

ADOPTED

RESOLUTION

1
2
3
4
5

6 RESOLVED, That the American
7 Bar Association adopts the *ABA*
8 *Criminal Justice Standards Relating*
9 *to Dual Jurisdiction Youth*, dated
10 August 2017.

112A

- 46 (k) “**Dependency Case**” is a legal proceeding involving youth and parents in the child welfare
47 system.
48
- 49 (l) “**Dependency Counsel**” is a lawyer hired or appointed to represent a youth’s expressed legal
50 interests in a dependency case.
51
- 52 (m) “**Diversion**” is the referral of an accused youth, without adjudication of criminal or
53 delinquency charges, to a youth service agency or other program, accompanied by a formal
54 termination of all legal proceedings against the youth in the juvenile justice system upon successful
55 completion of the program requirements.
56
- 57 (n) “**Dual-Status Youth**” are youth under the concurrent jurisdiction of the child welfare system
58 and the juvenile justice system.
59
- 60 (o) “**Dual-Status Docket**” is a specialized docket within the Family Court that exercises
61 jurisdiction over youth who are concurrently involved in the juvenile justice and child welfare
62 systems.
63
- 64 (p) “**Family Court**” is a court with jurisdiction over one or more of the following cases involving:
65 delinquency; abuse and neglect; status offenses; the need for emergency medical treatment or
66 behavioral health crisis intervention; voluntary and involuntary termination of parental rights
67 proceedings; adoption proceedings; appointments of legal guardians for juveniles; intrafamily
68 criminal offenses; proceedings in regard to divorce, separation, annulment, alimony, custody, and
69 support of juveniles; proceedings under the Uniform Interstate Family Support Act.
70
- 71 (q) “**Information**” is any communication - recorded or unrecorded, record, or material that may
72 identify individuals.
73
- 74 (r) “**Juvenile Justice System**” is the legal structure including law enforcement agencies, courts,
75 detention facilities, probationary and re-entry services for diverting, detaining, adjudicating,
76 supervising and discharging youth alleged or found to be delinquent.
77
- 78 (s) “**Juvenile Court**” is the court and court personnel responsible for diverting, adjudicating,
79 detaining, confining, and supervising youth alleged or found to be delinquent.
80
- 81 (t) “**Minor Delinquent Behavior**” is conduct that does not rise to the level of significant or
82 repeated harm to others, significant or repeated property loss or damage, or a threat of significant
83 harm to others.
84
- 85 (u) “**Outcome**” is a pre-defined, objective measure of change of limited scope.
86
- 87 (v) “**Records**” are all reports, pleadings, court orders, and other documents prepared or gathered
88 in connection with Juvenile and Family Court proceedings.
89
- 90 (w) “**School Resource Officer**” is a certified, sworn police officer employed by a local police
91 agency but assigned to work in a school.

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

94
95 (y) “**Status Offense**” is conduct that is prohibited only for persons under the age of majority, such
96 as truancy, curfew violations, or running away from home.

97
98 (z) “**Youth**” is a person who has not yet attained the age of majority or otherwise is not subject to
99 the jurisdiction of the criminal court; or who, as a result of a delinquency petition, remains subject
100 to the juvenile court’s jurisdiction.

101
102 (aa) “**Youth-Serving Agency or System**” is an agency or system of agencies responsible for
103 providing child welfare services, critical youth services, or behavioral health services.

104
105 **STANDARD 1.2 GENERAL PRINCIPLES**

106
107 (a) All youth need and deserve adequate care, education, and physical and behavioral health
108 services.

109
110 (b) Child welfare and other youth-serving agencies should not refer a youth for law enforcement
111 intervention for minor delinquent behavior.

112
113 (c) Cooperation between the juvenile justice system and other youth-serving systems is essential
114 in differentiating between conduct that warrants intervention by the juvenile justice system and
115 conduct that does not warrant such intervention, developing protocols that discourage
116 inappropriate referrals to juvenile court, and developing positive support systems and behavioral
117 strategies that reduce referrals to juvenile court.

118
119 (d) Information-sharing between and among juvenile justice and other youth-serving agencies
120 should be regulated to accommodate the youth’s need for coordinated services, as well as the
121 youth’s need for privacy and protection against self-incrimination.

122
123 (e) Locked and staff-secure facilities should only be used after arrest, during the court process, or
124 as a dispositional option when needed for the protection of the community or to reduce a risk of
125 flight.

126
127 (f) Services provided to youth removed from their home or community should be provided in the
128 least restrictive setting and a setting that is close to family, consistent with public safety and the
129 safety of the youth.

130
131 (g) Youth receiving critical youth services, child welfare services, or behavioral health services
132 should be entitled to continuity in those services in the least restrictive setting consistent with
133 public safety when they are removed from their home to the custody of the juvenile or criminal
134 justice systems.

135
136 (h) Services for youth involved in the juvenile or criminal justice systems should be provided by
137 appropriate youth-serving agencies in the community. When a youth is in detention or custody,

112A

138 the youth should receive services comparable to those they would receive in the community, in a
139 setting that is close to family.

140

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

144

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

148

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

152

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

156

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

160

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

164

165

166 **PART II: SYSTEMS COLLABORATION AND COORDINATION OF SERVICES FOR** 167 **DUAL-STATUS YOUTH**

168

169 **A. STATE STRUCTURE AND LEGISLATION**

170

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

172

173 (a) State laws and policies should ensure that dual-status youth continue to receive critical
174 youth services despite the youth's involvement in the juvenile justice system.

175

176 (b) State and federal laws should eliminate funding barriers and statutory restrictions that
177 inhibit dual-status youth from accessing state and federal funding allocated for youth in the
178 child welfare system.

179

180 (c) State laws should mandate and facilitate interagency planning, coordination and
181 accountability between and among agencies that have a legal obligation to each youth.

182 (d) Mandatory arrest provisions in domestic violence and criminal justice statutes should
 183 not mandate arrests for youth who engage in minor delinquent behavior in congregate care
 184 facilities in the child welfare, juvenile justice, or other youth-serving systems.
 185

186 **STANDARD 2.2 STRUCTURE OF STATE JUVENILE JUSTICE AND CHILD WELFARE SYSTEMS**

187
 188 (a) State systems should be structured so that:

- 189
 190 i. a single state agency is responsible for the licensing and regulation of programs
 191 for status offenders and delinquent and dependent youth and for ensuring that all
 192 residential facilities meet minimum licensing standards;
 193 ii. non-secure juvenile justice programs have access to and may utilize child welfare
 194 funding, partially covered by federal support, for family-based care and small group
 195 placements that will support youth in less restrictive, community-based settings
 196 while affording them additional protections under federal law;
 197 iii. child welfare services are available to juvenile courts and the courts may at any
 198 appropriate stage of the juvenile court proceedings enter any order authorized for a
 199 dependent youth; and
 200 iv. dependent youth who are not adjudicated delinquent should not be placed in
 201 residential facilities that are primarily for the care of delinquent youth.
 202

203 (b) State systems should engage behavioral health, education, and child welfare agencies
 204 and ensure that crisis intervention and other services are implemented to avoid the need for
 205 arrest and referral to the juvenile justice system.
 206

207 (c) States should ensure that congregate care facilities in the child welfare, juvenile justice,
 208 and other youth-serving systems are able to meet the needs of the youth they serve,
 209 including addressing minor delinquent behavior, without relying on law enforcement for
 210 discipline.
 211

212 **B. FAMILY COURT ORGANIZATION, POLICIES, AND PROCEDURES**

213 **STANDARD 2.3 JUVENILE COURT POLICIES, PROTOCOLS, AND RULES**

214
 215
 216 (a) Juvenile and Family Courts should establish policies and protocols that ensure the fair
 217 treatment of dual-status youth in diversion, detention, adjudication, and disposition
 218 decisions and eliminate practices that result in the unnecessary detention, adjudication, or
 219 prolonged incarceration of youth who are or should be served by the child welfare system.
 220

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

- 224 i. recognize the *in loco parentis* role of the child welfare agency and require the
 225 agency to fulfill the role a responsible parent would be expected to fulfill when a
 226 youth comes into contact with the juvenile justice system;
 227

112A

- 228 ii. limit secure confinement to situations in which the youth meets detention criteria
229 applied to other youth and ensure that a youth who does not have an in-tact home
230 to which to return is not securely detained solely as a result of the youth’s family
231 status;
232 iii. set strict timelines for the completion of the juvenile intake process;
233 iv. establish a process to determine whether a youth is better served in the juvenile
234 justice system, the child welfare system, or by concurrent jurisdiction of the two;
235 v. develop procedures for providing accommodations to youth with disabilities;
236 vi. permit concurrent jurisdiction by the child welfare and juvenile justice systems
237 when appropriate, and
238 vii. provide that a youth’s arrest or adjudication of delinquency will not result in
239 the closure of a child welfare case or the termination of services from other youth-
240 serving agencies solely because of the youth’s involvement in the juvenile justice
241 system.
242

