



NDAA National Prosecution Standards, Fourth Edition (2023) **Part V, Juvenile Justice**

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1. Juvenile Justice

The primary duty of the prosecutor is to seek justice while fully and faithfully representing the interests of the state. While the safety and welfare of the community, including the victim, is their primary concern, prosecutors should consider the special circumstances and rehabilitative potential of the youth to the extent they can do so without unduly compromising their primary concern. Formal charging documents for all cases referred to juvenile or adult court should be prepared or reviewed by a prosecutor. To the extent possible, a prosecutor should appear at all hearings concerning a youth accused of an act that would constitute a crime if they were an adult.

1.1 Personnel and Resources

The prosecutor's office should devote specific personnel and resources to fulfill its responsibilities with respect to juvenile delinquency proceedings, and all prosecutors' offices should have an identified juvenile unit or attorney responsible for representing the state in juvenile matters. For smaller and/or rural jurisdictions, it may be appropriate to combine resources when possible, however, specialized juvenile training should be made available to prosecutors who will appear in juvenile court in addition to their adult court commitments.

1.2 Qualification and Training of Prosecutors in Juvenile Court

Specialized training and experience should be required for prosecutors assigned to juvenile delinquency cases. Chief prosecutors should select prosecutors for juvenile court on the basis of their skill and competence, including knowledge of juvenile law, interest in working with children and youth, interest in community engagement, education, and experience. Entry-level attorneys in the juvenile unit should be as qualified as any entry-level attorney, and receive special, ongoing training regarding juvenile matters, including adolescent development.

1.3 Screening Juvenile Cases

The prosecutor or a designee should review all cases, which may be reviewed pursuant to their state statutes, for legal sufficiency and then decide whether a case will be diverted, formally petitioned with the juvenile court, or transferred to criminal court. If the facts of the case are not legally sufficient to warrant action, the matter should be terminated or returned to the referral source pending further investigation or receipt of additional reports.

1.4 Diversion

The prosecutor or a designee should be responsible for recommending which cases should be diverted from formal adjudication. No case should be diverted unless the prosecutor reasonably believes that they could substantiate the criminal or delinquency charge against the youth. Treatment, restitution, or public service programs developed in his or her office may be utilized, or the case can be referred to existing probation or community service agencies. To the extent possible, when determining the conditions of diversion, prosecutors should consider the individual treatment and service needs of the youth in order to tailor services accordingly. As much as possible, prosecutors should support efforts to address not only the needs of the youth, but also those of the youth's family that would help in rehabilitating the youth.

1.5 Charging and Diversion Criteria

The prosecutor or a designee must further review legally sufficient cases to determine whether they should be filed formally with the juvenile court, transferred or diverted for treatment, services, or probation. In determining whether to file formally or, where allowed by law, divert, the prosecutor or designated case reviewer should consider the following factors in deciding what result best serves the interests of the community and the youth:

- a. The seriousness of the alleged offense, including whether the conduct involved violence or bodily injury to others, including the victim;
- b. The role of the youth in that offense;
- c. The nature and number of previous cases presented by law enforcement or others against the youth, and the disposition of those cases;
- d. The youth's age, maturity, and mental status;
- e. The existence of appropriate treatment or services available through the juvenile court, child protective services, or through diversion;
- f. Whether the youth admits guilt or involvement in the offense charged (If allowed by statute), whether they accept responsibility for the conduct and the youth's attitude in regard to the crime;
- g. The dangerousness or threat posed by the youth to the person or property of others;
- h. The decision made with respect to similarly-situated youths; and
- i. Recommendations of the referring agency, victim, law enforcement, and advocates for the youth, in consideration of the youth's rehabilitative potential.

1.6 Transfer to Criminal Court

The transfer of cases to criminal court should be reserved for the most serious, violent, and chronic offending. Prosecutors should make transfer decisions on a case-by-case basis and take into account the individual factors and state requirements of each case including, among other factors, the gravity and violent nature of the current alleged offense, the record of previous delinquent behavior of the youth charged, and the availability of adequate treatment, services and dispositional alternatives in juvenile court.

