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# criminal justice standards & goals for ohio

Adopted by the Ohio Criminal Justice Supervisory Commission

Administration of Justice Division

...dan, Governor

Department of Economic and Community Development
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CRIMINAL JUSTICE STANDARDS
FOR OHIO

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# INTRODUCTION

The Ohio Criminal Justice Supervisory Commission has begun a three-year project to develop criminal justice standards for Ohio. This report, which is the first of a series, is the culmination of seven months of intensive effort by the Supervisory Commission to design Standards on the following crucial needs: recruitment and selection of law enforcement personnel; police-community crime prevention; diversion; youth services bureaus; reduction of pre-trial delay; and training of courts personnel. Their purpose is to assist local communities and state agencies in upgrading their criminal justice services and staff.

The Ohio effort to develop Standards follows the earlier national project. In 1971, LEAA established the National Advisory Commission on Criminal Justice Standards and Goals (NAC). The NAC, composed of interested citizens and working members of the criminal justice system, spent two years developing crime reduction goals for the United States and formulating over 450 standards to reach those goals. Its purpose was to design a national strategy to reduce crime and to devise methods to help State and local agencies combat crime and improve the administration of justice.

Each of the states is now engaged in a similar effort following the LEAA mandate to "develop a comprehensive set of standards" by FY 1976. The Ohio Criminal Justice Supervisory Commission began its work on the statewide project in the spring of 1974. In June, the Administration of Justice Division received a two-year LEAA discretionary grant for $361,706 to assist in the development of the Ohio Standards. The funding provides for additional staff members to aid the Commission in its work. By the end of 1975, the Supervisory Commission plans to establish Standards in all major funding areas. It is anticipated that the entire standard-setting process and review will continue into 1977, and that implementation will be carried out in the next decade.

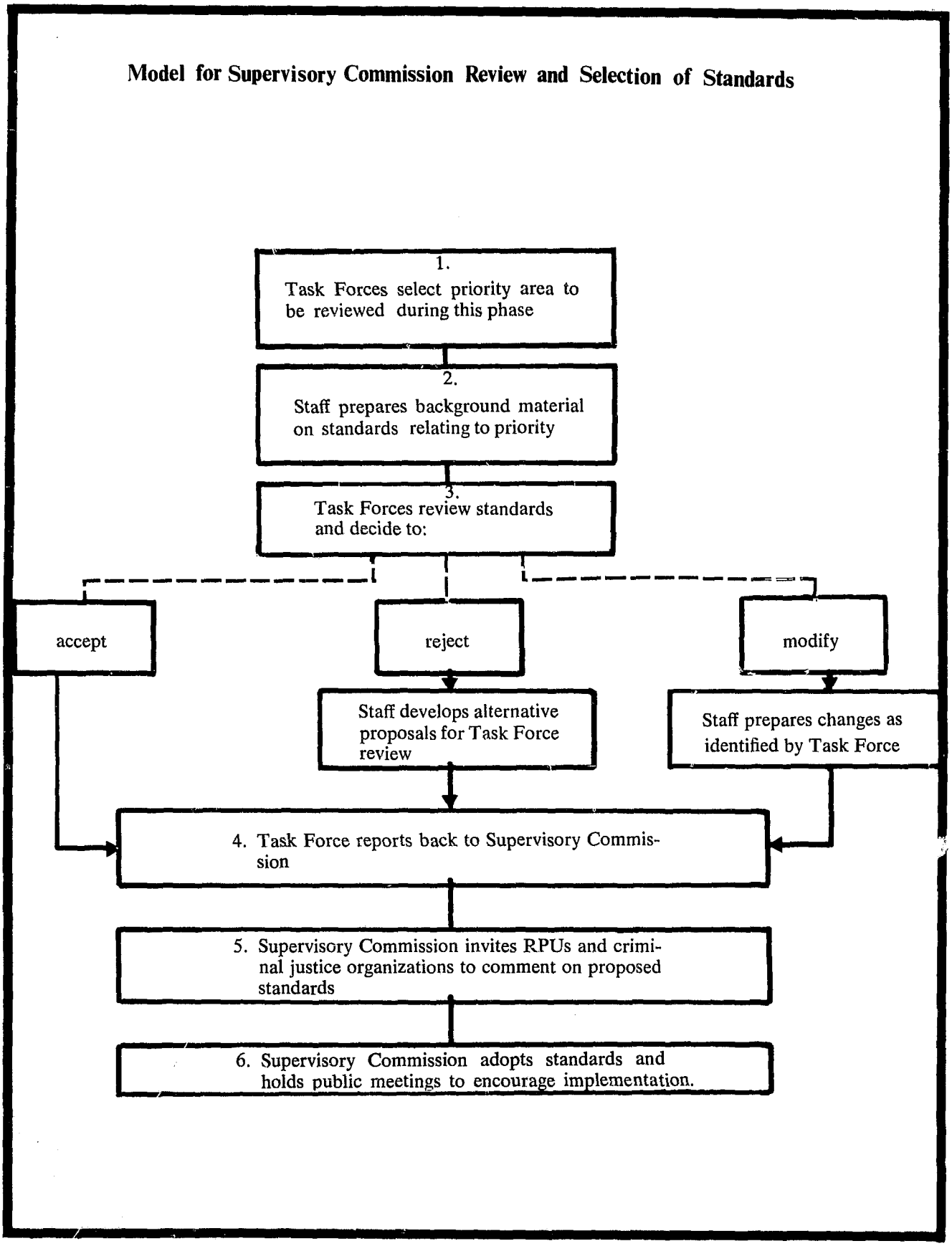
In developing the thirty-five standards found in this report, the Supervisory Commission reviewed relevant sections of reports by the NAC plus other national standard-setting groups, such as the American Bar Association and the National Council on Crime and Delinquency. The development of the Standards involves extensive staff preparation, task force review, and Supervisory Commission consideration, plus input from criminal justice organizations and public interest groups. The Standards in this volume were reviewed by a wide range of Ohio groups working in the criminal justice area (a complete list is found in Appendix A). They were adopted by the Supervisory Commission on January 10, 1975 (see Figure 1). A supplemental report on recruitment and training of adult corrections personnel is planned for this spring.

Many of the standards deal with recruitment and selection of criminal justice personnel, as well as training and education. For example, Standard 5, "Minimum Standards for the Selection of Police Officers," calls upon the Ohio Peace Officers Training Council to establish statewide minimum Standards for selection of all law enforcement officers. Other Standards in that section call upon law enforcement agencies to develop and implement EEO programs. In the courts area, the Supervisory Commission also developed three Standards for upgrading the training of judges, prosecutors, and public defenders.

Two Supervisory Commission task forces studied the area of diversion. The Prevention, Diversion, and System Development Task Force has developed two Standards for adult diversion, while the Juvenile Delinquency Task Force worked on Youth Services Bureaus. The Courts Task Force spent several months on its first priority -- the reduction of trial delay. It developed ten standards covering both the pre-trial and trial process.

As mentioned above, this report is the first of a series which will be prepared as the Supervisory Commission continues its work. The Supervisory Commission will also be involved in public meetings to discuss the Standards and their implementation. The role of the Supervisory Commission, however, is limited. It will lay out plans for implementation and use AJD funds to carry out projects. But most of the implementation will depend upon the commitment, both in terms of time and money, of those outside the Supervisory Commission. For example, state and local legislation is needed, as well as local funds, to carry the projects. Thus, if the Standards are to become a reality in Ohio, not only must they be accepted by major public interest groups across the state, but also carried out by them. Hopefully, this report will be an important first step.

## Model for Supervisory Commission Review and Selection of Standards



# THE RECRUITMENT AND SELECTION OF LAW ENFORCEMENT PERSONNEL IN OHIO

# INTRODUCTION

These Standards cover the areas of recruitment and selection of law enforcement personnel and incorporate recommendations and standards proposed in 1973 by the National Advisory Commission on Criminal Justice Standards and Goals (NAC). They relate to the Law Enforcement Task Force's first priority for 1975: "Establish statewide minimum standards for the selection of police officers."

The proposed NAC standards have been modified to reflect the particular needs of Ohio. Major modifications involve changes in the proposed timetables for implementation of the Standards. The Supervisory Commission has postponed or eliminated the original target dates set by the NAC because they would pose a hardship for Ohio law enforcement agencies.

The Supervisory Commission strongly endorses the principles of minority recruitment, the employment of women and affirmative action programming. The Standards outline a general plan of action which is in keeping with the Equal Employment Opportunities guidelines established by LEAA. The Supervisory Commission proposes to follow these guidelines in implementing standards for Ohio.

# Standard 1. General Police Recruiting

Every police agency should ensure the availability of qualified applicants to fill police officer vacancies by aggressively recruiting applicants when qualified candidates are not readily available.

1. The police agency should administer its own recruitment program.
   a. The agency should assign to specialized recruitment activities employees who are thoroughly familiar with the policies and procedures of the agency and with the ideals and practices of professional law enforcement;
   b. Agencies without the expertise to recruit police applicants successfully should seek expertise from the central personnel agency at the appropriate level of State or local government, or form cooperative personnel systems with other police agencies that are likely to benefit from such as association: every police agency, however, should retain administrative control of its recruitment activities.

2. The police agency should direct recruitment exclusively toward attracting the best qualified candidates. In so doing, it:
   a. should make college-educated applicants a target of all recruitment efforts; and
   b. should concentrate recruitment resources according to the agency's need for personnel from varied ethnic backgrounds.

3. The police agency should provide application and testing procedures at decentralized locations in order to facilitate the applicant's access to the selection process. The initial application form should be a short, simple record of the minimum information necessary to initiate the selection process.

4. The police agency should allow for the completion of minor routine requirements, such as obtaining a valid driver's license, after the initial application but before employment.

5. The police agency, through various incentives, should involve all agency personnel in the recruitment and selection process.

6. The police agency should seek professional assistance -- such as that available in advertising, media, and public relations firms -- to research and develop increasingly effective recruitment methods.

7. The police agency should continually evaluate the effectiveness of all recruitment methods so that successful methods may be emphasized and unsuccessful ones discarded.

**Commentary**

*This is one of four standards on law enforcement recruitment considered by the Supervisory Commission. Its objective is to support the concept of an established recruitment program for each department. Section 1, for example, outlines the need for qualified personnel to be assigned full time to the recruitment program, with outside professional assistance as needed (see Section 6). Section 2 emphasized the recruitment of college-educated and minority group personnel; these subjects are covered in more detail in Standards 2 and 3 on the following pages. Section 3 calls for police agencies to improve application and testing procedures in order to make them more easily accessible; this Section must be implemented in conjunction with the local Civil Service Commission.*

*Finally, the Supervisory Commission supported the procedure which allows applicants to complete minor routine requirements after application, but before hiring. The Supervisory Commission discussed the wisdom of recommending the elimination of the pre-employment residency requirement, as recommended by the NAC in its standards (see NAC Police Standard 13.2). The Supervisory Commission's final position was that such requirements are not discriminatory as such, and that local communities may decide to set such requirements.*

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*Reference: See National Advisory Commission on Criminal Justice Standards and Goals,* **Police Report,** *Standard 13.1, "General Police Recruiting," page 321.*

# √Standard 2. College Recruiting

Every police agency that does not have a sufficient number of qualified applicants having appropriate college backgrounds to fill police officer vacancies as they occur should immediately implement a specialized recruitment program to satisfy this need.

1. The police agency is encouraged to establish permanent liaison with:
   a. placement officers and career counselors in colleges and universities within a 50-mile radius of the police agency; and
   b. faculty members and heads of departments which provide a curriculum specifically designed to prepare students for the police service.

2. The police agency should compete actively with other governmental and private sector employers in recruitment efforts at nearby colleges and universities. The opportunity for a police officer to perform a valuable social service, and the opportunity for a progressive career, should be emphasized in college recruiting.

**Commentary**

*The National Advisory Commission not only called for the recruitment of college-educated law enforcement personnel, but also suggested in Police Standard 15.1 that a college education become a pre-employment requirement over the next decade.*[1] *They set the following timetable:*

| Time | Number of Years of College Education Before Employment |
|---|---|
| Now | 2 years |
| 1978 | 3 years |
| 1982 | 4 years |

*While the Supervisory Commission agreed that college education is increasingly important, their position was that it should serve as only one of the bases for employment. The Supervisory Commission felt that the timetable established by the NAC would pose to great a hardship on potential applicants and departments in Ohio. Also, there was considerable concern that requirements for college education would severely hamper efforts to recruit minority group members.*

*The Supervisory Commission strongly endorses college recruitment programs and encourages police agencies to establish permanent liaison with colleges and universities (Section 1). One method of recruiting college-educated personnel has been recommended by the National Advisory Commission. Its recommendation called for implementation of a police student worker program to provide part-time employment for college students between the ages of 17 and 25 who have shown a sincere interest in a law enforcement career.*[2] *Although the Supervisory Commission views student worker programs as an excellent means of recruiting college-educated personnel, it has postponed setting standards in this area until further consideration can be given.*

*The Supervisory Commission has supported student worker programs (police cadet programs) run in conjunction with two-year and four-year college programs. Commission policy is not to fund any college programs which have the effect of establishing a new department in a college or university because LEEP funding is provided to institutions of higher education for this purpose in Part D, Section 406(e) of the Omnibus Crime Control Act of 1973.*[3]

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*Reference: National Advisory Commission on Criminal Justice Standards and Goals,* **Police Report,** *Standard 13.2, "College Recruiting," page 326.*

1 *National Advisory Commission on Criminal Justice Standards and Goals,* **Police Report,** *page 369.*

2 *National Advisory Commission on Criminal Justice Standards and Goals,* **Police Report,** *page 326.*

3 **Ohio's Directives on Criminal Justice Planning and Project Development, FY 1975,** *page 57.*

# Standard 3. Minority Recruitment

Every police agency should immediately ensure that it presents no artificial or arbitrary barriers -- cultural or institutional -- to discourage qualified individuals from seeking employment or from being employed as police officers.

1. Every police agency should engage in positive efforts to employ ethnic minority group members. When a substantial ethnic minority population resides within the jurisdiction, the police agency should take affirmative action to achieve a ratio of minority group employees in approximate proportion to the makeup of the population.

2. Every police agency seeking to employ members of an ethnic minority group should direct recruitment efforts toward attracting large numbers of minority applicants.

3. Every police agency seeking to employ qualified ethnic minority members should research, develop, and implement specialized minority recruitment methods.

4. Every police chief executive should ensure that hiring, assignment, and promotion policies and practices do not discriminate against minority group members.

5. Every police agency should evaluate continually the effectiveness of specialized minority recruitment methods so that successful methods are emphasized and unsuccessful ones discarded.

**Commentary**

*The Supervisory Commission has previously recorded its support of affirmative action programs for all criminal justice agencies. The Administration of Justice Division is presently working with local departments and state agencies to develop the Equal Employment Opportunity (EEO) programs required by LEAA. In addition, the Supervisory Commission has supported minority recruitment programs over the past three years with special incentive funding. This funding, which totals almost $800,000, has benefited all of the major urban areas in Ohio, assisting police departments in recruitment and the development of testing procedures.*

*The Supervisory Commission has adopted the NAC recommendation that police agencies seeking to employ qualified ethnic minority members should research, develop, and implement specialized minority recruitment methods (Section 3). The Supervisory Commission, however, did not elect to include the six specific methods for specialized minority recruitment suggested by the NAC. It was felt that including these six methods in Ohio's standards could possible limit the research and development of other minority recruitment methods in the future.*

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*Reference: National Advisory Commission on Criminal Justice Standards and Goals,* **Police Report,** *Standard 13.3, "Minority Recruitment," page 329.*

# Standard 4. Employment of Women

Every police agency should immediately ensure that there exists no agency policy that discourages qualified women from seeking employment as sworn or civilian personnel or prevents them from realizing their full employment potential. Every police agency should:

1. institute selection procedures to facilitate the employment of women; no agency, however, should alter selection standards solely to employ female personnel; and

2. ensure that recruitment, selection, training, and salary policies neither favor nor discriminate against women.

**Commentary**

*The Supervisory Commission has endorsed the NAC's position that "every police agency should ensure that no agency policy exists which discourages qualified women from seeking employment or prevents them from realizing their full potential." The Supervisory Commission has been actively assisting law enforcement agencies in Ohio in developing affirmative action programs to attract women and minority group members. This support, as outlined in the commentary for Standard 3, "Minority Recruitment," has involved both funding and technical assistance on the selection process.*

*The Supervisory Commission will be considering job classification and promotional policies next year and, for that reason, two related sections in the original NAC standard (Police Standard 13.6) were not considered at this time.*

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*Reference: National Advisory Commission on Criminal Justice Standards and Goals,* Police Report, *Standard 13.6, "Employment of Women," page 342.*

# Standard 5.

# Minimum Standards for the Selection of Police Officers

The Ohio Peace Officer Training Council, by 1976, should develop and enforce State minimum mandatory standards for the selection of police officers.

1. The majority of this council should be composed of representatives of local law enforcement agencies to ensure responsiveness to local needs. Police practitioners, other members of the criminal justice system, and local government officials should be selected as council members for a fixed term.