243 (c) Consistent with standards concerning information sharing and confidentiality in these
244 standards and state and federal laws governing confidentiality and privilege, juvenile courts
245 should develop policies and protocols for the prompt notification of a youth’s caregiver,
246 child welfare caseworker, and attorney, and for the involvement of other youth-serving
247 agencies as appropriate when a youth is arrested or referred to the juvenile court.
248

249 **STANDARD 2.4 JUVENILE COURT LEADERSHIP**

250
251 Juvenile courts should exercise leadership in developing working relationships and
252 protocols with community agencies serving youth and families with multiple legal issues
253 and in need of services from multiple systems.
254

255 **STANDARD 2.5 JUVENILE AND CRIMINAL COURT JURISDICTION**

256
257 (a) State laws governing the transfer of youth from juvenile court to adult court or from
258 adult court to juvenile court should require probation officers, prosecutors, and juvenile
259 court judges to consider the dual-status youth’s need for services from the child welfare
260 and other youth-serving agencies in determining whether transfer is appropriate. The
261 attorney for the youth should have an opportunity to present evidence as to the youth’s
262 need for child welfare services.
263

264 (b) Juvenile courts should consider whether the child welfare and other youth-serving
265 systems have fulfilled their duties to a youth before considering whether to transfer the
266 youth to criminal court and should establish protocols to ensure that youth who receive
267 services from multiple systems are not disadvantaged in discretionary transfer decisions
268 solely due to their involvement in other systems.
269

270 (c) Consistent with public safety, state laws should permit transfer of youth from the
271 criminal court to the juvenile court when the youth needs services from the child welfare,
272 juvenile justice, or other youth-serving agencies.
273

274 (d) If a youth is transferred or has a case originally filed in criminal court, the youth should
 275 still be eligible for child welfare services, including social service placements and
 276 programs.
 277

278 **STANDARD 2.6 DEPENDENCY JURISDICTION**

279 (a) Dependency courts should develop protocols that:

- 282 i. acknowledge the *in loco parentis* role of the child welfare agency and require the
 283 agency to fulfill the role a responsible parent would be expected to fulfill when a
 284 youth comes into contact with the juvenile justice system;
- 285 ii. ensure that a youth's arrest or adjudication of delinquency will not result in the
 286 closure of a child welfare case or the termination of services from other youth-
 287 serving agencies solely because of the youth's involvement in the juvenile justice
 288 system;
- 289 iii. prevent the use of civil and criminal contempt violations in the child welfare
 290 system as a basis for a delinquency petition;
- 291 iv. facilitate coordination, planning and accountability when the child welfare and
 292 juvenile justice systems have concurrent jurisdiction over the youth;
- 293 v. ensure that a youth's defense counsel receives notice when the youth becomes
 294 involved in the child welfare system; and
- 295 vi. ensure that a youth's dependency counsel receives notice when the youth
 296 becomes involved in the juvenile justice system.

297
 298 (b) State laws should ensure that youth have a right to defense counsel and a court hearing
 299 at which they have the right to testify, present evidence, and cross-examine witnesses on
 300 the youth's need for child welfare services and whether their dependency case will be
 301 terminated after an arrest or referral to juvenile or criminal court.
 302

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

304 (a) In scheduling delinquency and other Family Court proceedings, clerks and other court
 305 personnel should be attentive to the youth's and family's obligation to appear in other legal
 306 proceedings. Court personnel should communicate with the youth and family to reduce
 307 multiple trips to court and court-related appointments and to avoid scheduling conflicts,
 308 school absences, and other avoidable inconveniences.
 309

310 (b) Consistent with standards related to information sharing and confidentiality in these
 311 Standards and state and federal laws governing confidentiality and evidentiary privilege,
 312 juvenile court staff should have access to the docket of all Family Court cases so they can
 313 identify youth and families with multiple legal proceedings within the court.
 314

315 (c) The same judge should consider all legal issues that involve the same family; however,
 316 to ensure fundamental fairness, each youth should have:
 317
 318
 319

112A

- 320 i. a lawyer at all stages of a delinquency and dependency case, including the intake,
- 321 adjudicatory, disposition, post-disposition, and appellate stages;
- 322 ii. an adjudicatory hearing at which each charge of delinquency will be considered
- 323 by a neutral judicial officer as consistent with due process and fundamental
- 324 fairness;
- 325 iii. the right to notice of all hearings and case staffing or case management
- 326 conferences related to the youth's cases; and
- 327 iv. the right to attend all hearings and case conferences related to the youth's cases
- 328 and a meaningful opportunity to be heard as to the youth's strengths, interests,
- 329 disabilities, needs, and preferences regarding placement, services, and case
- 330 outcomes.

331
332 (d) Juvenile and Family Courts should develop policies that allow for the consolidation of
333 post-adjudication matters involving dual-status youth. The policies should be consistent
334 with the following principles:

- 335
- 336 i. When feasible, a single judge should hear all dispositional and post-dispositional
- 337 matters involving dual-status youth.
- 338 ii. After a youth has been adjudicated delinquent, the youth's juvenile court
- 339 dispositional proceedings should be consolidated with child welfare and other
- 340 Family Court proceedings concerning the youth.
- 341 iii. The court should ensure continuity of legal representation for the youth
- 342 throughout all phases of the delinquency matter, including disposition.
- 343 iv. The court should require that representatives responsible for case management
- 344 and supervision of the youth in the child welfare and juvenile justice systems attend
- 345 the consolidated proceeding.
- 346 v. The court should ensure, to the extent consistent with the missions of the child
- 347 welfare and juvenile justice systems, that youth and family case plans be aligned in
- 348 terms of goals, permanency planning, services, and responsibility for
- 349 implementation.

350
351 (e) To the extent possible, services and other legal proceedings in the child welfare system
352 should not be delayed pending resolution of a delinquency case, unless the youth or the
353 youth's defense counsel believes such a delay is necessary.

354 **STANDARD 2.8 DESIGNATED DUAL-STATUS DOCKETS**

355
356 (a) A jurisdiction should have authority to create a specialized dual-status docket for youth
357 involved in both the juvenile and the child welfare systems, if it finds that the traditional
358 juvenile court cannot effectively address cases involving youth with particular needs or
359 characteristics.

360
361 (b) Dual-status dockets should be developed and implemented by an interdisciplinary team
362 that includes representatives from the judiciary, prosecution, defense bar, best interest
363 advocates, families, and relevant service providers.

366 (c) Youth assigned to a dual-status docket should have access to services from all systems
367 that have expertise related to the youth’s needs.

368
369 (d) Dual-status dockets should provide an opportunity for youth to be diverted from the
370 juvenile justice system or benefit from alternatives to detention at the pre-trial and
371 disposition stage of the delinquency case.

372
373 (e) Judges presiding over dual-status dockets should utilize incentives for positive
374 behavior, graduated responses to negative behavior, close judicial oversight, a team
375 approach, coordination of services, and meaningful re-entry strategies.

376
377 (f) Judges presiding over dual-status dockets should ensure that any sanctions imposed
378 serve a rehabilitative purpose.

379
380 (g) Courts with a dual-status docket should have rigorous intake and screening procedures
381 to ensure the Court accepts only those youth who are appropriate for the dual-status docket.

382
383 (h) The interdisciplinary team responsible for developing a dual-status docket should adopt
384 policies and protocols that ensure that:

- 385
- 386 i. the youth’s due process rights are protected at all stages of the delinquency case,
387 including the youth’s right to a fair and impartial hearing at the adjudicatory and
388 disposition stages of the case;
 - 389 ii. the parents’ due process rights are protected at all stages of the dependency case,
390 including the parents’ right to a fair and impartial hearing to adjudicate any
391 allegation of abuse or neglect;
 - 392 iii. the youth and the youth’s defense counsel have a right to be heard and participate
393 in all decisions regarding the youth’s placement and service plan;
 - 394 iv. youth and parents with disabilities receive accommodations necessary to ensure
395 meaningful participation at all stages of the case; and
 - 396 v. when the youth is not diverted from the juvenile justice system before
397 adjudication, the youth’s dependency case should not be consolidated with a
398 delinquency case on a dual-status docket unless and until there is an adjudication
399 of delinquency.

400
401 (i) Dual-status dockets should be presided over by a judge instead of a referee, master, or
402 magistrate.

