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*A Prosecutor's
Guide to the
Juvenile
Delinquency
Guidelines*



Office of Juvenile Justice
and Delinquency Prevention

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A Prosecutor's Guide to the Juvenile Delinquency Guidelines

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FOREWORD

National standards, policy positions, and guidelines serve to alert and inform practitioners in a given field. They describe basic principles and specific policies. As such, they are aspirational, not historical. They derive from a consensus of how the authors believe things ought to be, not how things are. They are reference materials. This publication compares selected juvenile justice positions taken by three leading national organizations: the National Council of Juvenile and Family Court Judges (NCJFCJ), the National District Attorneys Association (NDAA), and the American Prosecutors Research Institute (APRI), the non-profit research, training, and technical assistance affiliate of NDAA.

In 1977, NDAA published its first edition of the *National Prosecution Standards*. Section 19 of these standards covers juvenile justice. The second edition of the *National Prosecution Standards*, containing juvenile justice as Section 92, was published in 1991.¹ The standards are currently being revised to produce a third edition with publication anticipated in 2008. *The National Prosecution Standards* are advisory only, recognizing that variances in laws and practices may make some positions unworkable in particular jurisdictions.

In 1996, NDAA adopted a *Resource Manual and Policy Positions on Juvenile Crime Issues*.² In 2002, NDAA updated the *Resource Manual*. This manual is based upon recommendations of APRI's National Juvenile Justice Prosecution Center's advisory group and NDAA's Juvenile Justice Committee.

¹ National District Attorneys Association, *National Prosecution Standards*, 2nd ed. (Alexandria, VA: National District Attorneys Association, 1991). This publication is available at <http://www.ndaa-apri.org/publications/ndaa/index.html>.

² National District Attorneys Association, *Resource Manual and Policy Positions on Juvenile Crime Issues* (Alexandria, VA: National District Attorneys Association, 2002). This publication is available at http://www.ndaa-apri.org/issues/juvenile_law.html.

In 2005, NCJFCJ published the *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases*.³ APRI staff was honored to have participated on the Publication Development Committee of the *Juvenile Delinquency Guidelines*. This exhaustive work describes every stage of juvenile court proceedings along with current and proposed practices and principles. As you will see in the proceeding pages, the nation's prosecutors and judges agree on many points. We have also agreed to disagree on some. My hope is that this monograph will serve as a powerful tool to reinforce our efforts to make meaningful improvements in the juvenile justice system. Only through working together can we reduce juvenile crime and improve the outcomes for crime victims, communities, and juvenile offenders.

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³ Publication Development Committee of the Juvenile Delinquency Guidelines Project, *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases* (Reno, NV: National Council of Juvenile and Family Court Judges, 2005). This publication is available at <http://www.ncjfcj.org/content/view/411/411/>.

INTRODUCTION

In 2005, the National Council of Juvenile and Family Court Judges (“NCJFCJ”) published the third volume in its “Guidelines” series with the release of *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases* (the “*Delinquency Guidelines*”).⁴ It follows two previous similar works created for use in the juvenile court’s child abuse and neglect cases, *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*, published in 1995, and *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*, published in 2000. Each of the three is intended as a sort of “bench book” for juvenile court practice: designed for judges, but also useful to prosecutors, defense attorneys, probation and court staff, and others involved in the juvenile delinquency court process.⁵

The overarching purpose of the *Delinquency Guidelines* is to describe practices, policies, and procedures to create “A Juvenile Delinquency Court of Excellence.” The *Delinquency Guidelines* identifies 16 “Key Principles” of a Juvenile Delinquency Court of Excellence.⁶ It then “set[s] forth the essential elements of effective practice for the court processes that are involved in the handling of juvenile delinquency cases,”

⁴The NCJFCJ’s book refers to itself throughout by the abbreviation, “*Delinquency Guidelines*.” Even though that abbreviation ends in the plural “s” it describes the single volume of work. Therefore it is treated as singular throughout, though that sometimes resulted in awkward-appearing constructions (e.g. “*Delinquency Guidelines* is”). For consistency, this work will use the same grammatical convention.

⁵The *Delinquency Guidelines* was nearly four years in the making, and was funded mostly by a grant from the Office of Juvenile Justice and Delinquency Prevention of the United States Department of Justice. While the publication was drafted principally by Barbara Seibel, an independent consultant, it received significant contributions from the more than 40 members of the “Publication Development Committee,” made up of current and former juvenile court judges, and representatives of organizations involved in all aspects of juvenile justice, including representatives of the American Prosecutors Research Institute. Other members of the Publication Development Committee represented organizations as diverse as the National Juvenile Defender Center, the International Association of Chiefs of Police, the National Youth Advocacy Coalition, the National Center for State Courts, the American Probation and Parole Association, and many state and local court organizations and youth services agencies. More than 20 “Consultants and Advisors” also contributed to the book.

⁶ *Guidelines* at, 23-28.

and “identifies recommended practices throughout the juvenile delinquency court system.”⁷ The *Delinquency Guidelines*’ 225 pages are divided into 12 chapters, the first and last of which are devoted to explaining the NCJFCJ’s “Juvenile Delinquency Court of Excellence” concept.⁸ Each of the remaining chapters is devoted to one phase of the delinquency court process, from “Initiating the Court Process” to “Probation and Parole Violations.”⁹ The *Delinquency Guidelines* precedes each chapter with the disclaimer that its recommendations are “aspirational—they focus on what should be as opposed to what is.”¹⁰

The *Delinquency Guidelines* begins by describing the three goals of a Juvenile Delinquency Court of Excellence using terms similar to the three principles of the American Prosecutors Research Institute’s (APRI) “Balanced Approach” to juvenile justice, which the National District Attorneys Association (NDAA) supports fully.¹¹

Compare the following:

Delinquency Guidelines—“The goals of the Juvenile Delinquency Court are to:

- *Increase safety in communities* by supporting and implementing

⁷ *Id.* at 15.