2. This council should ensure that standards are met by inspecting for local compliance, and certifying as competent to exercise police authority only those police officers who have met the mandated standards.

a. Age, with consideration given to establishing a maximum recruitment age that reflects the physical demands placed upon a police officer and the retirement liability of police agencies;
b. Physical health, strength, stature, and ability, with consideration given to the physical demands of police work;
c. Character, with consideration given to the responsibilities of police officers and the need for public trust and confidence in police personnel;
d. Personality profile, with consideration given to the need for personnel who are psychologically healthy and capable of enduring emotional stress; and
e. Education, with consideration given to the mental skills and knowledge necessary to perform the police function properly.

3. The State should provide sufficient funds to enable the Council:

a. to employ a full-time executive director and a staff large enough to carry out the commission; and
b. to meet periodically.

**Commentary**

*The Supervisory Commission endorses the development of minimum standards for the selection of law enforcement officers here in Ohio. These standards would be developed and enforced through the existing Ohio Peace Officers Training Council (OPOTC) in conjunction with state and local law enforcement agencies. The standards would contain the basic criteria to be used in selecting law enforcement officers throughout the state. Local and state agencies would, of course, be free to add more requirements in order to upgrade the quality of personnel. Although the NAC suggested a 1975 deadline for development of minimum standards, the Supervisory Commission felt 1976 to be a more realistic target date for Ohio.*

*The NAC called for the establishment of minimum standards that incorporate compensating factors such as education, language skills, or experience in excess of that required if such factors can overcome minor deficiencies in physical requirements such as age, height, or weight. The Supervisory Commission, however, did not endorse the use of compensating factors.*

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*Reference: National Advisory Commission on Criminal Justice Standards and Goals,* **Police Report,** *Standard 13.4, "State Mandated Minimum Standard for the Selection of Police Officers, page 334.*

# Standard 6. The Formal Process of Selecting Police Officers

Every police agency immediately should employ a formal process for the selection of qualified police applicants. This process should include a written test of mental ability or aptitude, an oral interview, a physical examination, a psychological examination, and an in-depth background investigation.

1. Every police agency should measure every applicant's mental ability through the use of job-related ability or aptitude tests rather than general aptitude tests. These job-related ability tests should meet the requirements of Federal Equal Employment Opportunities Commission guidelines.

2. Every police agency, by 1977, should retain the services of a qualified psychiatrist or psychologist to conduct psychological testing of police applicants in order to screen out those who have mental disorders or are emotionally unfit for police work.

3. Every police agency should use the results of psychological testing as a positive predictor of later performance within the police service only when scientific research establishes the validity and reliability of such a predictor.

4. Every police agency should conduct an in-depth background investigation of every police applicant before employment. The policies and procedures governing these investigations at least should ensure that:

   a. to the extent practicable, investigations are based upon personal interviews with all persons who have valuable knowledge of the applicant;
   b. the polygraph examination is used where appropriate, but is not allowed to substitute for a field investigation;
   c. the rejection of police applicants is job-related; and
   d. police applicants are not disqualified on the basis of arrest records alone, without consideration of circumstances and disposition.

5. Every agency should ensure that no more than eight weeks pass from the time of initial application to final determination of employability; that applicants are promptly notified of the results of each major step in the selection process; and that the selection process is cost effective.

### Commentary

*This Standard outlines the basic procedure which should be followed by law enforcement agencies and civil service commissions in choosing new personnel from the pool of candidates. The Supervisory Commission strongly endorses the procedures set out by the Equal Employment Opportunities Commission, and urges that agencies work closely with EEOC to validate testing procedures and job classification criteria. This area is one which is expanding rapidly, and thus it is critical that agencies periodically review all personnel policies in order to improve them.*

*The Supervisory Commission extended the timetable for psychological testing of personnel from 1975, as suggested by the NAC, to 1977 (Section 2). This date was considered to be more reasonable for agencies in Ohio, especially because of the large number of small departments in the state.*

*Concerning policies for background investigations, the Supervisory Commission varied from the NAC recommendation. The NAC suggested that arrest or conviction records alone, without consideration of circumstances and disposition, should not be used to disqualify an applicant. The Supervisory Commission felt that each police department should decide for itself whether conviction records would disqualify applicants.*

*Another NAC recommendation -- that qualified police applicants be directed into other temporary employment within the agency until there are vacancies within the department -- was not accepted by the Supervisory Commission. This suggestion was not felt to be realistic in light of civil service requirements and the current job market. Also, there was some question as to the real need for such a temporary program.*

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*Reference: National Advisory Commission on Criminal Justice Standards and Goals,* **Police Report,** *Standard 13.5, "The Selection Process," page 337.*

# Standard 7.

# Entry Level Physical and Psychological Examinations

Every police agency should require all applicants for police officer positions to undergo thorough entry-level physical and psychological examinations to ensure detection of conditions that might prevent maximum performance under rigorous physical or mental stress.

By 1977, every agency should furnish, and require, as a condition of employment, that each applicant pass a thorough physical and psychological examination. This examination should:

a. be designed to detect conditions that are likely to cause non-job-related illnesses, inefficiency, unnecessary industrial accidents, and premature retirement;
b. be conducted under the supervision of a licensed, competent physician; and
c. include a psychological evaluation conducted under the supervision of a licensed, competent psychologist or psychiatrist.

**Commentary**

*The Supervisory Commission endorsed the NAC standard in this area (***Police** *20.1) with one modification. The date for compliance was moved from 1975 to 1977; the earlier date was not considered to be realistic or fair, in light of the expense involved. Smaller departments are urged to share the services of a psychologist or psychiatrist in testing personnel. The results of testing should be kept confidential.*

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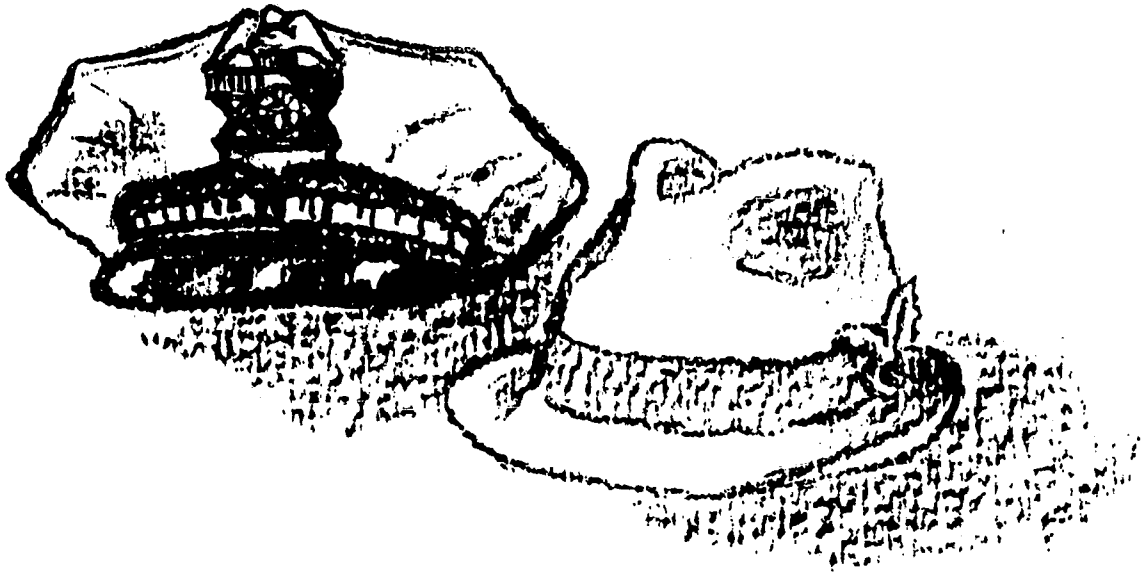
*Reference: National Advisory Commission on Criminal Justice Standards and Goals,* **Police Report,** *Standard 20.1, "Entry Level Physical and Psychological Examinations," page 498.*

# POLICE-COMMUNITY CRIME PREVENTION IN OHIO



# INTRODUCTION

The following five Standards are the work of the Ohio Criminal Justice Supervisory Commission's Law Enforcement Task Force, and relate to their second priority for 1975: "Assist in the development of programs involving both the police and members of the public in identifying crime problems and in preventing crime."

These Standards have been taken in part from the recommendations of the **Police Report** of the National Advisory Commission on Criminal Justice Standards and Goals (NAC). They focus upon the role of the police in the community crime prevention efforts.

Standard 1 discusses the roles of police and citizens in establishing and developing crime prevention programs. The second Standard is closely related to the first; it proposes that law enforcement agencies work with city planners and planning commissions to develop plans for future physical development of the community. Standards 3 and 5 cover such areas as the use of reserve police officers and the use of civilians to perform certain responsibilities within police departments. Both of these Standards relate closely to the Law Enforcement Task Force's first priority -- recruitment and selection of law enforcement personnel (see Standards on the Recruitment and Selection of Law Enforcement Personnel in Ohio). Standard 4 outlines both responsibilities and suggested organization for special crime tactical units. Such units would be deployed against specific crime problems.

The role of citizens has been stressed by the NAC in its **Community Crime Prevention Report.** Only Standard 1 touches upon the role of citizens and community groups in crime prevention. The Supervisory Commission, however, recognizes their critical role, and takes the position that crime prevention efforts are worthless without strong citizen support and input. This posture has been reflected in its funding of crime prevention programs in the past four years. Standards covering the role of citizens in crime prevention will be considered and reviewed by the Supervisory Commission's Prevention, Diversion, and System Development Task Force this year. The final product will be a comprehensive set of standards on crime prevention in Ohio, which will cover the roles and responsibilities for both the police and the community.

# Standard 1. Police-Community Crime Prevention Programs

Every police agency should immediately establish programs in preventing crime that provide information leading to the arrest and conviction of criminal offenders, that facilitate the identification and recovery of stolen property, and that increase liaison with private industry in security efforts.

1. Every police agency should assist actively in the establishment of volunteer neighborhood security programs that involve the public in neighborhood crime prevention and reduction.
   a. The police agency should provide the community with information and assistance regarding means to avoid being victimized by crime and should make every effort to inform neighborhoods of developing crime trends that may affect their area.
   b. The police agency should instruct neighborhood volunteers to telephone the police concerning suspicious situations and to identify themselves as volunteers and provide necessary information.
   c. Participating volunteers should not take enforcement action themselves.
   d. Police units should respond directly to the incident rather than to the reporting volunteer.
   e. If further information is required from the volunteer, the police agency should immediately notify him by telephone.
   f. If an arrest results from the volunteer's information, the police agency should immediately notify him by telephone.
   g. The police agency should acknowledge through personal contact, telephone call, or letter, every person who provides information.

2. Every police agency should establish or assist programs that involve trade, business, industry, and community participation in preventing and reducing commercial crimes.

3. Every police agency should seek the enactment of local ordinances that establish minimum security standards for all new construction and for existing commercial structures. Once regulated buildings are constructed, ordinances should be enforced through inspection by operational police personnel.

4. Every police agency should conduct, upon request, security inspections of businesses and residences and recommend measures to avoid being victimized by crime.

5. Every police agency having more than 75 personnel should establish a specialized unit to provide support services to and coordination of the agency's crime prevention programs; however, such programs should be operationally decentralized whenever possible.

**Commentary**

*The objective of this standard as stated by the NAC is to "enlist citizens as participants in a national effort to reduce crime, to diminish the fear of crime, and to preserve public order in their communities."*[1] *This entire standard, taken directly from the NAC report, outlines the role which citizens can play in crime prevention. Impact upon crime is greater when large numbers of citizens are involved in a crime prevention program, rather than when individuals take crime prevention steps separately.*

*The purpose of this standard is, therefore, to alert both police departments and citizen groups to ways in which they can work together in crime prevention.*

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*Reference: National Advisory Commission on Criminal Justice Standards and Goals,* **Police Report,** *Standard 3.2, "Crime Prevention," page 66.*

[1] *National Advisory Commission on Criminal Justice Standards and Goals,* **Police Report,** *page 61.*

# Standard 2. Police-Community Physical Planning

Every police agency should participate with local planning agencies and organizations, public and private, in community physical planning that affects the rate or nature of crime or the fear of crime.

1. Every government entity should seek police participation with public and private agencies and organizations involved in community physical planning within the jurisdiction.

2. Every police agency should assist in planning with public and private organizations involved in police-related community physical planning. This assistance should at least include planning involving:

a. Industrial area development;
b. Business and commercial area development;
c. Residential area development, both low-rise and high-rise;
d. Governmental or health facility complex development;
e. Open area development, both park and other recreation;
f. Redevelopment projects, such as urban renewal; and
g. Building requirements (target hardening), both residential and commercial.

## Commentary

*The objective of this standard is to introduce the concept of joint physical development planning to police departments, city planners, public officials, and the public. The team approach in city planning was developed primarily to coordinate transportation planning with housing and commercial development. Recently, police departments and city planners have used this concept in planning for crime prevention and security in new residential and commercial development.*

*Through current work such as that of Oscar Newman[1] with the New York City Housing Authority, it has been recognized that proper design and construction can play a significant role in reducing the opportunities for crime. "His studies indicate that while crime rates in public housing may not correlate specifically with density (the number of apartment units to the acre), they do correlate with building type and height. Crime rates were found to be much higher in high-rise buildings over six stories, especially in those designed with a 'double loaded corridor' (one floor consists of a long central corridor with apartments lining both sides)."[2]*

*Thus, the purpose of such joint planning should be both to remove opportunities for crime and to improve the ability of the police and the public to detect crime.*

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*Reference: National Advisory Commission on Criminal Justice Standards and Goals,* **Police Report,** *Standard 5.5, "Police-Community Physical Planning," page 129.*

[1] *Oscar Newman, Architectural Design for Crime Prevention, National Institute of Law Enforcement and Criminal Justice, 1971.*

[2] **Police Report,** *op. cit., page 130.*

# Standard 3.

# Use of Civilian Personnel in Law Enforcement Agencies

Every police agency should assign civilian personnel to positions that do not require the exercise of police authority or the application of the special knowledge, skills, and aptitudes of the professional peace officer. To determine the proper deployment of civilian and sworn personnel, every agency immediately:

1. Should identify those sworn positions which:
   a. do not require that the incumbent have peace officer status under local, State, or Federal statute;
   b. do not require that the incumbent exercise the full police power and authority normally exercised by a peace officer;
   c. do not require that the incumbent posses expertise which can be acquired only through actual field experience as a sworn police officer; and
   d. do not contribute significantly to the professional development of sworn personnel.

2. Should designate as civilian those positions that can be filled by a civilian employee according to the foregoing criteria;

3. Should staff with qualified civilian personnel all positions designated for civilians;

4. Should provide a continuing audit of all existing and future positions to determine the feasibility of staffing with civilian personnel;

5. Should develop a salary and benefit structure for civilian personnel commensurate with their position classifications;

6. Should ensure that an opportunity for career development exists within each civilian position classification where the nature of the position does not limit or bar such opportunity;

7. Should conduct in-depth personal background investigations of civilian applicants for confidential or sensitive positions. These background investigations should be as thorough as those of sworn applicants;

8. Should provide civilian training programs that ensure the level of proficiency necessary to perform the duties of each assignment;

9. Should inform all civilian employees of the requirements for sworn police status and interview them to determine their interest or desire to seek such status subsequently, and should record all information obtained during such interviews; and

10. Should assign those civilian employees who express a desire to seek sworn status later to positions that will contribute to their professional development as police officers.

**Commentary**

*The purpose of this standard as presented by the NAC is to encourage law enforcement agencies to hire civilian, non-sworn personnel to perform selected staff, support, and line functions. This, in turn, will free sworn personnel to handle assignments which can directly reduce and control crime. The Supervisory Commission endorsed the NAC standard, and encouraged each police agency to identify positions for which civilian personnel could be utilized (Section 1). It was felt that salary scales and benefits for civilian personnel should be commensurate with position classification, and within each classification an opportunity for career development should be ensured (Sections 5 and 6).*

*The Supervisory Commission felt that civilian training programs should be provided by the police agency (Section 9). It was also felt that civilian employees expressing a desire to seek sworn status should be assigned to positions that will contribute to their professional development as police officers (Section 10).*

*The concept of using civilians as a resource for future sworn personnel was proposed in 1967 by* the **President's Commission on Law Enforcement and Administration of Justice,** when it *recommended that agencies hire community service officers. A Community Service Officer*

*(CSO) would be, in effect, an apprentice police officer, not having full law enforcement powers, but performing certain service and investigative duties on the street. The NAC, in its* **Police Report,** *points to on-going programs in such cities as Dallas, Los Angeles, San Francisco, and Phoenix as examples of successful efforts to use such civilian personnel.*[1]

*As suggested in Standard 3, the Supervisory Commission has supported the concept of using civilians as a resource for future sworn personnel. AJD funds have been used in the past three years to assist police departments in hiring civilians (sometimes referred to as police cadets) between 18 and 21 years of age who have expressed an interest in a law enforcement career. Such programs have been successful in providing departments with a pool of future recruits.*

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*Reference: National Advisory Commission on Criminal Justice Standards and Goals,* **Police Report,** *Standard 10.1, "Assignment of Civilian Police Personnel," page 258.*

1 *National Advisory Commission on Criminal Justice Standards and Goals,* **Police Report,** *page 258-262.*

# √Standard 4. Special Crime Tactical Forces

Every police agency employing more than 75 personnel should have immediately available, consistent with an analysis of its need, a flexible and highly mobile tactical force for rapid deployment against special crime problems.

