Report of the Advisory Committee to the Administrator on Standards for the Administration of Juvenile Justice

September 30, 1976

- Standards on Adjudication
- General Implementation Plan

U.S. Department of Justice
Law Enforcement Assistance Administration
National Institute for Juvenile
Justice and Delinquency Prevention

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Letter of Transmittal

To the President and to the Congress
of the United States:

I have the honor of transmitting herewith the Report of the Advisory Committee to the Administrator on Standards for the Administration of Juvenile Justice.

This report was prepared in accordance with the schedule contained in the initial report of the Advisory Committee on Standards, submitted pursuant to the provisions of Section 247 of the Juvenile Justice and Delinquency Prevention Act of 1974 (Public Law 93-415) (JJDP Act) on September 6, 1975.

The JJDP Act created a major Federal initiative to respond to the "enormous annual cost and unmeasurable loss of human life, personal security, and wasted human resources," caused by juvenile delinquency and delegated the responsibility for administering and coordinating the programs established under that initiative to the Law Enforcement Assistance Administration (LEAA). As part of this effort, the Act called for the development of "national standards for the administration of juvenile justice including recommendations for administrative, budgetary, and legislative action at the Federal, State and local level to facilitate the adoption of such standards." Section 102(5).

This report contains the first group of those standards. It covers a broad range of topics, including recommendations on such fundamental issues as the jurisdiction of the courts responsible for matters involving children, the rights to which children and their parents are entitled in adjudicatory proceedings, and the dispositional alternatives that should be available following adjudication. It also contains recommendations regarding general strategies and specific actions to facilitate adoption of the standards.

Over the past decade, a number of State and national groups, including many supported by grants from LEAA, have reexamined existing laws and practices and formulated criminal and juvenile justice standards and model legislation. These efforts, together with those of the Advisory Committee on Standards, provide an important resource for use by policymakers, planners, and juvenile justice professionals in all parts of the country in the effort to combat the urgent problem of youth crime and to improve the quality of juvenile justice.

Respectfully submitted,

Richard W. Velde

Richard W. Velde
Administrator

Masthead

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The opinions, recommendations, and determinations contained herein are those of the Advisory Committee to the Administrator on Standards for the Administration of Juvenile Justice and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Introduction

The Advisory Committee to the Administrator on Standards for the Administration of Juvenile Justice was established by Section 208(e) of the Juvenile Justice and Delinquency Prevention Act of 1974 (Public Law No. 93-415) as a subdivision of the National Advisory Committee on Juvenile Justice and Delinquency Prevention. Under Section 247 of that Act, it was given the responsibility of supervising the review of "existing reports, data, and standards relating to the juvenile justice system" and recommending to the President and the Congress standards for the administration of juvenile justice at the Federal, State, and local level together with:

(1) ...Federal action, including but not limited to administrative and legislative action required to facilitate the adoption of these standards throughout the United States; and

(2) ...State and local action to facilitate the adoption of these standards for juvenile justice at the State and local level.

In its first report, dated September 6, 1975, the Advisory Committee on Standards presented its initial recommendations and discussed, inter alia, the scope of the standards to be recommended and the process to be used in developing them. The report indicated that the standards would address the full range of law enforcement, judicial, treatment, social service, health, educational, and planning activities affecting youth, and that they would be organized so that groups and agencies performing similar functions would be governed by the same set of principles. It stated further that the first set of standards and implementation recommendations would be submitted by September 30, 1976, and that additional standards and recommendations would be delivered by March 31, 1977.

In accordance with that commitment, this volume contains:

- Recommended Standards on Adjudication, including provisions on the jurisdiction and organization of court hearing matters relating to juveniles, the rights of the parties to judicial and administrative adjudicatory proceedings, and the alternatives, criteria, and procedures for intake, detention, and disposition;

- A General Implementation Plan, outlining criteria considered in assessing the various implementation mechanisms available, and two implementation strategies which appear to meet those criteria; and

- Specific recommendations for facilitating the adoption of particular standards.

The adjudication function was addressed first, because it presents many of the basic issues that define the structure, focus, and limits of the juvenile justice system. However, it is anticipated that this volume will form the third chapter of the full set of standards, preceded by sections on prevention and intercession and followed by provisions on supervision, services, and administration. Hence, the numerical code assigned to the standards on adjudication begins with three.

In developing these recommendations, the Advisory Committee on Standards has attempted to distill the best thinking from the proposals of the many national and State commissions, professional organizations, and other groups and agencies that have prepared standards, models, and guidelines relating to juvenile justice. Rather than formulating a wholly new set of prescriptions, it has sought whenever possible to endorse selected standards adopted by those efforts. This review and assessment process has been aided by access to the Comparative Analysis of the Positions of Past Standards Setting Groups and Current State Practices prepared for the Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention as well as to the working drafts of the standards recommended by the Task Force and by the Institute of Judicial Administration/American Bar Association (IJA/ABA) Joint Commission on Juvenile Justice Standards.* The primary sources for each of the Advisory Committee's recommendations are listed directly below the standard. The terms "see generally" or "see also" preceding a citation denote that although the recommended standard is drawn in large part from the listed source material, there are some significant differences in the positions taken. These differences are explained in the commentary which follows the standard test.

The Advisory Committee on Standards has closely coordinated the performance of its statutorily assigned responsibilities with the full National Advisory Committee on Juvenile Justice and Delinquency Prevention, providing National Advisory Committee members with detailed information concerning the drafts under discussion and submitting the approved standards and recommendations to the full Committee for consideration and endorsement. At its August 1976 meeting, the National Advisory Committee on Juvenile Justice and Delinquency Prevention endorsed the positions adopted by the Advisory Committee on Standards with the exception of the recommendations regarding the jurisdiction of the family court over noncriminal misbehavior. This nonconcurrence is noted in the affected standards, and the views of the National Advisory Committee, together with those of the Advisory Committee on Standards, are explained in the commentary to Standard 3.112.

Because work has not been completed on the standards addressing the other aspects of the administration of juvenile justice, it is inappropriate to attempt to summarize at this time the major themes that will bind the full set of standards together. However, it must be emphasized at the outset that by proposing criteria for the many discretionary decisions that occur throughout the adjudication process and by recommending that the facts and reasons underlying such

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*Citations to the work of the Task Force and the IJA/ABA Joint Commission are to the latest available drafts, which may, in some instances, differ in form or content from the documents now being readied for publication.

decisions be enumerated, these standards are intended to make the decisionmaking process more open, comprehensible, and accountable and to eliminate, to the greatest extent possible, discrimination in the administration of juvenile justice against juveniles on the basis of race, ethnic background, religion, sex, or economic status.

Standards on Adjudication

3.1 The Courts

3.11 Jurisdiction

JURISDICTION OVER MATTERS RELATING TO JUVENILES SHOULD BE PLACED IN A FAMILY COURT.

THE FAMILY COURT SHOULD HAVE EXCLUSIVE ORIGINAL JURISDICTION OVER MATTERS RELATING TO DELINQUENCY AS SPECIFIED IN STANDARD 3.111; NONCRIMINAL MISBEHAVIOR* AS SPECIFIED IN STANDARD 3.112; NEGLECT OR ABUSE OF JUVENILES AS SPECIFIED IN STANDARD 3.113; ADOPTIONS AND TERMINATIONS OF PARENTAL RIGHTS; APPOINTMENT OF A LEGAL GUARDIAN FOR JUVENILES; CIVIL COMMITMENT FOR TREATMENT OF THE MENTALLY ILL, MENTALLY RETARDED, ALCOHOLICS, AND PERSONS ADDICTED TO NARCOTIC DRUGS; THE INTERSTATE COMPACTS ON JUVENILES AND ON THE PLACEMENT OF CHILDREN; DIVORCE; SEPARATION; ANNULMENT; ALIMONY; CUSTODY AND SUPPORT OF CHILDREN; PATERNITY; AND THE UNIFORM RECIPROCAL, ENFORCEMENT OF SUPPORT ACT; AS WELL AS INTRA-FAMILY CRIMINAL OFFENSES AND CONTRIBUTING TO THE DELINQUENCY OF A MINOR AS SPECIFIED IN STANDARD 3.117.

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*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

Sources

Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 8.2 (July 1976); Ted Rubin, Proposed Standards Relating to Court Organization and Administration, Alternative Standard (IJA/ABA, Draft, 1975); Model Act for Family Courts, Sections 7, 10 (U.S. Department of Health, Education and Welfare, Washington, D.C., 1975).

Commentary

This standard endorses the formation of a family court with jurisdiction over most matters affecting juveniles and families. Currently four States (Delaware, Hawaii, New York, and Rhode Island), the District of Columbia, and a number of counties have adopted the family court model, although the scope of jurisdiction varies significantly. The remaining States rely on the traditional juvenile structure with jurisdiction limited primarily to delinquency, noncriminal misbehavior, neglect, abuse, adoption, and the Interstate Compacts on Juvenile and on the Placement of Juveniles.

As noted in the introduction to the Task Force's chapter on court structure:

> Today's reality in the overwhelming majority of states is that families beset with legal problems are dealt with by different courts or court divisions, different judges, and different probation personnel. Even lawyers are sometimes uncertain as to the particular forum where an action should be initiated. Characteristically the child's delinquency is heard in one court, his parent's divorce in a second court, a family member's mental illness commitment proceedings in still a different court, and an assault between two members of his family in yet another court. Typically there is no systematic provision for different judges to learn of the related cases which have involved this family. Information which is important to developing carefully crafted decisions is frequently unavailable to the decision maker. Further, there may be organizationally separate juvenile probation, felony probation, misdemeanor probation, court domestic relations counselors and a variety of social service personnel, all operative with this family in an uncoordinated fashion.

It is anticipated that the family court structure will allow a more consistent approach to the solution of legally related family problems and eliminate many of the artificial jurisdictional and administrative barriers that have developed.

The scope of jurisdiction recommended in the standard is substantially the same as that proposed by the Standards and Goals Task Force on Juvenile Justice and, with one major exception, parallels the position adopted by the IJA/ABA Joint Commission, Rubin, supra, and the Model Act, supra. That exception is the inclusion of jurisdiction over noncriminal misbehavior. A definition of this jurisdiction appears in Standard 3.112. Explanations of the jurisdiction over delinquency, neglect and abuse, intra-family offenses, and contributing to the delinquency of a minor are presented in Standards 3.111, 3.113, and 3.117, respectively. Like the source materials, the standard recommends that the family court handle commitment proceedings involving adults as well as juveniles. This is premised upon the major impact on a family when a parent is committed to

or returned from an institution because of mental illness, and alcohol or drug addiction. There will, of course, be some commitment proceedings involving individuals who do not have a family. However, the additional burden imposed by these cases is not anticipated to be significant enough to warrant splitting the jurisdiction over commitments.

Although it is anticipated that the family structure will be a more efficient as well as more effective way of dealing with family legal problems, the expansion of juvenile court jurisdiction must be accompanied by a concomitant expansion in resources. It is anticipated that this reallocation of resources will be facilitated if the family court is included as a division of the highest court of general jurisdiction. See Standard 3.121.

Related Standards

3.111
3.112
3.113
3.114
3.115
3.116
3.117
3.118
3.121
3.125

3.111
Jurisdiction Over Delinquency

THE JURISDICTION OF THE FAMILY COURT OVER DELINQUENCY SHOULD INCLUDE ONLY VIOLATIONS OF AN APPLICABLE FEDERAL, STATE, OR LOCAL STATUTE OR ORDINANCE THAT WOULD BE DESIGNATED AS CRIMINAL IF COMMITTED BY AN ADULT, AND VIOLATIONS OF AN APPLICABLE STATE OR LOCAL STATUTE OR ORDINANCE DEFINING A MAJOR TRAFFIC OFFENSE.

FOR PURPOSES OF THESE STANDARDS, MAJOR TRAFFIC OFFENSES INCLUDE ANY TRAFFIC OFFENSE CHARGED AGAINST A JUVENILE WHO WAS TOO YOUNG TO OBTAIN A LICENSE TO DRIVE AT THE TIME THE OFFENSE IS ALLEGED TO HAVE OCCURRED; VEHICULAR HOMICIDE; RECKLESS DRIVING; DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL, NARCOTICS, OR DANGEROUS DRUGS; LEAVING THE SCENE OF AN ACCIDENT; AND TRAFFIC OFFENSES FOR WHICH THERE IS A MANDATORY TERM OF INCARCERATION UPON CONVICTION.

ALL TRAFFIC OFFENSES NOT ENUMERATED ABOVE SHOULD BE COGNIZABLE IN THE COURT OR ADMINISTRATIVE AGENCY HAVING JURISDICTION OVER ADULTS FOR SUCH OFFENSES, NOTWITHSTANDING THAT THE ALLEGED OFFENDER'S AGE IS WITHIN THE LIMITS SET BY STANDARD 3.115.

Sources

Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standards 9.1 and 9.7 (July 1976).

Commentary

This standard defines the types of conduct cognizable under the delinquency jurisdiction of the family courts over delinquency. It includes all conduct that would be a criminal offense if committed by an adult. No distinction is made between felonies, misdemeanors, violations of local ordinances, or violations of regulatory provisions to which criminal penalties have been attached. This follows the definition adopted by the Standards and Goals Task Force on Juvenile Justice, supra, and the Uniform Juvenile Courts Act, section 2(2) (National Conference of Commissioners on Uniform State Laws, 1968). But see Model Act for Family Courts, section 2(7) (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975) (local ordinances not specifically included); John Junker, Proposed Standards Relating to Juvenile Delinquency and Sanctions, Sections 2.2-2.4 (IJA/ABA, Draft, September 1975) (offenses not punishable by imprisonment and certain "victimless crimes" excluded). Although all States define delinquency to include conduct that would be a felony if committed by an adult, some make a distinction between delinquent and "miscreant" (i.e., misdemeanor) offenses, and others do not specifically include violations of municipal or other local ordinances by juveniles within the definition of delinquency.

The standard also recommends that serious traffic offenses and traffic offenses committed by juveniles too young to obtain a driver's license should be handled by the family court. The exclusion of minor traffic violations from delinquency jurisdiction is based on several considerations: juvenile drivers are exercising adult privileges and should assume at least some adult responsibilities; minor traffic violations are essentially administrative matters and are not evidence of delinquency requiring rehabilitative remedies; and excluding minor traffic offenses would leave the family court free to devote its resources and energy to more serious matters. On the other hand, serious traffic offenses and those committed by children too young to qualify for a license should not be so frequent as to "overload the court and reduce the opportunity for individualized treatment," Task Force, supra, Commentary to Standard 9.7, and the dispositions available to the family court are far more appropriate for juveniles who have committed a major traffic offense than the jail terms and high fines imposed on adults in such cases. Task Force, supra; Junker, supra, Standard 2.2; see also Uniform Act, supra; Model Act, supra. Most States distinguish between major and minor offenses for purposes of juvenile or family court jurisdiction, although the definition of what constitutes a major traffic offense varies.

The jurisdiction of the family court over delinquency should not include conduct that would not be a crime if committed by an adult nor violations of dispositional orders in noncriminal misbehavior cases. See Standards 3.112 and 3.1811. A careful effort has been made throughout these Standards to distinguish between the considerations that should apply to and the alternatives that should be available in delinquency and noncriminal misbehavior cases. See, e.g., Standards 3.143 and 3.144; 3.151, 3.152, and 3.153; and 3.181 and 3.183. Most of the recent Standards and model legislation efforts have strongly urged that juveniles who fail to attend school, run away, or who "are beyond parental control" not be treated or identified in the same manner as juveniles who steal or who harm property or other people. See Task Force, supra, Junker, supra; Aiden Gough, Proposed Standards Relating to Non-Criminal Misbehavior (IJA/ABA, Draft, November 1975); Model Act, supra; President's Commissions on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 25-26 (U.S. Government Printing Office, Washington, D.C., 1967); National Advisory Commission on Criminal Justice Standards and Goals, Courts 294 (U.S. Government Printing Office, Washington, D.C., 1973); see also 42 U.S.C. Sections 5633(a)(12) and 5701 et seq. (Supp. 1975) (Juvenile Justice and Delinquency Act and the Runaway Youth Act). Approximately two-thirds of the States currently distinguish, at least to some extent, between juveniles engaging in noncriminal misbehavior and those who have committed a delinquent act.

Related Standards

3.11
3.112
3.113
3.114
3.115
3.116
3.118
3.143
3.151
3.152
3.161
3.171
3.174
3.181
3.182
3.1810

3.112
Jurisdiction Over Noncriminal Misbehavior*

THE JURISDICTION OF THE FAMILY COURT OVER CONDUCT BY A JUVENILE THAT WOULD NOT BE DESIGNATED AS CRIMINAL IF COMMITTED BY AN ADULT SHOULD BE LIMITED TO:

a. A PATTERN OF REPEATED ABSENCES OR HABITUAL UNAUTHORIZED ABSENCE FROM SCHOOL BY A JUVENILE SUBJECT TO THE COMPULSORY EDUCATION LAWS OF THE STATE;

b. REPEATED UNAUTHORIZED ABSENCES FOR MORE THAN 24 HOURS FROM THE PLACE OF RESIDENCE APPROVED BY THE JUVENILE'S PARENTS, GUARDIAN, OR PRIMARY CARETAKER;

c. REPEATED DISREGARD FOR OR MISUSE OF LAWFUL PARENTAL AUTHORITY; AND

d. ACTS OF DELINQUENCY COMMITTED BY JUVENILES BELOW AGE 10.

JURISDICTION OVER SUCH CONDUCT SHOULD EXTEND TO THE JUVENILE, HIS OR HER PARENTS, GUARDIAN, OR PRIMARY CARETAKER, AND ANY AGENCY OR INSTITUTION WITH A LEGAL RESPONSIBILITY TO PROVIDE NEEDED SERVICES TO THE JUVENILE, PARENTS, GUARDIAN, OR PRIMARY CARETAKER.

THE FAMILY COURT SHOULD NOT EXERCISE ITS JURISDICTION OVER NONCRIMINAL MISBEHAVIOR UNLESS ALL AVAILABLE AND APPROPRIATE NONCOERCIVE ALTERNATIVES TO ASSIST THE JUVENILE AND HIS OR HER FAMILY HAVE BEEN EXHAUSTED.

Source

Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standards 10.1-10.8, (July 1976).

Commentary

The proper scope of jurisdiction over noncriminal misbehavior, i.e., conduct that is unlawful for juveniles but not for adults, is one of the most hotly debated issues in juvenile justice today. Opponents of such jurisdiction, such as the National Council on Crime and Delinquency, argue that:

> The judicial system is simply an inept instrument for resolving intra-family conflicts, and dealing with these cases in that it results in a vast disproportionate draining of time and resources, to the detriment of cases of neglect or abuse or delinquency which are properly there and represent threats to safety which the court must address.
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> . . .

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*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary, pp. 12-13.

> In the great majority of American jurisdictions, status offenders are subject to exactly the same dispositions as minors who commit crimes, including commitment to State training schools.... A system which allows the same sanctions for parental defiance as for armed robbery--often with only the barest glance at the reasonableness of parental conduct--can only be seen as inept or unfair. (Aiden Gough, Proposed Standards Relating to Non-Criminal Misbehavior, Introduction (IJA/ABA, Draft, November 1975).)

On the other hand, proponents of jurisdiction over noncriminal misbehavior, such as the National Council of Juvenile Court Judges, contend:

> If we remove the status offenses from the juvenile courts, to a great degree we are removing the underpinnings that the law has provided for parents. If a child disobeys, or wants to run off with undesirable friends, he can go to his parents and say, "I'm leaving, what are you going to do about it?" The parent will have little he can do except use his powers of persuasion; and the parents whose children need this type of external support the most, are apt to be the parents who have the least powers of persuasion. I think the public would hesitate to remove the family category status offenses.
>
> I believe that status offenses are among the most serious matters that come before our courts, as serious certainly as car theft and shoplifting and possibly burglary. Status offenses are the tip of the iceberg, or maybe more appropriately, the tip of the volcano. What little we see on the surface: skipping some school, staying out late, dating boys the father doesn't like, looks rather small and harmless. But for these who get as far as the court, there is usually much under the surface. Status offenses are an indication of some serious trouble. That this is the place where we can help, where we can and should provide compulsory help if the family is not willing to seek help. This is the place where we can reduce the crime rates of the future. Because if we can help a child to unravel incorrigibility, absenting, truancies, drinking, then I think maybe we can do much through social work to make happier children, more contented children, better citizens . . . which is maybe what it's all about. (Lindsay G. Arthur, "Status Offenders Need Help, Too," 26 Juvenile Justice 3, 5 (February 1975).)

Although exact figures are not available, it is estimated that between 25 and 30 percent of the cases filed in American juvenile and family courts are based on status offenses and that more than twice this number are handled by intake personnel without referral to the court. Over half of the juveniles charged with noncriminal behavior spend time in a secure jail or detention facility before or after adjudication and approximately 25 percent of those adjudicated are sent to juvenile institutions. In addition, a disproportionate number of those who are placed in detention or correctional facilities are female.

In recent years, the number and percentage of juveniles confined because of noncriminal misbehavior has declined. This trend is expected

to accelerate as a result of the implementation of the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. Sections 5601, 5633(a)(12) (Supp. 1975) and the increased attention being directed to the issue by the States and national professional and child service organizations. But the basic jurisdictional question remains.

After considering a wide range of views, the Advisory Committee on Standards concluded that although its goal was to obviate the need for court jurisdiction over noncriminal misbehavior by assuring the availability of sufficient services for all families and children, current programs were neither numerous nor effective enough to warrant a recommendation that the family court be stripped of its power to order the provision of services to families when certain situations were shown to exist. It concluded further that although abuses had occurred, the juvenile courts had been able to assist juveniles and their families and to increase the services available in the community.

Although agreeing with the goal set by the Advisory Committee on Standards, a majority of the full National Advisory Committee on Juvenile Justice and Delinquency Prevention disagreed with the means chosen to achieve it, favoring instead a recommendation for immediate elimination of jurisdiction over noncriminal misbehavior. In support of this position, it was argued that schools, social services departments, and other agencies will not take the initiative for developing alternative means of handling noncriminal misbehavior cases so long as the family court retains jurisdiction; that traditionally girls have been subject to harsher penalties for running away or incorrigibility than boys; and that in practical terms little distinction has been drawn between status offenders and delinquents.

The Advisory Committee on Standards reconsidered Standard 3.112 following the National Advisory Committee's vote not to endorse it. After reviewing the standard's provisions and the bases on which it had been approved, the Standards Committee remained unconvinced that elimination of family court jurisdiction over noncriminal misbehavior would induce other public agencies to establish necessary services and programs where few had existed before. It concluded that by recommending that jurisdiction be limited to those cases in which all appropriate noncoercive alternatives have been exhausted, and that by urging that public institutions that have provided, have attempted to provide, or are intended to provide services to juveniles and their families be made parties to noncriminal misbehavior proceedings and subject to the dispositional authority of the court, Standard 3.112, together with Standards 3.143 and 3.183, was more likely to generate the alternative programs needed to provide aid and support for troubled families. It concluded further that the narrowed definition of the types of conduct cognizable by the family court; the specific criteria proposed to guide intake, detention, and dispositional decisions; the rights provided juveniles subject to the court's jurisdiction; and the repeated recommendation against placing juveniles accused or adjudicated of having engaged in noncriminal misbehavior in secure detention or correctional facilites would, if adopted, provide protection against the inequities to which the jurisdiction over noncriminal misbehavior has been subject in the past. See Standards 3.132, 3.143, 3.153, 3.155, 3.171, 3.183, 3.188, 3.189, 3.1811, and 3.191. Accordingly, the Advisory Committee on Standards, pursuant to its statutory authority, reaffirmed

its recommendation of Standard 3.112 and related provisions as a model that can significantly improve the administration of juvenile justice until such time as family court jurisdiction over noncriminal misbehavior is no longer necessary, even as a last resort. However, in response to the concerns of the National Advisory Committee, the Advisory Committee on Standards recommends, in addition, that Federal funds should be made available to assist any jurisdiction willing to abolish court jurisdiction over noncriminal misbehavior, to provide necessary services to juveniles and their families on a voluntary basis, and to evaluate the results and impact of this change.

Specifically, the standard recommends jurisdiction resulting from four types of behavior. Subparagraph (a) defines truancy in terms of "a pattern of repeated unauthorized absences or habitual unauthorized absence." It thus seeks to differentiate between the child who occasionally plays hooky, and the child who regularly misses school. Only in the latter instance does the possibility of coercive intervention appear justified. The standard does not set a particular number of unauthorized absences as a threshold, because there appears to be no figure that can accurately demarcate the line between the child who misses an occasional day on "impulse or caprice" and the confirmed dropout, without setting it so high as to preclude intervention until "the underlying cause of that behavior has had a chance to fester and become a grave and possibly unsolvable problem...." Task Force, supra, Commentary to Standard 10.5. The term unauthorized absence is intended to refer to absences that have not been consented to by the juvenile's parents, guardian, or custodian.

The inclusion of truancy within the noncriminal misbehavior jurisdiction of the family court is based on the traditional emphasis placed on education--49 States and the District of Columbia have compulsory school attendance laws--and the need in contemporary society for at least basic reading and mathematical skills in order to earn a living and obtain decent food and shelter. Although truancy may be one facet of a larger pattern of anti-social behavior, it may also be the result of unmet physical, mental, or emotional needs; an inability to afford adequate clothing or to pay for books and other fees; family problems; an inability to speak or understand English; or sometimes an inadequate and uninteresting educational program. See Children's Defense Fund, Children Out of School in America (1974). Most of these problems should be soluble without court intervention. Hence, it is the intent of the standard that the schools take primary responsibility for resolving truancy problems, including counseling the child and family, advising them of the availability of social and financial services, and providing alternative educational programs. Similarly, misbehavior in school that does not constitute a criminal offense should be dealt with by school authorities, not the court. See Standard 3.2. Conduct that would be a crime if committed by an adult is cognizable under the family court's delinquency jurisdiction. See Standard 3.111.

Truancy is included within the jurisdiction of the juvenile or family courts of 39 States and the District of Columbia. The IJA/ABA Joint Commission recommends that court jurisdiction be invoked as a last resort and limited to developing a plan for supervised attendance. William Buss and Stephen Goldstein, Proposed Standards Relating to Schools and Education, Standard 1.11 (IJA/ABA,

Draft, January 1976). The Model Act for Family Courts, Comment to Section 2(19)(iii) (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975) subsumes such conduct under the rubric of neglect. See also Fla. Stat. Ann. Section 39.01(10) (Supp. 1975). The Uniform Juvenile Court Act, Section 2(4)(i) (National Conference of Commissioners on Uniform State Laws, 1968) places juveniles who are "habitually and without justification truant from school and who are in need of treatment" in a separate "unruly child" class of jurisdiction. Richard Kobetz and Betty Bosarge, Juvenile Justice Administration, 77-78, 218 (International Association of Chiefs of Police, 1973) and the Children's Defense Fund, supra, recommend elimination of court jurisdictions based on truancy. See also Wisconsin Council on Criminal Justice Special Study Committee on Criminal Justice Standards and Goals, Juvenile Justice Standards and Goals, Standard 11.2 (2nd Draft, November 1975).

Subparagraph (b) delineates the scope of jurisdiction over juveniles who run away from home. A startling number of youths, both male and female, runaway each year. Estimates range up to as many as one million annually, although many of these may be short-term and resolved without outside intervention. See The Incidence and Nature of Runaway Behavior, (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975). The reasons for running away and the response required vary greatly. However, given the magnitude of the problem and the need to provide support for troubled families and to assure that runaways are treated fairly, continuation of family court jurisdiction over runaway behavior appears justified.

The standard recommends that children must be absent from their home or other approved place of residence (e.g., a boarding school, camp, or the home of a friend or relative) without the consent of their parent, guardian, or primary caretaker for 24 hours before family court jurisdiction can be invoked. This is to provide an opportunity for the conflict to cool and the juvenile to return or be returned without referral to the court. However, nothing in the standard is intended to prohibit law enforcement officers from conducting investigations and searches within the 24-hour period and returning the juvenile home or to an authorized runaway shelter.

The standard recommends that a noncriminal misbehavior petition should not be filed when a juvenile has runaway for the first time. As noted in the commentary to the Task Force standard, "very rarely do isolated instances of runaway behavior indicate severe family dysfunction or personal problems." Task Force, supra, Commentary to Standard 10.4. Only after repeated acts of leaving home without permission and the attempted utilization of noncoercive service alternatives should the family court be asked to determine whether the conduct occurred, and, if so, what disposition best serves the interests of the juvenile, the family, and the community. See Standard 3.144. This approach is in accord with the emphasis in the Federal Runaway Youth Act on meeting the needs of runaways and addressing their problems and those of their families outside the law enforcement and juvenile justice system.

The provisions adopted by the IJA/ABA Joint Commission recommend involvement of the family court only if a juvenile's parents refuse to allow their child to return home or if the juvenile and his/her parents cannot agree on an alternative place of residence. See Gough, supra, Standards 3.2 and 5.4. The IACP recommends

total elimination of court jurisdiction over runaways. Kobetz and Bosarge, supra. See also Wisconsin Council on Criminal Justice, supra. The Model Act, supra, recommends intervention of the family court under its neglect jurisdiction as a last resort. See also, Fla. Stat. Ann. Section 39.01(10), supra. The Uniform Juvenile Court Act, supra, includes juveniles who have "committed an offense applicable only to a child and who are in need of treatment or rehabilitation" under its special jurisdictional category for "unruly children." All States currently provide for jurisdiction over runaways, either specifically or under the provisions covering incorrigibility or beyond parental control.

Subparagraph (c) addresses the type of family conflicts formally brought into court as "incorrigibility" or being beyond parental control. It seeks to narrow those broad labels, requiring that there be repeated disregard for lawful parental authority and, like the other forms of noncriminal behavior, that appropriate noncoercive alternatives have been tried and failed. The provision, following the proposal of the Standards and Goals Task Force, would also permit challenges to "unreasonable and pointless parental demands" that are producing serious familial conflict. This would allow juveniles to seek resolution of family problems through established channels rather than through acting out or running away. In trying to determine whether parental demands were reasonable, the judge should consider the overall family situation and whether or not the demands served the purposes of family harmony, discipline, or the child's welfare. The term "repeated" is intended to require some pattern of disregard or misuse of parental authority, not merely a few insignificant, isolated incidents. The IJA/ABA Joint Commission, for the reasons indicated earlier, recommends that jurisdiction over disobedience to parental demands be eliminated. See Gough, supra; see also Kobetz and Bosarge, supra; Wisconsin Council on Criminal Justice, supra. It is the expectation of these authorities that, in nearly all cases, the services required can and will be available from public and private agencies. As with the other forms of noncriminal misbehavior, the Model Act for Family Courts recommends inclusion under neglect, and the Uniform Act includes habitual disobedience of reasonable and lawful parental demands under a PINS-type, "unruly child" classification. Most States include incorrigibility in one form or another within the jurisdiction of the family court.

The fourth type of noncriminal misbehavior cognizable by the family court is delinquent conduct committed by juveniles under the minimum age of the family court's jurisdiction over delinquency. See Standard 3.115. Subparagraph (d) is included in recognition that children under age 10 do commit acts that would constitute a crime if committed by an adult, but that "there is little purpose in authorizing delinquency jurisdiction over juveniles who are too young and immature to understand that engaging in certain behavior constitutes a criminal offense." Task Force, supra, comment to Standard 10.8. The general practice in the States when juveniles under 10 are apprehended for committing what would otherwise be a delinquent offense has been to place the child with a service agency without referral to court or to invoke the court's neglect or noncriminal misbehavior jurisdiction. Children under 12 are rarely adjudicated delinquent because of the difficulty in proving that such a young child is capable of forming the requisite intent, the recognition that such children require treatment not sanction, and the reluctance to further those

children's contacts with older delinquents. Unlike the Task Force provision, the standard does not specify that there must be repeated or serious delinquent acts in order to submit the matter to the family court. However, as with the other forms of noncriminal misbehavior, a petition should not be filed unless all appropriate noncoercive services have been refused or have proven ineffective after a reasonable trial period.

The Advisory Committee on Standards considered but rejected other commonly found bases for jurisdiction over noncriminal misbehavior. It concluded that although there should be authority to intercede when there is substantial and immediate danger to the juvenile's physical safety or when a juvenile is engaging in a social or dysfunctional behavior resulting from repeated excessive use of alcoholic beverages, and to provide services on a voluntary basis in such circumstances, court jurisdiction is unwarranted unless the behavior described falls within the four situations described in the standard or constitutes a delinquent act, neglect, or abuse. See Standards 3.111 and 3.113. Attempting to predict dangerousness is too uncertain an art to avoid the potential for continuation of the abuses of discretion cited by opponents to status offense jurisdiction. See Gough, supra. Alcohol abuse by adults is increasingly being handled as a medical problem without need of court intervention unless there is a threat to the safety of others, such as when an individual drives while intoxicated. There is no reason why this policy should not extend to juveniles as well. See Diversion of the Public Inebriate from the Criminal Justice System (Law Enforcement Assistance Administration, Washington, D.C., 1973); but see Task Force, supra. As for curfew violations--another common offense applicable only to juveniles--many communities have been able to cope with the problems that curfew regulations are intended to address without imposing such regulations. Moreover, curfews are subject to highly selective and often arbitrary enforcement. Again, nothing in the standard is intended to preclude return of children to their home. It suggests only that those juveniles should not be subject to adjudication or coercive dispositions. Subsequent standards will address the circumstances that justify societal intervention into the life of a child and the procedures and safeguards that should apply.

As indicated earlier, the family court's jurisdiction in noncriminal misbehavior cases should extend over the juvenile, his or her parents, guardian or primary caretaker, and any agency or institution with a legal responsibility to provide services to juveniles and/or their families. The latter would include, for example, the public schools in a truancy matter or a public social service agency to which a family has been referred. The standard is not intended to transform a simple referral to a private agency into a legal obligation to provide services. Hence, the family court's jurisdiction over noncriminal misbehavior would not include private agencies.

The term "all available and appropriate alternatives have been exhausted" in the last paragraph of the standard contemplates identification of the services that are available and determination that those services have been offered to the juvenile and his family, and that such services have proven ineffective after a reasonable trial period or have been unreasonably refused. See Standard 3.144. As noted above, the exhaustion of services provision is intended to apply to each of the forms of conduct included under the noncriminal misbehavior jurisdiction, including commission of delinquent acts by juveniles below age 10.

Related Standards

3.11
3.111
3.113
3.143
3.153
3.183
3.1811

3.113
Jurisdiction Over Neglect and Abuse

THE JURISDICTION OF THE FAMILY COURT OVER NEGLECT AND ABUSE SHOULD INCLUDE:

a. JUVENILES WHO ARE UNABLE TO PROVIDE FOR THEMSELVES AND WHO HAVE NO PARENT, GUARDIAN, RELATIVE, OR OTHER ADULT WITH WHOM THEY HAVE SUBSTANTIAL TIES WILLING AND ABLE TO PROVIDE SUPERVISION AND CARE;

b. JUVENILES WHO HAVE SUFFERED OR ARE LIKELY TO SUFFER PHYSICAL INJURY INFLICTED NONACCIDENTALLY BY THEIR PARENT, GUARDIAN, OR PRIMARY CARETAKER, WHICH CAUSES OR CREATES A SUBSTANTIAL RISK OF DEATH, DISFIGUREMENT, IMPAIRMENT OF BODILY FUNCTION, OR BODILY HARM;

c. JUVENILES WHO HAVE BEEN SEXUALLY ABUSED BY THEIR PARENT, GUARDIAN, PRIMARY CARETAKER, OR A MEMBER OF THE HOUSEHOLD;

d. JUVENILES WHOSE PHYSICAL HEALTH IS SERIOUSLY IMPAIRED OR IS LIKELY TO BE SERIOUSLY IMPAIRED AS A RESULT OF CONDITIONS CREATED BY THEIR PARENTS, GUARDIANS, OR PRIMARY CARETAKER OR BY THE FAILURE OF SUCH PERSONS TO PROVIDE ADEQUATE SUPERVISION AND PROTECTION;

e. JUVENILES WHOSE EMOTIONAL HEALTH IS SERIOUSLY IMPAIRED AND WHOSE PARENTS, GUARDIAN, OR PRIMARY CARETAKER FAIL TO PROVIDE OR COOPERATE WITH TREATMENT;

f. JUVENILES WHOSE PHYSICAL HEALTH IS SERIOUSLY IMPAIRED BECAUSE OF THE FAILURE OF THEIR PARENTS, GUARDIAN, OR PRIMARY CARETAKER TO SUPPLY THEM WITH ADEQUATE FOOD, CLOTHING, SHELTER OR HEALTH CARE, ALTHOUGH FINANCIALLY ABLE OR OFFERED THE MEANS TO DO SO;

g. JUVENILES WHOSE PHYSICAL HEALTH HAS BEEN SERIOUSLY IMPAIRED OR IS LIKELY TO BE SERIOUSLY IMPAIRED OR WHOSE EMOTIONAL HEALTH HAS BEEN SERIOUSLY IMPAIRED BECAUSE THEIR PARENTS HAVE PLACED THEM FOR CARE OR ADOPTION, IN VIOLATION OF THE LAW, WITH AN AGENCY, AN INSTITUTION, A NONRELATIVE, OR A PERSON WITH WHOM THEY HAVE NO SUBSTANTIAL TIES;

h. JUVENILES WHO ARE COMMITTING ACTS OF DELINQUENCY AS A RESULT OF PRESSURE FROM OR WITH THE APPROVAL OF THEIR PARENT, GUARDIAN, OR PRIMARY CARETAKER; AND,

i. JUVENILES WHO PARENTS, GUARDIAN, OR PRIMARY CARETAKER PREVENT THEM FROM OBTAINING THE EDUCATION REQUIRED BY LAW.