⁸ Chapter I is “Foundations for a Juvenile Delinquency Court of Excellence,” and Chapter XII is “The Journey to Becoming a Juvenile Delinquency Court of Excellence.” *Id.* at 19-34, 201-226.

⁹ The subjects covered are as follows:

Chapter II “General Issues Relating to the Juvenile Delinquency Court Process”

Chapter III “Initiating the Juvenile Delinquency Court Process”

Chapter IV “The Detention or Initial Hearing”

Chapter V “Hearings on Motions to Waive Juvenile Delinquency Court Jurisdiction and Transfer Jurisdiction to Criminal Court”

Chapter VI “The Trial/Adjudication Hearing”

Chapter VII “The Disposition Hearing”

Chapter VIII “The Appeals Process”

Chapter IX “Post-Disposition Review of Delinquent Youth Who Remain in the Home With Court Ordered Services”

Chapter X “Post-Disposition Review of Delinquent Youth Placed Out of the Home by Juvenile Delinquency Court Order”

Chapter XI “Probation and Parole Violations.”

Id. at 35-200.

¹⁰ *E.g., id.* at 20.

¹¹ The American Prosecutors Research Institute is the research, training, and technical assistance affiliate of the National District Attorneys Association.

both effective delinquency prevention strategies as well as a continuum of effective and least intrusive responses to reduce recidivism;

- *Hold juvenile offenders accountable* to their victims and community by enforcing completion of restitution and community service requirements; and
- *Develop competent and productive citizens* by advancing the responsible living skills of youth within the jurisdiction of the juvenile delinquency court.”¹²

with the following:

Bringing Balance to Juvenile Justice—“Balanced consideration of *community protection, offender accountability* and *competency development* brings clarity and reason to juvenile justice issues. This comprehensive philosophy speaks to every aspect of delinquency, punishment, treatment and prevention. These three principles, fully implemented, create a juvenile justice system that truly operates in the best interest of the child and the community.”¹³

The *Delinquency Guidelines* carries forward the same three guiding principles of community safety, offender accountability, and offender competency development that NDAA and APRI advocate for juvenile court systems.

Perhaps as a result of that commonality of approach, much of the material in the *Delinquency Guidelines* is consistent with NDAA’s and APRI’s positions on juvenile justice issues. To be sure, there are significant differences of viewpoint on important issues, such as waiver or transfer to criminal court and the need for strong sentences for juvenile offenders. This monograph will describe those differences of viewpoint, as well as the significant agreements between the *Delinquency Guidelines* and NDAA’s policy positions. The two principal documents to which the

¹² *Delinquency Guidelines* at 22 (emphasis added).

¹³ Caren Harp, *Bringing Balance to Juvenile Justice* (Alexandria, VA: American Prosecutors Research Institute, 2002), 1 (emphasis added).

GUIDE TO THE JUVENILE DELINQUENCY GUIDELINES

Delinquency Guidelines will be compared are the NDAA's *Resource Manual and Policy Positions on Juvenile Crime Issues* ("Resource Manual"),¹⁴ and the Juvenile Justice Sections of the NDAA's *National Prosecution Standards* ("Prosecution Standards").¹⁵ In addition, we will compare the "Juvenile Delinquency Court Report Card" described in the *Delinquency Guidelines* to APRI's national demonstration project, "Performance Measures for the Juvenile Justice System."

¹⁴ National District Attorneys Association, *Resource Manual and Policy Positions on Juvenile Crime Issues* (Alexandria, VA: National District Attorneys Association, 2002).

¹⁵ National District Attorneys Association, *National Prosecution Standards*, 2nd ed. (Alexandria, VA: National District Attorneys Association, 1991), § 92.1 *et seq.*

ROLE OF THE PROSECUTOR

The most significant area of agreement between the *Delinquency Guidelines* and the *Prosecution Standards and Resource Manual* concerns the role of the prosecutor in juvenile delinquency proceedings. Indeed, the *Delinquency Guidelines* describes an important contribution needed from the prosecutor in virtually every hearing in a juvenile delinquency case, just as in an adult criminal proceeding.¹⁶ Both the *Delinquency Guidelines* and the *Resource Manual* emphatically declare the priority that juvenile justice should receive in the prosecutor’s office—“Juvenile prosecution is a priority requiring experienced prosecutors.”¹⁷ In describing the role of the prosecutor in juvenile court, the *Delinquency Guidelines* borrows heavily from the language of the *Prosecution Standards* and the *Resource Manual*.

<p><i>Delinquency Guidelines p. 29</i> “The primary duty of the prosecutor is to seek justice in light of the special interests and needs of the juvenile as well as the safety and welfare of the community.”</p>	<p><i>Prosecution Standards § 92.1(b)</i> “The primary duty of the prosecutor is to seek justice while fully and faithfully representing the interests of the state...prosecutors should consider the special interests and needs of the juvenile to the extent they can do so without compromising [the safety and welfare of the community].”</p>
<p><i>Delinquency Guidelines p. 29</i> “[Prosecutors] should have a particular interest in youth, have knowledge of juvenile law, and be trained in the development, education, substance abuse, and mental health of youth. Juvenile delinquency court cases should not be assigned to entry level prosecutors.”</p>	<p><i>Prosecution Standards § 92.1(d)</i> “...Chief prosecutors should select prosecutors for juvenile court on the basis of their skill and competence, including knowledge of juvenile law, interest in children and youth, education, and experience... Entry-level attorneys in the juvenile unit should be as qualified as any entry-level attorney and receive special training regarding juvenile matters.”</p>

¹⁶ Compare *Delinquency Guidelines* at 29 (“The prosecutor should appear as an attorney for the state in all hearings concerning a juvenile accused of an act where the prosecutor would appear if an adult committed the same act”), with *Prosecution Standards* § 92.1(a) (“The prosecutor should appear as an attorney for the state in all hearings concerning a juvenile accused of an act that would constitute a crime if he were an adult”), and *Resource Manual* at 5 (same as *Prosecution Standards*).

