RESOLVED, that the American Bar Association adopts the attached Criminal Justice Standards Relating to Dual Jurisdiction Youth.
REPORT

By examining the use of the delinquency system for youth who would be better served in other systems, these Standards hope to encourage thoughtful reconsideration of the practices that result in the unnecessary referral of youth to juvenile courts. They seek to prescribe circumstances under which youth should be diverted from juvenile court, or served by it more effectively. Moreover, these Standards seek to answer questions like: What do we expect juvenile court to deliver in terms of services, risk management or public policy that other systems cannot? When referrals are made to juvenile court, how should the juvenile justice professionals assist in determining whether the referral is appropriate? When youth with multiple needs are appropriately under juvenile court jurisdiction, how can their needs be met so that society’s interest in protection is satisfied while giving these youth the best opportunity to become productive citizens?

Referral to Juvenile Court

These Standards first address how the juvenile court, through judicial leadership, prudent prosecutorial discretion, thoughtful defense advocacy, and appropriate probation decisions, can control the entry of youth into the juvenile justice system. The Standards provide guidance to judges and juvenile court personnel on when and how youth who are referred by and would be better served by other systems should be diverted from the juvenile court.

Youth who are appropriately in Juvenile Court

These Standards also address the court’s obligation to ensure that youth who are appropriately before the juvenile court receive services from other systems, including, where appropriate, services that are normally provided by the child welfare system. The Standards address the juvenile court’s continuing responsibility to determine whether, how, and for how long delinquent youth are served by more than one system.

Youth Returning to the Community from Placement and Exiting the Juvenile Justice System

Finally, these Standards address the responsibility of the juvenile justice system as a whole to plan and facilitate re-entry for youth who are dual status, regardless of who has responsibility for that function.

* * *

These Standards thus set forth a framework for how juvenile justice system professionals should make decisions about and serve youth who are referred by other systems, are involved with more than one system at a time, or have needs that should be met by more than one system.

We begin in Part I with definitions of key terms and a statement of general principles.

Part II addresses structural issues that are important to system collaboration. These include the need for a sound legislative framework, cross-system protocols, and guidance on court docketing when youth and families must attend multiple hearings and administrative proceedings. Recognizing the inherent tension between the youth’s right to privacy and confidentiality and the need for information sharing and data collection about youth who are involved in multiple systems, this Part also attempts to guide
juvenile justice professionals in determining whether, when and how to share and collect information.

Part III covers the many issues related to control of juvenile court jurisdiction. This part gives special attention to reducing unnecessary referrals from schools and child welfare agencies.

Part IV augments Part III by providing standards for juvenile court personnel to follow when they receive referrals of youth who are, or who are likely to become, involved with more than one system. The Standards discuss how court personnel can reject inappropriate referrals and encourage personnel to pay special attention to appropriate referrals of dual-status youth.

Part V guides court personnel in obtaining services from other systems to avoid juvenile court involvement, or to provide better treatment for youth who are appropriately in the juvenile justice system.

Parts VI and VII address adjudication and disposition of dual-status youth, paying particular attention to the guarantees of due process and the need for loyal and engaged defense advocates.

Part VIII deals with the unique problems of re-entry, while Part IX examines appeals. Part X provides guidance on juvenile records and expungement. Parts XI and XII cover ethical obligations of prosecuting attorneys and defense counsel, respectively.

Respectfully submitted,
Matthew Redle
Chair, Criminal Justice Section
August, 2017
PART 1. DEFINITIONS AND GENERAL PRINCIPLES

STANDARD 1.1 DEFINITIONS

For the purpose of these Standards, the listed terms are defined as follows:

(a) “Behavioral Health Services” are a continuum of services for individuals at risk of, or suffering from mental health or substance abuse conditions.

(b) “Best Interest Advocate” is an individual, not functioning or intending to function as a lawyer, appointed by the court to assist the court in determining the best interests of the youth.

(c) “Child Welfare System” is the legal structure including courts, residential facilities, foster care placements, and services designed to promote the well-being of youth alleged or found to be status offenders or to be abused, neglected, abandoned, homeless, or exploited, by ensuring safety, achieving permanency, improving well-being, and building the family’s capacity to care for their youth successfully.

(d) “Collateral Consequences” are consequences flowing from arrest or adjudication, other than the direct dispositional order, that may impact opportunities for future education, financial aid, employment, housing, immigration status, public benefits, or other individual rights, services, or benefits.

(e) “Congregate Care Facility” is a housing facility in which each individual has a private or semi-private bedroom but shares with other residents a common dining room, recreational room, or other facilities.

(f) “Critical Youth Services” are services required for the well-being of youth, including supervision, housing, clothing, nutrition, education, recreation, and physical and behavioral healthcare.

(g) “Cultural Competence” is an ability to understand, communicate with, and effectively interact with people across different cultures and socio-economic backgrounds.

(h) “Data” is information that is captured for aggregate reporting purposes but does not identify individuals.

(i) “Delinquency” is any behavior that would be a crime if committed by an adult.
(j) **Defense Counsel** is a lawyer hired or appointed to represent a youth’s expressed interest in a delinquency proceeding.

(k) **Dependency Case** is a legal proceeding involving youth and parents in the child welfare system.

(l) **Dependency Counsel** is a lawyer hired or appointed to represent a youth’s expressed legal interests in a dependency case.

(m) **Diversion** is the referral of an accused youth, without adjudication of criminal or delinquency charges, to a youth service agency or other program, accompanied by a formal termination of all legal proceedings against the youth in the juvenile justice system upon successful completion of the program requirements.

(n) **Dual-Status Youth** are youth under the concurrent jurisdiction of the child welfare system and the juvenile justice system.

(o) **Dual-Status Docket** is a specialized docket within the Family Court that exercises jurisdiction over youth who are concurrently involved in the juvenile justice and child welfare systems.

(p) **Family Court** is a court with jurisdiction over one or more of the following cases involving: delinquency; abuse and neglect; status offenses; the need for emergency medical treatment or behavioral health crisis intervention; voluntary and involuntary termination of parental rights proceedings; adoption proceedings; appointments of legal guardians for juveniles; intrafamily criminal offenses; proceedings in regard to divorce, separation, annulment, alimony, custody, and support of juveniles; proceedings under the Uniform Interstate Family Support Act.

(q) **Information** is any communication - recorded or unrecorded, record, or material that may identify individuals.

(r) **Juvenile Justice System** is the legal structure including law enforcement agencies, courts, detention facilities, probationary and re-entry services for diverting, detaining, adjudicating, supervising and discharging youth alleged or found to be delinquent.

(s) **Juvenile Court** is the court and court personnel responsible for diverting, adjudicating, detaining, confining, and supervising youth alleged or found to be delinquent.
(t) “Minor Delinquent Behavior” is conduct that does not rise to the level of significant or repeated harm to others, significant or repeated property loss or damage, or a threat of significant harm to others.

(u) “Outcome” is a pre-defined, objective measure of change of limited scope.

(v) “Records” are all reports, pleadings, court orders, and other documents prepared or gathered in connection with Juvenile and Family Court proceedings.

(w) “School Resource Officer” is a certified, sworn police officer employed by a local police agency but assigned to work in a school.

(x) “Staff-secure facility” is a facility that houses a small number of residents who have the freedom to enter or leave the premises.

(y) “Status Offense” is conduct that is prohibited only for persons under the age of majority, such as truancy, curfew violations, or running away from home.

(z) “Youth” is a person who has not yet attained the age of majority or otherwise is not subject to the jurisdiction of the criminal court; or who, as a result of a delinquency petition, remains subject to the juvenile court’s jurisdiction.

(aa) “Youth-Serving Agency or System” is an agency or system of agencies responsible for providing child welfare services, critical youth services, or behavioral health services.

**STANDARD 1.2 GENERAL PRINCIPLES**

(a) All youth need and deserve adequate care, education, and physical and behavioral health services.

(b) Child welfare and other youth-serving agencies should not refer a youth for law enforcement intervention for minor delinquent behavior.

(c) Cooperation between the juvenile justice system and other youth-serving systems is essential in differentiating between conduct that warrants intervention by the juvenile justice system and conduct that does not warrant such intervention, developing protocols that discourage inappropriate referrals to juvenile court, and developing positive support systems and behavioral strategies that reduce referrals to juvenile court.

(d) Information-sharing between and among juvenile justice and other youth-serving agencies should be regulated to accommodate the youth’s need for coordinated services, as well as the youth’s need for privacy and protection against self-incrimination.
(e) Locked and staff-secure facilities should only be used after arrest, during the court process, or as a dispositional option when needed for the protection of the community or to reduce a risk of flight.

(f) Services provided to youth removed from their home or community should be provided in the least restrictive setting and a setting that is close to family, consistent with public safety and the safety of the youth.

