims should have the same rights in juvenile court that they have in adult criminal court.

Restitution should be sought whenever appropriate.

Victims should not be mandated to participate in mediation with offenders.

Commentary

Prosecutors are the logical group to incorporate victim involvement into the juvenile justice system. However, many states restrict the type and amount of information that may be released to the public, including victims. Some states bar the public, including the victims, from juvenile proceedings. These practices further diminish the value and effectiveness of the juvenile justice system in the eyes of the public. As Paul G. Cassell writes in a recent law review article, "[e]xcluding victims from any serious juvenile proceedings seems hard to justify. The effect of crime on a victim does not depend on the age of the criminal. Moreover, while one can understand the need to allow juveniles to hide their errors from the general public, concealment from the victim is impossible."²⁷

Prosecutors should meet their obligations to victims by seeking restitution in appropriate cases and involving the victim in the judicial process. Additionally, prosecutors should work to remove legislative barriers that inhibit their ability to allow the victim access to judicial proceedings. This is especially true with regard to laws that prohibit a victim from providing an impact statement to the judge prior to imposition of sanctions.

Sample legislation: Tex. Crim. Proc. Code Ann. § 56.01 (1995).

Utah Code Ann. § 77-38-1 (1995) *et seq.*

See Appendix H for summaries of restitution programs and charts.

²⁷Paul G. Cassell, *Balancing the Scales of Justice: The Case for and The Effects of Utah's Victims' Rights Amendment*, 1994 Utah L. Rev. 1373, 1415 (1994). See also "Information Access" section, *supra* notes 21-26.

Guns and Dangerous Weapons

The availability, distribution and use of guns by juveniles in the commission of crimes have escalated to epic proportions. Because of this crisis, the public has demanded that the criminal justice system take a stronger stance on offenders who possess or use dangerous weapons.

Serious, violent, or habitual juvenile offenders who illegally use or possess firearms or dangerous weapons should face enhanced penalties similar to those imposed on adult offenders.

Commentary

The advisory group recognized that the issue of guns and juveniles is a politically charged and controversial topic. The discussion often is presented as a gun control issue when the real issue is one of safety in the community. Individual prosecutors have varying views on gun control, but there should be no dispute that individuals who illegally use dangerous weapons should face serious consequences in the criminal and juvenile justice systems.

Juveniles increasingly use guns in the commission of crimes, illegally possess guns and are victims of gun-related violence. A recent report found a strong relationship among illegal gun ownership, delinquency, and drug abuse.²⁸

Researchers studied tenth graders in Rochester, New York and found that fifty-seven percent of those youths who owned illegal guns carried them on a regular basis, and 24 percent of those same youths used an illegal gun in a street crime. According to the report, gun possession is common for the serious juvenile offender.

Also significant is a 1991 report in which the FBI found that when a juvenile was the victim of a violent crime by another juvenile, a gun was used 25 percent of the time.²⁹ The report also noted that more than 50 percent of juvenile murder victims were killed with a firearm.

²⁸Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, *Juvenile Offenders and Victims: A National Report*, August 1995.

²⁹*Id.* at 21.

Several states already have new laws relating to the illegal possession and criminal use of weapons by juveniles. One component of this legislation is enhanced penalties for gun use. These penalties involve longer juvenile sentences or trial in adult court. Some legislation also attaches criminal responsibility to adults who provide the juvenile with a weapon or with access to a weapon.

Sample legislation: Colo. Rev. Stat. § 18-12-108.5 (1995) *et seq.*
Fla. Stat. ch. 790.22 (1994 & Supp. 1995).
Minn. Stat. § 624.713 (1994 & Supp. 1995).
Tex. Educ. Code Ann. § 21.3011 (1995).

See Appendix I for additional information and chart on guns and dangerous weapons.

Gangs

Obviously, the impact of organized criminal activity by juveniles requires the criminal justice system to address the problem. The following policy statements are designed as an overview of major factors that should be considered when developing a response to gang-related activity within a prosecutors jurisdiction.

Prosecutors should establish as priorities the identification, prosecution, and punishment of gangs and gang-related behavior.

Individuals who commit crimes for the benefit of a gang should be subject to enhanced penalties.

Adequate resources should be provided to prosecutors to assist in the prosecution of gang-related crimes and the protection of witnesses.

Specialized prosecution is necessary to assist in the effective prosecution and punishment of crimes committed for the benefit of gangs. Prosecutors should be encouraged to share information with smaller jurisdictions and provide technical assistance regarding gang prosecution.

Commentary

The advisory group emphasized the importance of reminding prosecutors of the basic need to set a high priority on gang issues. Depending on the size of the jurisdiction and the types of gang problems, community model programs may vary. Examples of such models are included in the resource references. Ignoring the developmental stages of gang activity is the most common mistake that prosecutors and other law enforcement officials in a community make.

Gang activity is not mere delinquency. Gang exploits have become increasingly criminal in nature. It is important that the consequences imposed reflect the seriousness of the behavior. Prosecutors must recognize the need for public safety and the goal of deterrence. As a gang becomes organized to commit crimes for profit, control and reputation, its members and "wannabes" likely are directed to perform criminal acts. The gang itself then reaps the profits. This escalation harms the victim and society as a whole.

Even if prosecutors give the gang issue high priority, little can be accomplished unless adequate resources are provided to assist them. This can be done by providing sufficient detention space, appropriate prevention programs, and human resources to enable all personnel within the juvenile justice system to do their jobs efficiently and effectively. The success of preventive programs in curtailing gang activity within a community depends on the prosecutor taking action against those who, in spite of preventive intervention, continue their gang involvement. These individuals must be isolated from their peers and placed in institutional detention. Only those prosecutors with adequate staff, court support, and placement opportunities have achieved some success in reducing gang activities.

One issue often overlooked is the ability to protect witnesses who testify against gang members from retribution by the gang. Witnesses must feel that their testimony will not result in retaliation by the gang members on themselves or their families. The ability of the prosecutor to provide protection, relocate a witness, or arrange for similar services can go a long way in promoting the cooperation of a frightened witness. This is one area in which the advisory group believed the federal government can provide both technical and resource assistance to local prosecutors.

Current studies indicate that specialized task force units composed of prosecutors and law enforcement agents have the greatest chance of success in proceeding against gangs and gang members. The advisory group recognized that small- and medium-size jurisdictions (the majority of offices) do not have the staff and resources to create such units. To provide the most reasonable alternatives for these offices, the advisory group recommended that larger offices provide assistance. The experience and information available to the larger offices, if shared, could allow smaller offices to avoid reinventing the wheel when trying to address gang-related issues. Some of the specific areas in which aid should be available include:

- ➡ evidentiary matters, including briefs, experts, and demonstrative models;
- ➡ charging decisions, including forms, history, and approaches;
- ➡ restrictions on ability to gather intelligence; and
- ➡ other technical assistance.

Sample legislation: Cal. Penal Code § 186.20 (Deering 1995).

Fla. Stat. ch. 874.01 (1994).

Minn. Stat. § 609.229 (1994).

See Appendix J for list of state statutes and additional information on gangs and chart.

Federal Responsibility

Recently, prosecutors have witnessed the increased involvement of the federal government in what were historically denoted local crimes. For example, armed robberies of occupants of a vehicle became the federal crime of carjacking. As evidenced in the Supreme Court's recent decision, *U.S. v. Lopez*,³⁰ the courts may be signaling the end of this federal expansion in the prosecution of local crimes. In this environment, it is important to define the role of the federal government in the area of juvenile prosecution.

Responsibility for juvenile prosecution should be left to the states.

Commentary

A review of current legislation reveals that many states take varied approaches to juvenile crime. This diverse legislation is important, since the effectiveness of responses to juvenile crime may vary from jurisdiction to jurisdiction. The working group strongly believed that prosecution of juveniles should be left to local prosecutors, who are able to implement programs and policies needed to respond to local problems. However, the group recognized that there are some crimes that historically and appropriately are left to the federal government for prosecution. These crimes concern matters on federal reservations and immigration issues.

The advisory group recommended that the federal government play a larger role in those juvenile activities that cross state lines by sharing relevant information with local prosecutors. Finally, the laws that prevent federal agencies or agencies that receive federal monies from sharing information regarding juveniles should be amended or repealed.

Sample federal legislation: 18 U.S.C.S. § 5032 (1995).
28 C.F.R. § 0.57 (1995).

³⁰115 S.Ct. 1624 (1994).

Conclusion

Society faces a new breed of juvenile delinquent: the serious, violent, and habitual juvenile offender. The current juvenile justice system was created to handle nonviolent and at-risk youth and is ill equipped to handle the new breed of delinquents. Changes to the juvenile justice system must be made to address the juvenile offender problem more effectively. Prosecutors must have the discretion to waive juvenile cases to adult court; law enforcement, social services and other agencies must share information; and juvenile proceedings should be open to the public. Also, juvenile sentencing practices should progress toward more adultlike sanctions, while maintaining case-by-case flexibility and using alternative treatment and diversion programs when appropriate. Regardless of what is done, the advisory group unanimously agreed that some change is essential to combat the rising juvenile delinquency problem.

Ultimately, society must play a larger role in addressing the juvenile offender epidemic. Prosecutors are in the unique position of acting as society's voice in the juvenile justice system and are entrusted with protecting society. Prosecutors must continue to adopt new policies and institute new programs to educate communities on how to increase public safety and protect their citizens from the serious, violent, or habitual juvenile offender.

Arizona Criminal Justice Commission

Youth and Crime Task Force Working Groups' Recommendations

The Arizona Criminal Justice Commission convened the Youth and Crime Task Force (Task Force) to develop and suggest ways that the Arizona juvenile justice system can be redesigned to deal "with children as offenders and children as victims." Several principles guided the working groups: cohesion, integrity, accountability and early intervention. These principles are embodied in the Task Forces' final observations and suggestions. The Task Force cautions, however, that although no promises can be made about the effectiveness of these suggestions, everyone agrees that what is in place now is not working and must be changed.

Protecting Society Working Group

The Protecting Society Working Group issued its recommendations on December 21, 1993. The Working Group's main recommendation was the creation of "Children's Action Centers" (CAC) to provide intake and case management services, children's and family services, and administrative hearing services. The Working Group also recommended that all juvenile cases go through CAC. Other recommendations include changes in the restitution laws, prosecutorial discretion regarding transfer of cases to adult court and the use of alternative sentencing for first time juvenile offenders.