¹⁷ *Delinquency Guidelines* at 29, *Resource Manual* at 5.

In each chapter, the *Delinquency Guidelines* includes the prosecutor on its “Who Should Be Present” list for every phase of a delinquency case—indeed, only the judge and defense counsel are required as often as the prosecutor. Moreover, the *Delinquency Guidelines* defines other necessary functions of a “Juvenile Delinquency Court of Excellence” that only prosecutors can properly perform. For example, the *Delinquency Guidelines*, like the NDAA’s *Resource Manual* and *Prosecution Standards*, requires that the initial charging function be under the control of the prosecutor.¹⁸ Just as the NDAA does, the *Delinquency Guidelines* recognizes that “legal sufficiency” is the necessary first question in the process of initiating or diverting a juvenile court case,¹⁹ and requires that question ultimately to be answered by the prosecutor, even in jurisdictions where a non-lawyer court staff makes the initial review of the facts of each case.

<p><i>Delinquency Guidelines</i> p. 66 “When juvenile delinquency courts use intake staff or probation officers to review affidavits and file complaints, not only should the prosecutor sign off on a petition prior to filing, but the prosecutor should also review any affidavit that the intake officer declined to file, and have the ability to override the intake decision.”</p>	<p><i>Prosecution Standards</i> § 92.2(a) “The prosecutor should have the exclusive right to screen facts obtained from the police and other sources to determine whether those facts are legally sufficient for prosecution.”</p> <p><i>Resource Manual</i> p. 7 “A prosecutor should make all charging decisions in cases involving juvenile offenders.”</p>
<p><i>Delinquency Guidelines</i> p. 66-67 “The most efficient way to handle this first step in the juvenile delinquency court process ... is to have prosecutor trained and approved staff at the point of initial filing of the affidavit, to ensure staff have sufficient legal knowledge to make the decision as to legal sufficiency.”</p>	<p><i>Prosecution Standards</i> § 92.2(h) “Case screening may be accomplished by the prosecutor or by screeners employed directly by the prosecutor. If case screeners outside the prosecutor’s office are employed, the prosecutor should have the right to review charging decisions and to file, modify, or dismiss any petition.”</p>

¹⁸ *Delinquency Guidelines* at 66. As discussed more fully later, the *Delinquency Guidelines* also recognizes the primacy of the role played by prosecutors in the decision about which cases are diverted to alternative or “informal” handling instead of initiating a formal delinquency petition.

¹⁹ *Id.* (“A juvenile delinquency charge should not be referred for formal processing or informal diversion if the allegation is not legally sufficient”); *Prosecution Standards* § 92.2(a) and (g).

Thus, both the *Delinquency Guidelines* and the NDAA positions recognize the essential contribution of the prosecutor to the proper functioning of the juvenile delinquency court, and the importance of having qualified, experienced, and well-trained prosecutors assigned to represent the state in juvenile court. The importance of the prosecutor to the juvenile court is echoed throughout the remainder of the *Delinquency Guidelines*, identifying important roles for the prosecutor to play in every stage of the delinquency proceeding.

DIVERSION

The *Delinquency Guidelines* encourages the expansive use of alternatives to the formal juvenile court process, commonly referred to as “diversion.” Indeed, diversion is one of the document’s “Key Principles”—“Juvenile Delinquency Court Judges Should Ensure Their Systems Divert Cases to Alternative Systems Whenever Possible and Appropriate.”²⁰

The *Delinquency Guidelines* notes several reasons for this principle, most revolving around the fact that informal procedures or diversion are less expensive and consume far fewer resources such as court and prosecutor time, thereby reserving those resources for more serious cases and offenders.²¹ NDAA also recognizes the importance of diversion programs and encourages prosecutors to utilize and be involved in the diversion process. For example, the *Resource Manual* states that “Prosecutors should consider diversion programs for appropriate first-time or low-level juvenile offenders” where “the goals of prosecution can be reasonably reached through diversion.”²²

NDAA’s policy firmly holds that the decision whether to allow a particular case to be diverted should be the prosecutor’s alone,²³ and where agencies other than the prosecutor’s office administer the diversion programs, juvenile court prosecutors should review the programs to ensure that they are operating properly.²⁴ The *Delinquency Guidelines* clearly recognizes the importance of the prosecutor’s role in the diversion process, while acknowledging that in many jurisdictions the diversion decision is handled by other participants in the system such as law enforcement or

²⁰ *Delinquency Guidelines* at 25, 67 (Key Principle 6).

²¹ The *Delinquency Guidelines* also notes that research indicates that a majority of offenders referred to juvenile court for the first time will never have a second referral, thereby making it more efficient to process those offenders with less expensive alternative methods. *Id.* at 67, citing Howard Snyder and Melissa Sickmund, *Juvenile Offenders and Victims: 1999 National Report* (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 1999).

²² *Resource Manual* at 7-8.

²³ *Prosecution Standards* § 92.2(a) (“...the prosecutor should determine whether a juvenile is to be transferred to adult court, charged in juvenile court, or diverted from formal adjudication”); *Resource Manual* at 8 (“The decision to divert a case is a charging decision...”).

