

Chapter 4

Commencement of Proceedings, Intake, Diversion and Informal Adjustment

Summary of Contents

This chapter examines the process by which complaints against juveniles in Pennsylvania are received, screened, and either petitioned or diverted from the system.

- § 4-1. Commencement of Proceedings, Intake, Diversion and Informal Adjustment in General
- § 4-2. Best Practices
- § 4-3. The Principles of Diversion
- § 4-4. Commencing Proceedings: Written Allegation Procedures
- § 4-5. The Boundaries of Delinquency Jurisdiction
- § 4-6. Venue in Delinquency Cases
- § 4-7. Intake Conferences
- § 4-8. Informal Adjustment

Key Statutes

- 42 Pa.C.S. §1520 (adjudication alternative program)
- 42 Pa.C.S. §6302 (definitions of “child,” “delinquent act,” “delinquent child”)
- 42 Pa.C.S. §6303 (scope of chapter)
- 42 Pa.C.S. §6304 (powers and duties of probation officers)
- 42 Pa.C.S. §6321 (commencement of proceedings)
- 42 Pa.C.S. §6322 (transfer from criminal proceedings)
- 42 Pa.C.S. §6323 (informal adjustment)
- 42 Pa.C.S. §6340 (consent decree)
- 42 Pa.C.S. §6352 (disposition of delinquent child)
- 11 P.S. § 890.1 (Interstate Compact for Juveniles, Act 54 of 2004)
- 18 P.S. §§11.201, 11.216 (victim notice & comment rights prior to diversion)

Rules¹

- Rule 132, Pa.R.J.C.P. (victim’s presence)
- Rule 151, Pa.R.J.C.P. (assignment of counsel)
- Rule 200, Pa.R.J.C.P. (commencing proceedings)
- Rule 210, Pa.R.J.C.P. (arrest warrants)
- Rule 231, Pa.R.J.C.P. (written allegation)

- Rule 232, Pa.R.J.C.P. (contents of written allegation)
- Rule 233, Pa.R.J.C.P. (approval of private written allegation)
- Rule 241, Pa.R.J.C.P. (notice of detention hearing)
- Rule 242, Pa.R.J.C.P. (detention hearing)
- Rule 300, Pa.R.J.C.P. (venue)
- Rule 302, Pa.R.J.C.P. (inter-county transfer)
- Rule 310, Pa.R.J.C.P. (pre-intake duties, scheduling, and notice)
- Rule 311, Pa.R.J.C.P. (intake conference)
- Rule 312, Pa.R.J.C.P. (informal adjustment)
- Rule 313, Pa.R.J.C.P. (detention from intake)
- Rule 360, Pa.R.J.C.P. (summons and notice)
- Rule 370, Pa.R.J.C.P. (consent decree)
- Rule 390, Pa.R.J.C.P. (notice of request for transfer to criminal proceedings)
- Rule 409, Pa.R.J.C.P. (adjudication of delinquency)
- Rule 500, Pa.R.J.C.P. (summons and notice of the dispositional hearing)
- Rule 512, Pa.R.J.C.P. (dispositional hearing)
- Rule 513, Pa.R.J.C.P. (aids in disposition)
- Rule 600, Pa.R.J.C.P. (summons and notice of the commitment review, dispositional review, and probation revocation hearing)
- Rule 610, Pa.R.J.C.P. (dispositional and commitment review)
- Rule 631, Pa.R.J.C.P. (termination of court supervision)
- Rule 632, Pa.R.J.C.P. (early termination of court supervision by motion)
- Rule 597, Pa.R.Crim.P. (procedures following the filing of a motion requesting transfer from criminal proceedings to juvenile proceedings)

JCJC Standards²

- Juvenile Court Intake
- Inter-County Transfer of Delinquency Cases
- Juvenile Court Jurisdictional Procedures

§ 4-1 Commencement of Proceedings, Intake, Diversion and Informal Adjustment in General

Many important decisions are made at the juvenile justice system’s “front door.” The initial decisions made with regard to the processing of complaints of alleged juvenile misconduct, and the way they are made—the values and priorities that are reflected, the factors that are weighed, the views and interests that are considered—have enormous consequences for the safety of the community, for crime victims, and for the young people whose futures are

in the balance. Although the District Attorney in any Pennsylvania county may require that an attorney for the Commonwealth initially receive and approve some or all written allegations, generally these initial decisions are entrusted to juvenile probation officers, who are empowered to “receive and examine complaints and charges of delinquency or dependency of a child for the purpose of considering the commencement of proceedings....”³ But it is juvenile court judges who are ultimately responsible for ensuring that both the intake/diversion process and its results are fundamentally fair, rational, and consistent with the purposes of the Juvenile Act. Judges cannot ignore this responsibility—in effect, “taking what comes” into their courtrooms—without neglecting a significant part of their jobs.

Juvenile court judges are ultimately responsible for ensuring that their courts’ intake practices are consistent with the purposes of the Juvenile Act and the Juvenile Court Rules.

In fulfilling their intake oversight responsibilities, juvenile court judges exercise three basic kinds of leadership:

- ***Direct administrative leadership.*** Judges who administer their courts have a strong voice in the framing of overall intake/diversion policy and the setting of specific guidelines governing case screening, assessment and investigation, criteria for dismissal/diversion, and the contents and enforcement of diversion agreements.
- ***Bench leadership.*** Judges also have considerable indirect authority to shape intake and diversion policy from the bench—for example, by questioning the need for formal proceedings in cases that seem to have been inappropriately petitioned, or suggesting diversion options that may have been overlooked by the parties.
- ***Community leadership.*** As teachers and leaders in the community, judges have opportunities to educate people regarding the benefits of diversion in appropriate cases, to advocate for a broader range of community diversion options, and to recruit community members into the work of diversion.

Juvenile court judges in Pennsylvania should make use of their oversight authority to ensure that the intake/diversion process serves the larger purposes of the state’s juvenile justice system—that is, that it generates decisions that will protect the community, ensures the juvenile’s attendance at court proceedings, and provides for the diversion of appropriate cases from formal court processing.

