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Honorable John M. Cleland, Senior Judge  
Superior Court of Pennsylvania.  
Chairman, Interbranch Commission on Juvenile Justice  
P.O. Box 774  
4355 Route Six  
Kane, PA 16735

Re: Standards for Pennsylvania Prosecutors in Juvenile Court

Dear Judge Cleland:

On behalf of the Pennsylvania District Attorneys Association (PDAA) I write to commend the Interbranch Commission on Juvenile Justice (IBCJJ) for its outstanding work thus far in satisfying its legislative mandate to investigate the problems exposed in the Luzerne County Juvenile Justice system and to make recommendations designed to prevent a recurrence of those problems anywhere in the Commonwealth of Pennsylvania. We look forward to the completion of your report and the opportunity to contribute to the improvement of Pennsylvania's Juvenile Justice System, pursuant to your recommendations.

We anticipate that one of the conclusions you are sure to reach is that juvenile justice stakeholders can no longer assume that we all know and understand our roles and responsibilities. To better ensure that prosecutors understand and perform their duties in juvenile court, the PDAA has developed practice standards for juvenile prosecutors. Our Juvenile Prosecutor's Network, chaired by IBCJJ member George Mosee, presented these standards to the PDAA Executive Committee at our recent mid-winter meeting. I am happy to report that they were unanimously approved. A copy of the Standards is attached hereto for the IBCJJ's consideration.

Thank you again for your leadership and the hard work of the IBCJJ. Please do not hesitate to contact me with any questions.

Sincerely,

Edward M. Marsico, Jr.  
President

Cc: George D. Mosee, Jr., Deputy District Attorney

## **STANDARDS FOR PENNSYLVANIA PROSECUTORS IN JUVENILE COURT**

In 1996, the Juvenile Act was amended to incorporate an approach to handling delinquency cases that requires “balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.” 42 Pa.C.S. §6301(b)(2). Previously, the predominant consideration in Pennsylvania delinquency matters was “the best interest of the child.” Before 1996 some courts were fashioning dispositions with little or no regard for the impact on community safety. Prosecutors never opposed addressing the interests of the child, but sought due regard for the rights of the victim and the rest of us. Moreover, in 2005 the Supreme Court promulgated the Rules of Juvenile Court Procedure, which established uniform procedures for achieving the statutorily mandated purposes throughout Pennsylvania. Prosecutors now have an unquestioned statutory and procedural foundation from which to advocate for the rights of victims and community safety. These **Standards for Pennsylvania Prosecutors in Juvenile Court**<sup>1</sup> will further help to ensure that prosecutors realize their ultimate goal, justice in every delinquency case throughout the Commonwealth.

### **Juvenile Court Must Be a Top Priority**

Contrary to anyone’s misperception of juvenile court as just “kiddy court,” a careful examination of delinquency cases shows that juveniles commit the same gambit of offenses perpetrated by adult offenders, and more. Certainly, from the perspective of a victim, it matters not that the thief, robber or rapist was underage. On the other hand, many juvenile offenders are amenable to rehabilitation and can be steered clear of future misconduct when held accountable and effectively supervised, sometimes without an adjudication of delinquency. Considering the seriousness of some offenses perpetrated by Pennsylvanians under the age of 18, along with the fact that many juvenile cases present a high potential for the rehabilitation of the offender and the prevention of future offenses, District Attorneys throughout the Commonwealth must be committed to making juvenile justice a priority. The adoption of these Standards reflects that commitment.

### **Juvenile Court Prosecutors Must Be Properly Trained**

Considering both the increased seriousness of the offenses and the potential to prevent future offenses, Juvenile Prosecution, whenever possible, should be viewed as a specialty where experience and excellence is required, not simply a training ground for new prosecutors. Obviously, the effective representation of the Commonwealth’s interests requires that the juvenile court prosecutor be well versed in the relevant statutory and procedural mandates, the Juvenile Act and the Rules of Juvenile Court Procedure. Juvenile court prosecutors, therefore, need to be trained in the statutes and the rules before handling juvenile matters. Furthermore, all juvenile court prosecutors should be trained in these Standards.