1. Every chief executive should establish written policies and procedures that govern deployment of the tactical force against any problem. These policies and procedures should stipultate at least:
   a. that the tactical force will be deployed on the basis of current crime pattern analyses or validated current information on expected crime activity;
   b. that the tactical force will be deployed against a problem only when the regularly assigned patrol force is not adequate to be effective against that problem; and
   c. that tactical force deployment strategy will be based on an objective analysis of the problem: overt saturation as a low visibility detection and apprehension operation.

Every police agency employing more than 400 personnel should consider maintaining a full-time tactical force, and every agency employing more than 75 but fewer than 400 should consider maintaining a full- or part-time tactical force, depending on local problems. In addition, single departments having less than 75 personnel should consider joining with other smaller departments to form regional tactical forces.
   a. The numerical strength of the tactical force should depend on agency needs and local problems.
   b. A full-time tactical force should include an analytical staff element.
   c. A part-time tactical force should use qualified personnel from anywhere within the agency.
   d. Every tactical force should have a central headquarters and should operate from that headquarters when deployed against a problem.
   e. Field commanders should be informed of tactical force activities within their area of responsibility. Tactical force activities should be consistent with the policies of the field commander of the area in which they are working.
   f. Every tactical force should be equipped with necessary specialized equipment, vehicles, radios, vision devices, and weapons.

## Commentary

*Special tactical units are designed to deploy a limited number of highly trained police officers, working as a team to combat problems in a high-crime area. Their purpose is to augment the on-going regular patrol by focusing upon a specific crime problem, such as sharp rise in the burglary rate in an inner-city neighborhood. The deployment of such crime prevention teams is based upon an analysis by the police department of the total crime pattern within a community. As the NAC has pointed out, these units can provide a department with the flexibility needed to respond to an ever-changing crime pattern.*[1]

*The NAC report cautions, however, that "tactical units who use greater force, or who show less respect for the public than the patrol units in the area, may achieve their immediate goal while alienating the community."*[2]

*The Supervisory Commission, in this standard, endorsed the positions taken by the NAC in its* **Police Report.** *It also encouraged departments with less than 75 personnel to work together on a regular basis. This approach, as carried out by MEG Units in Ohio, has been supported through AJD funding. The Supervisory Commission cautioned that command and control of the personnel in multi-jurisdictional units must be clarified, and that communication between the MEG units and various law enforcement agencies be maintained to ensure the survival and success of a multi-jurisdictional unit.*

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*Reference: National Advisory Commission on Criminal Justice Standards and Goals,* **Police Report,** *Standard 9.8, "Special Crime Tactical Forces," page 238.*

[1] *National Advisory Commission on Criminal Justice Standards and Goals,* **Police Report,** *page 239.*

[2] *Ibid.*

# Standard 5. The Use of Reserve Police Officers

1. The Ohio Peace Officer Training Council immediately should establish minimum standards for reserve police officer selection and training.

**Commentary**

*The Law Enforcement Task Force used the NAC definitions for "auxiliary" and "reserve" police officers:*

> *The term police officer usually applies to a nonregular, sworn member of a police agency who has regular police powers while functioning as an agency's representative, and who is required to participate in agency activities on a regular basis. A reserve officer may or may not be compensated for his services, depending on each agency's policy. The term reserve is often used interchangeably with auxiliary in referring to nonregular police employees. The auxiliary officer, however, is one whose function is usually related to civic defense activities, and whose participation in police functions is usually limited to emergency situations.*[1]

*This definition does not conflict with current Ohio law, which authorizes communities themselves to, by ordinance, establish auxiliary police units. Ohio Law stipulates that village mayors and municipal directors of public safety are responsible for establishing rules and regulations for the training, administration, control, and conduct of auxiliary police officers. The duties and police powers of such officers can vary from city to city and village to village. Thus, each community may use different terminology for similar responsibilities.*[2]

*In its review of the NAC report, the Task Force modified this standard. First, the Task Force delegated responsibility for establishing minimum standards for selection and training of reserve officers to the Ohio Peace Officer's Training Council, since this group already has a similar responsibility for regular, sworn officers. Secondly, it was decided that the Ohio Peace Officer's Training Council, when establishing minimum standards, should not be limited to specific criteria, as recommended in the NAC report. Rather, the purpose of developing this standard is to ensure that adequate training is provided for reserve police officers under the supervision of the Ohio Peace Officer's Training Council.*

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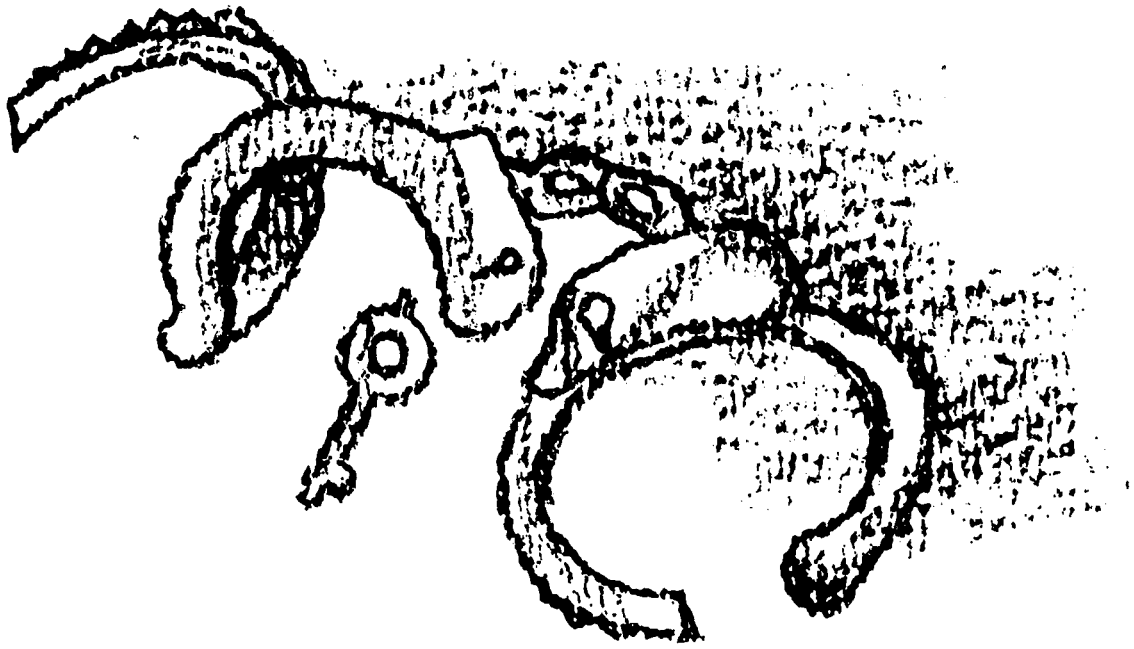
*Reference: National Advisory Commission on Criminal Justice Standards and Goals,* **Police Report,** *Standard 10.2, "Selection and Assignment of Reserve Police Officers," page 263.*

[1] *National Advisory Commission on Criminal Justice Standards and Goals,* **Police Report,** *Standard 10.2, "Selection and Assignment of Reserve Police Officers," page 264.*

[2] *See Ohio Revised Code Sections 737.05.1; 737.16.1; and 109.77.*

# THE DIVERSIONARY PROCESS FOR ADULTS IN OHIO



# INTRODUCTION

This set of Standards on adult diversion was prepared by the Ohio Criminal Justice Supervisory Commission's Task Force on Prevention, Diversion, and System Development. This Task Force has been working over the past months to develop standards which relate to its second priority for 1975: "Provide treatment, employment, and counseling to drug abusers, alcoholics, and first offenders to divert them from the criminal justice system."

The Task Force further narrowed its focus to standards covering the diversionary process with major emphasis upon diverting first offenders and those who have not committed serious or violent offenses. These standards pertain to diversion occuring at the prosecutor-court stage in the criminal justice process. Additional standards on the diversion of drug abusers and alcoholics will be considered later.

While the Task Force considered the work of the National Advisory Commission on Criminal Justice Standards and Goals (NAC), it decided to develop standards which specifically reflected its own philosophy on diversion.

The following pages contain an overview of diversion and background on the development of the concept. It is hoped that this may be helpful to the reader who is not familiar with diversion programs. Following this discussion is a brief summary of the Supervisory Commission's approach to adult diversion.

# OVERVIEW

Diversion is a relatively new concept in the criminal justice system. The purpose of this overview, therefore, is to provide basic information on the background and philosophy of diversion.

The criminal justice system traditionally functions on the premise that citizens agree to adhere to established standards of conduct. It is recognized that these rules or laws will be enforced and punishment will be administered to violators. But an alternate means of dealing with violators has been developing informally in many areas. This has been termed diversion, a process of removing the offender from the traditional criminal justice system. Where practicable, prosecution of the offender is deferred when the accused agrees to help develop and participate in an acceptable program -- one which satisfactorily addresses his needs. Upon successful completion of the diversion program, prosecution of the accused is stopped altogether, and records could be expunged.

Within the diversion process, the offender is offered a substitute means of restitution for his anti-social behavior: a rehabilitative program or other form of aid which can be of greater help to the individual than arrest followed by incarceration. By participating in a diversion program, the accused may be able to solve his problems and break the chain of events which have led him to criminal activity. The diversion process is an attempt to transform an individual's negative experience of arrest into a positive variation in his life, a movement toward becoming a more productive citizen.

National Advisory Commission

A variety of views stem from the basic philosophical concept of diversion. They differ as to the nature of the program and the type of criminal activity toward which the process is aimed. The National Advisory Commission on Criminal Justice Standards and Goals (NAC) in its various task force reports promulgated well-analyzed interpretations of the diversion process. The basic thrust of the NAC's interpretation emphasizes that diversion is a realistic approach to the problem of an over-burdened court system, but that such rationale is not the sole basis for the development of a diversion program. A major goal is to have a criminal justice system which is balanced in terms of caseloads and resources. If this goal were met, there would be little need for a diversion process whose sole meaning arose from a desire to alleviate inadequate court facilities, thus reducing court delay.

Instead, the NAC pointed to the many benefits which may accrue to both offender and society, if the case were processed through an alternative to the regular criminal justice process. For example, a young adult having committed a non-violent first offense may respond to counseling and the opportunity for employment. However, if incarcerated, this type of help and guidance may not be given to the offender. Similarly, a mentally ill person who has committed a minor offense could be diverted to mental health facilities rather than undergoing prosecution. Also, if an offender lacks normal mental capacity, the punitive aspects of the court system will have little effect. Thus, it would be beneficial to the offender, as well as society, if he were directed to facilities where persons are well-equiped to help him handle his problems. These types of programs will alleviate caseloads. But, as stressed by the NAC, in order to assure lasting validity, such programs must be based on a desire to help the individual rather than as a substitute for inadequate court facilities and resources.

Understanding of the diversion process can be clarified by viewing some of the previous or existing programs. An interesting prototype is the Manhattan Court Employment Project. This early attempt at diversion was planned in 1967 by the Vera Institute of Justice, under the sponsorship of New York City's Criminal Justice Coordinating Council. It was funded by a three-year demonstration grant from the Manpower Administration of the U.S. Department of Labor. Through the project, the offender was aided in finding steady employment which could enable him to abandon a potential criminal career. The project personnel interviewed an offender and determined his eligibility according to certain established criteria. Among the criteria were that the offender not use alcohol or narcotics, that he be unemployed or underemployed, and that he had not committed any serious crimes. If accepted into the program, prosecution was adjourned for 90

days, during which time the offender participated in individual and group counseling in an effort to identify and understand his problems. In addition, he was counseled by a career developer, who channeled him into employment with cooperating employers. The results of this project have been encouraging. By its third year, dismissal of charges was recommended for 61 percent of the participants. Employability of participants increased greatly, while criminality was reduced. Also, re-arrest figures for participants were lower than for a comparison group.

The Medina County First Offender Diversion Program is an early experiment here in Ohio. Citizens felt the community needed a program to serve first offenders who were accused of non-violent, non-traffic crimes. This program provides an accused with the opportunity to avoid a criminal record.

The Medina County (Ohio) Prosecutor works in conjunction with the County Family Guidance Clinic, an agency funded by the Board of Mental Health and Retardation. Offenders are offered a multi-phased counseling-employment program as an alternative to regular criminal prosecution. The program aims at altering a person's attitudes toward his obligations and problems in order to facilitate his movement back into society as a constructive and respectable citizen. This project hopes to reduce recidivism and the rate of incarceration of those first offenders who do not need institutionalization. The participant, upon successful completion of a designated program, will have the charges against him dropped.

The NAC lists two common prerequisites for participation in diversion which generally characterize such projects. They are as follows:

1. "Undesirability of criminal prosecution because of undue harm to the defendant or his underlying problem because of the apparent futility of prosecution in preventing future offenses, or because formal prosecution fails to meet the needs of the victim; and

2. Availability of assistance such as treatment, counseling, or mediation procedures."[1]

While recognizing such salient features, the specifics of the many programs vary greatly. The NAC realized that the particulars of each program must depend on the needs and desires of a specific area. But, at the same time, they stressed that such programs must not operate on an ad hoc basis. They must have well-defined procedures and criteria for both the selection of participants and the choice of resources to be used. Otherwise, the risk of depriving the offender of his rights could be very high.

## Coordination Within the System

The concept of diversion for adults involves members in many facets of the legal community, and links together all parts of the criminal justice system. Since all parts will be affected by formalization of the diversion process, it is essential that all members be represented in its inception. Policies must be devised by all those instrumental in implementation to ensure cooperation.

Diversion from the criminal justice system can occur at different stages in the process. For example, police departments have instituted diversion programs for mentally ill offenders and public intoxicants. Such programs remove the accused from the system at the arrest stage. Most of these programs are designed to include a facility in which intoxicated persons or mentally ill offenders can receive appropriate care. Also, diversion from the criminal justice system can occur after the arrest stage, but before trial. Such programs rely on both the discretion of the prosecutor to defer prosecution and the discretion of the judge to agree to diversion. Therefore, coordination within the criminal justice system is necessary to develop and utilize a diversion program.

## Supervisory Commission Action

The Prevention, Diversion and System Development Task Force of the Ohio Criminal Justice Supervisory Commission has addressed the issue of diversion and developed standards for this process. The Ohio Standards basically follow certain general premises noted by the NAC. But, as predicted by the NAC, the Task Force has adapted and devised its own standards to best suit the needs

and ideas of Ohio. While the NAC addressed diversion in several task force reports, the Supervisory Commission assigned this subject to one Task Force.

In its discussions, the Task Force concluded that between the time of arrest and the actual trial, a case may be dropped or dismissed by the police or the prosecutor for a variety of reasons. During the screening process, the prosecutor decides whether or not to prosecute a case primarily on the basis of the merits of the case itself and the evidence. Then from among those cases which can be prosecuted, the prosecutor reviews all cases to select those in which diversion may be possible. During the diversion process, however, the focus is upon the offender, his previous record, and his chances for rehabilitation rather than the case itself.

Within this frame of reference, the Task Force set the following definition of diversion, which was adopted by the Supervisory Commission:

> Diversion is the procedure of postponing prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is to be charged until adjudication. The purpose of diversion is to offer the accused an alternative method of rehabilitation, other than incarceration or probation, which will bring about the accused's future compliance with the law.

Finally, the Supervisory Commission recognized the urgent need to promulgate written guidelines for the diversion process, realizing it is already in existence informally in some areas, and is in need for development in others.

The following Standards address the diversionary process as carried out by the prosecutor and the courts. In Standard 1, "General Policies for the Diversion System," the Task Force outlined the general framework and organization of a model diversion process. The Standard calls for written guidelines and policies and represents an effort to standardize the process.

Standard 2, which is entitled, "General Criteria for Diversion," deals with the type of offender who should be eligible for diversion. The Standard contains a number of suggested criteria to be used in selecting offenders for the diversion process. Local communities may wish to add additional criteria to the basic list in Standard 2.

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[1] *National Advisory Commission on Criminal Justice Standards and Goals,* **Courts Report,** *Standard 2.1, "General Criteria for Diversion," page 33.*

# Standard 1. General Policies for Diversion Systems

1. All diversion policies must be written and made public.

2. All diversion policies must be developed jointly by representatives of law enforcement, the prosecutor's office and courts. This must be done to ensure uniform procedures and cooperation (see Standard 2).

3. In all cases where an individual is eligible for diversion, a written report is to be made and filed with the prosecutor's office, regardless of whether the individual is finally rejected or accepted for diversion. A copy of that report must be provided to the accused and the accused's counsel. In addition, copies may be provided to agencies which may be involved in developing treatment programs with the accused. All parties concerned should take care to ensure the privacy of the diversion reports.

4. The process of diversion cannot be used to coerce a guilty plea from the accused, even though there is a reasonable assumption of guilt. To protect this standard, the accused cannot be required to enter any formal plea to the charge made against him as a condition for participation in a diversion program. Also, participation in a diversion program cannot be used in subsequent proceedings relative to that charge as evidence of an admission of guilt.

5. Diversion is not a negotiation process, as in plea bargaining. The accused either accepts or rejects diversion. The role of the accused's counsel is to be a facilitator and to ensure the protection of the accused's rights.

6. Each individual who is charged must be provided with a sheet of facts about the diversion process.

7. The diversion process may be initiated by:
   a. the accused and/or counsel for the accused in the form of a written formal request for diversion to the prosecutor;
   b. the prosecutor;
   c. an *amicus curie* who could have the option to review a case (particularly where counsel is appointed by the court) to determine eligibility for diversion; or
   d. the chief of the local law enforcement agency.