403
404 (j) A judge presiding over a dual-status docket should have authority to dismiss the
405 delinquency petition for a youth who has successfully completed the requirements set by
406 the dual-status court.

407

112A

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

- 453 ii. to evaluate the need for and effectiveness of programs and practices designed to
454 achieve improved outcomes for youth.
455

456 **STANDARD 2.11 POLICIES AND PROCEDURES FOR CONFIDENTIALITY DURING INFORMATION**
457 **SHARING**
458

459 (a) All states should develop and require the use of protocols for information sharing about
460 individual dual-status youth from arrest to termination of jurisdiction.
461

462 (b) All agreements or protocols to share information between the juvenile justice system
463 and other youth-serving systems and agencies should ensure that information-sharing
464 protocols provide appropriate protection for the privacy of youth and their families and
465 follow federal and state law and ethical requirements regarding confidentiality of
466 privileged information.
467

468 (c) All agreements or protocols should specify the purposes of information sharing and
469 limit the information shared to the specified purposes.

470 (d) States should limit the use of information about the youth's involvement in multiple
471 systems to the coordination of case management and the continuity and integration of
472 services and treatment. Protocols should:

- 473 i. prohibit the unauthorized disclosure of, or unauthorized access to, information
474 relating to the dual-status youth, and
475 ii. develop quality control measures that minimize the inadvertent disclosure of
476 information relating to the youth.
477

478 (e) Absent an explicit exception under applicable state and federal law, juvenile justice
479 agencies and professionals should always obtain informed written consent from the youth
480 and the parent or guardian of the youth, before sharing personally identifiable information
481 between agencies serving the youth. Youth, parents, or guardians with disabilities should
482 receive accommodations necessary to provide informed consent.
483

484 (f) Any written consent for information sharing should state the purpose of sharing, the
485 specific information to be shared, and the time frame within which the information will be
486 shared.
487

488 (g) Information about dual-status youth should be shared with and used by youth-serving
489 agencies in a manner that complies with state and federal laws governing confidentiality,
490 including re-disclosure and privilege, and protects the youth's right against self
491 incrimination and right to due process as a respondent or defendant in any delinquency,
492 criminal, summary offense, status offense, or child welfare case.
493

494 (h) Juvenile justice officials sharing information about dual-status youth should ensure that
495 any youth-serving agency and system receiving that information is aware of and adheres
496 to rules and standards governing confidentiality of Family Court records, including
497

112A

498 restrictions on the dissemination of physical and behavioral health records and limitations
499 on the use of records for specified purposes.

500
501 (i) The juvenile court and other youth-serving agencies should develop docketing, filing,
502 and records-disclosure systems that will allow court staff to redact and separate records
503 and information that may be disclosed from those that may not be disclosed pursuant to
504 state and federal confidentiality laws.

505

506 **STANDARD 2.12 DATA COLLECTION FOR LAW, POLICY, AND PROGRAM DEVELOPMENT**

507
508 (a) Courts, legislatures, and state agencies should develop a system for collecting,
509 reporting, and sharing data regarding dual-status youth to achieve one or more of the
510 purposes identified in Standard 2.10 of these standards.

511
512 (b) Courts, legislatures, and state agencies should use data collection to improve outcomes
513 for dual-status youth and to reduce unnecessary referral to and penetration into the juvenile
514 and criminal justice systems.

515
516 (c) Lawyers, judges, and other government agents should ensure that data collection
517 protocols comply with applicable rules regarding confidentiality.

518
519 (d) Courts and state legislatures should periodically review the aggregate data collected to
520 determine how to allocate resources to youth-serving agencies and systems within the
521 jurisdiction, to improve procedures for handling youth who engage in delinquent behavior
522 while in the care or custody of a youth-serving agency, and to improve the continuity of
523 care for youth in multiple youth-serving systems.

524

525 **STANDARD 2.13 ACCESS TO COURT RECORDS**

526
527 (a) The use of and access to Family Court records should be strictly controlled to limit the
528 risk of unnecessary and harmful disclosure.

529
530 (b) Court records involving youth alleged or adjudicated delinquent or dependent should
531 normally be closed to the general public.

532
533 (c) Juvenile justice officials who disclose information about dual-status youth should
534 ensure that all recipients of that information are informed of all rules and standards
535 governing confidentiality of Family Court records.

536
537 (d) Courts and state legislatures should develop and enforce meaningful sanctions for the
538 unlawful dissemination of Family Court records.

539
540 (e) Juvenile justice professionals who disclose information about dual-status youth should
541 separate records that may be disclosed from those that may not be disclosed and redact
542 disclosed records accordingly.

543

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

546
 547 (g) The Family Court should avoid standing orders or policies that grant the public, court
 548 staff, juvenile justice officials, or other youth-serving agencies broad access to any
 549 category of records generally found within a Family Court file. Instead, the Court should
 550 develop policies and protocols to grant access to such records only after a judicial officer
 551 or appropriate designate makes an individualized analysis of a records request.
 552

553 **STANDARD 2.14 WAIVERS OF CONFIDENTIALITY**

554
 555 (a) Juvenile justice or other youth-serving agency officials may ask a youth to waive
 556 confidentiality protections.
 557

558 (b) A youth's waiver is valid only if it is made knowingly, intelligently, and voluntarily.
 559

560 (c) If a youth has appointed or retained counsel, agency officials should permit the youth
 561 an opportunity to consult with counsel before waiving any confidentiality protections.
 562 Waivers obtained without such an opportunity should be considered presumptively invalid.
 563

564 (d) In advising a youth regarding a possible waiver of confidentiality, the youth's lawyer
 565 should ensure the youth understands privilege, the youth's rights with respect to consent
 566 and confidentiality, and the potential consequences of waiving confidentiality or privilege
 567 in releasing information to others.
 568

569 (e) Agency officials should allow a youth to consult with a parent or guardian before
 570 waiving any confidentiality protections; but a parent cannot waive the youth's rights or
 571 privileges. In a delinquency proceeding, the decision to waive should be the youth's.
 572

573 (f) Any written waiver form should use youth-appropriate language and be written in a
 574 language the youth speaks or understands. If a youth has limited literacy, any waiver should
 575 be obtained and recorded in a manner that is understandable to the youth.
 576

577 (g) A youth may negotiate the terms of the waiver to limit the time, scope or purpose of
 578 the waiver.
 579

580 (h) A parent or guardian may waive confidentiality protections for records involving the
 581 parent.
 582

583 **E. CROSS-SYSTEM TRAINING**

584 **STANDARD 2.15 NEED FOR CROSS-SYSTEM TRAINING**

585
 586 (a) Family Courts and youth-serving agencies should promote training for all professionals in
 587 the juvenile justice and child welfare systems to reduce inappropriate referrals to the juvenile
 588 justice system.
 589

112A

- 590 (b) Training should include:
- 591 i. the scope and availability of services and means for accessing services from the child
- 592 welfare, behavioral health, physical health, public benefits, Family Court, and education
- 593 systems;
- 594 ii. information regarding any memoranda of understanding or other agreements between
- 595 and among the various youth-serving agencies regarding the provision of services for
- 596 youth;
- 597 iii. laws, rules, and procedures applicable to confidentiality and privilege;
- 598 iv. the role of the youth's defense counsel and best interest advocate for the youth;
- 599 v. child and adolescent development, brain development, disabilities, trauma, and
- 600 resiliency development;
- 601 vi. sexual orientation and gender-identity;
- 602 vii. cultural competence;
- 603 viii. racial bias;
- 604 ix. evidence-based research on the effectiveness of services and programs in achieving
- 605 good outcomes for youth in the juvenile justice and child welfare systems;
- 606 x. family and youth engagement; and
- 607 x. the immigration consequences of the youth's involvement in the child welfare or juvenile
- 608 justice system.
- 609

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

611 **STANDARD 3.1 GUIDELINES FOR CHILD WELFARE AGENCIES**

- 612 (a) Child welfare agencies should adopt policies discouraging staff from referring youth to
- 613 the juvenile justice system for minor delinquent behavior.
- 614
- 615 (b) Child welfare agencies should have protocols for responding to delinquent and status
- 616 offense behavior by youth in their care. These protocols should:
- 617 i. be developed in consultation with representatives of other youth-serving
- 618 agencies, including the juvenile court, probation, behavioral health, schools, law
- 619 enforcement, prosecution, defense, best interest advocates, and community service
- 620 providers;
- 621 ii. set forth the specific procedures to be followed when a youth violates rules of a
- 622 program or placement or engages in behavior that poses a threat to others in a
- 623 program or placement;
- 624 iii. specify behavioral support or staffing strategies that agencies should utilize
- 625 instead of referral to law enforcement;
- 626 iv. be in writing, made available to agency staff and youth served by the agency,
- 627 and be incorporated into any agency staff training; and
- 628 v. provide for periodic review and revision of the protocols.
- 629
- 630 (c) Staff in child welfare or other youth-serving agencies and facilities should be trained in
- 631 crisis intervention techniques, including strategies to de-escalate youth behavior arising out
- 632 of behavioral health or other disability-related needs, and such techniques should be
- 633 employed first, before any law enforcement referral.
- 634
- 635