The Working Group also submitted an alternative proposal recommends that the juvenile justice system be used only for first-time non-violent offenders. All other juvenile offenders would be placed in the adult system.

Protecting Children Working Group

The Protecting Children Working Group's function was to recommend ways in which the protection of children in abusive situations can be changed. The Working Group placed most of the responsibility of the administrative removal process on the CAC, with the Superior Court having the power of review of CAC decisions.

Schools and Crime Working Group

The Schools and Crime Working Group focused its efforts on the safety of children and teachers in Arizona schools. To ensure this safety, the Working Group recommended a combination of educational, recreational and prevention programs to intervene early in the lives of children and dissuade them from violence and crime. In the words of the Working Group, "[o]ur recommendations focus on creating . . . [s]chools where learning is the primary focus, where the students are held accountable, where the environment is open and hospitable, and where the community can come and participate."

National Prosecution Standards

National District Attorneys Association

Juvenile Justice

Excellence in criminal prosecution demands excellence in all areas-including both adult and juvenile justice. Whether in response to formalization of juvenile court procedures or increased interest in juveniles and the crimes they commit, America's prosecutors are playing a larger role in the juvenile justice system. The important substantive changes in prosecutorial involvement in juvenile delinquency cases prompted NDAA's Juvenile Justice Committee to revise National Prosecution Standard 19.2, Juvenile Delinquency, originally adopted in 1977. The revised standard is designed to guide prosecutors in redefining their role. Many years have passed since the Supreme Court rendered its landmark decision, *In Re Gault*, 387 U.S. 1 (1967). The revised standard incorporates many of the lessons learned since then.

The standard is aimed at promoting justice in juvenile delinquency cases. It emphasizes the prosecutor's duty to provide for the safety and welfare of the community and victims and, at the same time, consider the special interests and needs of juveniles to the extent possible without compromising that primary duty. The standard accepts the premise that a separate court for most juvenile delinquency cases continues to be an indispensable alternative to the adult court. Members of the NDAA Juvenile Justice Committee prepared ten drafts over 18 months before the final revision of this standard was adopted by the NDAA Board of Directors. Chief prosecutors on the Committee extensively discussed and debated the revisions, helped by input from other chief prosecutors, deputy and assistant district attorneys, and juvenile justice practitioners. The Committee also examined carefully the Institute of Judicial Administration/American Bar Association (IJA/ABA) Juvenile Justice Standards published in 1980. With respect to juvenile prosecution, the standard largely agrees with the IJA/ABA Volume, *Standards on Prosecution of Juveniles* (IJA/ABA Reporter: James P. Manak).

The standard necessarily established positions on controversial issues but incorporated the best guidelines the Committee could suggest for prosecutors. It was recognized that different approaches to juvenile prosecution are necessary because of varying state law and practice, limitations on resources, and institutionalized philosophic differences. The standard is therefore intended to be advisory only. Chief prosecutors remain the final arbiter of policy in their offices, and the commentary to the standard makes clear this flexibility. At the same time, the Committee believed that the standard sets forth ideal approaches to the prosecution of juvenile delinquency and is worthy of each chief prosecutor's careful consideration. The standard can also be used as a model by prosecutors seeking changes in state law and practices.

92.1 General Responsibilities of a Prosecutor

a. Appearance of Prosecutor

The prosecutor should appear as an attorney for the state in all hearings concerning a juvenile accused of an act that would constitute a crime if he were an adult ("a delinquent act"). This includes but is not limited to hearings for: detention, speedy trial, dismissal, entry of pleas, trial, waiver, disposition, revocation of probation or parole status, and any appeal from or collateral attacks upon the decisions in each of these proceedings.

b. Primary Duty

The primary duty of the prosecutor is to seek justice while fully and faithfully representing the interests of the state. While the safety and welfare of the community, including the victim, is their primary concern, prosecutors should consider the special interests and needs of the juvenile to the extent they can do so without compromising that concern.

c. Personnel and Resources

Chief prosecutors should devote specific personnel and resources to fulfill their responsibilities with respect to juvenile delinquency proceedings, and all prosecutors' offices should have an identified juvenile unit or attorney responsible for representing the state in juvenile matters. Additionally, the prosecutor for juvenile cases should have adequate staff support to the extent possible, given office resources including: clerical and paralegal personnel, interns, investigators, and victim/witness coordinators.

d. Qualifications of Prosecutor

Training and experience should be required for juvenile delinquency cases. Chief prosecutors should select prosecutors for juvenile court on the basis of their skill and competence, including knowledge of juvenile law, interest in children and youth, education, and experience. While the unit chief, if any, must have criminal trial experience, assistant prosecutors assigned to the unit should also have prior criminal trial experience, if possible. Entry-level attorneys in the juvenile unit should be as qualified as any entry-level attorney and receive special training regarding juvenile matters.

e. Cooperation

To the extent possible, prosecutors should cooperate with others in the juvenile justice system to promote speedy trials and efficient case processing.

92.2 Responsibilities of the Prosecutor for Charging Function

a. Right to Screen Cases and File Petitions

The prosecutor should have the exclusive right to screen facts obtained from the police and other sources to determine whether those facts are legally sufficient for prosecution. If it is determined that the facts are legally sufficient, the prosecutor should determine whether a juvenile is to be transferred to adult court, charged in juvenile court, or diverted from formal adjudication.

b. Definition of Legal Sufficiency

Legally sufficient cases are those cases in which the prosecutor believes that he can reasonably substantiate delinquency charges against the juvenile by admissible evidence at trial. The charging process requires early determination as to whether the facts constitute *prima facie* evidence that a delinquent act was committed and that the juvenile accused committed it. If the facts are not legally sufficient, the matter should be terminated or returned to the referral source pending further investigation or receipt of additional reports.

c. Prosecutorial Disposition of Legally Sufficient Cases

The prosecutor or a designee should further review cases determined to be legally sufficient to decide whether the case will be transferred to adult court, filed as a formal petition with the juvenile court, or diverted.

d. Juveniles Held in Custody

If the juvenile is being held in custody after arrest or detention, the prosecutor should screen the facts for legal sufficiency within 24 hours (excluding Sundays and legal holidays) after receipt from the police or other referral sources, unless state law or practice provides for a shorter period. If the allegations do not substantiate a legally sufficient basis for proceeding, the matter should be terminated and the juvenile released. If the juvenile continues to be held in custody based upon legally sufficient facts, the prosecutor should determine within 72 hours (excluding Sundays and legal holidays) after receiving the facts from police and other referral sources whether the case should be transferred to the adult court, filed as a formal petition with the juvenile court, or diverted. State law or practice may provide, however, for a shorter period.

e. Juveniles Not Held in Custody

If the juvenile is not held in custody, the facts should be screened for legal sufficiency within seven calendar days from receipt from police or other referral source, unless state law or practice provides for a shorter period. If the allegations do not substantiate a legally sufficient basis for proceeding, the matter should promptly be terminated. If the allegations do substantiate a legally sufficient basis for proceeding, the prosecutor should transfer the case to

an adult court, file it as a formal petition with the juvenile court, or divert it within ten calendar days after receipt of the report, unless state law or practice provides for a shorter period.

f. Transfer or Certification to Adult Court

To the extent that the prosecutor is permitted by law to use discretion to decide whether a juvenile delinquency case should be transferred to the adult court, prosecutors should seek transfer only if the gravity of the current alleged offense or the record of previous delinquent behavior reasonably indicates that the treatment services and dispositional alternatives available in the juvenile court are:

- (1) Inadequate for dealing with the youth's delinquent behavior; or
- (2) Inadequate to protect the safety and welfare of the community.

g. Criteria for Deciding Formal Adjudication Versus Diversion

The prosecutor or a designee must further review legally sufficient cases not appropriate for transfer to adult court to determine whether they should be filed formally with the juvenile court or diverted for treatment, services, or probation. In determining whether to file formally or to divert, the prosecutor or designated case reviewer should investigate to decide what disposition best serves the interests of the community and the juvenile, considering the following factors:

- (1) The seriousness of the alleged offense;
- (2) The role of the juvenile in that offense;
- (3) The nature and number of previous cases presented by the police or others against the juvenile, and the disposition of those cases;
- (4) The juvenile's age and maturity;
- (5) The availability of appropriate treatment or services potentially available through the juvenile court or through diversion;
- (6) Whether the juvenile admits guilt or involvement in the offense charged;
- (7) The dangerousness or threat posed by a juvenile to the person or property of others;
- (8) The provision of financial restitution to victims; and
- (9) Recommendations of the referring agency, victim, and advocates for the juvenile.

h. Qualifications of Case Screeners

Case screening may be accomplished by the prosecutor or by screeners employed directly by the prosecutor. If case screeners outside the prosecutor's office are employed, the prosecutor should have the right to review charging decisions and to file, modify, or dismiss any petition. Screening for the legal sufficiency of facts related to a criminal incident should be conducted only by a prosecutor. Further screening of legally sufficient cases for prosecutorial disposition (transfer, filing with juvenile court, or diversion) should be conducted by or with advice of screeners knowledgeable about treatment and services for children and youth.

i. Role of the Prosecutor in Formal Filing

Formal charging documents for all cases referred to juvenile court should be prepared or reviewed by a prosecutor.