²⁴ *Prosecution Standards* § 92.3(e).

probation departments.²⁵ Other than to suggest that “the prosecutor or juvenile delinquency court intake should use a validated diversion screening tool to determine which cases are diverted for informal processing,”²⁶ the *Delinquency Guidelines* provides little guidance for deciding which cases should be diverted. By contrast, the NDAA’s *Prosecution Standards* define in detail the criteria the prosecutor should use in making the diversion decision,²⁷ starting first with the requirement that diversion is not the dumping ground for weak cases; rather, only legally sufficient cases should be considered for diversion.²⁸

NDAA and the *Delinquency Guidelines* do agree on perhaps the most important criterion for deciding which cases should be eligible for diversion—the juvenile’s affirmative acceptance of responsibility for the offense. NDAA’s policy makes that acknowledgement of guilt a *sine qua non* for diversion: “A case should be diverted only if the juvenile admits guilt for the offense(s) charged...”²⁹ The *Delinquency Guidelines* states that diversion should be available only to “[juvenile] offenders with no serious prior involvement with the juvenile delinquency court, and who, along with their families, are willing to acknowledge responsibility and accept services and sanctions voluntarily...”³⁰ The *Delinquency Guidelines* and the NDAA policies also agree in the following other significant respects:

²⁵ E.g., *Delinquency Guidelines* at 67 (“Juvenile delinquency courts should encourage law enforcement and prosecutors to consider diversion for every status offender, every first-time, non-violent misdemeanor offender, and other offenders as appropriate”). NDAA’s *Resource Manual* also recognizes that, in some jurisdictions, personnel other than prosecutors make diversion decisions, and it urges prosecutors to “be involved in establishing the eligibility criteria and other guidelines for the program.” *Resource Manual* at 8.

²⁶ *Delinquency Guidelines* at 67.

²⁷ *Prosecution Standards* § 92.3(a). Section 92.2(g) states nine factors that prosecutors should consider in deciding whether to file a formal juvenile petition or to send a case to diversion, including the seriousness of the charge, the juvenile’s history, age, maturity, and role in the offense, the juvenile’s threat to the community or the victim and the juvenile’s willingness and ability to make restitution to the victim.

²⁸ See *Resource Manual* at 8 (“The decision to divert a case is a charging decision because it is a determination that sufficient evidence exists to file a charge in court but that the goals of prosecution can be reasonably reached through diversion”).

²⁹ *Prosecution Standards* § 92.3(b). See also *Resource Manual* at 8 (“Diversion programs should contain criteria to insure that the diverted juvenile offender is held accountable for his/her actions”).

³⁰ *Delinquency Guidelines* at 67–68.

- The plan for any juvenile accepted into diversion should be reduced to a written agreement signed by the juvenile and his/her family spelling out specific expectations of the juvenile and the time frame allotted to complete those requirements.³¹
- Systems should be in place to collect information about the juvenile's performance of the diversion contract, and to forward that information to appropriate court personnel, including prosecutors.³²
- Any failure by the juvenile to comply with the diversion contract should be promptly referred back to the prosecutor's office, where the prosecutor should consider formally charging the juvenile with the original offense.³³

Thus, the *Delinquency Guidelines* and NDAA policies are substantially in agreement about the importance of having effective diversion programs, and about the process by which they are implemented.

³¹ *Id.* at 68-69; *Prosecution Standards* § 92.3(c).

³² *Delinquency Guidelines* at 68-69; *Prosecution Standards* § 92.3(d).

³³ *Delinquency Guidelines* at 69; *Resource Manual* at 8. The *Delinquency Guidelines* also assumes that any statement made by the juvenile during the diversion process can be admitted against the juvenile in this subsequent formal action, and requires that the juvenile be warned about that possibility in the initial diversion intake interview, and that warning be included in the diversion contract.

WAIVER/TRANSFER

Although it comes up in relatively few cases, one of the more controversial issues in juvenile justice for many years has been the question of whether and under what circumstances offenses alleged to be committed by juveniles will be handled in adult criminal court rather than juvenile court, and the process by which that decision should be made. Many different words are used to describe the process, such as waiver of juvenile court jurisdiction, transfer to criminal court, and certification to stand trial as an adult. The *Delinquency Guidelines* uses the expression “waiver.” This area of waiver to criminal court represents one of the few areas of major disagreement between the *Delinquency Guidelines* and NDAA policy.

Historically, the decision has been one left entirely to the juvenile court, which the Supreme Court held has “considerable latitude” in making the decision so long as the juvenile is afforded basic due process.³⁴ With the explosion in serious and violent juvenile crime beginning in the 1980s and peaking in the mid-1990s,³⁵ state legislatures around the country began changing the waiver process to ensure that more and more serious and violent offenses committed by juveniles made their way into the adult criminal court, and consequently, that more and more juvenile offenders made their way into adult incarceration. Many state legislatures enacted statutory exclusions in which the juvenile court is deprived of jurisdiction to hear cases involving certain very serious offenses committed by juveniles of a certain age. Prosecutors are required by statute to file those cases directly in criminal court.³⁶ Some states created so-called “mandatory waiver” offenses for which waiver is mandatory if the juvenile court judge finds that there is probable cause to believe the juvenile committed the offense charged (although prosecutors retain discretion to decide when to seek waiver based on the facts and circumstances of the

³⁴ *Kent v. United States*, 383 U.S. 541 (1966).

³⁵ Howard N. Snyder, *Juvenile Arrests 1995* (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 1997), 4.

³⁶ Both NDAA policy and the *Delinquency Guidelines* disfavor these mandatory filing statutes. Both believe that individual case-by-case consideration of the facts of the crime committed and the juvenile accused is the better method of handling such matters. *Delinquency Guidelines* at 102; *Resource Manual* at 10.

case). If probable cause is so found, the case is transferred automatically to the criminal court.