636 (d) Public child welfare agencies that contract with private service providers should, in the
 637 contracts, set forth the circumstances under which those agencies may refer youth to law
 638 enforcement and provide guidance on alternatives to law enforcement and juvenile court
 639 referrals in case of a behavioral crisis or placement concerns.
 640

641 **STANDARD 3.2 RESPONSIBILITIES OF LAW ENFORCEMENT IN RESPONDING TO REFERRALS**
 642 **INVOLVING DUAL-STATUS YOUTH**
 643

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

- 646 i. have a presumption against arresting youth who have been referred from the child
 647 welfare system to the juvenile justice system for minor delinquent behavior; and
- 648 ii. consider whether the youth is or can be engaged with other youth-serving
 649 systems or agencies that will work to ensure the youth's appearance in court, divert
 650 the youth from custody or supervision, and minimize the youth's risk to public
 651 safety.

652
 653 (b) Law enforcement agencies should develop inter-agency crisis intervention strategies
 654 that discourage arrests of youth experiencing emergency behavioral health crises that do
 655 not create a serious risk to public safety.
 656

657 (c) If a youth needs emergency psychiatric or other behavioral health intervention, law
 658 enforcement officers should contact a behavioral health mobile crisis team; if such a team
 659 is not available, the officers should take the youth into custody without arrest and transport
 660 them to an appropriate crisis intervention facility.
 661

662 (d) When a youth appears to be homeless, a runaway, or declines to give home contact
 663 information, the law enforcement agency should determine whether the youth is under the
 664 care or supervision of the child welfare agency, and if not should determine whether the
 665 youth should be referred to an appropriate youth-serving agency.
 666

667 (e) Law enforcement should notify the caregiver or welfare caseworker of any youth who
 668 is arrested while committed to a child welfare agency.
 669

670 **STANDARD 3.3 RESPONSIBILITIES OF LAW ENFORCEMENT, SCHOOLS, AND JUVENILE COURTS**
 671 **IN RESPONDING TO SCHOOL-RELATED CONDUCT**
 672

673 (a) The primary authority responsible for school climate, discipline, and school safety is
 674 the school principal. Police should not be deployed in schools absent a significant showing
 675 of a demonstrable, time-limited need to protect students. If police are to be deployed in
 676 schools, memoranda of understanding and guidelines regarding their interaction with
 677 school officials and the scope and parameters of their authority should be established
 678 consistent with the principles set forth in these standards.
 679

112A

680 (b) Law enforcement, including school resource officers (hereinafter SROs) should not
681 arrest or refer youth to the juvenile justice system for minor delinquent conduct at school
682 and should not have primary responsibility for the enforcement of school discipline.
683

684 (c) Law enforcement personnel interacting with youth in schools should interact with
685 students in ways that foster positive relationships and promote a better understanding of
686 each other and should not be limited to arrest and law enforcement.
687

688 (d) Schools should adopt written policies and establish protocols limiting the presence and
689 use of SROs in accordance with the principles set forth in section (e) below. Law
690 enforcement, including SROs, should not be assigned within schools on a permanent basis,
691 and school and law enforcement officials should periodically reassess the need for law
692 enforcement presence and use.
693

694 (e) Formal law enforcement intervention includes issuance of a citation, ticket, or
695 summons, filing of a delinquency petition, referral to a probation office, searches, use of
696 restraints, or actual arrest. Law enforcement officials should not initiate formal law
697 enforcement intervention for school-related conduct except as permitted in written
698 protocols developed in accord with principles set forth in section (f) below.
699

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

- 703 i. allow law enforcement officials, including SROs, to transport a truant youth back
704 to school without an arrest or referral to the juvenile justice system, and encourage
705 school officials to develop educational programs, social services, and public health
706 responses to truancy in lieu of arrest;
- 707 ii. promote programs that are preventive, educational, and recreational to guide
708 young people away from negative behaviors;
- 709 iii. develop guidelines that limit disruption in educational placement or receipt of
710 educational services resulting from law enforcement intervention;
- 711 iv. encourage schools to implement disciplinary practices that:
 - 712 a. are age and developmentally-appropriate;
 - 713 b. are culturally competent;
 - 714 c. engage the youth and family;
 - 715 d. take into account that a student's behavior may be related to a disability.
- 716 v. reject zero tolerance policies and mandatory suspension, expulsion, arrest, or
717 referrals of students to juvenile or criminal court without regard to the
718 circumstances or nature of the offense or the student's disability or history.
719

720 (g) Students should be involved in the development of school-law enforcement protocols
721 and memoranda of understanding.
722

723 (h) Law enforcement personnel, including SROs, who may have contact with students,
724 especially those students who may be involved in the child welfare system, should receive
725 extensive training that includes the following topics:

- 726 i. youth and adolescent development and psychology;
 727 ii. the effects of neglect, abuse, and trauma, including the exposure to violence;
 728 iii. the effects of disabilities on behavior and the effects of medication taken to
 729 ameliorate the symptoms of disabilities;
 730 iv. common disabilities for youth and the protections afforded to youth under the
 731 Individuals with Disabilities Education Act (IDEA);
 732 v. conflict resolution, peer mediation, and restorative justice techniques;
 733 vi. cultural competence and gender and sexuality sensitivity;
 734 vii. research-based practices in de-escalation and alternative responses to the use of
 735 restraints against youth except in situations involving an arrest and serious and
 736 immediate threat to the physical safety or health of a member of the school
 737 community.
- 738
- 739 (i) Both school districts and law enforcement should maintain data to assist in evaluating
 740 the presence and use of law enforcement, including SROs. Each data point should be
 741 disaggregated by offense, student's age, grade level, race, sex, disability status, eligibility
 742 for free or reduced lunch, English language proficiency, and disposition. Data collection
 743 should include the number of:
- 744 i. law enforcement personnel, including SROs, deployed to each school;
 745 ii. school-based arrests (arrests of students that occur on school grounds during the
 746 school day or on school grounds during school-sponsored events) at each school;
 747 iii. referrals to the juvenile justice system for each school;
 748 iv. citations, summons or other actions taken by police personnel for each school;
 749 and
 750 v. suspensions, in and out of school, and expulsions at each school.
 751
- 752 (j) Juvenile courts and law enforcement should not inform a school of a student's
 753 involvement in the court system for conduct which occurred off school grounds unless the
 754 conduct is likely to have an impact on school safety.
 755
- 756 (k) Juvenile courts should annually review all data collected on school-based referrals to
 757 identify high rates of referral from particular schools or for a particular youth demographic.
 758 If referrals are for a disproportionately high rate of referral for youth of color, the juvenile
 759 court and law enforcement officials should work with schools to develop protocols that
 760 will reduce unnecessary or inappropriate referrals from the schools and reduce
 761 disproportionality.
 762
- 763 (l) Legislatures should repeal or amend laws, including zero tolerance laws that require
 764 schools to refer youth to law enforcement agencies for minor delinquent behavior.
 765
- 766 (m) Legislatures should protect the confidentiality of Family Court records by amending
 767 statutes that require courts and/or law enforcement agencies to notify schools about arrests
 768 to prohibit such notification unless the student conduct is likely to have an impact on school
 769 safety.
 770

112A

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

773
774 (a) Child welfare and juvenile justice agencies should work with local school districts to
775 develop inter-agency agreements that:

- 776 i. allow youth to remain in the same school, when practicable, even when the
777 agency places a youth outside the school district area,
- 778 ii. ensure the timely transfer of education records and credit information to
779 whatever school a youth will attend, and
- 780 iii. ensure a seamless re-entry of students discharged from a child welfare or
781 juvenile justice placement back to the youth's home school.

782
783 (b) Child welfare and juvenile justice agencies should work with the relevant school
784 district to ensure that every youth in out-of-home placement receives an education
785 appropriate for the youth's grade level, special educational needs, and academic or career
786 goals.

787 **PART IV: JUVENILE INTAKE AND DETENTION**

788
789 **STANDARD 4.1 RESPONSIBILITIES OF PROBATION OFFICES AT INTAKE**

790
791 (a) Probation staff should develop written protocols to guide intake decisions and guard
792 against the inappropriate processing of dual-status youth in the juvenile justice system.
793 Protocols should:

- 794 i. encourage the diversion of dual-status youth who engage in minor delinquent
795 behavior from the juvenile justice system; and
- 796 ii. encourage the delivery of services through youth-serving systems other than the
797 juvenile justice system.