92.3 Diversion of Legally Sufficient Cases

a. The Role of the Prosecutor in Diversion

The prosecutor is responsible for deciding which legally sufficient cases should be diverted from formal adjudication. Treatment, restitution, or public service programs developed in his office may be utilized or the case can be referred to existing probation or community service agencies. If the probation or service agency decides the case is not appropriate for their services, they must return it immediately to the prosecutor's office. The prosecutor will then make a further determination about an appropriate disposition.

b. Diversion Requires Admission of Involvement

A case should be diverted only if the juvenile admits guilt for the offense(s) charged in the written diversion contract. If the juvenile does not admit guilt, the case should be filed with the juvenile court or terminated. Admissions by the juvenile to the prosecutor or case screener in the course of investigating an appropriate prosecutorial disposition should not be used for any purpose by the prosecutor. Admissions in the juvenile's written diversion contract, however, may be used by the prosecutor in any subsequent adjudication.

c. Diversion Contract

All cases diverted require a written diversion contract between the juvenile and the supervising authority. The diversion contract should set forth the conditions of the informal disposition or diversion, together with an admission of guilt and waiver of a speedy trial and should be executed by both the juvenile and his parent or legal guardian. Diversion contracts should, in general, specify duties of the juvenile and the supervising authority that can reasonably be accomplished in three to six months. If the supervising authority determines

that a juvenile has substantially breached his diversion contract, the case should be returned to the prosecutor for formal filing of a petition with the juvenile court. If the juvenile successfully complies with the contract duties, the case should be terminated with a favorable report.

d. Records of Diversion Contracts and Compliance

Records of diversion contracts and compliance or non-compliance should be maintained in the prosecutor's office. If screening is conducted outside that office, records should also be maintained in the case screener's office. These records should be used exclusively by the prosecutor or designated case screeners to screen any subsequent case reports with respect to the juvenile. They should be destroyed when the juvenile reaches the age of majority.

e. Prosecutorial Review of Diversion Programs

The prosecutor should periodically review diversion programs, both within and outside the district attorney's office, to ensure that they provide appropriate supervision, treatment, restitution requirements, or services for the juvenile. The prosecutor should maintain a working relationship with all outside agencies providing diversion services to ensure that the prosecutor's diversion decisions are consistent and appropriate.

92.4 Uncontested Adjudication Proceedings

a. Propriety of Plea Agreements

The prosecutor can properly enter into a plea agreement with a defense attorney concerning a filed petition against a juvenile. The decision to enter into a plea agreement should be governed by both the interests of the state and those of the juvenile, although the primary concern of the prosecutor should be protection of the public interest as determined in the exercise of traditional prosecutorial discretion. Plea agreements, if appropriate, should be entered into expeditiously without delaying speedy adjudication and disposition, in order to protect the juvenile, the victim, and the state.

92.5 The Adjudicatory Phase

a. Speedy Adjudication

When the prosecutor decides to seek a formal adjudication of a complaint against a juvenile, he should proceed to an adjudicatory hearing as quickly as possible. 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. A dispositional hearing should be held within 30 days after the adjudicatory hearing.

b. Assumption of Traditional Adversarial Role

At the adjudicatory hearing the prosecutor should assume the traditional adversarial position of a prosecutor. The prosecutor should recognize, however, that vulnerable child witnesses should be treated fairly and with sensitivity.

c. Standard of Proof; Rules of Evidence

The juvenile prosecutor has the burden of proving the allegations in the petition beyond a reasonable doubt. The same rules of evidence used in trying criminal cases in the jurisdiction should apply to juvenile court cases involving delinquency petitions. The prosecutor is under the same duty to disclose exculpatory evidence in juvenile proceedings as he would be in adult criminal proceedings.

d. Notice to Prosecutor Before Dismissal

Once a petition has been filed with the juvenile court, it should not be dismissed without providing the prosecutor with notice and an opportunity to be heard.

92.6 Dispositional Phase

a. Prosecutor Should Take an Active Role

The prosecutor should take an active role in the dispositional hearing and make a recommendation to the court after reviewing reports prepared by prosecutorial staff, probation department, and others.

b. Victim Impact

At the dispositional hearing the prosecutor should ensure that the court is aware of the impact of the juvenile's conduct on the victim and should further report to the court any matter concerning restitution and community service.

c. Prosecutor's Recommendation

In recommending a disposition, the prosecutor should consider those dispositions that most closely meet the interests and needs of the juvenile offender, bearing in mind that community safety and welfare is his primary concern.

d. Effectiveness of Dispositional Programs

The chief prosecutor along with the prosecutor in juvenile court should evaluate the effectiveness of dispositional programs used in the jurisdiction, from the standpoint of both the state's and the youth's interests. If the prosecutor discovers that a youth or class of young people are not receiving the care and treatment envisioned in disposition decisions, he should inform the court of this fact.

92.7 Post-Disposition Proceedings

a. Appeals and Hearings Subsequent to Disposition

The prosecutor should represent the state's interest in all appeals from decisions rendered by the appropriate court, all hearings concerning revocation of probation, all petitions for modification of disposition, all hearings related to the classification and placement of a juvenile, and all collateral proceedings attacking the orders of that court.

b. Duty to Report

If the prosecutor becomes aware that the sanctions imposed by the court are not being administered by an agency to which the court assigned the juvenile or that the manner in which the sanctions are being carried out is inappropriate, the prosecutor should take all reasonable steps to ensure agency supervisors are informed and appropriate measures are taken. If the situation is not remedied, it is the duty of the prosecutor to report this concern to the agency and, if necessary, to the dispositional court.

Commentary

Standard 92.1 emphasizes three aspects of the role of the prosecutor. First, the prosecutor is charged to seek justice just as he does in adult prosecutions. The prosecutor in the juvenile system, however, is further charged to give special attention to the interest and needs of the accused juvenile to the extent that it does not conflict with the duty to fully and faithfully represent the interests of the state. This call for special attention reflects the philosophy that the safety and welfare of the community is enhanced when juveniles, through counseling, restitution, or more extensive rehabilitative efforts and sanctions, are dissuaded from further criminal activity.

Second, Standard 92.1 emphasizes the desirability of having the prosecutor appear at all stages of the proceedings. In so doing, the prosecutor maintains a focus on the safety and well-being of the community at each decision-making level. Further, because the juvenile system is increasingly adversarially based, the prosecutor fulfills an important role in addressing the arguments of other juvenile and social service advocates. The prosecutor's presence guarantees the opportunity to exercise continuous monitoring at each stage and broad discretion to ensure fair and just results.

The standard recognizes that in some jurisdictions prosecutors are barred by statute from participating at all in juvenile proceedings. In others, prosecutors are by law or practice not involved in hearings or discussions at certain stages. For instance, in many jurisdictions the state attorney general handles all appeals. The standard suggests that prosecutors examine their systems to see whether representation of the community's interests would be better served through the presence and involvement of someone from their office at each state of the adjudicatory process. If so, prosecutors may choose to use these standards in advocating change in existing law or practice.

Finally, the standard emphasizes professionalism in juvenile court work. It provides that attorneys in juvenile court should be experienced, competent, and interested. It suggests that the practice of using the juvenile court as a mere training forum for new prosecuting attorneys should be abandoned, because continuity of involvement in the system creates professionalism.

Standard 92.2 describes a large role for prosecutors in the charging function. This function has often been delegated by law or by practice to other agencies. While this may be a workable procedure, it is paramount that the prosecutor maintain ultimate responsibility for charging for many reasons. A major function of screening is to determine whether there is sufficient evidence to believe that a crime was committed and that the juvenile committed it. A case should only be further processed if it is legally sufficient. "Legally sufficient" means a case in which the prosecutor believes that he can reasonably substantiate the charges against the juvenile by admissible evidence at trial. These determinations should be made by a prosecuting attorney. If these determinations are, by law or practice, made initially by an outside agency, it is imperative that the prosecutor have the authority to review and revise them. The standards recommend that these decisions are best made through an intake process within the prosecutor's office.

After a determination of legal sufficiency, the next decision to be made is whether the case should be transferred to the adult court, diverted informally, or referred to the juvenile court. This decision has both legal and social implications. It should be made either by an experienced prosecutor who has an interest in juveniles or by other case screeners under the guidance of a prosecutor. The prosecutor, in exercising this function, should try to accommodate the needs of the juvenile while upholding the safety and welfare of the community.

Additionally at this stage, the prosecutor may elect to exercise his discretion to dismiss a case that may be technically sufficient but from a policy or economic point of view lacks prosecutorial merit. Continuation of the case may not serve the best interests of justice.

The large role of the prosecutor in screening is intended to eliminate at least two major abuses of the intake process. Juveniles are disserved when they are charged by non-lawyers in cases where there is insufficient evidence that they committed a crime. A lawyer, the prosecutor, should make this determination. On the other hand, the community is disserved if intake screeners continuously divert a juvenile from the court system despite an extensive background of lawbreaking. This standard seeks to halt these abuses by emphasizing the discretionary role of the prosecutor who has the primary authority to uphold the law and to evaluate what course will best achieve justice for the accused and the community.

Standard 92.2 also exhorts the prosecutor to make a prompt determination of legal sufficiency and prosecutorial disposition. The time limits suggested are ideal ones. It is recognized that some jurisdictions by law or practice make even more prompt determinations and that other jurisdictions, due to limitations in resources or the environment, have been unable to make such timely decisions. The point is that prompt determinations generally promote confidence in the system and fairness to both the victim, the community, and the juvenile. Further, prompt decisions are more likely to result in rehabilitation of the juvenile by providing more immediate attention.

The standard also recognizes that it is sometimes necessary to go beyond these time limits. Complicated cases may need additional investigation. A particularly sensitive case may require additional time so that the prosecutor can review a social history or psychological report before making a decision to, for instance, transfer a case to adult court. These exceptions should not dictate the rule. Many high volume jurisdictions have successfully instituted speedy case reviews.

It is important to note that the period described for the review of legal sufficiency encompasses only the initial review. The decision whether to transfer, charge, or divert comes later. This prompt determination is meant to uncover deficiencies in a case, so that they can be remedied, if possible, through additional investigation. If there is insufficient evidence and the deficiencies cannot be remedied, the matter should be terminated promptly and the juvenile, if in detention, should be released.

It is also important to note that the time periods begin to run after law enforcement reports the facts to the prosecutor. Delays in law enforcement reporting do not directly affect these time periods unless the prosecutor becomes aware of the facts through an alternate source, for instance at a detention hearing. Facts presented at a detention hearing commence the time limits. Prosecutors should encourage police to present facts promptly. At the same time, they should discourage law enforcement reporting that is incomplete or dependent upon extensive additional investigation unless absolutely necessary. Prosecutors must inform law enforcement that the practice of providing skeletal reports that barely describe probable cause without substantive information necessary for charging decisions is unacceptable.