JURISDICTION OVER NEGLECT AND ABUSE SHOULD EXTEND TO THE JUVENILE, HIS OR HER PARENTS, GUARDIAN OR PRIMARY CARETAKER, AND ANY AGENCY OR INSTITUTION WITH A LEGAL RESPONSIBILITY TO PROVIDE NEEDED SERVICES TO THOSE PERSONS.

Sources

Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standards 11.9-11.13 and 11.15, (July 1976); Proposed Model Child Protection Act, Section 4(c)(iii) (U.S. Department of Health, Education, and Welfare, Washington, D.C., Draft, July 1976); see also Judith Areen, Intervention Between Parent and Child: A Reappraisal of the State's Role in Child Abuse and Neglect Cases, 63 Georgetown Law Review 887 (1975); Robert Burt and Michael Wald, Proposed Standards Relating to Neglect and Abuse, Standard 2.1 (IJA/ABA, Draft, January 1976).

Commentary

This standard provides a definition of neglect and abuse for jurisdictional purposes. It is intended to focus attention on specific harms to the child rather than on broadly drawn descriptions of parental behavior. It weighs both the interests of the juvenile in avoiding harm and the interest of the family in avoiding unnecessary State interference in child rearing, but clearly recognizes that the protection of the juvenile is the primary purpose of State intercession. As formulated, the standard does not require a showing of "parental fault."

> In a system intended to protect endangered children..., reliance on formalistic legal concepts is inappropriate.... Intervention should be a non-punitive act. The objective of helping parents protect their children will be furthered if intervention does not require that parents be labeled blameworthy or made to feel so. (Task Force, supra, Commentary to Standard 11.3.)

Moreover, the standard seeks to discourage intervention based solely on the parent's lifestyle, values, or "morals" when the child's physical or emotional health is not impaired or demonstrably threatened and to encourage reliance on public assistance programs of executive agencies rather than on the jurisdiction of the family court when a child's parents, guardian, or primary caretaker are too poor to provide him/her with adequate food, clothing, shelter, health care, or education. The continuity of relationships with parents or parental surrogates is often of critical importance and should not be disrupted unless necessary to protect against the specific harms listed in the standard. See Joseph Goldstein, Anna Freud, and Albert Solnit, Beyond the Best Interests of the Child, 2nd Ed. (The Free Press, New York, New York, 1973); John Bowlby, Child Care and the Growth of Love (Penguin Press, Baltimore, Maryland, 1965).

It is anticipated that, in many cases, the counseling and other services necessary to protect a child from further harm following submission of a complaint can be provided on a voluntary basis through a referral of the family for services by the intake officer. See Standards 3.142, 3.145. The family court should not exercise its jurisdiction unless it is evident that the available noncoercive alternatives cannot adequately protect the child or the child has been placed in emergency custody. See Standards 3.112, 3.145, 3.155, and 3.157.

In accordance with these general principles, the standard recommends that the family court should be authorized to assume jurisdiction in order to protect children from any of nine defined types of harm. Subparagraph (a), rather than simply listing "abandonment" as a ground for jurisdiction, see e.g., Model Act for Family Courts, Section 2(19) (U.S.

Department of Health, Education, and Welfare, Washington, D.C., 1975), suggests that unless one of the harms specified in subparagraphs (b)-(i) can be demonstrated, it is not necessary to involve the jurisdiction of the family court on behalf of a child who has been entrusted by his/her parents to a relative or other adult to whom the child has formed an attachment and who is willing and able to provide supervision and care. See Task Force, supra, and discussion of subparagraph (g), infra. Similarly, it suggests that when older juveniles have demonstrated the ability to live on their own, it is not in the interest of the juvenile, the State, and, in most instances, the parents to attempt to intercede on grounds of parental abandonment or neglect. Most States currently provide authority to intervene when a child has been "abandoned," leaving the term to be defined by the courts on a case-by-case basis.

There can be little question that the law should seek to protect children, no less than adults, from being intentionally assaulted or otherwise harmed by others. The major issue is the threshold for intercession. A child should not have to be permanently maimed before assistance is available, but neither should court intervention be authorized when the risk of harm is highly speculative. See Task Force, supra; Michael Wald, State Intervention on Behalf of "Neglected" Children: A Search for Realistic Standards, 27 Stanford Law Review 985, 1012-1013 (1975). Under subparagraph (b), the family court's jurisdiction would include children who have suffered some form of bodily harm as a result of a deliberate act of their parents, guardian, or primary caretaker. Intent to inflict the particular injury that the child has suffered need not be proven, but there should be evidence that the child was not struck, burned, or otherwise injured accidentally. The term "primary caretaker" is used here and throughout these standards to denote a person other than a child's parents or public or private agency, institution, or organization that is providing or has taken on the responsibility for providing care and supervision of a child without having been designated as the child's legal guardian. Subparagraph (b) does not require that the injury to the child be serious because of the danger presented by the repetitive nature of child abuse. See Proposed Model Child Protection Act, supra Section 4(c); but see Task Force, supra, Burt and Wald, supra. The term "impairment of bodily function" is intended to include a child's "failure to thrive."

Subparagraph (c) addresses the problem of sexual abuse. Like physical abuse and abandonment, it is clear that incest and other forms of sexual abuse are matters warranting judicial intervention. In the past, when such conduct has been reported, it has often been treated as a criminal offense. The focus on assisting the family rather than punishing an offender, the availability of counseling and other services, and the fact that the parental sexual misconduct is often in conjunction with other forms of abuse or neglect, Yvonne Tormes, Child Victims of Incest (American Humane Association, Denver, Colorado, 1968); Samuel Weinberg, Incest Behavior (Citadel Press, New York, New York, 1955), make it more appropriate to handle such matters as neglect and abuse cases, even though under Standard 3.11 and 3.117, intra-family criminal offenses could be heard in the family court.

Subparagraph (d) defines the most commonly used basis for jurisdiction--serious impairment of a juvenile's health because of the failure of the juvenile's parents, guardian, or primary caretaker to provide adequate protection or supervision. Unlike many current statutes, the definition

requires that harm or a threat of imminent harm be shown in order for the matter to be cognizable in the family court. See Task Force, supra; Burt and Wald, supra; Areen, supra; but see Model Child Protection Act, supra. As noted above, this is intended to discourage intercession on the basis of the family's lifestyle, values, or poverty when the child's health is not endangered. The subparagraph encompasses situations such as the young child who is regularly left unattended or is allowed to roam the streets alone at night, the child allowed to play regularly in a room with an exposed and accessible high voltage wire or a defective heater, or the child who is repeatedly abused by a sibling or a visitor to the home. See Task Force, supra, Commentary to Standard 11.11. When a parent is unable to correct the dangerous condition or provide supervision for financial reasons, the case should ordinarily be referred to the appropriate public or private agency for provision of the necessary services on a voluntary basis and the complaint dismissed, unless no measure short of temporary emergency custody will be sufficient to protect the child until the condition is corrected or the homemaker or other services provided. See Standards 3.145 and 3.154. Because the hazards of prediction are greater in the situations covered by this subparagraph than in the intentional abuse cases covered by subparagraph (b), "serious" impairment of the child's physical health, or a substantial risk thereof, is required before the jurisdiction of the family court can be invoked. However, this limitation is not intended to prohibit the provision of services on a voluntary basis to assist the family.

Subparagraph (e) addresses the highly complex and uncertain issue of emotional neglect. Many current neglect statutes have been criticized for failing to protect the mental or emotional health of children in the same manner as their physical health. See Task Force, supra, Commentary to Standard 11.12. However, there is little agreement on the definition of emotional neglect, even among mental health professionals. Subparagraph (e) draws together elements from the Areen, Task Force, and IJA/ABA proposals. Like Professor Areen, the Advisory Committee on Standards concluded that the state of the art of child psychology is not yet sufficient to provide a set of precise, reliable, and inclusive symptoms that can be fashioned into a statutory definition of emotional neglect or abuse. See Areen, supra, 933; but see Task Force, supra and Wald and Burt, supra; Draft Model Child Protection Act, supra, Section 4(g). However, unlike the Areen proposal, supra, 933, the subparagraph does not require determination that the parents are the cause of their child's emotional problems. Rather, it follows the recommendation of the Task Force that the family court should be authorized to take cognizance of the matter only when the parents refuse to allow their child to receive treatment or are otherwise unwilling "to make meaningful efforts to resolve the problem." Task Force, supra, Commentary to Standard 11.12. Subparagraph (e) also limits jurisdiction to situations in which actual harm has occurred. Cf. Subparagraphs (b), (d) and (g).

> ...[I]t is particularly essential that intervention with regard to emotional neglect be premised solely on damage to the child. Without actual damage it is extremely difficult both to predict the likely future development of the child and to assess the impact of intervention. At a minimum, sound predictions would require extensive observations of the child and family. At present we lack the resources to undertake such evaluations. Even

if there were adequate resources, our knowledge of child development is still too limited to insure sound long-term predictions. (Wald, supra, 1017.)

Three States--Florida, South Carolina, and Utah--have statutes authorizing judicial intervention for failure of a child's parents to provide psychiatric help. Eleven others have statutes specifically addressing emotional neglect in other ways.

Subparagraph (f) is based on Section 4(c)(iii) of the Draft Model Child Protection Act, supra. It is intended to cover situations in which a child's health is endangered because his parents, guardian, or primary caretaker fail to provide him/her with the basic essentials of life, although financially able or given the means to do so. When the family is unable to provide food, shelter, clothing, or health care for financial reasons, the necessary services or funds should be provided through social service or welfare agencies without referral to the family court. Thirty States provide for jurisdiction in cases of destitution or make no exception in "failure to provide" statutes for lack of financial resources. As in subparagraph (d), this provision urges that failure to provide should not be subject to the jurisdiction of the family court unless the child has been seriously harmed, in order to discourage disruption of family life because of the parent's lifestyle or values and to provide some guidance to judges asked to order an operation or other medical treatment for children whose parents object on religious grounds. See Task Force, supra; Burt and Wald, supra; Elizabeth Browne and Lee Penny, The Non-Delinquent Child in Juvenile Court: A Digest of Case Law, 9-13 (National Council of Juvenile Court Judges, 1974); Note, Court Ordered Non-Emergency Medical Care for Infants 18 Cleveland-Marshall Law Review 296 (1969). Like subparagraph (e), the provision limits court jurisdiction to instances in which the child's health has actually been impaired.

Subparagraph (g) is included in recognition of the large number of children placed for adoption each year with unlicensed agencies or voluntarily relinquished to institutions or persons with whom they have no substantial ties. When such placement results in serious physical or emotional harm to the child or the threat of serious physical harm, court action to protect the child appears warranted. The provision is not intended to include voluntary placements with a relative or with a person with whom the child has formed a close attachment, although neglect or abuse of the child by such persons would be included under the other subparagraph of this standard. A number of States currently include placement of a child in unlicensed facilities as a ground for declaring the child neglected or abused. Both the Model Act for Family Courts, supra, Section 2 (19)(iv), and the Uniform Juvenile Court Act, Section 2(5)(iii) (National Conference of Commissioners on Uniform State Laws, 1968) include "children placed for care and adoption in violation of the law" within the jurisdiction over the neglect or abuse, although neither requires evidence of harm to the child before such jurisdiction can be exercised.

Subparagraph (h) provides for family court jurisdiction in instances in which children are actively encouraged to engage in delinquent conduct by their parent, guardian, or primary caretaker. Like the Task Force and IJA/ABA provisions from which it is drawn, supra, the subparagraph is not intended to include situations in which a juvenile is believed to have committed the delinquent acts because of lack of parental supervision or one of the

other forms of neglect or abuse. See Task Force, supra, Commentary to Standard 11.15. As in sexual abuse cases, the focus of and services available through the family court's jurisdiction over neglect and abuse appears to be a more appropriate means of dealing with the problem of encouraged delinquency than prosecuting the parent or parental surrogate in a criminal proceeding.

Failure to provide a child with the education required by law is often grouped together with failure to provide adequate clothing, shelter, food, or health care. See subparagraph (f). It is listed separately because it protects the child's interest in receiving at least an adequate education rather than the child's physical health. Hence, children alleged to have been prevented from obtaining the education required by law should not be placed in emergency custody. See Standards 3.154 and 3.157. The standard is not intended to affect the rights of parents to limit, to some extent, their child's education or to secure an alternative form of education for religious reasons. See Yoder vs. Wisconsin 406 U.S. 205 (1972). The term "required by law" is intended to refer to the compulsory school attendance laws in force in all but one State. For the reasons discussed in connection with subparagraphs (c) and (h), utilization of the court's jurisdiction over neglect appears to be a better means of protecting a juvenile's opportunity for an education than seeking to impose the criminal penalties contained in many compulsory school attendance laws.

The final paragraph of the standard recommends that the family court's jurisdiction in neglect and abuse cases, like that in noncriminal misbehavior cases, should extend over public agencies with a legal responsibility to provide services to juveniles and their families, as well as over the juvenile and parent, guardian, or primary caretaker named in the complaint or petition. This authority is necessary when the public agencies are alleged to have allowed children in their charge to be neglected or abused, to make certain that services ordered by the court are actually provided, and to assure that noncooperation with those services is brought to the court's attention. See Standards 3.184, 3.189, 3.1812, and 3.1813.

Related Standards

3.11
3.111
3.112
3.117
3.145
3.154
3.157
3.184
3.185
3.1812
3.1813

3.114
Jurisdiction of the Federal Courts Over Delinquency

THE JURISDICTION OF THE UNITED STATES DISTRICT COURTS OVER OFFENSES COMMITTED BY JUVENILES THAT WOULD BE DESIGNATED AS CRIMINAL IF COMMITTED BY AN ADULT SHOULD BE REDUCED TO THE GREATEST EXTENT POSSIBLE.

Source

None of the sets of standards or model legislation reviewed address the appropriate scope of Federal jurisdiction over delinquency. See generally, 18 U.S.C. Section 5032 (Supp. 1976).

Commentary

Over the past 10 years, the number of delinquency cases adjudicated by the U.S. District Courts has steadily declined. In 1975, the U.S. District Courts heard a total of 522 cases under the Federal Juvenile Delinquency Act. 18 U.S.C. Section 5031 et seq. (Supp. 1976). The latest statistics available--1973--show that Federal probation officers supervise just over 300 adjudicated delinquents. As of June 30, 1975, Federal correctional facilities housed about 340 persons adjudicated under the Federal Juvenile Delinquency Act, only about one-third of whom were under age 18. As a result, few if any U.S. District Court judges try delinquency cases on a regular basis or are selected to hear such cases under the criteria recommended in Standard 3.123; few Federal probation officers have an opportunity to become familiar with the problems of juveniles adjudicated delinquent; correctional programs for juveniles are limited; and the Federal correctional facilities to which adjudicated delinquents are sent are often far from the juvenile's home and family and house adult as well as juvenile offenders. Although there will inevitably remain a handful of juvenile offenders who will have to be tried in the Federal courts because the States lack concurrent jurisdiction over the offense (e.g., violations of immigration, currency counterfeiting, and Federal tax laws) or over the place where the offense was committed (e.g., sky-jacking or crimes committed on the high seas), this number could be significantly reduced. Among the ways in which this reduction could be achieved is to strengthen the longstanding policy in favor of deferral of jurisdiction to the States embodied in 18 U.S.C. 5032 (Supp. 1976), see also District of Columbia vs. PLM, 325 A.2d 600 (DCCA, 1976), by deleting the provision in that section permitting Federal prosecution when a State refuses to assume jurisdiction. Over half the commitments under the Federal Juvenile Delinquency Act to Federal correctional facilities were for offenses for which there are usually State equivalents (e.g., robbery, larceny, burglary, and drug offenses). In addition, in States which have not exercised the option provided in Sections 6 and 7 of Public Law 83-20 (1953) to assume jurisdiction over

criminal offenses and civil causes of action arising on Indian reservations, greater reliance could be placed on deferral of delinquency cases to the tribal courts. Such reliance should be accompanied by the programs, training, and other resources necessary to assist the tribal courts to administer effective and equitable justice and enable the tribes to provide or purchase the necessary services. A number of such programs are already under way. Furthermore, jurisdiction over an act of delinquency committed on military installations could be ceded back to those States that did not retain such jurisdiction when the land for the installation was transferred to the Federal Government. Because the number of Federal Juvenile Delinquency Act cases is already small--in 1973 the most delinquency cases handled by any one district was 43--these measures should not excessively burden the family courts of most jurisdictions.

In those cases in which the Federal courts must retain jurisdiction over delinquent conduct, correctional services, when required, should be obtained through contracts with State and local agencies or private organizations. Authority for procurement of such services is already provided in 18 U.S.C. Section 5040 (Supp. 1976). Dispositional decisions should be made in accordance with the procedures recommended in Standards 3.181 et seq. If a custodial alternative is selected, the custodial facility in which the juvenile is placed should ordinarily be as close to the juvenile's place of residence as possible. The Advisory Committee on Standards recommends that the operation of correctional facilities and programs by the Federal Government for juveniles adjudicated delinquent by the U.S. District Courts should be discontinued.

This standard is not intended as criticism of the performance of the U.S. District Courts or the Federal Bureau of Prisons. Rather, it arises from the recognition that the administration of juvenile justice is and should continue to be a State and local responsibility and, therefore, that jurisdiction over delinquency, noncriminal misbehavior, and neglect and abuse should be vested in State and local courts. As was noted by the District of Columbia Court of Appeals:

> As between the local community and the federal government one would hardly say that juvenile delinquency is primarily a federal concern because it is evident it is at bottom a responsibility of the community. If we have, as we do to a distressing degree, juvenile delinquency they are not either local delinquents or federal delinquents--they are juvenile delinquents and they are the problem of the local community primarily, barring a controlling statutory provision to the contrary. (District of Columbia v. P.L.M., supra, p. 601)

This standard recommends reduction of such statutory bars to a minimum.

Related Standards

3.11
3.111

3.115
Maximum and Minimum Age

THE JURISDICTION OF THE FAMILY COURT OVER DELINQUENCY SHOULD INCLUDE ANY PERSON CHARGED WITH AN OFFENSE THAT ALLEGEDLY OCCURRED ON OR AFTER THAT PERSON'S 10TH BIRTHDAY AND PRIOR TO THAT PERSON'S 18TH BIRTHDAY, AND FOR WHICH THE STATUTE OF LIMITATIONS, APPLICABLE IF THE OFFENSE HAD BEEN COMMITTED BY AN ADULT, HAS NOT RUN. THE DISPOSITIONAL AUTHORITY OF THE FAMILY COURT OVER AN ADJUDGED DELINQUENT SHOULD NOT EXTEND BEYOND THAT PERSON'S 21ST BIRTHDAY.

THE JURISDICTION OF THE FAMILY COURT OVER NONCRIMINAL MISBEHAVIOR* SHOULD ONLY BE INVOKED WITH REGARD TO PERSONS UNDER THE AGE OF MAJORITY ESTABLISHED BY STATUTE. THE DISPOSITIONAL AUTHORITY OF THE FAMILY COURT IN MATTERS UNDER ITS NONCRIMINAL MISBEHAVIOR JURISDICTION SHOULD NOT EXTEND BEYOND THE DATE ON WHICH THE PERSON WITH REGARD TO WHOM THAT JURISDICTION WAS INVOKED ATTAINS THE STATUTORY AGE OF MAJORITY.

Sources

Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standards 9.2-9.4, 10.8, and 14.14 (July 1976).

Commentary

This standard sets a maximum age limit on the jurisdiction of the family court over persons charged with acts of delinquency or noncriminal misbehavior, a minimum age below which a child may not be charged as a delinquent, and a limit on the duration of the family court's dispositional authority.

Establishing a maximum jurisdictional age is a somewhat arbitrary decision because the age at which individuals mature varies. However, because there appears to be little agreement on methods for actually measuring maturity, specification of a chronological age remains the most viable approach. Eighteen was selected as the age at which a person accused of committing an act that violates the criminal law will be handled as an adult offender rather than as an alleged delinquent, because it corresponds to the age at which most young persons complete their high school education, begin to loosen their family ties, and become eligible for such adult rights and responsibilities as voting and military service.

The date of the alleged conduct is designated as the date controlling family court jurisdiction. This follows the practice in a majority of

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*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

States and is intended to remove the incentive to delay prosecution of a case until after a juvenile's eighteenth birthday so that he/she can be tried as an adult. Standard 3.116 provides guidelines for transfer to a court of general criminal jurisdiction of accused delinquents, 16 and over, for whom dispositions by the family court would be inappropriate.

The statute of limitations applicable in delinquency cases should be the same as that applicable in adult criminal proceedings. See Task Force, supra. The IJA/ABA Joint Commission has recommended special statutes of limitations for delinquency matters. The rationale for such special provisions is that an isolated incident more than 3 years old has little bearing on a child's need for treatment or punishment and that if there have been no subsequent acts of delinquency, society's interest in preventing future criminal conduct can probably be best served by leaving the child alone. Charles Whitebread, Proposed Standards Relating to Waiver of Juvenile Court Jurisdiction, Standard 1.3 (December 1975). However, the screening and referral procedures recommended in Standards 3.141-3.147 accomplish the same objectives more simply and directly.

The maximum age for jurisdiction in noncriminal misbehavior cases is set at the statutory age of majority. Because the conduct included under the rubric of noncriminal misbehavior is not proscribed for adults, the standard recommends that both adjudicatory and dispositional jurisdiction should terminate at majority and makes no provision for continuing jurisdiction over noncriminal misbehavior. Thus, a juvenile who runs away or is truant cannot be subject to court action for those acts after he/she reaches the age of majority. Similarly a dispositional order, rendered in a proceeding initiated by a minor for repeated abuse of authority, would automatically terminate when the minor reached majority. In contrast, juveniles committing a delinquent act before their eighteenth birthday but not apprehended until after that birthday would still be subject to the family court's delinquency jurisdiction, although they could be transferred to a court of general criminal jurisdiction under Standard 3.116. Forty-one States set the beginning of adult status at 18 years of age, three at 19, and the remaining six at the traditional age of 21, although many States place separate age restrictions on the availability of alcoholic beverages, eligibility for public office, and the ability to convey land. Herbert W. Beaser, The Legal Status of Runaways, 317-318 (Educational Systems Corp., Washington, D.C., 1975).

The standard endorses the minimum age of 10 for delinquency cases recommended by the Standards and Goals Task Force and the IJA/ABA, Proposed Standards Relating to Juvenile Delinquency and Sanctions, Standard 2.1 (IJA/ABA, December 1975). The minimum age limit recognizes that the number of children under 10 years of age committing criminal acts is relatively small, that there is serious question about the ability of a child aged 9 or below to understand the proceedings or his/her actions, and that delinquency cases involving young children are likely to be family problems which can be addressed more effectively through the provision of counseling and services, either voluntarily or, when necessary, through the family court's jurisdiction over noncriminal misbehavior or neglect and abuse. See Standards 3.112 and 3.113. Accordingly, no minimum age is set for these other types of jurisdictions. Forty-five States either have no set policy or follow the commonlaw presumption that children under the age of 7 are not

capable of understanding the consequence of their behavior and therefore cannot be charged with a crime or delinquency. Two States have statutes setting the minimum age at 7 and four States set the minimum at 10.

Finally, the standard adopts 21 years as the maximum age for the exercise of continuing jurisdiction over an adjudicated delinquent. It thus follows the practice of 41 States. The purpose of providing continuing jurisdiction is to relieve the pressure that would otherwise exist to transfer to adult court large numbers of cases involving juveniles just under the maximum jurisdictional age. Dispositions extending beyond a person's eighteenth birthday would still be subject to the statutory durational limits established in conjunction with Standard 3.181. As noted above, dispositions in noncriminal misbehavior cases may not extend beyond the date on which the juvenile to whom the petition refers reaches majority. In delinquency cases, the Model Act for Family Courts, Section 9 (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975) specifies age 19 unless terminated prior thereto. The IJA/ABA Joint Commission recommends that jurisdiction continue until 18 if the dispositional order is entered before age 15, and up to a maximum of 3 years if the order is entered between the ages of 15 and 18. Whitebread, supra.

Related Standards

3.111
3.112
3.113
3.116
3.181

3.116 Transfer to Another Court—Delinquency

THE FAMILY COURT SHOULD HAVE THE AUTHORITY TO TRANSFER A JUVENILE CHARGED WITH COMMITTING A DELINQUENCY OFFENSE TO A COURT OF GENERAL CRIMINAL JURISDICTION IF:

a. THE JUVENILE IS AT LEAST AGE 16;

b. THERE IS PROBABLE CAUSE TO BELIEVE THAT THE JUVENILE COMMITTED THE ACT ALLEGED IN THE DELINQUENCY PETITION;

c. THERE IS PROBABLE CAUSE TO BELIEVE THAT THE ACT ALLEGED IN THE DELINQUENCY PETITION IS OF A HEINOUS OR AGGRAVATED NATURE, OR THAT THE JUVENILE HAS COMMITTED REPEATED SERIOUS DELINQUENCY OFFENSES; AND,

d. THERE IS CLEAR AND CONVINCING EVIDENCE THAT THE JUVENILE IS NOT AMENABLE TO TREATMENT BY THE FAMILY COURT BECAUSE OF THE SERIOUSNESS OF THE ALLEGED CONDUCT, THE JUVENILE'S RECORD OF PRIOR ADJUDICATED OFFENSES, AND THE INEFFICACY OF EACH OF THE DISPOSITIONS AVAILABLE TO THE FAMILY COURT.

THIS AUTHORITY SHOULD NOT BE EXERCISED UNLESS THERE HAS BEEN A FULL AND FAIR HEARING AT WHICH THE JUVENILE HAS BEEN ACCORDED ALL ESSENTIAL DUE PROCESS SAFEGUARDS.

BEFORE ORDERING TRANSFER, THE COURT SHOULD STATE, ON THE RECORD, THE BASIS FOR ITS FINDING THAT THE JUVENILE COULD NOT BE REHABILITATED THROUGH ANY OF THE DISPOSITIONS AVAILABLE TO THE FAMILY COURT.

Sources

Task Force To Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 9.5 (July 1976); Charles Whitebread, Proposed Standards Relating to Waiver of Juvenile Court Jurisdiction, Standard 2.2 (IJA/ABA, Draft, February 1975).

Commentary

The President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, 25 (U.S. Government Printing Office, Washington, D.C., 1967) termed transfer of accused delinquents to adult criminal courts, "a necessary evil, imperfect but not substantially more so than its alternatives." Waiver of jurisdiction in cases involving juveniles for whom the specialized services and programs available to the family court are inappropriate, functions as a safety valve to relieve the pressure to reduce the maximum age of family court jurisdiction and to facilitate the provision of services to those juveniles who appear more likely to respond.

This standard, following the lead of the Standards and Goals Task Force on Juvenile Justice, the IJA/ABA Joint Commission, and United States vs. Kent, 383 U.S. 541 (1966), recommends

criteria to regulate the operation of this safety valve to assure that those juveniles for whom treatment as an adult offender is appropriate are transferred and that those for whom stigmatization as a convicted felon is unnecessary remain under family court jurisdiction.

The first criterion is that juveniles under age 16 should remain under the jurisdiction of the family court. This is in accord with the recommendations of most recent standards and models and is the practice in about a quarter of the States. See e.g., Task Force, supra; Whitebread, supra; President's Commission, supra; Model Act for Family Courts Section 31 (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975); Uniform Juvenile Court Act Section 34 (National Conference of Commissioners on Uniform State Laws, 1968). No matter what age is set, there will always be a few juvenile offenders for whom transfer may be appropriate. Although many serious crimes are committed by juveniles age 15 and under, it is anticipated that the number of cases in which transfer of such juveniles would be proper under the other criteria listed in the standard will be minimal.

The standard further recommends that no juvenile be transferred unless it has been determined that there is probable cause to believe that a delinquent act has been committed and that the juvenile committed it. See e.g., Task Force, supra; Whitebread, supra; Uniform Act, supra; but see Model Act, supra. About half the States with statutory provisions on waiver include such a probable cause requirement. A new probable cause determination regarding the juvenile's involvement in the offense is not necessary if such a determination has been made during a detention hearing or on request of the respondent following the filing of a delinquency petition. See Standards 3.155 and 3.165.

However, in most cases, there will still need to be a determination regarding the seriousness of the conduct or the juvenile's prior record of serious felonies. The standard endorses the Task Force provision that a delinquent act must be shown to be of a heinous or aggravating nature or part of a pattern of serious offenses committed by the juvenile. The term "felony" is insufficient to convey the degree of seriousness required for transfer and although linking waiver to the classification scheme used for dispositional purposes may be one method of implementing the standard, see Whitebread, supra; and Standard 3.181, the mere citation of a particular class of felonies still does not necessarily address the nature and circumstances of the particular act in question. Approximately 14 States require that the delinquent act be the equivalent of a felony before a juvenile may be transferred. The Model Act, supra, recommends consideration of the "nature" of the offense and the juvenile's prior record in determining the "prospects for rehabilitation." The Uniform Act, supra, does not.

The fourth criteria focuses directly on the issue of the juvenile's amenability to treatment. The standard endorses the position adopted by the IJA/ABA Joint Commission that the family court judge must determine that there is clear and convincing evidence that a juvenile, because of the nature of the alleged offense and his/her response to the dispositions imposed for prior offenses, is unlikely to respond to any of the dispositions available to the family court. In making this decision the judge should review each of the available types of dispositional alternatives. The Task Force standard does not specify the level of proof, but otherwise agrees

in concept with the Whitebread proposal.

Kent vs. United States, supra, instructs that juveniles subject to a transfer proceeding are entitled to a hearing, to counsel, to "access by his counsel to the social records and probation or similar reports which presumably are considered by the court, and to a statement of reasons for the Juvenile Court's decision." Id., 383 U.S. at 557. This holding was raised to constitutional proportions by In re Gault 387 U.S. 1 (1967). The reference in the standard to all essential due process safeguards is intended to go beyond Kent and to be read in conjunction with Standard 3.171, which recommends that accused delinquents should be entitled to notice, to be present at all proceedings, to compel the attendance of witnesses, to present evidence and cross-examine witnesses, to an impartial decisionmaker, to the right against self-incrimination, and to have a verbatim record made of the proceeding.

The explicit statement of the facts and reasons underlying the transfer decision, which is called for in the final paragraph, follows Kent, supra, and is part of the effort throughout these standards to regularize the exercise of discretionary authority. See e.g., Standards 3.147; 3.155-3.157; and 3.188. Although the transfer decision can probably never be a "scientific evaluation," President's Commission, supra, the enumeration of specific criteria and the explanation of the basis for the transfer decision in terms of those criteria should facilitate review and promote understanding of and consistency in the transfer process.

Related Standards

3.111
3.117
3.182

3.117
Transfer of Jurisdiction— Intra-Family Criminal Offense, Contributing to the Delinquency of a Minor

THE FAMILY COURT SHOULD HAVE THE AUTHORITY TO TRANSFER TO A COURT OF GENERAL CRIMINAL JURISDICTION, AN ADULT CHARGED WITH AN INTRA-FAMILY CRIMINAL OFFENSE OR CONTRIBUTING TO THE DELINQUENCY OF A MINOR, WHEN THERE IS A FINDING, BASED UPON CLEAR AND CONVINCING EVIDENCE THAT THE SERVICES AVAILABLE TO THE FAMILY COURT ARE INAPPROPRIATE:

a. BECAUSE THE FAMILY UNIT DOES NOT REQUIRE SUCH SERVICES;

b. BECAUSE OF THE SERIOUSNESS OF THE ALLEGED CONDUCT; OR

c. BECAUSE OF THE ACCUSED'S RECORD OF PRIOR OFFENSES.

Sources

No other standards group addresses this issue other than to call for jurisdiction over intra-family offenses. The procedures are based on Charles H. Whitebread, Proposed Standards Relating to Waiver of Juvenile Court Jurisdiction, Standard 2.2 (IJA/ABA, Draft, February 1975).

Commentary

Jurisdiction is provided over intra-family offenses and contributing to the delinquency of a minor because of the counseling and other services familiar to and available through the family court, which can be utilized to assist the family and avoid recurrences of the unlawful behavior. Although under Standards 3.11 and 3.121, the family court, as a division of the highest court of general jurisdiction, would have authority to try a criminal matter and upon conviction to impose a sentence, transfer to a division that serves as a court of general criminal jurisdiction is recommended when such services are unnecessary or are inappropriate because of the nature of the offense, e.g., homicide, or because the defendant's prior record indicates that counseling would have little effect. It is intended that any criminal conduct in which both the alleged perpetrator and the victim are members of the same household or closely knit family group should be designated as an intra-family offense. Limiting intra-family offenses to certain enumerated crimes introduces unnecessary complexity and inducements to negotiate over the charge. See Note, 45 New York University Law Review 385 (1970).

It is anticipated that the procedures and time limits applicable to criminal proceedings will apply to intra-family offense and contributing to the delinquency of a minor cases, but that such cases will be reviewed by the intake unit in a manner similar to that described in Standards 3.142-3.147, at an early stage of the criminal process, in order to determine whether referral to services would be appropriate.

elated Standards

.11
.111
.116

3.118
Venue

DELINQUENCY, NONCRIMINAL MISBEHAVIOR,* AND NEGLECT AND ABUSE CASES SHOULD BE ADJUDICATED IN THE JURISDICTION WHERE THE CONDUCT FROM WHICH THE CASE AROSE IS ALLEGED TO HAVE OCCURRED.

UPON MOTION OF ANY PARTY PRIOR TO THE ADJUDICATION HEARING, THE COURT SHOULD TRANSFER THE CASE TO A FAMILY COURT IN ANOTHER CONVENIENT LOCATION IF IT FINDS THERE IS A REASONABLE LIKELIHOOD THAT A FAIR AND IMPARTIAL ADJUDICATION CANNOT BE HAD IN THE JURISDICTION IN WHICH THE CASE IS THEN PENDING, OR IF SUCH A TRANSFER WOULD BE IN THE INTEREST OF JUSTICE.

IN ADDITION, THE FAMILY COURT SHOULD BE AUTHORIZED UPON MOTION OF ANY PARTY TO TRANSFER A CASE AFTER ADJUDICATION TO THE FAMILY COURT IN THE JURISDICTION IN WHICH THE JUVENILE OR HIS FAMILY RESIDES FOR DETERMINATION OF THE APPROPRIATE DISPOSITION AND THE ENFORCEMENT THEREOF.

Sources

See generally, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 9.6 (July 1976), Uniform Rules of Criminal Procedure, Section 462 (National Conference of Commissioners on Uniform State Laws, 1974).

Commentary

This standard sets forth the principles governing the place of adjudication for delinquency, noncriminal misbehavior, and neglect or abuse proceedings. It recommends that cases be heard in the jurisdiction in which the underlying conduct occurred, because the witnesses for both the State and the respondent are more likely to be available in the place in which the alleged offense, conduct, neglect, or abuse took place.

This is consistent with the requirement of the Sixth Amendment to the U.S. Constitution that defendants in criminal cases be tried in the jurisdiction "wherein the crime shall have been committed," and the current practice in a majority of the States in delinquency cases.

However, the standard provides a liberal change of venue provision taken in part from the Uniform Rules of Criminal Procedure. It authorizes transfer of the proceedings to a family court in a location convenient to the parties upon a showing that there is a "reasonable likelihood" that the matter could not be adjudicated fairly or that a transfer would be in the

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*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

interests of justice. This is intended to include the inability of a party to present significant facts or witnesses in the original jurisdiction as well as such factors as prejudicial publicity.

The judge is required to be the arbiter between the possible competing interests of the parties. No special right of consent is accorded the juvenile because a transfer from the place of occurrence to the place of residence could be used to prejudice the State as well as to benefit the juvenile. But see Model Act for Family Court, Section 11 (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975). Such special provisions are usually intended to facilitate dispositions in the juvenile's home jurisdiction. To accommodate this need, the standard provides that cases may be transferred to the home jurisdiction following adjudication for both determination and enforcement of the disposition on the request of any of the parties. Article VII of the Interstate Compact on Juveniles requires the adjudicating judge to determine the disposition. However, because the family court judge in the home jurisdiction is more likely to be familiar with the programs and services available in that jurisdiction, and in light of the provisions in Standards 3.181 to 3.184 promoting increased consistency in dispositional decisions, it appears more appropriate to allow the dispositional decisions to be made in the home jurisdiction. Obviously, information concerning seriousness and circumstances of the conduct on which the adjudication was based and other information essential for making the dispositional decision will have to be transferred along with the case. See Standards 3.186 and 3.187.

Related Standards

3.111
3.112
3.113
3.188

3.12
Court Organization

3.121
Relationship to Other Courts

THE FAMILY COURT SHOULD BE A DIVISION OF THE HIGHEST COURT OF GENERAL JURISDICTION, WITH THE FULL JURISDICTIONAL AUTHORITY AND RANGE OF DISPOSITIONAL, REVIEW, AND INHERENT POWERS ENJOYED BY THAT COURT.

Sources

Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 8.1 (July 1976); see also Ted Rubin, Proposed Standards Relating to Court Organization and Administration, Standard 1.00 (IJA/ABA, Draft, October 1975); National Advisory Commission on Criminal Justice Standards and Goals, Courts, Section 14.1 (U.S. Government Printing Office, Washington, D.C., 1973).

Commentary

This standard endorses the position taken by all recent national standards-setting efforts that the court charged with jurisdiction over juvenile or family matters be an equal part of the highest court of general jurisdiction. See, in addition to the source materials, Model Act for Family Courts, Comment to Section 3 (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975); Uniform Juvenile Court Act, Comment to Section 2(9) (National Conference of Commissioners for Uniform State Laws, 1968). Although the standard is phrased in terms of the family court structure recommended in Standard 3.11,

it is not intended to discourage a State retaining the traditional scope of juvenile court jurisdiction from making the juvenile court a division of its highest trial court if the juvenile court does not already enjoy that status.