(g) Youth receiving critical youth services, child welfare services, or behavioral health services should be entitled to continuity in those services in the least restrictive setting consistent with public safety when they are removed from their home to the custody of the juvenile or criminal justice systems.

(h) Services for youth involved in the juvenile or criminal justice systems should be provided by appropriate youth-serving agencies in the community. When a youth is in detention or custody, the youth should receive services comparable to those they would receive in the community, in a setting that is close to family.

(i) Youth should have an opportunity to be heard, through the aid of counsel, regarding any decision that affects their physical placement, need for and selection of services, and general well-being.

(j) The juvenile justice system should ensure that youth needing services from both the child welfare and juvenile justice systems receive the most appropriate services without adversely affecting the severity or duration of the youth’s detention, placement, or probation supervision.

(k) Arrangements for follow-up treatment, services, placement, and protection that the youth will need once released from custody should be made during the period of their confinement, be in place upon their release, and not delay release.

(l) The child welfare system and agencies should not terminate services or close a youth’s dependency case solely because the youth was arrested or adjudicated in the juvenile or criminal justice system.

(m) Parents, guardians, and caretakers of youth involved in the juvenile justice system are entitled to respect and the opportunity to participate in decision-making involving the youth if appropriate for the youth’s legal interests, safety, and well-being.

(n) Youth released from custody should be reunited with their parents when in the youth’s best interests; when reunification is not in the youth’s best interest, the youth
should be placed in the care of other appropriate relatives, the child welfare system, or other appropriate systems.

PART II: SYSTEMS COLLABORATION AND COORDINATION OF SERVICES FOR DUAL-STATUS YOUTH

A. STATE STRUCTURE AND LEGISLATION

STANDARD 2.1 LEGISLATIVE PROVISIONS FOR EFFECTIVE CARE OF DUAL-STATUS YOUTH

(a) State laws and policies should ensure that dual-status youth continue to receive critical youth services despite the youth’s involvement in the juvenile justice system.
(b) State and federal laws should eliminate funding barriers and statutory restrictions that inhibit dual-status youth from accessing state and federal funding allocated for youth in the child welfare system.
(c) State laws should mandate and facilitate interagency planning, coordination and accountability between and among agencies that have a legal obligation to each youth.
(d) Mandatory arrest provisions in domestic violence and criminal justice statutes should not mandate arrests for youth who engage in minor delinquent behavior in congregate care facilities in the child welfare, juvenile justice, or other youth-serving systems.

STANDARD 2.2 STRUCTURE OF STATE JUVENILE JUSTICE AND CHILD WELFARE SYSTEMS

(a) State systems should be structured so that:
   i. a single state agency is responsible for the licensing and regulation of programs for status offenders and delinquent and dependent youth and for ensuring that all residential facilities meet minimum licensing standards;
   ii. non-secure juvenile justice programs have access to and may utilize child welfare funding, partially covered by federal support, for family-
based care and small group placements that will support youth in less restrictive, community-based settings while affording them additional protections under federal law;

iii. child welfare services are available to juvenile courts and the courts may at any appropriate stage of the juvenile court proceedings enter any order authorized for a dependent youth; and

iv. dependent youth who are not adjudicated delinquent should not be placed in residential facilities that are primarily for the care of delinquent youth.

(b) State systems should engage behavioral health, education, and child welfare agencies and ensure that crisis intervention and other services are implemented to avoid the need for arrest and referral to the juvenile justice system.

(c) States should ensure that congregate care facilities in the child welfare, juvenile justice, and other youth-serving systems are able to meet the needs of the youth they serve, including addressing minor delinquent behavior, without relying on law enforcement for discipline.

B. FAMILY COURT ORGANIZATION, POLICIES, AND PROCEDURES

STANDARD 2.3 JUVENILE COURT POLICIES, PROTOCOLS, AND RULES

(a) Juvenile and Family Courts should establish policies and protocols that ensure the fair treatment of dual-status youth in diversion, detention, adjudication, and disposition decisions and eliminate practices that result in the unnecessary detention, adjudication, or prolonged incarceration of youth who are or should be served by the child welfare system.

(b) Juvenile and Family Courts should establish policies and protocols for delinquency complaints involving youth referred by or receiving services from the child welfare or other youth-serving systems. Such policies and protocols should:

i. recognize the in loco parentis role of the child welfare agency and require the agency to fulfill the role a responsible parent would be expected to fulfill when a youth comes into contact with the juvenile justice system;
ii. limit secure confinement to situations in which the youth meets detention criteria applied to other youth and ensure that a youth who does not have an in-tact home to which to return is not securely detained solely as a result of the youth’s family status;
iii. set strict timelines for the completion of the juvenile intake process;
iv. establish a process to determine whether a youth is better served in the juvenile justice system, the child welfare system, or by concurrent jurisdiction of the two;
v. develop procedures for providing accommodations to youth with disabilities;
vi. permit concurrent jurisdiction by the child welfare and juvenile justice systems when appropriate, and
vii. provide that a youth’s arrest or adjudication of delinquency will not result in the closure of a child welfare case or the termination of services from other youth-serving agencies solely because of the youth’s involvement in the juvenile justice system.

(c) Consistent with standards concerning information sharing and confidentiality in these standards and state and federal laws governing confidentiality and privilege, juvenile courts should develop policies and protocols for the prompt notification of a youth’s caregiver, child welfare caseworker, and attorney, and for the involvement of other youth-serving agencies as appropriate when a youth is arrested or referred to the juvenile court.

**STANDARD 2.4 JUVENILE COURT LEADERSHIP**

Juvenile courts should exercise leadership in developing working relationships and protocols with community agencies serving youth and families with multiple legal issues and in need of services from multiple systems.

**STANDARD 2.5 JUVENILE AND CRIMINAL COURT JURISDICTION**

(a) State laws governing the transfer of youth from juvenile court to adult court or from adult court to juvenile court should require probation officers, prosecutors, and juvenile court judges to consider the dual-status youth’s need for services
from the child welfare and other youth-serving agencies in determining whether transfer is appropriate. The attorney for the youth should have an opportunity to present evidence as to the youth’s need for child welfare services.

(b) Juvenile courts should consider whether the child welfare and other youth-serving systems have fulfilled their duties to a youth before considering whether to transfer the youth to criminal court and should establish protocols to ensure that youth who receive services from multiple systems are not disadvantaged in discretionary transfer decisions solely due to their involvement in other systems.

(c) Consistent with public safety, state laws should permit transfer of youth from the criminal court to the juvenile court when the youth needs services from the child welfare, juvenile justice, or other youth-serving agencies.

(d) If a youth is transferred or has a case originally filed in criminal court, the youth should still be eligible for child welfare services, including social service placements and programs.

**STANDARD 2.6 DEPENDENCY JURISDICTION**

(a) Dependency courts should develop protocols that:

i. acknowledge the *in loco parentis* role of the child welfare agency and require the agency to fulfill the role a responsible parent would be expected to fulfill when a youth comes into contact with the juvenile justice system;

ii. ensure that a youth’s arrest or adjudication of delinquency will not result in the closure of a child welfare case or the termination of services from other youth-serving agencies solely because of the youth’s involvement in the juvenile justice system;

iii. prevent the use of civil and criminal contempt violations in the child welfare system as a basis for a delinquency petition;

iv. facilitate coordination, planning and accountability when the child welfare and juvenile justice systems have concurrent jurisdiction over the youth;

v. ensure that a youth’s defense counsel receives notice when the youth becomes involved in the child welfare system; and
vi. ensure that a youth’s dependency counsel receives notice when the youth becomes involved in the juvenile justice system.

(b) State laws should ensure that youth have a right to defense counsel and a court hearing at which they have the right to testify, present evidence, and cross-examine witnesses on the youth’s need for child welfare services and whether their dependency case will be terminated after an arrest or referral to juvenile or criminal court.

**STANDARD 2.7 DOCKETING PROCEEDINGS INVOLVING DUAL-STATUS YOUTH**

(a) In scheduling delinquency and other Family Court proceedings, clerks and other court personnel should be attentive to the youth’s and family’s obligation to appear in other legal proceedings. Court personnel should communicate with the youth and family to reduce multiple trips to court and court-related appointments and to avoid scheduling conflicts, school absences, and other avoidable inconveniences.

(b) Consistent with standards related to information sharing and confidentiality in these Standards and state and federal laws governing confidentiality and evidentiary privilege, juvenile court staff should have access to the docket of all Family Court cases so they can identify youth and families with multiple legal proceedings within the court.

(c) The same judge should consider all legal issues that involve the same family; however, to ensure fundamental fairness, each youth should have:

i. a lawyer at all stages of a delinquency and dependency case, including the intake, adjudicatory, disposition, post-disposition, and appellate stages;

ii. an adjudicatory hearing at which each charge of delinquency will be considered by a neutral judicial officer as consistent with due process and fundamental fairness;

iii. the right to notice of all hearings and case staffing or case management conferences related to the youth’s cases; and

iv. the right to attend all hearings and case conferences related to the youth’s cases and a meaningful opportunity to be heard as to the youth’s
strengths, interests, disabilities, needs, and preferences regarding placement, services, and case outcomes.