§ 4-2 Best Practices

- The juvenile court judge must ensure that the policies and procedures governing intake, diversion and informal adjustment agreements comply with the Rules of Juvenile Court Procedure and the Juvenile Act, and that the Rules and Act are followed by probation officers, attorneys and others involved in the delinquency system.
- Judges should ensure that the submission of the written allegation and the scheduling of the intake conference are timely, in order to provide prompt attention to the risks and needs of juveniles as well as the concerns of crime victims.
- Judges should encourage the development of a range of diversion options, through community partnerships that provide opportunities for low-risk juveniles to be held accountable without the need for formal court processing.
- Judges should make use of their oversight authority to ensure that the intake/diversion process serves the principles of “balanced and restorative justice”.
- The utilization of structured decision-making tools during intake is encouraged, as these tools are designed to help system professionals make consistent, appropriate, effective, and fundamentally fair decisions.⁴
- Judges and related personnel must understand the impact of trauma on children. Children should be screened to identify those who may be in need of specialized services.
- Utilization of the Pennsylvania Detention Risk Assessment Instrument (PaDRAI) is encouraged in all cases where there are new allegations of delinquency and detention is being considered. The decision to place a juvenile in a secure detention center represents one of the most important decisions of juvenile court processing and could be one of the most significant events in a young person’s life. The use of a validated detention risk assessment instrument can help ensure that this decision is structured and consistent, as well as racially and ethnically neutral. (see Chapter 5)
- The juvenile court administrative judge, chief juvenile probation officer, and district attorney should collaborate to develop written policies and procedures delineating victim contact and notification procedures and responsibilities, and laying out how information provided by victims will be used when diversion is being considered.

- Where allegations of delinquency involve non-resident juveniles, the best practice is for the juvenile probation department in the county where the offense occurred to contact the juvenile probation department in the county where the juvenile resides, in order they may jointly determine the most appropriate processing of the allegation. Judges should communicate with their juvenile probation department to ensure that such inter-county transfer cases are processed in a timely manner.

§ 4-3 Principles of Diversion

The Pennsylvania Juvenile Act and Rules of Juvenile Court Procedure endorse the fundamental principle that pre-adjudication diversion is appropriate in certain circumstances, and provide mechanisms to divert youth from formal processing within the juvenile justice system. These include informal adjustment⁵ and consent decrees⁶, which are diversion options that are available after the intake process is initiated. However, the diversion of cases can also occur at the law enforcement level through programs such as youth aid panels or youth commissions, or through the minor judiciary⁷ in summary offense cases.

Diverting children from formal court processing can prevent the negative long-term consequences of an adjudication of delinquency. However, diversion policies and practices must incorporate safeguards to prevent “net-widening”— subjecting more youth to juvenile justice system intervention than would be the case in the absence of these alternatives. Over-servicing low-risk youth can increase recidivism. Diversion programs must therefore focus on lower-risk youth who would be subject to further system penetration in the absence of these programs. Consideration for diversion should be based on clear eligibility guidelines, which may include such categories as first-time offenders, youth referred for failure to comply with a sentence imposed by a magisterial district judge, or youth referred for less serious offenses occurring in the school or community.

Treatment for juveniles with specialized needs such as behavioral health disorders, substance use issues, or developmental disabilities can be effectively provided in conjunction with a pre-adjudication diversion. Judges can ensure that the treatment needs of these youth will be met by encouraging collaboration among treatment providers and juvenile probation departments.

Diversion should be carefully aligned with the principles of “balanced and restorative justice”, which are the foundation of Pennsylvania’s juvenile justice system. All programmatic protocol and components should address the following principles:

Community Protection. Diversion is a sensible approach to cooperative, “entry-level” offenders who are unlikely ever to wind up in juvenile court again.⁸ Even if it were possible to process all offenses formally, the public’s long-term safety interest might be better served by measured, informal responses to minor offending—particularly if they are designed to strengthen and promote community bonds and attachments by engaging community members in the work of holding young people accountable. Obviously, diverting the cases of juveniles who do not pose a threat to the community’s safety makes it possible to reallocate court and probation resources to higher risk offenders.

Accountability

Youth considered for diversion should be held accountable to the victims of their alleged misconduct. Diversionary activities must seek to redress wrongs suffered by victims. Examples of such activities may include an apology to the victim if requested by the victim, requiring the payment of restitution and arranging restorative practices in appropriate cases. Informal diversion programs can often engage victims to a degree that is difficult for courts, giving them a voice, a role in the process, and a sense that their needs and interests have not been ignored. Eligible youth should be helped to understand the harm they have caused, be given the opportunity to learn the impact of their misconduct, and be required to make reparation to the affected victim to the extent possible. Where no individual victim is identified, eligible youth should be assisted in recognizing their “community” as the victim. The juvenile probation officer must include the payment of restitution agreed to be owed to the victim as a condition of successful completion of any diversion or informal adjustment by a juvenile.⁹

Competency Development

Diversion programs can target a juvenile’s competency development needs as well, through immediate treatment, training and services, while avoiding the significant and often needless harm to the juvenile’s prospects that could result from a formal delinquency adjudication.¹⁰ Information should be obtained about the eligible youth, through an interview or assessment process, to ensure that any diversion effort will include youth-specific competency development activities designed to decrease the likelihood of future arrests or referrals to juvenile court.

Diversion Options

Every juvenile court should have available a continuum of diversion programs that addresses local needs. Juvenile court judges should take the lead in enlisting broad support from police, prosecutors, schools, social service agencies, businesses, churches, and victims' organizations for the development of a complete diversion continuum. Judges should also look for opportunities, both on and off the bench, to educate members of the public regarding the purpose and value of diversion and to encourage community involvement in the work of diversion.