798
799 (b) Consistent with Standard 2.11 of these standards concerning Information Sharing,
800 probation staff should examine relevant databases to determine whether a youth or a
801 youth's family is or has been involved in other youth-serving systems.

802
803 (c) In deciding whether to recommend action or inaction by the juvenile court for a youth
804 referred from the child welfare system, probation staff should consider:

- 805 i. the seriousness of the offense;
- 806 ii. any information about the youth's mental health status, treatment history,
807 prescribed medications, educational status, and care and supervision by other
808 youth-serving agencies and systems;
- 809 iii. whether and to what extent the alleged behavior was related to the youth's
810 disabilities, mental health issues, exposure to violence, prior placement
811 deficiencies, substance abuse, or other identifiable factors;
- 812 iv. whether the child welfare system made reasonable efforts to improve the youth's
813 placement or services and prevent the referral to juvenile court;
- 814 v. whether services for the youth or family, such as crisis intervention or respite,
815 could alleviate the need for a delinquency court referral; and
816

817 vi. whether the juvenile justice system has non-confinement placements that are
818 appropriate for the youth.

819
820 (d) Probation staff should not recommend a delinquency petition if the youth's conduct is
821 more appropriately addressed by another youth-serving agency or system. Probation staff
822 should avoid:

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

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

829
830 (e) Probation staff should refer dual-status youth for community-based services that are
831 suitable for the youth's age, ethnicity, gender or sexual identity, cognitive disability, and
832 developmental stage.

833
834 **STANDARD 4.2 RESPONSIBILITIES OF JUDGES AND PROBATION OFFICES IN RECOMMENDING**
835 **DETENTION OR RELEASE**

836
837 (a) Probation offices should adopt written protocols and develop risk assessment
838 instruments to guide detention and release decisions involving dual-status youth.

839
840 (b) In deciding whether to recommend detention or release for youth referred from the child
841 welfare system, probation staff should use the same criteria applied to other youth. Those
842 criteria should be objective and determine whether the youth poses a risk of danger to the
843 community or failing to appear. Other criteria should include:

844 i. the existence of services available from other youth-serving agencies to address
845 the youth's needs and reduce the youth's risk of flight or risk to public safety; and
846 ii. whether detention will jeopardize placement or services provided by other youth-
847 serving agencies.

848
849 (c) Probation staff should not recommend detention:
850 i. because the youth is awaiting suitable placement in the child welfare system;
851 ii. as a respite for caregivers in the child welfare system; or
852 iii. when other youth-serving systems are providing or can provide placement and
853 services that protect the court's and the public's interests.

854
855 (d) The intake officer should not recommend detention in a facility that cannot adequately
856 meet a youth's special, physical, or behavioral health needs.

857
858 (e) If a youth is detained, probation staff should, consistent with Standard 2.12 of these
859 standards concerning Information Sharing:

860 i. advise other agencies currently serving the youth that detention is temporary, and
861 seek to preserve the placement and services the youth is receiving from those
862 agencies;

112A

- 863 ii. provide detention staff with information about the youth’s strengths, interests,
864 preference, educational needs, and physical or behavioral health needs; and
- 865 iii. facilitate communication between the detention staff and other agencies serving
866 the youth.

867 **STANDARD 4.3 DIVERTING DELINQUENCY TO DEPENDENCY AND MAINTAINING DUAL** 868 **JURISDICTION**

- 870
- 871 (a) Juvenile court judges have authority to divert a delinquency petition to a child welfare
872 or status offense petition.
- 873
- 874 (b) The decision to dismiss or divert should be made as early as possible.
- 875
- 876 (c) A judge presiding over child welfare proceedings should be authorized, when the youth
877 is facing delinquency proceedings or has been adjudicated delinquent, to keep the child
878 welfare matter open so the youth may receive necessary child welfare services.
- 879

880 **4.4 JUDICIAL RESPONSIBILITIES REGARDING DETENTION**

- 881
- 882 (a) In deciding whether to order detention or release for youth referred from the child
883 welfare system, the juvenile court judge should use the same criteria applied to other youth.
884 Those criteria should be objective and determine whether the youth poses a risk of danger
885 to the community or failing to appear. Other criteria should include:
 - 886 i. the existence of services available from other youth-serving agencies to address
887 the youth’s needs and reduce the youth’s risk of flight or risk to public safety; and
 - 888 ii. whether detention will jeopardize placement or services provided by other youth-
889 serving agencies.
- 890
- 891 (b) The juvenile court judge should not order detention:
 - 892 i. because the youth is awaiting suitable placement in the child welfare system;
 - 893 ii. as a respite for caregivers in the child welfare system; or
 - 894 iii. when other youth-serving systems are providing or can provide placement and
895 services protect the court’s and the public’s interests.
- 896
- 897 (c) The juvenile court judge should not order detention in a facility that cannot adequately
898 meet a youth’s physical or behavioral health needs.
- 899
- 900 (d) A judge who has concurrent jurisdiction over delinquency and child welfare matters
901 may order the appropriate child welfare agencies to:
 - 902 i. arrange a suitable nonsecure placement for a youth as an alternative to detention
903 in the juvenile justice system; or
 - 904 ii. continue providing services for a youth in detention.
- 905
- 906
- 907
- 908

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

910

911 (a) Juvenile justice professionals should develop protocols to ensure that pregnant or
912 parenting youth in the juvenile justice system have:913 i. basic support and critical services to reduce the risk that they will engage in
914 abusive or neglectful behavior toward their own children;915 ii. physical and behavioral health services commonly provided for high risk
916 pregnancy and child-rearing;917 iii. alternatives to detention and pretrial release and disposition plans that address
918 the youth's needs in caring for their own children;

919 iv. opportunities for detained youth to visit with and engage their children; and

920 v. opportunities for parenting, financial management, and independent living skills
921 training.

922

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

926

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

929

930 (d) When a judge detains a pregnant youth, juvenile justice professionals should address
931 special prenatal needs of the youth by ensuring:932 i. adequate prenatal care, including regular doctor visits, child-birth classes, and dietary
933 supplements;

934 ii. sanitary living conditions to reduce the risk of trauma and infection;

935 iii. access to reproductive health counseling; and

936 iv. no use of physical restraints during the term of pregnancy unless there are serious
937 and immediate risks to the safety of the youth or others, in which case the least
938 restrictive means of restraint should be used.

939

940 (e) During labor and delivery for detained youth, juvenile justice authorities should ensure
941 that:942 i. the detained youth is transported to an appropriate medical facility without delay,
943 and

944 ii. shackles or other restraints are not used.

945

946 (f) After delivery, juvenile justice professionals should allow the mother and child to be
947 together at least the first year, in the least restrictive placement possible. Professionals
948 should:

949 i. develop re-entry plans that focus specifically on pregnant and parenting youth;

950 ii. ensure that parenting youth are provided appropriate postnatal care and services,
951 including parenting classes, continued doctor visits, and behavioral health services
952 as appropriate;

112A

- 953 iii. facilitating placements that permit the child to reside with a parent or, if not
954 possible or in the best interests of the child, facilitate visits between the youthful
955 parent and their child, including overnight and contact visits; and
956 iv. facilitate visits with family or other caregivers providing care for the youth's
957 child.

958
959 (g) Any diversion, disposition, and re-entry plan developed for pregnant or parenting youth
960 should seek to reduce the chance that the youth's child will be placed in the child welfare
961 system.

PART V: REFERRING YOUTH FOR SERVICES

STANDARD 5.1 ACCESSING BEHAVIORAL HEALTH SERVICES

962
963
964
965
966
967 (a) To reduce the high rates of mental health and substance abuse conditions among dual-
968 status youth, every jurisdiction should have a system that:

- 969 i. provides for early identification of youth in the child welfare and juvenile justice
970 systems who have mental health or substance abuse conditions;
971 ii. seeks to prevent the unnecessary involvement in the juvenile justice system of
972 children who need mental health or substance abuse services;
973 iii. provides for timely access by youth in the child welfare system to appropriate
974 mental health treatment by qualified professionals within the least restrictive setting
975 that is consistent with public needs and reduces the risk of delinquent behavior by
976 these youth.

977
978 (b) A comprehensive system to address youth with mental health or substance abuse
979 disorders should provide:

- 980 i. screening and assessment at entry and key points in the child welfare and juvenile
981 justice processes;
982 ii. a continuum of evidence-based services at all stages of the youth's involvement
983 in the child welfare and juvenile justice systems, including short-term interventions
984 and crisis services, on-going supportive services, and continuity of care;
985 iii. family involvement in the least restrictive setting;
986 iv. protections against self-incrimination when youth participate in court-ordered
987 mental health or substance abuse screening, assessment, and treatment; and
988 v. sustainable funding mechanisms to support the above.