(d) Juvenile and Family Courts should develop policies that allow for the consolidation of post-adjudication matters involving dual-status youth. The policies should be consistent with the following principles:

i. When feasible, a single judge should hear all dispositional and post-dispositional matters involving dual-status youth.

ii. After a youth has been adjudicated delinquent, the youth’s juvenile court dispositional proceedings should be consolidated with child welfare and other Family Court proceedings concerning the youth.

iii. The court should ensure continuity of legal representation for the youth throughout all phases of the delinquency matter, including disposition.

iv. The court should require that representatives responsible for case management and supervision of the youth in the child welfare and juvenile justice systems attend the consolidated proceeding.

v. The court should ensure, to the extent consistent with the missions of the child welfare and juvenile justice systems, that youth and family case plans be aligned in terms of goals, permanency planning, services, and responsibility for implementation.

(e) To the extent possible, services and other legal proceedings in the child welfare system should not be delayed pending resolution of a delinquency case, unless the youth or the youth’s defense counsel believes such a delay is necessary.

**STANDARD 2.8 DESIGNATED DUAL-STATUS DOCKETS**

(a) A jurisdiction should have authority to create a specialized dual-status docket for youth involved in both the juvenile and the child welfare systems, if it finds that the traditional juvenile court cannot effectively address cases involving youth with particular needs or characteristics.

(b) Dual-status dockets should be developed and implemented by an interdisciplinary team that includes representatives from the judiciary, prosecution, defense bar, best interest advocates, families, and relevant service providers.
(c) Youth assigned to a dual-status docket should have access to services from all systems that have expertise related to the youth’s needs.

(d) Dual-status dockets should provide an opportunity for youth to be diverted from the juvenile justice system or benefit from alternatives to detention at the pre-trial and disposition stage of the delinquency case.

(e) Judges presiding over dual-status dockets should utilize incentives for positive behavior, graduated responses to negative behavior, close judicial oversight, a team approach, coordination of services, and meaningful re-entry strategies.

(f) Judges presiding over dual-status dockets should ensure that any sanctions imposed serve a rehabilitative purpose.

(g) Courts with a dual-status docket should have rigorous intake and screening procedures to ensure the Court accepts only those youth who are appropriate for the dual-status docket.

(h) The interdisciplinary team responsible for developing a dual-status docket should adopt policies and protocols that ensure that:

i. the youth’s due process rights are protected at all stages of the delinquency case, including the youth’s right to a fair and impartial hearing at the adjudicatory and disposition stages of the case;

ii. the parents’ due process rights are protected at all stages of the dependency case, including the parents’ right to a fair and impartial hearing to adjudicate any allegation of abuse or neglect;

iii. the youth and the youth’s defense counsel have a right to be heard and participate in all decisions regarding the youth’s placement and service plan;

iv. youth and parents with disabilities receive accommodations necessary to ensure meaningful participation at all stages of the case; and

v. when the youth is not diverted from the juvenile justice system before adjudication, the youth’s dependency case should not be consolidated with a delinquency case on a dual-status docket unless and until there is an adjudication of delinquency.

(i) Dual-status dockets should be presided over by a judge instead of a referee, master, or magistrate.
(j) A judge presiding over a dual-status docket should have authority to dismiss the delinquency petition for a youth who has successfully completed the requirements set by the dual-status court.

C. INTERSTATE COOPERATION

STANDARD 2.9 DUAL-STATUS YOUTH CROSSING STATE AND LOCAL JURISDICTIONS

(a) Courts and state legislatures, individually or with neighboring states, should develop policies and procedures consistent with the Interstate Compact for Juveniles, the Interstate Compact on the Placement of Children, and the Uniform Child Custody and Jurisdiction Act that will facilitate cooperation by justice system personnel and youth-serving agencies in addressing cross-jurisdictional issues.

(b) Policies and procedures for cross-jurisdictional cooperation should focus on:
   i. reducing delay, uncertainty, and unnecessary detention of youth,
   ii. providing prompt resolution of legal matters involving dual-status youth,
   iii. expediting the necessary transport of dual-status youth across jurisdictions, and
   iv. avoiding scheduling conflicts for youth and families with legal obligations in multiple jurisdictions.

(c) Policies and procedures should adopt a presumption that legal proceedings will take place in the jurisdiction where the youth has the most significant ties.

(d) Policies and procedures to facilitate cross-jurisdictional cooperation should abide by principles of confidentiality and privacy.

D. INFORMATION SHARING AND DATA COLLECTION

STANDARD 2.10 PURPOSES OF INFORMATION SHARING AND DATA COLLECTION

(a) Information sharing and data collection are necessary for any effective collaboration and coordination of services for dual-status youth.
(b) States should authorize and facilitate the sharing of information about individual youth between and among multiple systems and agencies to
   i. reduce duplication of assessments and services for the youth and the youth’s family,
   ii. enhance understanding of the youth’s strengths, interests, preferences, needs, and
   iii. improve individual case planning and decision-making for the youth.
(c) States should authorize and facilitate the collection of data for aggregate reporting on the characteristics of dual-status youth and the processes for handling those youth.
(d) States should use data:
   i. to improve the policies, practices, and coordinated responses of agencies responsible for the care of and provision of services to dual-status youth, and
   ii. to evaluate the need for and effectiveness of programs and practices designed to achieve improved outcomes for youth.

STANDARD 2.11 POLICIES AND PROCEDURES FOR CONFIDENTIALITY DURING INFORMATION SHARING

(a) All states should develop and require the use of protocols for information sharing about individual dual-status youth from arrest to termination of jurisdiction.
(b) All agreements or protocols to share information between the juvenile justice system and other youth-serving systems and agencies should ensure that information-sharing protocols provide appropriate protection for the privacy of youth and their families and follow federal and state law and ethical requirements regarding confidentiality of privileged information.
(c) All agreements or protocols should specify the purposes of information sharing and limit the information shared to the specified purposes.
(d) States should limit the use of information about the youth’s involvement in multiple systems to the coordination of case management and the continuity and integration of services and treatment. Protocols should:
i. prohibit the unauthorized disclosure of, or unauthorized access to, information relating to the dual-status youth, and

ii. develop quality control measures that minimize the inadvertent disclosure of information relating to the youth.

(e) Absent an explicit exception under applicable state and federal law, juvenile justice agencies and professionals should always obtain informed written consent from the youth and the parent or guardian of the youth, before sharing personally identifiable information between agencies serving the youth. Youth, parents, or guardians with disabilities should receive accommodations necessary to provide informed consent.

(f) Any written consent for information sharing should state the purpose of sharing, the specific information to be shared, and the time frame within which the information will be shared.

(g) Information about dual-status youth should be shared with and used by youth-serving agencies in a manner that complies with state and federal laws governing confidentiality, including re-disclosure and privilege, and protects the youth’s right against self incrimination and right to due process as a respondent or defendant in any delinquency, criminal, summary offense, status offense, or child welfare case.

(h) Juvenile justice officials sharing information about dual-status youth should ensure that any youth-serving agency and system receiving that information is aware of and adheres to rules and standards governing confidentiality of Family Court records, including restrictions on the dissemination of physical and behavioral health records and limitations on the use of records for specified purposes.

(i) The juvenile court and other youth-serving agencies should develop docketing, filing, and records-disclosure systems that will allow court staff to redact and separate records and information that may be disclosed from those that may not be disclosed pursuant to state and federal confidentiality laws.

**STANDARD 2.12 DATA COLLECTION FOR LAW, POLICY, AND PROGRAM DEVELOPMENT**
(a) Courts, legislatures, and state agencies should develop a system for collecting, reporting, and sharing data regarding dual-status youth to achieve one or more of the purposes identified in Standard 2.10 of these standards.

(b) Courts, legislatures, and state agencies should use data collection to improve outcomes for dual-status youth and to reduce unnecessary referral to and penetration into the juvenile and criminal justice systems.

(c) Lawyers, judges, and other government agents should ensure that data collection protocols comply with applicable rules regarding confidentiality.

(d) Courts and state legislatures should periodically review the aggregate data collected to determine how to allocate resources to youth-serving agencies and systems within the jurisdiction, to improve procedures for handling youth who engage in delinquent behavior while in the care or custody of a youth-serving agency, and to improve the continuity of care for youth in multiple youth-serving systems.

**STANDARD 2.13 ACCESS TO COURT RECORDS**

(a) The use of and access to Family Court records should be strictly controlled to limit the risk of unnecessary and harmful disclosure.

(b) Court records involving youth alleged or adjudicated delinquent or dependent should normally be closed to the general public.