Elements of an effective diversion continuum will vary from community to community, but must include a range of options. The following examples can operate as stand-alone diversion programming or be used in conjunction with other dispositions such as informal adjustments, consent decrees or a probation disposition following an adjudication of delinquency:

- ***Work service/restitution programs.*** Community service and restitution are among the juvenile justice system's most basic "teaching tools." By working to pay in some way for the damage they have done, juvenile offenders learn to understand and accept responsibility for the consequences of their wrongdoing. All Pennsylvania juvenile courts should establish restitution and community service programs, and develop policies that ensure that reasonable restitution obligations are imposed on juveniles whenever feasible, that private sector and/or subsidized employment is available to enable indigent juveniles to pay restitution, and that a system is in place to track and report individual and aggregate data on restitution ordered and collected annually. Courts should also develop guidelines to determine the amount of community service that should be imposed in individual cases, and collect and report individual and aggregate data on community service required and performed annually.
- ***Offense-specific education programs.*** Many jurisdictions have established diversion programs especially designed for particular categories of offenders, such as shoplifters, vandals, truants, lower risk juveniles with anger management problems, and substance-abusers.
- ***Competency development programs.*** Programs designed to address juveniles' skill deficits and build on their strengths might include tutoring, mentoring, counseling and treatment programs.

- **Restorative Practices.** Restorative justice practices come in many different forms but are ultimately rooted in core restorative principles. Practices used in Pennsylvania include: restorative group conferencing, victim offender dialogue, community dialogues, victim impact panels, impact of crime classes, apologies, and community justice panels (also referred to as youth aid panels). At their foundation, all these restorative practices require juveniles to understand the harms that were incurred and take steps to make things right. Successful restorative practices encourage collaboration, facilitate relationship-building, and are based on the voluntary participation of all parties.¹¹

Victim Input

Victims should be informed whenever diversion is a possibility, and given a chance to register their views regarding diversion as part of the intake consultation. Although a victim’s opposition and/or unwillingness to participate should not by itself rule out diversion in an otherwise appropriate case, the victim’s viewpoint and desires should be carefully weighed in diversion decision-making, and taken into account in routine reviews of intake decisions.

Victims should be informed whenever diversion is a possibility and victims’ views should be carefully weighed in diversion decision-making.

Before proceeding with an intake conference, a juvenile probation officer is required by the Rules to afford the victim “the opportunity to offer prior comment on the disposition of the case if informal adjustment or an alternative resolution of the case is being considered.”¹² The Rules provide additional guidance specifically relating to victim notice and input when a written allegation is informally adjusted. (See § 4-8).

Law Enforcement Input

Often, arresting officers also have pertinent information, either about the youth or the circumstances of the offense, which should be taken into account in diversion decision-making. Where possible, juvenile probation officers should seek input from arresting officers regarding the appropriateness of informal adjustment in individual cases

§ 4-4 Commencing Proceedings

The Rules¹³ provide that, except for cases that are transferred from one court to another, every delinquency proceeding must be commenced by one of the following:

- 1) the submission of a written allegation,
- 2) a warrantless arrest followed promptly by the submission of a written allegation,
- 3) the filing of a certification with the court that a juvenile has failed to comply with a lawful sentence imposed for a summary offense,
- 4) transfer of a case from a criminal proceeding,¹⁴
- 5) the court accepting jurisdiction of a resident juvenile from another state; or
- 6) the court accepting supervision of a juvenile pursuant to another state's order.

The written allegation is not a petition, in that it does not necessarily lead to formal court action. But it sets in motion the process of determining whether the court has jurisdiction over the matter, and if so, whether the formal proceedings are warranted.

Written Allegation Procedures

Although written allegations may in some instances originate from private citizens, they are for the most part submitted by law enforcement. The content requirements for written allegations

The written allegation is the document that initiates delinquency proceedings.

loosely track those for petitions, in part to facilitate the common practice of preparing petitions based on written allegations. Every written allegation must contain all of the following¹⁵:

- 1) the name of the person making the allegations;
- 2) the name, date of birth, and address, if known, of the juvenile, or if unknown, a description of the juvenile;
- 3) a statement that it is in the best interest of the juvenile and the public that the proceedings be brought, and that the juvenile is in need of treatment, supervision, or rehabilitation;
- 4) the date when the offense is alleged to have been committed (or if the specific date is unknown or the offense is a continuing one, that it was committed on or about any date within the period of limitations);
- 5) the place where the offense is alleged to have been committed;

- 6) a) a summary of the facts sufficient to advise the juvenile of the nature of the offense alleged; and
b) the official or customary citation of the statute and section, or other provision of law which the juvenile is alleged to have violated, but an error in such citation shall not affect the validity or sufficiency of the written allegation;
- 7) the name and age of any conspirators, if known;
- 8) a statement that the acts were against the peace and dignity of the Commonwealth of Pennsylvania or in violation of an ordinance of a political subdivision;
- 9) a notation indicating whether the juvenile has or has not been fingerprinted and photographed;
- 10) a notation if criminal laboratory services are requested in the case;
- 11) a verification by the person making the allegation that the facts set forth in the written allegation are true and correct to the person's personal knowledge, information, or belief, and that any false statement made is subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;
- 12) the signature of the person making the allegation and the date of execution of the written allegation; and
- 13) the name and address of the juvenile's guardian, or if unknown, the name and address of the nearest adult relative.

Responsibility for initial receipt and review of written allegations varies from county to county. Generally, they are received in the first instance by a juvenile probation officer, with copies forwarded to the attorney for the Commonwealth. However, a county District Attorney may elect to require that an attorney for the Commonwealth initially receive and approve written allegations (including those made in connection with arrest warrant applications), either in all cases or in a designated category of cases, as specified in a formal certification of election filed with the local Court of Common Pleas.¹⁶ In such counties, the juvenile probation department is notified and receives a copy of the written allegation only after the approval or disapproval of the attorney for the Commonwealth.

Private Written Allegations

A written allegation submitted by a non-law enforcement source must be approved or disapproved (by a juvenile probation officer or the attorney for the Commonwealth, depending on the county's written allegation review arrangement) "without unnecessary delay."¹⁷ If the written allegation is disapproved, the person submitting the allegation is entitled to a written statement of reasons, and may file a motion with the Court of Common

Pleas for review of the decision. If the court overturns the disapproval of a written allegation, it should direct the decision-maker to proceed to a consideration of whether informal adjustment or petitioning is warranted in the case.