8. In order to expedite the diversion process, the appropriate authority must take immediate steps to gather all information required by the prosecutor in order that he may be able to make the diversion decision as soon as possible.

9. There must always be a diversion agreement developed before diversion occurs. This agreement should include the terms of diversion, the length of diversion terms, and a section stating the period of time after which the prosecutor will either move to *nolle* the charge or seek a conviction. This agreement must be signed by the accused and his counsel, and filed in the prosecutor's office with a copy going to the accused and one to his counsel.

**Commentary**

*The Supervisory Commission devised the general criteria for diversion in a manner best suited to Ohio. It is an attempt to make public and standardize the policies of diversion, assuring that all cases are handled equitably, on the basis of well-defined criteria. Although many diversion programs exist informally, they should be formally established through legislation. Such legislation should not only detail the standards and duties of the officials affected, but also describe a process for funding.*

*The idea that diversion policies must be made public and uniform is stressed in Sections 1-2. Policies must be devised by all those instrumental in implementation to ensure cooperation.*

*Section 3 describes a procedure for distribution of written reports to those involved with the diversion decision. The Supervisory Commission stipulated that care must be taken to ensure the privacy of these diversion reports.*

*Sections 4-6 reflect the Supervisory Commission's great concern that the accused must be dealt with fairly. Those handling the cases must not abuse any individual's personal rights. Thus, Section 4 stresses that diversion cannot be used to coerce a guilty plea from the accused, nor may*

*anything he says while being considered or undergoing diversion be used against him if his case later goes to trial. In addition, as stated in Section 5, diversion is* **not** *plea bargaining. Rather, it has a specific purpose -- rehabilitation. If this is not the desired and reasonably probable end, the diversion process should not be considered. Within such programs, there is always a risk that an accused may commit himself to a program, but has not really understood what is happening. Thus the Supervisory Commission felt Section 6, which states that the arrestee should be given a sheet of facts about the process, was important.*

*Sections 7-9 approach some procedural aspects of diversion. The question of who or what agency should operate the diversion process generated much discussion. After consideration, the Supervisory Commission decided not to include a section assigning program administration to the prosecutor, as it would not be feasible in some communities.*

*The Supervisory Commission felt that initiation of the process should be handled by any of the four parties listed in Section 7. Although initiation of the process can vary, Section 8 states that the prosecutor on county or municipal levels is to make the diversion decision.*

*Also, the Supervisory Commission felt that an essential ingredient of a diversion program is a written agreement between all parties outlining aspects of the proposed diversion. This diversion agreement, described in Section 9, is an attempt to avoid confusion and problems because of* misunderstandings among the participants.

*Reference: See National Advisory Commission on Criminal Justice Standards and Goals,* **Courts Report,** *Standard 2.1, "General Criteria for Diversion," page 32; and* **Police Report,** *Standard 4.3, "Diversion," page 80.*

# Standard 2. General Criteria for Diversion

2.1 In appropriate cases, the accused should be diverted before a formal decision is made relative to the case.

1. Such diversion is appropriate where:
   a. There is substantial likelihood that justice will be served and the community will be safe, if the individual is diverted; or
   b. it is determined that the needs of the accused can better be met outside the criminal justice system and community resources are available to meet these needs; or
   c. any points under ORC 2929.12 are present:
      1. The offense neither caused nor threatened serious physical harm to persons or property, or the offender did not contemplate that it would do so;
      2. the offense was the result of circumstances unlikely to recur;
      3. the victim of the offense induced or facilitated it;
      4. there are substantial grounds tending to excuse or justify the offense, though failing to establish a defense;
      5. the offender acted under strong provocation;
      6. the offender has no history of prior delinquency or criminal activity, or has led a law-abiding life for a substantial time before commission of the present offense; or
      7. the offender is likely to respond quickly to correctional or rehabilitative treatment.

2. An individual should not be considered for a diversion program if:
   a. the individual has been known to be unresponsive to previous diversionary programs; or
   b. the individual is a "Dangerous Offender," defined in ORC 2929.01 as:
      "...a person who has committed an offense, whose history, character and condition reveal a substantial risk that he will be a danger to others, and whose conduct has been characterized by a pattern of repetitive, compulsive, or aggressive behavior with heedless indifference to the consequences. 'Dangerous offender' includes, without limitation, psychopathic offender[1] as defined in Section 2947.24 of the Revised Code."

**Commentary**

*In this Standard, the Supervisory Commission outlined the instances when the diversion process should be utilized. These were aimed at meeting the needs of Ohio and corresponding to the nature of its criminal law. Many of the instances are patterned after various issues raised by the NAC. For example, a consideration that the needs of the accused could better be met outside the criminal justice system through utilization of community resources is worthy criteria. Also, diversion is considered appropriate when there is reason to believe that an accused was mentally ill or unstable at the time of the crime. Although consideration was given to including a section specifically mentioning these persons, the Supervisory Commission felt that mentally ill offenders are already included in Section 1.*

*At the same time, Section 2929.12 of the Ohio Revised Code, which outlines factors to be considered by the court in determining the sentence for a felony, was incorporated to serve as additional guidelines for diversion. This was incorporated, as it was felt that better results could be attained by utilizing current Ohio law when possible (see Section 1).*

*The Supervisory Commission further outlined criteria for diversion by eliminating from consideration those offenders who have been known to be unresponsive to previous diversionary programs and those who could be described as "dangerous offenders."*

*The Supervisory Commission also considered the role of the victim. It was suggested that diversion would only be appropriate if the victim were willing not to seek a conviction. This condition was deleted on the rationale that in a criminal case, the State is the plaintiff and determines prosecutability of the accused, not the*

*victim. The State administers punishment or regulates conduct in an attempt to maintain order. Hence, the offender would not usually be required to make restitution to a victim in a criminal case. The Supervisory Commission felt that direct victim input would be no more appropriate in the diversion decision than it would be in the sentencing decision. If within legal bounds, the State should be able to divert an offender when this solution is better for soceity. This alternative would also take into account the State's responsibility for maintaining order.*

*At the same time, the prosecutor should consider the feelings of the victim before taking action. The Commission did express great concern for the injured party, but this issue had to be weighed against other factors. It was realized that too often the victim, being emotional or vindictive, may insist on prosecution, even though it is not the best solution to the underlying problems. Hence, the victim should not have control over the diversion decision.*

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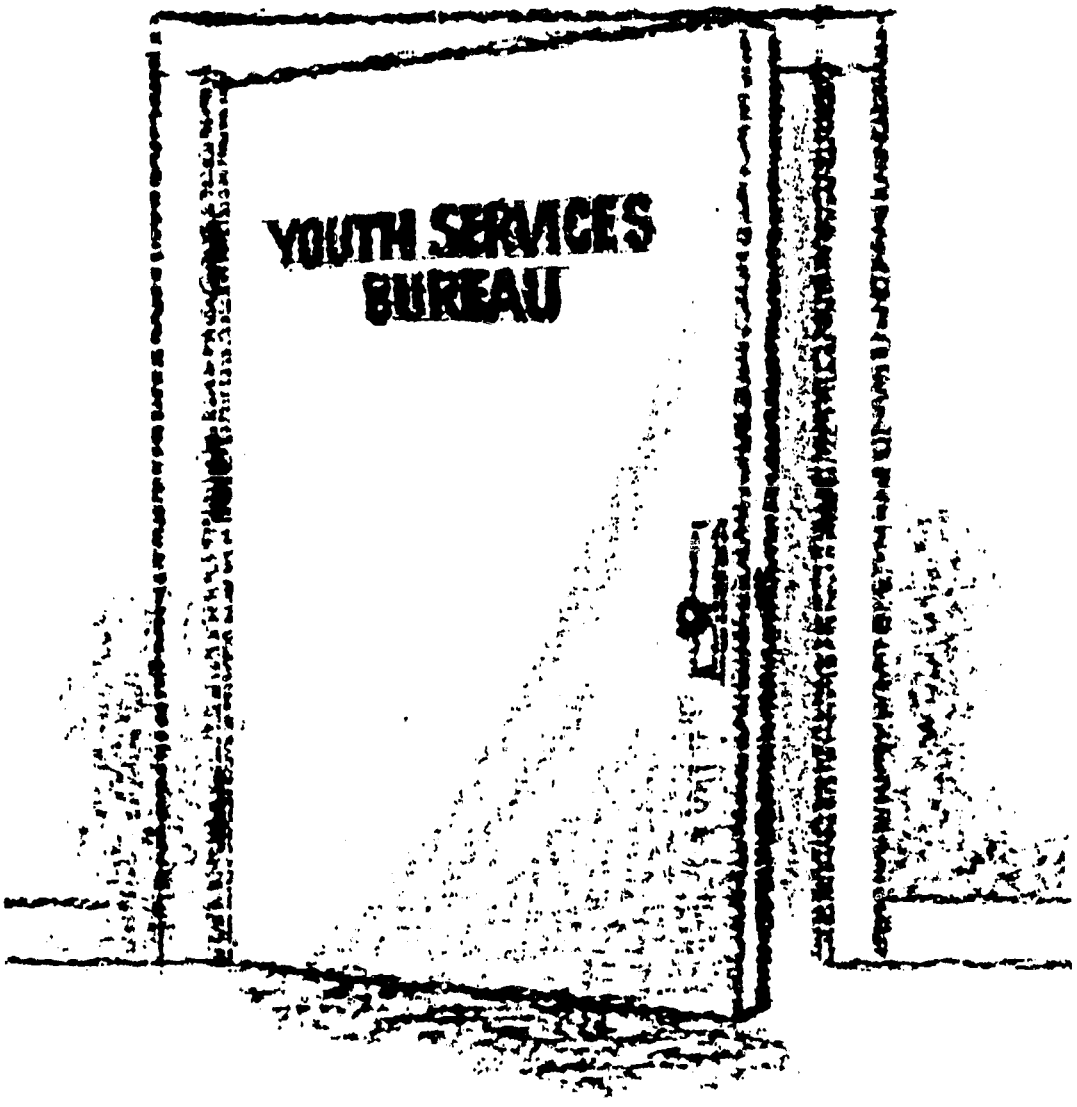
*Reference: See National Advisory Commission on Criminal Justice Standards and Goals,* **Courts Report,** *Standard 2.2, "Procedure for Diversion Programs," page 39.*

[1] *Also see ORC Sec. 2947.24 for a complete definition of a psychopathic offender. Basically, a "psychopathic offender" means any person who is adjudged to have a psychopathic personality, who exhibits criminal tendencies, and who by reason thereof is a menace to the public.*

# THE DIVERSION OF YOUTH IN OHIO



# INTRODUCTION

## Objectives

The following Standards were prepared by the Juvenile Delinquency Task Force of the Ohio Criminal Justice Supervisory Commission. During the spring and summer of 1974, this Task Force reviewed the standards from the National Advisory Commission on Criminal Justice Standards and Goals (NAC) which relate to their second priority for 1975:

"Provide alternatives to detention and court processing by referring youth identified as in danger of becoming delinquent to appropriate community resources."

In doing this, the Juvenile Delinquency Task Force reviewed and discussed the standards on the general area of diversion and prevention and on the development of youth services bureaus. It identified two major objectives:

1. To identify as early as possible those youth who may become delinquent and, if possible, before they have contact with the police or juvenile court; and
2. To improve the planning and coordination between youth service agencies and the juvenile justice system.

The Task Force also took the position that delinquency-prone youth often are not given assistance and help until they are in the juvenile justice system. They also stressed, however, that not all youth can or should be referred to a youth services bureau in lieu of the juvenile justice system. The youth services bureau rather should be one of several approaches in juvenile delinquency prevention and diversion.

## Youth Services Bureaus

Standards 2 through 8 cover the area of youth services bureaus which the Supervisory Commission has identified as an important strategy in preventing juvenile delinquency. The related NAC standards are found in Chapter Three of its **Community Crime Prevention Report.**

In reviewing the work of the National Advisory Commission on youth services bureaus, the Juvenile Delinquency Task Force was concerned that the national standards were too broad, and thus were not helpful in defining the role of youth services bureaus within the youth services system. The entire Supervisory Commission agreed. The members also felt that the NAC standards were replete with jargon, and consequently eliminated or simplified terms which were not clearly defined and understood by all readers.

The Supervisory Commission reaffirmed the original concept of youth services bureaus, which was presented in 1967 by the President's Commission as the most useful. The Supervisory Commission concluded that there are four types of youth services bureaus: (1) those that serve as referral agencies; (2) those that serve as planning and coordinating councils for existing agencies; (3) those that serve as youth advocacy agencies; and (4) those that provide direct services. The Supervisory Commission agreed that YSB's should avoid providing direct services, except short-term demonstration projects, whenever possible. In this respect, the Supervisory Commission echoed the National Council on Crime and Delinquency, which said:

> "The Youth Services Bureau is not itself a service agency so much as an agency for organizing the delivery of services to children and their families. Its uniqueness lies in its relationship to youth and to agencies serving youth. Although it may conduct demonstration projects and perform an information, counseling, and referral function, it is not in competition with other direct-service agencies. In fact, one long-range aim of the Youth Services Bureau should be to achieve such a change in court intake practices and such coordination and development of youth resources in the community that whatever direct services it may have temporarily provided will no longer be needed."
> (Sherwood Norman, *Youth Services Bureaus,* page 14)

## Organization of Standards

In developing Standards on youth services

bureaus, the Supervisory Commission followed much of the format of the **Community Crime Prevention Report**, and considered standards on the objectives, target groups, functions, staffing, funding, and legislation for youth services bureaus. The Supervisory Commission postponed action, however, on an NAC standard on evaluation of youth services bureaus because they felt that the original standard was not adequate or clear and thus they wished to reconsider this area. The Supervisory Commission, however, does emphasize the need for evaluation, and strongly urges that it be built into program development.

# Standard 1. The Use of Diversion for Youth

Each local community working with the police, the juvenile court, the schools, and youth service agencies should develop and implement diversion programs for youth. Diversion programs should supplement other efforts to work with pre-delinquent and delinquent youths.

1. The development of diversion services should be part of the total planning for youth services in the community. It is one of the strategies which should be followed in order to prevent delinquency. Youth Services Bureaus should be considered as one of the means to divert youth from the juvenile justice system.

2. Diversion should occur as soon as possible after a youth has had contact with the juvenile justice system. There should be written guidelines which are developed through local cooperation to assist the police and juvenile court intake in diverting youth. There should also be a periodic review of policies to evaluate the diversion programs and their impact upon the juvenile justice system.

3. Diversion is a strategy which may be considered for the following groups of youth:

a. youth offenders under 18 years;
b. offenders with little previous contact with the juvenile justice system;
c. offenders who have not committed violent acts; and
d. offenders who are considered delinquent or unruly and who have not committed an act which for an adult would be a crime.

There will be, however, some youth within the group above who need the assistance of the juveniie court or the Ohio Youth Commission and who should not be diverted. This should be included in the guidelines.

4. Diversion must be voluntary, and the youth and family must understand and have in writing the terms of the diversion.

**Commentary**

*The Supervisory Commission has developed separate standards on diversion for juveniles and for adults. This distinction is necessary because existing law sets out a different philosophy on the treatment of juveniles, and has established a separate juvenile justice system. Thus, this standard attempts to identify those youth for whom diversion will be most helpful. The entire process is much more informal and flexible than the diversionary process for adults suggested earlier in this report by the Supervisory Commission.*

*The Supervisory Commission feels it is necessary to distinguish between prevention and diversion in terms of the target groups to be served:*

*1.* **Prevention:** *Pre-delinquent youth should be identified and helped before they have contact with the police or the juvenile court. This help may come from schools, community agencies, or youth services bureaus; and*

*2.* **Diversion:** *Youth who have had formal contact with the police or juvenile court intake should, whenever possible, be diverted out of the juvenile justice system. Diversion may take place any time up to the juvenile court hearing. The Supervisory Commission recognizes that diversion is not the best strategy for all youth; some are seriously troubled and need the services of the juvenile court or the Ohio Youth Commission.*

*In this standard, the Supervisory Commission continues to emphasize the need for cooperation among youth-serving agencies and the juvenile justice system and the need for written guidelines and policies which can be reviewed continually.*

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*Reference: See National Advisory Commission on Criminal Justice Standards and Goals,* **Corrections Report,** *Standard 3.1, "Use of Diversion," page 95.*

# Standard 2. Objectives of Youth Services Bureaus

Youth services bureaus should be established to focus on the special problems of youth in the community. Its primary goals should be to help prevent juveniles from entering the juvenile justice system. It should function as either:

a. a coordinating and planning council for existing agencies, pulling together agencies and assisting agencies in obtaining funding and other resources; or

b as an advocate for youth by obtaining and developing needed services and ensuring that services were being provided for youth in that community. In this capacity, a youth services bureau may also be involved in running demonstration projects for needed services with the understanding that the program be a short-term one and be taken over by another agency as soon as possible.

Priorities among goals should be set locally and objectives should be measurable with progress toward them scrutinized by evaluative research.