(c) Juvenile justice officials who disclose information about dual-status youth should ensure that all recipients of that information are informed of all rules and standards governing confidentiality of Family Court records.

(d) Courts and state legislatures should develop and enforce meaningful sanctions for the unlawful dissemination of Family Court records.

(e) Juvenile justice professionals who disclose information about dual-status youth should separate records that may be disclosed from those that may not be disclosed and redact disclosed records accordingly.

(f) Defense counsel in any juvenile or criminal case in which a youth is involved should normally have access to all Family Court records involving the youth.

(g) The Family Court should avoid standing orders or policies that grant the public, court staff, juvenile justice officials, or other youth-serving agencies broad
access to any category of records generally found within a Family Court file. Instead, the Court should develop policies and protocols to grant access to such records only after a judicial officer or appropriate designate makes an individualized analysis of a records request.

**Standard 2.14 Waivers of Confidentiality**

(a) Juvenile justice or other youth-serving agency officials may ask a youth to waive confidentiality protections.

(b) A youth’s waiver is valid only if it is made knowingly, intelligently, and voluntarily.

(c) If a youth has appointed or retained counsel, agency officials should permit the youth an opportunity to consult with counsel before waiving any confidentiality protections. Waivers obtained without such an opportunity should be considered presumptively invalid.

(d) In advising a youth regarding a possible waiver of confidentiality, the youth’s lawyer should ensure the youth understands privilege, the youth’s rights with respect to consent and confidentiality, and the potential consequences of waiving confidentiality or privilege in releasing information to others.

(e) Agency officials should allow a youth to consult with a parent or guardian before waiving any confidentiality protections; but a parent cannot waive the youth’s rights or privileges. In a delinquency proceeding, the decision to waive should be the youth’s.

(f) Any written waiver form should use youth-appropriate language and be written in a language the youth speaks or understands. If a youth has limited literacy, any waiver should be obtained and recorded in a manner that is understandable to the youth.

(h) A youth may negotiate the terms of the waiver to limit the time, scope or purpose of the waiver.

(g) A parent or guardian may waive confidentiality protections for records involving the parent.

**E. Cross-System Training**
**STANDARD 2.15 NEED FOR CROSS-SYSTEM TRAINING**

(a) Family Courts and youth-serving agencies should promote training for all professionals in the juvenile justice and child welfare systems to reduce inappropriate referrals to the juvenile justice system.

(b) Training should include:

i. the scope and availability of services and means for accessing services from the child welfare, behavioral health, physical health, public benefits, Family Court, and education systems;

ii. information regarding any memoranda of understanding or other agreements between and among the various youth-serving agencies regarding the provision of services for youth;

iii. laws, rules, and procedures applicable to confidentiality and privilege;

iv. the role of the youth’s defense counsel and best interest advocate for the youth;

v. child and adolescent development, brain development, disabilities, trauma, and resiliency development;

vi. sexual orientation and gender-identity;

vii. cultural competence;

viii. racial bias;

ix. evidence-based research on the effectiveness of services and programs in achieving good outcomes for youth in the juvenile justice and child welfare systems;

x. family and youth engagement; and

x. the immigration consequences of the youth’s involvement in the child welfare or juvenile justice system.

**PART III: ARREST AND REFERRALS TO THE JUVENILE JUSTICE SYSTEM**

**STANDARD 3.1 GUIDELINES FOR CHILD WELFARE AGENCIES**

(a) Child welfare agencies should adopt policies discouraging staff from referring youth to the juvenile justice system for minor delinquent behavior.

(b) Child welfare agencies should have protocols for responding to delinquent and status offense behavior by youth in their care. These protocols should:
i. be developed in consultation with representatives of other youth-serving agencies, including the juvenile court, probation, behavioral health, schools, law enforcement, prosecution, defense, best interest advocates, and community service providers;

ii. set forth the specific procedures to be followed when a youth violates rules of a program or placement or engages in behavior that poses a threat to others in a program or placement;

iii. specify behavioral support or staffing strategies that agencies should utilize instead of referral to law enforcement;

iv. be in writing, made available to agency staff and youth served by the agency, and be incorporated into any agency staff training; and

v. provide for periodic review and revision of the protocols.

(c) Staff in child welfare or other youth-serving agencies and facilities should be trained in crisis intervention techniques, including strategies to de-escalate youth behavior arising out of behavioral health or other disability-related needs, and such techniques should be employed first, before any law enforcement referral.

(d) Public child welfare agencies that contract with private service providers should, in the contracts, set forth the circumstances under which those agencies may refer youth to law enforcement and provide guidance on alternatives to law enforcement and juvenile court referrals in case of a behavioral crisis or placement concerns.

**STANDARD 3.2 RESPONSIBILITIES OF LAW ENFORCEMENT IN RESPONDING TO REFERRALS INVOLVING DUAL-STATUS YOUTH**

(a) In deciding whether to arrest, divert, warn, detain, or refer a youth to the juvenile court, law enforcement officers should:

i. have a presumption against arresting youth who have been referred from the child welfare system to the juvenile justice system for minor delinquent behavior; and

ii. consider whether the youth is or can be engaged with other youth-serving systems or agencies that will work to ensure the youth’s
appearance in court, divert the youth from custody or supervision, and minimize the youth’s risk to public safety.

(b) Law enforcement agencies should develop inter-agency crisis intervention strategies that discourage arrests of youth experiencing emergency behavioral health crises that do not create a serious risk to public safety.

(c) If a youth needs emergency psychiatric or other behavioral health intervention, law enforcement officers should contact a behavioral health mobile crisis team; if such a team is not available, the officers should take the youth into custody without arrest and transport them to an appropriate crisis intervention facility.

(d) When a youth appears to be homeless, a runaway, or declines to give home contact information, the law enforcement agency should determine whether the youth is under the care or supervision of the child welfare agency, and if not should determine whether the youth should be referred to an appropriate youth-serving agency.

(e) Law enforcement should notify the caregiver or welfare caseworker of any youth who is arrested while committed to a child welfare agency.

STANDARD 3.3 RESPONSIBILITIES OF LAW ENFORCEMENT, SCHOOLS, AND JUVENILE COURTS IN RESPONDING TO SCHOOL-RELATED CONDUCT

(a) The primary authority responsible for school climate, discipline, and school safety is the school principal. Police should not be deployed in schools absent a significant showing of a demonstrable, time-limited need to protect students. If police are to be deployed in schools, memoranda of understanding and guidelines regarding their interaction with school officials and the scope and parameters of their authority should be established consistent with the principles set forth in these standards.

(b) Law enforcement, including school resource officers (hereinafter SROs) should not arrest or refer youth to the juvenile justice system for minor delinquent conduct at school and should not have primary responsibility for the enforcement of school discipline.

(c) Law enforcement personnel interacting with youth in schools should interact with students in ways that foster positive relationships and promote a better
understanding of each other and should not be limited to arrest and law enforcement.

(d) Schools should adopt written policies and establish protocols limiting the presence and use of SROs in accordance with the principles set forth in section (e) below. Law enforcement, including SROs, should not be assigned within schools on a permanent basis, and school and law enforcement officials should periodically reassess the need for law enforcement presence and use.

(e) Formal law enforcement intervention includes issuance of a citation, ticket, or summons, filing of a delinquency petition, referral to a probation office, searches, use of restraints, or actual arrest. Law enforcement officials should not initiate formal law enforcement intervention for school-related conduct except as permitted in written protocols developed in accord with principles set forth in section (f) below.

(f) Law enforcement agencies should work with school officials to develop written protocols to ensure that referrals to the juvenile court from schools are not for behavior that is more appropriately handled by the school. Such protocols should:

   i. allow law enforcement officials, including SROs, to transport a truant youth back to school without an arrest or referral to the juvenile justice system, and encourage school officials to develop educational programs, social services, and public health responses to truancy in lieu of arrest;

   ii. promote programs that are preventive, educational, and recreational to guide young people away from negative behaviors;

   iii. develop guidelines that limit disruption in educational placement or receipt of educational services resulting from law enforcement intervention;

   iv. encourage schools to implement disciplinary practices that:

       a. are age and developmentally-appropriate;

       b. are culturally competent;

       c. engage the youth and family;

       d. take into account that a student’s behavior may be related to a disability.
v. reject zero tolerance policies and mandatory suspension, expulsion, arrest, or referrals of students to juvenile or criminal court without regard to the circumstances or nature of the offense or the student's disability or history.

(g) Students should be involved in the development of school-law enforcement protocols and memoranda of understanding.

(h) Law enforcement personnel, including SROs, who may have contact with students, especially those students who may be involved in the child welfare system, should receive extensive training that includes the following topics:
   i. youth and adolescent development and psychology;
   ii. the effects of neglect, abuse, and trauma, including the exposure to violence;
   iii. the effects of disabilities on behavior and the effects of medication taken to ameliorate the symptoms of disabilities;
   iv. common disabilities for youth and the protections afforded to youth under the Individuals with Disabilities Education Act (IDEA);
   v. conflict resolution, peer mediation, and restorative justice techniques;
   vi. cultural competence and gender and sexuality sensitivity;
   vii. research-based practices in de-escalation and alternative responses to the use of restraints against youth except in situations involving an arrest and serious and immediate threat to the physical safety or health of a member of the school community.