989
990 (c) Juvenile justice authorities should have authority to obtain services from other youth-
991 serving systems, including state and local child welfare, physical and behavioral health,
992 physical health, educational, and alcohol and drug abuse treatment systems.

993
994 (d) Juvenile and child welfare courts should have authority to obtain services for youth
995 with mental health and substance abuse conditions without having to alter the legal custody
996 of the youth or transfer jurisdiction to another court or system.

997
998

999 **PART VI: DELINQUENCY ADJUDICATION OF DUAL-STATUS YOUTH**

1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1040
1041
1042
1043

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.

112A

1044 (b) Risk or needs assessment tools used in disposition planning for dual-status youth should
1045 be validated and targeted to achieve the youth’s best long-term interests in either the child
1046 welfare or delinquency system.

1047
1048 (c) Results of any risk or needs assessment tools should be in writing and provided to the
1049 parties, and any persons who administered the tool should be available for examination by
1050 the parties.

1051
1052 (d) Jurisdictions should develop protocols and teams to aid disposition planning for dual-
1053 status youth. Such teams should include representatives from youth-serving agencies
1054 necessary to address the youth’s needs, as well as the youth, the youth’s parents, guardian
1055 or caretaker, defense counsel, best interest advocate, service provider, and representatives
1056 from the state, such as a probation officer or prosecutor.

1057
1058 (e) When a youth participates in a disposition team meeting, the youth should be advised
1059 that the team will consider any information the youth provides in making placement
1060 decisions.

1061
1062 (f) The juvenile court judge should:
1063 i. designate a lead agency responsible for coordinating services for the youth;
1064 ii. direct that disposition team meetings be completed before disposition, and
1065 expedited when a youth is detained pending disposition; and
1066 iii. order that the team prepare a written disposition report with a statement of
1067 reasons explaining how the recommendations will advance the best interests of the
1068 youth and the goals of the state’s juvenile justice code. That report should be
1069 distributed to all parties including the youth and defense counsel in advance of the
1070 disposition hearing. The author of the report should be available for examination
1071 at or before the hearing.

1072
1073 (g) All parties should be permitted to review and respond to any information or testimony
1074 that will be or is presented to the court at the disposition hearing.

1075

1076 **STANDARD 7.3 POSTPONEMENT OF DISPOSITION**

1077
1078 (a) The court may temporarily postpone disposition in a delinquency case, and recommend
1079 referral to the appropriate child welfare agency that can serve the youth with minimal risk
1080 to public safety, when a delinquent youth is in immediate need of services from or awaiting
1081 placement by the child welfare system. Any such referral should be expedited if possible.

1082
1083 (b) The child welfare system should develop processes for expediting cases for delinquent
1084 youth who are pending disposition in a delinquency proceeding.

1085

1086 **STANDARD 7.4 DISPOSITION OPTIONS**

1087

1088 (a) Courts ordering disposition for dual-status youth should be aware of and utilize all
 1089 disposition options that are legislatively available for youth in the child welfare and
 1090 delinquency systems.

1091

1092 (b) The juvenile court should order the least restrictive disposition that furthers the best
 1093 interests of the youth and the goals of the juvenile justice system.

1094

1095 (c) Disposition options should include:

1096

i. termination of the delinquency jurisdiction;

1097

ii. referral to other youth-serving systems;

1098

iii. maintaining dual jurisdiction; or

1099

iv. disposition within the delinquency system while providing access to other
 1100 youth-serving services, systems or agencies.

1101

1102 (d) Juvenile courts should have authority to

1103

i. review service, rehabilitative, and disposition plans developed in the child
 1104 welfare system;

1105

ii. modify child welfare plans that are in conflict with the goals of the juvenile
 1106 justice system; and

1107

iii. require child welfare and juvenile justice agencies to coordinate planning to
 1108 satisfy their obligations to the youth.

1109

1110 (e) All youth who are adjudicated delinquent should have access to the same publicly-
 1111 funded services that are available to non-delinquent youth.

1112

1113 (f) Juvenile court judges and probation officers should assist youth in obtaining services
 1114 from other youth-serving systems and develop protocols for expeditious service delivery
 1115 from such systems and agencies.

1115

1116 **STANDARD 7.5 DISPOSITION ORDERS**

1117

1118 (a) Disposition orders that place the youth out of the home should include:

1119

i. a plan to maintain the youth's connection to parents, caregivers, or others who
 1120 are important to the youth;

1121

ii. a reunification or permanency plan that seeks to reunite the youth with family,
 1122 caregivers or other significant supportive adult, to identify some other permanent
 1123 stable living arrangement; and

1124

iii. a re-entry and discharge plan that specifies where and how, after release from
 1125 detention or residential placement, the youth will be educated, work, and receive
 1126 appropriate services.

1127

1128 (b) Disposition orders should set forth the services expected from each agency and set
 1129 regular status review hearings to assess compliance with the order.

1130

1131

112A

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

1178 permits, if it appears the youth will need housing or other services when juvenile
 1179 court jurisdiction terminates;
 1180 iv. specify that delay in identifying, securing, or arranging appropriate post-
 1181 discharge services may not be relied on to extend the duration of a residential
 1182 placement; and
 1183 v. allow the youth and the youth’s family and counsel to participate fully in the
 1184 development and periodic reviews of the re-entry plan.
 1185

1186 **STANDARD 8.2 IMPLEMENTATION OF RE-ENTRY AND DISCHARGE PLAN**

1187
 1188 (a) Youth discharged from residential placement but remaining under supervision of either
 1189 the child welfare or delinquency system should have case managers assigned and trained
 1190 to ensure timely and coordinated implementation of the youth’s re-entry and discharge
 1191 plan.
 1192

1193 (b) Each agency with responsibility to the youth should:
 1194 i. participate in a discharge planning meeting with other service providers at least
 1195 thirty (30) days in advance of the anticipated discharge date;
 1196 ii. ascertain, before discharge, the youth’s strengths, interests, preferences and
 1197 needs regarding services;
 1198 iii. identify and secure, before discharge, a residence for the youth, to avoid delay
 1199 in discharge; and
 1200 iv. assist youth in obtaining important documents (such as identification or driver’s
 1201 license and birth certificates) as well as coverage for essential services such as
 1202 healthcare.
 1203

1204 **PART IX: APPEALS**

1205
 1206 **STANDARD 9.1 RIGHT TO APPEAL**

1207
 1208 (a) Dual-status youth should have the same right to appeal any order of the Family Court
 1209 as any other youth. The right to appeal should include a review of the facts, law, and
 1210 disposition order. Procedural safeguards should exist to ensure that youth are not penalized
 1211 due to delays and other consequences arising out the youth’s involvement in multiple legal
 1212 matters.
 1213

1214 (b) A youth involved in multiple legal matters should be entitled to appellate review of, at
 1215 a minimum:
 1216 i. all orders of a juvenile or dependency court that dispose of any portion of any
 1217 case or matter;
 1218 ii. inconsistent orders in the youth’s delinquency, dependency or other matters; and
 1219 iii. orders that do not embody the least restrictive alternative to achieve the best
 1220 interests of the youth and the goals of multiple systems.
 1221
 1222
 1223

112A

1224 STANDARD 9.2 WRITTEN COURT ORDERS AND ADVICE OF RIGHTS

1225
1226 (a) At the conclusion of any judicial proceeding involving dual-status youth and their
1227 families, the judge should:

- 1228 i. prepare a final written order delineating the court’s rulings, the facts found, the
1229 law applied, the disposition ordered, and the reasons therefore;
1230 ii. advise the youth (and family) of the right to appeal;
1231 iii. advise the parent or guardian of the right to appeal in dependency proceedings;
1232 and
1233 iv. inquire of the youth’s financial status, appoint appellate counsel if youth is
1234 indigent, or instruct defense counsel to secure the appointment of appellate counsel.

1235
1236 (b) At or before the conclusion of the matter, the youth and the youth’s counsel should be
1237 entitled to a copy of any document in the court file, as well as a verbatim transcript or
1238 recording of any relevant hearing.

1239 1240 PART X: RECORDS EXPUNGEMENT

1241 1242 STANDARD 10.1 EXPUNGEMENT OF JUVENILE AND FAMILY COURT RECORDS

1243
1244 (a) Expungement of delinquency records should require the complete deletion of records from
1245 all files and databases in all courts as well as any agency that obtained the records from the
1246 juvenile justice system.