In many jurisdictions, transfer of juveniles to adult court is controlled by statute or practice. In most states, the juvenile court determines whether a juvenile is to be transferred. This standard simply provides guidance for prosecutors in using discretion to the extent that they participate in this process. The provision reflects the view that the juvenile justice system should be utilized to the greatest extent possible given the level of resources available to address the juvenile's behavior. The provision further suggests that juveniles should not be transferred to the adult system unless and until a determination is made that the juvenile cannot be rehabilitated within the juvenile system or alternatives would be contrary to the safety and welfare of society or the nature of the crime dictates a transfer.

Prosecutors differ in their views about whether they should be involved in diverting less serious cases from formal adjudication. The consensus seems to be, however, that because most juveniles are in the process of developing their behavior and values, there is a unique opportunity presented at the juvenile court level to dissuade them from criminal activity. The prosecutor should seriously consider involvement in this process. For all the pessimism that abounds in the system, it is nevertheless undoubtedly true that many first-time or minor offenders will never enter the justice system again if their cases are handled properly. Treatment, restitution, or service programs often are viable alternatives to court processing. Standard 92.3 describes the opportunity for prosecutors to be involved either in diversion programs based in their offices or through referral to existing probation or community service agencies.

Diversion pursuant to this standard requires an admission of involvement in the offense. While many are critical of this requirement, the standard takes the position that it is necessary for three reasons. First, juveniles should not be sanctioned unless there is legally sufficient evidence that they committed what would otherwise be a crime or offense if they were an adult. Denial of involvement by the juvenile should weigh heavily in favor of a formal determination of guilt or innocence. Second, many juvenile justice practitioners believe that effective treatment or rehabilitation begins with an acknowledgment of wrong-doing. Third, cases that are diverted with no admission of guilt often cannot be restored if the juvenile fails to meet the conditions agreed upon for diversion. Revival of the case is often not possible because too much time has passed and witnesses are unavailable or evidence is lost. A written admission of involvement provides evidence that the prosecutor may need if the case has to be referred to court upon failure of the diversion process.

Given this requirement for an admission of involvement, the standard delineates a careful process that should be undertaken when a juvenile case is diverted. It is critical that the juvenile and his parents understand the nature of diversion, the effect of an admission of guilt, the waiver of his rights, and his responsibilities under the diversion contract. In order to ensure that the juvenile and his parents understand this process, diversion is preceded by execution of a written contract.

Additionally, Standard 92.4 reflects the consensus that plea agreements are appropriate in a juvenile court to the extent that they are appropriate in the adult court. The appropriateness and extent to which plea agreements are used are matters of office policy to be determined by the chief prosecutor. The prosecutor should always take steps to ensure that the resulting record is sufficient to reflect the actual nature of the offense.

In juvenile courts where a plea to any offense vests full dispositional jurisdiction in the court, there is sometimes a practice to reduce the charge through a plea agreement. For instance, a provable burglary charge is reduced to theft or a sex offense to an assault. For at least these serious offenses, NDAA urges prosecutors to only enter into pleas that reflect that seriousness, unless there is a problem with proof. A provable burglary case should result in a court record that reflects commission of a burglary, not just theft. The court record can then be used as an accurate gauge of prior delinquent behavior if the juvenile is later accused of additional offenses.

A plea agreement with a juvenile should be conducted through defense counsel. Juveniles, and even juveniles and their parents, should not be involved in plea agreements when they are unrepresented by an attorney, because of the danger of misunderstanding the nature of the agreement and the potential consequences are so great.

NDAA recognizes that in some jurisdictions this general rule could result in the availability of "reduced charge" pleas to represented juveniles and not to unrepresented juveniles. The rule is not meant to discriminate against unrepresented juveniles and the prosecutor is charged to exercise his discretion wisely to avoid this result.

A plea agreement should be accompanied by a recitation on the court record of sufficient facts to demonstrate a *prima facie* case that the juvenile has committed the acts

alleged in the petition to which he is pleading guilty. When a confession by the juvenile is introduced, the prosecutor must assure that the record recites corroborative evidence establishing the crime itself. The prosecutor's recitation should be limited to the act(s) to which the juvenile is pleading guilty, except when the juvenile accepts responsibility for financial restitution with respect to dismissed charges. Where restitution is involved for dismissed charges, the court may nevertheless require a recitation to establish the basis for financial liability.

The time limits in Standard 92.5, like those in Standard 92.2, are intended to expedite juvenile case in order to promote fair treatment to both victim and juvenile and to make the experience more meaningful for the juvenile. Many juvenile justice professionals believe that a court appearance or a disposition several months after the delinquent act is much less useful than a prompt response. Like the time limits on screening in Standard 92.2, these are suggested limits. Some jurisdictions may process cases more quickly than this while other may find it impossible, given local law and practice. NDAA recognizes, for instance, that the defense discovery process in some jurisdictions may require a longer time period. It also recognizes that good cause may exist in specific cases to extend the time period. Prosecutors may find that they can utilize these standards to convince lawmakers or other juvenile justice professionals that changes should be made to ensure prompt case processing and disposition.

Section 92.5 envisions a formal, adversarial process with respect to determination of guilt or innocence. This standard, therefore, suggests that the same rules of evidence employed in adult criminal cases in the jurisdiction should be applied to juvenile court cases. Prosecutors should strive in the juvenile court setting to maintain a distinction between a factual determination of innocence or guilt and a determination of disposition. This approach promotes fairness to both the victim and the community and enhances the integrity of juvenile court findings.

Standard 92.6 encourages prosecutors to participate in the dispositional phase because the community should be represented in this phase just as it is or should be in earlier phases. Prosecutors should also offer appropriate alternatives to the court because they have been involved with the particular juvenile's case. They are familiar with dispositional alternatives that are most appropriate. When a juvenile presents a danger to the safety and welfare of the community, the prosecutor should voice this concern. On the other hand, when appropriate, the prosecutor may offer a dispositional recommendation that is less restrictive than what the juvenile court judge may contemplate imposing. The standard recognizes that, given the scarce resources in many prosecutors' offices, it may not be practical to assign attorneys to attend disposition hearings for minor offenses. One possibility in these cases is that the prosecutor submit to the court a written recommendation on disposition.

This standard also suggests that the prosecutor should take a leadership role in the community in assuring that a wide range of appropriate dispositional alternatives are available for youth who are adjudicated delinquents. The prosecutor is challenged to assume this leadership role because he is in the unique position to help organize the community and because successful programs should serve to actually reduce crime.

Standard 92.7 suggests that the work of the prosecutor is not finished at disposition of the case. Instead, the prosecutor is encouraged to follow up on cases to ensure that dispositions are upheld, court ordered sanctions are administered, and treatment is provided. At the same time, NDAA recognizes that in some states legal restrictions do not allow such follow-up, and scarce resources prevent follow-up in other offices.

Additional resources regarding "Adult vs. Juvenile Prosecution" include:

1. Francis Barry McCarthy, *The Serious Offender and Juvenile Court Reform: The Case for Prosecutorial Waiver of Juvenile Court Prosecution*, 38 St. Louis U.L.J. 629 (1994).
2. "All States allow juveniles to be tried as adults in criminal court under certain circumstances", *Juvenile Offenders and Victims: A National Report*, Office of Juvenile Justice and Delinquency Prevention, August, 1995, p. 85-89.
3. Joseph B. Sanborn, Jr., *Certification to Criminal Court: The Important Policy questions of How, When, and Why*, 40 *Crime & Delinquency* 262 (1994).
4. Jeffrey Fagan and Elizabeth Piper Deschenes, *Determinants of Judicial Waiver Decisions for Violent Juvenile Offenders*, 81 *Journal of Criminal Law and Criminology* 314 (1990).
5. Donna M. Bishop and Charles E. Frazier, *Transfer of Juveniles to Criminal Court: A Case Study and Analysis of Prosecutorial Waiver*, 5 N.D.J.L. & Pub. Pol'y 281 (1991).
6. Melissa Sickmund, Ph.D., "How Juveniles Get to Criminal Court," *Juvenile Justice Bulletin*, October, 1994, p. 1-5.

JUDICIAL WAIVER STATUTES¹

	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA
I. Juvenile's Case Transferable to Criminal Court via:																			
A. Judicial Waiver	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
B. Prosecutorial Discretion				X															
C. Legislative Exclusion	X	X	X ²		X ²		X	X	X ²	X	X	X	X	X	X		X	X	X
D. Juvenile's Election										X									
II. Discretionary Transfer for:																			
A. Any Criminal Offense	14	X	X	16	16			16	16 ³	14	15		14	13		14	16		
B. Felony						14	14	14	15			16 ⁴			16		14	14	
C. Murder				14	14								X						14
D. Capital Offense											13							14	
E. Person Offenses																			
1. Kidnapping				14	14														14
2. Criminal Sexual Conduct (may include rape, sodomy, etc.)				14	14								X						14
3. Battery				14									X						14 ⁶
4. Assault				14 ⁵									X						
5. Robbery				14	14								X						14 ⁷
6. Manslaughter																			

¹Shaded boxes indicate transfer for attempt of specified crime in addition to transfer for specified crime

²A rebuttable presumption that the public safety or interest would best be served by transfer

³A rebuttable presumption that the child is not amenable to rehabilitation within the juvenile justice system

⁴Rebuttable presumption for transfer

⁵If child has already been committed as a delinquent

⁶When committed by discharge of firearm

⁷When committed with firearm

	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA
7. Other					14 ^a														
F. Property Offenses																			
1. Burglary					14														
2. Arson																			
3. Carjacking					14														
4. Other																			
G. Drug Offense																	14		
H. Crime Part of Continuing Gang Activities				14															
I. Firearms Offenses				14	14				X ^c										
J. Other				14 ¹⁰	14 ¹¹										14 ¹²				
II. Mandatory Transfer for:																			
A. Any Criminal Offense										X ¹³		16 ¹⁴	X ¹⁵				X ¹⁶		

^aTorture

⁹Within 1000' of school, public pool, arcade or youth center

¹⁰Terroristic Act; Conspiracy

¹¹Escape; Mayhem

¹²Heinous or Aggravated Act; Repetitive Pattern of Delinquent Acts

¹³Upon three or more prior felony adjudications

¹⁴If prior transfer to criminal court

¹⁵Ibid.

¹⁶Ibid.