In addition to the specific powers recommended in these standards, family courts should have the same express and inherent authority accorded other divisions, including the power to sentence adults to the full range of penalties provided by the State criminal code, see Standard 3.117; to review agency rules, procedures, and actions; to grant appropriate writs; and to order appropriate services for the child or family.

The aim of the standard is to assure that the quality of justice offered juveniles is comparable to that available in adult civil or criminal matters and to promote economy and efficiency in court administration. It is anticipated that as a division of the highest court of general jurisdiction, additional resources will be available to the family court. It is further anticipated that the enhanced prestige of this status, together with the recommendations regarding judicial tenure and qualifications in Standards 3.122 and 3.123, will put to the rest the stigma of the "kiddie court" that judges, prosecutors, and defense attorneys must avoid entirely or escape from as quickly as possible.

Currently, 18 States and the District of Columbia include the juvenile or family court as a division of the general trial court and six States provide for separate juvenile courts at the equivalent jurisdictional level. In 12 additional States, some juvenile matters are heard at the general trial level (usually in the larger population centers), while the rest are handled by lower court judges.

Related Standards

3.11
3.122
3.123
3.124
3.125

.122
Tenure of Family Court Judges

ASSIGNMENTS TO THE FAMILY COURT SHOULD BE FOR A 2-YEAR TERM. JUDGES IN A MULTIPLE-JUDGE JURISDICTION SHOULD NORMALLY SERVE NO MORE THAN TWO CONSECUTIVE TERMS ON THE FAMILY COURT. HOWEVER, THE PRESIDING JUDGE OF THE HIGHEST COURT OF GENERAL JURISDICTION SHOULD HAVE DISCRETION TO APPOINT AN INCUMBENT FAMILY COURT JUDGE TO ADDITIONAL CONSECUTIVE TERMS WHEN THAT JUDGE HAS DEMONSTRATED EXCEPTIONAL COMPETENCE WHILE SERVING ON THE FAMILY COURT AND RETAINS A KEEN INTEREST IN THE NEEDS AND PROBLEMS OF JUVENILES AND IN CONTINUING TO SERVE AS A FAMILY COURT JUDGE.

Sources

See generally, Ted Rubin, Proposed Standards Relating to Court Structure, Standard 2.00 (IJA/ABA, Draft, October 1974); Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 8.4 (July 1976).

Commentary

This standard attempts to strike a balance between conflicting policy positions. On the one hand, there is the position, adopted by the Standards and Goals Task Force, that judges should be permanently assigned to the family court, subject to removal for unsuitability or reassignment on request. The Task Force concluded that this policy will provide adequate time for a new judge to develop specialized knowledge and community-specific expertise in juvenile and family matters, encourage only those truly interested in the family court to offer their services, and allow family court judges to become more effective advocates in the community for developing needed services for families and children.

On the other hand, the IJA/ABA Joint Commission concluded that assignments to the family court division should be rotated among the judges of the highest court of general jurisdiction with each serving no more than 2 years in succession. This position, it is argued, would avoid the phenomenon of judges who regard the family court as a personal fief and who overly personalize the administration of juvenile justice, conforming their decisions more to their personal philosophy than to objective standards of law. Such a policy would also encourage the infusion into the juvenile justice system of fresh insights based on the rotating judges' broad legal expertise.

Standard 3.122 recognizes that it may take as much as 1 year for a family court judge to become acclimatized and fully cognizant of all the available programs and services. Hence, a 2 year minimum term is recommended. It recognizes further that exceptionally competent and interested judges should be allowed to serve more than 4 years in succession on the family court bench, but that periodic

rotation of judges can strengthen all divisions of the highest court of general jurisdiction and help to avoid the dangers of both over personalization or routinization of the administration of juvenile justice. Accordingly, the standard recommends that the presiding judge should be authorized to make exceptions to the normal 2-term tenure for family court judges who have demonstrated unusual ability and who remain keenly interested in serving on the family court bench.

State practices vary. Many assign judges to a particular division for 1 year terms permitting renewal based on performance, overall needs, and individual preferences. Others assign judges to monthly, 3 month, or 6 month terms. Some States utilize indefinite terms.

Related Standard

3.123

3.123 Judicial Qualifications and Selection

IN ADDITION TO THOSE QUALIFICATIONS REQUIRED FOR ALL JUDGES SERVING ON THE HIGHEST COURT OF GENERAL JURISDICTION, FAMILY COURT JUDGES SHOULD BE ATTORNEYS WHO POSSESS A KEEN AND DEMONSTRATED INTEREST IN THE NEEDS AND PROBLEMS OF JUVENILES. THEY SHOULD BE ASSIGNED TO THE FAMILY COURT WITHOUT REGARD TO SENIORITY, POLITICAL CONSIDERATIONS, OR ANY OTHER FACTORS THAT DETRACT FROM THE OBJECTIVE EVALUATION OF AN INDIVIDUAL'S COMPETENCE FOR AN INTEREST IN SERVICE ON THE FAMILY COURT.

Sources

Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standards 8.4, 17.1 (July 1976).

Commentary

The effectiveness of the juvenile justice system is dependent, in large part, on the calibre of the judges serving on the family court. This standard outlines the criteria that should and should not be utilized in assigning judges to the family court bench. No position is taken with regard to the method of judicial selection--i.e., election, appointment, or a combination thereof. The first basic qualification, in addition to those required of other judges of the highest court of general jurisdiction, is that the family court judge should be an attorney. This is already required in the vast majority of the States and is recommended by all recent standards and model legislative efforts. Although it is highly beneficial for family court judges to be familiar with other disciplines, legal training is essential.

The second factor is that the judge possess a keen and demonstrated interest in the problems and needs of juveniles. How that interest is to be determined is left to the States, but representation of persons before the family court is not intended to be the sole criterion. Factors such as seniority, or the lack thereof, or political affiliation should not be the determining factors. The family court should not serve as a temporary training ground for service in adult divisions of the general trial court.

Both the Standards for Juvenile and Family Courts, p. 103 (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975) and the National Council of Juvenile Court Judges, Juvenile Court Evaluation Report, ch. 4 (1974) suggest a detailed list of personal attributes that family court judges should possess in addition to being a member of the State bar. These include:

1. Deep concern about the rights of people;

2. Interest in the problems of children and families;

3. Awareness of modern psychiatry, psychology, and social work;

4. Ability to make dispositions uninfluenced by own personal concepts of child care;

5. Skill in administration and ability to delegate;

6. Ability to conduct hearings in a kindly manner and talk to children and adults at their level of understanding without loss of the essential dignity of the court; and

7. Eagerness to learn (NCJCJ only).

See also Ted Rubin, Proposed Standards Relating to Court Organization and Administration, Standard 3.00 (IJA/ABA, Draft, October 1974).

The level of compensation for family court judges should be sufficient to attract and retain individuals with the skills, qualifications, and interests necessary for service on the family court bench and should be comparable to that of other judges of the highest court of general jurisdiction. See e.g., Task Force, supra, Standard 17.12; ABA, Standards Relating to Court Organization, Section 1.23 (Approved, Draft, 1974).

Specialized training for family court judges will be discussed in subsequent standards.

Related Standards

3.11
3.121
3.122

3.124
Use of Quasi-Judicial Decisionmakers

FAMILY COURT JUDGES RATHER THAN QUASI-JUDICIAL PERSONNEL, SUCH AS REFEREES, MASTERS, OR COMMISSIONERS, SHOULD PRESIDE OVER ALL ADJUDICATORY AND DISPOSITIONAL HEARINGS AND ANY HEARINGS AT WHICH THE DETENTION, CONDITIONED LIBERTY, TRANSFER, OR TEMPORARY OR PERMANENT CUSTODY OF A JUVENILE IS AT ISSUE.

Sources

Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 8.3 (July 1976); Ted Rubin, Proposed Standards Relating to Court Organization and Administration, Standard 3.10 (IJA/ABA, Draft, October 1975).

Commentary

This standard, in accordance with the position adopted by the Standards and Goals Task Force and the IJA/ABA Joint Commission, recommends that every decision which affects a juvenile's liberty or status should be made by a judge rather than by non or quasi-judicial personnel. It applies to delinquency, noncriminal misbehavior, neglect, abuse, and adoption cases, as well as termination of parental rights, custody, and civil commitment proceedings, and is intended to include all decisions concerning detention, shelter care, emergency custody, or release prior to adjudication or disposition; transfer to another court; adjudication; and disposition, except the intake and initial detention, emergency custody, and release decisions made by intake officers following the submission of a complaint. See Standards 3.141-3.147 and 3.151-3.158. The standard does not adopt a position regarding the use of nonjudicial personnel in other types of proceedings.

In several States, trained nonjudicial personnel are authorized to hear and dispose of a broad range of juvenile cases. The American Bar Association, Standards Relating to Court Organization, Section 1.12(b) (1974), encourages use of legally trained "judicial officers" to assist judges. The Model Act for Family Courts, Section 4 (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975) recommends the use of attorneys as referees in delinquency and neglect proceedings unless a party objects, the allegations in the petition are denied, or the hearing concerns waiver of juvenile jurisdiction and transfer to an adult court. Under the Model Act, a full rehearing before a judge is authorized upon request of a party. The National Conference of Commissioners on Uniform State Laws endorses the use of attorneys as referees in "routine and simple matters where the caseload of a court warrants it." Uniform Juvenile Court Act, Comment to optional Section 7 (N.C.C.U.S.L., 1968).

The standard is premised upon the greater visibility and accountability of judges compared to referees, commissioners, and masters; the need to upgrade the status of the family court; and the administrative advantages of eliminating the cumbersome review and trial de novo system required in systems utilizing quasi-judicial decisionmakers. When additional decisionmakers are required, judges with the qualifications set forth in Standard 3.123 should be reassigned to the family court.

Where quasi-judicial decisionmakers continued to be utilized, they should have the same qualifications and be subject to the same standards of performance, training, and discipline as family court judges and should serve once renewable 2-year terms. See Standards 3.122 and 3.123. Cf. Task Force, supra, Standard 17.3.

Related Standards

3.11
3.121
3.122
3.123

.125
'mployment of a
'ourt Administrator

FAMILY COURTS WITH FOUR OR MORE UDGES (AND WHERE JUSTIFIED BY CASE-OAD, FAMILY COURTS WITH FEWER JUDGES) HOULD HAVE A FULL-TIME PROFESSIONAL OURT ADMINISTRATOR.

THE FAMILY COURT ADMINISTRATOR HOULD BE AN ASSISTANT TO THE ADMINI-TRATOR OF THE HIGHEST COURT OF GEN-RAL JURISDICTION, APPOINTED BY THE RESIDING JUDGE OF THAT COURT, AND ERVING UNDER THE SUPERVISION OF THE RESIDING JUDGE OF THE FAMILY COURT.

THE RESPONSIBILITY OF THE FAMILY OURT ADMINISTRATOR SHOULD BE TO AS-URE THE EFFECTIVE AND EFFICIENT OP-RATION OF THE FAMILY COURT IN ACCOR-DANCE WITH STATE AND LOCAL LAW, PRO-CEDURES AND PRACTICES, AND THE POLICIES ESTABLISHED BY THE PRESIDING JUDGE OF THE FAMILY COURT. AMONG THE DUTIES OF THE FAMILY COURT ADMINISTRATOR SHOULD BE:

a. CASEFLOW AND CALENDAR MANAGEMENT;

b. BUDGET PREPARATION AND FISCAL MANAGEMENT;

c. RECORDS MANAGEMENT;

d. PERSONNEL MANAGEMENT, SUPERVISION, AND TRAINING;

e. PROCUREMENT;

f. SPACE AND FACILITIES MANAGEMENT;

g. PLANNING, RESEARCH, AND EVALUATION OF METHODS TO IMPROVE FAMILY COURT OPERATIONS;

h. COORDINATION WITH ADMINISTRATIVE PERSONNEL IN OTHER COURTS AND AGENCIES; AND

i. DISSEMINATION OF INFORMATION TO THE PUBLIC.

IN JURISDICTIONS WITHOUT A SUFFICIENT CASELOAD TO WARRANT EMPLOYMENT OF A SEPARATE FAMILY COURT ADMINISTRATOR, THESE FUNCTIONS SHOULD BE PERFORMED BY THE ADMINISTRATOR OF THE HIGHEST COURT OF GENERAL JURISDICTION.

Source

Ted Rubin, Proposed Standards Relating to Court Organization and Administration, Standards 2.20 and 3.30 (IJA/ABA, Draft, October 1975).

Commentary

This standard endorses the employment of a professional family court administrator to facilitate and upgrade the operation of the court. The term "professional court administrator" is intended to discourage appointment of individuals without the training, skills, and experience in court management necessary to carry out the complex duties that a court administrator is required to perform. The administrator should not also serve as the chief probation officer nor the director of

court services, because these positions require different skills and full-time attention.

Because of the specialized procedure and short time limits that apply to the family court, its administration should be assigned to an individual without other administration duties whenever the caseload permits. The four-judge minimum suggested in the standard is intended as a rough guide. Because the family court is a division of the highest court of general jurisdiction and, therefore, should operate within the personnel, financial, and administrative policies of that court, the standard recommends that the family court administrator should be an assistant to the administrator of the general trial court and should be appointed by the presiding judge of that court. See Standard 3.121. However, the chief judge of the family court is in a far better position to assess the performance of the family court administrator and, therefore, should be responsible for the day-to-day supervision of the administrator's actions.

The standard spells out the matters for which the family court administrator should be responsible. Included within these duties should be maintenance of an adequate management information system, development of all necessary forms, and juror management, as well as supervision of clerks and other administrative employees. See Rubin, supra.

Specialized training for family court administrators and other court personnel will be discussed in subsequent standards.

Related Standards

3.11
3.121
3.122

3.13 Counsel

3.131 Representation by Counsel—For the State

THE STATE SHOULD BE ENTITLED TO BE REPRESENTED BY COUNSEL IN ALL PROCEEDINGS ARISING UNDER THE JURISDICTION OF THE FAMILY COURT IN WHICH THE STATE HAS AN INTEREST.

COUNSEL FOR THE STATE IN MATTERS BEFORE THE FAMILY COURT SHOULD BE FROM THE OFFICE THAT NORMALLY REPRESENTS THE STATE IN CRIMINAL PROCEEDINGS BEFORE THE HIGHEST COURT OF GENERAL JURISDICTION. OFFICES WITH SIX OR MORE ATTORNEYS SHOULD ESTABLISH A SEPARATE FAMILY COURT SECTION, INCLUDING LEGAL, PROFESSIONAL, AND CLERICAL STAFF.

THE ATTORNEYS ASSIGNED TO THE FAMILY COURT SECTION SHOULD BE SELECTED ON THE BASIS OF INTEREST, EDUCATION, EXPERIENCE, AND COMPETENCE.

Sources

James Manak, Proposed Standards Relating to Prosecution Function, Standards 1.1(a), 2.1 and 2.3(b) (IJA/ABA, Draft, May 1975); Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standards 15.1-15.5 and 15.7 (July 1976).

Commentary

This standard declares that the State should be represented by an attorney in all proceedings in which it has a direct interest. These include all matters arising under the delinquency, noncriminal misbehavior,

and neglect and abuse jurisdictions of the family court, the jurisdiction over intra-family offenses or contributing to the delinquency of a minor, enforcement of support and adoption, termination of parental rights, and custody cases in which a State agency or State-supplied service is involved. The term "State" includes county, city, or other local units of governments. Hence, the office that normally represents the State in criminal proceedings could be the office of the district attorney, county attorney, solicitor, State attorney, or attorney general, depending on the particular organizational structure utilized by the State. See Manak, supra; Task Force, supra.

The President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime (1967) recommends against the use of State prosecutors in family or juvenile matters, stressing that the best interests of the family and child are more likely protected in informal proceedings. However, that recommendation was made before the decision in In re Gault, 387 U.S. 1 (1967), which heralded an awareness that informality in delinquency proceedings often serves to deprive the child of basic rights. The standard tracks the recommendations of the IJA/ABA Joint Commission and Standard and Goals Task Force on Juvenile Justice, which provide for the participation of a "juvenile prosecutor" at every stage of every case in which the State has an interest. The standard contemplates that representation of the State by an attorney will contribute significantly to the improvement of the quality of justice dispensed by family courts. Participation of a prosecuting attorney should impress upon the parties the seriousness of the proceedings. It should also expedite the proceedings, improve the quality of the evidence considered, stimulate more competent representation of parties other than the State, and eliminate the present conflict of roles for judges, and probation and police officers.

Traditionally, neither the State nor the juvenile were represented by an attorney in family court. Because In re Gault, supra, mandated counsel for the child, many States have revised their practices to provide for State counsel to be present, at least in those cases in which the child is actually represented or in which the judge requests the prosecutor's presence.

The standard recommends creation of a unified family court section within the prosecutor's office serving the highest court of general jurisdiction. It is not intended that attorneys from the civil law section of the prosecutor's office or from a separate civil law State's attorney office should be excluded from the family court section. The standard merely seeks to encourage a unified structure similar to that recommended for the family court to facilitate the development of expertise in matters relating to juveniles and families and to promote managerial effectiveness and consistent policy toward cases involving juveniles. Like the standard on the qualifications for family court judges, see Standard 3.123, the third paragraph of this provision stresses that assignment to the family court section should be based on interest, experience, and competency and not on political factors, seniority, or the lack thereof. Assignments should be made by the prosecutor or the chief administrative assistant, and a senior attorney with considerable trial experience should be designated to head the section. The standard is intended to make clear that such assignments to the family court section should not be regarded as the bottom rung on the ladder to felony trial work to be endured and dispensed with as quickly as possible. Pay schedules for the family court section should be comparable to those for the rest of

the office, part-time assignments should be avoided unless absolutely necessary, and adequate investigative and clerical staff should be assigned.

Specialized training for attorneys in the family court section of the prosecutor's office will be discussed in subsequent standards. In smaller jurisdictions, for which creation of separate family court units may not be practical, attorneys for the State appearing in family court proceedings should receive the same type of specialized training available to attorneys in larger offices.

Related Standards

3.11
3.134
3.147
3.155
3.156
3.157
3.163
3.165
3.166
3.171
3.187
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3.1810
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3.1812
3.1813
3.191

3.132 Representation by Counsel—For the Juvenile

A JUVENILE SHOULD BE ENTITLED TO BE REPRESENTED BY COUNSEL IN ALL PROCEEDINGS ARISING FROM A DELINQUENCY, NONCRIMINAL MISBEHAVIOR,* NEGLECT, OR ABUSE ACTION AND IN ANY PROCEEDING AT WHICH THE CUSTODY, DETENTION, OR TREATMENT OF THE JUVENILE IS AT ISSUE.

IN DELINQUENCY AND NONCRIMINAL MISBEHAVIOR PROCEEDINGS, THE RIGHT TO COUNSEL SHOULD ATTACH AS SOON AS A JUVENILE IS TAKEN INTO CUSTODY BY AN AGENT OF THE STATE, A COMPLAINT IS FILED AGAINST A JUVENILE, OR A JUVENILE APPEARS AT INTAKE OR AT AN INITIAL DETENTION HEARING, WHICHEVER OCCURS FIRST.

IN ALL OTHER ACTIONS IN WHICH A JUVENILE IS ENTITLED TO REPRESENTATION BY COUNSEL, THE RIGHT TO COUNSEL SHOULD ATTACH AT THE EARLIEST STAGE OF THE DECISIONAL PROCESS, EXCEPT WHEN TEMPORARY EMERGENCY ACTION IS INVOLVED AND IMMEDIATE PARTICIPATION OF COUNSEL IS NOT PRACTICABLE.

IN ANY PROCEEDING IN WHICH A JUVENILE IS ENTITLED TO BE REPRESENTED BY COUNSEL, AN ATTORNEY SHOULD BE APPOINTED WHENEVER COUNSEL IS NOT RETAINED FOR THE JUVENILE; WHENEVER IT APPEARS THAT COUNSEL WILL NOT BE RETAINED; WHENEVER THERE IS AN ADVERSE INTEREST BETWEEN THE JUVENILE AND THE JUVENILE'S PARENTS, GUARDIAN, OR PRIMARY CARETAKER; OR WHENEVER APPOINTMENT OF INDEPENDENT COUNSEL IS OTHERWISE REQUIRED IN THE INTERESTS OF JUSTICE.

*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

Sources

Lee Teitelbaum, Proposed Standards Relating to Counsel for Private Parties, Standard 2.3 (IJA/ABA, Draft, May 1975); Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standards 16.5, 16.7 (July 1976); Model Act for Family Courts, Section 25 (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975).

Commentary

This standard recommends that juveniles should be represented by an attorney in nearly all proceedings before the family court. Although this broad entitlement to counsel is likely to involve additional public expense, it was the conclusion of the Advisory Committee on Standards that few measures could more effectively assure fairness in the administration of juvenile justice.

Traditionally, States did not require that children in family or juvenile court proceedings be represented by counsel, although most did permit the family lawyer to be present and to assist the child and family if

necessary. In re Gault, 387 U.S. 1, 36, 41 (1967) held that representation by counsel is constitutionally required at juvenile delinquency adjudications. See also Kent vs. United States, 383 U.S. 541 (1966). Most States now provide for counsel: some providing court-appointed counsel, if necessary, at all stages of delinquency proceedings; some not specifying what stages of the proceedings require counsel; some providing counsel only upon request of the juvenile or upon indigence of the juvenile's family; and some providing counsel at the discretion of the judge. Samuel M. Davis, Rights of Juveniles: The Juvenile Justice System, 125-127 (Clark Boardman Co., Ltd., New York, 1974). A number of States also provide a right to counsel for juveniles in neglect, dependency, and abuse matters.

The Model Act for Family Courts, supra, recommends that counsel should also be provided to juveniles in neglect proceedings. Both the IJA/ABA Joint Commission and the Standards and Goals Task Force on Juvenile Justice urge that juveniles should be entitled to counsel in any proceeding that may affect their status and custody. Teitelbaum, supra; Stanley Z. Fisher, Proposed Standards Relating to Pre-Adjudicatory Procedures, Standards 5.1-5.3 (IJA/ABA, Draft, December 1, 1975) Task Force, supra; see also, Wisconsin Council on Criminal Justice Special Study Committee on Criminal Justice Standards and Goals, Juvenile Justice Standards and Goals, Standard 12.1(b) (2d Draft, November 1975).

In recommending that juveniles be entitled to counsel in most family court proceedings, the standard recognizes that the same interests in preserving liberty and privacy and the need for assistance "to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings..." and for effective advocacy, which require counsel in delinquency proceedings, In re Gault, supra, 36, apply to noncriminal misbehavior, neglect and abuse, adoption, custody, and civil commitment cases. It recognizes, in addition, that counsel for the State or the parents will often be unable to represent both the interests of their client and the interests of the child. See Teitelbaum, supra; Task Force, supra; M. Inker and C. Perretta, A Child's Right to Counsel in Custody Cases, 5 Family Law Quarterly 108, 115 (1971).

The standard urges that the right to counsel should attach at the earliest stage of the proceedings. The intake, release, and changing processes may be crucial to the final outcome of the case and therefore require the same standard of diligent protection of the interests of the child as is afforded at adjudicatory hearings.

> The need for counsel is not confined to the adjudicatory stages of th proceeding. Both at intake and at disposition, counsel is crucial. In an earlier section of this report the importance of prejudicial determinations was stressed and recommendations were proffered for further institutionalizing the processes of nonjudicial disposition. Clearly such a system would invite unfettered authoritarianism by nonjudicial officials unless counsel were provided at the inception of informal proceedings involving coercion.... In the juvenile no less than in the adult area, the presence of counsel representing the alleged offender is indispensable to a system of alternative tracks short of full use of the judicial proceeding.

* * *

> Of course law is an irksome restraint upon the free exercise of discretion. But its virtue resides precisely in the restraints it imposes on the freedom of the probation officer and the judge to follow their own course without having to demonstrate its legitimacy or even the legitimacy of their intervention. (President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, 32-33 (1967). See also, Richard Kobetz and Betty Bosarge, Juvenile Justice Administration, 246 (International Association of Chiefs of Police, 1973); Fisher, supra; Teitelbaum, supra; and Task Force, supra.)

Few State statutes address the right to counsel at intake. A recent survey of over 400 courts in population centers of 50,000 or more indicated that although approximately 60 percent of the courts responded that counsel could be appointed at intake if necessary, there was virtually no attorney representation at intake.

The phrase "as soon as a juvenile is taken into custody by an agent of the State," in the second paragraph of the standard, is intended to include interrogation and eyewitness identification situations. More explicit provisions concerning these situations will be included in subsequent standards. The "temporary emergency action" cited in the third paragraph refers to situations in which immediate action is necessary to save a child's life or prevent imminent injury. Counsel should be provided as soon as possible after the temporary emergency action has been taken.

The final paragraph of the standard discusses the circumstances in which counsel should be appointed. In keeping with the importance attached to representation by counsel, the provision is intended to assure that juveniles are provided with counsel whenever they appear without a lawyer at their side. Many State provisions authorizing appointment of counsel cite one or a combination of the following considerations: indigence of the family, the interests of justice, or a conflict of interests between the juveniles and their families.

The Model Act for Family Courts, section 25, supra, provides for appointment of counsel whenever one is not retained in delinquency proceedings but applies the adverse interests criterion in neglect proceedings. Because the vast majority of juveniles will not be able to retain counsel with their own resources, the key issue is when the proffer of counsel by a parent should be ignored and an attorney appointed to represent a child in a matter before the family court. The major argument against appointment of independent counsel, other than the expense, is the interference with family autonomy and parental authority implicit in such a practice. For example, some children may be placed in the position of being admonished by the judge to obey their parents soon after being advised by their attorney to ignore parental demands to admit their guilt. However, as noted earlier, it seems doubtful that an attorney representing parents accused of neglect or abusing a child, see Standard 3.113, or who have complained that their child has disregarded their authority, see Standard 3.112, or who are engaged in a custody fight over the child could forcefully advocate the client's interests and at the same time speak for the child. Accordingly, the standard intends that independent counsel be appointed to represent a juvenile whenever an attorney representing the juvenile's parents would have a duty to advocate a position that an attorney representing the juvenile would have a duty to oppose; whenever an attorney representing the juvenile's

parents has a duty to contend on their behalf, which may prejudice the juvenile's interests at any point in the proceedings; and whenever the juvenile's attorney would have to accommodate the juvenile's interests to those of some third person or institution, including the attorney's employer. Teitelbaum, supra, Standard 3.2; ABA, Canons of Professional Ethics, Canon 6; ABA, Code of Professional Responsibility, DR 5-107(b).

Notice to juveniles of their rights to be represented by an attorney is provided for in other standards. See, e.g., Standards 3.146, 3.155-3.157 3.164-3.166, 3.176, 3.186.

In Faretta vs. California, 422 U.S. 806 (1975), the Supreme Court held that defendants in criminal proceedings have a constitutional right to represent themselves. The opinion made clear that counsel should not be appointed to represent a defendant who wishes to exercise the right but specified that appointment of standby or advisory counsel to protect the defendant's rights and to provide for the situation in which the defendant's conduct requires his/her removal from the courtroom does not impinge upon the right of self-representation. Id., at p. 835, fn. 46. Although the court did not discuss the impact of the Faretta decision on proceedings involving juveniles, and there is a possible distinction on the basis of the juvenile's lack of maturity, education, and experience, the constitutional status given the right of self-representation calls provisions barring waiver of counsel into serious question. See Model Act for Family Courts, Section 25 (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975).

Although there are special problems with allowing juveniles to represent themselves in family court proceedings, most States permit waivers following consultation with parents or counsel if, considering the child's age, intelligence, and experience, the context in which waiver was made, and the "totality of the circumstances," the waiver is shown to be competent, voluntary, and intelligent. It was the conclusion of the Advisory Committee on Standards that further investigation into the ramifications of the right of self-representation on police practices and family court cases is necessary before a standard discussing the application of this right to juveniles can be recommended.

Related Standards

3.131
3.133
3.134
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3.133 Representation by Counsel—For the Parents

PERSONS WHO ARE THE PARENTS, GUARDIANS, OR PRIMARY CARETAKERS OF JUVENILES SUBJECT TO THE NONCRIMINAL MISBEHAVIOR,* NEGLECT, OR ABUSE JURISDICTION OF THE FAMILY COURT OR WHO ARE THEMSELVES SUBJECT TO THAT JURISDICTION SHOULD BE ENTITLED TO APPOINTED COUNSEL THROUGHOUT THE PROCEEDINGS IF THEY ARE UNABLE, FOR FINANCIAL REASONS, TO RETAIN AN ATTORNEY.

THE PARENTS, GUARDIANS, OR PRIMARY CARETAKERS OF JUVENILES SUBJECT TO THE JURISDICTION OF THE FAMILY COURT OVER DELINQUENCY SHOULD BE ENTITLED TO APPOINTED COUNSEL AT THE DISPOSITIONAL STAGE OF THE PROCEEDINGS IF THEY ARE UNABLE, FOR FINANCIAL REASONS, TO RETAIN AN ATTORNEY AND IF IT APPEARS THAT THEY WILL BE REQUIRED TO PARTICIPAGE AFFIRMATIVELY IN THE DISPOSITIONAL ORDER OR PLAN.

Source

See generally Task Force to Develop Standards for Juvenile Justice and Delinquency Prevention, Standard 16.6 (July 1976).

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*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

Commentary

A parent's right to raise his or her child has been described by the Supreme Court as a "basic civil right far more precious than property rights." Stanley vs. Illinois, 405 U.S. 645, 651 (1972). This standard recommends that parents or parental surrogates be entitled to be represented by counsel whenever that right is challenged by the State or whenever they may be ordered by the family court to play an active role in the disposition following a delinquency adjudication.

The first paragraph urges that counsel be afforded to the parents, guardians, or primary caretakers of children alleged to have been neglected or abused. The right of parents to be represented by counsel in such cases has been recognized by a number of States as well as by several recent sets of standards and model acts. See Model Act for Family Courts, Section 25(b) (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975); Uniform Juvenile Court Act, Section 26 (National Conference of Commissioners on Uniform State Laws, 1968); Lee Teitelbaum, Proposed Standards Relating to Private Parties, Standard 2.3b (IJA/ABA, May 1976); Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, supra.

The standard also recommends that parents be entitled to counsel throughout noncriminal misbehavior proceedings. This is somewhat broader than the position of the Standards and Goals Task Force on Juvenile Justice, which suggests that counsel need only be appointed at the disposition stage of such proceedings "when it appears that [a parent] will be required to participate affirmatively in the dispositional order or plan." Because the jurisdiction over noncriminal misbehavior focuses on the actions of the family as well as those of the juvenile, the parents should be entitled to counsel during the adjudicatory and preadjudicatory phases of the proceeding, especially when allegations of misuse of parental authority have been made by the State or raised as a defense by the juvenile. See Standard 3.112. As with juveniles, the parents' right to counsel should attach at the earliest stage of the decisional process. See Standard 3.132.

In delinquency proceedings, it is recommended that parents and parental surrogates should be entitled to have an attorney only at the dispositional stage and, even then, only when it is likely that the parents may be required to take some affirmative action, such as providing treatment or opportunities for their child, supervising his or her conduct, or simply retaining custody or responsibility for the respondent. This is in accord with the view of the Standards and Goals Task Force. But see Stanley Fisher, Proposed Standards Relating to Pre-Adjudication Procedures, Standard 6.5 (IJA/ABA, Draft, December 1975). No role is provided for parents during the predisposition phases of delinquency proceedings, because the behavior in question is only that of the child. Their interests are not directly at issue, hence party status appears unnecessary. If the parents initiate the proceedings, support the petition, or acquiesce in the exercise of delinquency jurisdiction, their interests are almost identical to those of the State. If they oppose the petition or support the child's case, their interests are almost identical to those of the child. In either instance, the interests are already protected by counsel.

Some members of the Advisory Committee on Standards urged that even if parents were not granted party status prior to disposition, there should be provision for appointment of counsel at an early stage in the proceedings. They argued that, in many cases, parents will need counsel to understand what is happening in the case in order to provide guidance to their child, that they may not trust the explanations and judgments of the juvenile's appointed attorney, and that without having counsel of their own, they would not be able to evaluate the advice provided. Finally, they suggested that because the standard is not intended to bar retention of counsel by the parents at any stage of any proceeding with the jurisdiction of the family court, failure to provide for appointed counsel would put indigent parents at a special disadvantage.

However, the majority of the Committee concluded that to provide for appointed counsel would encourage parents to take an active role in delinquency adjudication hearings and that such a role would complicate and lengthen the proceedings without substantial benefit. It was noted that the provision on the role of counsel in family court proceedings, Standard 3.134, encouraged counsel for accused delinquents to advise a juvenile to seek the advice of his parents.

In each of the instances in which a parent, guardian, or primary caretaker is entitled to counsel, there must be a determination that the person so entitled is indigent before an

attorney is appointed. Unlike Standard 3.132, this provision does not assume that the failure to appear with counsel is due to the inability to afford legal services. The standard does not attempt to define indigence or recommend the manner in which a person's indigence or nonindigence should be determined. The definition of and procedures for determining indigence vary greatly among and within States. See Sheldon Krantz, et al., The Right To Counsel in Criminal Cases: The Mandate of Argersinger vs. Hamlin, (Ballinger Publishing Co., Cambridge, Mass., 1976); National Study Commission on Defense Services, Draft Report and Guidelines for the Defense of Eligible Persons, 113-163 (National Legal Aid and Defender Association, 1976).

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3.192

A right to appointed counsel is not recommended in custody, adoption, paternity, support, and other such proceedings, because these disputes are generally between private parties rather than between the parent and the State. Hence, the imbalance of resources and power between the parties is considerably lessened. However, the scope of the right to counsel for adults charged with committing an intra-family criminal offense or contributing to the delinquency of a minor should be the same as that for any other criminal defendant, i.e., they should be entitled to counsel at all critical stages of the criminal proceedings and may not be sentenced to a term of incarceration unless they were represented by or waived their right to an attorney. See e.g., Gideon vs. Wainwright, 372 U.S. 335 (1963); Argersinger vs. Hamlin, 407 U.S. 25 (1972).

Related Standards

3.131
3.132
3.134
3.146
3.155

3.134
Role of Counsel

THE PRINCIPAL DUTY OF AN ATTORNEY REPRESENTING THE STATE IN A FAMILY COURT MATTER IS TO SEEK JUSTICE.

THE PRINCIPAL DUTY OF AN ATTORNEY REPRESENTING A PRIVATE INDIVIDUAL IN A MATTER WITHIN THE JURISDICTION OF THE FAMILY COURT SHOULD BE TO REPRESENT ZEALOUSLY THAT INDIVIDUAL'S LEGITIMATE INTERESTS. DETERMINATION OF THE CLIENT'S INTEREST UNDER THE LAW SHOULD ORDINARILY REMAIN THE RESPONSIBILITY OF THE CLIENT.

IF AN ATTORNEY FINDS, AFTER INTERVIEWS AND OTHER INVESTIGATION, THAT A CLIENT CANNOT UNDERSTAND THE NATURE AND CONSEQUENCES OF THE PROCEEDINGS AND IS THEREFORE UNABLE RATIONALLY TO DETERMINE HIS OR HER OWN INTERESTS IN THE PROCEEDINGS, THE ATTORNEY SHOULD BRING THAT CIRCUMSTANCE TO THE COURT'S ATTENTION, ASK THAT A GUARDIAN AD LITEM BE APPOINTED ON THE CLIENT'S BEHALF, AND ADVISE THE COURT OF POSSIBLE CONFLICTS OF INTEREST BETWEEN THE CLIENT AND ANY PERSON UNDER CONSIDERATION FOR APPOINTMENT AS GUARDIAN AD LITEM.

Sources

Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standards 16.2 and 16.3 (July 1976); James Manak, Proposed Standards Relating to the Prosecution Function, Standard 1.1(b) (IJA/ABA, Draft, May 1975); Lee Teitelbaum, Proposed Standards Relating to Defense Counsel, Standard 3.1 (IJA/ABA, Draft, May 1975).

Commentary

The thrust of this standard is that the role of counsel in family court proceedings, whether representing the State, the juvenile, or the parent, is to advocate that which is in the best interest of the client, with an underlying awareness that the aim of the proceeding is to determine the truth of the allegations and, upon adjudication, to determine the disposition that best serves the interests of the juvenile and the community.

The first paragraph of the standard recommends that the prosecutor should represent the interest of the State zealously. However, because the State has multiple interests, which include both protection of the public and the development of children into productive, law-abiding citizens, the degree to which a prosecutor plays an adversary role may vary from stage to stage in family court proceedings. In accordance with Standard 3.175, the attorney for the State should scrupulously avoid the use of prosecutorial discretion to induce the juvenile to admit guilt, accept a negotiated plea, or submit to detention or incarceration.

The remainder of the standard reflects the conviction that clients, be they juveniles, parent, or third party, bear the chief responsibility for determining what their interests are. The attorney's role is limited to advising the client about those

interests and, once the client has decided, to advocate those interests in relevant proceedings. This position is adopted also by the Task Force on Standards and Goals for Juvenile Justice and Delinquency Prevention, supra, the IJA/ABA Joint Commission, Teitelbaum, supra, and the Wisconsin Council on Criminal Justice Special Study Committee on Criminal Justice Standards, Juvenile Justice Standards and Goals, Standards 12.1(k) and (l) (2d Draft, November 1975).