Warrantless Arrest

An arrest without a warrant is authorized (1) when the offense is a felony or misdemeanor committed in the presence of the police officer making the arrest; (2) upon probable cause when the offense is a felony; or (3) upon probable cause when the offense is a misdemeanor for which warrantless arrest is specifically authorized by statute.

Failure to Comply with Sentence for a Summary Offense

Juvenile courts may exercise delinquency jurisdiction when the juvenile has failed to comply with a lawful sentence imposed for the summary offense by a magisterial district judge. In such cases, the magisterial district judge would certify the failure to comply with the juvenile probation office, which may resolve these cases informally by imposing conditions such as community service, referring to educational programming, or collecting outstanding financial obligations. Many juvenile probation departments across the state place any monies collected in these types of cases into restitution funds, which are dedicated exclusively for payments to victims of juvenile offenders.¹⁸

It is noteworthy that where the summary offense arose out of “the same episode or transaction” as a delinquent act, the summary offense must be specified in the petition.¹⁹

Transfer from Criminal Proceedings

A transfer from criminal proceedings, otherwise known as “decertification,” can occur when the criminal court determines that the public interest is best served by transferring a case to juvenile court. Transfer of a criminal case can also occur when the juvenile is found guilty of a crime classified as a misdemeanor and the juvenile and the attorney for the Commonwealth agree to the transfer to juvenile court for disposition.²⁰ When a case is transferred from a criminal proceeding to juvenile court, the entire case file is to be transferred. The accusatory pleading will initiate the commencement of proceedings in the juvenile court and may serve in lieu of a petition otherwise required, unless the court directs the filing of a petition.²¹

Interstate Compact for Juveniles (ICJ)

The Interstate Compact for Juveniles (ICJ) is the only legal means to transfer a juvenile’s probation or parole supervision from one state to another and to return juveniles from one

state to another.²² The administration of the ICJ in Pennsylvania is coordinated by the Office of Children Youth and Families and the Pennsylvania Department of Human Services. To be eligible for services under the Revised ICJ, the juvenile must fulfill all of the following conditions:

- Be classified as a juvenile in the sending state;
- Be an adjudicated delinquent or adjudicated status offender, or have a deferred adjudication in the sending state;
- Be under the jurisdiction of a court or appropriate authority in the sending state;
- Have a plan inclusive of relocating to another state for a period exceeding ninety (90) consecutive days in any twelve (12) month period;
- Have more than ninety (90) days or an indefinite period of supervision remaining at the time the sending state submits the transfer request; and
- Will reside with a legal guardian, relative, non-relative or independently, excluding residential facilities; or be a full-time student at an accredited secondary school, accredited university, college, or licensed specialized training program, and be able to provide proof of acceptance and enrollment.²³

The ICJ procedures that govern “accepting jurisdiction from another state” include situations when a Pennsylvania juvenile commits a crime in another state and that state wants Pennsylvania to accept the disposition of the juvenile and supervise the juvenile.

The ICJ procedures that govern “accepting supervision of a juvenile pursuant to another state’s order” include situations in which a juvenile lives outside of the Pennsylvania, committed the crime outside of Pennsylvania, and is moving to Pennsylvania, and the other jurisdiction would like Pennsylvania to accept the disposition and supervise the juvenile.

Note that transferring supervision does not transfer the jurisdiction of the case. The transfer of supervision should be viewed as a request from one ICJ member state to another to provide services and supervision in support of the sending state’s dispositional order and the terms of supervision. The jurisdiction of a case remains with the court of the sending state. Violations of the conditions of supervision must be handled by the courts of the sending state upon notice from the receiving state, unless the violations constitute new delinquent acts or status offenses under the laws of the receiving state and that state decides to prosecute.²⁴

§ 4-5 The Boundaries of Delinquency Jurisdiction

Upon submission of the written allegation, it must be determined whether the matter falls within the boundaries of delinquency jurisdiction. The jurisdictional determination is based primarily on a review of the allegation itself, supplemented by some verification and examination of the evidence.

Following the receipt of a written allegation, the person entrusted with intake decisions must determine whether the matter described in the written allegation falls within those boundaries.²⁵ Initially, the intake officer must answer two basic questions:

- Are the allegations within the jurisdiction of the juvenile court?
- If so, is it appropriate to schedule an intake conference to determine what further action, if any, should be taken?²⁶

In addition to these two basic questions, good practice requires that every probation office also complete a Pennsylvania Detention Risk Assessment (PaDRAI), either upon receipt of a written allegation or at the time of the intake conference. (See §§ 4-2, 5-1 and 5-2)

Age Limits

In Pennsylvania, juvenile courts have jurisdiction over any “child” who is “alleged to be delinquent.” These terms imply both lower and upper age limits to delinquency jurisdiction, since a “child” must generally be under 18 while a “delinquent child” must be at least 10:²⁷

- **Child.** For purposes of delinquency jurisdiction, a “child” is anyone who is “under the age of 18 years” or “under the age of 21 years who committed an act of delinquency before reaching the age of 18 years.”
- **Delinquent child.** “A child ten years of age or older whom the court has found to have committed a delinquent act and is in need of treatment, supervision or rehabilitation.”

If a child is under the age of ten at the time of the commission of a delinquent act, a dependency petition may be filed.²⁸ In general, an intake officer making an initial jurisdictional determination should verify the juvenile's age, rather than simply accept the age listed on the arrest report.