(i) Both school districts and law enforcement should maintain data to assist in evaluating the presence and use of law enforcement, including SROs. Each data point should be disaggregated by offense, student’s age, grade level, race, sex, disability status, eligibility for free or reduced lunch, English language proficiency, and disposition. Data collection should include the number of:
   i. law enforcement personnel, including SROs, deployed to each school;
   ii. school-based arrests (arrests of students that occur on school grounds during the school day or on school grounds during school-sponsored events) at each school;
   iii. referrals to the juvenile justice system for each school;
iv. citations, summons or other actions taken by police personnel for each school; and

v. suspensions, in and out of school, and expulsions at each school.

(j) Juvenile courts and law enforcement should not inform a school of a student’s involvement in the court system for conduct which occurred off school grounds unless the conduct is likely to have an impact on school safety.

(k) Juvenile courts should annually review all data collected on school-based referrals to identify high rates of referral from particular schools or for a particular youth demographic. If referrals are for a disproportionately high rate of referral for youth of color, the juvenile court and law enforcement officials should work with schools to develop protocols that will reduce unnecessary or inappropriate referrals from the schools and reduce disproportionality.

(l) Legislatures should repeal or amend laws, including zero tolerance laws that require schools to refer youth to law enforcement agencies for minor delinquent behavior.

(m) Legislatures should protect the confidentiality of Family Court records by amending statutes that require courts and/or law enforcement agencies to notify schools about arrests to prohibit such notification unless the student conduct is likely to have an impact on school safety.

**STANDARD 3.4 RESPONSIBILITIES OF CHILD WELFARE AND JUVENILE JUSTICE AGENCIES IN ADDRESSING THE EDUCATIONAL NEEDS OF DUAL-STATUS YOUTH**

(a) Child welfare and juvenile justice agencies should work with local school districts to develop inter-agency agreements that:

i. allow youth to remain in the same school, when practicable, even when the agency places a youth outside the school district area,

ii. ensure the timely transfer of education records and credit information to whatever school a youth will attend, and

iii. ensure a seamless re-entry of students discharged from a child welfare or juvenile justice placement back to the youth’s home school.

(b) Child welfare and juvenile justice agencies should work with the relevant school district to ensure that every youth in out-of-home placement receives an
education appropriate for the youth’s grade level, special educational needs, and academic or career goals.

**PART IV: JUVENILE INTAKE AND DETENTION**

**STANDARD 4.1 RESPONSIBILITIES OF PROBATION OFFICES AT INTAKE**

(a) Probation staff should develop written protocols to guide intake decisions and guard against the inappropriate processing of dual-status youth in the juvenile justice system. Protocols should:

i. encourage the diversion of dual-status youth who engage in minor delinquent behavior from the juvenile justice system; and

ii. encourage the delivery of services through youth-serving systems other than the juvenile justice system.

(b) Consistent with Standard 2.11 of these standards concerning Information Sharing, probation staff should examine relevant databases to determine whether a youth or a youth’s family is or has been involved in other youth-serving systems.

(c) In deciding whether to recommend action or inaction by the juvenile court for a youth referred from the child welfare system, probation staff should consider:

i. the seriousness of the offense;

ii. any information about the youth’s mental health status, treatment history, prescribed medications, educational status, and care and supervision by other youth-serving agencies and systems;

iii. whether and to what extent the alleged behavior was related to the youth’s disabilities, mental health issues, exposure to violence, prior placement deficiencies, substance abuse, or other identifiable factors;

iv. whether the child welfare system made reasonable efforts to improve the youth’s placement or services and prevent the referral to juvenile court;

v. whether services for the youth or family, such as crisis intervention or respite, could alleviate the need for a delinquency court referral; and
vi. whether the juvenile justice system has non-confinement placements that are appropriate for the youth.

(d) Probation staff should not recommend a delinquency petition if the youth’s conduct is more appropriately addressed by another youth-serving agency or system. Probation staff should avoid:

i. duplication of services when the youth is already receiving or may receive similar services from a less restrictive, less coercive agency outside of the juvenile justice system; and

ii. processing the youth in the juvenile justice system when the juvenile justice system cannot effectively serve the youth because of the youth’s developmental limitations, disabilities, or other cognitive or mental health impairments.

(e) Probation staff should refer dual-status youth for community-based services that are suitable for the youth’s age, ethnicity, gender or sexual identity, cognitive disability, and developmental stage.

**STANDARD 4.2 RESPONSIBILITIES OF JUDGES AND PROBATION OFFICES IN RECOMMENDING DETENTION OR RELEASE**

(a) Probation offices should adopt written protocols and develop risk assessment instruments to guide detention and release decisions involving dual-status youth.

(b) In deciding whether to recommend detention or release for youth referred from the child welfare system, probation staff should use the same criteria applied to other youth. Those criteria should be objective and determine whether the youth poses a risk of danger to the community or failing to appear. Other criteria should include:

i. the existence of services available from other youth-serving agencies to address the youth’s needs and reduce the youth’s risk of flight or risk to public safety; and

ii. whether detention will jeopardize placement or services provided by other youth-serving agencies.

(c) Probation staff should not recommend detention:
i. because the youth is awaiting suitable placement in the child welfare system;
ii. as a respite for caregivers in the child welfare system; or
iii. when other youth-serving systems are providing or can provide placement and services that protect the court’s and the public’s interests.

(d) The intake officer should not recommend detention in a facility that cannot adequately meet a youth’s special, physical, or behavioral health needs.

(e) If a youth is detained, probation staff should, consistent with Standard 2.12 of these standards concerning Information Sharing:
   i. advise other agencies currently serving the youth that detention is temporary, and seek to preserve the placement and services the youth is receiving from those agencies;
   ii. provide detention staff with information about the youth’s strengths, interests, preference, educational needs, and physical or behavioral health needs; and
   iii. facilitate communication between the detention staff and other agencies serving the youth.

**STANDARD 4.3 DIVERTING DELINQUENCY TO DEPENDENCY AND MAINTAINING DUAL JURISDICTION**

(a) Juvenile court judges have authority to divert a delinquency petition to a child welfare or status offense petition.

(b) The decision to dismiss or divert should be made as early as possible.

(c) A judge presiding over child welfare proceedings should be authorized, when the youth is facing delinquency proceedings or has been adjudicated delinquent, to keep the child welfare matter open so the youth may receive necessary child welfare services.

**4.4 JUDICIAL RESPONSIBILITIES REGARDING DETENTION**

(a) In deciding whether to order detention or release for youth referred from the child welfare system, the juvenile court judge should use the same criteria applied to other youth. Those criteria should be objective and determine whether the
youth poses a risk of danger to the community or failing to appear. Other criteria should include:

i. the existence of services available from other youth-serving agencies to address the youth’s needs and reduce the youth’s risk of flight or risk to public safety; and

ii. whether detention will jeopardize placement or services provided by other youth-serving agencies.

(b) The juvenile court judge should not order detention:

i. because the youth is awaiting suitable placement in the child welfare system;

ii. as a respite for caregivers in the child welfare system; or

iii. when other youth-serving systems are providing or can provide placement and services protect the court’s and the public’s interests.

(c) The juvenile court judge should not order detention in a facility that cannot adequately meet a youth’s physical or behavioral health needs.

(d) A judge who has concurrent jurisdiction over delinquency and child welfare matters may order the appropriate child welfare agencies to:

i. arrange a suitable nonsecure placement for a youth as an alternative to detention in the juvenile justice system; or

ii. continue providing services for a youth in detention.

**STANDARD 4.5 INTAKE AND DETENTION OF PREGNANT OR PARENTING YOUTH**

(a) Juvenile justice professionals should develop protocols to ensure that pregnant or parenting youth in the juvenile justice system have:

i. basic support and critical services to reduce the risk that they will engage in abusive or neglectful behavior toward their own children;

ii. physical and behavioral health services commonly provided for high risk pregnancy and child-rearing;

iii. alternatives to detention and pretrial release and disposition plans that address the youth’s needs in caring for their own children;

iv. opportunities for detained youth to visit with and engage their children; and
v. opportunities for parenting, financial management, and independent living skills training.

(b) When addressing alleged behavior by pregnant or parenting youth, juvenile justice professionals should seek to minimize harm to the health of the youth’s child and minimize disruption in the child’s living arrangements.

(c) Juvenile justice professionals should give special consideration to alternatives to detention during a youth’s pregnancy and at least the first year of the newborn’s life.