The standard adopts the position that "most children are sufficiently capable of understanding the basic nature of the proceeding and its potential consequences to be able to decide what position to adopt...," Teitelbaum, supra, at 114-115. However, attorneys for children should be prepared to advise their clients about the legal consequences of various decisions, parental or societal perceptions of their behavior, the advisability of consulting with parents or counselors about various courses of action, the desirability of accepting certain social services and similar matters about which the juvenile may be uninformed. Similarly, attorneys for parents should be prepared to advise the parents about what seems to be in the best interest of the child, even if the courses of action indicated are not in the interests of the parents. However, the line between advising and decisionmaking must be carefully observed.

In placing decisionmaking responsibility in the client, the standard is intended to make the representational obligations of attorneys in family court consistent with those attorneys in civil and criminal proceedings in other divisions of the highest court of general jurisdiction. In doing so it rejects both the guardian ad litem and amicus curiae models of representation for competent juveniles. The guardian ad litem model requires the juvenile's attorney to serve not only the legal interests of the client, but also to determine what course best promotes his/her general welfare with or without the juvenile's concurrence. The amicus curiae model relegates the attorney to the role of liaison between the juvenile, the judge, and the parents. The attorney does not present a juvenile's case or advocate a point of view but simply protects the juvenile's formal legal rights as he contributes to the final consensus about what should be done in the case.

By contrast, the standard requires advocacy of the self-determined interests of the child in all cases except when the attorney believes that the client is unable to understand the proceedings, to assist counsel, and to make a rational determination of his/her best interests. In such cases, the attorney is obligated to bring the matter to the attention of the family court and to request that a guardian ad litem be appointed. See Standard 3.169. The attorney does not thereby relinquish the role of child advocate. Counsel should be prepared to advise the court about any adversity of interests between the guardian and the juvenile, particularly when the guardian is a close relative of the juvenile.

Once the guardian ad litem is appointed, he/she becomes responsible for determining the best interests of the child, and the attorney remains obligated to advocate those interests in the proceedings. See Standard 3.169.

Related Standards

3.131
3.132
3.133
3.169
3.187
3.188

3.14
Intake

3.141
Organization of Intake Units

AN INTAKE UNIT SHOULD BE ESTABLISHED AS A SEPARATE DEPARTMENT OR AGENCY TO REVIEW COMPLAINTS SUBMITTED PURSUANT TO THE JURISDICTION OF THE FAMILY COURT OVER DELINQUENCY, NONCRIMINAL MISBEHAVIOR,* AND NEGLECT AND ABUSE AND TO MAKE THE INITIAL DETERMINATIONS REGARDING THE RELEASE OR RETENTION IN CUSTODY OF JUVENILES WHO ARE NAMED IN SUCH COMPLAINTS.

THE MINIMUM QUALIFICATIONS FOR EMPLOYMENT AS AN INTAKE OFFICER SHOULD INCLUDE A MASTERS DEGREE IN SOCIAL WORK OR 2 YEARS OF GRADUATE STUDY IN THE BEHAVIORAL SCIENCES, PARTICIPATION IN A FIELD TRAINING PROGRAM, AND 1 YEAR OF FULL-TIME EMPLOYMENT UNDER PROFESSIONAL SUPERVISION FOR A CORRECTIONAL OR SOCIAL SERVICES AGENCY.

Sources

See generally, Josephine Gittler, Proposed Standards Relating to the Juvenile Probation Function: Intake and Pre-disposition Investigative Services, Standards 3.1, 3.4 and 4.1(c) (d) and (e) (IJA/ABA Draft, January 1976). Task Force to Develop Standards

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*The National Advisory Commission on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

and Goals for Juvenile Justice and Delinquency Prevention, Standard 21.1 (July 1976).

Commentary

Standard 3.141 recommends formation of specialized intake units to screen incoming delinquency, noncriminal misbehavior, and neglect and abuse complaints and to determine the initial custodial status of juveniles named in such complaints. The organization and location of such units will depend on State and local demographic factors and governmental structure.

The IJA/ABA Joint Commission and the Standards and Goals Task Force on Juvenile Justice recommend that intake units should be placed in an executive agency rather than administered directly by the family courts. Although judicial administration of intake services is the norm in many jurisdictions and has been endorsed by the National Advisory Commission on Criminal Justice Standards and Goals, Courts, Section 14.2 (U.S. Government Printing Office, Washington, D.C., 1973), serious questions have been raised regarding the possible impact of this practice on the impartiality of the court. It has been suggested that because intake personnel perform a screening function akin to that played by the prosecution in adult criminal proceedings, they should, like the prosecutor, be independent of judicial administrative control, and that although the family court should participate in the development of the policies and rules governing intake and detention, the authority to hire, supervise, and fire intake personnel may lead to a type of judicial regulation over access to the court and informal predetermination of individual cases that would significantly impair a judge's ability to serve as a neutral reviewer of administrative action and impartial trier of the facts. See In re Reis, 7 Crim L. Rptr, 2151 (R.I. Fam. Ct., April 14, 1970); but cf. In re Appeal in Pima County Anonymous, Juv. Action No. J-24818-2, 110 Ariz. 98, 515 P.2d 600 cert. denied, appeal dismissed, 417 U.S. 939 (1974). In addition, the President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections, 35 (1967), has suggested that in many instances judges may have neither the time, resources, nor management skills necessary to provide the "continuous intensive administrative attention" required to oversee the operations of an intake agency effectively, but see National Advisory Commission, supra, 298.

The standard limits the functions to be performed by intake units to the review of complaints, see Standard 3.142, and determinations regarding detention, release, or emergency custody. See Standard 3.151 et seq. No provision is made for direct supervision of or furnishing of services to juveniles and their families by intake personnel. If the provision of services is called for, the subject of the complaint should be referred to the proper agency or private program and the complaint promptly dismissed unless the referral is refused, ignored, or shown to be inappropriate within 30 days. See Standard 3.142. Informal probation, despite good intentions, can result in imposing substantial constraints on liberty under threat of prosecution without adequate due process safeguards. See Jamie S. Gorelick, Pre-trial Diversion: The Threat of Expanding Social Control, 10 Harvard Civil Rights - Civil Liberties Law Review (1975); President's Commission on Law Enforcement and Administration of Justice, 17 (U.S. Government Printing Office, Washington, D.C., 1967); Richard Kobetz and Betty Bosarge, Juvenile Justice Administration, 259 (International Association of Chiefs of Police, 1973); Model Rules for Juvenile Court, p. 15 (National Council on Crime and Delinquency/

National Council of Juvenile Court Judges, 1969); but see National Advisory Commission on Criminal Justice Standards and Goals, Corrections, 225 (U.S. Government Printing Office, Washington, D.C., 1973). Moreover, many commentators question the effectiveness of "coerced treatment." See e.g., Standards for Juvenile and Family Courts, 58 (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975); David Fogel, We are the Living Proof: The Justice Model for Corrections (W.H. Anderson Co., Cincinnati, 1975).

3.144
3.145
3.146
3.147
3.151
3.152
3.153
3.154

In view of the significance and complexity of the discretionary decisions made by intake officers, the standard recommends that intake officers should have a masters degree in social work or equivalent graduate work in the behavioral sciences, as well as actual experience through fieldwork and full-time employment in a correctional or social service agency. The IJA/ABA provisions on which the standard is based recommend graduate work but do not require either a graduate degree or fieldwork as part of the educational program. The Advisory Committee on Standards concluded that the central role played by the intake unit in the juvenile justice process endorsed by these standards requires that individual intake officers possess the highest possible qualifications, and that fieldwork and actual work experience in juvenile justice or related agencies or organizations is an essential part of the preparatory process. Salaries of intake officers should be commensurate with their education, training, and experience. The standard is not intended to discourage the use of paraprofessionals and volunteers to assist the professional intake staff.

Related Standards

3.142
3.143

3.142
Review of Complaints

UPON RECEIPT OF A COMPLAINT, AN INTAKE OFFICER SHOULD MAKE AN INITIAL DETERMINATION WHETHER THE COMPLAINT IS SUFFICIENT TO SUPPORT THE FILING OF A PETITION. IF LEGAL SUFFICIENCY OF THE COMPLAINT IS UNCLEAR, THE INTAKE OFFICER SHOULD ASK THE FAMILY COURT SECTION OF THE PROSECUTOR'S OFFICE TO MAKE THE DETERMINATION. IF THE COMPLAINT IS FOUND TO BE SUFFICIENT, THE INTAKE OFFICER SHOULD DETERMINE WHETHER TO RECOMMEND THAT A PETITION BE FILED, TO REFER THE PERSON NAMED IN THE COMPLAINT FOR SERVICES, OR TO DISMISS THE COMPLAINT.

THE DETERMINATION SHOULD BE MADE AS EXPEDITIOUSLY AS POSSIBLE. IF THE SUBJECT OF A DELINQUENCY OR NONCRIMINAL MISBEHAVIOR* COMPLAINT OR A JUVENILE ALLEGED TO BE NEGLECTED OR ABUSED IS IN CUSTODY, THE INTAKE DECISION SHOULD BE MADE WITHIN 24 HOURS OF THE INITIAL FILING OF THE COMPLAINT, EXCLUDING NONJUDICIAL DAYS. IF THE SUBJECT OF SUCH COMPLAINTS OR A JUVENILE ALLEGED TO BE NEGLECTED OR ABUSED IS NOT IN CUSTODY, THE INTAKE DECISION SHOULD BE MADE WITHIN 30 CALENDAR DAYS OF THE INITIAL APPEARANCE OF THE SUBJECT OF THE COMPLAINT AT INTAKE.

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*The National Advisory Committee on Juvenile Justice and Delinquency does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

Source

See generally Josephine Gittler, Proposed Standards Relating to the Juvenile Probation Function: Intake and Predisposition Services, Standards 1.2-1.4, 1.7 and 1.14 (IJA/ABA, Draft, January 1976).

Commentary

This standard defines the alternative actions open to the intake officer and the time limits within which the intake determination must be made. The intake officer should first examine the complaint to assure that the allegations are sufficient to bring the person named therein within the jurisdiction of the family court--i.e., whether the conduct alleged in the complaint took place within the court's geographical jurisdiction and whether the conduct appears to fall within the family court's delinquency, noncriminal misbehavior, or neglect and abuse jurisdiction. Cf. Florida Department of Health and Rehabilitative Services, Manual: Intake for Delinquency and Dependency Juvenile Programs (Tallahassee, 1976). This cursory review is to insure that an individual's liberty is not restrained or his/her privacy invaded on the basis of clearly inadequate or improper allegations. If the complaint is not sufficient, it should be determined or referred to the complainant for further information. If there is a question about the legal sufficiency of

he complaint, the intake officer hould consult with an attorney from he family court section of the pro- ecutor's officer. If the complaint ppears to be sufficient, the intake fficer must then determine whether, n light of the criteria set forth in tandard 3.143, 3.144 and 3.145, to ismiss the complaint; to refer the ubject of the complaint, i.e., the uvenile, when the complaint alleges delinquent act, noncriminal misbe- avior other than repeated misuse of arental authority, or abandonment as efined in Standard 3.113(a), and the arent or parental surrogate, when the omplaint alleges other forms of ne- lect or abuse or a misuse of parental uthority, or to recommend to the pro- secutor that a petition be filed. Un- er Standard 3.163, the family court section of the prosecutor's office re- tains the authority to make a final determination regarding the legal suf- ficiency of the complaint and to file the petition.

The standard recommends that intake decisions should be made within 24 hours if the subject of the complaint is in custody. However, days on which the family court is not in session, i.e., weekends and holidays, are not counted against this time limit in or- der to give the intake officer an op- portunity to investigate the availabil- ity of services for a juvenile who is in custody before deciding whether it is in the best interest of the commu- nity and the juvenile--and for noncriminal misbehavior and neglect and abuse complaints, in the best interest of the family--to dismiss the complaint, refer for services, or recommend that a petition be filed. Under Standards 3.155, 3.157, and 3.161, a hearing to review the de- cision to detain or hold in emergency custody must be held within 24 hours of the time at which the person is taken into custody, whether or not the intake decision has been made, be- cause of the substantial impact that out-of-home custody may have on a child. In cases not involving de- tention or emergency custody, a 30- day limit is proposed, although it is anticipated that most intake decisions can and will be made well within this time period. The Task Force to De- velop Standards and Goals for Juvenile Justice and Delinquency Prevention recommends that in delinquency cases, the intake decision should be made within 48 hours for juveniles who are detained and within 30 days for juve- niles who are not detained. Florida's manual on intake procedures, supra, at Section 5.6.1(a), provides a 24-hour limit for intake decisions in delin- quency cases when the juvenile is de- tained and a 15-day limit when the ju- venile is not detained.

Immediate dismissal of the com- plaint is not required when a person is referred to services, because in- take officers may be discouraged from selecting a nonjudicial disposition if there is no possibility of recommending the filing of a petition should the person fail at least to sample the offered service. Gittler, supra; but see Model Rules for Juvenile Court 15 (National Council on Crime and Delin- quency/National Council of Juvenile Court Judges, 1969); National Advisory Commission on Criminal Justice Stan- dards and Goals, Corrections, 255 (U.S. Government Printing Office, Wash- ington, D.C., 1973). However, in keeping with the importance of assuring that referral services are provided and accepted on a voluntary basis and to limit the period of uncertainty, the standard does not propose a period beyond the 30-day limit in noncriminal custody cases during which the de- cision to dismiss the complaint or recommend that a petition be filed may be deferred. Richard Kobetz and Betty Bosarge, Juvenile Justice Administra- tion, 256 (International Association of Chiefs of Police, 1973); but see Gittler, supra; (deferral period of up to 90 days); Task Force, supra;

(deferral period of up to 90 days). Uniform Juvenile Court Act, Section 10 (National Conference of Commissioners on Uniform State Laws, 1968). ("Informal adjustments" may continue for 3 months and may be extended by the court for up to an additional 3 months.)

It is the intent of this standard that intake officers should honor the request of the subject of a complaint for a judicial determination of the truth of the allegations by recommending that a petition be filed without regard to whether such a recommendation would normally be made under the criteria listed in Standards 3.143 to 3.145. However, before acting on such a request, the intake officer should urge the subject of the complaint to consult with his/her attorney.

Related Standards

3.141
3.143
3.144
3.145
3.146
3.147

3.143 Criteria for Intake Decisions—Delinquency

STATE AND LOCAL AGENCIES RESPONSIBLE FOR INTAKE SERVICES SHOULD DEVELOP AND PUBLISH WRITTEN GUIDELINES AND RULES REGARDING INTAKE DECISIONS FOR COMPLAINTS BASED ON THE DELINQUENCY JURISDICTION OF THE FAMILY COURT.

IN DETERMINING WHAT DISPOSITION OF A SUFFICIENT DELINQUENCY COMPLAINT BEST SERVES THE INTERESTS OF THE COMMUNITY AND OF THE JUVENILE, THE FOLLOWING FACTORS SHOULD BE CONSIDERED:

a. THE SERIOUSNESS OF THE ALLEGED OFFENSE;

b. THE ROLE OF THE JUVENILE IN THAT OFFENSE;

c. THE NATURE AND NUMBER OF CONTACTS WITH THE INTAKE UNIT AND FAMILY COURT THAT THE JUVENILE HAS HAD AND THE RESULTS OF THOSE CONTACTS;

d. THE JUVENILE'S AGE AND MATURITY; AND

e. THE AVAILABILITY OF APPROPRIATE SERVICES OUTSIDE THE JUVENILE JUSTICE SYSTEM.

REFERRAL FOR SERVICES OR DISMISSAL SHOULD NOT BE PRECLUDED FOR THE SOLE REASON THAT THE COMPLAINANT OBJECTS OR THAT THE JUVENILE DENIES THE ALLEGATIONS.

Sources

See generally, Josephine Gittler, Proposed Standards Relating to the Juvenile Probation Function: Intake and Predisposition Investigative Services, Standards 1.6 and 1.8 (IJA/ABA, Draft, January 1976).

Commentary

This standard outlines the basis on which intake officers should make the intake decisions described in Standard 3.142. Although the standard sets forth the general criteria to be used, detailed rules and guidelines should be developed to operationalize these criteria and other procedures and to promote consistency in intake decisions. See e.g., Florida Department of Health and Rehabilitative Services, Manual: Intake for Delinquency and Dependency Juvenile Programs, Section 5.6.1(b) (i through xiii) (Tallahassee, 1976). The family court and the State and local agencies, departments, and programs affected by intake decisions should participate in the development of these guidelines, but final responsibility for their promulgation should rest with the agency directly responsible for the provision of intake services. The Advisory Committee on Standards recommends the development of rules and guidelines governing intake decisions as an action that States can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.

The standard outlines five criteria on which intake decisions in delinquency cases should be based. These five factors should be considered in concert with each other in reaching the intake decision.

The first criterion listed is the seriousness of the delinquent conduct, i.e., the nature and extent of harm to others resulting from the alleged offense. The provision approved by the IJA/ABA Joint Commission on which this standard is based lists as specific criteria: "whether the conduct caused death or personal injury, severity of personal injury, extent of property damage, value of property damaged or taken, whether property taken is recovered and whether victim was threatened or intimidated by display of weapons, physical force or verbally." Gittler, supra at 1.8(b)(1). See also, Fla. D.H.R.S., Manual, supra, 5.6.1(b); California Proposed Juvenile Court Rules, Rule 1307 (Tentatively Adopted, May 1976). Others have suggested that a serious offense be defined in terms of the felony-misdemeanor distinction or in terms of a list of specified offenses. See e.g., Ferster, Courtless and Snethen, Separating Official and Unofficial Delinquents: Juvenile Court Intake, 55 Iowa Law Review 874 (1970); California Juvenile Court Deskbook, Section 4.7 (1972). However, juveniles who commit some acts that are technically felonies or one of the enumerated offenses may not constitute such a threat to society as to warrant judicial handling of the matter on that basis. The President's Commission on Crime in the District of Columbia, Report, 661 (1966); Richard Kobetz and Betty Bosarge, Juvenile Justice Administration, 247-248 (International Association of Chiefs of Police, 1973).

The second criterion is the role that the juvenile allegedly played in the offense. The Gittler provision adopted by the IJA/ABA Joint Commission proposes that when a group of juveniles are alleged to have committed a delinquent act together, equity requires that they be treated alike. Hence, in a leader/follower situation, if the intake officer determines on the basis of the seriousness of the prior record and other factors that a petition should be filed against the leader of the group, a petition should ordinarily be filed against all. Although not intending to denigrate the importance of equal treatment, the standard goes no further than recommending role as an appropriate point to consider.

The third criterion is the nature, number, and result of prior contacts with intake services and the family court. Information regarding past referrals and the juvenile's response to them seems essential if diversion for services is to be retained and encouraged as an alternative, and there can be little argument that prior adjudications are not relevant to intake decisions. Use of such records does imply that the threshold decision on whether a delinquency case should or should not proceed may be based, in part, on unproven allegations. This use appears little different than the commonly accepted practice of using arrest records in determining dispositions and sentences in delinquency and criminal proceedings. To assure that incomplete or inaccurate information is not used and that unwarranted assumptions are not made from records of prior contacts, the standard requires that the results of any prior contact--not only the nature and number of those contacts--be considered and the right to counsel be extended to intake proceedings. See Standards 3.132 and 3.133. The IJA/ABA Joint Commission and a number of commentators and standards groups have endorsed consideration of a juvenile's prior contacts with intake and the family court. See e.g., Gittler,

supra, Kobetz and Bosarge, supra, 248; President's Commission on Law Enforcement and the Administration of Justice, Task Force Report on Juvenile Justice and Youth Crime, 17 (U.S. Government Printing Office, Washington, D.C., 1967); Ferster, Courtless and Snethen, supra, 1151; see also Fla. D.H.R.S., Manual, supra at 5.6.1(b), California Proposed Juvenile Court Rules, supra. Standards governing the retention and dissemination of such records will be included in a subsequent volume.

The fourth consideration is the juvenile's age and maturity. The fact that a particular juvenile is 10 or 17 years of age should not in and of itself be determinative whether or not to recommend the filing of a petition. It must be weighed together with all the other factors. See Gittler, supra; Fla. D.H.R.S., Manual, supra.

The final criterion is the availability of services outside the juvenile justice system that are suited to the juvenile's needs. The unavailability of services should not necessarily imply that a petition should be filed when other criteria suggest that dismissal of the complaint is the proper disposition.

Absent from this list are factors such as school attendance and behavior and the juvenile's relationship with his or her family. See e.g., Kobetz and Bosarge, supra, 248; Fla. D.H.R.S., Manual, supra; California Proposed Juvenile Court Rules, supra. Serious questions can be raised regarding the equity in differentiating between two youths accused of burglary or armed robbery on the basis of their school attendance or ability to communicate with their parents. However, if the listed criteria point to dismissal, these social factors may be considered in determining which if any available services may be appropriate.

Also absent is consideration of the accused youth's "attitude." See Gittler supra, at Standard 1.8.; Kobetz and Bosarge, supra at 248; Fla. D.H.R.S., Manual, supra; California Proposed Juvenile Court Rules, supra. As noted in President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Justice and Youth Crime, 17 (U.S. Government Printing Office, Washington, D.C., 1967):

> Even more troubling is the question of the significance of a juvenile's demeanor. Is his attitude, remorseful or defiant, a sound measure of his suitability for pre-judicial handling? Can the police, or anyone else for that matter, accurately detect the difference between feigned and genuine resolve to mend one's ways, or between genuine indifference to the law's commands and fear engendered defiance? Attaching weight to attitude also implies presupposing the child's involvement, a presupposition reflected in some referral policies that mandate court referral whenever the juvenile denies commission of an offense. If the act or conduct is minor and would otherwise be disposed of by referral, the more defensible policy would seem to be the use of pre-judicial disposition.

However, the standard does recommend that a recommendation to file a petition should not be made merely because the subject of a complaint is unwilling to acknowledge responsibility or the complainant objects to a dismissal of the complaint. As is noted in the commentary to Standard 3.142, if a juvenile, after consultation with counsel, requests a judicial determination of the allegations, that request should be honored.

Related Standards

3.141
3.142
3.144
3.145
3.152
3.153
3.154
3.182
3.183
3.184

3.144
Criteria for Intake Decisions—Noncriminal Misbehavior

STATE AND LOCAL AGENCIES RESPONSIBLE FOR INTAKE SERVICES SHOULD DEVELOP AND PUBLISH WRITTEN GUIDELINES AND RULES REGARDING INTAKE DECISIONS FOR COMPLAINTS BASED ON THE JURISDICTION OF THE FAMILY COURT OVER NONCRIMINAL MISBEHAVIOR.

IN DETERMINING WHAT DISPOSITION OF A SUFFICIENT NONCRIMINAL MISBEHAVIOR COMPLAINT BEST SERVES THE INTERESTS OF THE JUVENILE, THE FAMILY, AND THE COMMUNITY, THE FOLLOWING FACTORS SHOULD BE CONSIDERED:

a. THE SERIOUSNESS OF THE ALLEGED CONDUCT AND THE CIRCUMSTANCES IN WHICH IT OCCURRED;

b. THE AGE AND MATURITY OF THE JUVENILE WITH REGARD TO WHOM THE COMPLAINT WAS FILED;

c. THE NATURE AND NUMBER OF CONTACTS WITH THE INTAKE UNIT AND THE FAMILY COURT THAT THE SUBJECT OF THE COMPLAINT AND HIS OR HER FAMILY HAS HAD;

d. THE OUTCOME OF THOSE CONTACTS, INCLUDING THE SERVICES TO WHICH THE JUVENILE AND/OR FAMILY HAVE BEEN REFERRED AND THE RESULTS OF THOSE REFERRALS; AND

e. THE AVAILABILITY OF APPROPRIATE SERVICES OUTSIDE THE JUVENILE JUSTICE SYSTEM.

REFERRAL FOR SERVICES OR DISMISSAL SHOULD NOT BE PRECLUDED FOR THE SOLE REASON THAT THE COMPLAINANT OBJECTS OR THAT THE PERSON NAMED IN THE COMPLAINT DENIES THE ALLEGATIONS.

Sources

Standard 3.144 is based on the jurisdiction of the family court over noncriminal misbehavior defined in Standard 3.112 and draws on criteria set forth in Gittler, Proposed Standards Relating to the Juvenile Probation Function: Intake Predisposition Investigative Services, Standards 1.6 and 1.8 (IJA/ABA, Draft, January 1976).

Commentary

This standard outlines the issues to be considered in making the intake decision on complaints filed under the noncriminal misbehavior jurisdiction of the family court. Although similar to the criteria specified for intake in delinquency cases, the criteria in this standard focus on the family rather than the juvenile alone and are designed to fulfill the requirement in Standard 3.112 that "the family

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*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal jurisdiction. See Commentary to Standard 3.112.

court should not exercise its jurisdiction over noncriminal misbehavior unless all available and appropriate noncoercive alternatives to assist the juvenile and his or her family have been exhausted." Also in keeping with the provisions of Standard 3.112, the term "seriousness" in subparagraph (a) is intended to refer to such factors as the length of the juvenile's absences from home, the number of days missed from school, and the nature of the parental demand disregarded or misused, rather than to the extent of harm caused to others.

As in Standard 3.143, the Advisory Committee on Standards recommends the development of rules and guidelines governing the intake process in noncriminal misbehavior cases as an action that each State can take immediately without a major reallocation of resources to improve the administration of juvenile justice. The development of such guidelines is especially critical for noncriminal misbehavior cases because of the abuses to which this type of jurisdiction has been subject, see Commentary to Standard 3.112, and the emphasis in these standards on the use of voluntary services. Although the rules and guidelines should be issued by the agency responsible for intake, see e.g., Florida Department of Health and Rehabilitative Services, Manual: Intake for Delinquency and Dependency Juvenile Programs (Tallahassee, 1976), the family court and the State and local agencies, departments, and programs affected by intake decisions should participate in their development.

Related Standards

3.112
3.141
3.142
3.143
3.145
3.146
3.147

3.145
Criteria for Intake Decisions—Neglect and Abuse

STATE AND LOCAL AGENCIES RESPONSIBLE FOR INTAKE SERVICES SHOULD DEVELOP AND PUBLISH WRITTEN GUIDELINES AND RULES REGARDING INTAKE DECISIONS FOR COMPLAINTS BASED ON THE JURISDICTION OF THE FAMILY COURT OVER NEGLECT AND ABUSE.

IN DETERMINING WHAT DISPOSITION OF A SUFFICIENT NEGLECT AND ABUSE COMPLAINT BEST SERVES THE INTERESTS OF THE JUVENILE, THE FAMILY, AND THE COMMUNITY, THE FOLLOWING FACTORS SHOULD BE CONSIDERED:

a. THE SERIOUSNESS OF THE ALLEGED NEGLECT OR ABUSE AND THE CIRCUMSTANCES IN WHICH IT OCCURRED;

b. THE AGE AND MATURITY OF THE JUVENILE ALLEGED TO HAVE BEEN NEGLECTED OR ABUSED;

c. THE NATURE AND NUMBER OF CONTACTS WITH THE INTAKE UNIT AND THE FAMILY COURT THAT THE FAMILY HAS HAD;

d. THE OUTCOME OF THOSE CONTACTS INCLUDING THE SERVICES TO WHICH THE FAMILY HAS BEEN REFERRED AND THE RESPONSE TO THOSE REFERRALS;

e. THE AVAILABILITY OF APPROPRIATE SERVICES OUTSIDE THE JUVENILE JUSTICE SYSTEM THAT DO NOT INVOLVE REMOVAL OF THE JUVENILE FROM THE HOME; AND

f. THE WILLINGNESS OF THE FAMILY TO ACCEPT THOSE SERVICES.

REFERRAL FOR SERVICES OR DISMISSAL SHOULD NOT BE PRECLUDED FOR THE SOLE REASON THAT THE PERSON NAMED IN THE COMPLAINT DENIES THE ALLEGATIONS.

Sources

None of the standards or model legislation reviewed include specific intake criteria for neglect and abuse cases. The recommended criteria are based on the definition of the jurisdiction of the family court over neglect and abuse contained in Standard 3.113 and draws on the criteria proposed for intake decisions in delinquency cases by Josephine Gittler, Proposed Standards Relating to Intake and Predisposition Investigative Services, Standards 1.6 and 1.8 (IJA/ABA, Draft, January 1976).

Commentary

This standard outlines the criteria to be considered in making the intake decision on complaints alleging that a juvenile has been neglected or abused as defined in Standard 3.113. No one criterion should be considered more important than any of the others, although protection of the juvenile from harm should be the primary concern. Accordingly, the term "seriousness" in subparagraph (a) is intended to refer to the severity of the harm to the juvenile and to the likelihood and immediacy of any threatened harm. See Standard 3.113.

Related Standards

3.113
3.141
3.142
3.143
3.144
3.146
3.147

Like the provision on intake decisions in noncriminal misbehavior cases, the standard focuses on the family and is intended to channel as many cases as possible to services outside the juvenile justice system. Hence, among the listed factors to be considered in making the intake decision are the family's prior contacts, if any, with the intake unit or the family court; the results of those contacts, e.g., dismissal of the complaint without referral to services, referral to services, cooperation of the family with those services, or the disposition imposed following adjudication of a petition; the availability of services offered by public or private agencies that are not components of the juvenile justice system; and the willingness of the family to cooperate with those services. See Standard 3.144.

As in the other standards on intake criteria, the Advisory Committee on Standards recommends the development of rules and guidelines governing the intake process in noncriminal misbehavior cases as an action that each State can take immediately without a major reallocation of resources to improve the administration of juvenile justice. Such rules are essential, given the scope of the recommended jurisdiction over neglect and abuse and the inherent difficulty and complexity of intake decisions in neglect and abuse cases. Although the rules and guidelines should be issued by the agency responsible for intake, see e.g., Florida Department of Health and Rehabilitative Services, Manual: Intake for Delinquency and Dependency Juvenile Programs (Tallahassee, 1976), the family court and the State and local agencies, departments, and programs affected by intake decisions should participate in their development.

.146
ntake Investigation

THE INTAKE OFFICER SHOULD BE AUTHORIZED TO CONDUCT A PRELIMINARY INVESTIGATION IN ORDER TO OBTAIN INFORMATION ESSENTIAL TO THE MAKING OF A DECISION REGARDING THE COMPLAINT. IN THE COURSE OF THE INVESTIGATION, THE INTAKE OFFICER SHOULD BE AUTHORIZED TO:

a. INTERVIEW OR OTHERWISE SEEK INFORMATION FROM THE COMPLAINANT, THE VICTIM, AND ANY WITNESSES TO THE ALLEGED CONDUCT;

b. EXAMINE COURT RECORDS AND THE RECORDS OF LAW ENFORCEMENT AND OTHER PUBLIC AGENCIES; AND

c. CONDUCT INTERVIEWS WITH THE SUBJECT OF THE COMPLAINT AND HIS OR HER FAMILY, GUARDIAN, OR PRIMARY CARETAKER.

ADDITIONAL INQUIRIES SHOULD NOT BE UNDERTAKEN UNLESS THE SUBJECT OF THE COMPLAINT AND, IF THAT PERSON IS A JUVENILE, HIS OR HER PARENT, GUARDIAN, OR PRIMARY CARETAKER, PROVIDES INFORMED CONSENT.

THE SUBJECT OF A COMPLAINT AND HIS OR HER FAMILY, GUARDIAN, OR PRIMARY CARETAKER SHOULD HAVE THE RIGHT TO REFUSE TO PARTICIPATE IN AN INTAKE INTERVIEW, AND THE INTAKE OFFICER SHOULD HAVE NO AUTHORITY TO COMPEL THEIR ATTENDANCE. IN REQUESTING AN INTERVIEW WITH THE SUBJECT OF A COMPLAINT AND AT THE INCEPTION OF THAT INTERVIEW, THE INTAKE OFFICER SHOULD EXPLAIN THAT ATTENDANCE IS VOLUNTARY AND THAT THE SUBJECT OF THE COMPLAINT IS ENTITLED TO BE REPRESENTED BY AN ATTORNEY AND HAS THE RIGHT TO REMAIN SILENT. AT THE INCEPTION OF THE INTERVIEW, THE INTAKE OFFICER SHOULD ALSO EXPLAIN THE NATURE OF THE COMPLAINT, THE ALLEGATIONS THAT HAVE BEEN MADE, THE FUNCTION OF THE INTAKE PROCESS, THE PROCEDURES TO BE USED, AND THE ALTERNATIVES AVAILABLE FOR DISPOSING OF THE COMPLAINT. THE FAMILY, GUARDIAN, OR PRIMARY CARETAKER OF THE SUBJECT OF THE COMPLAINT SHOULD BE SIMILARLY ADVISED OF THE RIGHTS TO WHICH THEY ARE ENTITLED, THE NATURE OF THE COMPLAINT AND THE ALLEGATIONS THEREIN, AND THE PURPOSE, PROCEDURES, AND POSSIBLE CONSEQUENCES OF THE INTAKE PROCESS.

Source

Josephine Gittler, Proposed Standards Relating to Juvenile Probation Function: Intake and Predisposition Investigative Services, Standard 1.11, 1.12 and 1.13 (IJA/ABA, Draft, January 1976).

Commentary

Most States provide for a preliminary inquiry or investigation of a complaint, but few provide detailed guidelines governing the scope and procedures for such investigations. Among the exceptions are the Florida Department of Health and Rehabilitative Services, Manual: Intake for Delinquency and Dependency Juvenile

Programs, Sections 5.3 et seq. (1976), the California Department of Youth Authority, Standards for the Performance of Probation Duties, 57-58 (1970), and the Missouri Rules of Practice and Procedure in Juvenile Courts, Rule 3 and 4 (1975). In defining the limits and requirements for investigations resulting from the filing of delinquency, noncriminal misbehavior, and neglect and abuse complaints, Standard 3.146 seeks to strike a balance between the intake officer's need for information and the juvenile's and family's interest in avoiding unnecessary invasions of privacy. At the outset, the standard emphasizes that intake investigations should be limited to obtaining only that information "essential" for making the intake decision. This is in accord with the standard on this issue adopted by the IJA/ABA Joint Commission and with the realization expressed in provisions on records and information approved by both the IJA/ABA Joint Commission and the Standards and Goals Task Force on Juvenile Justice that "too much as well as too little information can inhibit the process of decision-making." Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Commentary to Standard 28.1 (July 1976); see also Michael Altman, Proposed Standards Relating to Juvenile Records and Information Systems (IJA/ABA, Draft, January 1976).

Like the Gittler provision, the standard permits but does not require interviews with the complainant, victim, if any, and witnesses to the alleged conduct. Such interviews will often be necessary to supplement the information contained in the complaint regarding the seriousness and circumstances of the alleged conduct. They can also help to correct the disregard for the complainant or victim which has often occurred in the past. These interviews, however, should not serve as substitutes for thorough investigations by law enforcement officers or other officials.

The standard also permits the intake officer to check court records and the records of law enforcement and other public agencies, such as schools or social service programs, for information essential to the intake decision and to interview the subject of the complaint and his or her family, guardian, or primary caretaker. The term "family" is used so as to include the possibility of interviews with siblings of a child who has allegedly been neglected or abused or who is alleging a repeated misuse of parental authority, as well as with the parents of a juvenile subject to the delinquency or noncriminal misbehavior jurisdiction of the family court. Interviews with the subjects of complaints and their families, guardians, or primary caretakers are to be on a strictly voluntary basis. Refusal to participate in an intake interview should not preclude dismissal of the complaint. See Standards 3.143-3.145.

Because it is anticipated that intake will often lead to what is essentially a waiver of the accused's right to trial through referral to voluntary services, and because if a petition is filed, the accused's statements may be able to be used against him/her at least in some instances, it is critical that the subject of the complaint be as fully advised and informed as possible. Accordingly, the standard also recommends that intake officers explain the allegations in the complaint, the purpose, procedures, and possible results of the intake process, and the alternatives to which the subjects of complaints are entitled. See Standards 3.132, 3.133, and 3.171. The parents of juveniles accused of engaging in noncriminal misbehavior and juveniles who have allegedly been neglected or abused, or whose parents, guardian, or primary

caretaker are accused of misusing parental authority are also directly affected by intake decisions. Hence, the standard recommends that the intake officer explain the intake process to such persons at the inception of an interview and inform them at the time the interview is requested and at its inception that they cannot be compelled to participate and that they are entitled to be represented by counsel and to have an attorney appointed if they are unable to retain counsel for financial reasons. See Standards 3.132 and 3.133. These recommendations are similar to the interview procedures currently in use in Florida in delinquency cases. See Fla. D.H.R.S., Manual, supra, at Section 5.3 et seq.; see also, Gittler, supra.

Finally, the standard provides that the informed consent of the subject of the complaint and, if the subject is a juvenile, the informed consent of his/her parent, guardian, or primary caretaker should be obtained before any sources beyond those listed can be utilized. The subjects of complaints should be advised to consult with their attorney before consenting to a more extensive investigation. It is anticipated that few cases will require such additional inquiries and that the safeguards are necessary to avoid excessively wide-ranging probes into the reputation, behavior, and physical or mental health of individuals prior to an adjudication or even a finding of probable cause.

Related Standards

3.132
3.133
3.141
3.142
3.143
3.144
3.145
3.171
3.186

3.147
Notice of Decision

UPON DETERMINING THAT THE ALLEGATIONS CONTAINED IN A DELINQUENCY, NONCRIMINAL MISBEHAVIOR,* AND ABUSE OR NEGLECT COMPLAINT SHOULD BE SUBMITTED TO THE FAMILY COURT, THE INTAKE OFFICER SHOULD SEND A WRITTEN REPORT TO THE FAMILY COURT SECTION OF THE PROSECUTOR'S OFFICE EXPLAINING THE REASONS FOR THE DECISION AND RECOMMENDING THAT A PETITION BE FILED. A COPY OF THE REPORT SHOULD BE SENT TO THE SUBJECT OF THE COMPLAINT AND TO HIS OR HER ATTORNEY. IF THE SUBJECT OF THE COMPLAINT IS A JUVENILE, NOTICE SHOULD ALSO BE SENT TO HIS OR HER PARENTS, PRIMARY CARETAKER, OR LEGAL GUARDIAN.