## Commentary

*The Supervisory Commission believes that the youth services bureau cannot adequately perform all of the functions discussed by the NAC and that, indeed, one agency cannot both provide direct services and coordinate other outside services. These functions are "fish" and "fowl," which cannot be assigned to the same agency. Thus, the Supervisory Commission feels that in larger cities, where there are already many on-going youth services programs, the youth services bureau should play a coordinating role and not become involved in providing services. In smaller communities, where there are few existing youth programs and resources, the youth services bureau may serve as an advocate for needed services and develop demonstration projects on a short-term basis.*

*On the whole, the Supervisory Commission believes that the youth services bureau should retain a watchdog function in the community regarding youth services, rather than providing direct services for pre-delinquents. While the Supervisory Commission's position is that local communities can best identify problems and youth services bureaus should be tailored to fit local problems, it suggests that it is best to limit the role played by the youth services bureau in order to maximize results.*

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*Reference: See National Advisory Commission on Criminal Justice Standards and Goals,* **Community Crime Prevention Report,** *Standard 3.1, "Purpose, Goals, and Objectives," page 70.*

# Standard 3. Structure of Youth Services Bureaus

Youth services bureaus should be organized as independent, locally operated agencies that involve the widest number of people of the community in the solution of youth problems. The most appropriate local mix for decision-making should be determined by the priorities set among the goals, but in no case should youth services bureaus be under the control of the juvenile justice system or any of its components.

A coalition, including young people, indigenous adults, and representatives of agencies and organizations operating in the community, should comprise the decision-making structure. Agency representatives should include juvenile justice policy-makers.

**Commentary**

*There are several issues raised in the original NAC standard (Community Crime Prevention Standard 3.2), with which the Supervisory Commission did not completely agree.*

*1. One issue is the degree of independence for the youth services bureau. The NAC stressed that it should be "organized as [an] independent, locally operated agency." The Supervisory Commission agreed that it should not be part of the police department or the juvenile court, but also stressed that it must have the recognized authority to handle youth problems. This can be gained only through close cooperation and agreement among youth service agencies, the juvenile justice system, schools, and the community.*

*2. The Supervisory Commission discussed and rejected one section in the original NAC standard:*

*"A bureau should be operated with the advice and consent of the community it serves, particularly the recipients of its services. This should include the development of youth responsibility for community delinquency prevention."*

*The reason for rejecting this section was that the Supervisory Commission felt that too much emphasis is placed upon youth control of the program. It does not endorse the philosophy that the recipients of the bureau's services should play a primary role in the operations of the bureau, although they agree that the youth in the community ought to participate.*

*3. While the Task Force agreed with the NAC as to the importance of involving juvenile justice policy-makers, it also stressed that the juvenile justice personnel who have contact with juveniles and who make the decisions on diverting them must be in close contact on a continuing basis with the bureau.*

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*Reference: See National Advisory Commission on Criminal Justice Standards and Goals,* **Community Crime Prevention Report,** *Standard 3.2, "Decision Structure," page 72.*

# Standard 4. Target Group for Youth Services Bureaus

Youth Services Bureaus should direct their efforts to two target groups of youth in the community:

1. Youth who have not yet had formal contact with the police or the juvenile court, but who are identified by schools, churches, individuals, and other community groups as being in serious danger of becoming delinquents. This may include youth who have run away from home, who are absent from school or have dropped out, who have difficulty relating to others or exhibit behavioral problems; and

2. Youth who do come into contact with the police or juvenile court intake center for the first time, who do not pose a serious threat to public safety, and who **voluntarily** accept referral to the youth services bureau.

Specific criteria to be used for referrals should be jointly developed in writing by law enforcement, the schools, juvenile court, and youth services bureau personnel. Referral policies and procedures should be reviewed on a periodic basis by all of the agencies working together.

Cases coming from the police or the juvenile court should be closed by the referring agency upon referral. Referral agencies are, however, entitled to systematic feedback on initial services provided to the referred youth by the bureau in order to monitor the effectiveness of the referral process.

**Commentary**

*The Supervisory Commission found the standard (Community Crime Prevention 3.3) as proposed by the National Advisory Commission too broad. It felt that youth services bureaus could not possibly work with all youth in the community, and instead needed to focus their attention upon a fairly specific group of potential delinquents and upon first-time delinquents for whom referral was the best course.*

*The Supervisory Commission eliminated various repetitious references in the original standard to the voluntary nature of referrals. While it agrees with the NAC that ". . . .the youth should not be forced to choose between bureau referral and further justice system processing," the Supervisory Commission acknowledged that the choice for many youth may be the lesser of two evils. This problem will be faced continually by all youth services bureaus.*

*NAC suggested that the police department and the juvenile court should close cases once they have been referred to the youth services bureau (Section Six of Standard 3.3). But the following section (Section Seven) stated that "referring agencies should be entitled to and should expect systematic feedback on initial services provided to a referred youth by the bureau." The Supervisory Commission found these two sections somewhat contradictory. It agreed that cases ought to be turned over completely to the youth services bureaus, but it stressed that the youth services bureau should report back regularly to the referring agencies on their services.*

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*Reference: See National Advisory Commission on Criminal Justice Standards and Goals,* **Community Crime Prevention Report,** *Standard 3.3, "Target Groups," page 74.*

# Standard 5. Functions of Youth Services Bureaus

Youth services bureaus should, whenever possible, utilize existing services for youth through referral, systematic follow-up, and individual advocacy. Bureaus should develop and provide services on an on-going basis only where these services are unavailable to the youth in the community or are inappropriately delivered. Services should be confidential, and should be available immediately to respond skillfully to each youth in crisis.

Among the functions suggested for youth services bureaus are the following:

1. A youth services bureau's programs should be specifically tailored to the needs of the community it serves. This should include consideration of techniques suitable for urban, suburban, or rural areas.

2. The youth services bureau should provide service with a minimum of intake requirements and form filling by the youth served.

3. Services should be appealing and accessible by location, hours of service availability, and style of delivery.

4. Case records should be minimal, and those maintained should be confidential and should be revealed to agencies of the justice system and other community agencies only with the youth's permission.

5. The youth services bureau should make use of existing public and private services when they are available and appropriate.

6. The bureau should maintain an up-to-date listing of all community services to which youth can be referred by the bureau. This listing should be readily accessible by all bureau staff.

7. Referrals to other community services should be made only if voluntarily accepted by the youth.

8. The youth services bureau should not refer youth to court except in cases of child neglect or abuse.

9. In referring to other community agencies for service, the youth services bureau should expedite access to service through such techniques as arranging appointments, orienting the youth to the service, and providing transportation if needed.

10. The youth services bureau should rapidly and systematically follow up each referral to ensure that the needed service was provided.

11. The youth services bureau should have funds to use for purchase of services that are not otherwise available.

**Commentary**

*The Supervisory Commission retained much of the text to the original NAC standard, although it considered much of the description to be common sense. It did indicate that while recordkeeping ought to be minimal, it was necessary to keep records in order to carry out a thorough evaluation (Section Four).*

*One section, however, was eliminated by the Supervisory Commission. It stated that, "The youth services bureau should provide services to young people at their request, without the requirement of parental permission." The Supervisory Commission did not feel that parental permission was always necessary, but realized that it is required by law in some cases. Thus, the section was omitted.*

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*Reference: See National Advisory Commission on Criminal Justice Standards and Goals,* **Community Crime Prevention Report,** *Standard 3.4, "Functions," page 76.*

# Standard 6. Staffing for Youth Services Bureaus

Sufficient full-time, experienced staff should be employed by the youth services bureau to ensure the capacity to respond immediately to complex personal crises of youth, to interact with agencies and organizations in the community, and to provide leadership to actualize the skills of less experienced employees and volunteers.

1. Staff who will work directly with youth should be hired on the basis of their ability to relate to youth in a helping role. The focus of staffing should not be to hire only via the traditional education and experience requirements. Sensitivity to young people's needs and to the feelings and pressures of the community is a knowledge often acquired outside formalized training, and should be sought in staff members.

2. Indigenous workers, both paid and volunteer, adult and youth, should be an integral part of the youth services bureau's staff, and should be utilized to the fullest extent.

3. Volunteers should be actively encouraged to become involved in the bureau. Volunteers should be screened, and those accepted should receive formalized pre-service training and orientation to the work of the youth services bureau.

4. Whenever possible, the youth services bureau should have available (perhaps on a volunteer basis) the specialized professional skills of doctors, psychiatrists, attorneys, and others to meet the needs of its clients.

**Commentary**

*Most of the redrafting of the text of this standard from the NAC's* **Community Crime Prevention Report** *was done to simplify the language and to avoid repetition. The Supervision Commission did delete a section calling for youth who are program participants to be employed as staff in the youth services bureau. This section is contradictory to the Supervisory Commission's position on the participation of youth in the bureau (see Standard 3).*

*The Supervisory Commission agreed that experience and the ability to work with troubled youth are usually more important in selecting staff members than formal education requirements. Therefore, they encouraged agencies to use several different criteria in the selection of youth workers for the bureau.*

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*Reference: See National Advisory Commission on Criminal Justice Standards and Goals,* **Community Crime Prevention Report,** *Standard 3.5, "Staffing," page 78.*

# Standard 7. Funding for Youth Services Bureaus

Public funds should be appropriated on an on-going basis to support youth services bureaus because the total community has a concern for youth and their problems. Private funding should, therefore, be supplemental to the public effort.

## Commentary

*The Supervisory Commission feels strongly that youth services bureaus should be publicly funded. Juvenile delinquency is a community problem, which should concern all citizens. Youth services bureaus, like juvenile courts, should be accountable to the public. This can best be accomplished through the use of public funds.*

*In addition, funding has been a difficult problem for many youth services bureau. They have often lacked stability because they do not have on-going funding, and instead have relied upon year-to-year funding from such programs as AJD and from private foundations. Thus, it is important that they gain the stability of on-going public funding in order to carry out their activities.*

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*Reference: See National Advisory Commission on Criminal Justice Standards and Goals,* **Community Crime Prevention Report,** *Standard 3.7, "Funding," page 82.*

# Standard 8. State Legislation for Youth Services Bureaus

The State of Ohio should enact necessary legislation to fund partially and to encourage local establishment of youth services bureaus throughout the State. Legislation also should be enacted to permit the use of youth services bureaus as a voluntary diversion resource by agencies of the juvenile justice system.

## Commentary

*The Supervisory Commission recognizes this Standard as the ultimate goal for youth services bureaus. It will provide the key to continuing local projects once the limited AJD funding has been exhausted. The Supervisory Commission is considering strategies for the implementation of this standard.*

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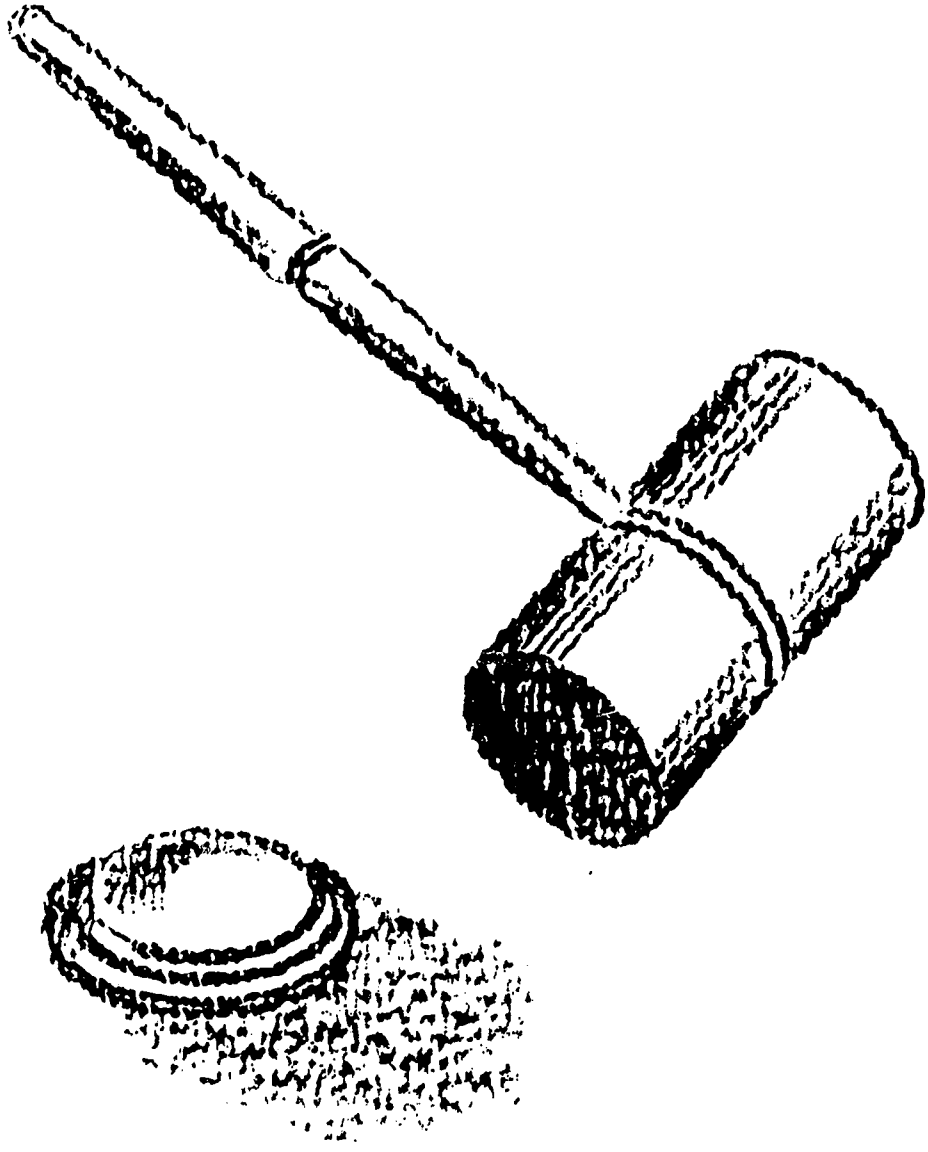
*Reference: See National Advisory Commission on Criminal Justice Standards and Goals,* **Community Crime Prevention Report,** *Standard 3.8, "Legislation," page 83.*

# REDUCING TRIAL DELAY IN OHIO



# INTRODUCTION

In 1975, the Supervisory Commission's Courts Task Force established, as its first priority, the reduction of pre-trial delay in Ohio. Thus, the ten Standards which follow were developed in response to this priority. During the past two years, Ohio has already taken many significant steps to avoid pre-trial delays through the Supreme Court Rules of Superintendence and Rules of Criminal Procedure. Thus, many of the Standards in this area are taken directly from the Ohio Rules of Criminal Procedure.

The Supervisory Commission believes Ohio law and rules substantially comply and often exceed some of the Standards presented by the National Advisory Commission on Criminal Justice Standards and Goals (NAC). Those Standards which incorporated an existing Ohio criminal rule are often more detailed than the original NAC Standards. Thus, the commentary highlights the significant differences between the Ohio Rules which were adopted as Standards and the NAC Standards. Also, in some instances, the Task Force chose to use the NAC Standard and some of its commentary, since it most adequately addressed the issues involved.

Effective reduction in pre-trial delay could result in numerous benefits to the criminal justice system. As discussed by the NAC in the **Courts** Volume, Chapter 4, reduction in pre-trial delay would not only assure an individual's constitutional right to a speedy trial, but would affect society in a variety of ways. For example, the NAC felt there could be an increased deterrent effect to a crime whose punishment most closely followed the crime. A speedier trial would also ease the burden of pre-trial detention. In addition, pre-trial release would be utilized exclusively in cases where it was the best action. It would never be used as a substitute for release, because the community did not have adequate resources to keep defendants for longer periods. Improved trial operations would also encourage increased community confidence in the criminal justice system. This result would be especially beneficial to witnesses and victims who so often suffer unfairly from pre-trial delays. Clearly, at a time in this country when confidence in the legal system is at a low level, the elimination of pre-trial delay could be a major boost in the justice system's credibility.

# Standard 1. Comprehensive Pre-Trial Process Planning

Each criminal justice jurisdiction immediately should begin to develop a comprehensive plan for improving the pre-trial process. In the planning process, the following information should be collected:

1. The extent of pre-trial detention, including the number of detainees, the number of man-days of detention, and the range of detention by time periods.

2. The cost of pre-trial release programs and detention.

3. The disposition of persons awaiting trial, including the number released on bail, released on non-financial conditions, and detained.

4. The disposition of such persons after trial including, for each form of pre-trial release or detention, the number of persons who were convicted, who were sentenced to the various available sentencing alternatives, and whose cases were dismissed.

5. Effectiveness of pre-trial condition, including the number of releasees who (a) failed to appear, (b) violated conditions of their release, (c) were arrested during the period of their release, or (d) were convicted during the period of their release.

6. Conditions of local detention facilities, including the extent to which they meet the Standards recommended herein.

7. Conditions of treatment of and rules governing persons awaiting trial.

8. The need for and availability of resources that could be effectively utilized for persons awaiting trial, including the number of arrested persons suffering from problems relating to alcohol, narcotic addiction, or physical or mental disease or defects, and the extent to which community treatment programs are available.

9. The length of time required for bringing a criminal case to trial and, where such delay is found to be excessive, the factors causing such delay.

The comprehensive plan for the pre-trial process should include the following:

1. Assessment of the status of programs and facilities relating to pre-trial release and detention.

2. A plan for improving the programs and facilities relating to pre-trial release and detention, including priorities for implementation of the recommendations in this section.

3. A means of implementing the plan and of discouraging the expenditure of funds for, or the continuation of, programs inconsistent with it.

4. A method of evaluating the extent and success of implementation of the improvements.

5. A strategy for processing large numbers of persons awaiting trial during mass disturbances, including a means of utilizing additional resources on a temporary basis.