The two most commonly used methods for waiver or transfer are referred to in the *Delinquency Guidelines* as discretionary judicial waiver and prosecutorial waiver.³⁷ The first of these, judicial waiver, is the method used for decades in which the juvenile court judge alone makes the waiver decision based on two determinations: whether probable cause exists, and if so, whether it would be better to adjudicate the offense charged against this specific juvenile offender in adult criminal court rather than in juvenile court. The prosecutor's involvement is in the decision to petition for transfer; whether to order the transfer is wholly up to the juvenile court judge. The *Delinquency Guidelines* prefers this method of transfer:

Waiver and transfer decisions should only be made on an individual case-by-case basis, and not on the basis of the statute allegedly violated; and...the decision should be made by the juvenile delinquency court judge.³⁸

NDAAs policy is the opposite, stating that “the prosecutor is in the best position to decide when and if a juvenile should be transferred to adult court.”³⁹ In this form of waiver, the juvenile court judge plays no role; when the prosecutor files the case in adult criminal court, the juvenile court's jurisdiction over that offender ends (assuming the charge results in a conviction).⁴⁰

³⁷ Many states' statutes contain a combination of all these methods, requiring waiver for some offenses committed by certain kinds of offenders, while allowing discretion to judges and/or prosecutors in other circumstances.

³⁸ *Delinquency Guidelines* at 102. The *Delinquency Guidelines* also “recommends that waiver and transfer of juveniles to adult court should be rare...” *Id.*

³⁹ *Resource Manual* at 10.

⁴⁰ Many states with prosecutorial waiver provisions also provide a procedure, often called “reverse waiver” or “reverse certification,” whereby the juvenile offender can request that the criminal court transfer a directly-filed matter to juvenile court. Under most of those statutes, the criteria for determining whether to transfer are similar to the criteria used to determine juvenile court waiver, but usually the burden of proof is shifted to the offender. See, e.g., 10 Okla. Stat. § 7306-1.1; 42 Pa. C.S. § 6322 (Pennsylvania does not have prosecutorial waiver, but it does have reverse waiver for directly filed offenses).

Given the large increase in violent crime among juvenile offenders and the importance of holding these offenders appropriately accountable for their actions, the NDAA believes that prosecutors should be vested with the discretion to determine without court interference whether juveniles committing crimes of violence should be transferred to adult court for prosecution. The same should be true for other serious, violent or habitual offenders. The prosecutor should retain the ability to evaluate the facts, as well as the impact upon the victim and the community, and determine whether it is appropriate to file charges in adult or juvenile court. Without prosecutorial discretion, the system may result in inequity.⁴¹

NDAA policy states that the decision whether to file a case in adult or juvenile court should depend on which of those court systems is most likely to satisfy the three guiding principles of balanced justice discussed earlier, *i.e.* “which system best furthers public safety; holds the offender accountable to victims and to the community; and develops the offender’s skills as a way of reducing future delinquency or criminal behavior.”⁴² The policy goes on to list several factors which the prosecutor should consider in making that decision, most of which are very similar to the factors the *Delinquency Guidelines* suggests a juvenile court judge should consider when deciding a motion to waive jurisdiction.

Compare the following:

Resource Manual—“Specific factors which should be considered in the waiver decision include the seriousness of the alleged offense; the role of the juvenile in that offense; the nature and number of previous cases against the juvenile and the disposition of those cases; the juvenile’s age and maturity; the availability of appropriate treatment or services potentially available in each court; and the dangerousness or

⁴¹ *Resource Manual* at 10.

⁴² *Id.* at 11.

threat posed by a juvenile to the person or property of others.”⁴³

with the following:

Delinquency Guidelines—“Factors that Should Be Considered in the Decision To Retain or Waive Jurisdiction...

Dangerousness—The degree of violence involved in the current offense, including whether the juvenile used a weapon and the degree of injury suffered by any victims... The degree of violence involved in past offenses...

Sophistication/Maturity—Whether or not the youth is perceived to be mature reflects the degree to which the youth understands the nature and consequences of the behavior... Whether there were co-offenders, and if so, the relative involvement of the juvenile to the seriousness of the offense and the relative age of the youth to the co-offenders...

Amenability to Treatment—Does the juvenile delinquency court believe the youth can benefit from treatment available in the juvenile delinquency system, considering the time the youth remains under the jurisdiction of the juvenile delinquency court and the level of security needed to provide a reasonable assurance of community safety?

...⁴⁴

Thus, while the *Delinquency Guidelines* and NDAA policy differ over who should make the decision, they do substantially agree about the factors which are important to that decision.

⁴³ *Id.* at 11. See also *Prosecution Standards* Commentary at 261 (“...the juvenile justice system should be utilized to the greatest extent possible... juveniles should not be transferred to the adult system unless and until a determination is made that the juvenile cannot be rehabilitated within the juvenile system or alternatives would be contrary to the safety and welfare of society or the nature of the crime dictates a transfer”).

⁴⁴ *Delinquency Guidelines* at 110-111.

SENTENCING⁴⁵

Another area of some disagreement between NDAA policies (especially those stated in the *Resource Manual*) and the *Delinquency Guidelines* is in the area of sentencing. NDAA advocates that “meaningful sanctions” apply to all serious, violent, or habitual juvenile offenders, whether the adjudication of the offense occurs in juvenile or adult criminal court. From the juvenile court’s inception in 1899 through at least the 1980s, juvenile statutes directed that the “best interests” of the offender be the sole or at least primary factor in juvenile court sentencing. NDAA opposes that standard because “as practiced, [it] is not working.”⁴⁶ Instead, NDAA advocates a “balanced approach” where the juvenile court, in all aspects of its work, including sentencing, balances three factors: (1) community protection, (2) offender accountability, and (3) competency development in offenders.⁴⁷

The primary factors affecting a juvenile’s sentence should be the seriousness of the crime, the protection of the community from harm, and accountability to the victim and the public for the juvenile’s behavior....

There should be assured consequences, including the use of detention space, for those juveniles who violate conditions of probation.⁴⁸

⁴⁵ NDAA advocates elimination of euphemisms in juvenile court practice and the use of the same terminology in both juvenile court and criminal court. Thus, NDAA suggests that juvenile courts refer to “convictions” and “sentences” rather than “adjudications” and “dispositions.” The *Delinquency Guidelines* continues the old practice of using a separate vocabulary for juvenile court and criminal court, but this document uses the NDAA recommended language.