1247
1248 (b) Youth entitled to expungement of delinquency records should retain that right even when
1249 the youth is under the jurisdiction of other youth-serving agencies or systems.

1250
1251 (c) The juvenile court should establish procedures to ensure effective notification to other
1252 youth-serving agencies and systems that a youth’s delinquency records should be expunged.

1253
1254 (d) In jurisdictions where the juvenile court or law enforcement agency is required to notify a
1255 youth’s school of an arrest, adjudication, or disposition, the juvenile court should also be
1256 required to notify the school when any juvenile court record has been expunged, and the school
1257 should be required to destroy its records relating to any expunged matter.

1258 1259 PART XI: RESPONSIBILITIES OF PROSECUTING ATTORNEYS

1260 1261 STANDARD 11.1 POLICIES AND PROTOCOLS

1262
1263 (a) Prosecutors should develop policies to guide intake decisions involving dual-status
1264 youth. Such policies should encourage diversion or non-intervention for youth who engage
1265 in minor delinquent behavior and who can obtain appropriate services from other youth-
1266 serving agencies and systems.

1267
1268 (b) Prosecutors should, in conjunction with state and local law enforcement officers and
1269 youth-serving agencies, develop policies governing referrals to the juvenile justice system

1270 from other youth-serving agencies and systems. Such policies should seek to reduce
 1271 referrals to the juvenile justice system for minor delinquent behavior.

1272

1273 **STANDARD 11.2 TRAINING**

1274

1275 Prosecutors should participate in cross-system training as set forth in Standard 2.15 of these
 1276 standards concerning the Need for Cross-System Training.

1277

1278 **STANDARD 11.3 CHARGING DECISIONS**

1279

1280 (a) Consistent with Standard 2.11 of these standards concerning Information Sharing, when
 1281 youth are referred to the juvenile justice system, prosecutors should review available
 1282 Family Court records to determine whether the youth or the youth's family is or has been
 1283 served by other youth-serving systems.

1284

1285 (b) The prosecutor should not file a delinquency petition:

1286 i. when the alleged delinquent behavior is minor and the youth can obtain
 1287 appropriate services from other agencies;

1288 ii. when it is clear that the youth did not have the mental capacity, cognitive ability,
 1289 or intent necessary to be held responsible for his behavior; or

1290 iii. to secure services or placement for a youth when a delinquency charge would
 1291 not otherwise be warranted,

1292

1293 (c) The prosecutor should not prosecute delinquent behavior in juvenile or criminal court
 1294 when the prosecutor determines that the purposes of the delinquency process can be
 1295 accomplished outside of the juvenile or criminal justice system.

1296 (d) The prosecutor should make every effort to ensure that a delinquency petition will not
 1297 result in the termination or disruption of appropriate services for the youth from other
 1298 youth-serving systems. The prosecutor should discourage other government attorneys
 1299 handling dependency cases from closing dependency proceedings just because a
 1300 delinquency petition is filed.

1301

1302 **STANDARD 11.4 COMMUNICATING WITH VICTIMS**

1303

1304 The prosecutor should advise victims, to the extent required by law or permitted under
 1305 confidentiality laws or rules, of circumstances involving dual-status youth that lead to
 1306 specific charging decisions and proposed resolutions. The prosecutor should advise victims
 1307 of statutory, rule or other limitations on disclosure of information about the accused youth.

1308

1309 **STANDARD 11.5 DIVERSION**

1310

1311 (a) The prosecutor should consider information regarding the youth's access to services
 1312 from the child welfare system when deciding whether to divert a youth from the juvenile
 1313 justice system.

1314

112A

- 1315 (b) If the prosecutor decides to divert a dual-status youth from the juvenile justice system,
1316 the prosecutor should:
- 1317 i. refer the youth to a program suitable for the youth’s age, ethnicity, culture,
1318 gender or sexual identification, disability, and developmental or cognitive ability;
1319 and
 - 1320 ii. consider diversion programs that allow the youth to participate in community
1321 service in lieu of a delinquency petition.

1322 **STANDARD 11.6 DETENTION**

- 1323
- 1324
- 1325 (a) In deciding whether to request detention of an accused youth, the prosecutor should:
- 1326 i. not seek detention for alleged minor delinquent behavior; and
 - 1327 ii. consider whether other youth-serving agencies outside the juvenile justice
1328 system can protect the youth and serve public safety.
- 1329
- 1330 (b) The prosecutor should not seek detention just because no suitable child welfare
1331 placement has been identified.
- 1332
- 1333 (c) The prosecutor should not seek detention when detention will likely cause the youth to
1334 lose placement or services from other youth-serving systems and public safety can be
1335 served without detention.

1336 **STANDARD 11.7 COMMUNICATING AND COORDINATING WITH YOUTH-SERVING AGENCIES**

- 1337
- 1338
- 1339 (a) If the prosecutor declines to file a delinquency petition, the prosecutor should
1340 communicate that decision to any referring agency.
- 1341
- 1342 (b) The prosecutor should develop policies to govern the effective referral of youth to the
1343 child welfare system and other youth-serving agencies.

1344 **STANDARD 11.8 DISPOSITION AND POST-DISPOSITION PLANNING**

- 1345
- 1346
- 1347 (a) The prosecutor should participate in placement, re-entry, and disposition planning team
1348 meetings consistent with Standard 7.2 of these standards concerning the Disposition
1349 Process.
- 1350
- 1351 (b) The prosecutor should not seek an out-of-home placement when the youth’s supervision
1352 and service needs can be met in the community.
- 1353
- 1354 (c) After disposition, the prosecutors should periodically review the case.
- 1355 i. If it appears that additional or alternate services are needed to meet the needs of
1356 the youth or to ensure public safety, the prosecutor may seek to modify the
1357 dispositional plan as described above.
 - 1358 ii. If it appears that the youth no longer needs care and rehabilitation from the
1359 juvenile court and does not pose a risk to public safety, the prosecutor should file a
1360 request to terminate the delinquency disposition early.

1361 **PART XII: RESPONSIBILITIES OF DEFENSE COUNSEL**

1362

1363 **STANDARD 12.1 ETHICAL OBLIGATIONS OF DEFENSE COUNSEL**

1364

1365 (a) Defense counsel representing dual-status youth should abide by all applicable

1366 professional and ethical obligations for defense counsel generally.

1367

1368 **STANDARD 12.2 TRAINING**

1369

1370 Defense counsel should participate in cross-system training consistent with Standard 2.13

1371 of these standards concerning Access to Court Records.

1372

1373 **STANDARD 12.3 INVESTIGATION AND CONFIDENTIALITY WAIVERS**

1374

1375 (a) Consistent with Standard 2.14 of these standards concerning Waivers of

1376 Confidentiality, defense counsel and dependency counsel should advise the youth in age-

1377 appropriate language, and when permitted and appropriate, inform the youth's parent or

1378 guardian, about the need for a signed waiver to allow counsel access to child welfare

1379 records and the implications of such waiver. Youth, parents, or guardians with disabilities

1380 should receive accommodations necessary to provide informed consent to the waiver.

1381 i. The juvenile justice system should provide, and defense counsel should obtain,

1382 necessary interpretive services. Defense counsel should ensure that any written

1383 waiver form and other documents are appropriately translated.

1384 ii. When the youth is developmentally or cognitively limited or limited in his or

1385 her literacy skills, counsel should explain and obtain the waiver in a manner the

1386 youth can best understand.

1387

1388 (b) Defense counsel should gather and review all information that would likely affect the

1389 youth's custody, legal status, or services in the juvenile justice system.

1390

1391 **STANDARD 12.4 PRE-PETITION ADVOCACY BY DELINQUENCY COUNSEL**

1392

1393 (a) Defense counsel should advise the youth regarding the possibility of initiating a referral

1394 from the juvenile justice system to the child welfare system and the possible implications

1395 of such a referral.

1396

1397 (b) Defense counsel should provide decision-makers all relevant information militating

1398 against, and advocate against, the filing of a delinquency petition and the inclusion of

1399 particular charges in a petition with the youth's voluntary and informed consent. Defense

1400 counsel should consider and recommend alternatives to provide needed services for the

1401 youth and, if necessary, to protect the public.

1402

1403 (c) Defense counsel should communicate with the youth's dependency counsel and the

1404 youth's best interest advocate when the youth consents and such communication would not

1405 undermine the youth's rights in the delinquency case.

1406

112A

1407 STANDARD 12.5 ADVOCACY AT DETENTION HEARING

1408
1409 (a) In and before a detention hearing, defense counsel should present facts and arguments
1410 to support placement in the community or in the custody of youth-serving agencies, if
1411 consistent with the youth's objectives. Facts and arguments should include evidence from
1412 youth-serving agencies regarding the availability of specific placements or services.