The comprehensive plan for the pre-trial process should be conducted by a group representing all major components of the criminal justice system that operate in the pre-trial area. Included should be representatives of the police, sheriffs, prosecution, public defender, private defense bar, judiciary, court management, probation, corrections, and the community.

**Commentary**

*The National Advisory Commission on Criminal Justice Standards and Goals (NAC) made the following comments in this area: "The necessity for comprehensive planning by the many diverse agencies which are involved is nowhere so critical as it is in the pre-trial stage of a criminal prosecution. . .An effective system of handling persons awaiting trial should include various forms of nonfinancial release programs, provision for services and treatment programs, and rules requiring the expediting of criminal trials. . .The proliferation of responsibility in the pre-trial process increases the likelihood that, without comprehensive planning, programs and facilities will be developed that will shortly become obsolete. . .*

*"Thus, the pre-trial process is a mix of interrelated factors that cannot be considered or dealt with separately. Comprehensive planning, with proper assessment of present techniques and coordinated implementation of new means of handling persons awaiting trial is required, if public interest is to be served."*[1] *This planning process should be undertaken by representatives of all elements of the criminal justice system that presently deal with persons awaiting trial.*

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*Reference: See National Advisory Commission on Criminal Justice Standards and Goals,* **Corrections Report,** *Standard 4.1, "Comprehensive Pre-trial Process Planning," page 111.*

*1 See National Advisory Commission on Criminal Justice Standards and Goals,* **Corrections Report,** *page 112.*

# Standard 2. Use of Summons and Citations

A. Issuance

1. **Upon complaint.** If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed, and that the defendant has committed it, a warrant for the arrest of the defendant, or a summons in lieu of a warrant, shall be issued by a judge, clerk of court, or officer of the court designated by the judge, to any law enforcement officer authorized by law to execute or serve it.

The finding of probable cause may be based upon hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. Before ruling on a request for a warrant, the issuing authority may require the complainant to appear personally and may examine under oath the complainant and any witnesses. Such testimony shall be admissible at a hearing on a motion to suppress, if it was taken down by a court reporter or recording equipment.

The issuing authority shall issue a summons instead of a warrant upon the request of the prosecuting attorney, or when issuance of a summons appears reasonably calculated to assure the defendant's appearance.

2. **By law enforcement officer with warrant.** In misdemeanor cases where a warrant has been issued to a law enforcement officer, he may, unless the issuing authority includes a prohibition against it in the warrant, issue a summons in lieu of executing the warrant by arrest, when issuance of a summons appears reasonably calculated to assure the defendant's appearance. Summons issued in lieu of executing a warrant by arrest shall be served by personal or residence service only, and not by certified mail. The officer issuing such summons shall note on the warrant and the return that the warrant was executed by issuing summons, and shall also note the time and place the defendant must appear. No alias warrant shall be issued unless the defendant fails to appear in response to the summons, or unless subsequent to the issuance of summons it appears improbable that the defendant will appear in response thereto.

3. **By law enforcement officer without a warrant.** In misdemeanor cases where a law enforcement officer is empowered to arrest without a warrant, he may issue a summons in lieu of making an arrest, when issuance of a summons appears reasonably calculated to assure the defendant's appearance. The officer issuing such summons shall file, or cause to be filed, a complaint describing the offense. No warrant shall be issued unless the defendant fails to appear in response to the summons, or unless subsequent to the issuance of summons it appears improbable that the defendant will appear in response thereto.

B. Multiple issuance; sanction

More than one warrant or summons may issue on the same complaint. If the defendant fails to appear in response to summons, a warrant or alias warrant shall issue.

C. Warrant and summons: form

1. **Warrant.** The warrant shall contain the name of the defendant or, if that is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged in the complaint, and shall state the numerical designation of the applicable statute or ordinance. A copy of the complaint shall be attached to the warrant. The warrant shall command that the defendant be arrested and brought before the court issuing it without unnecessary delay.

2. **Summons.** The summons shall be in the same form as the warrant, except that it shall not command that the defendant be arrested, but shall order the defendant to appear at a stated time and place and inform him that he may be arrested if he fails to appear at the time and place stated in the summons. A copy of the complaint shall be attached to the summons, except where an officer issues summons in lieu of making an arrest without a warrant, or where an officer issues summons after arrest without a warrant.

3. Authorities should develop a unified form for all summons.

D. Warrant or summons: execution or service; return

1. **By whom.** Warrants shall be executed and summons served by any officer authorized by law.

2. **Territorial limits.** Warrants may be executed or summons may be served at any place within this state.

3. **Manner.** Warrants, except as provided in subsection A.2., shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest. In such case, he shall inform the defendant of the fact that the warrant has been issued. A copy of the warrant shall be given to the defendant as soon as possible.

Summons may be served upon a defendant by delivering a copy to him personally, or by leaving it at his usual place of residence with some person of suitable age and discretion then residing therein, or, except when the summons is issued in lieu of executing a warrant by arrest, by mailing it to the defendant's last known address by certified mail with a return receipt requested. When service of summons is made by certified mail, it shall be served by the clerk in the manner prescribed by Civil Rule 4.1(I). A summons to a corporation shall be served in the manner provided for service upon corporations in Civil Rules 4 through 4.2 and 4.6(A) and (B), except that the waiver provisions of Civil Rule 4(D) shall not apply.[1]

4. **Return.** The officer executing a warrant shall make return thereof to the issuing court before whom the defendant is brought.[2] At the request of the prosecuting attorney, any unexecuted warrant shall be returned to the issuing court and canceled by a judge of that court.

When the copy of the summons has been served, the persons serving summons shall endorse that fact on the summons and return it to the clerk, who shall make the appropriate entry on the appearance docket.

When the person serving summons is unable to serve a copy of the summons within twenty-eight days, he shall endorse that fact and the reasons therefor on the summons and return the summons and copies to the clerk, who shall make the appropriate entry on the appearance docket.

At the request of the prosecuting attorney, made while the complaint is pending, a warrant returned unexecuted and not canceled, or a summons returned unserved, or a copy of either, may be delivered by the court to an authorized officer for execution or services.

**Commentary**

*The basis for this Standard is Rule 4 of the Ohio Rules of Criminal Procedure. It corresponds to the ideas expressed in the NAC Courts Standard 4.2.*

*Rule 4(A), I-3, outlines the situations where a summons is permitted in lieu of a warrant and arrest. In essence, a summons may be issued where there is probable cause to believe an offense has been committed by the defendant, and certainty that the summons will assure the defendant's appearance. The Supervisory Commission feels the use of a summons should be encouraged. It believes the last sentence in Section A.I, that a summons should be issued in lieu of a warrant when such appears reasonably calculated to assure the defendant's appearance, implies the sanction of the expanded use of summons in the case of lesser felonies.*

*The NAC Standard advised that all law enforcement officers have authority to issue citations in lieu of arrest, and that judicial officers may issue summons in lieu of arrest. Ohio Rule 4(D) states comparably that warrants be executed and summons be served by an officer authorized by law. The NAC Standard recommends summons should be served in the same manner as a civil summons, whereas Ohio Rule 4(D)(3) outlines the specific manner of service to be followed in this state.*

*The procedure outlined will help save time and manpower. The police officer will not have to leave his normal duties to transfer all offenders to the station. This task will be eliminated where the officer is convinced the summons will assure the individual's appearance in court.*

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*Reference: Ohio Rules of Criminal Procedure, Rule 4; also see National Advisory Commission on Criminal Justice Standards and Goals,* Courts Report, *Standard 4.2, "Citation and Summons in Lieu of Arrest," page 70.*

1 *See Rule 4 of the Ohio Rules of Civil Procedure.*

2 *Pursuant to Rule 5 of the Ohio Rules of Criminal Procedure (see Standard 3).*

# Standard 3. Procedure for Preliminary Hearings

**A. Procedure upon initial appearance**

When a defendant first appears before a judge he shall permit the accused or his counsel to read the complaint or a copy thereof, and shall inform the defendant:

1. of the nature of the charge against him;

2. that he has a right to counsel and the right to a reasonable continuance in the proceedings to secure counsel, and the right to have counsel assigned without cost to himself if he is unable to employ counsel;[1]

3. that he need make no statement, and any statement made may be used against him;

4. of his right to a preliminary hearing in a felony case, when his initial appearance is not pursuant to indictment; and

5. of his right, where appropriate, to jury trial and the necessity to make demand therefor in petty offense cases.

In addition, if the defendant has not been admitted to bail for a bailable offense, the judge shall admit the defendant to bail as provided in the Ohio Rules of Criminal Procedure.

In felony cases, the defendant shall not be called upon to plead either at the initial appearance or at a preliminary hearing.

In misdemeanor cases, the defendant may be called upon to plead at the initial appearance.[2]

**B. Preliminary hearing in felony cases; procedure**

1. In felony cases, a defendant is entitled to a preliminary hearing unless waived in writing. If the defendant waives preliminary hearing, the judge shall forthwith order the defendant bound over to the court of common pleas. If the defendant does not waive the preliminary hearing, the judge shall schedule a preliminary hearing within a reasonable time, but in any event no later than five days following arrest or service of summons if the defendant is in custody, and no later than 14 days following arrest or service of summons if he is not in custody. The preliminary hearing shall not be held, however, if the defendant is indicted. With the consent of the defendant, and upon a showing of good cause, taking into account the public interest in the prompt disposition of criminal cases, time limits specified in this subsection may be extended. In the absence of such consent by the defendant, time limits may be extended only as required by law, or upon a showing that extraordinary circumstances exist, and that delay is indispensable to the interests of justice.

2. At the preliminary hearing, the prosecuting attorney may, but is not required to, state orally the case for the state, and shall then proceed to examine witnesses and introduce exhibits for the state. The defendant and the judge have full right of cross-examination, and the defendant has the right of inspection of exhibits prior to their introduction. The hearing shall be conducted under the rules of evidence prevailing in criminal trials generally.

3. At the conclusion of the presentation of the state's case, defendant may move for discharge for failure of proof, and may offer evidence on his behalf. If the defendant is not represented by counsel, the court shall advise him, prior to the offering of evidence on behalf of the defendant:

a. that any such evidence, if unfavorable to him in any particular, may be used against him at later trial;

b. that he may make a statement, not under oath, regarding the charge, for the purpose of explaining the facts in evidence;

c. that he may refuse to make any statement, and such refusal may not be used against him at trial; and

d. that any statement he makes may be used against him at trial.

4. Upon conclusion of all the evidence and the statement, if any, of the accused, the court shall do one of the following:

a. Find that there is probable cause to believe the crime alleged or another felony has been committed and that the defendant committed it, and bind the defendant over to the court of common pleas of the county or any other county in which venue appears;

b. find that there is probable cause to believe that a misdemeanor was committed and that the defendant committed it, and retain the case for trial before an appropriate court; or

c. order the accused discharged.

5. Any finding requiring the accused to stand trial on any charge shall be based solely on the presence of substantial credible evidence thereof. No appeal shall lie from such decision, nor shall the discharge of defendant be a bar to further prosecution.

6. In any case in which the defendant is ordered to appear for trial for any offense other than the one charged, the court shall cause a complaint charging such offense to be filed.

7. Upon the conclusion of the hearing and finding, the court of the clerk of such court shall, within seven days, complete all notations of appearance, motions, pleas, and findings on the criminal docket of the court, and shall transmit a transcript of the appearance docket entries, together with a copy of the original complaint and affidavits, if any, filed with the complaint, the journal or docket entry of reason for changes in the charge, if any, together with the order setting recognizance, if any, filed, to the clerk of the court in which defendant is to appear. Such transcript shall contain an itemized account of the costs accured.

**Commentary**

*The Supervisory Commission rejected the NAC position calling for the elimination of arraignment (NAC Courts Standard 4.8.). It felt that the remainder of the NAC Standard is satisfactorily addressed by the Ohio Rules of Criminal Procedure, and thus redrafted the Standard to include portions of Rule 5.*

*Rule 5(B)(1) specifies that a defendant in a felony case is entitled to a preliminary hearing unless waived in writing. If not waived, the judge must schedule the hearing no later than five days following arrest or service of summons if the defendant is in custody, and no later than two weeks if not in custody. Rule 5(B)(4)(a)-(c) corresponds to the NAC statement of the purpose of the preliminary hearing, which is to determine "that there is probable cause to believe that a crime was committed and that the defendant committed it."[3] During such, the evidence presented shall be limited to a determination whether there is probable cause that a felony or misdemeanor has been committed.*

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*Reference: Ohio Rules of Criminal Procedure, Rule 5; also see National Advisory Commission on Criminal Justice Standards and Goals,* **Courts Report**, *Standard 4.8, "Preliminary Hearing and Arraignment," page 87.*

1 *See Rule 44 of the Ohio Rules of Criminal Procedure for further expansion on this time.*

2 *Where the defendant enters a plea, the procedure established by Rule 10 and Rule 11 of the Rules of Criminal Procedure applies.*

3 *National Advisory Commission on Criminal Justice Standards and Goals,* **Courts Report**, *page 87.*

# p.11 Standard 4. Priority Case Scheduling

Cases should be given priority for trial where one or more of the following factors are present:

1. The defendant is in pre-trial custody;

2. the defendant constitutes a significant threat of violent injury to others;

3. the defendant is a recidivist;

4. the defendant is a professional criminal, that is, a person who substantially derives his livelihood from illegal activities; or

5. the defendant is a public official.

**Commentary**

*The purpose of this Standard is to direct special attention to those cases that present the greatest threat to the community. This Standard requires that the nature of a case also be considered, in addition to its age, in setting priorities for the court calendar.*

*The NAC made the following comments on this issue: "The practice of automatically scheduling cases for trial on a chronological basis, with no regard for the characteristics of individual cases, amounts to ignoring an opportunity to serve the interests of individual defendants, as well as those of the general public. In some circumstances, delay prior to trial is especially burdensome and some of these cases should be given priority as a means of minimizing the burden on the accused. . .*

*"Priority case scheduling also serves the public interest by recognizing that certain defendants present a greater threat to the community than others, and that rapid trial of these persons reduces this threat."*[1]

The Supervisory Commission rejected the NAC concept of placing the responsibility for case scheduling upon the prosecutor. It was felt that this method would not be advantageous to the system in Ohio.

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*Reference: See National Advisory Commission on Criminal Justice Standards and Goals,* **Courts Report,** *Standard 4.11, "Priority Case Scheduling," page 95.*

[1] *National Advisory Commission on Criminal Justice Standards and Goals,* **Courts Report,** *page 95*

4.17

# Standard 5. Continuances

Continuances should not be granted except upon written motion and a showing of good cause.

**Commentary**

*Continuances have been a major reason for delay in the judicial process. Judges often have unlimited authority to grant continuances, and may do so as a matter of routine or for minor reasons.*

*This proposed change -- that continuances be granted only upon a written motion and a showing of good cause -- must occur through a new attitude on the part of the bench and the bar. All participants must assist in seeking the efficient administration of justice. Conduct which is inconsistent should be penalized.*

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*Reference: See National Advisory Commission on Criminal Justice Standards and Goals,* **Courts Report,** *Standard 4.12, "Continuances," page 97.*

# 4.1 Standard 6. Pre-Trial Discovery

A. Demand for discovery

Upon written request, each party shall forthwith provide the discovery herein allowed. Motions for discovery shall certify that the demand for discovery has been made and the discovery has not been provided.

B. Disclosure of evidence by the prosecuting attorney

1. Information subject to disclosure.

**a. Statement of defendant or co-defendant.** Upon motion of the defendant, the court shall order the prosecuting attorney to permit the defendant to inspect and copy or photograph any of the following which are available to, or within the possession, custody, or control of the state, the existence of which is known or by the exercise of due diligence may become known to the prosecuting attorney:

i. Relevant written or recorded statements made by the defendant or co-defendant, or copies thereof;

ii. written summaries of any oral statement, or copies thereof, made by the defendant or co-defendant to a prosecuting attorney or any law enforcement officer; and

iii. recorded testimony of the defendant or co-defendant before a grand jury.

**b. Defendant's prior record.** Upon motion of the defendant, the court shall order the prosecuting attorney to furnish defendant a copy of defendant's prior criminal record, which is available to or within the possession, custody or control of the state.

**c. Documents and tangible objects.** Upon motion of the defendant, the court shall order the prosecuting attorney to permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, available to or within the possession, custody or control of the state, and which are material to the preparation of his defense, or are intended for use by the prosecuting attorney as evidence at the trial, or were obtained from or belong to the defendant.

**d. Reports of examination and tests.** Upon motion of the defendant, the court shall order the prosecuting attorney to permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific test or experiments, made in connection with the particular case, or copies thereof, available to or within the possession, custody or control of the state, the existence of which is known or by the exercise of due diligence may become known to the prosecuting attorney.

**e. Witness names and address; record.** Upon motion of the defendant, the court shall order the prosecuting attorney to furnish to the defendant a written list of the names and addresses of all witnesses whom the prosecuting attorney intends to call at trial, together with any record of prior felony convictons of any such witness, which record is within the knowledge of the prosecuting attorney. Names and addresses of witnesses shall not be subject to disclosure if the prosecuting attorney certifies to the court that to do so may subject the witness or others to physical or substantial economic harm or coercion. Where a motion for discovery of the names and addresses of witnesses has been made by a defendant, the prosecuting attorney may move the court to perpetuate the testimony of such witnesses in a hearing before the court, in which hearing the defendant shall have the right of cross- examination. A record of the witness' testimony shall be admissible at trial as part of the state's case in chief, in the event the witness has become unavailable through no fault of the state.