⁴⁶ *Resource Manual* at 14.

⁴⁷ See a “balanced approach” discussion, *supra* at page 3. That standard, or at least a standard that no longer emphasizes the best interest of the offender, is now the law in a majority of the states. Sandra P. O’Brien, Ph.D., “Restorative Juvenile Justice in the States: A National Assessment of Policy Development and Implementation: Summary of Survey Findings,” Florida Atlantic University, Balanced and Restorative Justice Project, <http://www.fau.edu/barj/survey.pdf>.

⁴⁸ *Resource Manual* at 14 (“A juvenile’s sentence should emphasize provision for community safety, offender accountability, and competency development so that offenders can re-enter the community capable of pursuing non-criminal paths”).

Consistent with those principles, the *Resource Manual* suggests that out-of-home secure placement in correctional settings—and never probation alone—is the appropriate sanction of first resort for serious, violent or habitual offenders. This fulfills the first two principles of protecting the community by separating the offender and providing consequences that make the offender appropriately accountable for his/her actions. It also addresses the third element of rehabilitating the juvenile offender, since NDAA firmly believes that “an important aspect of rehabilitation includes punishment.”⁴⁹

The *Delinquency Guidelines* takes a different approach, one that is more aligned with the traditional “best interests” standard. The *Delinquency Guidelines* identifies the same three principles of the balanced approach as guiding the “purpose of the disposition hearing,” but then modifies them in significant ways that emphasize the juvenile’s interests and de-emphasize punishment and secure placement of juveniles to secure the safety of the community. For example, when the *Delinquency Guidelines* states that the first “purpose” of sentencing is to “increase safety in communities,” it then limits the principle significantly with the phrase “by supporting and implementing both effective delinquency prevention strategies as well as a continuum of effective and least intrusive responses to recidivism.”⁵⁰ That limitation largely vitiates the community safety principle by requiring a sentencing response which is “least intrusive,” rather than one which is “most effective” or incurs the “least risk” in protecting the community. Likewise, in discussing the second principle, holding juvenile offenders accountable, the *Delinquency Guidelines* does not even consider correctional placement, and instead only mentions restitution and community service as possible means of accountability.⁵¹

Most telling of the different approach between the *Delinquency Guidelines* and the NDAA policy is the *Delinquency Guidelines* section that discusses the circumstances under which the juvenile court judge should consider out-of-home and secure correctional placements. That section in the

⁴⁹ *Id.* at 15.

⁵⁰ *Delinquency Guidelines* at 136.

⁵¹ *Id.*

Delinquency Guidelines starts by making such placements the sentencing option of last resort (out of eleven options). Then, while acknowledging that such placements may be necessary “in order to provide community safety,” the *Delinquency Guidelines* largely minimizes that factor by requiring the following:

[T]he juvenile delinquency court judge should be able to articulate why services cannot be safely provided to the youth without removal from the home through day or evening treatment centers, wrap-around services, or other services combined with probation and coordinated case management.⁵²

That limitation wholly misses the point of out-of-home placement as articulated in the NDAA policy — that secure correctional placement is less about services to the juvenile than about protecting the community and holding the juvenile accountable, especially those who are violent or habitual offenders. By continuing to emphasize services to the youth rather than the needs of the community, even in this last-resort sentencing option, the *Delinquency Guidelines* perpetuates the now largely discredited “best interests” emphasis of juvenile justice. This is fundamentally different from the emphasis urged by NDAA.

⁵² *Id.* at 153.

BLENDING SENTENCING

One area related to sentencing in which the NDAA policy and the *Delinquency Guidelines* apparently agree is so-called “blended sentencing” statutes that have been enacted in many states over the last decade. Blended sentencing is a “best of both worlds” compromise between juvenile and adult sentencing for juvenile offenders whose offense may not warrant transfer or direct filing in criminal court, but whose circumstances (such as age and prior history of the offender) indicate that more significant sanctions or a longer period of supervision may be necessary than would normally be permitted in the juvenile court. The process and details of blended sentencing vary widely from state to state, but in most the process essentially blends juvenile and adult sentencing, sometimes giving the judge an option to impose one or the other, but more often making them concurrent. If the offender is successful in completing the services and other requirements of the juvenile portion of the sentence, the adult sentence will either be vacated or held in abeyance for a period of time. If the juvenile fails in a material aspect of his or her juvenile sentence, the adult portions of the sentence can be enforced.

The NDAA *Resource Manual* affirmatively recommends the enactment of blended sentencing statutes in states where they do not presently exist, and the utilization of the statutes where they do:

Blended sentencing models are appropriate and necessary in the continuum of sanctions available for more serious, violent or habitual juvenile offenders, especially for younger youth committing very serious crimes.⁵³

While the *Delinquency Guidelines* does not affirmatively advocate the use of blended sentencing in the way the NDAA *Resource Manual* does, it notes that in some states it is a dispositional alternative for juvenile court

⁵³ *Resource Manual* at 11. See also *id.* at 15 (“The NDAA is in favor of ‘blended’ sentencing structures for serious violent or habitual juvenile offenders who are not prosecuted as adults”).

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judges while in others it is a sentencing alternative for criminal court judges in direct filed or mandatory waiver cases.⁵⁴

⁵⁴ *Delinquency Guidelines* at 101-102.

INFORMATION ACCESS

Over the last two decades, the previous view that juvenile delinquency proceedings should be closed to the public and press has given way to more openness. NDAA and the *Delinquency Guidelines* largely agree on the two most important aspects of the issue of access to information about juvenile delinquency proceedings: whether the process should be open to the press and public, and whether prosecutors and other system participants should have access to complete information about the juveniles who enter the system.