Offense Limits

Intake decision-makers must also determine whether the conduct alleged in the complaint falls within the delinquency jurisdiction of the juvenile court—that is, whether it constitutes a “delinquent act.” The general definition is as follows:

- ***Delinquent act.*** “The term means an act designated a crime under the law of this Commonwealth, or of another state if the act occurred in that state, or under Federal law, or under local ordinances or an act which constitutes indirect criminal contempt under 23 Pa.C.S. Ch. 61 (relating to protection from abuse).”²⁹

However, the same Juvenile Act provision excludes five basic categories of offenses from the definition of “delinquent act” for purposes of juvenile court jurisdiction. A case in which an excluded offense is alleged must be processed in criminal court—at least initially; as is discussed more fully at §6-1, criminal courts are given some discretion to transfer such cases to juvenile court.³⁰ The following offense categories are excluded:

- ***Murder.*** The juvenile court has no original jurisdiction over a juvenile accused of murder.
- ***Selected offenses involving the use of deadly weapons.*** A number of enumerated offenses are initially excluded from juvenile court jurisdiction when they are committed by a juvenile 15, 16, or 17 years of age at the time of the offense using a “deadly weapon” during the commission of the offense:³¹
 - Voluntary manslaughter
 - Rape
 - Involuntary deviate sexual intercourse
 - First degree felony aggravated assault
 - Aggravated indecent assault
 - First degree felony robbery
 - Robbery of a motor vehicle
 - Kidnapping
 - Any attempt, conspiracy, or solicitation to commit murder or any of these offenses.
- ***Selected repeat offenses.*** The definition of “delinquent act” also initially excludes selected offenses (the same as those listed above, with the exception of aggravated assault) committed by a juvenile 15, 16, or 17 years of age at the time of the offense, who has previously been adjudicated delinquent for any of the offenses on the list:

- Voluntary manslaughter
 - Rape
 - Involuntary deviate sexual intercourse
 - Aggravated indecent assault
 - First degree felony robbery
 - Robbery of a motor vehicle
 - Kidnapping
 - Any attempt, conspiracy, or solicitation to commit murder or any of these offenses.
- ***Offenses committed by juveniles who have previously been found guilty of crimes.*** Once a juvenile has been found guilty of a non-summary offense in a criminal proceeding, subsequent offenses committed by the same juvenile are excluded from the definition of “delinquent act” for jurisdictional purposes.
 - ***Summary offenses.*** A summary offense is not in itself considered a delinquent act for jurisdictional purposes. However, juvenile courts may exercise delinquency jurisdiction over summary offenses where the summary offense arose out of “the same episode or transaction” as a delinquent act. In this case, the summary offense must be specified in the petition.

Determining the appropriate handling of a delinquency allegation is both a legal and a policy decision.

For details regarding age and offense categories that, while not excluded from juvenile court jurisdiction, are eligible for discretionary transfer out of juvenile court, see § 6- 3.

§ 4-6 Venue in Delinquency Cases

Any proceeding under the Juvenile Act may be heard in “the county in which the child resides”; in addition, a delinquency case may be heard in “the county in which the acts constituting the alleged delinquency occurred.”³² In cases in which these are different counties, intake decision-makers may be called upon to weigh the appropriateness of alternative venues.

The JCJC Standards Governing the Inter-County Transfer of Delinquency Cases provide that in a case in which a delinquent act is alleged to have been committed in a county other than the juvenile's county of residence, “adjudicatory proceedings should normally be

conducted in the county in which the delinquent act occurred, unless a specific arrangement to the contrary has been agreed to by the attorneys for the Commonwealth in both jurisdictions.”³³ (Unless the juvenile has been emancipated, the juvenile's county of residence would be the county in which the custodial parents or other guardians or custodians reside.) However, the juvenile probation department presented with delinquency allegations against a nonresident child must promptly “initiate contact with the juvenile probation department in the county of residence to discuss the matter and jointly determine the most appropriate manner for processing the case.” Local district attorneys should be notified and involved in these discussions as well.

There are some good reasons for processing a delinquency case involving a nonresident juvenile in the county in which the alleged delinquent acts occurred. Presumably this will be the more convenient forum in which to weigh evidence and hear witnesses regarding the delinquent acts themselves.

More importantly, this is the forum in which active victim participation in the resolution of the matter is most likely, and intake policy regarding venue determinations should take this into account.

Fact-finding in delinquency cases should normally be conducted in the county in which the alleged delinquent act occurred.

On the other hand, the JCJC Standards governing Inter-County Transfer of Delinquency Cases acknowledge that “in certain cases, it may be appropriate to transfer a matter to the county of residence immediately following the intake conference.”³⁴ The county of residence has the more substantial stake in the accused juvenile's future, after all. So in a case in which a formal adjudication calling for witness testimony is unlikely, for instance, there may be no reason not to transfer the matter. The same may be true in a case in which the court in the juvenile's county of residence happens to be closer to the victim or others involved in the case. But the decision to transfer the matter following the intake conference should be jointly made by the juvenile probation departments and the attorneys for the Commonwealth in the two jurisdictions. If the attorney for the Commonwealth in the county conducting the intake conference objects to a proposed transfer, the case should be transferred only after a court hearing.

Wherever the fact-finding hearing occurs, the juvenile's county of residence is ordinarily the appropriate forum for disposition. Once a fact-finding hearing has been conducted in the county where the delinquent act occurred, and it has been determined that a nonresidential juvenile in fact committed the act charged, the court may enter the finding

on the record and then transfer the case—along with certified copies of all documents, reports, and summaries in the juvenile's court file—to the county of residence for a determination of the juvenile's need for treatment, supervision or rehabilitation.³⁵ The Inter-County Transfer of Delinquency Cases standard recommends that the transferring court in such a case specify the amount of any restitution that should be paid, and the person to whom it is owed, as part of its finding. But the court receiving the transferred case and ordering the final disposition is responsible for implementing it, including costs associated with placement and collection of fines, costs and restitution.

In all inter-county transfer cases, including those involving “courtesy supervision” transfers following disposition, the court should make every effort to ensure that a victim impact statement is collected and forwarded along with other relevant papers, and that the probation departments in the respective counties work together to ensure that victims receive the notice of hearings and other “significant actions and proceedings” to which the Crime Victims Act and the Rules entitle them.³⁶ (See § 8-11 for a detailed description of victim’s rights.)

§ 4-7 Intake Conferences

The Rules provide that an intake conference must be scheduled “within a reasonable time” of the receipt of a written allegation, and that the juvenile probation officer scheduling the conference must “make all

reasonable efforts to provide actual notice” of the conference to the juvenile and the juvenile's guardian.³⁷ At the start of the

The immediate purpose of the intake conference is to gather the information needed to apply intake decision-making guidelines.

conference, the juvenile, the juvenile's guardian, and the juvenile's attorney, if present, must be provided with a copy of the written allegation, and the juvenile must be informed of the right to remain silent and the right to have an attorney present.³⁸ JCJC Standards Governing Juvenile Court Intake recommend that the administrative judge and the chief juvenile probation officer develop a standardized form and procedures for explaining these rights.³⁹ If refusal to participate in an intake interview precludes dismissal or diversion of the complaint, the intake interviewer should make this clear as well.