1.7 Plea Agreements

The decision to enter into a plea agreement should be governed by both the interests of the state and those of the youth, although the primary concern of the prosecutor should be protection of the community as determined in the exercise of traditional prosecutorial discretion. The prosecutor should also consider the youth's potential for rehabilitation.

1.8 Prosecutor's Role in Adjudication (Trial)

At the adjudicatory hearing, the prosecutor should assume the traditional adversarial role of a prosecutor, acting in the best interests of justice and community safety.

1.9 Dispositions

The prosecutor should take an active role in the dispositional hearing and make a recommendation consistent with community safety to the court after reviewing reports prepared by prosecutorial staff, the probation department, and others. In making a recommendation, the prosecutor should seek the input of the victim and consider the rehabilitative needs of the youth, provided that they are consistent with community safety and welfare.

1.10 Victim Impact

Victims of crimes should be informed of all important stages of the proceedings to the extent feasible, upon request or as required by law. The prosecutor should be aware of any obligations imposed by victims' rights legislation in his or her particular jurisdiction. The prosecutor should take care to balance the extent of information provided to the victim with the need to protect the integrity of the case and process.

1.11 Evaluation of Programs

The prosecutor should periodically review diversion and dispositional programs, both within and outside the prosecutor's office, to ensure that they provide appropriate supervision, treatment, restitution requirements, or services for the youth. The prosecutor should maintain a working relationship with all outside agencies providing diversion and dispositional services to ensure that the prosecutor's decisions are consistent and appropriate. If the prosecutor discovers that a youth or class of youths is not receiving the care and treatment envisioned in disposition or diversion decisions, the prosecutor should inform the court of this fact.

1.12 Duty to Report

If the prosecutor becomes aware that the directives and/or sanctions imposed by the court are not being administered by an agency to which the court assigned the youth or that a treatment provider is engaging in unethical or questionable practices, the prosecutor, at minimum, should report the concerns to the court.

Commentary

Over the last twenty years, there has been significant attention paid to the field of juvenile justice. The decline in the number of juvenile delinquency cases since 1997, coupled with the increase in alternatives to incarceration and strategies based on research have created greater opportunities for prosecutors to serve a more expansive role in their respective communities. No longer confined to the courtroom, juvenile court prosecutors play an important and influential role in delinquency prevention and early intervention efforts. They serve as leaders by creating innovative programs and policies that make crime prevention a key component of the community safety mission.

The prosecutor is charged to seek justice just as he does in criminal prosecutions. The prosecutor in the juvenile system, however, is further charged to give special attention to the circumstances and needs of the youth to the extent that it does not conflict with the duty to fully and faithfully represent the interests of the state. This balanced approach reflects the philosophy that the safety and welfare of the community is enhanced when youths, through counseling, restitution, or more extensive rehabilitative efforts and sanctions, are dissuaded from further criminal activity.

To efficiently carry out his or her duties, it is desirable that the prosecutor appear at all stages of the proceedings. In so doing, the prosecutor maintains a focus on the safety and well-being of the community at each decision-making level. Further, because the juvenile system is increasingly adversarial, the prosecutor fulfills an important role in addressing the positions of juvenile and social service advocates. The prosecutor's presence guarantees the opportunity to exercise continuous monitoring at each stage and broad discretion to ensure fair and just results.

These standards further emphasize professionalism in juvenile court work. They provide that attorneys in juvenile court should be experienced, competent, and interested. Because of the adversarial nature of juvenile proceedings, the prosecutor should be responsible for screening to determine whether there is sufficient evidence to believe that a crime was committed and that the youth committed it. A case should only be further processed if it is legally sufficient. "Legally sufficient" means a case in which the prosecutor believes that he can reasonably substantiate the charges against the youth by admissible evidence at trial.