UPON DETERMINING THAT A COMPLAINT SHOULD BE DISMISSED, THE INTAKE OFFICER SHOULD SEND A WRITTEN REPORT TO THE COMPLAINANT EXPLAINING THE DECISION AND THE REASONS THEREFORE AND STATING THAT THE COMPLAINANT MAY RESUBMIT THE COMPLAINT TO THE FAMILY COURT SECTION OF THE PROSECUTOR'S OFFICE. THE INTAKE OFFICER SHOULD SEND A COPY OF THE REPORT TO THE SUBJECT OF THE COMPLAINT AND HIS OR HER ATTORNEY, AND IF THE COMPLAINT IS BASED ON THE JURISDICTION OF THE FAMILY COURT OVER DELINQUENCY, TO THE FAMILY COURT SECTION OF THE PROSECUTOR'S OFFICE.

UPON DETERMINING THAT THE INTAKE DECISION SHOULD BE DELAYED AND THE SUBJECT OF THE COMPLAINT REFERRED TO SERVICES, THE INTAKE OFFICER SHOULD SEND A WRITTEN REPORT ADVISING THE COMPLAINANT OF THE DETERMINATION, THE REASONS THEREFORE, AND THE DATE BY WHICH FINAL DECISION WILL BE MADE.

Source

See generally Josephine Gittler, Proposed Standards Relating to the Juvenile Probation Function: Intake and Predisposition Investigative Services, Standard 1.15 (IJA/ABA, Draft, 1976).

Commentary

The standard requires the intake officer to advise the subject of the complaint of the intake decision and the reasons therefore without regard to the nature of the proceeding or to whether the decision is to submit to the court, dismiss the complaint, or refer for services. The standard differs from the Gittler provision by requiring notification to the accused when the complaint is dismissed and by requiring notification to the attorney of the subject of the complaint. The notification of dismissal is to provide the subject of the complaint with proof that the charge is no longer pending. The addition of notification to the attorney is based

*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

n the broad entitlement to counsel provided by Standards 3.132 and 3.133 nd is intended to assure that a juvenile receives and understands the intake officer's report.

The report to the family court section of the prosecutor's office described in the first paragraph of this standard follows from the recommendation in Standard 3.163 that the responsibility for reviewing the legal sufficiency of the complaint and for filing the petition be assigned to prosecutors. See also Standard 3.131. Notice of a decision not to file a delinquency complaint is also required to be sent to the prosecutor's office because of the special responsibilities traditionally placed on the prosecutor when a crime has been committed.

The standard also provides for notifying the complainant of the intake decisions and for permitting complainants to seek review of an intake officer's decision to dismiss a delinquency, noncriminal misbehavior or neglect and abuse complaint by resubmitting the complaint to the family court section of the prosecutor's office. Too often in the past the complainant or victim have been forgotten during the processing of a case except when their testimony has been needed. The provision for notice and prosecutorial review of intake decisions on request of the complainant provides a check on the intake officer's discretion and follows the current practice in many jurisdictions, see e.g., Florida Department of Health and Rehabilitative Services, Manual: Intake for Delinquency and Dependency Juvenile Programs, Section 5.6.4 (Tallahassee, 1976), and is in accordance with the recommendations of the Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 15.13 (July 1976), and the Model Act for Family Courts, Section 13 (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975). However, as noted in Standards 3.142 to 3.145, objection by the complainant should not preclude dismissal of the complaint or referral of the subject of the complaint for services. Regardless of the decision revealed, it is recommended that the intake officer's report include an explanation of the reasons that underlie it. This is part of the effort throughout these standards to make discretionary decisions more consistent and decision-makers more accountable. See e.g., Standards 3.143 to 3.145, 3.151 to 3.158, 3.182 to 3.184, and 3.188. Setting forth the reasons for intake decisions will facilitate review and will help to assure that recommended criteria and rules are being followed and to assess their effect. It will also facilitate a better understanding of the juvenile justice process by members of the public who become involved in a delinquency, noncriminal misbehavior, or neglect and abuse proceeding.

Related Standards

3.141
3.142
3.143
3.144
3.145
3.163

3.15 Detention, Release, and Emergency Custody

3.151 Purpose and Criteria for Detention and Conditioned Release—Delinquency

WRITTEN RULES AND GUIDELINES SHOULD BE DEVELOPED BY THE AGENCY RESPONSIBLE FOR INTAKE SERVICES TO GOVERN DETENTION DECISIONS IN MATTERS SUBJECT TO THE JURISDICTION OF THE FAMILY COURT OVER DELINQUENCY.

A JUVENILE ACCUSED OF A DELINQUENCY OFFENSE SHOULD BE UNCONDITIONALLY RELEASED UNLESS DETENTION IN A SECURE OR NONSECURE FACILITY OR IMPOSITION OF CONDITIONS ON RELEASE IS NECESSARY TO PROTECT THE JURISDICTION OR PROCESS OF THE FAMILY COURT; TO PREVENT THE JUVENILE FROM INFLICTING SERIOUS BODILY HARM ON OTHERS OR COMMITTING A SERIOUS PROPERTY OFFENSE PRIOR TO ADJUDICATION, DISPOSITION, OR APPEAL; OR TO PROTECT THE JUVENILE FROM IMMINENT BODILY HARM.

IN DETERMINING WHETHER DETENTION OR CONDITIONED RELEASE IS REQUIRED, AN INTAKE OFFICER SHOULD CONSIDER:

a. THE NATURE AND SERIOUSNESS OF THE ALLEGED OFFENSE;

b. THE JUVENILE'S RECORD OF DELINQUENCY OFFENSES, INCLUDING WHETHER THE JUVENILE IS CURRENTLY SUBJECT TO THE DISPOSITIONAL AUTHORITY OF THE FAMILY COURT OR RELEASED PENDING ADJUDICATION, DISPOSITION, OR APPEAL;

c. THE JUVENILE'S RECORD OF WILLFUL FAILURES TO APPEAR AT FAMILY COURT PROCEEDINGS; AND

d. THE AVAILABILITY OF NONCUSTODIAL ALTERNATIVES, INCLUDING THE

PRESENCE OF A PARENT, GUARDIAN, OR OTHER SUITABLE PERSON ABLE AND WILLING TO PROVIDE SUPERVISION AND CARE FOR THE JUVENILE AND TO ASSURE HIS OR HER PRESENCE AT SUBSEQUENT PROCEEDINGS.

IF UNCONDITIONAL RELEASE IS NOT DETERMINED TO BE APPROPRIATE, THE LEAST RESTRICTIVE ALTERNATIVE SHOULD BE SELECTED. RELEASE SHOULD NOT BE CONDITIONED ON THE POSTING OF A BAIL BOND BY THE JUVENILE OR BY THE JUVENILE'S FAMILY, OR ON ANY OTHER FINANCIAL CONDITION. A JUVENILE SHOULD NOT BE DETAINED IN A SECURE FACILITY UNLESS THE CRITERIA SET FORTH IN STANDARD 3.152 ARE MET.

Sources

See generally, Daniel Freed, Timothy Terrell, J. Lawrence Schultz, Proposed Standards Relating to Interim Status, Standards 3.2 and 4.6. (IJA/ABA, Draft, September 1975); National Advisory Commission on Criminal Justice Standards and Goals, Corrections Section 8.2(7)(b) (U.S. Government Printing Office, Washington, D.C., 1973).

Commentary

Although exact figures are not yet available, it is estimated that over 15,000 juveniles are held in American jails and detention centers on any given day. See Children in Custody: Advance Report on the Juvenile Detention and Correctional Facility Census of 1972-1973 (LEAA, Washington, D.C., May 1975); Rosemary Sarri, Under Lock and Key: Juveniles in Jails and Detention (National Assessments of Juvenile Corrections, Ann Arbor, Michigan, 1974). Recent studies have shown that the rate of detention, the person making and reviewing the initial decision to detain or release a juvenile, and the reasons for detention vary greatly from jurisdiction to jurisdiction. Standards 3.151 to 3.158 seek to define and limit the purposes for holding juveniles in custody or conditioning their release pending adjudication, disposition, and appeal to clarify the responsibility for making and reviewing custodial decisions and to specify the criteria on which such decisions should be based. It is the intent of these standards that most juveniles subject to the jurisdiction of the family court over delinquency, noncriminal misbehavior, and neglect and abuse be released to the custody of their parents, guardian or primary caretaker without imposition of any substantial restraints on liberty and, when this is not possible, that the least restrictive alternative be employed.

This standard, together with Standard 3.152, sets out the purposes for which restraints may be imposed on the liberty of a juvenile subject to the jurisdiction of the family court over delinquency and recommends criteria to be employed in determining whether such restraints are necessary. The term "detention" is intended to refer to placement of a juvenile in a facility or residence other than his home pending adjudication, disposition, or appeal. A secure facility is intended to denote a facility "characterized by physically restrictive construction with procedures designed to prevent the juveniles from departing at will" Freed, Terrell and Schultz, supra, Standard 2.10. A single family foster home is an example of a nonsecure facility. More precise definitions will be included in subsequent standards.

The initial recommendation in Standard 3.151 is that written rules and guidelines be developed in order to promote consistency in detention and release decisions. See e.g., Florida Department of Health and Rehabilitative Services, Manual: Intake for Delinquency and Dependency Juvenile Programs, ections 5.4-5.4.8 and 5.5-5.5.1 (Tallahassee, 1976). The

Advisory Committee on Standards recommends the development of rules and guidelines governing decisions regarding detention and release of juveniles in delinquency cases as an action that States can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice. Although the guidelines are to be promulgated by the agency responsible for intake services of the family court, the police and other affected components of the juvenile justice system should participate in their development. Cf. Standards 3.143 to 3.145. Consolidation of administrative control over the intake and detention decisionmaking in one agency is recommended to enhance accountability and reduce the confusion and inconsistency that have occurred when several agencies, departments, or units have been authorized to make initial detention/release decisions. However, decisions to detain should be subject to mandatory review by a family court judge within 24 hours and the terms of release should be subject to judicial review on the request of the juvenile or the juvenile's family. See Standards 3.155 and 3.156.

Although emphasizing that most juveniles should be released without the imposition of substantial restraints on their liberty, the standard indicates that such restraints may be imposed to prevent a juvenile from fleeing or being taken out of the jurisdiction or to protect the juvenile or the community. See, e.g., Standards and Guides for Detention of Children and Youth, (National Council on Crime and Delinquency, 1961); Uniform Juvenile Court Act, Section 14 (National Conference of Commissioners on Uniform State Laws, 1968); Model Act for Family Courts, Section 20 (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975); Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 12.7 (July 1976); Freed, Terrell and Schultz, supra. The criteria set forth in Standard 3.152 are intended to limit the circumstances in which juveniles may, in furtherance of these purposes, be placed in secure detention.

Although preventive detention has been a highly controversial issue in adult criminal cases, the imposition of high bail has often been used to achieve the same purpose. Preventive detention of juveniles, in one form or another, is allowable under the juvenile codes of a substantial number of States and has been approved by the National Advisory Committee, Courts, supra, 298-299 (to protect person or properties of others); the Model Act for Family Courts, supra (release presents a clear and substantial threat of a serious nature to the person or property of others); the Uniform Juvenile Court Act (to protect the person and property of others); Standards and Goals Task Force for Juvenile Justice, supra (to prevent infliction of bodily harm on others or intimidation of any witness); and the IJA/ABA Joint Commission, Freed, Terrell and Schultz, supra (prevent infliction of serious bodily harm on others). But see National Advisory Commission on Criminal Justice Standards and Goals, Corrections, Section 8.2(7) (1973). Because of the difficulty of predicting future conduct, the adverse impact of incarceration on a juvenile, and the cost of detention, the standard recommends that secure detention should be an available alternative in only certain specified situations. In addition, juveniles can only be confined for their own protection in a secure facility if they request such confinement in writing "in circumstances that present an immediate danger of serious physical injury." See Freed, Terrell and Schultz, supra, Standard 6.7(a).

To provide further guidance, the standard suggests four sets of considerations relevant to the decision regarding what, if any, restraints should be imposed. These relate directly to the purposes enumerated above and to the criteria for secure detention discussed in Standard 3.152. See also Standard 3.143. In order to assure that the juvenile's rights are protected, Standard 3.155 provides that the detention hearing must include a judicial determination of probable cause, and Standard 3.158 recommends weekly review of decisions to continue detention to assure that confinement is still necessary.

Finally, the standard, in accordance with the position adopted by the President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, 36 (U.S. Government Printing Office, Washington D.C., 1967); the Standards and Goals Task Force on Juvenile Justice, supra, Standard 12.12; and the IJA/ABA Joint Commission, Freed, Terrell, and Schultz supra, recommends that a juvenile's release not be conditioned on the posting of a bail bond or any other financial condition. As stated in the commentary to the Task Force provision:

> A juvenile is unlikely to have independent financial resources which he could use to post bail. Even if he did have such resources, he could not sign a binding bail bond because a minor is not ordinarily liable on a contract. Consequently, the youth would have to depend on his parents or other interested adults to post bond in his behalf. If an adult posted bond, the youth's incentive to appear would arguably be defeated, since he would not personally forfeit anything upon non-appearance. On the other hand, a parent might refuse to post bail and force the youth to remain in detention. Finally, financial conditions discriminate against indigent juveniles and their families.

State practices with regard to bail vary widely. A substantial number, however, by statute or decision, provide accused delinquents with a right to bail. It was the conclusion of the Advisory Committee on Standards that the recommended procedures are more in keeping with the purposes of the family court than bail, will more adequately protect juveniles against unwarranted restraints on their liberty, and will not be subject to the abuses and injustices that have occurred in the adult criminal justice system as a result of reliance on bail and other financial conditions for release. See National Advisory Commission, Courts, supra, Section 4.6; ABA, Standards Relating to Pretrial Release, Section 1.2(c) (Approved Draft, 1969).

Related Standards

3.152
3.153
3.154
3.155
3.156
3.157
3.158
3.171

3.152 Criteria for Detention in Secure Facilities—Delinquency

JUVENILES SUBJECT TO THE JURISDICTION OF THE FAMILY COURT OVER DELINQUENCY SHOULD NOT BE DETAINED IN A SECURE FACILITY UNLESS:

a. THEY ARE FUGITIVES FROM ANOTHER JURISDICTION;

b. THEY REQUEST PROTECTION IN WRITING IN CIRCUMSTANCES THAT PRESENT AN IMMEDIATE THREAT OF SERIOUS PHYSICAL INJURY;

c. THEY ARE CHARGED WITH MURDER IN THE FIRST OR SECOND DEGREE;

d. THEY ARE CHARGED WITH A SERIOUS PROPERTY CRIME OR A CRIME OF VIOLENCE OTHER THAN FIRST OR SECOND DEGREE MURDER WHICH IF COMMITTED BY AN ADULT WOULD BE A FELONY, AND:

i) THEY ARE ALREADY DETAINED OR ON CONDITIONED RELEASE IN CONNECTION WITH ANOTHER DELINQUENCY PROCEEDING;

ii) THEY HAVE A DEMONSTRABLE RECENT RECORD OF WILLFUL FAILURES TO APPEAR AT FAMILY COURT PROCEEDINGS;

iii) THEY HAVE A DEMONSTRABLE RECENT RECORD OF VIOLENT CONDUCT RESULTING IN PHYSICAL INJURY TO OTHERS; OR

iv) THEY HAVE A DEMONSTRABLE RECENT RECORD OF ADJUDICATIONS FOR SERIOUS PROPERTY OFFENSES; AND

e. THERE IS NO LESS RESTRICTIVE ALTERNATIVE THAT WILL REDUCE THE RISK OF FLIGHT, OR OF SERIOUS HARM TO PROPERTY OR TO THE PHYSICAL SAFETY OF THE JUVENILE OR OTHERS.

Source

See generally, Daniel Freed, Timothy Terrell, J. Lawrence Schultz, Proposed Standards Relating to Interim Status, Standards 6.6 and 6.7 (IJA/ABA, Draft, September 1975).

Commentary

This standard describes the circumstances in which a juvenile subject to the jurisdiction of the family court over delinquency may be detained in a secure facility. It is intended to limit secure detention to those instances in which no less restrictive alternative is sufficient to protect the juvenile, the community, or the jurisdiction of a family court.

Under subparagraph (a), juveniles who have fled from a jurisdiction in which a delinquency complaint or petition is pending against them may be detained in a secure facility unless nonsecure detention, conditioned or unconditioned release would be sufficient to significantly reduce the risk of flight.

Subparagraph (b) recommends that protective custody be permitted only on the juvenile's written request coupled with circumstances that

indicate that the juvenile is in immediate danger of serious physical injury. Such danger is intended to be more than being on the streets at night or the possibility that the juvenile may be harmed if he/she continues to get into trouble. See Freed, Terrell and Schultz, supra, Commentary to Standard 5.7. Protective custody provisions have sometimes functioned as convenient excuses for holding a child in custody because of other reasons or the lack of less restrictive facilities. Such a practice would not be authorized under the standard. If the juvenile is endangered by his parents, guardian, or primary caretaker in one of the ways set forth in Standard 3.113, a neglect or abuse action may be appropriate.

Subparagraph (c) recommends that secure detention be permitted but not required when a juvenile is charged with first or second degree murder. This provision is somewhat analogous to the statutes in some States prohibiting adults charged with a capital offense from being released on bail.

Under subparagraph (d), commission of a crime of violence short of murder but still equivalent to a felony, e.g., manslaughter, rape, or aggravated assault, is not in itself sufficient to detain a juvenile. The juvenile must also have, for example, a demonstrable record of committing violent offenses that result in physical injury to others or be on conditioned release or in detention pending adjudication, disposition, or appeal of another delinquency matter. Similarly, being charged with a serious property offense, e.g., burglary in the first degree or arson, must be coupled with a demonstrable record of adjudications for serious property offenses. The term "demonstrable record" is not intended to require introduction of a certified copy of a prior adjudication order, but should include more than allegations of prior misconduct. In order to protect the juvenile's rights and to assure that the decision to detain a juvenile in a secure facility was made in accordance with this standard and Standard 3.151, related standards recommend that a detention hearing be held before a family court judge within 24 hours and, if detention is continued, that it be subject to judicial review every 7 days. See Standards 3.155 and 3.158.

The standard differs significantly from the Freed, Terrell, and Schultz provisions on which it is based in four ways. First, it urges that the proposed strict criteria be limited to detention in secure facilities. Second, in view of the large number of burglaries and other serious property offenses committed by some juveniles, it does not restrict detention to juveniles accused of committing violent crimes. Third, the Freed, Terrell, and Schultz provision would limit the violent felonies other than murder, which would warrant secure detention, to those for which commitment to a secure correctional institution is likely. This added factor is omitted because it involves the type of prediction that the other criteria seek to avoid and because it may have a tendency to become a self-fulfilling prophecy. Fourth, the standard does not restrict the violent or serious property offenses, which would make a juvenile eligible for secure detention, to those occurring while the juvenile is subject to the jurisdiction or dispositional authority of the family court. However, the standard, like those approved by the IJA/ABA Joint Commission, is intended to prevent detention of juveniles in secure facilities because of the lack of less restrictive alternatives; because of the unavailability of a parent, relative, or other adult with substantial ties to the juvenile who is willing and able to provide supervision and care; or in order to provide "treatment." See also Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency, Standard 12.7 (July 1976).

Related Standards

3.151
3.155
3.156
3.158
3.161
3.171

3.153
Criteria and Procedures for Detention and Release—Noncriminal Misbehavior

PERSONS SUBJECT TO THE JURISDICTION OF THE FAMILY COURT OVER NONCRIMINAL MISBEHAVIOR* SHOULD NOT BE DETAINED IN SECURE DETENTION FACILITIES. A JUVENILE SUBJECT TO THAT JURISDICTION SHOULD BE PLACED IN SHELTER FACILITIES PENDING ADJUDICATION, DISPOSITION, OR APPEAL ONLY WHEN THE JUVENILE IS IN DANGER OF IMMINENT BODILY HARM AND NO LESS COERCIVE MEASURE WILL REDUCE THE RISK OR WHEN THERE IS NO PERSON WILLING AND ABLE TO PROVIDE SUPERVISION AND CARE.

WRITTEN RULES AND GUIDELINES SHOULD BE DEVELOPED BY THE AGENCY RESPONSIBLE FOR INTAKE SERVICES TO GOVERN DETENTION AND RELEASE DECISIONS.

IN DETERMINING WHETHER DETENTION OR CONDITIONED RELEASE IS REQUIRED, THE INTAKE OFFICER SHOULD CONSIDER:

a. THE NATURE AND SERIOUSNESS OF THE ALLEGED CONDUCT;

b. THE JUVENILE'S AGE AND MATURITY;

c. THE NATURE AND NUMBER OF CONTACTS WITH THE INTAKE UNIT OR FAMILY COURT THAT THE JUVENILE AND HIS OR HER FAMILY HAS HAD;

d. THE OUTCOME OF THOSE CONTACTS; AND

e. THE PRESENCE OF A PARENT, GUARDIAN, OR OTHER ADULT ABLE AND WILLING TO PROVIDE SUPERVISION AND CARE FOR THE JUVENILE.

IF UNCONDITIONAL RELEASE IS DETERMINED NOT TO BE APPROPRIATE, THE LEAST RESTRICTIVE ALTERNATIVE SHOULD BE SELECTED. WHEN IT IS NECESSARY TO PROVIDE TEMPORARY CUSTODY FOR A JUVENILE PENDING A NONCRIMINAL MISBEHAVIOR PROCEEDING, EVERY EFFORT SHOULD BE MADE TO PROVIDE SUCH CUSTODY IN THE LEAST RESTRICTIVE SETTING POSSIBLE AND TO ASSURE THAT CONTACT WITH JUVENILES DETAINED UNDER STANDARD 3.151 OR WHO HAVE BEEN ADJUDICATED DELINQUENT IS MINIMIZED.

Source

See generally, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 12.8 (July 1976).

Commentary

Although precise national data is not yet available, a number of studies have estimated that from 30 percent to over 50 percent of the juveniles detained prior to disposition are status offenders. See e.g., Richard Airessohn and Gordon Gonion, Reducing the Juvenile Detention Rate, 24 Juvenile Justice 28 (May 1973); Helen Sumner, Locking Them Up, 17 Crime and

*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

Delinquency 168 (April 1971); Rosemary Sarri, Under Lock and Key: Juveniles in Jails and Detention 20 (National Assessment of Juvenile Corrections, Ann Arbor, Michigan, 1974); National Council on Crime and Delinquency, "Survey on Corrections in the United States" reprinted in President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections (U.S. Government Printing Office, Washington, D.C., 1967). As with detention of juveniles in general, the reasons for and rates of detention of juveniles accused of engaging in noncriminal misbehavior vary widely among and within States, although as noted by the Standards and Goals Task Force on Juvenile Justice, "... detention is presently the most convenient method for the pre-adjudicatory handling of juveniles exhibiting 'status' types of behavior because other resources... are either not available or available only on a very selective basis." Task Force, supra, Commentary to Standard 12.8. Although the number and percentage of such children who are detained appear to be declining and are expected to continue to do so, in part due to the implementation of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. Sections 5601, 5633(a)(12) (Supp. 1975), there is still a need to define the circumstances and conditions under which juveniles subject to the jurisdiction of the family court over noncriminal misbehavior may be detained. See Standard 3.112.

The standard makes clear, at the outset, that persons accused of noncriminal misbehavior--juveniles or adults alleged to have repeatedly misused their lawful parental authority--should never be placed in a secure detention center or jail. See Juvenile Justice and Delinquency Prevention Act of 1974, supra; Task Force, supra. In most cases, such persons should be released without conditions upon their promise to appear. However, the standard provides that juveniles may be placed in shelter facilities in two limited situations. The first is when the juvenile is in danger of imminent bodily harm and no alternative to shelter care can reduce the risk. The second is when there is no one able and willing to provide supervision and care for the juvenile, and the juvenile is not able to provide adequately for his or her own needs (food, shelter, and clothing) without such care and supervision. The term shelter facility will be defined in subsequent standards but is intended to refer to a single family foster home, a small group home, or similar facility.

Unlike Standard 3.152, the standard does not require a written request for protection by the juvenile in circumstances that present an immediate threat of physical injury, because in most cases, protection for children in noncriminal misbehavior cases can be provided in nonsecure shelter facilities, and it seems unrealistic to expect runaways, truants, and other children who are in conflict with their families to request protection. Only then the juvenile can be protected by no other means should a secure facility be used.

The Task Force provision from which this standard is adopted appears to limit use of shelter care to the first of the enumerated situations. However, the commentary to the Task Force Standard indicates that it is intended to include "a young child who continually runs away from home or other residential placement regardless of what services are offered or provided and is therefore exposing him or herself to the myriad of harm that can befall a young child unsupervised and unprotected on a city street." It appears more appropriate to address this problem directly, rather than to premise nonrelease on predictions of potential danger. The IJA/ABA Joint Commission's standards do not provide

for family court jurisdiction over most instances of noncriminal misbehavior. However, juveniles who run away and do not consent to be transported home may be taken to a temporary nonsecure residential facility. Aiden Gough, Proposed Standards Relating to Non-Criminal Misbehavior, Standards 2.1 and 3.1 (IJA/ABA, Draft, November 1975).

Related Standards

3.112
3.151
3.155
3.156
3.158
3.161
3.171

As in the provisions concerning intake and Standards 3.151 and 3.154, the standard recommends that written rules and guidelines be promulgated by the agency responsible for intake services to promote consistency in detention/release decisions. The family court, the police, and other affected agencies should participate in the development of such regulations. The Advisory Committee on Standards recommends the development of rules and guidelines governing release and detention decisions in noncriminal misbehavior cases as an action that States can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.

In deciding whether detention or any release conditions are necessary, the standard directs the intake officer to select the least restrictive alternative consistent with a series of criteria similar o those to be utilized in intake decisions, see Standard 3.144; see also Standard 3.151.

The standard emphasizes that if shelter facilities are used, they should be as normal an environment as possible, and recommends that contact between accused or adjudicated delinquency offenders and juveniles accused of noncriminal misbehavior should be minimized in order to distinguish as much as possible the consequences of noncriminal and criminal behavior.

3.154 Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases

WRITTEN RULES AND GUIDELINES SHOULD BE DEVELOPED BY THE AGENCY RESPONSIBLE FOR INTAKE SERVICES TO GOVERN IMPOSITION OF PROTECTIVE MEASURES PRIOR TO ADJUDICATION OR DISPOSITION OF MATTERS SUBMITTED PURSUANT TO THE JURISDICTION OF THE FAMILY COURT OVER NEGLECT AND ABUSE.

IN DETERMINING WHETHER TO IMPOSE CONDITIONS TO PROTECT A JUVENILE ALLEGED TO BE NEGLECTED AND ABUSED OR TO PLACE THE JUVENILE IN EMERGENCY CUSTODY, THE INTAKE OFFICER SHOULD CONSIDER: THE NATURE AND SERIOUSNESS OF THE ALLEGED NEGLECT OR ABUSE AND THE CIRCUMSTANCES IN WHICH IT OCCURRED; THE JUVENILE'S AGE AND MATURITY; THE NATURE AND NUMBER OF CONTACTS WITH THE INTAKE UNIT AND THE FAMILY COURT WHICH THE FAMILY HAS HAD; AND THE PRESENCE OF A PARENT, GUARDIAN, RELATIVE, OR OTHER PERSON WITH WHOM THE JUVENILE HAS SUBSTANTIAL TIES, WILLING AND ABLE TO PROVIDE SUPERVISION AND CARE.

CONDITIONS SHOULD NOT BE IMPOSED ON A JUVENILE'S PARENTS, GUARDIAN, OR PRIMARY CARETAKER UNLESS NECESSARY TO PROTECT THE JUVENILE AGAINST ANY OF THE HARMS SET FORTH IN STANDARD 3.113(b)-(i).

JUVENILES SHOULD NOT BE PLACED IN EMERGENCY CUSTODY UNLESS:

a. THEY ARE UNABLE TO CARE FOR THEMSELVES AND THERE IS NO PARENT, GUARDIAN, RELATIVE, OR OTHER PERSON WILLING AND ABLE TO PROVIDE SUPERVISION AND CARE;

b. THERE IS A SUBSTANTIAL RISK THAT THEY WOULD SUFFER ONE OF THE FORMS OF NEGLECT OR ABUSE SET FORTH IN STANDARD 3.113(b)-(h) IF THEY WERE RETURNED HOME;

c. THERE IS A SUBSTANTIAL RISK THAT THEY WILL FAIL TO OR BE PREVENTED FROM APPEARING AT ANY FAMILY COURT PROCEEDING RESULTING FROM THE FILING OF THE COMPLAINT; AND

d. THERE IS NO OTHER MEASURE THAT WILL PROVIDE ADEQUATE PROTECTION.

WHEN IN ACCORDANCE WITH THE ABOVE CRITERIA AND FACTORS IT IS DETERMINED THAT EMERGENCY CUSTODY IS REQUIRED, EVERY EFFORT SHOULD BE MADE TO PROVIDE SUCH CUSTODY IN THE MOST HOMELIKE SETTING POSSIBLE. JUVENILES SUBJECT TO THE NEGLECT AND ABUSE JURISDICTION OF THE FAMILY COURT SHOULD NOT BE PLACED IN FACILITIES HOUSING ACCUSED OR ADJUDICATED DELINQUENCY OR ADULT OFFENDERS.

Sources

See generally, Model Act for Family Courts, Section 20 (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975); see also, Robert Burt and Michael Wald, Proposed Standards Relating to Neglect and Abuse, Standard 4.3 (IJA/ABA, Draft, January 1976).

Commentary

This standard sets forth the factors and circumstances that an intake officer should consider in deciding whether protective measures should be imposed pending adjudication and disposition of a neglect and abuse case. As in the other standards dealing with discretionary decisions by the intake officer, it urges that written rules and guidelines be issued by the agency responsible for intake services to promote consistency. See Standards 3.143-3.145, 3.151 and 3.153; see e.g., Florida Department of Health and Rehabilitative Services, Manual: Intake for Delinquency and Dependency Juvenile Programs, Section 6.7 (Tallahassee, 1976). The family court, police, child protective services agency, and other State and local agencies affected by the imposition of protective condition or the placement of children alleged to have been neglected or abused in emergency custody should participate in the development of such regulations. The Advisory Committee on Standards recommends the development of rules and guidelines governing decisions to impose protective measures in neglect and abuse cases as an action that States can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.

The factors listed in the second paragraph of the standard are intended to serve as guides for the decisionmaking and rulemaking processes. They are similar to those that the intake officer should consider in making the intake decision. See Standard 3.145.

Conditions should only be imposed on a juvenile's parents or parental surrogates when necessary to protect the child from any of the harms specified in Standard 3.113(b)-(i), pending determination and disposition of the case. Any conditions imposed should be addressed to alleviating immediate dangers--e.g., assuring that the child receives prescribed medication or that care is provided while the parent is away--and not to resolving any underlying family conflicts or problems.

Because removal of a child from his/her house, even on an emergency basis, is often emotionally "very painful" to the child, Joseph Goldstein, Anna Freud, and Albert Solnit, Beyond the Best Interests of the Child, 20 (The Free Press, New York, 1973), and because the emphasis throughout these standards on the use of the least intrusive form of intercession that is appropriate, cf. Standards 3.143-3.145, 3.151-3.153, 3.182-3.184, the standard recommends that a juvenile alleged to have been neglected or abused should not be placed in emergency custody unless no other alternative will provide adequate protection. Accord, Burt and Wald, supra; Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 12.9 (July 1976). See Judith Areen, Intervention Between Parent and Child: A Reappraisal of the State's Role in Neglect and Abuse Cases, 63 Georgetown Law Journal 887, 919 (1975). Under the standard, juveniles could be placed in emergency custody if they are in immediate danger in any of the ways specified in Standard 3.113, with one exception. Because preventing a child from obtaining the education required by law, Standard 3.113(i), does not imperil his/her physical or emotional health, it does not warrant removing the child from the home. The standard would also permit emergency custody when it is likely that the juvenile will flee, will be taken from the jurisdiction, or otherwise prevented from appearing at any of the proceedings.

The Model Act for Family Courts, supra, permits juveniles to be placed

in emergency custody if there is no adult able and willing to provide care, if release would present a serious threat of substantial harm, and "if the child has a history of failing to appear for hearings." The provision adopted by the IJA/ABA Joint Commission is more limited. It stipulates that a child should not be held in emergency custody unless return home would create "an imminent substantial risk of death or bodily injury to the child," no adequate safeguards other than removal are available, and the conditions of emergency custody adequately safeguard the child's well-being. Burt and Wald, supra. The Standards and Goals Task Force on Juvenile Justice, supra, would limit removal even further, allowing emergency custody "only when it is necessary to protect the child and the parents or other adult caretakers are unwilling or unable to protect the child from such injury."

When juveniles are placed in emergency custody, they should be placed in as homelike a setting as possible, in order to reduce the impact of removal to the greatest extent possible. However, such placement should adequately protect the juvenile and provide for the juvenile's physical and emotional needs. As noted in the commentary to the Task Force, Standard 12.9, supra:

> It is obviously pointless to remove a child from a dangerous home situation unless we can assure that he will be adequately protected in the temporary out-of-home placement.

Ordinarily, forestry camps and other remote facilities should not be utilized. Parental visits should be permitted and encouraged. See Task Force, supra; Burt and Wald, supra Standard 4.2. To assure protection without otherwise unnecessary security measures and to avoid treating nondelinquent juveniles in the same manner as those accused of committing or found to have committed a criminal offense, juveniles alleged to be neglected and abused should not be commingled with alleged or adjudicated delinquents or adult offenders.

Decisions to place a child in emergency custody should be subject to judicial review within 24 hours of the time at which the juvenile was taken into custody. See Standard 3.157. Protective measures short of emergency custody should be subject to review by the family court upon request of the juvenile's parents, guardian, or primary caretaker. See Standard 3.156.

Related Standards

3.113
3.151
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3.157
3.158
3.161
3.171

CONTINUED

1 OF 3

3.155
Initial Review of Detention Decisions

UPON DETERMINING THAT THE SUBJECT OF A DELINQUENCY COMPLAINT SHOULD BE DETAINED, THE INTAKE OFFICER SHOULD FILE A WRITTEN NOTICE WITH THE FAMILY COURT TOGETHER WITH A COPY OF THE COMPLAINT. THE NOTICE SHOULD SPECIFY THE TERMS OF DETENTION, THE BASIS FOR IMPOSING SUCH TERMS, AND THE LESS RESTRICTIVE ALTERNATIVES, IF ANY, THAT MAY BE AVAILABLE. A COPY OF THE NOTICE SHOULD BE GIVEN TO THE FAMILY COURT SECTION OF THE PROSECUTOR'S OFFICE, THE JUVENILE, AND THE JUVENILE'S ATTORNEY AND PARENTS, GUARDIAN, OR PRIMARY CARETAKER.

UNLESS THE JUVENILE IS RELEASED EARLIER, A DETENTION HEARING SHOULD BE HELD BEFORE A FAMILY COURT JUDGE NO MORE THAN 24 HOURS AFTER THE JUVENILE HAS BEEN TAKEN INTO CUSTODY. AT THAT HEARING, THE STATE SHOULD BE REQUIRED TO ESTABLISH THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT A DELINQUENT OFFENSE WAS COMMITTED AND THAT THE ACCUSED JUVENILE COMMITTED IT. IF PROBABLE CAUSE IS ESTABLISHED, THE COURT SHOULD REVIEW THE NECESSITY FOR CONTINUED DETENTION. UNLESS THE STATE DEMONSTRATES BY CLEAR AND CONVINCING EVIDENCE THAT CONTINUED SECURE OR NONSECURE DETENTION IS WARRANTED, THE COURT SHOULD PLACE THE JUVENILE IN THE LEAST RESTRICTIVE FORM OF RELEASE CONSISTENT WITH THE PURPOSES AND FACTORS SET FORTH IN STANDARD 3.151.

AT THE INCEPTION OF THE DETENTION HEARING, THE JUDGE SHOULD ASSURE THAT THE JUVENILE UNDERSTANDS HIS OR HER RIGHT TO COUNSEL, SHOULD APPOINT AN ATTORNEY TO REPRESENT THE JUVENILE IF THE JUVENILE IS NOT ALREADY REPRESENTED BY COUNSEL, AND MEETS THE ELIGIBILITY REQUIREMENTS SET FORTH IN STANDARD 3.132.

IF DETENTION IS CONTINUED, THE FAMILY COURT JUDGE SHOULD EXPLAIN, ON THE RECORD, THE TERMS OF DETENTION AND THE REASONS FOR REJECTING LESS RESTRICTIVE ALTERNATIVES. IF THE TERMS DIFFER FROM THOSE IMPOSED BY THE INTAKE OFFICER, A WRITTEN COPY OF THOSE TERMS SHOULD BE GIVEN TO THE JUVENILE AND THE JUVENILE'S ATTORNEY AND PARENTS, GUARDIAN, OR CUSTODIAN.

NO DETENTION DECISION SHOULD BE MADE ON THE BASIS OF A FACT OR OPINION THAT HAS NOT BEEN DISCLOSED TO COUNSEL FOR THE STATE AND FOR THE JUVENILE.