**f. Disclosure of evidence favorable to defendant.** Upon motion of the defendant

before trial, the court shall order the prosecuting attorney to disclose to counsel for the defendant all evidence, known or which may become known to the prosecuting attorney, favorable to the defendant and material either to guilt or punishment. The certification and the perpetuation provisions of subsection (B) (I) (e) apply to this subsection.

g. **In camera inspection of witness' statement.** Upon completion of a witness' direct examination at trial, the court on motion of the defendant shall conduct an in camera inspection of the witness' written or recorded statement with the defense attorney and prosecuting attorney present and participating, to determine the existence of inconsistencies, if any, between the testimony of such witness and the prior statement.

If the court determines that inconsistencies exist, the statement shall be given to the defense attorney for use in cross-examination of the witness as to the inconsistencies.

If the court determines that inconsistencies do not exist, the statement shall not be given to the defense attorney, and he shall not be permitted to cross-examine or comment thereon.

Whenever the defense attorney is not given the entire statement, it shall be preserved in the records of the court to be made available to the appellate court in the event of an appeal.

2. **Information not subject to disclosure.** Except as provided in subsections (B)(I)(a),(b),(d),(f), and (g), this standard does not authorize the discovery or inspection of reports, memoranda, or other internal documents made by the prosecuting attorney or his agents in connection with the investigation or prosecution of the case, or of statements made by witnesses or prospective witnesses to state agents.

3. **Grand jury transcripts.** The discovery or inspection of recorded proceedings of a grand jury shall be governed by subsection (B)(I)(a) of this standard.[1]

4. **Witness list; no comment.** The fact that a witness' name is on a list furnished under subsections (B)(I)(b) and (f), and that such witness is not called shall not be commented upon at the trial.

C. Disclosure of evidence by the defendant.

1. Information subject to disclosure.

a. **Documents and tangible objects.** If on request or motion the defendant obtains discovery under subsection (B)(I)(c), the court shall, upon motion of the prosecuting attorney order the defendant to permit the prosecuting attorney to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, available to or within the possession, custody, or control of the defendant, and which the defendant intends to introduce in evidence at the trial.

b. **Reports of examinations and tests.** If on request or motion the defendant obtains discovery under subsection (B)(I)(d), the court shall, upon motion of the prosecuting attorney, order the defendant to permit the prosecuting attorney to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, available to or within the possession or control of the defendant, and which the defendant intends to introduce in evidence at the trial, or which were prepared by a witness whom the defendant intends to call at the trial, when such results or reports relate to his testimony.

c. **Witness names and addresses.** If on request or motion the defendant obtains discovery under subsection (B)(I)(e), the court shall, upon motion of the prosecuting attorney, order the defendant to furnish the prosecuting attorney a list of the names and addresses of the witnesses he intends to call at the trial. Where a motion for discovery of the names and addresses of witnesses has been made by the prosecuting attorney, the defendant may move the court to

perpetuate the testimony of such witness in a hearing before the court in which hearing the prosecuting attorney shall have the right of cross-examination. A record of the witness' testimony shall be made and shall be admissible at trial as part of the defendant's case in chief in the event the witness has become unavailable through no fault of the defendant.

d. **In camera inspection of witness' statement.** Upon completion of the direct examination, at trial, of a witness other than the defendant, the court on motion of the prosecuting attorney shall conduct an in camera inspection of the witness' written or recorded statement obtained by the defense attorney or his agents with the defense attorney and prosecuting attorney present and participating, to determine the existence of inconsistencies, if any, between the testimony of such witness and the prior statement.

If the court determines that inconsistencies exist, the statement shall be given to the prosecuting attorney for use in cross-examination of the witness as to the inconsistencies.

If the court determines that inconsistencies do not exist, the statement shall not be given to the prosecuting attorney, and he shall not be permitted to cross-examine or comment thereon.

Whenever the prosecuting attorney is not given the entire statement, it shall be preserved in the records of the court to be made available to the appellate court in the event of an appeal.

**2. Information not subject to disclosure.** Except as provided in subsections (c)(I)(b) and (d), this standard does not authorize the discovery or inspection of reports, memoranda, or other internal documents made by the defense attorney or his agents in connection with the investigation or defense of the case, or of statements made by witnesses or prospective witnesses to the defense attorney or his agents.

**3. Witness list; no comment.** The fact that a witness' name is on a list furnished under subsection (C)(I)(c), and that the witness is not called shall not be commented upon at the trial.

D. Continuing duty to disclose

If, subsequent to compliance with a request or order pursuant to this Standard, and prior to or during trial, a party discovers additional matter which would have been subject to discovery or inspection under the original request or order, he shall promptly make such matter available for discovery or inspection, or notify the other party or his attorney or the court of the existence of the additional matter, in order to allow the court to modify its previous order, or to allow the other party to make an appropriate request for additional discovery or inspection.

E. Regulation of discovery

**1. Protective orders.** Upon a sufficient showing, the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion by a party, the court may permit a party to make such showing, or part of such showing, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such a showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

**2. Time, place, and manner of discovery and inspection.** An order of the court granting relief under this Standard shall specify the time, place, and manner of making the discovery and inspection permitted, and may prescribe such terms and conditions as are just.

**3. Failure to comply.** If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this Standard or with an order issued pursuant to this standard, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit thr party from introducing in evidence the material not disclosed, or it may make such other order as it deems just under the circumstances.

F. Time of motions

A defendant shall make his motion for discovery within 2l days after arraignment or seven

days of trial, whichever is earlier, or at such reasonable time later as the court may permit. The prosecuting attorney shall make his motion for discovery within seven days after defendant obtains discovery or three days before trial, whichever is earlier. The motion shall include all relief sought under this Standard. A subsequent motion may be made only upon showing of cause why such motion would be in the interest of justice.

**Commentary**

*This Standard is based on Rule 16 of the Ohio Rules of Criminal Procedure. The Supervisory Commission adopted Rule 16 as the Standard because it felt the Rule provides the most efficient, adequate procedure for pre-trial discovery.*

*Rule 16(B) and 16(C) give more extensive coverage than does the NAC Standard (***Courts** *Standard 4.9) to the issue of what information is subject to disclosure. As in the NAC Standard, Ohio Rule 16(C) requires a continuous duty to disclose. Any material which is found after the pre-trial discovery, which would have been subject to disclosure, must immediately be available for discovery.*

*The regulation of discovery; in 16(E), corresponds to various aspects of the NAC Standard. The court is given the authority to issue orders to facilitate the proper use of discovery. For example, in 16(E)(3), the court may deal appropriately with a party who has failed to comply properly with his duty of disclosure. Also, the time periods within which motions requesting disclosure must be made, according to 16(F), vary slightly from those recommended by the NAC.*

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*Reference: Ohio Rules of Criminal Procedure, Rule 16; also see National Advisory Commission on Criminal Justice Standards and Goals,* **Courts Report,** *Standard 4.9, "Pre-trial Discovery," page 89.*

[1] *See Rule 6(E) of the Ohio Rules of Criminal Procedure.*

# Standard 7. Pre-Trial Motions and Conference

Part I. Pre-Trial Motion

A. Pleadings and motions

Pleadings in criminal proceedings shall be the complaint, and the indictment or information, and the pleas of not guilty, not guilty by reason of insanity, guilty, and no contest. All other pleas, demurrers, and motions to quash, are abolished. Defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in the Ohio Rules of Criminal Procedure.

B. Pre-Trial Motions

Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. The following must be raised before trial:

1. Defenses and objections based on defects in the institution of the prosecution;

2. defenses and objectives based on defects in the indictment, information, or complaint (other than failure to show jurisdiction in the court or to charge an offense, which objections shall be noticed by the court at any time during the pendency of the proceeding);

3. motions to suppress evidence, including but not limited to statements and identification testimony, on the ground that it was illegally obtained;

4. requests for discovery under Standard 6[1]; and

5. requests for severance of charges or defendants. [2]

C. Motion date

Generally, all pre-trial motions shall be made within 35 days after arraignment or seven days after arraignment or seven days before trial, whichever is earlier. The court, in the interest of justice, may extend the time for making pre-trial motions.[3]

D. Notice by the prosecuting attorney of the intention to use evidence

**1. At the discretion of the prosecuting attorney.** At the arraignment, or as soon thereafter as is practicable, the prosecuting attorney may give notice to the defendant of his intention to use specified evidence at trial, in order to afford the defendant an opportunity to raise objections to such evidence prior to trial under subsection (B)(3).

**2. At the request of the defendant.** At the arraignment, or as soon thereafter as is practicable, the defendant may, in order to raise objections prior to trial under subsection (B)(3), request notice of the prosecuting attorney's intention to use evidence in chief at trial, which evidence the defendant is entitled to discover under Standard 6.[4]

E. Ruling on motion

A motion made before trial other than a motion for change of venue, shall be timely determined before trial. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

F. Return of tangible evidence

Where a motion to suppress tangible evidence is granted, the court, upon request of the defendant, shall order the property returned to the defendant if he is entitled to lawful possession thereof. Such order shall be stayed pending appeal by the state.[5]

G. Effect of failure to raise defenses or objections

Failure by the defendant to raise defenses or objections, or to make requests which must be made prior to trial, at the time set by the court pursuant to subdivision (C), or prior to any extension thereof made by the court, shall constitute a waiver thereof, but the court for good cause shown may grant relief from the waiver.

H. Effect of plea of no contest

The plea of no contest does not preclude a defendant from asserting upon appeal that the trial court prejudicially erred in ruling on a pre-trial motion, including a pre-trial motion to suppress evidence.

I. Effect of determination

If the court grants a motion to dismiss based on a defect in the institution of the prosecution or in the indictment, information, or complaint, it may also order that the defendant be held in custody or that his bail be continued for a specified time not exceeding fourteen days, pending the filing of a new indictment, information, or complaint. Nothing in this standard shall affect any statute relating to periods of limitations. Nothing in this standard shall affect the state's right to appeal an adverse ruling on a motion under subsections (B)(1) or (2), when such motion raises issues which were formerly raised pursuant to a motion to quash, a plea in abatement, a demurrer, or a motion in arrest of judgment.

J. State's right of appeal upon granting of motion to return property or motion to suppress evidence

The state may take an appeal as of right from the granting of a motion for the return of seized property, or from the granting of a motion to suppress evidence if, in addition to filing a notice of appeal, the prosecuting attorney certifies that:

1. the appeal is not taken for the purpose of delay; and

2. the granting of the motion has rendered the state's proof with respect to the pending charge so weak in its entirety that any reasonable possibility of effective prosecution has been destroyed.

Such appeal shall not be allowed unless the notice of appeal and the certification by the prosecuting attorney are filed with the clerk of the trial court within seven days after the date of the entry of the judgment or order granting the motion. Any appeal taken under this Standard shall be diligently prosecuted.

If the defendant has not previously been released, he shall, except in capital cases, be released from custody on his own recognizance pending such appeal when the prosecuting attorney files the notice of appeal and certification. This appeal shall take precedence over all other appeals.

Part II. Pre-Trial Conference

At any time after the filing of an indictment, information or complaint the court may, upon its own motion or the motion of any party, order one or more conferences to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference, the court shall prepare and file a memorandum of the matters agreed upon. No admissions made by the defendant or his attorney at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and his attorney. The court shall not conduct pre-trial conferences until the defendant is represented by counsel.

Commentary

*The Ohio standard is mainly derived from Rules 12 and 17.1 of the Ohio Rules of Criminal Procedure. The Supervisory Commission felt these rules most appropriately address the issues involved.*

*In Ohio, Rule 12(C) requires that pre-trial motions be made within 35 days after arraignment or seven days before trial, whichever is earlier, with several exceptions (see Standard 8, "Pre-trial Motions for Misdemeanor Cases). In contrast,the NAC* **Courts** *Standard 4.10 requires that all pre-trial motions be filed within 15 days of either the preliminary hearing, the waiver of the preliminary hearing, or service of summons following indictment. In addition, a hearing on the motion is required to be held within five days of filing, and a ruling must be made by the court within 72 hours following the closing of such hearing. The Supervisory Commission did not adopt the NAC's strict time scheme, as it was felt to be too restrictive. But it firmly upheld its rationale -- that of deterring the use of pre-trial motions as a means to delay trial. Thus, the Supervisory Commission emphasizes Rule 12(E), which provides that a*

*pre-trial motion shall be timely determined before trial.*

*Both the NAC Standard (***Courts** *Standard 4.10) and Ohio Rule 12(G) hold that failure by a defendant, before trial, to raise objections, defenses, and requests which must be made before trial, constitutes a waiver. There may be relief from the waiver if good cause can be shown.*

*An additional concept within this area is the pre-trial conference which has been addressed at both the national and state level. According to Ohio Rule 17.1, the court, on its own or another party's motion, may order a conference in which pre-trial matters can be determined. The NAC notes that such a conference affords a period conducive to narrowing the issues to be litigated which ultimately will result in more efficient use of trial time.*

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*Reference: Ohio Rules of Criminal Procedure, Rules 12 and 17.1; also see National Advisory Commission on Criminal Justice Standards and Goals,* **Courts Report,** *Standard 4.10, "Pre-trial Motions and Conference," page 93. Also see Ohio Rules of Criminal Procedure, Rule 5, reprinted within Standard 3, "Procedure for Preliminary Hearings."*

1 *Also see Rule 16 of the Ohio Rules of Criminal Procedure.*

2 *See Rule 14 of the Ohio Rules of Criminal Procedure.*

3 *Exceptions are noted in Rule 7(E) and Rule 16(F) of the Ohio Rules of Criminal Procedure.*

4 *Also see Rule 16 of the Ohio Rules of Criminal Procedure.*

5 *See Rule 12(J) of the Ohio Rules of Criminal Procedure.*

# Standard 8. Pre-Trial Motions for Misdemeanor Cases

All motions should be filed at least three (3) days before a non-jury trial. Copies of motions should be served upon the prosecutor by the defense counsel.

Whether or not witness testimony is required, motions should be heard immediately before a non-jury trial.

**Commentary**

*Presently, Rule 12 of the Ohio Rules of Criminal Procedure, which is generally applicable to both felony and misdemeanor trials, indicates that pre-trial motions should be made within 35 days after arraignment or seven days before trial, whichever is earlier. The exceptions to this timetable are found in Rule 7(E) as to a bill of particulars and in Rule 16(F) as to discovery. Rule 12 provides that the time periods may be extended if determined by the court to be necessary.*

*The Supervisory Commission feels there should be a stricter time period for pre-trial motions for misdemeanor cases not heard by a jury. Thus, the Ohio Standard requires that motions must be filed at least three days before a non-jury trial. It is felt that such a limitation will aid in eliminating unnecessary trial delay.*

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*Reference: See National Advisory Commission on Criminal Justice Standards and Goals,* **Courts Report**, *Standard 4.3, "Procedure in Misdemeanor Prosecution," page 73.*

# 4.13 Standard 9. Jury Selection

The trial judge should ask questions as to qualifications to serve as jurors in the case, and the attorneys for the prosecution and defense may supplement the examination by further inquiry.

**Commentary**

*The Supervisory Commission felt that a portion of the Ohio Criminal Rules on jury selection should be modified. Ohio Rule 24(A) provides that either the prosecution and defense counsels or the court should conduct the examination of prospective jurors. When the court is directing the examination, the prosecution and the defense should be permitted to supplement it by further inquiry. Standard 9 varies this concept by placing the sole responsibility for conducting the examination upon the judge. At the same time, according to the Ohio Standard, the court shall be authorized to allow attorneys for the prosecution and the defense to augment the proceeding with additional questioning. This view follows the idea expressed in the NAC* **Courts** *Standard 4.13. It was felt this procedure would help reduce delay caused by excessive questioning by the attorneys, which often resulted in improper influence of jurors or failure to select an impartial jury.*

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*Reference: See National Advisory Commission on Criminal Justice Standards and Goals,* **Courts Report,** *Standard 4.13, "Jury Selection," page 99.*

# Standard 10. Trial of Criminal Cases

All criminal trials should conform to the following:

1. Opening statements to the jury by counsel should be limited to a clear, nonargumentative statement of the evidence to be presented to the jury.

2. Evidence admitted should be strictly limited to that which is directly relevant and material to the issues being litigated. Repetition should be avoided.

3. Summations or closing statements by counsel should be limited to the issues raised by evidence submitted during trial, and should be subject to time limits established by the judge.

4. Standardized instructions should be utilized in all criminal trials as far as is practicable. Requests by counsel for specific instructions should be made within a reasonable time prior to commencement of the final argument.