These determinations should be made by the prosecutor.

After a determination of legal sufficiency, the next decision to be made is whether the case should be diverted, referred to juvenile court or transferred to criminal court. This decision has both legal and social implications. It should be made either by an experienced prosecutor who has an interest in youths or by other case screeners under the guidance of a prosecutor. The prosecutor, in exercising this function, should consider the rehabilitative needs of the youth while upholding the safety and welfare of the community. These decisions should be made without unreasonable delay. Prompt determinations generally promote confidence in the system and fairness to the victim, the community, and the youth. Further, prompt decisions are more likely to result in rehabilitation of the youth by providing more immediate attention.

Diversion of cases in juvenile court from the formal charging, adjudication, and disposition procedure has become common for less serious offenses. The impetus for such a procedure is that because youths are in the process of cognitive, moral, and social development, there is a unique opportunity presented at the juvenile court level to dissuade them from criminal activity. Advances in neuroscience confirm that the adolescent brain is undergoing significant development, and the neuroplasticity creates tremendous opportunity to influence youth in a positive way. However, science also confirms the tremendous vulnerability of the adolescent brain to drugs and alcohol. This is a concern for juvenile court prosecutors. Many youths will never enter the justice system again if their cases are handled properly through a robust diversion program. Treatment, restitution, or service programs often are viable alternatives to court

processing. These standards describe the opportunity for prosecutors to be involved either in diversion programs based in their offices or through referral to existing probation or community service agencies.

In many jurisdictions, transfer of youths to criminal court is controlled by statute or practice. This standard simply provides guidance for prosecutors in using discretion to the extent that they participate in this process, and includes consideration of the rehabilitative potential of a youth. Given the general decline in the number of cases being transferred, this option should be reserved for serious, violent, and chronic offending.

These standards reflect the consensus that plea agreements are appropriate for juvenile court. A plea agreement should only be entered into when there is sufficient admissible evidence to demonstrate a prima facie case that the youth has committed the acts alleged in the petition to which he is pleading guilty. The appropriateness and extent to which plea agreements are used are matters of office policy to be determined by the chief prosecutor. The prosecutor should always take steps to ensure that the resulting disposition is in the interest of the community with due regard being given to the rehabilitative needs of the youth. In those matters that are not diverted or disposed of without trial the prosecutor should assume the traditional prosecution role in the adversarial process with respect to determination of guilt or innocence. This standard, therefore, suggests that the rules of evidence apply. Prosecutors should strive in the juvenile court setting to maintain a distinction between a factual determination of innocence or guilt and a determination of disposition. This approach promotes fairness to both the victim and the community and enhances the integrity of juvenile court findings.

Prosecutors should offer dispositional alternatives to the court that reduce risk and increase the protective factors that will make a youth successful in the future. When a youth presents a danger to the safety and welfare of the community, the prosecutor should voice this concern. On the other hand, when appropriate, the prosecutor may offer a dispositional recommendation that is less restrictive than what the juvenile court judge may contemplate imposing.

Given the unique role that prosecutors play across the justice continuum, they have a responsibility to ensure that all decisions are fair and just. They must base decisions on factors such as community safety, accountability, and rehabilitation. Race, ethnicity, and/or gender are never appropriate factors in decision-making. In order to ensure that decisions and policies are fair and equal, it is important to track case processing and outcomes. Data-driven practices are an important component of the fair administration of justice. Prosecutors should examine strategies and alternatives that decrease racial, ethnic, and gender disparities while maintaining community safety.

This standard also suggests that, to the extent possible, the prosecutor should take a leadership role in the community in assuring that a wide range of appropriate dispositional alternatives are available for youth who are adjudicated delinquents. In addition, the prosecutor is encouraged to follow up on cases to ensure that dispositions are upheld, court ordered sanctions are administered, and treatment is provided. Similarly, prosecutors, to the extent possible, should take an active role in prevention and early intervention efforts.