(d) When a judge detains a pregnant youth, juvenile justice professionals should address special prenatal needs of the youth by ensuring:
   i. adequate prenatal care, including regular doctor visits, child-birth classes, and dietary supplements;
   ii. sanitary living conditions to reduce the risk of trauma and infection;
   iii. access to reproductive health counseling; and
   iv. no use of physical restraints during the term of pregnancy unless there are serious and immediate risks to the safety of the youth or others, in which case the least restrictive means of restraint should be used.

(e) During labor and delivery for detained youth, juvenile justice authorities should ensure that:
   i. the detained youth is transported to an appropriate medical facility without delay, and
   ii. shackles or other restraints are not used.

(f) After delivery, juvenile justice professionals should allow the mother and child to be together at least the first year, in the least restrictive placement possible. Professionals should:
   i. develop re-entry plans that focus specifically on pregnant and parenting youth;
   ii. ensure that parenting youth are provided appropriate postnatal care and services, including parenting classes, continued doctor visits, and behavioral health services as appropriate;
   iii. facilitating placements that permit the child to reside with a parent or, if not possible or in the best interests of the child, facilitate visits between
the youthful parent and their child, including overnight and contact visits; and

iv. facilitate visits with family or other caregivers providing care for the youth’s child.

(g) Any diversion, disposition, and re-entry plan developed for pregnant or parenting youth should seek to reduce the chance that the youth’s child will be placed in the child welfare system.

PART V: REFERRING YOUTH FOR SERVICES

STANDARD 5.1 ACCESSING BEHAVIORAL HEALTH SERVICES

(a) To reduce the high rates of mental health and substance abuse conditions among dual-status youth, every jurisdiction should have a system that:

i. provides for early identification of youth in the child welfare and juvenile justice systems who have mental health or substance abuse conditions;

ii. seeks to prevent the unnecessary involvement in the juvenile justice system of children who need mental health or substance abuse services;

iii. provides for timely access by youth in the child welfare system to appropriate mental health treatment by qualified professionals within the least restrictive setting that is consistent with public needs and reduces the risk of delinquent behavior by these youth.

(b) A comprehensive system to address youth with mental health or substance abuse disorders should provide:

i. screening and assessment at entry and key points in the child welfare and juvenile justice processes;

ii. a continuum of evidence-based services at all stages of the youth’s involvement in the child welfare and juvenile justice systems, including short-term interventions and crisis services, on-going supportive services, and continuity of care;

iii. family involvement in the least restrictive setting;
iv. protections against self-incrimination when youth participate in court-ordered mental health or substance abuse screening, assessment, and treatment; and
v. sustainable funding mechanisms to support the above.

(c) Juvenile justice authorities should have authority to obtain services from other youth-serving systems, including state and local child welfare, physical and behavioral health, physical health, educational, and alcohol and drug abuse treatment systems.

(d) Juvenile and child welfare courts should have authority to obtain services for youth with mental health and substance abuse conditions without having to alter the legal custody of the youth or transfer jurisdiction to another court or system.

PART VI: DELINQUENCY ADJUDICATION OF DUAL-STATUS YOUTH

STANDARD 6.1 DUE PROCESS AT ADJUDICATORY HEARING

(a) Charges of delinquency should be adjudicated at a full due process hearing by a judge who is a neutral fact-finder. The juvenile court judge should:
   i. not be influenced by knowledge of or prior interactions with the youth or the youth’s family in a dependency case or other legal matters;
   ii. make a determination of delinquency based on admissible evidence in the delinquency record; and
   iii. not review information relating to the youth’s involvement in a dependency case unless:
       a. review is requested by a party to the delinquency case, and
       b. the information is relevant and appropriate for judicial review under applicable rules of evidence.

STANDARD 6.2 LEGAL REPRESENTATION IN A DELINQUENCY CASE
(a) Youth charged with delinquency are entitled to competent, loyal, and zealous representation by defense counsel. A “best interests” advocate for a child in a dependency proceeding should not also serve as the youth’s defense counsel in a delinquency case.

(b) Incriminating statements made by a youth to a best interest advocate who is not bound by the rules of the attorney-client confidentiality should be inadmissible in a delinquency hearing absent a knowing, voluntary, and intelligent waiver.

PART VII: DISPOSITION OF DELINQUENCY CASES

STANDARD 7.1 INFORMATION GATHERING AND INFORMATION SHARING FOR DISPOSITION

After adjudication, records relating to a youth’s child welfare case may be reviewed by the juvenile court to:

i. avoid conflicting court orders;

ii. ensure effective case management; and

iii. assist in the development of an effective disposition plan.

STANDARD 7.2 DISPOSITION PROCESS

(a) If a youth is adjudicated delinquent, the court should hold a full due process hearing to determine the youth’s appropriate disposition. The youth’s disposition hearing should be consolidated with child welfare proceedings involving the youth if the court determines that such proceedings will advance the best interests of the youth and promote efficient and effective coordination of services. Youth and family members with disabilities should receive accommodations necessary for meaningful participation in the proceedings.

(b) Risk or needs assessment tools used in disposition planning for dual-status youth should be validated and targeted to achieve the youth’s best long-term interests in either the child welfare or delinquency system.
(c) Results of any risk or needs assessment tools should be in writing and provided to the parties, and any persons who administered the tool should be available for examination by the parties.

(d) Jurisdictions should develop protocols and teams to aid disposition planning for dual-status youth. Such teams should include representatives from youth-serving agencies necessary to address the youth’s needs, as well as the youth, the youth’s parents, guardian or caretaker, defense counsel, best interest advocate, service provider, and representatives from the state, such as a probation officer or prosecutor.

(e) When a youth participates in a disposition team meeting, the youth should be advised that the team will consider any information the youth provides in making placement decisions.

(f) The juvenile court judge should:
   i. designate a lead agency responsible for coordinating services for the youth;
   ii. direct that disposition team meetings be completed before disposition, and expedited when a youth is detained pending disposition; and
   iii. order that the team prepare a written disposition report with a statement of reasons explaining how the recommendations will advance the best interests of the youth and the goals of the state’s juvenile justice code. That report should be distributed to all parties including the youth and defense counsel in advance of the disposition hearing. The author of the report should be available for examination at or before the hearing.

(g) All parties should be permitted to review and respond to any information or testimony that will be or is presented to the court at the disposition hearing.

**STANDARD 7.3 POSTPONEMENT OF DISPOSITION**

(a) The court may temporarily postpone disposition in a delinquency case, and recommend referral to the appropriate child welfare agency that can serve the youth with minimal risk to public safety, when a delinquent youth is in immediate need of services from or awaiting placement by the child welfare system. Any such referral should be expedited if possible.
(b) The child welfare system should develop processes for expediting cases for delinquent youth who are pending disposition in a delinquency proceeding.

**STANDARD 7.4 DISPOSITION OPTIONS**

(a) Courts ordering disposition for dual-status youth should be aware of and utilize all disposition options that are legislatively available for youth in the child welfare and delinquency systems.

(b) The juvenile court should order the least restrictive disposition that furthers the best interests of the youth and the goals of the juvenile justice system.

(c) Disposition options should include:
   i. termination of the delinquency jurisdiction;
   ii. referral to other youth-serving systems;
   iii. maintaining dual jurisdiction; or
   iv. disposition within the delinquency system while providing access to other youth-serving services, systems or agencies.

(d) Juvenile courts should have authority to
   i. review service, rehabilitative, and disposition plans developed in the child welfare system;
   ii. modify child welfare plans that are in conflict with the goals of the juvenile justice system; and
   iii. require child welfare and juvenile justice agencies to coordinate planning to satisfy their obligations to the youth.

(e) All youth who are adjudicated delinquent should have access to the same publicly-funded services that are available to non-delinquent youth.

(f) Juvenile court judges and probation officers should assist youth in obtaining services from other youth-serving systems and develop protocols for expeditious service delivery from such systems and agencies.

**STANDARD 7.5 DISPOSITION ORDERS**

(a) Disposition orders that place the youth out of the home should include:
   i. a plan to maintain the youth’s connection to parents, caregivers, or others who are important to the youth;
ii. a reunification or permanency plan that seeks to reunite the youth with family, caregivers or other significant supportive adult, to identify some other permanent stable living arrangement; and

iii. a re-entry and discharge plan that specifies where and how, after release from detention or residential placement, the youth will be educated, work, and receive appropriate services.

(b) Disposition orders should set forth the services expected from each agency and set regular status review hearings to assess compliance with the order.

STANDARD 7.6 MODIFICATION OF DISPOSITION ORDERS

(a) Juvenile courts should have authority to review and modify if necessary, any component of a disposition order for dual-status youth.

(b) Courts should not modify any disposition ordered until after notice to, and opportunity to be heard by, all parties.