	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA
B. Felony	16	16	16 ¹⁷		16 ¹⁸				15 ¹⁹	14 ²⁰		16 ²¹						14 ²²	
C. Murder	16		16		14 ²³		14	X	15			16 ²⁴	14	15					15 ²⁵
D. Capital Offense										X									
E. Person Offenses																			
1. Kidnapping					16		14 ²²	X											15
2. Criminal Sexual Conduct (may include rape, sodomy, etc.)			16		16		14 ²²	X	15				14	15					15
3. Battery																			15 ²⁴
4. Assault			16 ²³				14 ²²		15				14						
5. Robbery					16		14 ²²		15				14	15 ²³					15
6. Manslaughter							14												
7. Other					16 ²⁴														

¹⁷If on four prior separate occasions child was adjudicated delinquent (at least one of which was a serious offense)

¹⁸Violent felony

¹⁹Violent felony if three prior delinquency adjudications

²⁰Upon three or more prior felony adjudications

²¹If previous violent felony or murder or two felonies within prior two years

²²With firearm

²³Minimum age is 16 for transfer on attempted murder charge

²⁴Upon second or subsequent offense

²⁵With a deadly weapon causing serious physical injury

²⁶Torture

	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA
F. Property Offenses																			
1. Burglary							14 ²⁷		15		15 ²⁸								15 ²⁹
2. Arson		16			16														
3. Carjacking																			
4. Other																			
G. Drug Offense					16								14 ³⁰	15 ³¹					15 ³²
H. Crime Part of Continuing Gang Activities														15 ³²					
I. Firearms Offenses					16				15										
J. Other					16 ³³								14 ³⁴						

²⁷With firearm

²⁸If three prior, separate burglary convictions

²⁹Upon second or subsequent offense

³⁰Within 1000' of school or school activity

³¹Within 1000' of school or public housing

³²If forcible felony upon prior adjudication of delinquency for felony act (or vice versa)

³³Escape; mayhem

³⁴Mayhem

	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR
I. Juvenile's Case Transferable to Criminal Court via:																			
A. Judicial Waiver	X	X	X	X	X	X	X	X		X	X	X	X ³⁵		X	X	X	X	X
B. Prosecutorial Discretion									X ³⁶										
C. Legislative Exclusion	X	X	X ³⁷		X	X		X						X	X	X	X	X	
D. Juvenile's Election												14 ³⁸				16			
II. Discretionary Transfer for:																			
A. Any Criminal Offense		15				13						14 ³⁹	X						
B. Felony	X			15	14		12 ⁴⁰		X	16	X				13		15	X	
C. Murder	X						X	12 ⁴¹				14							15
D. Capital Offense		X																	
E. Person Offenses																			
1. Kidnapping								16				14							
2. Criminal Sexual Conduct (may include rape, sodomy, etc.)							X	12				14							15
3. Battery																			
4. Assault							X					14							15
5. Robbery							X	16				14							15
6. Manslaughter																			15

³⁵Children's Court Judge has discretion to invoke adult sentence or juvenile sanctions

³⁶Juvenile Court has exclusive jurisdiction if child is homeless, abandoned, uncontrolled by parents, or habitually truant from home or school

³⁷Rebuttable presumption that child is not amenable to rehabilitation within the juvenile justice system

³⁸Child under 14 years old may elect transfer if charged with murder

³⁹If juvenile previously adjudicated delinquent or convicted of homicide, drug-induced death, arson, robbery, sexual assault, or kidnapping, or if previously confined in an adult penal institution

⁴⁰No age limitation if two or more unrelated felony commissions

⁴¹Youth must be 16 or older to be transferred for negligent homicide

	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR
7. Other																14 ^a			
F. Property Offenses																			
1. Burglary								16											
2. Arson								16				14							16
3. Carjacking												14 ^a							
4. Other																			
G. Drug Offense							X	16				14							
H. Crime Part of Continuing Gang Activities												14							
I. Firearms Offenses								16				14							
J. Other			14 ^a						16 ^a	X ^a									16 ^a

⁴²Crime involving threat or infliction of serious bodily harm

⁴³Auto-theft

⁴⁴Child may be transferred for crime punishable by imprisonment and child previously committed to Dept. of Youth Services or if crime involves threat or infliction of serious bodily harm

⁴⁵Misdemeanor other than traffic offenses; No age limitation for traffic offenses

⁴⁶Traffic Offenses

⁴⁷Escape; Coercion

	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	O R
II. Mandatory Transfer for:																			
A. Any Criminal Offense	X ^a					13 ^b												X ^c	
B. Felony					14 ^d	13 ^e											X ^f		
C. Murder		16	X					16						13	13	14	X ^g	13	
D. Capital Offense		14				13													
E. Person Offenses																			
1. Kidnapping		16												14				16	
2. Criminal Sexual Conduct (may include rape, sodomy, etc.)		16												14		14 ^h		16	
3. Battery																			
4. Assault		16												14					
5. Robbery		16												14				16	
6. Manslaughter		16	X											14				16	
7. Other																			

⁴⁸For future offenses after having been convicted as charged in criminal court

⁴⁹For subsequent offenses after youth has been subject of transfer to circuit court

⁵⁰For subsequent offenses after prior transfer to adult court

⁵¹If prior criminal conviction for a felony

⁵²With deadly weapon

⁵³If prior transfer and conviction

⁵⁴If child previously adjudicated delinquent for murder or if prior transfer and conviction

⁵⁵By force or threat

	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	O R
F. Property Offenses																			
1. Burglary														14				16 ⁵⁶	
2. Arson														14				16	
3. Carjacking		16																	
4. Other																			
G. Drug Offense																		16	
H. Crime Part of Continuing Gang Activities																			
I. Firearms Offenses		16																16	
J. Other		16 ⁵⁷																16 ⁵⁸	

	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
I. Juvenile's Case Transferable to Criminal Court via:													
A. Judicial Waiver	X	X	X	X ⁵⁹	X	X	X	X	X	X	X	X	X
B. Prosecutorial Discretion													
C. Legislative Exclusion	X	X			X		X	X			X	X	
D. Juvenile's Election	14								14 ⁶⁰		14		
II. Discretionary Transfer for:													
A. Any Criminal Offense					16							16	X

⁵⁶Upon three or more prior burglary adjudications

⁵⁷Mayhem

⁵⁸Intimidating a witness

⁵⁹Circuit Court holds transfer hearing

⁶⁰If charged with offense punishable by imprisonment

	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
B. Felony	14	16	16 ⁶¹	X		15	14		14	15	X ⁶²		
C. Murder					X			10			X		
D. Capital Offense		X											
E. Person Offenses													
1. Kidnapping					X			10		17	X		
2. Criminal Sexual Conduct (may include rape, sodomy, etc.)					X			10		17	X		
3. Battery			14 ⁶³										
4. Assault								10		17			
5. Robbery					X			10		17	X		
6. Manslaughter								10					
7. Other								10 ⁶⁴					
F. Property Offenses													
1. Burglary								10					
2. Arson								10 ⁶⁵			X		
3. Carjacking													
4. Other													
G. Drug Offense			14								X		
H. Crime Part of Continuing Gang Activities												14	
I. Firearms Offenses			14										

⁶¹Felony punishable by up to 10 years imprisonment; 14 year-old may be transferred if charged with felony punishable by 15 years or more

⁶²For second violent felony or third felony; if at least 14 years old, youth may be transferred for first violent felony or second felony

⁶³Of high, aggravated nature

⁶⁴Maiming

⁶⁵Causing death

	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
J. Other										17 ⁶⁶	X ⁶⁷		
II. Mandatory Transfer for:													
A. Any Criminal Offense					X ⁶⁸		X ⁶⁸					16 ⁶⁹	
B. Felony											14 ⁷⁰		
C. Murder	X ⁷¹							14			14		
D. Capital Offense													
E. Person Offenses													
1. Kidnapping								14			14		
2. Criminal Sexual Conduct (may include rape, sodomy, etc.)								14			14		
3. Battery													
4. Assault								14					
5. Robbery								14			14		
6. Manslaughter								14					
7. Other								14 ⁷²					
F. Property Offenses													
1. Burglary								14					

⁶⁶Extortion

⁶⁷Treason

⁶⁸If prior criminal conviction

⁶⁹Ibid

⁷⁰If Juvenile Court has waived its jurisdiction over the child for a previous violation

⁷¹If second violent felony or third felony

⁷²Unless case has been transferred from criminal to juvenile court

⁷³Maiming

	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
2. Arson											14		
3. Carjacking													
4. Other													
G. Drug Offense		16 ⁷⁴											
H. Crime Part of Continuing Gang Activities													
I. Firearms Offenses													
J. Other											14 ⁷⁵		

⁷⁴If previously found delinquent for felony drug offense

⁷⁵Treason

DETENTION

[illegible]

[illegible]

STATUTORY PROVISIONS	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
I. No contact with and separation from detained adults	X	X	X	X	X	X		X	X	X		X	X
II. Adequate supervision of detained juveniles/specialized staff for juveniles		X ¹			X							X	
III. Juvenile not detained for longer than a specified period of time without a court order					X	X	X		X				X
IV. Notification of custody to parent, guardian, etc.	X		X				X	X	X		X	X ²	X
V. Parent responsible for medical care costs of juvenile in detention													
VI. Mandatory hearing to determine if juvenile should remain in detention	X			X	X	X	X	X	X	X	X		X
VII. Court can order parental visitation while juvenile detained													
VIII. Release to parent, guardian or legal custodian:								X					
A. Unless circumstances warrant otherwise; or	X	X				X	X			X	X		
B. If parent promises to present child to court upon request	X		X	X	X				X				X

¹ Rhode Island Statute § 14-1-24 provides that when a girl is detained, she may be placed in the care of a police matron.

² Wisconsin Statutes Annotated § 48.227 provides for notification to parent, guardian or legal custodian of child's presence in a runaway home.

SENTENCING

[illegible]

¹ Some states include electronic monitoring as part of home supervision programs. See e.g., Wisconsin, W.S.A. § 48.534 (1995); Arkansas, Ar. St. § 9-27-330(11) (1995); Ohio, Oh. St. § 2151.355(A)(10) (1995).