NDAA advocates that juvenile prosecutions should be open to the public, in the same manner as in adult criminal proceedings: “Simply, the public has the right to know who commits crimes within the community.”⁵⁵ Moreover, other agencies have an important need to know information about the juveniles who come before the juvenile court. For example, police officers need to know about juveniles with a history of violence so that they can take appropriate precautions when interacting with the youth. Detention officers need to know about a juvenile’s history of runaway, self-abusive, or suicidal behavior to be able to supervise the juvenile properly while in detention. Treatment providers need to know about the juvenile’s prior treatment successes and failures to properly craft an effective program for the juvenile.

The *Delinquency Guidelines*’ “recommended practice regarding openness of juvenile delinquency hearings is that hearings should be presumed to be open to the general public, unless sufficient evidence supports a finding that an open hearing will harm the juvenile and that the juvenile’s interests outweigh the public’s interest.”⁵⁶ The *Delinquency Guidelines* also recommends that court records be accessible, though on a more limited basis than NDAA would recommend. The *Delinquency Guidelines* suggests that court records be made available to agencies making recommendations to the court, and to agencies with a “recognized legitimate reason for access” like the military and the police.⁵⁷

⁵⁵ *Resource Manual* at 21.

⁵⁶ *Delinquency Guidelines* at 40.

⁵⁷ *Id.* at 42–43.

NDAA and the *Delinquency Guidelines* also largely agree on the issue of access by prosecutors (and other system participants) to complete information about the juvenile offenders who come into the system.

Numerous state and federal laws appear to restrict access—not only to prosecutors and other court personnel, but sometimes even to judges—to some kinds of information that are useful in juvenile delinquency proceedings. Often much more information than required is withheld by agencies out of fear of violating one of these confidentiality laws when in fact the information is not legally restricted.

NDAA takes the position that “[t]o properly perform their prosecutorial duties, prosecutors should have complete access to, and use in court of, information and records from other agencies.”⁵⁸ Further, NDAA recommends that information should be freely shared among prosecutors and “juvenile justice agencies, schools and juvenile treatment and prevention programs” because they have overlapping needs and services, and sharing information among them will avoid wasteful duplication of efforts, or worse, contradictory actions.⁵⁹ The *Delinquency Guidelines* largely agrees with NDAA’s position, though not in such forceful terms. The *Delinquency Guidelines* suggests the following:

Confidentiality laws need not impede information exchanges among those who make up the system of care for a delinquent youth. The *Delinquency Guidelines* recommends that information exchanges should be the norm and not the exception.⁶⁰

Thus, while NDAA and the *Delinquency Guidelines* do not agree in every detail, both advocate a much freer access to information about juvenile delinquency proceedings and the individuals who are the subject of those proceedings than has previously been practiced in many jurisdictions.

⁵⁸ *Resource Manual* at 20.

⁵⁹ *Id.* at 22.

⁶⁰ *Delinquency Guidelines* at 42.

VICTIMS' RIGHTS

NDAA's policy on victims' rights in juvenile delinquency court is simple and straightforward: crime victims should have the same rights in juvenile court that they have in adult criminal court.⁶¹ The *Delinquency Guidelines* supports victims' rights just as forcefully, including as one of its "Key Principles" the following statement:

Juvenile Delinquency Court Judges Should Ensure Crime Victims Have Access to All Phases of the Juvenile Delinquency Court Process and Receive All Services to Which They Are Entitled by Law — The prosecutor, probation officer, or both, should provide victim advocates to assist crime victims throughout the court process. Crime victims should be welcomed, respected, listened to, and involved in system improvement efforts.⁶²

Moreover, victims and respect for their rights are referred to frequently throughout the document. For example, the *Delinquency Guidelines* includes victims or victim advocates on almost all of its "Who Should Be Present" lists for each major hearing in the delinquency process.⁶³ The *Delinquency Guidelines* also recognizes that victims are entitled to be notified when other major case events occur that might affect a victim's well-being, such as when offenders are returning home from out-of-home placement.⁶⁴

NDAA's policy and the *Delinquency Guidelines* also agree on the issue of requiring offenders to pay restitution to compensate victims for financial losses resulting from the offender's actions. The *NDAA Resource Manual*

⁶¹ *Resource Manual* at 22.

⁶² *Delinquency Guidelines* at 25 (bold in original). The *Delinquency Guidelines* also includes in the list of items which should be included in a pre-disposition investigation information about the victim, including the victim's relationship to the offender, the injuries the victim suffered, the risk of re-victimization, and the victim's desire to participate in the disposition hearing. *Id.* at 138.

⁶³ *E.g., id.* at 105 (hearing on motion to waive or transfer to criminal court), 124 (trial or adjudication hearing), 141 (disposition hearing).

⁶⁴ *Id.* at 191 n. 16.

declares that restitution should be sought in every appropriate case. The *Delinquency Guidelines* emphasizes the use of restitution as an element of sentencing, not only to repair the damage to the victim but also to hold the offender accountable for his or her behavior. The *Delinquency Guidelines* requires that restitution be addressed in every disposition plan. Indeed, the *Delinquency Guidelines* suggests that juvenile delinquency courts should develop programs, in addition to or in lieu of community service programs, that will enable the offender to actually earn a wage that can be paid directly into the victim restitution fund, thereby assuring the victim of compensation and disabling the offender from evading accountability by asserting poverty to avoid restitution.⁶⁵

One area in which there may be a difference between NDAA policy and the *Delinquency Guidelines* with regard to victims' rights is in the emerging area of alternative dispute resolution methods being applied to juvenile delinquency court. The Restorative Justice concepts that have been implemented in many courts throughout the country often include processes for mediated resolution to juvenile crime matters, such as Victim-Offender Conferencing and Family Group Counseling. The NDAA *Resource Manual*, while supporting these alternative dispute resolution procedures generally, makes clear that they must be voluntary and declares that victims never should be required to participate.⁶⁶ The *Delinquency Guidelines* appears to endorse these alternative procedures, and while noting that juveniles and victims are not on an equal footing in these kinds of cases, takes no position on whether victim participation should or should not be mandatory. Therefore it is not clear whether the *Delinquency Guidelines* accepts or rejects the NDAA policy that victims should not be required to participate.