1413
1414 (b) If the youth is detained or sent to another out-of-home placement, defense counsel
1415 should advocate for comparable or better education, physical or behavioral health, and
1416 other services than the youth had been receiving prior to the placement.

1417
1418 (c) If the youth is ordered detained, defense counsel should, as soon as possible provide
1419 detention or shelter care staff with information about the youth's needs and advocate for
1420 the proper care and safety of the youth.

1421 1422 STANDARD 12.6 DISPOSITION ADVOCACY

1423
1424 (a) Defense counsel representing dual-status youth should zealously advocate for the
1425 youth's stated objectives at all stages, including any multi-agency planning team meeting
1426 or disposition hearing.

1427
1428 (b) Counsel should protect the youth's due process interests, including in cases when the
1429 disposition hearing is consolidated with other Family Court proceedings.

1430
1431 (c) If necessary to advance the youth's objectives, counsel should challenge any evidence
1432 or reports submitted to the juvenile court at the disposition hearing, including items
1433 submitted by the multi-agency team.

1434 1435 STANDARD 12.7 POST-DISPOSITION ADVOCACY

1436
1437 (a) Defense counsel's advocacy on behalf of dual-status youth should not end at the entry
1438 of a disposition order. Counsel should maintain contact with both the youth and the agency
1439 or agencies responsible for implementing the court's order, and:

1440 i. counsel the youth and inform the youth's family concerning the order and its
1441 implementation;
1442 ii. ensure the timely and appropriate implementation of the order; and
1443 iii. ensure the youth's rights are protected as the youth's disposition is
1444 implemented.

1445
1446 (b) Defense counsel should monitor the implementation of the youth's disposition order.
1447 i. If it appears that additional or different services are needed to meet the needs of
1448 the youth, counsel should seek to modify the dispositional plan or order, as
1449 consistent with the youth's stated interests.
1450 ii. If it appears the youth no longer needs rehabilitative services from the juvenile
1451 court and does not pose a risk to public safety, defense counsel should seek to
1452 modify or terminate disposition early.

1453 (c) Relevant government jurisdictions should ensure that defense counsel have the
 1454 authority and funding to continue representation after disposition consistent with these
 1455 standards.
 1456

1457 **STANDARD 12.8 APPELLATE ADVOCACY**
 1458

1459 (a) After adjudication and disposition, defense counsel should
 1460 i. explain to the youth the meaning and consequences of the court's judgment and
 1461 the youth's right to appeal any delinquency disposition or other court orders;
 1462 ii. give the youth a professional judgment as to whether there are meritorious
 1463 grounds for appeal and the probable results of an appeal; and
 1464 iii. explain to the youth the advantages and disadvantages of an appeal.
 1465

1466 (b) Defense counsel should take whatever steps are necessary to protect the youth's right
 1467 to appeal any illegal disposition or other court order, as consistent with the youth's stated
 1468 objectives.
 1469

1470 **PART XIII: RESPONSIBILITIES OF DETENTION AND RESIDENTIAL STAFF**
 1471

1472 **STANDARD 13.1 POLICIES AND PROTOCOLS**
 1473

1474 (a) Lawyers in the juvenile justice system should advocate for comparable or better
 1475 treatment and services in juvenile detention settings than the youth would receive if
 1476 allowed to remain in the community.
 1477
 1478

1479 (b) Detention and residential facility staff should develop internal policies to eliminate
 1480 barriers in detention to the provision of appropriate services to dual-status youth in
 1481 detention. Such internal policies should, at a minimum:

- 1482 i. ensure regular communication between detention and residential staff and child
 1483 welfare and other youth-serving agencies and service providers with a legal obligation
 1484 to the youth;
- 1485 ii. ensure that youth are transported to and from provider appointments, if safety and
 1486 flight risks can be managed during transport;
- 1487 iii. develop or revise visitation policies to allow foster parents, guardians, family
 1488 members, significant others, and representatives from the child welfare agencies and
 1489 service providers to visit youth in detention; and
- 1490 iv. provide private and appropriate physical space for youth to meet with foster parents,
 1491 guardians, family members, significant others, and representatives from the child
 1492 welfare agencies and service providers.

REPORT

History of the ABA Standards for Criminal Justice

The idea of developing the *ABA Standards for Criminal Justice* was formulated in 1963. The various chapters in the first edition of the Standards were approved by the ABA House of Delegates between 1968 and 1973. They were described by Chief Justice Warren Burger as the “single most comprehensive and probably the most monumental undertaking in the field of criminal justice ever attempted by the American legal profession in our national history”.

Beginning in 1978, the ABA House of Delegates approved revisions to the Standards. Publications of its second edition occurred in 1980. Since that time, periodic changes have been made to the Standards and publication of these Prosecution Function and Defense Function Standards would begin the Fourth edition of the Standards.

Overview of the Recommended Changes

It has been over 20 years since the third edition of the Prosecution Function and Defense Function Standards were passed by the ABA House of Delegates. In that time there have been many changes in the way that criminal cases are tried. These updated Standards reflect these changes and create best practices in consideration of those changes. In addition to several new Standards noted in the Table of Contents, every Standard has been revised since the previous edition.

The first set of black letter Standards propose changes to Chapter Three, “The Prosecution Function,” of the Standards. The second set of black letter Standards propose changes to Chapter Four, “The Defense Function,” of the Standards. Once approved, they will begin the Fourth Edition of the Standards.

These chapters covers the function of prosecutors and defense counsel. The recommended revisions represent a comprehensive examination of Chapter Three and Four of the *ABA Standards for Criminal Justice*, Third Edition, now more than two decades old.

Background

The proposed black letter standards in these chapters emerge from an effort of more than eight years, begun with the work of an updating task force in March 2006. The Task Force was appointed by the Criminal Justice Standards Committee, a Standing Committee of the Criminal Justice Section. The Task Force, which focused on the standards relating to the prosecution and defense function first met in March 2006 to chart direction. After 11 meetings the Task Force submitted a draft to the Criminal Justice Section Standards Committee in May 2009. After 13 Standards Committee meetings, the draft was submitted to the Criminal Justice Section Council for review at

112A

the Spring 2013 Meeting. After four Council meetings the Criminal Justice Section Council approved these revised Standards at its April 2014 meeting.

The final proposed standards are, accordingly, the result of careful drafting and extensive review by representatives of all segments of the criminal justice system – judges, prosecutors, defense counsel, court personnel and academics active in criminal justice teaching and research. Circulation of the standards to a wide range of outside expertise also produced a rich array of comment and criticism which has greatly strengthened the final product.

Proposed Amendments

Since these chapters were last amended, there have been dramatic developments in the area of legal ethics. Thousands of new judicial decisions have been handed down. Hundreds of new books and articles touching upon the ethics of our profession have been published. Indeed, the proper role and function of prosecutors and defense counsel has been a particularly topical focus of discussion, debate and controversy in recent years.

The Fourth Edition of the Prosecution and Defense Function Standards substantively revises all of the Standards in the previous edition. In addition, this edition proposes eight new Standards, and two new sections of Standards: *Prosecutorial Relationships* and *Appeals and Other Conviction Challenges*.

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.

112A

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

GENERAL INFORMATION FORM

Submitting Entity: Criminal Justice Section

Submitted By: Matthew Redle, Chair

1. Summary of Resolution(s). This resolution adopts the *ABA Criminal Justice Standards Relating to 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.

These standards will be used to support ABA Governmental Affairs Office Lobbying efforts, as well as to guide practitioners in the juvenile justice system. These standards will also be used to support amicus briefs.

8. Cost to the Association. (Both direct and indirect costs) None.
9. Disclosure of Interest. (If applicable) None.
10. Referrals.

Standing Committee on 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

112A

Youth at Risk
Young Lawyer's Division
Civil Rights and Social Justice
Government and Public Sector Lawyers
Health Law
International Law
National Conference of Federal Trial Judges
National Conference of State Trial Judges
Law Practice Division
Litigation
Science & Technology
Commission on Sexual Orientation and Gender Identity
Center for Children and the Law

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

EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution adopts the ABA Criminal Justice Standards Relating to Dual Jurisdiction Youth.

2. Summary of the Issue that the Resolution Addresses

This resolution adopts the ABA Criminal Justice Standards Relating to Dual Jurisdiction Youth, creating standards to address the unique situations for juveniles caught in two court systems at the same time, and provide guidance for judges, prosecutors, defense attorneys and other personnel as to best practices in these situations.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The resolution adopts the standards as ABA policy, allowing the standards to be used as training and guides for practitioners, and for lobbying efforts or in amicus briefs.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None.