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<sup>1</sup> These Standards are consistent with and incorporate the relevant National Prosecution Standards for Juvenile Justice.

### **Juvenile Court Prosecutors Should Represent the Interests of the Commonwealth at Every Stage of the Proceedings**

A prosecutor should work to assure that victims and juveniles receive a fair hearing and that their constitutional and other legal rights are recognized and enforced pursuant to 42 Pa.C.S. § 6301(b)(4). Further, the Crime Victims Act, 18 P.S. §11.102(2), mandates that "The rights extended to victims of crime . . . are to be honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants."

Contrary to the discretionary tone of 42 Pa.C.S. §6336(b) FUNCTIONS OF DISTRICT ATTORNEY (The district attorney, *upon request of the court*, shall present the evidence in support of the petition and otherwise conduct the proceedings on behalf of the Commonwealth) prosecutors should always conduct juvenile delinquency proceedings on behalf of the Commonwealth and their representation of the Commonwealth's interests should occur and continue throughout the juvenile court process. "In order that the interests of the state can be adequately protected, we hold that the Commonwealth has an absolute right to have a representative present in every Juvenile Court proceeding involving a juvenile offender." *In re Gaskins*, 430 Pa. 298, 303, 244 A.2d 662, 665 (1968), (emphasis in original), cert. denied, 393 U.S. 989, 89 S.Ct. 470, 21 L.Ed.2d 451 (1968).

By appearing at all stages of the proceedings, the prosecutor insures that the juvenile court maintains a focus on the safety of the community and the interests of the victim at each decision-making level.

### **General Responsibilities of Juvenile Court Prosecutors**

A juvenile court prosecutor should strive to seek justice as their primary duty. While devoting foremost attention to the interests and safety of the community and victim, prosecutors should consider the needs of the juvenile to the extent that it does not compromise the duty to faithfully represent the Commonwealth.

These Standards for Prosecutors in Juvenile Court identify the need for continuous involvement by referencing, in sequence, some key Rules of Juvenile Court Procedure.<sup>2</sup> They are as follows:

#### **Rule 152. Waiver of Counsel**

Prosecutors should not suggest, encourage or recommend that a juvenile waive counsel (Rule of Professional Conduct 3.8(c)). When a juvenile does exercise the right to waive the right to counsel, the prosecutor, before proceeding, will ensure, that the court colloquies the juvenile on the record to ascertain that the waiver is knowingly, intelligently and voluntarily made, and that the waiver is for the instant proceeding only.

#### **Rule 160. Inspection of Juvenile File/Records**

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<sup>2</sup> If any later relevant additional rules or amendments are promulgated, they, too, should be included in this list.

Prosecutors will ensure that information within their control will only be revealed and/or disseminated in conformance with the Juvenile Act and the Rules of Juvenile Court Procedure.

Prosecutors will maintain files in juvenile cases to ensure that all relevant information is available at every hearing including dispositional reviews.

**Rule 170 Expunging or Destroying Juvenile court records**

Prosecutors should review expungement petitions to determine the sufficiency of the averments. When a basis exists for opposing expungement, prosecutors should show cause for preserving the juvenile's record at a hearing pursuant to RJCP 170 (Expunging or Destroying Juvenile Court Records). When no such cause exists and the requirements of 18 Pa.C.S. §9123 have been satisfied, prosecutors should consent to expungement.

**Rule 200 Commencing Proceedings**

Prosecutor should exercise the right to review the allegations presented by the police or other sources in an Arrest Warrant (RJCP 210) or Written Allegation (RJCP 231). This determination should be made as promptly as is practical so as to increase the likelihood of rehabilitation of the juvenile and foster protection of the community and victim.

Prosecutors shall refrain from prosecuting a charge that they know is not supported by probable cause (Rule of Professional Conduct 3.8(a)). After the alleged facts are determined to be legally sufficient, prosecutors should decide whether the juvenile should be tried in criminal court, juvenile court or diverted from being adjudicated delinquent. Legal sufficiency shall mean that delinquency charges can be reasonably substantiated against the juvenile by admissible evidence.