⁶⁵ *Id.* at 141, 148.

⁶⁶ *Resource Manual* at 22-23.

PARENTAL RESPONSIBILITY

The *Delinquency Guidelines* and the NDAA policy positions do not disagree on the subject of parental responsibility, though they are not perfectly in sync. Both agree that, within the limits of resources available to the family, parents should bear a share of the court costs and the cost of placement and treatment of their delinquent child.⁶⁷ Likewise, both agree that parents should be required to participate in the delinquency court process by attending all hearings, and by cooperating in the child's probation plan and treatment programs.⁶⁸

NDAA also urges that parents be required to make restitution to victims, in part because it helps force parents to be responsible for controlling their children's behavior.⁶⁹ NDAA's caveat is that parental liability should not diminish delinquent juveniles' accountability for their own actions—"Parental responsibility laws should strike a proper balance between using parental liability to force parents to control their children, making victims whole, and holding juveniles personally accountable for their actions."⁷⁰ The *Delinquency Guidelines* does not take a position about the advisability of parental restitution, but rather notes that it is provided for in some state statutes, and where available, juvenile court judges should impose it "when they believe the order is necessary to protect the community, assist the youth in changing delinquent behaviors, or repair damage to the victim."⁷¹

⁶⁷ *Delinquency Guidelines* at 141; *Resource Manual* at 18.

⁶⁸ *Id.*

⁶⁹ *Resource Manual* at 18.

⁷⁰ *Id.*

⁷¹ *Delinquency Guidelines* at 141.

PERFORMANCE MEASURES

The *Delinquency Guidelines* includes a section as part of its “Journey to Excellence” chapter, that discusses the importance of establishing information systems that are capable of measuring various aspects of juvenile delinquency court performance, and the production of a “Report Card” to inform the public about that performance. The NDAA also supports the measurement of the delinquency court’s performance, though not on precisely the same terms as those in the *Delinquency Guidelines*. In fact, APRI, partnered with the Balanced and Restorative Justice Project and the National Center for Juvenile Justice, led a recent federally-funded demonstration project that proved the feasibility of collecting and publishing information about the performance of juvenile court systems in four diverse jurisdictions—Cook County, Illinois; Deschutes County, Oregon; Allegheny County, Pennsylvania; and the State of South Carolina. The end result was the production in each of those jurisdictions of a “Report Card” that was distributed throughout the jurisdiction to report the results.⁷²

The participants in the project concluded that a key to the success of the project was the proper definition of the factors to be measured and reported. They concluded that the best measures were those related to the three principles of balanced justice, *i.e.* community safety, offender accountability, and offender competency development. For example, measures of community safety included facts like rates of new arrests or charges filed for youth on probation; measures of accountability included data such as the percentage of restitution and community service requirements fulfilled; and measures of competency development included facts like the rate of negative drug screens and the percentage of youth on probation who are employed or are actively attending school or vocational training. Some jurisdictions also included information from surveys of victims coming into contact with the delinquency system to deter-

⁷² For detailed information about the demonstration project, including copies of the Report Cards produced by the four jurisdictions, visit APRI’s web site at www.ndaa-apri.org/apri/programs/juvenile/performance_measures.html.

mine their level of satisfaction with the way they were treated and how the matters they were involved in were handled.

The *Delinquency Guidelines* also recommends that juvenile delinquency courts produce report cards modeled on measures similar to those utilized in APRI's project. The facts the *Delinquency Guidelines* suggests to report, however, are not entirely consistent with those of the APRI project. The *Delinquency Guidelines* does suggest measures like recidivism rates, rates of restitution and community service, and measures of law-abiding behavior, such as negative drug screens and success at school. It goes further, however, and suggests measures that are ambiguous indicators of juvenile delinquency court success. For example, the *Delinquency Guidelines* suggests measuring and reporting the number of petitions filed and the number of youth in secure detention. Those measures, however, can indicate either success or failure of the system depending on the reader's point of view. Citizens who think that the juvenile delinquency court should be tougher on juvenile offenders might welcome increases in petitions filed and youth detained, while others might view those statistics as reflecting an increase in crime that indicates poor performance by the juvenile court. The experience of APRI and its partners in the Performance Measures Demonstration project suggests that unambiguous factors directly tied to the juvenile court's purposes — community protection, offender accountability and offender competency development — yield the most meaningful information in a report card to the public.

NDAAs wholeheartedly support performance measures for juvenile delinquency courts, as does the *Delinquency Guidelines*. While there are differences in viewpoint on what facts about the system should be measured and reported, there is agreement about the value of measuring and reporting in general.

CONCLUSION

The *Delinquency Guidelines* is much broader in scope and deeper in detail than either of NDAA's policy statements. As a result, the *Delinquency Guidelines* covers many topics about which NDAA has adopted no specific policy. Conversely, there are several subjects on which NDAA does express a policy position which are outside the scope of the *Delinquency Guidelines*.⁷³ Overall, other than on the issue of waiver/transfer, the differences between the *Delinquency Guidelines* and NDAA policies are not so great as to diminish an overall favorable view of the *Delinquency Guidelines*.

⁷³ For example, the *Resource Manual* contains policy statements on such subjects as firearm and gang prosecution and crime prevention that are not addressed by the NCJFCJ in the *Delinquency Guidelines*. Conversely, the *Delinquency Guidelines* contains a chapter on appeals, a subject about which NDAA has no stated policy.



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