The intake stage is the point at which a great deal of information regarding the circumstances of the case and the juvenile first becomes available. At this stage in the

process—when intake officers must decide whether to divert the case, handle it informally, or file a petition—structured decision-making becomes absolutely essential.

The JCJC Standards Governing Juvenile Court Intake require that the intake process be structured by comprehensive guidelines, policies, and procedures established by the administrative judge⁴⁰ and the chief juvenile probation officer. Intake recommendations should likewise be based on written criteria that have been developed by the administrative judge and the chief juvenile probation officer and which are consistent with the fundamental purposes of the Juvenile Act. The recommendations themselves, along with the basis for them, should be reduced to writing, and should be subject to review and approval by the administrative judge or a designee. And the administrative judge and the chief juvenile probation officer should meet regularly to review intake operations and assure their consistency and compliance with law, policies, and procedures.

In substance, a thorough intake conference should gather (1) basic demographic information, (2) incident information (the juvenile's account of the incident and the juvenile's own role in it, whether the juvenile admits guilt or involvement, whether the juvenile accepts responsibility, and the juvenile's overall attitude, maturity and understanding), and (3) pertinent family information (the attitude of the parents/guardians, whether they had knowledge of the offense, whether they have taken steps to correct or address the juvenile's misconduct, and whether they would be willing to cooperate in a diversion arrangement).

In addition to information gathered directly at the intake conference, intake decision-making should take into account the nature and number of the juvenile's prior contacts with the court and the results of those contacts. In most cases, either with the written consent of the juvenile and the juvenile's parents or by court order, school, child welfare, and other agency records should also be accessed and considered.

The **risk**, **need**, and **responsivity** principles are critical to the implementation of evidence-based juvenile justice practice. The **"risk principle"** refers to the probability that a juvenile will re-offend, based on characteristics that are correlated with future delinquency and that are non-changeable, such as the juvenile's current age, age at first arrest and the number of prior arrests. The **"need principle"** defines the juvenile's individual and environmental attributes that are related to delinquency but can be changed ("criminogenic needs"). And the **"responsivity principle"** emphasizes the importance of the juvenile's individual characteristics that influence his or her ability and/or motivation to learn. Determining the risk to reoffend, the criminogenic needs, and the responsivity factors structure how supervision can effectuate positive changes in youth.

The principles of “balanced and restorative justice” emphasize caution in utilizing the juvenile justice system to address cases that can be dealt with informally or more effectively by other social services or community-based programs. Historically, these decisions were often based solely on the seriousness of the charge and delinquent history. Now, Juvenile Justice System Enhancement Strategy (JJSES) tools help probation officers categorize and consider these and other important factors at the intake decision point.

Many Pennsylvania counties have adopted the Massachusetts Youth Screening Instrument (MAYSI-2) to identify youth with possible special mental health or substance use needs at intake. Pennsylvania’s juvenile probation departments also conduct the Youth Level of Service/Case Management Inventory (YLS/CMI) assessment upon receiving a written allegation. The best practice is to administer the YLS/CMI at the juvenile court intake stage. Low-risk cases require minimal supervision or intervention and can be diverted or handled informally with little risk to public safety. Moderate- and high-risk cases often require more formal processing, including the filing of a petition and a hearing before the court. Assessment and planning begins when the allegation of delinquency is received and continues throughout the supervision period. The information gathered at the intake conference is utilized to create an effective case plan that addresses the youth’s risk to reoffend, the specific needs that should be addressed and how best to address those.

An essential function of the probation officer is to gather all relevant information needed to provide balanced attention to the interests of the juvenile, the victim, and the community. Common questions addressed during the intake conference process include:

- What risk does the juvenile pose and what action must be taken, if any, to manage and minimize the risk?
- Is there an identifiable victim?
- What harm has been caused?
- What is necessary to restore the victim?
- What skill development activities are necessary to improve competencies, reduce risk, and increase the juvenile’s decisions to lead a prosocial lifestyle?
- What level of restrictiveness (system penetration) is required?

During the intake process, the information gathered regarding the community protection goal must consider all factors related to managing and minimizing the risk posed. It should encompass the YLS/CMI risk score and level as well as the specific criminogenic risk factors. The information gathered regarding the accountability goal must identify parties affected by the youth’s behavior and the activities required to restore harm to the degree possible. The competency development goal is addressed, in part, by identifying the

specific interventions needed to address the top criminogenic needs where they are most appropriately delivered. In addition, regardless of risk level, this information must include specific academic and/or workforce development activities. The JCJC Standards Governing Juvenile Court Intake provide that the basis of any intake recommendation must be recorded in writing. Because information gathered during the preliminary investigation may form the foundation for subsequent assessments, eventually helping to inform decisions regarding disposition and case planning, it should be accurately, systematically, and legibly recorded. The juvenile probation officer is required to inform the attorney for the Commonwealth of the intake decision. The attorney for the Commonwealth may file a motion requesting review by the court of the juvenile probation officer's decision. The court is to conduct a hearing on the motion.⁴¹

Victim Input at Intake

While the Crime Victims Act does not give victims the right to participate in intake conferences, intake decision-making must be informed by the victim's point of view. The Rules provide that, prior to the intake conference in a case in which informal adjustment or an alternative resolution of the case is being considered, the juvenile probation officer is required to afford the victim a chance “to offer prior comment on the disposition of the case”.⁴² It is clear that in any case involving an identifiable victim, the victim's account of the emotional as well as physical and economic impact of the offense—and what would be required to repair the harm—are essential pieces of information at intake. In cases involving generalized harm to the community rather than to any individual victim, the intake decision-maker should make an effort to assess and give weight to the community interest, and to explore means of reconciling the offender with the community.