SENTENCING OPTIONS	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR
I. Informal disposition/Diversion	X					X	X	X				X				X			X
A. Counseling, treatment, community service							X												X
B. Restitution							X	X											X
II. Probation	X		X	X	X	X	X	X	X			X		X	X	X	X	X	X
III. Supervision in home ²	X			X	X	X	X		X	X		X			X		X	X	
IV. Fines				X	X	X	X			X	X				X	X	X	X	X
V. Community service, restitution	X			X	X	X	X	X	X	X	X	X		X	X	X	X	X	X
VI. Commitment to secured correctional facility	X							X	X	X		X		X	X		X		X
VII. Commitment to an institution, camp, training school or other facility for juvenile offenders			X			X				X		X			X	X	X	X	X
VIII. Participation in counseling, substance abuse treatment or other program	X				X	X	X	X			X	X			X	X	X	X	
IX. Revocation or suspension of driver's license	X				X	X	X			X		X					X		
X. Imposition of a curfew for youthful offenders																			
XI. Deferred Adjudication																			

SENTENCING OPTIONS	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
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² Some states include electronic monitoring as part of home supervision programs. See e.g., Wisconsin, W.S.A. § 48.534.

I. Informal disposition/Diversion	X					X			X	X		X	
A. Counseling, treatment, community service												X	
B. Restitution												X	
II. Probation	X	X			X	X	X	X	X			X	X
III. Supervision in home³		X			X		X				X	X	
IV. Fines							X		X	X	X	X	X
V. Community service, restitution	X	X				X	X	X	X	X	X	X	X
VI. Commitment to secured correctional facility					X	X	X		X	X		X	X
VII. Commitment to an institution, camp, training school or other facility for juvenile offenders	X	X					X	X		X	X	X	X
VIII. Participation in counseling, substance abuse treatment or other program		X		X		X ⁴	X			X	X	X	X
IX. Revocation or suspension of driver's license						X	X		X	X	X	X	X
X. Imposition of a curfew for youthful offenders									X				
XI. Deferred adjudication										X			

³ Some states include electronic monitoring as part of home supervision programs. See e.g., Wisconsin, W.S.A. § 48.534.

⁴ In Texas, for example, V.T.C.A § 54.032 provides for deferral of adjudication and dismissal of certain cases on completion of an approved "Teen Court" program.

Parental Notification Upon Arrest of Juvenile: An Alaska Case

In a recent case, the Alaska Supreme Court determined that a juvenile is not *per se* incapable of waiving his or her right to parental notification upon arrest. *J.R.N. v. Alaska*, 884 P.2d 175 (Alaska App. 1994). In this case, police arrested a 16 year-old who was riding in the car of a murder victim. Pursuant to instructions from the prosecutor's office, police asked the juvenile at the time of his arrest if he wanted his parents notified. He did not want his parents notified, and police began questioning the youth after he acknowledged his Miranda rights. The juvenile confessed to the murder and to stealing the car, and led police to the murder weapon and other incriminating evidence. The police later notified the juvenile's father, who stated that he would have been present had he known of his son's arrest.

The trial court denied the youth's motion to suppress his confession, but the appeals court reversed, holding that the police violated juvenile court rules by failing to notify the youth's parents immediately upon arrest.

The Alaska Supreme Court applied a "totality of the circumstances" test in determining whether a juvenile can waive his right to parental notification. The court stated that no general rule exists requiring specific "explanations or warnings" of the existence of a right, except in the context of Miranda warnings. The court made a comparison to consent to warrantless searches, and assessed voluntariness in light of the totality of the circumstances.

After reviewing the facts of the case, the Alaska Supreme Court determined that the police deliberately asked the youth whether he wanted his parents notified. The court concluded that the youth could have reasonably inferred that his parents could have been present prior to questioning. By choosing not to have his parents called, the youth voluntarily and knowingly waived his right to parental notification. (source: "Juveniles Are Not *Per Se* Incapable of Waiving Right to Parental Notification on Arrest," *Juvenile Justice Update*, August/September 1995, at 8.)

PROCEDURAL RIGHTS

STATUTORY PROVISIONS	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA
I. Speedy hearing						X									X		X		X
A. In detention matters		X													X				X
II. State rules of criminal procedure or civil procedure apply															X	X	X		
III. Right to counsel	X			X	X	X	X		X	X	X	X						X	X
IV. Right to notice of proceeding and copies of pleadings																			
V. Right to introduce evidence, call witnesses and cross-examine witnesses							X				X								
VI. Right to appeal																			
VII. Right to request a hearing																			X
VIII. Privilege against self-incrimination	X										X	X							X
IX. Otherwise inadmissible extra-judicial statements cannot be used against youth	X			X ¹			X				X								X
X. Statements admissible when made in writing and only after a knowing, intelligent and voluntary waiver of <i>Miranda</i> warnings																			
XI. Juvenile can waive rights (knowingly, intelligently, voluntarily)				X															
XII. Hearings may be open to the public																			
XIII. Hearings may be closed to the public	X	X				X						X							
XIV. Right to a jury trial		X ²																	
XV. Juvenile entitled to specific rights during custody (including <i>Miranda</i> warnings)					X	X													

¹ Statements made to intake officer or probation officer during intake process are not admissible at any stage of any proceedings. Ar. St. §9-27-321.

² The court may select a "young adult advisory panel" to hear the case and advise the court of a recommended judgment. AK St. § 47.10.075.

STATUTORY PROVISIONS	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR
I. Speedy hearing	X								X		X	X		X			X		
A. In detention matters																			X
II. State rules of criminal procedure or civil procedure apply	X																		X
III. Right to counsel	X				X	X		X	X		X	X		X	X	X	X	X	X
IV. Right to notice of proceeding and copies of pleadings																			X
V. Right to introduce evidence, call witnesses and cross-examine witnesses					X				X		X					X			X
VI. Right to appeal									X										X
VII. Right to request a hearing																			X
VIII. Privilege against self-incrimination	X ³							X	X							X			
IX. Otherwise inadmissible extra-judicial statements cannot be used against youth														X		X			
X. Statements admissible when made in writing and only after a knowing, intelligent and voluntary waiver of <i>Miranda</i> warnings															X				
XI. Juvenile can waive rights (knowingly, intelligently and voluntarily)					X			X	X			X							
XII. Hearings may be open to the public					X														
XIII. Hearings may be closed to the public					X												X		
XIV. Right to jury trial					X														
XV. Entitled to specific rights during custody (including <i>Miranda</i> warnings)						X	X	X							X				

³ No statement made to a juvenile caseworker during a preliminary investigation is admissible at a later adjudicatory hearing. 15 M.R.S. §3204 (1994).

[illegible]

PARENTAL RESPONSIBILITY

STATUTORY PROVISIONS	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA
I. Parent must appear in court with juvenile																	X		
II. Parents must reimburse for child's care, support and/or treatment			X				X		X	X	X		X	X	X		X		X
III. Assignment of parent's wages allowed if failure to reimburse														X					
IV. Court may order parent to participate in treatment and/or counseling						X ¹				X	X	X ²			X	X		X	
V. Employer may not penalize employee's attendance at delinquency hearing/matter																			
VI. Parents liable for acts of delinquent child								X											
VII. Penalty for encouraging/contributing to delinquency	X												X					X	
VIII. Parents must pay for legal services for juvenile ³									X		X			X					X
IX. Parent must not allow minor to violate curfew																			
X. Parent must make restitution/render community service						X		X		X		X	X						

¹ A parent or guardian or both parent or guardian and the juvenile may be required to attend a parental responsibility training program. C.R.S.A. § 19-2-703.

² H.R.S. § 571-31.3 provides that a parent or child may voluntarily apply for any services such as counseling, etc.

³ Legal services include a court appointed attorney, reasonable attorneys' fees, any administrative fees and any probation or program fees.

STATUTORY PROVISIONS	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR
I. Parent must appear in court with juvenile			X	X										X					
II. Parents must reimburse for child's care, support and/or treatment			X	X	X	X	X	X	X	X	X				X	X	X	X	
III. Assignment of parent's wages allowed if failure to reimburse				X															
IV. Court may order parent to participate in treatment and/or counseling	X					X		X			X	X			X				X
V. Employer may not penalize employee's attendance at delinquency hearing/matter																	X		
VI. Parents liable for acts of delinquent child																	X		
VII. Penalty for encouraging/contributing to delinquency				X ⁴							X							X	
VIII. Parents must pay for legal services for juvenile ⁵						X													X
IX. Parent must not allow minor to violate curfew																			X
X. Parent must make restitution/render community service						X		X			X ⁶	X ⁷							

⁴ The court may order the parents, guardian, custodian or other person to refrain from continuing conduct that the court determines has caused or tended to cause the child to come under the provisions of the juvenile code.

⁵ Legal services include a court appointed attorney, reasonable attorneys' fees, any administrative fees and any probation or program fees.

⁶ N.H.R.S.A. § 169-B:45 provides for restitution for juvenile's vandalism.

⁷ N.J. Stat. § 2A:4A-43(b)(19) provides for restitution for theft of or unlawful taking of an automobile.

STATUTORY PROVISIONS	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
I. Parent must appear in court with juvenile				X			X						X
II. Parents must reimburse for child's care, support and/or treatment				X		X	X		X	X		X	
III. Assignment of parent's wages allowed if failure to reimburse				X ⁸	X								
IV. Court may order parent to participate in treatment and/or counseling		X				X			X				X
V. Employer may not penalize employee's attendance at delinquency hearing/matter							X						
VI. Parents liable for acts of delinquent child													
VII. Penalty for encouraging/contributing to delinquency					X	X					X		X
VIII. Parents must pay for legal services for juvenile ⁹				X		X			X	X		X	X
IX. Parent must not allow minor to violate curfew													
X. Parent must make restitution/render community service													

⁸ A lien against the property, both real and personal, can be taken for the payment of a court-appointed attorney.

⁹ Legal services include a court appointed attorney, reasonable attorneys' fees, any administrative fees and any probation or program fees.

Fox Valley Technical College offers law enforcement training programs that are sponsored by the Office of Juvenile Justice and Delinquency Prevention. Some of these training programs include:

- **Managing Juvenile Operations:** This program is designed to assist law enforcement agencies in improving their juvenile programs and overall agency effectiveness.
- **Gang and Drug Policy:** This program is designed to assist communities in combating gangs and drugs.
- **Serious Habitual Offender Comprehensive Action Program:** This program presents the interagency process as the model for improvement of local juvenile justice efforts with regard to the serious habitual offender.