## Commentary

*This Standard recognizes that all delay in criminal proceedings does not occur within the pre-trial process, but can also result from time wasted in the actual trial of the case. Thus, this Standard was adopted to alleviate some of the causes for the problem of delay at trial.*

*For example, as stated by the NAC, the opening statement is meant to allow both sides to present their theory of the case. Its purpose is to outline the case for the jury, and thus enable them to analyze the evidence, as it is presented, in its proper relationship to the case. As it is vital to their understanding of the case, it should be presented as concisely and dispassionately as possible.[1] Similarly, trial time can safely be reduced if the judge responsibly prevents the use of evidence which is irrelevant, imaterial, and cumulative. The issues must be restricted to those bearing upon the case, and not those which are unrelated or collateral. Likewise, summations should be strictly issue-oriented and subject to time limitations agreed upon by court and counsel.*

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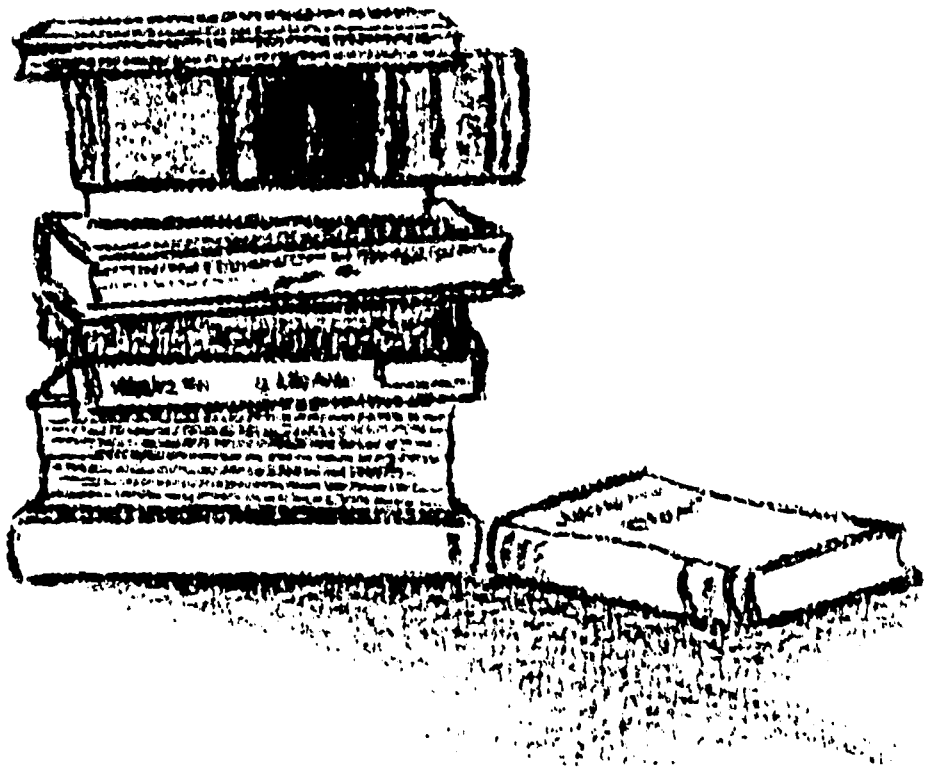
*Reference: See National Advisory Commission on Criminal Justice Standards and Goals,* **Courts Report,** *Standard 4.15, "Trial of Criminal Cases," page 103.*

1 *See National Advisory Commission on Criminal Justice Standards and Goals,* **Courts Report,** *pages 103-104.*

# TRAINING FOR COURTS PERSONNEL IN OHIO



# INTRODUCTION

The following three Standards relate to the education and training of courts personnel in Ohio. Pre-service and continuing in-service training for judges, prosecutors, and public defenders are covered by the standards. They were selected by the Supervisory Commission from the **Courts Report** of the National Advisory Commission on Criminal Justice Standards and Goals (NAC). The standards correspond to the following Supervisory Commission priority for 1975 and 1976:

"Provide local and regional in-service training coordinated at the State level for all courts personnel and bring them into regular, effective contact with other components of the system."

The Ohio Standards expand upon the work of the NAC in some areas, such as the training of assistant prosecutors (see Standard 2). Ohio has already established training programs for judges through the Ohio Legal Center, as outlined in Standard I. Likewise, the Ohio Judicial Conference is already distributing a newsletter for courts. On the other hand, the Ohio Public Defender Association has only recently started to develop a statewide training program, and pre-service training programs have not been established for all new public defenders (see Standard 3). The commentary for the three standards was taken directly from the NAC **Courts Report**, as noted.

These standards do not cover the training of support and management staff for the courts. This training will be covered in a later group of standards.

# Standard 1. Judicial Education

The State of Ohio should create and maintain a comprehensive program of continuing judicial education. Planning for this program should recognize the extensive commitment of judge time, both as faculty and as participants for such programs, that will be necessary. Funds necessary to prepare, administer, and conduct the programs, and funds to permit judges to attend appropriate national and regional educational programs, should be provided.

The Ohio program should have the following features:

1. All new trial judges, within three years of assuming judicial office, should attend both local and national orientation programs, as well as one of the national judicial educational programs. The local orientation program should come immediately before or after the judge first takes office. It should include visits to all institutions and facilities to which criminal offenders may be sentenced.

2. Ohio should develop its own state judicial training facility, which should be responsible for the orientation program for new judges, and which should make available to all judges the graduate and refresher programs of the national judicial educational organizations. The state also should plan specialized subject matter programs, as well as two- or three-day annual State seminars for trial and appellate judges.

3. The failure of any judge, without good cause, to pursue educational programs as prescribed in this standard should be considered as grounds for discipline or removal.

4. Ohio should prepare a bench manual for Common Pleas Court judges and a bench manual for Municipal Court judges on procedural laws, with forms, samples, rule requirements, and other information that a judge should have readily available. This should include sentencing alternatives and information concerning correctional programs and institutions.

5. Ohio should publish periodically -- not less than quarterly -- a newsletter with information from the chief justice, the court administrator, correctional authorities, and others. This should include articles of interest to judges, references to new literature in the judicial and correctional fields, and citations of important appellate and trial court decisions.

**Commentary**

*Note: This Commentary was taken from the National Advisory Commission on Criminal Justice* Standards and Goals, **Courts Report,** *pages 156-159. This commentary has been organized to correspond to the various sections of Standard 1.*

*The tasks of judging have special requirements and demands that are best conveyed through an organized educational program. Changing social and legal conditions also call for a structured program of continuing judicial education. In recognition of the need for continuing education and training, the number and variety of legal education programs have increased substantially in recent years.*

*Section 1. Orientation Programs for New Judges*

*It is more than just a step in a legal career when a lawyer becomes a judge. It is a major career change to a position involving significantly different functions and requiring different skills and knowledge than were required of the person in his prior professional position. Orientation for new judges on all trial courts, therefore, should be part of Ohio's judicial education plan. The program should be mandatory for each new judge before or immediately after he begins his judicial duties.*

*Section 2. In-Service Training*

a. National Programs for Judges

*To continue the judicial education process, Ohio should provide an opportunity for each of its new judges to attend a national in-resident program. Thereafter, judges should be able to attend shorter, in-depth graduate or refresher courses periodically.*

*National programs encourage a much-needed*

exchange of methods and ideas, and they can attract instructional talent not otherwise available. They provide an opportunity to examine the philosophy of justice, the role of a judge, the doctrine of separation of powers, the interdisciplinary aspects of the criminal justice system, problems of bail, sentencing, judicial ethics, and other matters with judges from all sections of the nation. These programs tend to break down self-satisfaction with local ways and the pervasive sectionalism that often has characterized the judicial establishment.

While most judges will be enthusiastic about judicial education, attendance at selected educational programs is so important that the Supervisory Commission recommends a mandatory component of judicial office with power in a judicial conduct commission to discipline or remove judges who willfully fail to participate in the required programs.

Since Ohio already has a State training facility for trial judges, as recommended in Section 2, the Supervisory Commission feels that attendance at a national program can wait until the second year of judicial services.

**b. Annual State Seminars**

Two- or three-day annual seminars for trial and appellate judges should be conducted in Ohio. If manpower requirements make it difficult to have the entire judiciary away from their courts at one time, several duplicate sessions should be conducted. These seminars should include a report from the Supreme Court administrator on the needs, deficiencies, and innovations of the State and local system, and a report on national trends in judicial education programs.

It also should include courses on techniques and skills used in judging and on matters of substantive law and procedure, such as recent developments in criminal law, sentencing problems, and evidence.

These seminars should be located so that they provide over a period of years, an opportunity for the participating judges to visit or revisit the State's correctional and mental institutions. They also should be structured to provide an opportunity to open and maintain communications with other parts of the criminal justice system. While most of the seminar schedule should be devoted to law, court procedure, and problems of the judiciary, each program should also devote time to understanding the workings of other parts of the system. Participants from police and correctional agencies might be profitably involved.

**c. Special Subject Seminars**

Ohio should include provisions for specialized subject matter programs in its judicial education plan. One selected subject each year, or each month, should be presented and a limited number of judges invited to participate. Subjects that would be appropriate for judges sitting in criminal cases include psychiatry, social work, and the law; theory of government and separation of powers; computers in courts; poverty law; criminal law--substantive and procedural; criminal law-sentencing; court administration, including special seminars for chief judges of metropolitan courts with emphasis on techniques to assure a speedy trial; the relationship between the courts and the executive and legislative branches of government; and relationship between courts and the news media; family law; juvenile law; criminal penalties for infractions of environmental law; and opinion writing.

*Section 3. Attendance at Seminars*

The expense of judicial education is as necessary a cost of a good judicial system as are courtrooms and court clerks. The cost will not be insubstantial. But the Supervisory Commission believes that money spent on an educational program, such as that described in this standard, is well spent, and it recommends that specific provisions be made for direct costs, as well as indirect, such as the loss of judicial time that occurs when judges participate in such programs, either as instructors or as students. Careful examination suggests that the total time taken from a judge's judicial duties by an educational program is not an unreasonable portion of his professional time.

*Section 4. Information on Alternatives*

Each orientation program should include visits to the various State institutions to which judges may make commitments. A judge should be fully informed as to the kinds of programs and conditions to which he is sentencing offenders.

*Care should be taken to assure that the personnel of these institutions understand the purpose of these visits; if the visits are to be meaningful, they must reveal frankly the shortcomings, as well as the strengths, of institutional programs and facilities.*

*Section 5. Exchange of Information*

*The Supervisory Commission suggests that there be a regular program to distribute information to courts personnel on new decisions and changes in the criminal justice system. This might be carried out by a newsletter or through in-service training.*

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*Reference: See National Advisory Commission on Criminal Justice Standards and Goals,* **Courts Report,** *Standard 7.5, "Judicial Education," page 156.*

# Standard 2.

# Training and Education of Prosecutorial Personnel[1]

Education programs should be utilized to assure that prosecutors and their assistants have the highest possible professional competence. All prosecutors should attend prosecutors' training courses immediately upon assuming prosecutorial duties. All prosecutors should attend a formal prosecutors' training course each year, in addition to regular in-house training.

## Commentary

*This commentary is taken from the text of the National Advisory Commission on Criminal Justice Standards and Goals' report on* **Courts,** *pages 239-240.*

*"While performance of the prosecution function requires the same high degree of skill and knowledge as other specialized areas of the law, the legal training of a prosecutor is generally limited to his legal education and whatever courtroom experience he has had. While this may meet the need for the courtroom and trial aspects of the job, it does not necessarily prepare the individual for his administrative and law enforcement function. This standard recommends that the need for specialized training be met by introductory training sessions for new assistant prosecutors, continuing educational programs within local offices, and formal educational programs of wider scope than purely locally-based programs.*

*"Newly elected or appointed prosecutors should be required to attend a formal prosecutor's training course. . .An effort should be made to impart to the prosecuting attorney a deeper understanding of the criminal justice system and the needs it is designed to serve." Regular in-service training programs also should be established. All prosecutors who try cases should enroll in formal training courses each year.*

*The Supervisory Commission has included training for assistant prosecutors in this standard because it feels that this important area should receive more attention.*

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*Reference: See National Advisory Commission on Criminal Justice Standards and Goals,* **Courts Report,** *Standard 12.5, "Education of Professional Personnel," page 239.*

[1] *"Prosecutorial Personnel" includes county and municipal prosecutors, city solicitors, and assistant prosecutors at all levels.*

# Standard 3. Training and Education of Public Defenders

An intensive entry level training program should be established at national, state, and local levels, prior to indigent representation, to asssure that all public defenders have the basic skills to provide effective representation. In-service and continuing legal education programs should be established on a systematic basis at the state and regional levels for public defenders.

## Commentary

*The NAC points out: "The high value placed upon personal liberty in a free society demands the most skilled practitioner to defend that liberty in the adversary process. . .Systematic and intensive basic training programs for new defenders are imperative in order to provide even the minimum degree of specialized skill necessary to adequate criminal defense representation."*[1]

*The NAC goes on to outline the content of pre-service training: "An orientation program should be established. . .to familiarize new public defenders with local court structure and procedure, bail practices, office procedures, plea-negotiations practices of the prosecutor, and community resources available to aid the defender in formulating sentencing alternatives."*[2]

*The Supervisory Commission recommends that training be done on the regional and state levels, rather than locally, in order to provide the best training possible.*

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*Reference: See National Advisory Commission on Criminal Justice Standards and Goals,* **Courts Report,** *Standard 13.16, "Training and Education of Defenders," page 284.*

1 *National Advisory Commission on Criminal Justice Standards and Goals,* **Courts Report,** *Standard 13.16, "Training and Education of Defenders," page 284-285.*

2 *Ibid.*

# APPENDIX A

Cliff Tyree, Chairman
Legislative Committee
Ohio Youth Services Bureaus Association

Joan Lees, Chairman
Adult and Juvenile Justice Committee
League of Women Voters of Ohio

Richard Weaver, Coordinator
Youth Services Bureaus of Montgomery County

Bernard J. Hyman, Executive Director
Health and Welfare Planning Council
Dayton, Ohio

Michael Bradford
Division of Youth and Manpower
City of Dayton

Judge John J. Toner, Chairman
Ohio Youth Services Advisory Commission

Judge Angelo Gagliardo, Chairman
Standards Review Committee
Juvenile Court Judges Association

Judge John F. Corrigan
Court of Common Pleas
Juvenile Court Division
Cleveland, Ohio

4. COURTS TASK FORCE

Francis L. Bremson, Project Director
Court Management Project
Cleveland, Ohio

John W. Kessler, Director
Public Defender Association of Dayton, Inc.

Anthony J. La Salvia, Executive Director
Summit County Criminal Justice
Coordinating Council
Akron, Ohio

Christopher Myers, Senior Planner
Criminal Justice Coordinating Council
of Greater Cleveland

John Gotherman, Chief Counsel
John P. Coleman, Executive Director
The Ohio Municipal League

Coit H. Gilbert
Assistant Administrative Director
Supreme Court of Ohio

K. Michael Foley, Executive Director
Ohio Prosecuting Attorneys Association

Miami Valley Regional Planning Commission

David Ferriman, Program Manager
Judicial Process
Columbus-Franklin County Criminal
Justice Coordinating Council

John A. Serrott, Assignment Commissioner
Franklin County Municipal Court

Robert J. Ormond
Pre-Trial Release Bureau, Inc.
Dayton, Ohio

# APPENDIX A

The Ohio Standards were distributed in draft form to public interest groups, the six Regional Planning Units, and members of the criminal justice community for review and comment during the autumn of 1974. Over fifty groups were asked to submit their suggestions, criticisms, and modifications to the Supervisory Commission in writing. In addition, the chairman and the staff met with representatives of the Regional Planning Units to discuss the proposed Standards. The reviews were, in turn, discussed and utilized by the task forces in developing the final Standards found in this report.

Below is the list of the public interest and criminal justice groups involved in the Standards review process.

## ORGANIZATIONS AND INDIVIDUALS REVIEWING DRAFT STANDARDS

### 1. LAW ENFORCEMENT TASK FORCE

Mr. Don E. Fisher, Executive Director
Buckeye State Sheriffs Association

Dr. Robert B. Mills
University of Cincinnati
Member of Council on Higher
Education in Criminal Justice

Mr. Leslie F. St. Pierre
Assistant Director
Ohio Peace Officer Training Council

Mr. John Conrad, Senior Fellow
The Academy for Contemporary Problems

Mr. John P. Coleman, Executive Director
The Ohio Municipal League

Mr. Earl O. Smith, Executive Director
Ohio Association of Chiefs of Police

Mr. Anthony J. La Salvia, Executive Director
Summit County Criminal Justice Commission

Mr. Christopher Myers, Senior Planner
Criminal Justice Coordinating
Council of Greater Cleveland

### 2. PREVENTION, DIVERSION, AND SYSTEM DEVELOPMENT TASK FORCE

John F. Corrigan, Judge
Court of Common Pleas
Juvenile Court Division
Cleveland, Ohio

John P. Conrad, Senior Fellow
The Academy for Contemporary Problems

Earl O. Smith, Executive Director
Ohio Association of Chiefs of Police

John W. Kessler, Director
Public Defender Association of Dayton, Inc.

Anthony J. La Salvia, Executive Director
Summit County Criminal Justice
Coordinating Council
Akron, Ohio

Christopher Myers, Senior Planner
Criminal Justice Coordinating Council
of Greater Cleveland

John Gotherman, Chief Counsel
John P. Coleman, Executive Director
The Ohio Municipal League

Coit H. Gilbert
Assistant Administrative Director
Supreme Court of Ohio

K. Michael Foley, Executive Director
Ohio Prosecuting Attorneys Association

Robert J. Ormond
Pre-Trial Release Bureau, Inc.
Dayton, Ohio

### 3. JUVENILE DELINQUENCY TASK FORCE

Robert J. Ormond
Pre-Trial Release Bureau, Inc.
Dayton, Ohio

Coit H. Gilbert
Assistant Administrative Director
Supreme Court of Ohio