THE SAME PROCEDURES AND TIME LIMITS SHOULD APPLY TO THE MATTERS UNDER THE JURISDICTION OF THE FAMILY COURT OVER NONCRIMINAL MISBEHAVIOR,* EXCEPT THAT THE TERMS OF DETENTION IN NONCRIMINAL MISBEHAVIOR CASES SHOULD BE ASSESSED AGAINST THE CRITERIA SET FORTH IN STANDARD 3.153.

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*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

Sources

See generally, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 12.11 (July 1976); see also Daniel Freed, Timothy Terrell, J. Lawrence Schultz, Proposed Standards Relating to Interim Status, Standard 4.3, 7.7-7.8 (IJA/ABA, Draft, September 1975), Fred Cohen, Proposed Standards Relating to Dispositional Procedures, Standard 2.4(a) (IJA/ABA, Draft, May 1975).

Commentary

This standard recommends that the decision to detain the subject of a complaint filed pursuant to the jurisdiction of the family court over delinquency and noncriminal misbehavior should be judicially reviewed within 24 hours of the time at which the subject of the complaint was taken into custody. It recommends further that this review take place during a hearing at which the detained person is entitled to counsel and at which the State is required to prove that there is probable cause to believe the allegations in the complaint are true.

All of the recent national standards-setting or model legislative efforts recommend that there be an opportunity for judicial review of detention decisions. The Model Act for Family Courts, Section 23 (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975); the Uniform Juvenile Court Act, Section 17 (National Conference of Commissioners for Uniform State Laws, 1968); the President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, 37 (U.S. Government Printing Office, Washington, D.C., 1967); and the National Advisory Commission on Criminal Justice Standards and Goals, Courts, Section 14.2 (U.S. Government Printing Office, Washington, D.C., 1973), as well as the IJA/ABA Joint Commission, Freed, Terrell and Schultz, supra, and the Standards and Goals Task Force on Juvenile Justice, supra, recommend that such hearings be mandatory. Most States provide for and many require a detention hearing.

Provisions regarding the time period in which such hearings should be held vary. All but one of the groups recommending a mandatory detention hearing propose that such hearings be held within 48 hours of arrest. The Uniform Juvenile Court Act, supra, sets a 72-hour limit. State provisions range from no specifications as to time, to the requirements in Texas and in the District of Columbia that detention hearings be held within 24 hours.

Determining what time limit should be applied involves balancing two sets of competing interests. On the one hand, the intake officer needs time to gather the information necessary to make the intake and detention decisions and to prepare the necessary paper work, see Standards 3.143, 3.144 and 3.151, and the family court section of the prosecutor's office must have some opportunity to prepare the evidence and contact the witnesses for the probable cause determination at the detention hearing. On the other hand, there is the harsh impact that even brief detention may have on a juvenile, especially when he/she is placed in a secure facility, and the corresponding need to assure as quickly as possible that such detention is necessary. Although it is recognized that the 24-hour period (including holidays and weekends) proposed in this standard will cause some difficulty in those few cases in which it is necessary to detain a juvenile, especially in rural areas, the cost of detention both to the juvenile and the taxpayers warrants such a stringent prescription.

Procedurally, the standard proposes that intake officers prepare a notice as soon as possible after making the decision to detain that explains the restraints imposed, the less restrictive alternatives that were rejected, and the reasons for rejecting them. This explanation should be in terms of the purposes and criteria set forth in Standard 3.151. Together with the similar explanation to be provided by the judge in the event detention is continued, it is part of the effort throughout these standards to make discretionary decisions more consistent and open to review. See e.g., 3.143-3.145, 3.182-3.184, and 3.188. The notice, together with a copy of the complaint, are to be filed with the family court in order to provide a basis for the hearing and given to the parties in order to provide each side at least some opportunity to prepare. This procedure is comparable to that recommended by the IJA/ABA Joint Commission. Freed, Terrell and Schultz, supra.

As noted earlier, the standard recommends that the judge must find that there is a legally sufficient basis on which to hold the juvenile before reviewing whether detention is necessary. This is consistent with the Supreme Court's recent decision in Gerstein vs. Pugh, 420 U.S. 103 (1975). Unlike the Task Force provision, the standard does not bar the use of hearsay to show probable cause. This follows the majority view in Gerstein, supra, that the full panoply of adversary procedures need not apply to most probable cause determinations. Moreover, given the brief time available, it would be impractical to require the State to present a full slate of witnesses. However, the standard, together with Standard 3.171, goes beyond Gerstein in recommending that the subject of the delinquency or noncriminal misbehavior complaint be afforded the right to counsel, to be present at the detention hearing, to present evidence, and to call and cross-examine witnesses. Although these procedures do "freight" juvenile proceedings with "trial-type procedures," Moss vs. Weaver, 525 F.2d 1258 (5th Cir., 1976), the significanc of the detention decision for the juvenile makes such safeguards essential The standard provides further that no information relied upon in deciding whether detention is to be continued should be withheld from the attorney for the State, the attorney for the juvenile, and in noncriminal misbehavior proceedings the attorney for the juvenile's parents, guardian, or primary caretaker. See Standards 3.131-3.133. This is in keeping with the recommendations for broad disclosure by all particpants of the proceedings throughout these standards. See Standards 3.167 and 3.187. Whethe potentially harmful information should be revealed to the juvenile or the juvenile's parents or parental surrogate, is left to discretion of counsel.

The procedures for review of decisions to place juveniles alleged to have been neglected or abused in emergency custody are discussed in Standard 3.157.

Related Standards

3.151
3.152
3.153
3.156
3.157
3.158
3.161
3.171

3.156 Review of the Conditions of Release

UPON DETERMINING THAT THE SUBJECT OF A DELINQUENCY COMPLAINT SHOULD BE RELEASED, AND WHAT, IF ANY, CONDITIONS SHOULD BE IMPOSED ON THAT RELEASE, THE INTAKE OFFICER SHOULD FILE A WRITTEN NOTICE WITH THE FAMILY COURT TOGETHER WITH A COPY OF THE COMPLAINT. THE NOTICE SHOULD SPECIFY THE CONDITIONS OF RELEASE, THE BASIS FOR IMPOSING SUCH CONDITIONS, AND THE LESS RESTRICTIVE ALTERNATIVES, IF ANY, THAT MAY BE AVAILABLE. A COPY OF THE NOTICE SHOULD BE GIVEN TO THE FAMILY COURT SECTION OF THE PROSECUTOR'S OFFICE, THE JUVENILE, AND THE JUVENILE'S ATTORNEY AND PARENTS, GUARDIAN, OR CUSTODIAN.

IF REQUESTED BY THE JUVENILE OR BY THE JUVENILE'S FAMILY, A HEARING SHOULD BE HELD TO REVIEW THE CONDITIONS OF RELEASE AND TO ASSURE THAT THEY CONSTITUTE THE LEAST RESTRICTIVE FORM OF RELEASE CONSISTENT WITH THE PURPOSES AND CRITERIA SET FORTH IN STANDARD 3.151.

AT THE INCEPTION OF THE HEARING, THE JUDGE SHOULD ASSURE THAT THE JUVENILE UNDERSTANDS HIS OR HER RIGHT TO COUNSEL AND SHOULD APPOINT AN ATTORNEY TO REPRESENT THE JUVENILE IF THE JUVENILE IS NOT ALREADY REPRESENTED BY COUNSEL AND MEETS THE ELIGIBILITY REQUIREMENTS SET FORTH IN STANDARD 3.132.

AT THE CONCLUSION OF THE HEARING, THE FAMILY COURT JUDGE SHOULD EXPLAIN, ON THE RECORD, THE CONDITIONS OF RELEASE TO BE IMPOSED OR CONTINUED AND THE REASONS FOR REJECTING ANY LESS RESTRICTIVE ALTERNATIVES. IF THE CONDITIONS DIFFER FROM THOSE IMPOSED BY THE INTAKE OFFICER, A WRITTEN COPY OF THOSE CONDITIONS SHOULD BE GIVEN TO THE JUVENILE AND THE JUVENILE'S ATTORNEY AND PARENTS, GUARDIAN, OR PRIMARY CARETAKER.

NO DECISION SHOULD BE MADE ON THE BASIS OF A FACT OR OPINION THAT HAS NOT BEEN DISCLOSED TO COUNSEL FOR THE STATE, FOR THE JUVENILE, AND FOR THE JUVENILE'S PARENTS, GUARDIAN, OR PRIMARY CARETAKER.

THE SAME PROCEDURES SHOULD APPLY TO MATTERS SUBJECT TO THE JURISDICTION OF THE FAMILY COURT OVER NONCRIMINAL MISBEHAVIOR* AND NEGLECT AND ABUSE. IN NONCRIMINAL MISBEHAVIOR CASES THE CONDITIONS OF RELEASE SHOULD BE ASSESSED AGAINST THE CRITERIA IN STANDARD 3.153. IN NEGLECT AND ABUSE CASES, CONDITIONS IMPOSED ON A JUVENILE'S PARENTS, GUARDIAN, OR PRIMARY CARETAKER IN ORDER TO PROTECT THE JUVENILE SHOULD BE ASSESSED AGAINST THE CRITERIA SET FORTH IN STANDARD 3.154.

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*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

Sources

None of the standards examined address review of the terms of release. The standard is based on the recommendations regarding review of detention decisions of the Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 12.11 (July 1976); see also Daniel Freed, Timothy Terrell, J. Lawrence Schultz, Proposed Standards Relating to Interim Status, Standard 4.3, and 7.8 (IJA/ABA, Draft, September 1975), Fred Cohen, Proposed Standards Relating to Dispositional Procedures, Standard 2.4(a) (IJA/ABA, Draft, May 1975).

Commentary

As noted in the commentary to Standard 3.151, it is anticipated that it will not be necessary to detain or condition the release of most juveniles accused of committing a delinquent offense or engaging in noncriminal misbehavior and most adults accused of misusing their parental authority. It is further anticipated that in most cases in which release is subject to conditions, and in most neglect and abuse cases in which conditions are imposed to protect the juvenile, the conditions will be readily agreed to by the juvenile and the family and will not significantly restrain their liberty. However, in a few cases, juveniles and/or their families may feel that the conditions are or have become unnecessarily restrictive or that their agreement was coerced. In keeping with the family court's authority to review the actions of executive agencies, see Standard 3.121, and in order to assure that undue restraints are not imposed by the intake officers on the liberty of persons subject to the jurisdiction and that such persons perceive that they are being treated fairly, the standard recommends that the subject of delinquency and noncriminal misbehavior complaints and their parents, guardian, or primary caretaker be able to secure judicial review of the terms of release, and that juveniles alleged to be neglected and abused and their families be able to secure judicial review of the protective conditions which have been imposed.

The proposed procedures are identical to those set forth in Standards 3.155 and 3.157 except that the State is not required to establish probable cause. This requirement is omitted because most conditions will not be so burdensome as to constitute a "significant restraint on liberty." See Gerstein vs. Pugh 420 U.S. 103, 114 (1975). However, Standard 3.165 recommends that a hearing to determine the probable cause should be held upon the request of the person named therein

A review hearing may be requested at any time prior to implementation of the dispositional order or during a stay pending appeal when conditions on continued liberty are imposed. Judicial review of the terms of release is not made mandatory in order to avoid placing a time-consuming and unnecessary burden on the family court.

Related Standards

3.151
3.153
3.154
3.155
3.171

3.157
Initial Review of Emergency Custody Decisions

UPON DETERMINING THAT A JUVENILE SUBJECT TO THE JURISDICTION OF THE FAMILY COURT OVER NEGLECT AND ABUSE SHOULD BE RETAINED IN EMERGENCY CUSTODY, THE INTAKE OFFICER SHOULD FILE A WRITTEN NOTICE WITH THE FAMILY COURT TOGETHER WITH A COPY OF THE COMPLAINT. THE NOTICE SHOULD SPECIFY THE BASIS FOR RETAINING THE JUVENILE IN EMERGENCY CUSTODY, AND THE LESS RESTRICTIVE ALTERNATIVES, IF ANY, THAT MAY BE AVAILABLE. A COPY OF THE NOTICE SHOULD BE GIVEN TO THE FAMILY COURT SECTION OF THE PROSECUTOR'S OFFICE, THE JUVENILE, AND THE JUVENILE'S ATTORNEY AND PARENTS, GUARDIAN, OR PRIMARY CARETAKER.

UNLESS THE JUVENILE IS RETURNED HOME EARLIER, A HEARING SHOULD BE HELD BEFORE A FAMILY COURT JUDGE NO MORE THAN 24 HOURS AFTER THE JUVENILE HAS BEEN TAKEN INTO CUSTODY. AT THAT HEARING, THE STATE SHOULD BE REQUIRED TO ESTABLISH THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT THE JUVENILE HAS BEEN NEGLECTED OR ABUSED IN ANY OF THE WAYS SET FORTH IN STANDARD 3.113. IF PROBABLE CAUSE IS ESTABLISHED, THE COURT SHOULD DETERMINE WHETHER UNDER THE CRITERIA SET FORTH IN STANDARD 3.154, CONTINUED EMERGENCY CUSTODY IS NECESSARY TO PROTECT THE JUVENILE FROM ANY OF THE HARMS OR RISKS OF HARM SPECIFIED IN STANDARD 3.113(a)-(h).

AT THE INCEPTION OF THE HEARING, THE JUDGE SHOULD ASSURE THAT THE PARTIES UNDERSTAND THEIR RIGHT TO COUNSEL AND SHOULD APPOINT AN ATTORNEY TO REPRESENT A PARTY WHO IS NOT ALREADY REPRESENTED BY COUNSEL AND MEETS THE ELIGIBILITY REQUIREMENTS SET FORTH IN STANDARD 3.132 OR 3.133.

IF EMERGENCY CUSTODY IS CONTINUED, THE JUDGE SHOULD EXPLAIN, ON THE RECORD, THE REASONS FOR REJECTING LESS RESTRICTIVE ALTERNATIVES. NO DECISION SHOULD BE MADE ON THE BASIS OF A FACT OR OPINION THAT HAS NOT BEEN DISCLOSED TO COUNSEL FOR THE STATE, FOR THE JUVENILE, AND FOR THE JUVENILE'S PARENTS, GUARDIAN, OR PRIMARY CARETAKER.

Sources

See generally Robert Burt and Michael Wald, Proposed Standards Relating to Neglect and Abuse, Standards 4.3 and 5.2 (IJA/ABA, Draft, January 1976); see also, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 12.11 (July 1976); Daniel Freed, Timothy Terrell, J. Lawrence Schultz, Proposed Standards Relating to Interim Status, Standards 4.3, 7.7 (IJA/ABA, Draft, September 1975), Fred Cohen, Proposed Standards Relating to Dispositional Procedures, Standard 2.4(a) (IJA/ABA, Draft, May 1975).

Commentary

This standard recommends that the decision to place a juvenile alleged

to have been neglected or abused in emergency custody should be reviewed within 24 hours of the time at which the juvenile was taken into custody. Like the standard on review of detention decisions, it recommends further that this review take place at a hearing at which the juvenile and the juvenile's parents, guardian, or primary caretaker are entitled to counsel, and at which the State is required to prove that there is probable cause to believe that the allegations contained in the complaint are true and to demonstrate that continued emergency custody is necessary. The principle of a prompt hearing to review decisions to place a juvenile in emergency custody has been endorsed by all of the recent national standards-setting and model legislative groups that have addressed the issue. The Model Act for Family Courts, Section 23 (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975), and the Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standards 12.9 and 12.10 (July 1976) recommend that a hearing to review the initial emergency custody decision be held within 24 hours of the filing of the petition--i.e., within 48 hours of being taken into custody. Both the Model Act and the Task Force do not exclude weekends and holidays from the prescribed time periods. The Uniform Juvenile Court Act, section 17(b) (National Conference of Commissioners on Uniform State Laws, 1968) requires a hearing within 72 hours. The provision adopted by the IJA/ABA Joint Commission recommends that a hearing be held no later than the next business day. Burt and Wald, supra.

The Advisory Committee on Standards concluded that the time period for the initial judicial review of detention decisions in delinquency and noncriminal misbehavior and time period for initial judicial review of decisions to place a child in emergency custody should be the same. Although the recommended 24-hour limit may cause some difficulties, especially in rural areas, the emotional impact on a juvenile of removal from even a bad home requires that the mechanism for correcting improper emergency custody decisions be available as quickly as possible. See Joseph Goldstein, Anna Freud, Albert Solnit, Beyond the Best Interests of the Child (The Free Press, New York City, 1973); see also Standard 3.155.

The notice and hearing procedures recommended in the standard are parallel to those recommended for review of detention decisions in delinquency and noncriminal misbehavior cases. See Standard 3.155. At the hearing, the family court judge should first determine whether there is probable cause to believe that a juvenile has been neglected or abused. Accord, Burt and Wald, supra; Model Children's Code, section 6.7(A) (American Indian Law Center, 1976); cf. Gerstein vs. Pugh, 420 U.S. 103 (1975). As in the other standards dealing with determinations of probable cause, Standard 3.157 does not preclude such determinations from being based in part on hearsay. See e.g., Standards 3.155 and 3.165.

If probable cause is found, the court should review the decision to retain a juvenile in emergency custody. The State should bear the burden of showing that the intake officer's decision complies with the criteria set forth in Standard 3.154 and that continued emergency custody is necessary.

If emergency custody is continued, Standard 3.158 recommends that there should be weekly hearings to determine whether out-of-home custody remains necessary.

Related Standards

3.113
3.154
3.155
3.156
3.158
3.161
3.171

3.158
Review, Modification, and Appeal of Detention and Emergency Custody Decisions

A REVIEW HEARING SHOULD BE HELD AT OR BEFORE THE END OF EACH 7-DAY PERIOD IN WHICH A PERSON SUBJECT TO THE JURISDICTION OF THE FAMILY COURT OVER DELINQUENCY OR NONCRIMINAL MISBEHAVIOR* REMAINS IN SECURE OR NONSECURE DETENTION, OR WHENEVER NEW CIRCUMSTANCES WARRANT AN EARLIER REVIEW.

IN ACCORDANCE WITH A SPECIFIC ORDER OF THE FAMILY COURT, AN INTAKE OFFICER MAY AT ANY TIME RELAX CONDITIONS OF RELEASE, WHICH THE COURT HAS APPROVED OR IMPOSED, IF THE RESTRICTIONS ARE NO LONGER NECESSARY. A NOTICE STATING THE CHANGED CIRCUMSTANCES AND THE NEW CONDITIONS SHOULD BE FILED WITH THE COURT AND A COPY SENT TO THE JUVENILE, THE JUVENILE'S ATTORNEY, AND PARENTS, GUARDIAN, OR PRIMARY CARETAKER, AND TO THE FAMILY COURT SECTION OF THE PROSECUTOR'S OFFICE.

SECURE OR NONSECURE DETENTION OR MORE STRINGENT CONDITIONS SHOULD BE IMPOSED ONLY BY THE FAMILY COURT FOLLOWING A HEARING AT WHICH THE CIRCUMSTANCES JUSTIFYING THE ADDITIONAL RESTRICTIONS, INCLUDING A WILLFUL VIOLATION OF THE CONDITIONS OF RELEASE OR A WILLFUL FAILURE TO APPEAR, ARE DEMONSTRATED BY CLEAR AND CONVINCING EVIDENCE. THE DECISION TO IMPOSE ADDITIONAL RESTRICTIONS SHOULD BE MADE IN ACCORDANCE WITH THE CRITERIA SET FORTH IN STANDARDS 3.151 AND 3.152 FOR DELINQUENCY CASES AND STANDARD 3.153 FOR NONCRIMINAL MISBEHAVIOR CASES AND IN THE SAME MANNER AS IN STANDARD 3.155.

THE SUBJECT OF A COMPLAINT OR PETITION SHOULD BE ENTITLED TO APPEAL AN ORDER OF THE FAMILY COURT IMPOSING, OR DENYING RELEASE FROM DETENTION OR OTHER SIGNIFICANT RESTRAINT ON LIBERTY. THE NOTICE OF APPEAL SHOULD INCLUDE A COPY OF THE ORDER AND OF THE REASONS FOR THAT ORDER GIVEN BY THE FAMILY COURT. APPEALS FROM DETENTION ORDERS SHOULD BE HEARD AND DECIDED AS EXPEDITIOUSLY AS POSSIBLE.

THE SAME REVIEW, MODIFICATION, AND APPELLATE PROCEDURES SHOULD APPLY TO NEGLECT AND ABUSE PROCEEDINGS IN WHICH THE JUVENILE HAS BEEN PLACED IN EMERGENCY CUSTODY, AND THE SAME MODIFICATION AND APPELLATE PROCEDURES SHOULD BE APPLICABLE TO NEGLECT AND ABUSE PROCEEDINGS IN WHICH CONDITIONS DESIGNED TO PROTECT THE JUVENILE HAVE BEEN IMPOSED ON THE JUVENILE'S PARENTS, GUARDIAN, OR PRIMARY CARETAKER.

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*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

Sources

See generally, Daniel Freed, Timothy Terrell, J. Lawrence Schultz, Proposed Standards Relating to Interim Status, Standards 4.5, 7.10, 7.12, 7.13 (IJA/ABA, Draft, September 1975); Task Force to Develop Standards for Juvenile Justice and Delinquency Prevention, Standard 12.11 (July 1976).

Commentary

In keeping with the concern over the impact of long-term detention or emergency custody of juveniles, this standard provides for recurring review of such detention or custody. The review is intended to assure that detention or emergency custody is still warranted and to encourage prompt adjudication.

The standard requires a judicial review hearing every 7 days or whenever new circumstances arise. This combines the short time period recommended by the IJA/ABA Joint Commission with the more flexible criterion proposed by the Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention. Freed, Terrell, and Schultz, supra, Standard 7.10; Task Force, supra. The Wisconsin Council on Criminal Justice, Special Study Committee on Criminal Justice Standards and Goals, Juvenile Justice Standards and Goals, Section 7.3(F) (2nd Draft, November 1975) urges that detention in delinquency cases be reviewed every 5 days.

The second paragraph of the standard is to encourage family court judges to identify the circumstances in which the intake officer may terminate the detention or emergency custody or may ease or void the conditions. Intake officers are not provided the power to relax the conditions of detention or release without judicial approval. However, intake officers should be authorized to seek such approval when the situation warrants.

Imposition of more stringent conditions on release or, in neglect and abuse matters, on continued parental custody of the child require a court order so as to assure that the added restraints are warranted. One of the circumstances justifying a tightening of the conditions of release or placing the juvenile in more restrictive detention is a willful violation of the conditions of release.

Finally, the standard provides for interlocutory appeal of decisions approving or imposing detention, emergency custody, or other significant restraints on liberty. Such appeals should be processed and decided as expeditiously as possible. It is anticipated that many appeals of detention decisions will be heard by a single appellate court judge. The provisions approved by the IJA/ABA Joint Commission recommend that appeals of detention decisions be heard within 24 hours of the filing of the notice of appeal and decided at the conclusion of appellate argument. Freed, Terrell, and Schultz, supra, Standard 7.12.

Related Standards

3.151
3.152
3.153
3.154
3.155
3.156
3.157
3.161
3.171
3.191

3.16
Preadjudication Procedures

3.161
Case Processing Time Limits

IN MATTERS SUBJECT TO THE JURISDICTION OF THE FAMILY COURT OVER DELINQUENCY, THE FOLLOWING TIME LIMITS SHOULD APPLY:

a. INTAKE DECISIONS, AS DEFINED IN STANDARD 3.142, SHOULD BE MADE WITHIN 24 HOURS AFTER THE JUVENILE HAS BEEN TAKEN INTO CUSTODY, EXCLUDING NONJUDICIAL DAYS, IF THE JUVENILE IS DETAINED, AND WITHIN 30 CALENDAR DAYS OF THE FILING OF THE COMPLAINT IF THE JUVENILE IS NOT DETAINED;

b. IF A JUVENILE IS DETAILED. THE HEARING TO REVIEW THE DETENTION DECISION, AS DEFINED IN STANDARD 3.155, SHOULD BE HELD WITHIN 24 HOURS AFTER A JUVENILE HAS BEEN TAKEN INTO CUSTODY;

c. THE DECISION BY THE FAMILY COURT SECTION OF THE PROSECUTOR'S OFFICE TO FILE A PETITION, AS DEFINED IN STANDARD 3.163, SHOULD BE MADE WITHIN 2 JUDICIAL DAYS AFTER RECEIPT OF THE INTAKE OFFICER'S REPORT IF THE JUVENILE IS DETAINED, AND WITHIN 5 JUDICIAL DAYS AFTER RECEIPT OF THAT REPORT IF THE JUVENILE IS NOT DETAINED;

d. WHEN A COMPLAINANT RESUBMITS A COMPLAINT DISMISSED BY THE INTAKE OFFICER, THE DECISION

BY THE FAMILY COURT SECTION OF THE PROSECUTOR'S OFFICE WHETHER OR NOT TO FILE A PETITION, AS DEFINED IN STANDARD 3.163, SHOULD BE MADE WITHIN 30 CALENDAR DAYS AFTER RESUBMISSION OF THE COMPLAINT;

e. THE ARRAIGNMENT HEARING, AS DEFINED IN STANDARD 3.166, SHOULD BE HELD WITHIN 5 CALENDAR DAYS AFTER THE FILING OF THE PETITION;

f. THE ADJUDICATION HEARING SHOULD BE HELD WITHIN 15 CALENDAR DAYS AFTER THE FILING OF THE PETITION FOR JUVENILES WHO ARE DETAINED AND WITHIN 30 CALENDAR DAYS AFTER THE FILING OF THE PETITION FOR NONDETAINED JUVENILES;

g. THE DISPOSITION HEARING FOR JUVENILES ADJUDICATED DELINQUENT SHOULD BE HELD WITHIN 15 CALENDAR DAYS AFTER ADJUDICATION;

h. ANY ISSUE TAKEN UNDER ADVISEMENT BY THE FAMILY COURT JUDGE SHOULD BE DECIDED WITHIN 30 CALENDAR DAYS OF SUBMISSION;

i. APPELLATE COURTS SHOULD DECIDE INTERLOCUTORY APPEALS FROM FAMILY COURT DECISIONS WITHIN 30 CALENDAR DAYS AFTER THE INTERLOCUTORY APPEAL IS FILED; AND

j. APPEALS FROM FINAL ORDERS OF THE FAMILY COURT SHOULD BE DECIDED WITHIN 90 CALENDAR DAYS OF FILING.

WHEN THESE TIME LIMITS ARE NOT MET, THERE SHOULD BE AUTHORITY TO RELEASE A DETAINED JUVENILE, TO IMPOSE SANCTIONS AGAINST THE PERSONS WITHIN THE JUVENILE JUSTICE SYSTEM RESPONSIBLE FOR THE DELAY, AND TO DISMISS THE CASE WITH OR WITHOUT PREJUDICE.

TIME LIMITS EQUIVALENT TO THOSE RECOMMENDED FOR DELINQUENCY CASES SHOULD APPLY TO MATTERS SUBJECT TO THE JURISDICTION OF THE FAMILY COURT OVER NONCRIMINAL MISBEHAVIOR* AND NEGLECT AND ABUSE.

Sources

See generally, Daniel J. Freed, Timothy P. Terrell, J. Lawrence Schultz, Proposed Standards Relating to Interim Status, Standard 7.10 (IJA/ABA, Draft, December 1975); Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 12.1 (July 1976).

Commentary

This standard sets forth the maximum time limits that should apply to the processing of delinquency, noncriminal misbehavior, and neglect and abuse cases. In accord with the recommendations of the IJA/ABA Joint Commission, Freed, Terrell, and Schultz, supra, the Standards and Goals Task Force on Juvenile Justice, supra, and the Model Act for Family Court, Section 17 (Department of Health, Education, and Welfare, Washington, D.C., 1975), the standard recommends swifter processing of cases in which a juvenile accused of committing a delinquency act or engaging in noncriminal misbehavior is detained or a juvenile alleged to be neglected or abused is in emergency custody.

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*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

See also Wisconsin Council on Criminal Justice Special Study Commission on Criminal Justice Standards and Goals, Juvenile Justice Standards and Goals (Second Draft, November 1975); ABA, Standards Relating to Speedy Trial Section 1.1 (Approved Draft, 1968). The maximum times set by the standard are intended to provide a sufficient opportunity for all parties to prepare, although assuring that cases are heard while the events are still fresh in the juvenile's mind. In cases in which a youth is detained or in emergency custody, the total time period between the date on which the child is taken into custody and the adjudication hearing is set at a maximum of 18 calendar days. In noncustody cases, the total time from filing the complaint to adjudication is set at a maximum of 65 days. It is anticipated that efficient management of the family court and other juvenile justice agencies will make compliance with the standard possible. However, Standard 3.162 does recommend limited grounds for extensions as well as the periods that should be excluded from the computation of the time limits.

The reasons underlying the time limits for intake decisions--subparagraph (a)--are discussed in the Commentary to Standard 3.142. The time limits for hearings to review detention decisions or decisions to place a juvenile alleged to be neglected or abused in emergency custody--subparagraph (b)--are discussed in Standards 3.155 and 3.157, respectively. Standard 3.158 sets a 7-day limit on subsequent review hearings if detention or emergency custody is continued.

Subparagraphs (c) and (d) prescribe the time within which the petition must be filed following submission of the report containing the intake officer's recommendation, see Standard 3.147, or resubmission of a dismissed complaint by the complainant. See Standards 3.147 and 3.163.

Under subparagraph (e), the arraignment proceeding should be held within 5 days of the filing of the petition. In cases in which the juvenile is detained or in emergency custody, it is anticipated that the arraignment will be combined with the weekly custody review hearing. See Standards 3.158 and 3.166. In noncustody cases, the arraignment can be combined with the hearing to determine probable cause if such a hearing has been requested and there is sufficient time for the parties to prepare. See Standard 3.165.

The 15/30 day limit on the period between the filing of the petition and the adjudication hearing--subparagraph (f)--adopts the position approved by the IJA/ABA Joint Commission. Freed, Terrell, and Schultz, supra. The Task Force provision, supra, contains a 20/60 day limit. However, subparagraph (g), like the Task Force provision, recommends that disposition hearings be held within 15 days after adjudication, whether or not the juvenile is in custody. See Standard 3.188 cf. Freed, Terrell, and Schultz, supra--15 days custody/30 days noncustody. Subparagraphs (h) through (j) endorse the time limits proposed by the Task Force for matters taken under advisement by the family court, see Standard 3.168, and on appellate court decisions during the course of and following the adjudicatory process. See Standards 3.191 and 3.192.

If the time limits are exceeded and no extension has been granted and none of the exclusions are applicable, the standard recommends that one or more of four types of sanctions be applied. If a juvenile subject to the jurisdiction of the family court over delinquency or noncriminal misbehavior is detained and the time limit

provisions are violated, he/she should be released, thereby making applicable the somewhat longer time periods for noncustody cases. If those time limits are then violated, the case should be dismissed. In determining whether the dismissal should be with or without prejudice--i.e., whether or not the case may be refiled--the judge should consider such factors as the seriousness of the offense, the facts and circumstances leading to the dismissal, the impact of reprosecution on the administration of justice, the length of the delay, and the prejudice, if any, to the respondent. See Speedy Trial Act, 18 U.S.C. 3162 (Supp. 1976). Because all participants in the juvenile justice process should share the burden and responsibility of assuring that a case is handled as speedily and fairly as possible, the standard provides further that juvenile justice personnel, including attorneys, who cause unnecessary delay should be subject to sanctions. However, when the reason for delay is lack of sufficient resources rather than individual failures, the family court should make this fact known.

Related Standards

3.142
3.147
3.151
3.152
3.153
3.154
3.155
3.157
3.158
3.162
3.166
3.188
3.189
3.1810
3.1811
3.1812
3.1813
3.191

3.162 Extention and Computation of Case Processing Time Limits

EXTENSIONS OF THE TIME LIMITS SET FORTH IN THESE STANDARDS SHOULD BE AUTHORIZED WHEN:

a. THE ATTORNEY FOR THE STATE CERTIFIES THAT A WITNESS ESSENTIAL TO THE STATE'S CASE OR OTHER ESSENTIAL EVIDENCE WILL BE UNAVAILABLE DURING THE PRESCRIBED PERIOD; OR

b. A CONTINUANCE IS REQUESTED BY ANY PARTY AND THE JUDGE FINDS THAT THE ENDS OF JUSTICE SERVED BY GRANTING THE CONTINUANCE OUTWEIGH THE INTERESTS OF THE PUBLIC AND THE OTHER PARTIES IN A SPEEDY RESOLUTION OF THE CASE.

SUCH EXTENSIONS SHOULD NOT EXCEED 30 CALENDAR DAYS WHEN THE SUBJECT OF THE COMPLAINT, THE RESPONDENT TO A PETITION, OR A JUVENILE ALLEGED TO HAVE BEEN NEGLECTED OR ABUSED IS IN CUSTODY AND SHOULD NOT EXCEED 60 CALENDAR DAYS IN NONCUSTODY CASES.

ANY PERIOD OF DELAY CAUSED BY THE ABSENCE, INCOMPETENCY, OR PHYSICAL INCAPACITY OF THE RESPONDENT; CONSIDERATION OF A MOTION FOR CHANGE OF VENUE, A MOTION FOR TRANSFER TO A COURT OF GENERAL JURISDICTION PURSUANT TO STANDARD 3.116, OR AN EXTRADICTION REQUEST; A DIAGNOSTIC EXAMINATION ORDERED BY THE FAMILY COURT AND COMPLETED WITHIN THE TIME SPECIFIED IN THE ORDER; OR AN INTERLOCUTORY APPEAL; AND A REASONABLE PERIOD OF DELAY CAUSED BY JOINDER OF THE CASE WITH THAT OF ANOTHER PERSON FOR WHOM THE TIME LIMITS HAVE NOT EXPIRED, SHOULD NOT BE INCLUDED IN THE COMPUTATION OF THE PRESCRIBED TIME PERIODS.

Sources

See generally, Daniel Freed, Timothy J. Terrell, J. Lawrence Schultz, Proposed Standards Relating to Interim Status, Standards 7.10 (IJA/ABA, Draft, December 1975); see also Speedy Trial Act, 18 U.S.C. 3161(h) (Supp. 1976).

Commentary

In seeking to limit the possibilities for delay while providing sufficient leeway for special problems that may arise in individual cases, the standard provides two sets of exceptions to the time limits proposed in these standards. The first exception is for continuances sought by the State because of the unavailability of a key witness or evidence or sought by any party in the interests of justice. The length of such continuances are limited to no more than 30 days when the subject of a delinquency or noncriminal misbehavior complaint, or the respondent to a delinquency or noncriminal misbehavior petition is detained, or when a juvenile alleged to have been neglected or abused is held in emergency custody, and no more than 60 days in nondetention and nonemergency custody

cases. Similar limits should be imposed on extensions of the time for processing and deciding an appeal. The term "unavailable" is intended to denote situations in which the presence of a witness cannot be secured "by due diligence" or a witness resists "appearing or being returned" for a hearing. See 18 U.S.C. Section 3161(h)(3)(B)(Supp. 1976). Under the standard, general court congestion, lack of diligent preparation by counsel, or failure to obtain an available witness are not grounds for granting a continuance. Id., at Section 3161(h)(8)(c). Similarly, because of the potential for abuse and for circumvention of the policy favoring adjudication of delinquency, noncriminal misbehavior, and neglect and abuse matters as expeditiously as possible, the standard is intended to discourage stipulated continuances.

The second exception excludes from the case-processing time periods set forth in Standard 3.161, delays caused by the absence, incompetency or physical incapacity of the subject of the proceedings, diagnostic examinations, joinder with a related case, and certain procedural matters that may obviate the need for further proceedings.

Related Standards

3.161
3.1810
3.1811
3.1813

3.163
Decision to File a Petition

ALL PETITIONS SHOULD BE PREPARED AND FILED BY THE FAMILY COURT SECTION OF THE PROSECUTOR'S OFFICE AND SIGNED BY THE ATTORNEY IN CHARGE OF THAT SECTION.

A PETITION SHOULD NOT BE FILED UNLESS IT IS DETERMINED THAT THE ALLEGATIONS CONTAINED IN THE COMPLAINT ARE LEGALLY SUFFICIENT. IF THE ALLEGATIONS ARE NOT LEGALLY SUFFICIENT, THE COMPLAINT SHOULD BE DISMISSED.

WHEN A COMPLAINANT RESUBMITS A COMPLAINT DISMISSED BY THE INTAKE OFFICER, AN ATTORNEY FROM THE FAMILY COURT SECTION OF THE PROSECUTOR'S OFFICE SHOULD CONSIDER THE FACTS PRESENTED BY THE COMPLAINANT, CONSULT WITH THE INTAKE OFFICER WHO MADE THE INITIAL DECISION, AND THEN MAKE THE FINAL DETERMINATION AS TO WHETHER A PETITION SHOULD BE FILED. THIS DETERMINATION SHOULD BE MADE AS EXPEDITIOUSLY AS POSSIBLE AND IN NO EVENT MORE THAN 30 CALENDAR DAYS AFTER THE COMPLAINT HAS BEEN RESUBMITTED.

Sources

See generally, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 15.13 (July 1976).