When informal adjustment decisions are made by juvenile probation, prosecutors should ensure that they receive notice of the intake decisions pursuant to RJCP 311 Intake Conference.

**Rule 242. Detention Hearing**

Prosecutors should participate in detention hearings to ensure that public safety is given appropriate weight. Prosecutors should also ensure that upon commencement of the hearing, the juvenile is advised by the court, pursuant to RJCP 242, of the right to counsel and the right to remain silent, and that a copy of the written allegation is provided to the juvenile, and guardian, if present. Prosecutors should request detention when it is required to protect the person or property of others or of the juvenile, or because the juvenile may abscond or be removed from the jurisdiction of the court, or because he has no parent, guardian, or custodian or other person able to provide supervision and care and return the juvenile to court when required, or an order for his detention has been made by the court (see 42 Pa.C.S. §6325).

**Rule 330. Petition: Filing, Contents, Function**

Even when prosecutors have not elected to file delinquency petitions in deference to juvenile probation, prosecutors should ensure that the petitions satisfy the requirements of RJCP 330(C) regarding content.

**Rule 340. Pre-Adjudicatory Discovery and Inspection**

Prosecutor should provide, or ensure the provision of, all discoverable materials. The prosecutor should also request reciprocal discovery and the names of any defense witnesses with contact information.

**Rule 370. Consent Decree**

Prosecutors should review cases to determine if they are appropriate for supervision without an adjudication of delinquency. When appropriate, the prosecutor should agree to a court ordered consent decree. Prosecutors should ensure that no consent decree is entered without the Commonwealth's approval (RJCP 370, 42 Pa.C.S. § 6340). Prosecutors should monitor the performance of the juvenile and seek an extension of the supervision or revocation when appropriate.

**Rules 390-396. Transfer to Criminal Proceedings**

Prosecutors should assess cases involving serious and/or chronic illegal behavior and consider requesting removal from juvenile court pursuant to 42 Pa.C.S. § 6355 (Transfer to Criminal Proceedings). Prosecutors should also assess cases in criminal court pursuant to 42 Pa.C.S. § 6302 (Definitions, Delinquent Act (2) The term shall not include:...) to determine whether it would be appropriate to send the case to juvenile court 42 Pa.C.S. § 6322 (Transfer from Criminal Proceedings).

In a prosecutor's office where different prosecutors prosecute cases in juvenile and criminal court, the prosecutors should consult about potential transfer cases to determine in which forum the public interest will be served.

**Rule 404. Prompt Adjudicatory Hearing**

Prosecutors should be mindful of the need for prompt adjudicatory hearings and make efforts to ensure that the time limitations of RJCP 404 are met.

**Rule 407. Admissions**

Prosecutors should ensure that no admission is accepted until after the juvenile has been colloquied pursuant to RJCP 407 and the court has determined that the admission was knowingly, intelligently and voluntarily made.

**Rule 512. Dispositional Hearing**

Prosecutors should be actively involved in shaping the disposition for a juvenile adjudicated delinquent. Prosecutors should have access to all the relevant reports prepared by evaluators, probation and others. Prosecutors should ensure that the victim has an opportunity to be heard and that, consistent with the Juvenile Act's mandate, restitution and community safety along with the juvenile's competency development are given appropriate weight.

Prosecutors should make specific recommendations to protect the community, hold the juvenile accountable for the offenses he committed, and enable the juvenile to be responsible and productive.

At the end of the dispositional hearing, prosecutors should ensure that the juvenile is advised of the post-dispositional and appellate rights listed in RJCP 512.

**Rule 610. Dispositional and Commitment Review.**

Prosecutors should ensure that juveniles are receiving the treatment and supervision ordered by the court and that they are compliant with the expectations of the court while on probation or in placement. Prosecutors should obtain and review copies of all relevant progress reports and evaluations.

**Rule 631. Termination of Court Supervision.**

Prior to the Termination of Court Supervision the prosecutor should determine whether all of the conditions of the disposition, whether placement or probation, have been satisfied, pursuant to RJCP 631. In particular, prosecutors should ensure that restorative conditions, such as the payment of restitution, have been satisfied before a case is discharged.