Intake Recommendations

As noted above, the JCJC Standards Governing Juvenile Court Intake require that the administrative judge and the chief juvenile probation officer “establish written criteria to be used by Juvenile Court intake in developing recommendations for intake decisions,” as well as “written guidelines for use by Juvenile Court intake concerning final intake recommendations.” Ideally, these criteria and guidelines should be explicit and detailed enough to give structure to decision-making, but flexible enough to preserve discretion in individual cases.

In general, intake decision-making guidelines should be designed to protect the community, to hold youth accountable, and to address the needs of the victims of juvenile crime while helping juvenile offenders to grow into law-abiding and productive adults.

Those decisions should be concrete enough to yield consistent results overall, even while allowing for departures in individual cases. But they should not be set in stone. Intake decision-making criteria should be included in continuous quality improvement processes, should be assessed periodically for fundamental fairness and consistency, and should otherwise be subject to review, criticism, and comment from others, including members of the community, victims, and their representatives and advocates.

The JCJC Standards Governing Juvenile Court Intake lay out four basic recommendation options:

- ***Warning and dismissal.*** The option of dismissing legally sufficient allegations of delinquency at intake should ordinarily be reserved for cases involving juveniles who are accused of minor offenses, who have no prior record or pattern of offending, who either have no apparent need for services or are receiving adequate services already, whose families are providing needed supervision, and whose victims are not interested in pursuing the matter further. Like other intake recommendations, a dismissal recommendation must be recorded in writing, along with the basis for making the recommendation.
- ***Informal adjustment.*** Informal adjustments in lieu of petitioning are negotiated by the parties and recorded in a standardized informal adjustment agreement form that has been developed by the administrative judge and the chief juvenile probation officer. An informal adjustment may or may not involve referrals to outside agencies for services. Notably, informal adjustment is available to juveniles who are alleged to be dependent children as well as those alleged to be delinquent. Prior to informally adjusting the written allegation, the juvenile probation officer is to give the victim the opportunity to submit an oral and/or written victim-impact statement.⁴³
- ***Consent decree.*** In appropriate cases, and “according to local policy,” the JCJC Standards Governing Juvenile Court Intake allow for a recommendation that a delinquency petition be filed but that proceedings be suspended, and the case continued under a consent decree. Resolution by consent decree may be appropriate in cases in which formal adjudication is not necessary based on the results of the intake interview and/or YLS assessment, but the authority of the court is needed to ensure good conduct, address the victim's needs, or hold the juvenile accountable. Unlike an informal adjustment, a consent decree requires the acquiescence of the district attorney as well as the court. (See §8-9.)

- ***Formal petitioning/adjudication.*** Formal petitioning and adjudication should generally be reserved for serious or disputed cases. The JCJC Standards Governing Juvenile Court Intake specify that “denial by the child of the allegations of delinquency and/or a request by the child for a hearing shall be compelling reasons for filing a petition.” More generally, formal handling should be recommended when needs/risk identified by the YLS indicate that interventions and/or therapeutic services are required, and they cannot be addressed or provided pursuant to a consent decree; when the juvenile and the juvenile’s parents are unwilling to accept services voluntarily; when the juvenile has had prior referrals to court; or when the seriousness of the offense, the threat posed to the public, and/or the nature and extent of harm to the victim or the community rule out informal handling.

§ 4-8 Informal Adjustment

The Juvenile Act authorizes a juvenile probation officer presented with allegations of delinquency to “refer the child and the juvenile’s parents to an agency for assisting in the matter” and to “give counsel and advice to the parties with a view to an informal adjustment” in lieu of filing a petition.⁴⁴ Resolving allegations of delinquency through informal adjustment without a petition is permissible only when the arrangement “would be in the best interest of the public and the child” and “the child and the juvenile’s parents, guardian, or other custodian consent thereto with knowledge that consent is not obligatory.”⁴⁵

While the informal adjustment provision in its current form was not enacted until 1972, Pennsylvania’s juvenile courts have been empowered to adjust individual cases of delinquency informally—that is, to address them through the use of social service and supervisory resources rather than formal, coercive powers—since the passage of the Juvenile Act of 1933. Diversion of this kind is not a sideline—it is central to the juvenile court’s historic mission. Indeed, in appropriate cases, diversion does a better job of accomplishing the court’s primary goals than formal judicial processing.

Informal Adjustment Agreements

As noted above, an informal adjustment is based on the consent of the parties, embodied in an agreement recorded on a standardized form developed by the administrative judge and the chief juvenile probation officer. The form agreement should contain all of the following:

- **Basic framework.** The agreement should state that juvenile court intake is withholding the filing of a petition in exchange for certain commitments from the juvenile and the juvenile’s family.
- **Informed consent.** The agreement should acknowledge that the juvenile and the juvenile’s parents were notified of their right to refuse informal adjustment and to insist upon an adjudication hearing, as well as their right to terminate the agreement at any time and request an adjudication hearing.
- **Clear, specific conditions.** Vague, disputable, or unenforceable obligations (“show respect”) should be avoided, in favor of clear and measurable objectives (deadlines, work hours, amount of restitution/costs/fee obligation and payment plan).
- **Active commitments.** To be effective and hold youth accountable, agreements should call for activity from juveniles. Beyond simply staying out of trouble, agreements should obligate youth to do things—for example, perform community service, pay restitution, contribute to a restitution fund through a supervision fee, attend special classes, write an apology letter, participate in mentoring or tutoring programs, engage in community activities, cooperate in treatment.
- **Termination.** An informal adjustment agreement should have a definite duration (usually six months) and a termination date. The filing of a petition based on the events leading to the original referral should be permitted only for failure to comply with the agreement during its duration.

Informal adjustment and other forms of diversion should be considered before a petition is filed.

Limits on Informal Adjustment

Pennsylvania law and the Rules impose six specific limitations on the use of informal adjustment:

- **Jurisdictional facts admitted.** If a probation officer is to give “counsel and advice”— in other words, if the informal adjustment will involve a period of counseling and supervision by a probation officer—the law requires that “the admitted facts bring the case within the jurisdiction of the court.”⁴⁶ The case of a juvenile who does not admit the offense, or at least some offense, cannot be informally adjusted.