Commentary

This standard recommends that the responsibility for submitting a delinquency, noncriminal misbehavior, or neglect and abuse case to the family court for adjudication be vested in the attorney in charge of the family court section of the prosecutor's office. However, unlike the provisions proposed by the Standards and Goals Task Force for Juvenile Justice and the Model Act for Family Courts, the standard limits review of the intake officer's recommendation to file a petition to a determination of legal sufficiency. See Task Force, supra; Model Act for Family Court, Section 13 (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975). This practice assigns to the intake officer and to the prosecutor, respectively, the decision most appropriate to their training and experience. Under Standards 3.141-3.147, the intake officer determines whether, on the basis of the nature of the allegations and the juvenile's age and maturity, the prior contacts with the intake unit and family court that the juvenile and, in noncriminal misbehavior and neglect and abuse cases, the juvenile's family have had, the results of those contacts, and the availability of appropriate services outside the juvenile justice system, it is in the interest of the juvenile, the family, and the community to dismiss the complaint; refer the juvenile and/or his parents, guardian, or primary caretaker for services; or recommend that a petition be filed. The prosecutor must then determine whether the facts alleged are sufficient to establish

jurisdiction and whether there is competent and credible evidence available to support the allegations. See Task Force, supra, Commentary to Standard 15.13. The standards approved by the IJA/ABA Joint Commission recommend that in delinquency proceedings, the prosecutor should decide whether it is appropriate to file a petition, but in other types of proceedings, the intake officer should make this decision. See James Manak, Proposed Standards Relating to the Prosecution Function, Standards 4.1-4.4 (IJA/ABA, Draft, December 1975).

Implementation of the recommendations in the standard will expand the role and responsibility of the prosecutor in many jurisdictions. A 1972 survey of 68 American cities found that in only 11.8 percent of the cities surveyed did the prosecutor have authority to file a petition; in only 36.8 percent was the petition reviewed by the prosecutor for legal sufficiency; and in only 8.8 percent was the prosecutor required to sign the petition. Prosecution in the Juvenile Courts: Guidance for the Future, Appendix B (Boston University Center for Criminal Justice, Boston, Mass., 1973).

The standard does recommend a broader prosecutorial review when a complainant resubmits a complaint dismissed by the intake officer. See Standard 3.147. In such cases, an attorney from the family court section of the prosecutor's office should discuss the matter with both the complainant and the intake officer, undertake whatever additional investigation may be necessary, and make the final decision. No provision is made for the complainant to appeal this decision to the family court or to file a petition without the signature of the chief attorney for the family court section of the prosecutor's office. See Manak, supra; but see Task Force, supra.

Standard 3.161 recommends that the review of the legal sufficiency of complaints and the preparation and filing of the petition be completed within 2 days (excluding weekends and holidays) when the subject of the complaint is detained or when a juvenile alleged to have been neglected or abused is in emergency custody, and within 5 days (excluding weekends and holidays) in nondetention or noncustody cases. This allows some time to carry out any investigation that may be deemed necessary and draft the pleadings, without unduly delaying the case. A 30-day limit is placed on the time that may be taken to consider the resubmission of a dismissed complaint. This is comparable to the time given to the intake officer to make the initial decision regarding the complaint when the juvenile is not detained or placed in emergency custody. No specific time constraints are imposed on the complainant's decision to resubmit the complaint. However, the relevant statute of limitations, the maximum jurisdictional ages recommended in Standard 3.115, and, when applicable, the right of the subject of the complaint to a speedy trial, provide some protection against unreasonable delay.

Related Standards

3.131
3.134
3.141
3.147
3.161
3.164
3.165

3.164
Petition and Summons

THE PETITION SHOULD SET FORTH WITH PARTICULARITY ALL FACTUAL AND OTHER ALLEGATIONS RELIED UPON IN ASSERTING THAT A PERSON IS SUBJECT TO THE JURISDICTION OF THE FAMILY COURT OVER DELINQUENCY, NONCRIMINAL MISBEHAVIOR,* OR NEGLECT AND ABUSE. SPECIFICALLY, THE PETITION SHOULD INCLUDE:

a. THE NAME AND ADDRESS OF THE RESPONDENT;

b. THE DATE, TIME, MANNER, AND PLACE OF THE CONDUCT ALLEGED AS THE BASIS OF THE COURT'S JURISDICTION;

c. ANY OTHER FACTUAL ALLEGATIONS NECESSARY TO ESTABLISH JURISDICTION;

d. A CITATION TO THE LEGAL PROVISIONS RELIED UPON FOR JURISDICTION AND ALLEGED TO HAVE BEEN VIOLATED BY THE CONDUCT DESCRIBED IN (b); AND

e. THE TYPES OF DISPOSITIONS TO WHICH THE RESPONDENT COULD BE SUBJECTED.

IN ADDITION, IF THE RESPONDENT IS A JUVENILE, THE PETITION SHOULD INCLUDE THE NAME AND ADDRESS OF THE JUVENILE'S PARENTS, GUARDIAN, OR PRIMARY CARETAKER.

IF THE RESPONDENT IS NOT DETAINED, A SUMMONS SHOULD BE ISSUED DIRECTING THE RESPONDENT TO APPEAR BEFORE THE FAMILY COURT AT A SPECIFIED TIME AND PLACE FOR ARRAIGNMENT; DESCRIBING THE NATURE AND FUNCTION OF THE ARRAIGNMENT PROCEEDING; AND ADVISING THE RESPONDENT OF HIS OR HER LEGAL RIGHTS.

IF THE RESPONDENT IS DETAINED, A NOTICE CONTAINING THE INFORMATION INCLUDED IN A SUMMONS SHOULD BE ATTACHED TO THE PETITION, AND AN ORDER SHOULD BE ISSUED DIRECTING THAT THE RESPONDENT BE BROUGHT BEFORE THE COURT AT THE SPECIFIED TIME AND PLACE.

A COPY OF THE PETITION TOGETHER WITH THE SUMMONS OR NOTICE SHOULD BE SERVED ON THE RESPONDENT AND ANY OTHER PERSONS WHO ARE NECESSARY OR PROPER PARTIES TO THE PROCEEDINGS. IN ADDITION, A COPY OF THE PETITION AND SUMMONS OR NOTICE SHOULD BE SENT TO THE ATTORNEY FOR EACH OF THE PARTIES, AND IF THE RESPONDENT IS A JUVENILE, THE RESPONDENT'S PARENTS, GUARDIAN, OR PRIMARY CARETAKER.

Source

Stanley Z. Fisher, Proposed Standards Relating to Pre-Adjudication

*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendations of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

Procedures, Standards 1.2 and 1.3 (IJA/ABA, Draft, October 1973).

Commentary

The standard sets forth the information to be included in the petition and summons.

The purpose of the petition is to provide respondents--i.e., juveniles accused in the petition of committing a delinquent offense or engaging in noncriminal misbehavior, or adults accused in the petition of neglecting or abusing a child or misusing their parental authority--with sufficient notice of the charges to be able to prepare for trial. Such notice is mandated in delinquency proceedings by In re Gault, 387 U.S. 1 (1967). The petition also provides a record of the allegations to protect against double jeopardy. The standard recommends that the petition should clearly describe the nature of the conduct that triggered the proceedings and the date, time, and place at which it occurred. It recommends further that the petition should also include other factual allegations necessary to establish jurisdiction--e.g., the juvenile's age at the time of the offense, and in noncriminal misbehavior cases, that all noncoercive alternatives have been exhausted. The citations to the statutory provisions on which the proceeding is based are intended to clarify the type of jurisdiction sought and to enable the respondent to identify the points that must be proven at the adjudication hearing. Information regarding the types of dispositions available is included to make clear to the respondent the seriousness of the proceedings. The name and address of the parents, guardian, or primary caretaker of a juvenile subject to the jurisdiction of the family court is included in the petition because the family, even in delinquency proceedings, may be called upon to play a major role in the disposition should the allegations be proven. See Standards 3.133, 3.183, 3.184, and 3.188.

The summons should specify the time and address at which the person named in the petition should appear before the family court for arraignment, see Standard 3.166, and the legal rights to which the respondent is entitled, see Standard 3.171. In order to assure that juveniles who are detained have the same information as those who are not detained, the standard provides that they should receive a notice in lieu of the summons which contains information identical to that included in the summons.

The standard provides that the petition and summons or notice should be served on the respondent, the respondent's attorney, and if the respondent is a juvenile, his or her parents. It recommends further that a copy of these items should be provided to "other persons who are necessary or proper parties." This term is taken from the provision prepared for the IJA/ABA Joint Commission and is intended to refer to individuals, agencies, or institutions having a substantial interest in the outcome of the proceedings--e.g., agencies providing services to a child or family, schools in noncriminal misbehavior cases based on truancy, or a correctional agency already supervising a juvenile.

The manner and timing of service is not specified. It should be designed to achieve the purposes of the petition and summons listed above and to meet the time limits recommended in Standard 3.161. Communities with significant non-English speaking populations should make provision for translating the petition and summons or notice into the languages most commonly used by those populations.

Related Standards

3.161
3.163
3.166
3.171

3.165
Determination of Probable Cause

IN CASES IN WHICH THERE HAS NOT BEEN A JUDICIAL DETERMINATION OF PROBABLE CAUSE PURSUANT TO STANDARDS 3.116, 3.155, OR 3.157, A RESPONDENT SHOULD BE ENTITLED, ON REQUEST, TO A HEARING FOLLOWING THE FILING OF THE PETITION AT WHICH THE STATE IS REQUIRED TO ESTABLISH THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT THE ALLEGATIONS IN THE PETITION ARE TRUE. IF PROBABLE CAUSE IS NOT ESTABLISHED, THE PETITION SHOULD BE DISMISSED. THE HEARING SHOULD BE HELD AS PROMPTLY AS POSSIBLE AFTER THE FILING OF THE RESPONDENT'S REQUEST.

Source

See generally, Stanley Fisher, Proposed Standards Relating to Pre-Adjudication Procedures, Standard 4.1 (IJA/ABA, Draft, December 1975).

Commentary

Standards 3.116, 3.155, and 3.157 provide for a determination that there is probable cause to believe that the allegations in the complaint or petition are true, in all cases in which there has been a motion to transfer the matter to another division of the highest court of general jurisdiction, in which the respondent is being detained, or in which a juvenile is being held in emergency custody. This standard recommends that respondents in other delinquency, noncriminal misbehavior, or neglect and abuse cases should be entitled to request a determination of probable cause following the filing of a delinquency petition. Although not constitutionally required when the respondent's liberty is not significantly restrained, see Gerstein vs. Pugh, 420 U.S. 103 (1975), hearings to determine probable cause can serve to protect the person charged against unwarranted prosecution and save both respondents and the public the expense of unnecessary trials. However, because Standard 3.163 recommends that the prosecutor determine that the allegations are legally sufficient before filing a petition and in light of the broad discovery procedures recommended in Standard 3.167 and the need to hold the time between the filing of the petition and the adjudication hearing to a minimum, see Standard 3.161, the standard proposes that other than in the three situations specified above, probable cause hearings should be held only if requested by the respondent. Requests are limited to after the filing of the petition so as to avoid holding hearings in cases in which the intake officer or family court section of the prosecutor's office conclude that the matter should not be submitted to the family court. It is anticipated that probable cause hearings will be requested only when the respondent believes that the allegations or the evidence to support them are so inadequate that the State will be unable to sustain the relatively low level of proof required. Hence, such

determinations should not impose a significant new burden on the family court.

It is anticipated that probable cause hearings requested under this standard may often be held in conjunction with hearings requested under Standard 3.156 to review the terms of release or in conjunction with the arraignment proceeding if there is sufficient time for the parties to prepare, see Standard 3.166. As with the probable cause determinations recommended in other sections of these standards, the use of hearsay should not be totally precluded, see Standard 3.155.

The provisions adopted by the IJA/ABA Joint Commission recommend that there be a judicial finding of probable cause in all delinquency and neglect and abuse cases. Fisher, supra; Robert Burt and Michael Wald; Proposed Standards Relating to Neglect and Abuse, Standard 5.2(b) (IJA/ABA, Draft, January 1976). See also Wisconsin Council on Criminal Justice Special Study Committee on Criminal Justice Standards and Goals, Juvenile Justice Standards and Goals, Section 12.5(d)(2d Draft, November 1975). None of the other sets of standards or model legislative provisions reviewed and no State juvenile code provide for probable cause determinations in nondetention or nontransfer cases.

Related Standards

3.116
3.143
3.144
3.155
3.157
3.161
3.163
3.166
3.171

3.166
Arraignment Procedures

AT THE INCEPTION OF THE ARRAIGNMENT PROCEEDING, THE JUDGE SHOULD EXPLAIN THE ALLEGATIONS AND POSSIBLE CONSEQUENCES OF THE PETITION, AS WELL AS THE RIGHTS TO WHICH THE RESPONDENT IS ENTITLED, AND SHOULD APPOINT AN ATTORNEY TO REPRESENT THE RESPONDENT, IF THE RESPONDENT IS NOT ALREADY REPRESENTED BY COUNSEL AND MEETS THE ELIGIBILITY REQUIREMENTS SET FORTH IN STANDARD 3.132 OR STANDARD 3.133.

THE RESPONDENT SHOULD THEN BE ASKED TO ADMIT OR DENY THE ALLEGATIONS IN THE PETITION. IF THE ALLEGATIONS ARE ADMITTED AND THE ADMISSION ACCEPTED PURSUANT TO STANDARD 3.176, THE CASE SHOULD BE SET FOR DISPOSITION. IF THE ALLEGATIONS ARE DENIED, THE STATE SHOULD BE REQUIRED TO PROVE THE ALLEGATIONS IN ACCORDANCE WITH STANDARD 3.174. A DENIAL OF THE ALLEGATIONS SHOULD NOT RESULT IN A MORE RESTRICTIVE DISPOSITION IF THE ALLEGATIONS ARE SUBSEQUENTLY PROVEN TO BE TRUE.

Sources

Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standards 12.4 and 13.2 (July 1976).

Commentary

For purposes of these standards, the term "arraignment" denotes a hearing held 5 days after the filing of the petition, the purpose of which is to advise the respondent of the formal charges and of the rights to which he/she is entitled, to determine whether the respondent is represented by counsel and to appoint counsel when appropriate under Standards 3.132 and 3.133, and to obtain the respondent's admission to or denial of the allegations. It should not be confused with the hearings recommended in Standards 3.155 and 3.157 to review detention or placement in emergency custody within 24 hours after a juvenile has been taken into custody. But see Task Force, supra.

For respondents who are not in custody, the arraignment is likely to be the first appearance before the family court. See Standard 3.157. It can be combined with the hearing to determine probable cause if such a hearing has been requested and if there is sufficient time for the parties to prepare. See Standard 3.165. For respondents who are in custody, the arraignment can be held in conjunction with the weekly review hearing called for by Standard 3.158.

Although some groups, notably the National Advisory Commission on Criminal Justice Standards and Goals, Courts, 4.8 (U.S. Government Printing Office, Washington, D.C., 1973), have suggested that arraignment is unnecessary and confusing, that many of its notice functions can be handled administratively, and that the admission or denial can be entered at the

beginning of the adjudication proceeding, it was the conclusion of the Advisory Committee on Standards that the explanations provided by the intake officer and in the petition and summons, see Standards 3.146, 3.147, and 3.164, are not sufficient to assure that juveniles and their families fully understand the nature and consequences of the proceedings and the rights to which they are entitled. Task Force, supra.

The second paragraph of the standard reflects the policy that denial of the allegations should be regarded as an assertion of the right to have the State prove the allegations contained in the petition. Accordingly, exercise of this right should not be punished by the imposition of a harsher disposition in the event the allegations are proven. Not only is this necessary to avoid chilling the exercise of a respondent's constitutional rights, see In re Winship, 397 U.S. 358 (1970), but it is an essential support to the prohibitions against plea-bargaining recommended in Standard 3.175. See Task Force, supra.

Related Standards

3.161
3.163
3.164
3.171
3.176

3.167
Discovery

EACH STATE SHOULD DEVELOP RULES AND GUIDELINES PERMITTING AS FULL DISCOVERY AS POSSIBLE PRIOR TO ADJUDICATION AND OTHER JUDICIAL HEARINGS. DISCOVERY SHOULD BE CONDUCTED INFORMALLY BETWEEN COUNSEL. HOWEVER, THE FAMILY COURT SHOULD SUPERVISE THE EXERCISE OF DISCOVERY TO THE EXTENT NECESSARY TO ENSURE THAT IT PROCEEDS PROPERLY, EXPEDITIOUSLY, AND WITH A MINIMUM OF IMPOSITION ON THE PERSONS INVOLVED.

Sources

Stanley Fisher, Proposed Standards Relating to Pre-Adjudication Procedures, Standards 3.1 and 3.2 (IJA/ABA, Draft, December 1975); ABA, Standards Relating to Discovery and Procedures Before Trial, Sections 1.2 and 1.4 (Approved Draft, 1970).

Commentary

This standard endorses the principle of broad disclosure by all parties to delinquency, noncriminal misbehavior, and neglect and abuse proceedings prior to adjudication or other judicial hearings--e.g., transfer hearings pursuant to Standard 3.116. In order to reduce delay and unnecessary paperwork, it provides that disclosures should be informal and automatic, rather than requiring a specific motion. Accord Fisher, supra; ABA, supra; but see Fed. R. Crim. P. 16. The standards on intake, detention, and disposition decisions specifically provide for disclosure of the information on which those decisions are based. See Standards 3.147, 3.155-3.157, and 3.187-3.188.

The standard does not specify the exact scope of disclosure. The extent of discovery, if any, is a subject of much debate. Opponents suggest that in criminal cases, disclosure of information by the State can only assist the respondent in contriving a defense, that it may lead to intimidation of witnesses and nit-picking cross-examinations of witnesses on minor discrepancies between testimony and prior written statements, that it will delay and complicate the proceedings, and that because of the proscriptions of the Fifth Amendment to the Constitution, discovery can never be a "two-way street." Proponents of discovery content that many of these arguments were made prior to the introduction of discovery into civil proceedings but have not proven to be true, and that discovery helps to reduce gamesmanship in criminal proceedings and the importance of surprise as a trial tactic. Moreover, they argue that rather than lengthening the proceedings, discovery focuses proceedings on the issues and encourages guilty parties to admit to their guilt after seeing the evidence stacked against them, and suggest that the defense can be asked to disclose everything except statements of the respondent or defendant and whether or not the respondent or defendant

will testify. The Supreme Court has approved mutual disclosures by the defense and prosecution in criminal cases in Williams vs. Florida, 309 U.S. 78 (1970) and Wardius vs. Oregon, 412 U.S. 470 (1973). The court also called for the disclosure of social reports to the attorneys of accused delinquents facing transfer to criminal court. Kent vs. United States, 383 U.S. 541 (1966). Discovery has long been part of civil procedure.

The ABA, Standards Relating to Discovery and Pre-Trial Procedures, Sections 2.1-2.6, and 3.1-3.2 (Approved Draft, 1970), provide for broad discovery by both the prosecution and the defense. Under the ABA provision, prosecutors are required to disclose, inter alia, the names, addresses, prior recorded statements, and criminal records of persons they intend to call as witnesses, statements of the defendant and any codefendant, expert and medical reports, tangible evidence obtained from or belonging to the defendant that the prosecutor intends to introduce at trial, whether there has been electronic surveillance, and whether any relevant information has been provided by an informant. The ABA standards would require defendants to disclose, subject to constitutional limitations, the names and addresses of intended witnesses, the nature of the defense to be used at trial, experts' statements and the results of scientific medical and mental health examinations; and to appear in a line-up, speak for identification, be fingerprinted, be photographed, try on clothing, provide blood, hair, and other samples, provide hand writing samples, and submit to a reasonable physical or medical inspection. Additional sections address the criteria, scope, and procedures for excision and the issuing of protective orders.

The IJA/ABA Joint Commission has endorsed a comparable set of discovery standards for delinquency cases. However, disclosures by the respondent are limited to the nature of the defense, the names of prospective witnesses, and medical or scientific reports. Both the ABA and the IJA/ABA recommendations provide for additional discovery in the discretion of the court. The IJA/ABA standard would also allow both the State and the respondent to take depositions. None of the other sets of national standards or model legislation address the issue of discovery. Several States and the Federal Rules of Criminal Procedures provide for discovery of varying scope by both the prosecution and the defense.

Related Standards

3.147
3.155
3.156
3.157
3.187
3.188
3.1810
3.1811
3.1813

3.168
Motion Practice

EACH JURISDICTION SHOULD DEVELOP RULES FOR THE REGULATION OF MOTION PRACTICE IN FAMILY COURT, REQUIRING MOTIONS NORMALLY TO BE MADE IN WRITING AND WHEN APPROPRIATE TO BE SUPPORTED BY AFFIDAVIT. THE RULES SHOULD SPECIFY TIME LIMITS FOR THE FILING OF MOTIONS AND FOR SERVICE ON OPPOSING PARTIES AND SHOULD PRESCRIBE PROCEDURES FOR SECURING MOTION HEARINGS.

THE RULES GOVERNING MOTIONS SHOULD PROVIDE FOR EXTRA-JUDICIAL CONFERENCES BETWEEN THE PARTIES BEFORE MOTIONS ARE ARGUED, WHENEVER DISCOVERY MOTIONS ARE FILED, AND IN OTHER APPROPRIATE CIRCUMSTANCES.

Sources

Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 12.2 (July 1976).

Commentary

One consequence of the formalization of delinquency proceedings following In re Gault, 387 U.S. 1 (1967), is that motion practice has become an established part of family court proceedings. See e.g., Douglas Besharov, Juvenile Justice Advocacy, 265 et seq. (Practicing Law Institute, New York City, 1974). Pretrial motions often help to clarify the issues for adjudication as well as protect the rights of the parties. In order to facilitate the smooth operation of the court and to avoid unnecessary delay, each jurisdiction should establish rules governing the time for filing, the form of and the procedures for hearing motions in delinquency, noncriminal misbehavior, and neglect and abuse cases. Whenever possible, such rules should be promulgated on a statewide basis. To further assure the efficient use of court time, informal conferences between the parties and their counsel should be encouraged to resolve questions regarding discovery and other routine issues.

Related Standards

3.161
3.162
3.165
3.167
3.171

3.169
Appointment and Role of Guardian Ad Litem

THE FAMILY COURT SHOULD APPOINT A GUARDIAN AD LITEM TO PROTECT THE RIGHTS AND INTERESTS OF A JUVENILE SUBJECT TO ITS JURISDICTION:

a. WHO IS INCAPABLE OF ADEQUATELY COMPREHENDING THE NATURE AND CONSEQUENCES OF AND PARTICIPATING IN THE PROCEEDING BECAUSE OF IMMATURITY OR A MENTAL DISABILITY;

b. WHOSE PARENT, GUARDIAN, OR PRIMARY CARETAKER DOES NOT APPEAR OR HAS AN ADVERSE INTEREST IN THE PROCEEDING; OR

c. WHOSE INTERESTS OTHERWISE REQUIRE IT.

THE GUARDIAN AD LITEM SHOULD INQUIRE THOROUGHLY INTO ALL THE CIRCUMSTANCES THAT A CAREFUL AND COMPETENT INDIVIDUAL IN THE JUVENILE'S POSITION WOULD IN DETERMINING HIS OR HER INTERESTS IN THE PROCEEDINGS.

THE APPOINTMENT SHOULD BE MADE AT THE EARLIEST FEASIBLE TIME AFTER THE NEED THEREFORE HAS BEEN SHOWN. THE COURT SHOULD INFORM GUARDIANS AD LITEM, UPON APPOINTMENT, OF THEIR RESPONSIBILITIES AND POWERS.

PERSONS WITH INTERESTS ADVERSE TO THOSE OF THE JUVENILE, OR A PUBLIC OR PRIVATE INSTITUTION OR AGENCY HAVING CUSTODY OF THE JUVENILE SHOULD NOT BE APPOINTED GUARDIAN AD LITEM.

Sources

See generally, Stanley Z. Fisher, Proposed Standards Relating to Pre-Adjudication Procedures, Standard 6.7 (IJA/ABA, Draft, June 1975); Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standards 16.4 (1976).

Commentary

This standard describes the circumstances in which a guardian ad litem should be appointed by the family court for a juvenile involved in delinquency, noncriminal misbehavior, or neglect and abuse proceedings, the duties of a guardian ad litem and the persons eligible for such an appointment. It endorses the general principle that a juvenile should have a parent or guardian ad litem present throughout the proceedings to provide friendly advice and support. See Fisher, supra.

Specifically, the standard recommends appointment of a guardian ad litem in three instances. The first is when a juvenile is unable to understand the nature and possible consequences of the proceedings and to determine, rationally, his or her interests in that proceeding. Unlike the IJA/ABA provision, Fisher, supra, it includes children who are unable to appreciate the nature and consequences of the proceeding because of a mental illness or mental

retardation, as well as those unable to do so because of immaturity. See Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, supra, Standard 16.3. Thus, in neglect and abuse cases involving young children or in delinquency and noncriminal misbehavior cases in which the juvenile is determined to be mentally ill or mentally retarded, an adult should be appointed to assist in identifying the child's interests and protecting the child's rights.

The second instance is when the child's parents are not present to provide advice during the proceeding or when their interests in the proceeding conflict with those of the child. Similar provisions are commonly found in statutes authorizing appointment of a guardian ad litem. See e.g., Model Act for Family Courts, Section 41 (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975). Uniform Juvenile Court Act, Section 51 (National Council of Juvenile Court Judges, 1968); see also Fisher, supra; Task Force, supra. A discussion of what constitutes adverse interest is contained in the commentary to Standard 3.132.

The third instance is when, for some other reason, the juvenile needs an independent adult to provide guidance, for example, when "the parent seems incompetent, disinterested or otherwise incapable of being a source of positive guidance and support of the child." Fisher, supra.

The standard suggests that the guardian ad litem take on the duties that the juvenile or the juvenile's parent acting on the juvenile's behalf would normally perform. Ordinarily, when the juvenile is the respondent, the guardian ad litem should insist that the State prove the allegations in the petition. See Task Force, supra, Standard 16.4; Fisher, supra; and Standard 3.174. Unlike the provision adopted by the IJA/ABA Joint Commission, the standard does not recommend that the guardian ad litem have an independent role in the proceedings. See Standards 3.132 and 3.133.

The standard would bar all persons whose interests conflict with those of the juvenile from serving as guardian ad litem. This is intended to include the juvenile's parents, guardian, or primary caretaker in neglect and abuse and noncriminal misbehavior proceedings. Similarly, because the guardian ad litem is intended to serve as an independent resource to assist in the determination of the child's interests and because agency representatives often have institutional concerns to consider, the standard would prohibit the appointment of such representatives in order to avoid the risk that the child's interests will be confused with or ignored in favor of agency needs. Unlike the IJA/ABA provision, but in accord with the recommendations of the Standards and Goals Task Force on Juvenile Justice, the standards would allow a juvenile's attorney to serve as guardian ad litem. See also Draft Model Child Protection Act, Section 25 (U.S. Department of Health, Education, and Welfare, March 1976); but see Alan Sussman and Stephan Cohen, The Model Child Abuse and Neglect Reporting Law, Section 15 (Ballinger Publishing Co., Cambridge, Mass., 1975). Although as noted by the Supreme Court of Vermont, "a lawyer attempting to function as both guardian ad litem and legal counsel is cast in the quandry of acting as both attorney and client, to the detriment of both capacities and the possible jeopardizing of the infant's interests," In re Dobson, 125, Vt. 165, 168, 212 A.2d 620, 622 (1965), the Advisory Committee on Standards concluded that the experience with guardians ad litem in family court

proceedings is not sufficient to determine the practical effects of this apparent conflict and, therefore, that an absolute ban is not appropriate. However, nothing in the standard is intended to discourage appointment of relatives whose interests are not adverse to those of the juvenile or concerned individuals from religious, academic, community services, or volunteer organizations to serve as guardians ad litem. Because in many instances a person so appointed will be unfamiliar with the duties, responsibilities, and role of a guardian ad litem, these matters should be explained by the family court at the time of appointment.

Related Standards

3.132
3.133
3.134
3.171

3.17
Adjudication Procedures

3.171
Rights of the Parties

IN ADDITION TO THE RIGHT TO COUNSEL, THE RIGHT TO A PUBLIC PROCEEDING, AND THE RIGHT TO APPEAL SPECIFIED IN STANDARDS 3.131, 3.132, 3.133, 3.172, AND 3.191, THE PARTIES TO MATTERS FILED PURSUANT TO THE JURISDICTION OF THE FAMILY COURT OVER DELINQUENCY, NONCRIMINAL MISBEHAVIOR,* AND NEGLECT AND ABUSE SHOULD BE ENTITLED:

a. TO PRIOR NOTICE OF ALL PROCEEDINGS;

b. TO BE PRESENT AT ALL PROCEEDINGS;

c. TO COMPEL THE ATTENDANCE OF WITNESSES;

d. TO PRESENT EVIDENCE AND CONFRONT AND CROSS-EXAMINE WITNESSES;

e. TO AN IMPARTIAL DECISION-MAKER; AND

f. TO ALL THE OTHER RIGHTS ACCORDED TO DEFENDANTS IN CRIMINAL CASES EXCEPT FOR THE RIGHT TO INDICTMENT BY A GRAND JURY,

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*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

THE RIGHT TO A TRIAL BY JURY, THE RIGHT TO BAIL, AND IN NEGLECT AND ABUSE CASES, THE RIGHT TO HAVE THE ALLEGATIONS PROVEN BEYOND A REASONABLE DOUBT.

A VERBATIM RECORD SHOULD BE MADE OF ALL PROCEEDINGS.

Sources

See generally, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standards 12.3 and 13.4 (July 1976); see also Robert Dawson, Proposed Standards Relating to Adjudication 2.1, (IJA/ABA, Draft, December 1974); Lee Teitelbaum, Proposed Standards Relating to Counsel for Private Parties, Standard 2.3 (IJA/ABA, Draft, May 1975); Robert Burt and Michael Wald, Proposed Standards Relating to Neglect and Abuse, Standards 5.1 and 5.3(d) (IJA/ABA, Draft, January 1976).

Commentary

This standard sets forth the basic due process and other rights which should be accorded individuals whose liberty or fundamental interests are being challenged by the government. It is intended to apply throughout delinquency, noncriminal misbehavior, and neglect and abuse proceedings, not merely during the adjudication stage.

In a series of decisions over the past 10 years, the Supreme Court has begun to spell out the rights to which a juvenile in a delinquency proceeding is entitled. In In re Gault, 387 U.S. 1 (1967), the Supreme Court held that juveniles are entitled to "fundamental fairness" and that adjudication hearings in delinquency cases are to be measured against due process standards. See also United States vs. Kent, 383 U.S. 541 (1966). Specifically, the Court held that:

> Due Process requires adequate, timely, written notice of the allegations against the respondent. Juveniles, in all cases in which they are in danger of loss of liberty because of commitment, are to be accorded, on due process grounds, the right to counsel, the privilege against self-incrimination, and the right to confront and cross-examine opposing witnesses under oath. (Monrad Paulsen and Charles Whitebread, Juvenile Law and Procedure, (National Council of Juvenile Court Judges, 1974).)

Subsequently, in In re Winship, 397 U.S. 358 (1970), the Court applied the "beyond a reasonable doubt" standard of proof to delinquency matters, and in Breed vs. Jones __ U.S. __, 95 S.Ct. 1779 (1975), it held that an adjudicated delinquent could not be retried as an adult for an offense that formed the basis of the delinquency proceeding. However, as is discussed in more detail in Standard 3.173, the Court has also concluded that juveniles do not have a Federal constitutional right to a trial by jury in delinquency proceedings. McKeiver vs. Pennsylvania, 403 U.S. 528 (1971).

Virtually all States provide for the right to appeal from delinquency adjudications by rule or statute. See Standard 3.191. Almost three-fourths of the States statutorily provide for notice, and almost half entitle juveniles to compulsory process. At least 21 States currently have rules or statutes providing some form of the right against self-incrimination; 17 States provide a right to a transcript of the proceedings; 15 States entitle accused delinquents to call and cross-examine witnesses; and 10 States apply the right against unreasonable search and seizure to delinquency proceedings. Herbert

Beaser, Runaway Youth: From What to Where, 92, 119-124 (Educational Systems Corp., Washington, D.C., 1975). Many additional States provide for one or more of these rights through judicial decree.

On the basis of these decisions and statutory provisions, and in accord with the recommendations of the IJA/ABA Joint Commission, Dawson, supra, and the Standards and Goals Task Force on Juvenile Justice, supra, the standard provides that juveniles accused of committing an act of delinquency should be afforded the rights to notice to be present at all proceedings, to compulsory process, to call and cross-examine witnesses, and to an impartial decisionmaker, in addition to the rights to counsel, to an open proceeding, and to appeal specifically addressed in Standards 3.132, 3.172, and 3.191. The right to be present at the proceedings is not intended to imply that adjudication hearings, once begun, must be suspended if respondents absent themselves voluntarily, see Dawson, supra, Standard 1.3, or that respondents may not be excluded if they continually disrupt the proceedings. Illinois vs. Allen 397 U.S. 337 (1970). In view of the right to an impartial decisionmaker and the absence of a jury, judges who learn the facts of the case or information regarding the respondent's prior record and background prior to the adjudication hearing, e.g., at a detention review hearing under Standard 3.155, should ordinarily excuse themselves if asked to do so. See Task Force, supra.

The standard also provides for the preparation of a verbatim transcript of all proceedings, see Standard 3.192, and that, with three exceptions, accused delinquents should be afforded the same rights as criminal defendants--e.g., the rights against double jeopardy, Breed vs. Jones, supra; against self-incrimination, In re Gault, supra, and against unreasonable search and seizure. See e.g., In re Marsh, 40 Ill. 2d 53, 237 N.E. 2d 529 (1968); State vs. Lowry 95 N.J. supra. 307, 230 A.2d 907 (1967); In re B.M.L., 506 P.2d 409 (Colo. App. 1973); Task Force supra, Standard 12.6. The first of these exceptions is the right to indictment by a grand jury. As is noted in the commentary to Task Force Standard 12.3, "the right to indictment by a grand jury which exists in many jurisdictions is a costly and anachronistic device which few suggest should be extended to juvenile delinquency proceedings." Moreover, Standards 3.155, 3.157, and 3.165 recommend procedures that in many ways provide a substitute for the screening functions that grand juries are intended to serve. The second exception is the right to a trial by jury. Accord McKiever vs. Pennsylvania, supra; Task Force, supra; Model Act for Family Courts, Section 29 (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975); but see Dawson, supra. The reasons underlying this exception are discussed in the Commentary to Standard 3.173. The third exception is the right to bail. The Commentary to Standard 3.151 explains the basis for excluding bail as a means for releasing a juvenile from detention and the procedures proposed to safeguard the interests that the right to bail is intended to protect. Accord Task Force, supra; Freed, Terrell, and Schultz, supra, Standard 4.7.

As is noted earlier, the standard is not limited to delinquency cases. With the exception of the level of proof required to sustain the allegations in a neglect or abuse petition, see Standard 3.174, it recommends that the same spectrum of rights be afforded to persons accused of engaging in noncriminal misbehavior, or neglecting or abusing a child. Currently, in States that include running

away, truancy, and other forms of noncriminal misbehavior within the scope of the jurisdiction over delinquency, little differentiation is made in the rights provided juveniles accused of committing acts that would be a crime if committed by an adult and those accused of committing a "status offense." See Beaser, supra. In jurisdictions that distinguish between delinquency and noncriminal misbehavior the situation is not as clear, although many extend basic due process guarantees to juveniles involved in both types of cases. See e.g., In re Cecilia R., 36 N.Y. 2d 317, 327 N.E. 2d 812 (1975); Leache vs. State, 428 S.W. 2d 817 (Tex. Ct. Crim. App., 1968); State ex rel. Wilson vs. Bambrich, 195 S.E. 2d 721 (1973). California Welfare and Institutions Code Section 630 (West, 1972); but see In re Henderson, 199 N.W. 2d 111 (Iowa, 1972). With regard to neglect and abuse, many States already provide at least some due process rights to parents and juveniles involved in such cases. See cases cited in Elizabeth Browne and Lee Penny, The Non-Delinquent Child in Juvenile Court: A Digest of Case Law, 32-56 (National Council of Juvenile Court Judges, 1974); see also Commentary to Standard 3.133. The Standard and Goals Task Force on Juvenile Justice did not address these issues beyond provision of the right to counsel, notice, and a hearing. The IJA/ABA Joint Commission went somewhat further, recommending that the parties in neglect and abuse cases be afforded the rights to notice, presence, counsel, compulsory process, and trial by jury. Burt and Wald, supra.

In Goldberg vs. Kelly, 397 U.S. 254, 263 (1970), the Supreme Court commented that:

> The extent to which procedural due process must be afforded the [individual] is influenced by the extent to which he may be condemned to suffer grievous loss and depends upon whether the [individual's] interest in avoiding that loss outweighs the [institutional] interest in summary adjudication.

The Advisory Committee on Standards concluded that a juvenile's loss of liberty following a noncriminal misbehavior adjudication constitutes a "grievous loss," even though that juvenile would not be placed in a secure detention or correctional facility; that infringement upon a parent's "natural right" to control and supervise his/her children following adjudication of a noncriminal misbehavior or neglect or abuse petition constitutes a "grievous loss," see Griswold vs. Connecticut, 381 U.S. 479 (1965); Stanley vs. Illinois, 405 U.S. 645 (1972); that enhancing the opportunity for all parties to be fairly heard will not destroy the purpose, promptness, or effectiveness of family court proceedings; and, therefore, that "the interest in avoiding that loss outweighs . . . the interest in a summary proceeding." Practically speaking, there appears to be no sound basis for permitting a juvenile brought before the court for being truant or parents accused of abusing their child to be required to testify against themselves or to be subject to a second prosecution based on the same conduct, while protecting accused delinquents from being compelled to incriminate themselves and from being placed twice in jeopardy. On the other hand, there is good reason to believe that by increasing the actual and perceived fairness of the juvenile justice system, the application of those rights to delinquency, noncriminal misbehavior, and neglect and abuse cases will substantially strengthen and improve the administration of juvenile justice.