(c) After disposition, any party in a delinquency case should have authority to petition the court, and the court should have authority to:

i. reduce the restrictiveness or duration of disposition when more appropriate and less restrictive options have become available; or

ii. increase the restrictiveness or duration of disposition only when the youth has violated the terms or conditions of disposition and the services being provided are not adequately addressing the youth’s needs or ensuring public safety and no equally or less restrictive options are available.

(d) The court should not have authority to increase the restrictiveness or duration of disposition for a dual-status youth until after a full due process hearing, with counsel and an opportunity for the youth to be heard. Youth and family members with disabilities should receive accommodations necessary for meaningful participation in the proceedings.

(e) Absent informed consent by the youth, neither the restrictiveness nor the duration of disposition should be increased just to ensure the youth’s access to funding.
PART VIII: POST-DISPOSITION AND RE-ENTRY

STANDARD 8.1 KEY PRINCIPLES GOVERNING RE-ENTRY AND DISCHARGE PLANNING

(a) Re-entry into the community and discharge from the juvenile justice system should be planned to include coordination with the child welfare system and ensure that dual-status youth receive all services they may need and all benefits to which they may be entitled.

(b) Re-entry and discharge planning should provide youth with a stable residential placement with appropriate services, support, and supervision from the child welfare and juvenile justice systems to promote their success in the community after discharge.

(c) Re-entry and discharge planning should:

i. require the juvenile justice system to begin re-entry and discharge planning at or before disposition and complete it well in advance of the re-entry or discharge;

ii. identify and implement services that, at a minimum, address continuity of education (including special education), housing, employment, and the need for physical and behavioral health services; and that are timely and coordinated across systems and agencies;

iii. allow the filing of a petition for dependency, voluntary placement, or re-entry into foster care before a youth’s 18th birthday, or whatever older age state law permits, if it appears the youth will need housing or other services when juvenile court jurisdiction terminates;

iv. specify that delay in identifying, securing, or arranging appropriate post-discharge services may not be relied on to extend the duration of a residential placement; and

v. allow the youth and the youth’s family and counsel to participate fully in the development and periodic reviews of the re-entry plan.

STANDARD 8.2 IMPLEMENTATION OF RE-ENTRY AND DISCHARGE PLAN

(a) Youth discharged from residential placement but remaining under supervision of either the child welfare or delinquency system should have case managers
assigned and trained to ensure timely and coordinated implementation of the youth’s re-entry and discharge plan.

(b) Each agency with responsibility to the youth should:
   i. participate in a discharge planning meeting with other service providers at least thirty (30) days in advance of the anticipated discharge date;
   ii. ascertain, before discharge, the youth’s strengths, interests, preferences and needs regarding services;
   iii. identify and secure, before discharge, a residence for the youth, to avoid delay in discharge; and
   iv. assist youth in obtaining important documents (such as identification or driver’s license and birth certificates) as well as coverage for essential services such as healthcare.

PART IX: APPEALS

STANDARD 9.1 RIGHT TO APPEAL

(a) Dual-status youth should have the same right to appeal any order of the Family Court as any other youth. The right to appeal should include a review of the facts, law, and disposition order. Procedural safeguards should exist to ensure that youth are not penalized due to delays and other consequences arising out the youth’s involvement in multiple legal matters.

(b) A youth involved in multiple legal matters should be entitled to appellate review of, at a minimum:
   i. all orders of a juvenile or dependency court that dispose of any portion of any case or matter;
   ii. inconsistent orders in the youth’s delinquency, dependency or other matters; and
   iii. orders that do not embody the least restrictive alternative to achieve the best interests of the youth and the goals of multiple systems.
**STANDARD 9.2 WRITTEN COURT ORDERS AND ADVICE OF RIGHTS**

(a) At the conclusion of any judicial proceeding involving dual-status youth and their families, the judge should:

i. prepare a final written order delineating the court’s rulings, the facts found, the law applied, the disposition ordered, and the reasons therefore;

ii. advise the youth (and family) of the right to appeal;

iii. advise the parent or guardian of the right to appeal in dependency proceedings; and

iv. inquire of the youth’s financial status, appoint appellate counsel if youth is indigent, or instruct defense counsel to secure the appointment of appellate counsel.

(b) At or before the conclusion of the matter, the youth and the youth’s counsel should be entitled to a copy of any document in the court file, as well as a verbatim transcript or recording of any relevant hearing.

**PART X: RECORDS EXPUNGEMENT**

**STANDARD 10.1 EXPUNGEMENT OF JUVENILE AND FAMILY COURT RECORDS**

(a) Expungement of delinquency records should require the complete deletion of records from all files and databases in all courts as well as any agency that obtained the records from the juvenile justice system.

(b) Youth entitled to expungement of delinquency records should retain that right even when the youth is under the jurisdiction of other youth-serving agencies or systems.

(c) The juvenile court should establish procedures to ensure effective notification to other youth-serving agencies and systems that a youth’s delinquency records should be expunged.

(d) In jurisdictions where the juvenile court or law enforcement agency is required to notify a youth’s school of an arrest, adjudication, or disposition, the juvenile court should also be required to notify the school when any juvenile court record has been
expunged, and the school should be required to destroy its records relating to any expunged matter.

PART XI: RESPONSIBILITIES OF PROSECUTING ATTORNEYS

STANDARD 11.1 POLICIES AND PROTOCOLS
(a) Prosecutors should develop policies to guide intake decisions involving dual-status youth. Such policies should encourage diversion or non-intervention for youth who engage in minor delinquent behavior and who can obtain appropriate services from other youth-serving agencies and systems.
(b) Prosecutors should, in conjunction with state and local law enforcement officers and youth-serving agencies, develop policies governing referrals to the juvenile justice system from other youth-serving agencies and systems. Such policies should seek to reduce referrals to the juvenile justice system for minor delinquent behavior.

STANDARD 11.2 TRAINING
Prosecutors should participate in cross-system training as set forth in Standard 2.15 of these standards concerning the Need for Cross-System Training.

STANDARD 11.3 CHARGING DECISIONS
(a) Consistent with Standard 2.11 of these standards concerning Information Sharing, when youth are referred to the juvenile justice system, prosecutors should review available Family Court records to determine whether the youth or the youth’s family is or has been served by other youth-serving systems.
(b) The prosecutor should not file a delinquency petition:
   i. when the alleged delinquent behavior is minor and the youth can obtain appropriate services from other agencies;
ii. when it is clear that the youth did not have the mental capacity,  
cognitive ability, or intent necessary to be held responsible for his  
behavior; or  
iii. to secure services or placement for a youth when a delinquency charge  
would not otherwise be warranted,

(c) The prosecutor should not prosecute delinquent behavior in juvenile or  
criminal court when the prosecutor determines that the purposes of the  
delinquency process can be accomplished outside of the juvenile or criminal  
justice system.

(d) The prosecutor should make every effort to ensure that a delinquency petition  
will not result in the termination or disruption of appropriate services for the  
youth from other youth-serving systems. The prosecutor should discourage other  
government attorneys handling dependency cases from closing dependency  
proceedings just because a delinquency petition is filed.

**STANDARD 11.4 COMMUNICATING WITH VICTIMS**

The prosecutor should advise victims, to the extent required by law or permitted  
under confidentiality laws or rules, of circumstances involving dual-status youth  
that lead to specific charging decisions and proposed resolutions. The prosecutor  
should advise victims of statutory, rule or other limitations on disclosure of  
information about the accused youth.

**STANDARD 11.5 DIVERSION**

(a) The prosecutor should consider information regarding the youth’s access to  
services from the child welfare system when deciding whether to divert a youth  
from the juvenile justice system.

(b) If the prosecutor decides to divert a dual-status youth from the juvenile justice  
system, the prosecutor should:

   i. refer the youth to a program suitable for the youth’s age, ethnicity,  
culture, gender or sexual identification, disability, and developmental or  
cognitive ability; and
ii. consider diversion programs that allow the youth to participate in community service in lieu of a delinquency petition.

**STANDARD 11.6 DETENTION**

(a) In deciding whether to request detention of an accused youth, the prosecutor should:

i. not seek detention for alleged minor delinquent behavior; and

ii. consider whether other youth-serving agencies outside the juvenile justice system can protect the youth and serve public safety.

(b) The prosecutor should not seek detention just because no suitable child welfare placement has been identified.

(c) The prosecutor should not seek detention when detention will likely cause the youth to lose placement or services from other youth-serving systems and public safety can be served without detention.

**STANDARD 11.7 COMMUNICATING AND COORDINATING WITH YOUTH-SERVING AGENCIES**

(a) If the prosecutor declines to file a delinquency petition, the prosecutor should communicate that decision to any referring agency.

(b) The prosecutor should develop policies to govern the effective referral of youth to the child welfare system and other youth-serving agencies.

**STANDARD 11.8 DISPOSITION AND POST-DISPOSITION PLANNING**

(a) The prosecutor should participate in placement, re-entry, and disposition planning team meetings consistent with Standard 7.2 of these standards concerning the Disposition Process.