For more information regarding these programs and others, contact:

OJJDP Training
Criminal Justice Department
Fox Valley Technical College
1825 North Bluemound Drive
P.O. Box 2277
Appleton, WI 54913-2277
(800) 648-4966

CONFIDENTIALITY/INFORMATION ACCESS

	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA
I. INFORMATION ACCESS																			
A. Access to Juvenile Records																			
1. Judge/Court Staff	X		X	X		X	X		X	X	X	X		X	X		X	X	X
2. Prosecutor						X						X		X	X		X		
a. Prior record used in sentencing																	X		
3. Juvenile & Authorized Representatives/Custodians	X					X			X	X		X		X				X	X
4. Victim		X		X			X					X	X	X	X				X
5. Media or Others with a Legitimate Interest	X	X				X	X		X	X	X	X		X	X		X		X
B. Sealing/Expunction of Records																			
1. Requirements																			
a. Application/Petition	X		X					X	X		X		X	X	X	X	X	X	X
b. Hearing								X			X					X	X	X	
c. Character References																			
d. No Subsequent or Pending Convictions	X		X					X	X		X		X			X	X	X	
e. Satisfactory Rehabilitation											X		X				X		
f. Age Requirement		X	X	X				X		X			X	X			X		
g. Termination in Favor of Juvenile																			
2. Provision for Re-opening Records																			
3. Records Destroyed	X		X					X		X					X				
4. Crime Restrictions								X								X			
5. By Operation of Law																			
C. Public Access to Juvenile Court Proceedings																			
1. Discretion of Court																			
2. Public Excluded											X								X
3. Victim Access						X	X			X									X
D. Fingerprinting/Photographing																			
1. Age Restrictions	X														X	X			

[illegible]

	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR
I. INFORMATION ACCESS																			
A. Access to Juvenile Records																			
1. Judge/Court Staff			X		X	X		X	X		X	X				X		X ¹	
2. Prosecutor						X		X			X	X				X		X	
a. Prior record used in sentencing																			
3. Juvenile & Authorized Representatives/Custodians			X		X	X		X			X					X			
4. Victim	X			X		X	X	X		X	X								
5. Media or Others with a Legitimate Interest	X			X		X	X	X		X						X		X	
B. Sealing/Expunction of Records																			
1. Requirements																			
a. Application/Petition	X						X			X		X		X	X		X	X	X
b. Hearing															X		X	X	X ²
c. Character References																			
d. No Subsequent or Pending Convictions	X									X		X			X			X	X
e. Satisfactory Rehabilitation																	X		
f. Age Requirement							X	X		X	X			X				X	
g. Termination in Favor of Juvenile														X					
2. Provision for Re-opening Records										X		X						X	
3. Records Destroyed																	X		X
4. Crime Restrictions														X	X				X
5. By Operation of Law																	X ³		
C. Public Access to Juvenile Court Proceedings																			
1. Court's Discretion												X						X	

¹ If a juvenile is adjudicated for a serious act or for habitual criminal acts, confidentiality restrictions no longer apply to juvenile court records. See 10 Ok.St. Ann. § 1125.3(A); 10 Ok.St. Ann. § 1160.2 (Serious and Habitual Juvenile Offender Act).

² If contested.

³ Two years after adjudication of unruly child.

	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR
2. Public Excluded	X ⁴				X		X												
3. Victim Access					X		X				X	X							
D. Fingerprinting/Photographing																			
1. Age Restrictions					X				X	X		X		X	X	X		X	
2. Crime Restrictions								X				X		X	X		X		X
3. Destruction of Information if:																			
a. no petition filed against juvenile										X					X	X	X		
b. juvenile found not guilty after transfer															X		X		
c. juvenile not adjudicated delinquent or petition disposed of														X		X	X	X	X
d. record expunged																	X		X
e. juvenile reaches age of 21 or discharged for 3 years without subsequent or pending charges															X				
f. juvenile reaches age of 18 with no criminal offenses after age 16																X			
E. Prosecutor's Access																			
1. Juvenile Court records				X	X	X	X	X				X			X	X		X	
2. Law Enforcement records								X				X			X	X			X ⁵
3. Agency records												X						X	

⁴ From certain proceedings. See 15 M.R.S. § 3307.

⁵ Fingerprint and photograph records.

	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
I. INFORMATION ACCESS													
A. Access to Juvenile Records													
1. Judge/Court Staff	X				X	X		X	X				X
2. Prosecutor	X				X	X		X					X
a. Prior record used in sentencing													X
3. Juvenile & Authorized Representatives/Custodians		X	X		X	X	X				X		X
4. Victim		X	X					X				X ⁶	X ⁷
5. Media or Others with a Legitimate Interest	X		X		X	X	X		X			X	X ⁸
B. Sealing/Expunction of Records													
1. Requirements													
a. Application/Petition				X		X	X	X	X	X			X
b. Hearing				X		X	X	X					
c. Character References													
d. No Subsequent or Pending Convictions				X		X	X		X	X			X
e. Satisfactory Rehabilitation													
f. Age Requirement									X		X		
g. Termination in Favor of Juvenile													
2. Provision for Re-opening Records						X				X	X		
3. Records Destroyed						X ⁹			X	X			
4. Crime Restrictions													
5. By Operation of Law									X		X		
C. Public Access to Juvenile Court Proceedings													

⁶ Upon certain showings.

⁷ Limited to legal records, name of juvenile and disposition.

⁸ Upon finding that release of information will serve the public health/safety or deterrence interests. May be limited to legal records, name of juvenile and disposition.

⁹ Upon motion; no destruction of records if convicted of delinquent act that would be felony if committed by an adult.

	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
1. Discretion of Court													
2. Public Excluded				X		X			X ¹⁰				X
3. Victim Access													
D. Fingerprinting/Photographing													
1. Age Restrictions						X	X		X				
2. Crime Restrictions	X		X		X	X	X		X				X
3. Destruction of Information if:													
a. no petition filed against juvenile					X	X			X				X
b. juvenile found not guilty after transfer									X				
c. juvenile not adjudicated delinquent or petition disposed of	X		X		X	X		X	X				X
d. record expunged							X ¹¹						
e. juvenile reaches age of 21 or discharged for 3 years without subsequent or pending charges						X							
f. juvenile reaches age of 18 with no criminal offenses after age 16													
E. Prosecutor's Access													
1. Juvenile Court records				X ¹²	X ¹³	X	X		X	X	X	X ¹⁴	X
2. Law Enforcement records	X				X	X		X			X		X
3. Agency records						X			X	X ¹⁵	X		X

¹⁰ Unless adjudication for criminal law violation.

¹¹ Fingerprints not destroyed.

¹² Pursuant to court order; includes social services reports, clinical studies, etc.

¹³ Excluding documents other than petitions and orders (e.g. medical reports, psychiatric evaluations, etc.)

¹⁴ For child adjudicated delinquent for act which would be felony if committed by an adult; for the purpose of investigating whether person possessed firearm.

¹⁵ Upon motion to the court and where the court finds disclosure in the interest of justice and the juvenile.

Mediation and Restitution Services

Mediation and Restitution Services (MARS)

The Los Angeles, California, based Mediation and Restitution Services (MARS) program brings together youth offenders and their victims in an attempt to reach a restitution agreement for the victim's damages caused by the offender. Trained mediators listen to both parties and negotiate the written agreement in cases where restitution is possible. The offender's parents are encouraged to participate.

Contact: Kevin Caliup, Coordinator, Mediation and Restitution Services, One Manchester Blvd., Inglewood, CA, 90301. Telephone: (310) 412-5578 Fax: (310) 412-8737.

Tuscaloosa County Juvenile Court Restitution Program summary

The Tuscaloosa County Juvenile Court Restitution Program requires juvenile offenders and a parent to sign a contractual agreement for the payment of restitution. Payment is made in one of four forms: (1) monetary payment, (2) community service work, (3) paid employment or (4) direct employment by the victim (although this is rarely used because of the reluctance of many victims to involve themselves with offenders). The type of restitution depends on the damage caused by the offender. Each offender is heavily supervised under program guidelines designed to allay concerns over public safety.

Contact: John Upchurch, Ph.D., Tuscaloosa County Commission, 6001 12th Avenue East, Tuscaloosa, AL, 35404. Telephone: (205) 349-3870.

(The effectiveness of the programs listed above was not measured by the advisory group. The programs are listed only so prosecutors can be aware of alternatives to adjudications.)

VICTIMS' RIGHTS

	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA
I. Restitution/Reparation																			
A. Monetary			X	X	X	X	X	X		X			X			X			X
B. Service					X	X ¹		X ²		X			X						X
II. Victim impact statements allowed							X				X ³								X
III. Victim may be present at all hearings and testify		X				X				X		X							X
IV. Right of victim to have supportive person present during testimony																			
V. Notice to victims of juvenile's identity (name and address for purposes of legal remedies)										X									
VI. Right of victim to have juvenile tested for HIV/STD and/or notice to victim of results of juvenile's tests											X						X		X ⁴
VII. Notice to victim of juvenile's discharge/release																			X
VIII. Videotape of child victim's testimony admissible in some cases																	X		
IX. Notice to victim of status of case/disposition of case														X					X

¹ C.R.S.A. § 19-2-703 provides for service by juvenile only if victim consents in writing to such services.

² § 1009 provides for service in the absence of any objections by the victim.

³ The court must provide the juvenile with a copy of the victim impact statement and allow the juvenile an opportunity to rebut.

⁴ L.R.S. § 15:535 provides that if an offender tests positive for AIDS or HIV, the victim shall be provided with counseling regarding HIV and with referrals to health care and support services.