- **Time limits.** Likewise, a period of probation supervision pursuant to an informal adjustment may not last more than six months, unless extended by court order for an additional period of no more than three months.⁴⁷ In other words, even if the juvenile is willing to agree otherwise, the law imposes a maximum of nine months' supervision by a probation officer without the filing of a formal petition.
- **No detention authorized.** A juvenile cannot agree to be detained as part of an informal adjustment.⁴⁸
- **Privilege against self-incrimination.** Incriminating statements made by a participant in the informal adjustment process—including any “discussions or conferences incident thereto”— “shall not be used against the declarant” in any subsequent juvenile or criminal proceeding.⁴⁹
- **Victim notice and input.** Victims have the right to receive notice and submit comment prior to the informal adjustment of delinquency allegations. The Rules provide that before proceeding with an intake conference, a juvenile probation officer is required to afford the victim the opportunity to offer prior comment on the disposition of the case if informal adjustment or an alternative resolution of the case is being considered. Moreover, the juvenile probation officer is to give the victim the opportunity to submit an oral and/or written victim-impact statement if the victim so chooses. If the victim is not present when a written allegation is informally adjusted, the victim is to be notified of the final outcome of the proceeding. The responsibility for providing this notification varies from county to county, and may belong either to the attorney for the Commonwealth or to a victim advocate.⁵⁰
- **Payment of restitution.** The juvenile probation officer is to include payment of restitution agreed to be owed to the victim as a condition of successful completion of an informal adjustment by the juvenile.⁵¹

¹ <http://www.pacourts.us/courts/supreme-court/committees/rules-committees/juvenile-court-procedural-rules-committee/juvenile-court-committee-rules-and-forms>

² <http://www.jcjc.pa.gov/Publications/Pages/JuvenileCourtStandards.aspx>

³ 42 Pa.C.S. §6304.

⁴ Examples of such tools include the Massachusetts Youth Screening Instrument (MAYSI-2) to identify potential mental health and substance abuse needs; and the Youth Level of Service/ Case Management Inventory (YLS/CMI) to determine the risk of recidivating and to identify criminogenic factors for targeted intervention services.

⁵ 42 Pa. C.S. §6323 and Pa.R.J.C.P. 312

⁶ 42 Pa. C.S. §6340 and Pa.R.J.C.P. 370

⁷ 42 Pa. C.S. §1520

⁸ See Snyder, H., and Sickmund, M. (2006). *Juvenile Offenders and Victims: 2006 National Report*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention

⁹ Comment to Rule 312, Pa.R.J.C.P.

¹⁰ For a more thorough discussion of the use of diversion as an alternative to formal court processing, see Griffin, P. and Torbet, P. (2002) *Desktop Guide to Good Juvenile Probation Practice*. Pittsburgh, PA: National Center for Juvenile Justice.

¹¹ See *Crossing Bridges: A Sequel to Building Bridges Between Your Court and Your Community*

http://www.pachiefprobationofficers.org/docs/Crossing_Bridges.pdf

¹² Rule 311(B)(3), Pa.R.J.C.P.

¹³ Rule 200, Pa.R.J.C.P.

¹⁴ Pa.R.Crim.P.597 and 42 Pa.C.S. § 6322

¹⁵ Rule 232, Pa.R.J.C.P.

¹⁶ Rules 210 and 231, Pa.R.J.C.P.

¹⁷ Rule 233, Pa.R.J.C.P.

¹⁸ 42 Pa.C.S. §6304.1 and §6352 (a)(5)

¹⁹ 42 Pa.C.S. §6303(a)(5)

²⁰ 42 Pa.C.S. §6322 (e)

²¹ 42 Pa.C.S. §6322 (d)

²² 11 P.S. §890.1

²³ 11 P.S. §890.1, Rule 4-101(2)(f).

²⁴ 11 P.S. §890.1, Chapter 3.6 Transfer of Supervision

²⁵ Rule 311, Pa.R.J.C.P.

²⁶ Rule 310, Pa.R.J.C.P.

²⁷ 42 Pa.C.S. §6302

²⁸ Rule 1100 et seq. and 42 Pa.C.S. § 6301 et seq.

²⁹ 42 Pa.C.S. §6302

³⁰ 42 Pa.C.S. §6322

³¹ “Deadly weapon” is defined in 18 Pa.C.S. §2301: “Any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or serious bodily injury, or any other device or instrumentality which, in the manner in which it is used or intended to be used, is calculated or likely to produce death or serious bodily injury.”

³² 42 Pa.C.S. §6321(b)(1) and (2). See also Rule 300, Pa.R.J.C.P.

³³ 37 Pa. Code §200.702.

³⁴ 37 Pa. Code §200.702

³⁵ Rule 302, Pa.R.J.C.P.

³⁶ 18 P.S. §11.201, and Rules 132, 241, 242, 311, 312, 360, 370, 390, 409, 500, 512, 513, 600, 610, 631 and 632 Pa. R.J.C.P.

³⁷ Rule 310, Pa.R.J.C.P.

³⁸ Rule 311, Pa.R.J.C.P.

³⁹ <http://www.jcjc.pa.gov/Publications/Documents/Standards%20Governing%20Juvenile%20Court%20Intake.pdf>

⁴⁰ In counties in which the president judge normally takes responsibility for setting policy, the term “administrative judge” should be understood to designate the president judge.

⁴¹ Rule 311 (E)(1)(2)(3) Pa.R.J.C.P

⁴² Rule 311(B)(3), Pa.R.J.C.P.

⁴³ Comment to Rule 311 (E)(2), Pa.R.J.C.P.

⁴⁴ 42 Pa.C.S. §6323.

⁴⁵ 42 Pa.C.S. §6323(b)(1) and (2).

⁴⁶ 42 Pa.C.S. §6323(b)(3).

⁴⁷ 42 Pa.C.S. §6323(c).

⁴⁸ 42 Pa.C.S. §6323(d).

⁴⁹ 42 Pa.C.S. §6323(e).

⁵⁰ Rule 311(B)(3) and Comment to Rule 312 Pa.R.J.C.P.

⁵¹ Comment to Rule 312 Pa.R.J.C.P.