(b) The prosecutor should not seek an out-of-home placement when the youth’s supervision and service needs can be met in the community.

(c) After disposition, the prosecutors should periodically review the case.
i. If it appears that additional or alternate services are needed to meet the needs of the youth or to ensure public safety, the prosecutor may seek to modify the dispositional plan as described above.

ii. If it appears that the youth no longer needs care and rehabilitation from the juvenile court and does not pose a risk to public safety, the prosecutor should file a request to terminate the delinquency disposition early.

PART XII: RESPONSIBILITIES OF DEFENSE COUNSEL

STANDARD 12.1 ETHICAL OBLIGATIONS OF DEFENSE COUNSEL

(a) Defense counsel representing dual-status youth should abide by all applicable professional and ethical obligations for defense counsel generally.

STANDARD 12.2 TRAINING

Defense counsel should participate in cross-system training consistent with Standard 2.13 of these standards concerning Access to Court Records.

STANDARD 12.3 INVESTIGATION AND CONFIDENTIALITY WAIVERS

(a) Consistent with Standard 2.14 of these standards concerning Waivers of Confidentiality, defense counsel and dependency counsel should advise the youth in age-appropriate language, and when permitted and appropriate, inform the youth’s parent or guardian, about the need for a signed waiver to allow counsel access to child welfare records and the implications of such waiver. Youth, parents, or guardians with disabilities should receive accommodations necessary to provide informed consent to the waiver.

i. The juvenile justice system should provide, and defense counsel should obtain, necessary interpretive services. Defense counsel should ensure that any written waiver form and other documents are appropriately translated.

ii. When the youth is developmentally or cognitively limited or limited in his or her literacy skills, counsel should explain and obtain the waiver in a manner the youth can best understand.
(b) Defense counsel should gather and review all information that would likely affect the youth’s custody, legal status, or services in the juvenile justice system.

**STANDARD 12.4 PRE-PETITION ADVOCACY BY DELINQUENCY COUNSEL**

(a) Defense counsel should advise the youth regarding the possibility of initiating a referral from the juvenile justice system to the child welfare system and the possible implications of such a referral.
(b) Defense counsel should provide decision-makers all relevant information militating against, and advocate against, the filing of a delinquency petition and the inclusion of particular charges in a petition with the youth’s voluntary and informed consent. Defense counsel should consider and recommend alternatives to provide needed services for the youth and, if necessary, to protect the public.
(c) Defense counsel should communicate with the youth’s dependency counsel and the youth’s best interest advocate when the youth consents and such communication would not undermine the youth’s rights in the delinquency case.

**STANDARD 12.5 ADVOCACY AT DETENTION HEARING**

(a) In and before a detention hearing, defense counsel should present facts and arguments to support placement in the community or in the custody of youth-serving agencies, if consistent with the youth’s objectives. Facts and arguments should include evidence from youth-serving agencies regarding the availability of specific placements or services.
(b) If the youth is detained or sent to another out-of-home placement, defense counsel should advocate for comparable or better education, physical or behavioral health, and other services than the youth had been receiving prior to the placement.
(c) If the youth is ordered detained, defense counsel should, as soon as possible provide detention or shelter care staff with information about the youth’s needs and advocate for the proper care and safety of the youth.

**STANDARD 12.6 DISPOSITION ADVOCACY**
(a) Defense counsel representing dual-status youth should zealously advocate for the youth’s stated objectives at all stages, including any multi-agency planning team meeting or disposition hearing.

(b) Counsel should protect the youth’s due process interests, including in cases when the disposition hearing is consolidated with other Family Court proceedings.

(c) If necessary to advance the youth’s objectives, counsel should challenge any evidence or reports submitted to the juvenile court at the disposition hearing, including items submitted by the multi-agency team.

**STANDARD 12.7 POST-DISPOSITION ADVOCACY**

(a) Defense counsel’s advocacy on behalf of dual-status youth should not end at the entry of a disposition order. Counsel should maintain contact with both the youth and the agency or agencies responsible for implementing the court’s order, and:

i. counsel the youth and inform the youth’s family concerning the order and its implementation;

ii. ensure the timely and appropriate implementation of the order; and

iii. ensure the youth’s rights are protected as the youth’s disposition is implemented.

(b) Defense counsel should monitor the implementation of the youth’s disposition order.

i. If it appears that additional or different services are needed to meet the needs of the youth, counsel should seek to modify the dispositional plan or order, as consistent with the youth’s stated interests.

ii. If it appears the youth no longer needs rehabilitative services from the juvenile court and does not pose a risk to public safety, defense counsel should seek to modify or terminate disposition early.

(c) Relevant government jurisdictions should ensure that defense counsel have the authority and funding to continue representation after disposition consistent with these standards.
**STANDARD 12.8 APPELLATE ADVOCACY**

(a) After adjudication and disposition, defense counsel should

i. explain to the youth the meaning and consequences of the court’s judgment and the youth’s right to appeal any delinquency disposition or other court orders;

ii. give the youth a professional judgment as to whether there are meritorious grounds for appeal and the probable results of an appeal; and

iii. explain to the youth the advantages and disadvantages of an appeal.

(b) Defense counsel should take whatever steps are necessary to protect the youth’s right to appeal any illegal disposition or other court order, as consistent with the youth’s stated objectives.

**PART XIII: RESPONSIBILITIES OF DETENTION AND RESIDENTIAL STAFF**

**STANDARD 13.1 POLICIES AND PROTOCOLS**

(a) Lawyers in the juvenile justice system should advocate for comparable or better treatment and services in juvenile detention settings than the youth would receive if allowed to remain in the community.

(b) Detention and residential facility staff should develop internal policies to eliminate barriers in detention to the provision of appropriate services to dual-status youth in detention. Such internal policies should, at a minimum:

i. ensure regular communication between detention and residential staff and child welfare and other youth-serving agencies and service providers with a legal obligation to the youth;

ii. ensure that youth are transported to and from provider appointments, if safety and flight risks can be managed during transport;

iii. develop or revise visitation policies to allow foster parents, guardians, family members, significant others, and representatives from the child welfare agencies and service providers to visit youth in detention; and
iv. provide private and appropriate physical space for youth to meet with foster parents, guardians, family members, significant others, and representatives from the child welfare agencies and service providers.
1. **Summary of Resolution(s)**. This resolution adopts the *ABA Criminal Justice Standards for Dual Jurisdiction Youth*.

2. **Approval by Submitting Entity**. This resolution was passed by the Criminal Justice Council at the Spring Council meeting in Jackson Hole, Wyoming in May, 2017.

3. **Has this or a similar resolution been submitted to the House or Board previously?**

   No.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

   The Juvenile Justice Standards (currently under revision) and the existing ABA policy on dual status youth address these issues, but these standards seek to harmonization and update both the existing standards and the previous resolution.

5. **If this is a late report, what urgency exists which requires action at this meeting of the House?**

   N/A

6. **Status of Legislation**. (If applicable) N/A

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

   N/A

8. **Cost to the Association**. (Both direct and indirect costs) None.

9. **Disclosure of Interest**. (If applicable) None.

10. **Referrals.**

    - Public Service and Diversity
    - Commission on Veteran’s Legal Services
    - Legal Aid & Indigent Defense
    - Commission on Disability Rights
    - Special Committee on Hispanic Legal Rights & Responsibilities
    - Commission on Homelessness and Poverty
    - Center for Human Rights
    - Commission on Immigration
    - Racial & Ethnic Diversity
    - Racial & Ethnic Justice
    - Youth at Risk
    - Young Lawyer’s Division
11. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address)

   Sara Elizabeth Dill  
   ABA Criminal Justice Section  
   1050 Connecticut Avenue NW, Suite 400  
   Washington, D.C. 20036  
   T: (202) 662-1511  
   E: sara.dill@americanbar.org

   Kristin Henning  
   Georgetown Law  
   111 F Street, N.W.  
   Washington, D.C. 20001  
   (202) 662-9592  
   hennink@georgetown.edu

12. **Contact Name and Address Information.** (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail.)

   Stephen Saltzburg  
   2000 H Street, NW  
   Washington, D. C. 20052  
   T: 202-994-7089  
   E: ssaltz@law.gwu.edu

   Neal Sonnett  
   2 South Biscayne Blvd., Suite 2600  
   Miami, Florida 33131-1819  
   T: 305-358-2000  
   Cell: 305-333-5444  
   E: nrslaw@sonnett.com

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EXECUTIVE SUMMARY

1. Summary of the Resolution
   This resolution adopts the ABA Criminal Justice Standards for Dual Jurisdiction Youth.

2. Summary of the Issue that the Resolution Addresses
   This resolution adopts the ABA Criminal Justice Standards for Dual Jurisdiction Youth.

3. Please Explain How the Proposed Policy Position Will Address the Issue
   The resolution adopts the standards as ABA policy.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified
   None.