[illegible]

[illegible]

[illegible]

	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
I. Restitution/Reparation													
A. Monetary	X	X			X	X	X			X	X	X	X
B. Service	X	X			X	X	X			X	X	X	
II. Victim impact statements allowed									X			X	
III. Victim may be present at all hearings and testify													
IV. Right of victim to have supportive person present during testimony													
V. Notice to victim of juvenile's identity (name and address for purposes of legal remedies)		X ⁵	X									X	
VI. Right of victim to have juvenile tested for HIV/STD and/or notice to victim of results of juvenile's tests						X						X	
VII. Notice to victim of juvenile's discharge/release				X						X ⁶			
VIII. Videotape of child victim's testimony admissible in some cases													
IX. Notice to victim of status of case/disposition of case			X										
X. Notice to victim of available financial and social assistance													

⁵ Upon written motion of victim or victim's attorney, the name and address of the juvenile can be revealed for the purpose of allowing the victim to initiate a civil suit against the juvenile and/or his or her parents.

⁶ The statute also provides that upon discharge, parole or release, a convicted juvenile sex offender may not attend the same public elementary, middle or high school as the victim of the sex offender. In addition, the offender's parents must pay the costs associated with a change in school districts. R.C.W.A. § 13.40.215(5) (1995).

[illegible]



Chart One: Summary of State Code Provisions Affecting Juveniles' Possession of Firearms¹

This chart indicates which of the listed types of provisions affecting juveniles' possession of firearms are included in individual state codes.

State	Possession	Licensing	Transfer	Access	Gun-Free Schools	Transfer to Criminal Court	Adjudicated Delinquent
Alabama			X		X	X	
Alaska	X				X	X	X
Arizona	X	X	X	X	X	X	X
Arkansas			X		X	X	X
California	X	X	X	X	X	X	X
Colorado	X		X	X	X	X	X
Connecticut	X	X	X	X	X	X	
Delaware	X	X	X	X	X	X	X
Florida	X	X	X	X	X	X	X
Georgia	X	X	X		X	X	X
Hawaii		X	X	X		X	X
Idaho	X	X	X		X	X	
Illinois	X	X	X		X	X	X
Indiana	X	X	X	X	X	X	
Iowa	X	X	X	X	X	X	
Kansas	X		X		X	X	X
Kentucky	X				X	X	X
Louisiana			X		X	X	
Maine	X	X			X	X	X
Maryland	X	X	X	X	X	X	
Massachusetts	X	X	X		X	X	
Michigan	X	X	X	X	X	X	
Minnesota	X		X	X	X	X	X
Mississippi	X	X	X	X	X	X	X

State	Possession	Licensing	Transfer	Access	Gun-Free Schools	Transfer to Criminal Court	Adjudicated Delinquent
Missouri	X		X		X	X	
Montana		X		X		X	
Nebraska	X	X	X		X	X	
Nevada			X	X	X	X	
New Hampshire	X	X	X	X	X	X	
New Jersey	X		X	X	X	X	
New Mexico	X				X	X	
New York	X	X	X		X	X	
North Carolina	X		X	X	X	X	
North Dakota	X	X	X	X	X	X	
Ohio		X	X		X	X	X
Oklahoma	X	X	X	X	X	X	X
Oregon	X	X	X		X	X	X
Pennsylvania	X	X	X		X	X	X
Rhode Island	X	X	X		X	X	
South Carolina	X				X	X	
South Dakota	X	X	X		X	X	
Tennessee	X		X		X	X	
Texas			X		X	X	
Utah	X		X		X	X	
Vermont	X	X	X		X	X	
Virginia	X		X	X	X	X	X
Washington	X	X			X	X	
West Virginia	X	X		X	X	X	
Wisconsin	X	X	X	X	X	X	X
Wyoming		X				X	
District of Columbia	X	X	X	X	X	X	X

State	Possession	Licensing	Transfer	Access	Gun-Free Schools	Transfer to Criminal Court	Adjudicated Delinquent
Guam	X	X	X	X			
N. Marianas	X	X					
Puerto Rico		X					
Virgin Islands		X					
Total States	44	35	43	25	48	52	22

1. "A Project to Develop a Model Juvenile Handgun Code for the States," prepared by the Criminal Justice Association for the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Pg. 41-43 publication pending.

Additional resources on gangs include:

1. Conly, Catherine H., "Street Gangs: Current Knowledge and Strategies," *Issues and Practices in Criminal Justice*, U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, August, 1993.
2. Topical Bibliography on Gangs, U.S. Department of Justice, Office of Justice Programs, National Institute of Justice. (To request a copy, contact: National Institute of Justice/NCJRS Reference Department, Box 6000, Rockville, Maryland 20850, (301) 251-5500 or (800) 851-3420).

Appendix on Gang Legislation

1. Arizona

Ariz. Rev. Stat. Ann.

13-1202
13-2308
13-3102
13-3115
13-604
13-105
13-2301
13-1209
41-617 to 41-617.01
41-2401 to 41-2416

2. Arkansas

Ark. Code Ann.

5-74-201 to 203

3. California

Cal. Penal Code Ann.

13826 et seq.
12021.5
13826.1 to 13826.62
189, 190, 12072
12022.9, 13519.5, 13510
186.20 et seq.

Cal. Educ. Code Ann.

32261 to 32295
35183
35294.1
51260 to 51269
58700 to 58707
58730 et seq
51266, 51266.5

Cal. Welf. & Inst. Code Ann.

830.1

4. Colorado

Colo. Rev. Stat.

24-33.5-412 to 24-33.5-415.3
17-1-109
22-25-103
22-25-104.5
18-12-107.5

5. Connecticut

Con. Gen. Stat.

53a-59
53a-70
53a-70a
53a-30
53a-29
53a-40c
29-7n
10-16b
7-294l
7-294x

6. Delaware

Del. Code Ann. tit.

11, 476, 477
11, 1320, 1321

7. Florida

Fla. Stat.

874.01 to 874.09
893.138

8. Georgia

Ga. Code Ann.

16-15-1 to 16-15-7
16-14-1 to 16-14-15

9. Illinois

725 ILCS 5/110-5
20 ILCS 505/34.2
702 ILCS 405/1-8
20 ILCS 2640/20
720 ILCS 5/12-6.1
20 ILCS 2605/55a-3 to 2605-55a-5
20 ILCS 2640/1 et seq.
30 ILCS 755/0.01 et seq.
725 ILCS 5/106-2.5
730 ILCS 5/5-5-3.2
740 ILCS 20/1 et seq.
740 ILCS 147/1 et seq.

10. Indiana

Ind. Code Ann.

tit. 20 sec. 10.1-27-1 to 10.1-27-12
tit. 35 sec. 45-9-1 to 45-9-4

11. Iowa

Iowa Code

723A.1 et seq.
279.58
80B.11

12. Louisiana La. Rev. Stat. Ann.
15:1401 et seq.
17:13.1
15:1226
15:1421 to 1430
13. Minnesota Minn. Stat.
609.229
1996 Minn. Laws 408
1996 Minn. Laws 412
14. Mississippi Miss. Code Ann.
97-3-7
1996 Miss. Laws S.B. 2571
15. Nevada Nev. Rev. Stat.
193.168
193.169
213.1263
392.4635
388.532
16. North Dakota N.D. Cent. Code
12.1-06.2-01 to 12.1-06.2-04
17. Oklahoma Okla. Stat.
tit. 21 sec. 856
tit. 10 sec. 7302-7.1 et seq.
18. Oregon Or. Rev. Stat.
336.109
19. Rhode Island R.I. Gen. Laws
11-47-51.1
11-47-61
20. Tennessee Tenn. Code Ann.
49-6-4215
40-35-114
21. Texas Tex. Penal Code Ann.
71.01 et seq.
- Tex. Civ. Prac. & Rem. Code Ann.
125.068
125.004
125.069
125.001 et seq
125.061 et seq

Tex. Educ. Code Ann.
37.015

22. Utah

Utah Code Ann.
53A-15-601
49-10-302

23. Washington

Wash. Rev. Code Ann.
13.40.310
43.310.005 et seq.
10.95.020
43.70.550

24. Wisconsin

Wis. Stat. Ann.
823.113 et seq.
15.197
46.027
46.265
939.625
895.77
941.38

More information on juvenile justice issues is available from a number of government sources:

Juvenile Justice Clearinghouse
P.O. Box 6000
Rockville, MD 20849-6000
(800) 638-8736
email: look@ncjrs.aspensys.com

National Criminal Justice Reference Service (NCJRS)
(800) 851-3420
email: askncjrs@ncjrs.org
World Wide Web address: <http://www.ncjrs.org>

Bureau of Justice Assistance Clearinghouse
(800) 732-3277
email: askncjrs@ncjrs.org
World Wide Web address: <http://www.ncjrs.org>

ONDCP Drugs & Crime
(800) 666-3332
email: askncjrs@ncjrs.org
World Wide Web address: <http://www.ncjrs.org>

User Services
Uniform Crime Reports
9th & Pennsylvania Ave., N.W.
Washington, D.C. 20535
(202) 324-5015
FBI's World Wide Web address: <http://www.fbi.gov>

National Center for Juvenile Justice
710 Fifth Avenue
Pittsburgh, PA 15219-3000
(412) 227-6950
World Wide Web: <http://www.ncj.fcj.unr.edu>

National Clearinghouse on Child Abuse and Neglect
P.O. Box 1182
Washington, D.C. 20013-1182
(800) 394-3366
World Wide Web: <http://www.calib.com/nccanch>

National Clearinghouse on Families and Youth
P.O. Box 13505
Silver Spring, MD 20911-35-5
(301) 608-8098
email: cdiehm@ncfy.com

National Center for Education Statistics
555 New Jersey Ave., N.W.
Washington, D.C. 20208
(800) 424-1616
(202) 219-1513
World Wide Web: <http://www.ed.gov>

Customer Services
Bureau of the Census
Washington, D.C. 20233-8300
(301) 457-4100
World Wide Web: <http://www.census.gov>

National Center for Health Statistics
Division of Vital Statistics
6525 Belcrest Road
Hyattsville, MD 20782
(301) 436-8500
World Wide Web: <http://www.cdc.gov/nchswww/nchshome.htm>

National Highway Traffic Safety Administration
Office of Alcohol and State Programs
400 Seventh Street, S.W.
Washington, D.C. 20590
(202) 366-6979
World Wide Web: <http://www.nhtsa@dot.gov>

National Archive of Criminal Justice Data -ICPSR
P.O. Box 1248
Ann Arbor, MI 48106
(800) 999-0960
(313) 763-5010
World Wide Web: <http://www.icpsr.umich.edu/NACJD/home.html>