Related Standards

3.116
3.131
3.132
3.133
3.134
3.146
3.147
3.155
3.156
3.157
3.158
3.164
3.165
3.166
3.167
3.168
3.172
3.173
3.174
3.176
3.186
3.188
3.189
3.1810
3.1811
3.1812
3.1813
3.191
3.192
3.2

3.172
Public and Closed Proceedings

AT THE BEGINNING OF THEIR INITIAL APPEARANCE BEFORE THE FAMILY COURT, SUBJECTS OF A DELINQUENCY, NONCRIMINAL MISBEHAVIOR,* OR NEGLECT AND ABUSE COMPLAINT OR PETITION SHOULD BE INFORMED BY THE FAMILY COURT JUDGE THAT THEY HAVE A RIGHT TO HAVE THE PROCEEDINGS OPEN TO THE PUBLIC AND THAT IF THEY WAIVE THIS RIGHT, ALL PROCEEDINGS WILL BE CLOSED TO EVERYONE BUT THE JUDGE, NECESSARY COURT PERSONNEL, THE PARTIES, THEIR COUNSEL AND FAMILIES, AND OTHER PERSONS APPROVED BY THE COURT.

IF CLOSED PROCEEDINGS ARE REQUESTED, ALL PERSONS OTHER THAN THOSE LISTED ABOVE SHOULD BE EXCLUDED FROM THE COURTROOM, AND THE PERSONS ALLOWED TO REMAIN AS WELL AS WITNESSES SHOULD BE INSTRUCTED NOT TO DIVULGE THE IDENTITY OF THE SUBJECT OF THE COMPLAINT OR PETITION AND HIS OR HER FAMILY.

WRITTEN VOLUNTARY GUIDELINES SHOULD BE DEVELOPED BY THE NEWS MEDIA IN CONSULTATION WITH THE FAMILY COURT TO OUTLINE THE ITEMS RELATED TO FAMILY COURT PROCEEDINGS THAT ARE AND ARE NOT GENERALLY APPROPRIATE FOR REPORTING.

ON A MOTION BY ANY PARTY OR ON THEIR OWN INITIATIVE, FAMILY COURT JUDGES SHOULD BE AUTHORIZED TO CLOSE THE PROCEEDINGS TEMPORARILY TO PROTECT A WITNESS FROM EMOTIONAL DURESS. FAMILY COURT JUDGES SHOULD ALSO BE AUTHORIZED TO EXCLUDE INDIVIDUALS WHO ARE CREATING DISTRACTIONS OR DISTURBANCES FROM THE COURTROOM.

Sources

See generally Robert Dawson, Proposed Standards Relating to Adjudication, Standards 6.1 and 6.2(a) and (d) (IJA/ABA, Draft, December 1974). Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 12.3 (July 1976); Nebraska Press Association vs. Stuart, __ U.S. __, 96 S.Ct. 2791 (1976).

Commentary

In his concurring opinion in Nebraska Press Association vs. Stuart, supra, 96 S.Ct. at 2816, Mr. Justice Brennan commented that:

> Secrecy of judicial action can only breed ignorance and distrust of courts and suspicion concerning the competence and impartiality of judges; free and robust reporting, criticism, and debate can contribute to public

*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

> understanding of the rule of law and to comprehension of the functioning of the entire criminal justice system, as well as improve the quality of that system by subjecting it to the cleansing effects of exposure and accountability. (See also McKeiver vs. Pennsylvania 403 U.S. 528 (1971) (Mr. Justice Brennan, concurring).)

Following this reasoning, the IJA/ABA Joint Commission and the Standards and Goals Task Force on Juvenile Justice both recommend that respondents be entitled to open at least delinquency proceedings to the public. The major objection against open hearings in family court proceedings has been the notoriety and publicity to which a juvenile and family may be subject, and the destruction of the "case work" atmosphere which has characterized the juvenile court. Most States currently permit only limited public access to juvenile or family court proceedings. A few provide broader access but attempt to limit publication of the juvenile's name.

On the other hand, it has been argued that closing proceedings to public view may encourage some judges to become lax in their application of the law, that rights should not be dependent upon unproven policy considerations, and that opening family court hearings will generate community support for the family court. See e.g., Douglas Besharov, Juvenile Justice Advocacy, 290-291 (Practicing Law Institute, New York City, 1974); President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, 38-39 and 86; Lindsay Arthur and William Gauger, Disposition Hearings: The Heartbeat of the Juvenile Court, 51 (National Council of Juvenile Court Judges, 1974); RLR vs. State, 487 P.2d 27 (Aka., 1971).

The Advisory Committee on Standards, on the basis of these arguments and the Nebraska Press Association decision, concluded that the respondent should have the option of opening or closing the proceedings to the general public. Accordingly, the standard recommends that persons subject to jurisdiction of the family court over delinquency, noncriminal misbehavior, and neglect and abuse should be advised of their right to chosse between having the proceedings closed or open at their first appearance before the court. For persons in custody, the first appearance will be a detention hearing within 24 hours of arrest. See Standard 3.155. For persons not in custody, the first appearance before the family court will usually be at the arraignment proceeding, unless a hearing to review the conditions of release has been held prior to the filing of the petition. Standards 3.156 and 3.166. The term "open to the public" is intended to mean open to anyone who wishes to attend including the press. The term "closed proceeding" is intended to mean that hearings will be open to the judge, court personnel (e.g., court reporter and clerk), the parties, their family and counsel, and persons with a special interest in attending who have received specific permission to be present from the family court--e.g., researchers or students studying the operation of the family court. See Task Force, supra; Dawson, supra, Standard 6.2(b); Model Act for Family Courts Section 29(c) (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975). So that the parties are made fully aware of the implications of each choice, it is recommended that the judge notify them as to who is included in a closed session.

Witnesses are not included in the list of persons automatically admitted as spectators to closed proceedings, because in many jurisdictions, witnesses are often excluded from the courtroom at the request of the parties in order to reduce the possibility that they may consciously or unconsciously alter their stories to conform to prior testimony. In reviewing a request to exclude witnesses when the respondent has opted for an open hearing, the judge should determine that there is reasonable likelihood that accurate fact-finding cannot be achieved without prohibiting witnesses from watching the proceedings.

When the subject of a complaint or respondent to a petition has opted for a closed proceeding, the judge should direct the persons present and witnesses not to disclose the identity of the juvenile and the juvenile's family outside the courtroom. The similar provisions in the standards approved by the IJA/ABA Joint Commission and in the Model Act for Family Courts do not exclude the press from such an order or direction. However, the imposition of a ban on publication of information available to the public was held to be a prior restraint violating the First Amendment of the Constitution except when no alternative measure would "sufficiently mitigate the adverse effects of the pre-trial publicity." Nebraska Press Association vs. Stuart, supra, 96 S.Ct. at 2805. See also Cox Broadcasting Corp. vs. Cohn, 420 U.S. 469 (1975). Although the reasons underlying the prohibitions against identifying juveniles and their families are not the same as those involved in the Nebraska Press Association case, and the Court has specifically refrained from deciding whether proceedings may be closed, Id., at 2811, fn. 3, 2814, fn. 11 (Mr. Justice Brennan concurring), and the extent to which public access to juvenile records may be limited, Cox Broadcasting Corp. vs. Cohn, supra, 420 U.S. at 496, fn. 26, the strong policy evidenced in those cases against imposing prior restraints on publication indicates that the parens patriae philosophy cannot supercede the guarantees of the First Amendment. Hence, the standard, following the suggestion in Sheppard vs. Maxwell 384 U.S. 333, 360-361 (1966) limits the controls over identification of juveniles and their families to those persons present in closed proceedings--i.e., the parties, their counsel and families, court personnel, witnesses and other persons admitted with the express permission of the Court. See Nebraska Press Association vs. Stuart, supra, 96 S.Ct. at 2823 (Mr. Justice Brennan concurring); ABA, Standards Relating to Fair Trial and Free Press, Section 2.3 (Approved Draft, 1968).

For open hearings, the standard endorses the development of voluntary guidelines by the media and the family court. Such guidelines should reflect the "fiduciary-like" duty of the press to exercise the protected rights responsibly. Nebraska Press Association vs. Stuart, supra, 96 S.Ct. at 2803. See also President's Commission, supra, 39. It is anticipated that as such guidelines are established throughout the United States, the problem foreseen by the Court of violations by out-of-State reporters in sensational cases will be significantly diminished. Nebraska Press Association vs. Stuart, supra, 96 S.Ct. at 2798.

The standard does not adopt the position recommended in the provisions adopted by the IJA/ABA Joint Commission and Standards and Goals Task Force that the respondent be able to select whom he or she wishes to be present. In most instances, only those with a personal interest in the case will be present and having

the hearings either open to all or closed except to a clearly designated few relieves the family court judge of delicate decisions regarding observation by the media in cases that are nominally open to the public. However, the standard does provide for temporary closure of the hearing to protect the emotional health of a particular witness--e.g., a rape victim or young victim of sexual abuse. See Task Force, supra, and for expulsion of persons who disrupt the proceedings. Dawson, supra; Task Force, supra.

Related Standards

3.155
3.161
3.166
3.171
3.173

3.173
Finder of Fact

CONTESTED ADJUDICATORY HEARINGS IN DELINQUENCY, NONCRIMINAL MISBEHAVIOR,* AND NEGLECT AND ABUSE CASES SHOULD BE CONDUCTED BY A FAMILY COURT JUDGE WITHOUT A JURY.

Sources

Model Act for Family Courts, Section 29(a) (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975); Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 13.4 (July 1976); National Advisory Commission on Criminal Justice Standards and Goals, Courts, Section 14.4 (U.S. Government Printing Office, Washington, D.C., 1973).

Commentary

The standard recommends against jury trials in delinquency, noncriminal misbehavior, and neglect and abuse cases. This follows the Supreme Court's decision in McKeiver vs. Pennsylvania, 402 U.S. 528 (1971) that jury trials are not constitutionally required in delinquency cases.

The IJA/ABA Joint Commission has recommended jury trials in both delinquency and neglect and abuse cases in order to assure, inter alia, that intervention into the lives of a child and family reflects "widely shared community norms," and about a third of the States provide by statute or decision for a right to jury in delinquency cases, although the right appears to be exercised relatively infrequently. Robert Burt and Michael Wald, Proposed Standards Relating to Abuse and Neglect, Standard 5.3(e)(i) (IJA/ABA, Draft, January 1976); Robert Dawson, Proposed Standards Relating to Adjudication, Standard 4.1 (IJA/ABA, Draft, December 1975); see also, RLR vs. State, 487 P.2d 27 (Aka., 1971); Wisconsin Council on Criminal Justice Special Study Committee on Criminal Justice Standards and Goals, Juvenile Justice Standards and Goals, Sub-Goal 12.13 (2d Draft, November 1975). However, the Advisory Committee on Standards concluded that the accountability and protections offered by juries could be secured by allowing family court proceedings to be open to the public and by specifically applying the right to an impartial decisionmaker to family court proceedings, without introducing the rigidity and delay that jury trials inevitably foster. See Standards 3.171 and 3.172; see

*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

also McKiever, supra, 550; Task Force, supra; Model Act for Family Courts, supra; National Advisory Commission, supra; President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, 38 (U.S. Government Printing Office, Washington, D.C., 1967).

Related Standards

3.171
3.172

3.174
Burden and Level of Proof

IN CONTESTED DELINQUENCY AND NONCRIMINAL MISBEHAVIOR CASES,* THE STATE SHOULD BEAR THE BURDEN OF PROVING THE ALLEGATIONS IN THE PETITION BEYOND A REASONABLE DOUBT.

IN CONTESTED NEGLECT AND ABUSE CASES, THE STATE SHOULD BEAR THE BURDEN OF PROVING THE ALLEGATIONS IN THE PETITION BY CLEAR AND CONVINCING EVIDENCE.

Source

Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standards 13.4, 13.5, and 13.7 (July 1976); see also Robert Dawson, Proposed Standards Relating to Adjudication, Standard 4.3 (IJA/ABA, Draft, December 1975); Robert Burt and Michael Wald, Proposed Standards Relating to Neglect and Abuse, Standard 5.3(e)(ii) (IJA/ABA, Draft, January 1976).

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*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding the jurisdiction of the family court over noncriminal misbehavior. See Commentary to Standard 3.112.

Commentary

This standard assigns the burden of proof and sets the level of proof required for the three types of adjudicatory hearings discussed in these standards. In contested delinquency proceedings, the burden is on the prosecution to prove the allegations in the petition beyond a reasonable doubt. This follows the constitutional requirements set down in In re Winship, 397 U.S. 358 (1970). The standard recommends that the same level of proof apply to noncriminal misbehavior proceedings. This follows the practice in about a quarter of the States and the recommendation of the Uniform Juvenile Court Act, Section 29(b) (National Conference of Commissioners on Uniform State Laws, 1968). Allowing allegations of noncriminal misbehavior to be proven by a preponderance of the evidence has often encouraged use of the family court's jurisdiction over noncriminal misbehavior when the evidence supporting a delinquency complaint or petition appears weak. This distorts the purposes of both types of jurisdiction. The Standards and Goals Task Force on Juvenile Justice did not specify the level of proof applicable in noncriminal misbehavior cases. Its provision requires that "the family court should determine whether each of the facts alleged in the petition is true," and that "there should not be a designation of fault attached to these determinations." Task Force,

supra, Standard 10.2. The IJA/ABA Joint Commission did not address this issue because it recommends elimination of family court jurisdiction over noncriminal misbehavior. See also Model Act for Family Courts, Section 32 (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975).

For neglect and abuse proceedings, the standard endorses the position adopted by the Task Force on Standards and Goals for Juvenile Justice, supra, the IJA/ABA Joint Commission, Burt and Wald, supra, the Model Act for Family Courts, supra, and the Uniform Juvenile Court Act, supra. Neglect and abuse cases are not easily classified as either civil or criminal. On the one hand, the fundamental right of parents to raise their children is being challenged by the State. See Stanley vs. Illinois 405 U.S. 645 (1972). On the other hand, the purpose of this intervention is protective, not punitive. Accordingly, neither the preponderance of the evidence nor the beyond-a-reasonable-doubt levels of proof appear to be appropriate. Given the nature of the rights being challenged and the possible harm to the child from unwarranted intervention, preponderance of the evidence appears to be too low, but in light of the difficulties of proof, especially when young children are involved, the beyond-a-reasonable-doubt level of proof does not provide adequate protection for the child. Hence, the standard recommends that the State must present clear and convincing evidence that the juvenile is endnagered in any of the ways specified by Standard 3.113.

Related Standards

3.131
3.171
3.173

3.175
Plea Negotiations

ALL FORMS OF PLEA NEGOTIATIONS, INCLUDING NEGOTIATIONS OVER THE LEVEL OF CHARGING AS WELL AS OVER THE DISPOSITION, SHOULD BE ELIMINATED FROM THE FAMILY COURT PROCESS. UNDER NO CIRCUMSTANCES SHOULD THE PARTIES ENGAGE IN DISCUSSIONS FOR THE PURPOSE OF AGREEING TO EXCHANGE CONCESSIONS BY THE PROSECUTOR FOR AN ADMISSION TO THE ALLEGATIONS IN THE COMPLAINT OR PETITION.

Sources

Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 13.1 (July 1976); See also National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standard 3.1 (U.S. Government Printing Office, Washington, D.C., 1973).

Commentary

Although plea bargaining has not been as prevalent in delinquency and noncriminal misbehavior proceedings as it has in adult criminal cases, it is becoming increasingly common. See Douglas Besharov, Juvenile Justice Advocacy, 311 (Practicing Law Institute, New York, 1974). Despite approval of the practice by the Supreme Court, Santobello vs. New York 404 U.S. 257 (1971), debate over the propriety and impact of plea negotiation continues. Proponents of plea bargaining including the President's Task Force on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society (U.S. Government Printing Office, Washington, D.C., 1967); the ABA Standards Relating to Pleas of Guilty (Approved Draft, 1968); and James Manak, Proposed Standards Relating to the Prosecution Function, Standards 5.1-5.4 (IJA/ABA, Draft, December 1975), suggest that plea negotiation promotes rehabilitation through facilitating the imposition of less stringent correctional measures better suited to the provision of treatment and by encouraging defendants to face up to their guilt; speeds the adjudicative process; adds flexibility while allowing both the State and the defendant to reduce the risks inherent in trial and sentencing; and conserves the resources of the criminal justice system. They argue that many of the problems cited by the opponents of plea bargaining can be alleviated through careful oversight and regulation.

Opponents of plea bargaining, such as the National Advisory Commission on Criminal Justice Standards and Goals, Courts, supra, and the Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, supra, contend that the process is inherently coercive, because prosecutors are inevitably led to "overcharge" in order to gain a superior bargaining position and judges tend to reward individuals who foresake their right to trial with

more lenient sentences; that it allows jurisdictions to obscure the inadequacy of their criminal justice systems and attorneys to evade their ethical duties; that it reduces the rationality and equity of the adjudication and dispositional process; that it impairs rehabilitation by reducing respect for that process; and that these problems cannot be cured by even the most rigorous of procedural safeguards. See also Albert Alschuler, The Defense Attorney's Role in Plea Bargaining, 84 Yale Law Journal 1179 (1975); Albert Alschuler, The Prosecutor's Role in Plea Bargaining, 36 University of Chicago Law Review 50 (1968); Jonathan Casper, American Criminal Justice: The Defendant's Perspective (Prentice Hall, Englewood Cliffs, N.J., 1972).

After careful consideration of these contrasting views, the Advisory Committee on Standards concluded that plea negotiation, in any form, would be detrimental to the fairness and effectiveness of the juvenile justice process. It concluded further that because most jurisdictions do not rely on plea bargaining as the basic mode for disposing of delinquency, noncriminal misbehavior, and neglect and abuse cases, there is a real opportunity for the juvenile justice system to avoid the inequities that result from dependence on obtaining negotiated pleas.

One traditional argument in favor of plea bargaining has been that the increase in trials, which would result from its elimination, would quickly overwhelm already overburdened courts, prosecutors, and defense attorneys. However, a number of jurisdictions (e.g., the State of Alaska; Multnomah County, Oregon; and El Paso County, Texas) have apparently succeeded in reducing the amount or at least the types of plea bargaining taking place, without suffering a collapse of their criminal justice systems. The intense case-screening procedures already provided in Standards 3.141-3.147 and 3.163 should assist family courts and the family court section of prosecutors' offices in handling the caseload pressures without resorting to wholesale plea negotiation.

The standard is not intended to preclude admissions to the allegations in delinquency, noncriminal misbehavior, and neglect and abuse petitions. Indeed, as is indicated by Standard 3.176, it is anticipated that a significant number of cases will be adjudicated in this manner. It is directed, however, at eliminating admissions which are the result of or in exchange for an agreement by the prosecutor to reduce or drop a charge, to change a delinquency petition to a noncriminal misbehavior or neglect and abuse petition, or to recommend a particular disposition. If such action by the family court section of the prosecutor's office is warranted, it should be taken without a quid pro quo from the respondent. The recommendation in this standard is all the more significant in view of the increased pressure to plea bargain, which will arise as a result of the structured dispositional system proposed for delinquency cases in Standards 3.181 and 3.182. Those standards and the other provisions contained in this volume attempt to balance the often competing interests of the juvenile, the parents, and the community; to encourage consistency without sacrificing flexibility; and to safeguard the rights of each of the parties. In the opinion of the Advisory Committee on Standards, plea bargaining can only disrupt this balance, undermine these safeguards, and seriously impair the administration of juvenile justice.

Related Standards

3.171
3.176
3.177

3.176
Uncontested Adjudications

BEFORE ACCEPTING AN ADMISSION TO THE ALLEGATIONS IN A PETITION, THE FAMILY COURT JUDGE SHOULD INQUIRE THOROUGHLY INTO THE CIRCUMSTANCES OF THAT ADMISSION. THE INQUIRY SHOULD BE ON THE RECORD AND SHOULD INCLUDE:

a. A DETERMINATION THAT A RESPONDENT FOR WHOM A GUARDIAN AD LITEM HAS NOT BEEN APPOINTED IS ABLE TO UNDERSTAND THE NATURE AND CONSEQUENCES OF THE ADMISSION;

b. A DETERMINATION THAT THE RESPONDENT DOES UNDERSTAND THE NATURE AND CONSEQUENCES OF THE ADMISSION;

c. A DETERMINATION THAT THE ADMISSION IS NOT THE RESULT OF ANY PROMISE, INDUCEMENT, BARGAIN, FORCE, OR THREAT;

d. A DETERMINATION THAT THE RESPONDENT HAS RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL; AND

e. A DETERMINATION THAT THERE IS A FACTUAL BASIS FOR THE ALLEGATIONS.

BEFORE MAKING THE DETERMINATION DESCRIBED IN SUBPARAGRAPH (b), THE JUDGE SHOULD EXPLAIN IN LANGUAGE CALCULATED TO COMMUNICATE EFFECTIVELY WITH THE RESPONDENT: THE ALLEGATIONS, THE RIGHTS TO WHICH THE RESPONDENT IS ENTITLED, THE EFFECT OF THE ADMISSION UPON THOSE RIGHTS, AND THE MOST RESTRICTIVE DISPOSITION THAT COULD BE IMPOSED.

BEFORE MAKING THE DETERMINATION DESCRIBED IN SUBPARAGRAPH (c), THE JUDGE SHOULD EXPLAIN TO THE RESPONDENT THAT NEGOTIATED ADMISSIONS ARE PROHIBITED AND NOT BINDING ON THE COURT AND SHOULD ASK THE RESPONDENT, HIS OR HER ATTORNEY, AND THE ATTORNEY FOR THE STATE WHETHER ANY AGREEMENTS HAVE BEEN MADE. NO ADMISSION RESULTING FROM AN AGREEMENT SHOULD BE ACCEPTED.

Sources

See generally, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 13.2 (July 1976); Robert Dawson, Proposed Standards Relating to Adjudication, Standards 3.1-3.6 (IJA/ABA, Draft, December 1974).

Commentary

Despite the prohibition on plea negotiations proposed in Standard 3.175, it is anticipated that many respondents will wish to admit the allegations in the petition, thereby waiving a number of the rights set forth in Standard 3.171. This standard recommends a procedure that assures that those waivers are made intelligently and voluntarily. In doing so, it follows the decision of

the Supreme Court in Boykin vs. Alabama, 394 U.S. 238 (1969), by requiring the family court judge to determine, on the record: that the respondent is able to and does understand the effect and possible consequences of the admission, and the rights that are being waived; that the admission is not being made under duress, as the result of a bargain, or on the basis of unwarranted expectations; and that the respondent's attorney has performed his or her responsibilities. The assessment of a juvenile's capacity to understand the meaning and impact of an admission should be based on such factors as the juvenile's age, educational level, reading ability, and prior police and court experience. See Task Force, supra, Commentary to Standard 13.2. The inquiry into whether a respondent has received effective assistance of counsel should include such matters as the number and length of their conferences. Task Force, supra. These determinations should be based on discussion between the judge and the respondent personally. The standard emphasizes that explanations should be in terms that the respondent can understand. This is especially important when the respondent is a juvenile. Interpreters should be provided for non-English speaking respondents.

The standard also recommends that before accepting an admission, the judge should be satisfied that there is substantial reason to believe the allegations are true. See ABA, supra; National Advisory Commission, supra. The factual basis can be demonstrated through an offer of proof by the attorney for the State of the evidence that would be introduced if the case were contested or by judicial questioning of the respondent. See Dawson, supra 3.5. In some instances, the transcript of the probable cause determination may be introduced. See Standards 3.116, 3.155, 3.157, and 3.165.

Finally, the standard includes a mechanism for enforcing the prohibition on plea negotiations. See Standard 3.175; Task Force, supra, Standard 13.1; National Advisory Commission on Criminal Justice Standards and Goals, Courts, Section 3.1 (U.S. Government Printing Office, Washington, D.C., 1973); but see James Manak, Proposed Standards Relating to the Prosecution Function, Standards 5.1-5.4 (IJA/ABA, Draft, May 1975); ABA Standards Relating to Pleas of Guilty, (Approved Draft, 1968). The statement of counsel regarding the absence of plea negotiations should be included in the record of the proceeding. It is anticipated that attorneys will be subject to disciplinary proceedings if it is later shown that a plea agreement had been made.

Related Standards

3.166
3.171
3.174
3.175
3.177

3.177
Withdrawals of Admissions

RESPONDENTS SHOULD BE PERMITTED TO WITHDRAW AN ADMISSION FOR ANY FAIR AND JUST REASON PRIOR TO DISPOSITION OF THEIR CASE. FOLLOWING DISPOSITION, RESPONDENTS SHOULD BE PERMITTED TO WITHDRAW AN ADMISSION WHENEVER IT IS PROVEN THAT THE ADMISSION WAS NOT MADE COMPETENTLY, VOLUNTARILY, OR INTELLIGENTLY OR THAT WITHDRAWAL OF THE ADMISSION IS NECESSARY TO CORRECT ANY OTHER MANIFEST INJUSTICE.

AN ADMISSION THAT IS NOT ACCEPTED OR THAT HAS BEEN WITHDRAWN, AND ANY STATEMENT BY THE RESPONDENT DURING THE ACCEPTANCE PROCEDURE SET FORTH IN STANDARD 3.176, SHOULD NOT BE ADMISSIBLE IN ANY SUBSEQUENT PROCEEDING.

Sources

See generally, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 13.3 (July 1976); National Advisory Commission on Criminal Justice Standards and Goals, Courts, Section 3.7 (1973); Robert Dawson, Proposed Standards Relating to Adjudication, Standards 3.8 (IJA/ABA, Draft, December 1974); ABA, Standards Relating to Pleas of Guilty, Section 2.1 (Approved Draft, 1968).

Commentary

This standard specifies the circumstances in which respondents should be permitted to withdraw an admission to the allegations in a delinquency, noncriminal misbehavior, or neglect and abuse petition. Although the standard recommends a liberal policy toward withdrawals prior to the disposition hearing, it is anticipated that few respondents will seek to retract the admissions made during the careful colloquy proposed in Standard 3.176. See Task Force, supra. This is especially true in light of the prohibition against plea negotiations recommended in Standard 3.175. The standard would, however, permit a withdrawal based on discovery of evidence that would enhance the possibility of acquittal or of collateral consequences of adjudication that the respondent wishes to avoid.

Following disposition, the standard recommends that withdrawal should be permitted only upon a showing that the waiver of the respondent's rights did not meet the constitutional requirements set down in Boykin vs. Alabama, 394 U.S. 238 (1969); see also Johnson vs. Zerbst, 304 U.S. 458 (1938); or to correct some other "manifest" injustice"--e.g., demonstrated ineffective assistance of counsel. This follows the position adopted by the Standard and Goals Task Force on Juvenile Justice, supra. See also ABA, Standards Relating to Pleas and Guilty, Section 2.1 (Approved Draft, 1968). The provision approved by the IJA/ABA Joint Commission is similar except for a section allowing withdrawal when the

State fails to comply with the terms of the plea bargain. Dawson, supra; Santobello vs. New York, 404 U.S. 257 (1971); see Standard 3.175.

The recommendation that an admission that has been withdrawn or statements made by the respondent during the acceptance procedure should not be admissible against the respondent in subsequent proceedings follows the recommendations of National Advisory Commission on Criminal Justice Standards and Goals, supra, and the ABA Standards Relating to Criminal Justice, as well as the Standards and Goals Task Force, supra. As noted by the National Advisory Commission, supra, p. 60 "this minimizes infringements upon interests protected by the fifth amendment without hampering the . . . [plea-acceptance] process."

Related Standards

3.166
3.171
3.175
3.176

3.18
Dispositions

3.181
Duration of Disposition and Type of Sanction—Delinquency

ALL CONDUCT SUBJECT TO THE JURISDICTION OF THE FAMILY COURT OVER DELINQUENCY SHOULD BE CLASSIFIED FOR THE PURPOSE OF DISPOSITION INTO CATEGORIES THAT REFLECT SUBSTANTIAL DIFFERENCES IN THE SERIOUSNESS OF THE OFFENSE. SUCH CATEGORIES SHOULD BE FEW IN NUMBER. THE MAXIMUM TERM THAT MAY BE IMPOSED FOR CONDUCT FALLING WITHIN EACH CATEGORY SHOULD BE SPECIFIED.

THE TYPES OF SANCTIONS THAT MAY BE IMPOSED FOR CONDUCT SUBJECT TO THE JURISDICTION OF THE FAMILY COURT OVER DELINQUENCY SHOULD BE GROUPED INTO CATEGORIES THAT ARE FEW IN NUMBER AND REFLECT DIFFERENCES IN THE DEGREE OF RESTRAINT ON PERSONAL LIBERTY.

Sources

Linda Singer, Proposed Standards Relating to Disposition of Juvenile Adjudicated Delinquent, Standard 1.2 (IJA/ABA, Draft, September 1975); see also, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standards 14.9 and 14.13 (July 1976); John Junker, Proposed Standards Relating to Juvenile Delinquency and Sanctions, Standards 5.1-5.2 (IJA/ABA, Draft, September 1975).

Commentary

The degree of dispositional discretion that should be accorded family court judges is one of the major

debates in juvenile justice today. Approximately 80 percent of the States permit the juvenile or family court to exercise jurisdiction over a juvenile found delinquent until he/she reaches 21, regardless of the offense. See e.g., Ariz. Rev. Stat. Ann., Section 8-246 (1974); Fla. Stat. Ann., tit. V, Section 39.11(4) (Supp., 1976); Ill. Stat. Ann., ch. 37, Sections 705-2 and 705-11 (1972); Ann. Mass. Laws, ch. 119, Section 58 (1975); Okla. Stat. Ann., tit. 10, Section 1139 (Supp., 1975). This dispositional scheme is often based on the view that the delinquent act is an indication that the youth is in need of "treatment" and that it is in the youth's best interest for such treatment to continue as long as it is necessary. Most of these States leave the decision of when juveniles should be released from custody or supervision to the public or private agency to which they have been committed.

A number of other States provide that the court may commit a juvenile for an indeterminate period up to a statutory maximum, which is the same for most offenses. Many of these also provide for extensions of the dispositional period. See e.g., Conn. Gen. Stat. Ann., Section 17-69(a) (1975); Ga. Code Ann., Section 24A-2701 (Supp. 1975); McKinney's Consolidated Laws of N.Y., Book 29-A, Sections 756 and 758 (1975); see also Wisconsin Council on Criminal Justice Special Study Committee on Criminal Justice Standards and Goals, Juvenile Justice Standards and Goals, Standards 14.1(k)-(m) (2d Draft, November 1975). Uniform Juvenile Court Act, Section 36(b) (National Conference of Commissioners on Uniform State Laws, 1968); Model Act for Family Courts, Section 37 (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975).

On the other hand, some commentators have recently proposed a return to a "just desserts" model of mandatory sentences, at least for adult offenders, although the degree of restraint to be imposed would still be decided by the judge. See e.g., David Fogel, We Are the Living Proof: The Justice Model for Corrections, (W. H. Anderson Co., Cincinnati, 1975).

Proponents of indeterminate sentencing suggest that such sentences facilitate rehabilitation by motivating the offender with the reward of early release, place the "treatment" and release decisions in the hands of qualified professionals, protect society from hardcore youthful offenders, deter nondelinquent youth, and reduce unnecessary incarceration. See E. Barrett Prettyman, Jr., The Indeterminate Sentence and the Right to Treatment, 7 American Criminal Law Review, 15-17 (1972). Opponents of indeterminate sentences cite studies that indicate that release or parole decisions are more often based on institutional classificatory schemes and offender characteristics than on individualized progress towards rehabilitation; that offenders, both juvenile and adult, perceive the release or parole decision as made without valid or consistent criteria; and that the indeterminate sentence is open to abuse both by inmates who can "con" their way into early release and by institutional personnel who may wrongfully or arbitrarily withhold release. Id., at 17-21.

This standard, together with Standard 3.182, follows the lead of the National Advisory Commission on Criminal Justice Standards and Goals, Corrections, 575 (U.S. Government Printing Office, Washington, D.C., 1973), the IJA/ABA Joint Commission on Juvenile Justice Standards, Singer, supra, Junker, supra, and the Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency

Prevention, supra, by taking a middle course between these conflicting views. These standards recommend that:

a. Delinquent offenses be grouped into categories according to the relative degree of seriousness;

b. Maximum dispositional time periods be set for each category; (e.g., for offenses in category 1, the term of disposition shall not exceed X years);

c. The type of sanctions be categorized according to the extent to which they restrain the juvenile's liberty (e.g., category a. out-of-home custody, category b. probation); but

d. The responsibility for determining the length of disposition within the statutory maximum, the degree of restraint that should be imposed, and the type of program to which the juvenile should be assigned should be retained by the family court judge. In this way, increased equity and consistency in the disposition of delinquency cases can be achieved without sacrificing the family court's ability to fashion a dispositional plan on the basis of the mitigating and aggravating factors of the particular case and the juvenile's needs and interests. See Standard 3.182.

To assure that the equity achieved at the dispositional stage is maintained and the intent of the dispositional determination carried out and to increase the visibility and accountability of dispositional decisionmaking, Standards 3.189 and 3.1810 recommend that changes in the degree of restraint must be ordered by the family court. The same is true for reductions in the duration of disposition, other than for a limited good time allowance. The supervisory agency may shift juveniles between individual programs of the type specified by the court, so long as there is no change in the degree of restraint imposed. See Standards 3.182 and 3.189. Standard 3.1810 provides for court enforcement of major violations of dispositional orders by the juvenile.

Unlike the provisions approved by the IJA/ABA Joint Commission and the Standards and Goals Task Force on Juvenile Justice, this standard does not recommend any particular set of categories or maximum terms. Although the Advisory Committee on Standards agreed that the length of dispositions in delinquency cases should never exceed those that an adult could receive for the same conduct, it concluded that the current state of knowledge does not provide a basis for determining which of the classifications that have been proposed is the most appropriate. Each State should decide what are the exact dispositional time limits on the basis of its own needs, problems, and priorities. The IJA/ABA and Task Force proposals are summarized as illustrations of the differing approaches that have been taken on these issues.

The IJA/ABA Joint Commission adopted provisions calling for the division of juvenile offenses into five classes based on the maximum sentence that can be imposed on adults following conviction for similar conduct. Specifically, Class (1) juvenile offenses should include criminal offenses for which the maximum authorized sentence is death or imprisonment for more than 20 years. Class (2) juvenile offenses should include criminal offenses with maximum authorized sentences of imprisonment for more than 5 years. Class (3) should include criminal offenses with maximum authorized sentences of imprisonment for more than 1 year. Class (4) juvenile offenses should include criminal offenses with a maximum authorized

sentence of imprisonment for more than 6 months. And, Class (5) juvenile offenses should include criminal offenses with maximum authorized sentences of imprisonment for 6 months or less. Junker, supra, Standard 5.2. The IJA/ABA Joint Commission recommended maximum durations for each class of juvenile offenses as in Table 3.1.

Table 3.1. IJA/ABA JOINT COMMISSION RECOMMENDED MAXIMUM DURATIONS FOR CUSTODIAL AND NONCUSTODIAL SANCTIONS

CLASS	MAXIMUM DURATION IF CUSTODIAL SANCTION IS IMPOSED	MAXIMUM DURATION IF NONCUSTODIAL SANCTION IS IMPOSED
1	24 months	36 months
2	12 months	24 months
3	6 months	18 months
4	3* months	12 months
5	2+ months	6 months

*Confinement in a secure facility only if the juvenile has a prior record--i.e., adjudication for a class (1)(2) or (3) offense committed within 24 months of the commission of the current offense, or adjudication of three class (4) or (5) offenses, at least one of which was committed within 12 months of the commission of the current offense.

+Confinement only in a nonsecure facility and only if the juvenile has a prior record as defined above.

Source: Junker, supra, Standard 7.2.

The IJA/ABA standards also suggest that the types of sanctions be divided into three broad categories: nominal, conditional, and custodial. Nominal dispositions include reprimand and release and suspended dispositions. Conditional dispositions include fines, restitution, community service, supervision by a probation officer, day custody programs, and required attendance at educational, vocational, and counseling programs. Custodial dispositions includes placement in secure and nonsecure facilities and custody on a continuous or intermittent basis--i.e., only at night, or weekends or during vacations. Singer, supra, Standard 3.2.

The Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention proposed four classes of delinquent acts: Class I to include conduct that would be a misdemeanor if committed by an adult; Class II to include crimes against property that would be a felony if committed by an adult; Class

II to include crimes against property that would be a felony if committed by an adult; Class III to include crimes against persons and Class II offenses if the juvenile has a prior adjudication for a Class II offense; and Class IV to include acts that if committed by an adult would be punishable by death or imprisonment for over 20 years. The maximum duration for dispositions for each class is as shown in Table 3.2.

3.188
3.189
3.1810

Table 3.2. TASK FORCE RECOMMENDED MAXIMUM DURATIONS FOR DISPOSITIONS

CLASS	NORMAL DURATION	POSSIBLE EXTENSION*
I	8 months	4 months
II	24 months	6 months
III	36 months	12 months or the juvenile's 21st birthday whichever occurs first
IV	The juvenile's 21st birthday	

*Extensions are permitted only upon a showing of clear and convincing proof that additional community supervision of the juvenile is required for the protection of the public. The juvenile may not be confined during the extension. The total dispositional period should not exceed 12 months for Class I offenses, 30 months for Class II offenses, and 48 months or beyond the juvenile's 21st birthday for Class III and Class IV offenses.

Source: Task Force, supra, Standards 14.13 and 14.14.

The Task Force categories for the types of sanctions that may be imposed are nearly identical to those proposed by the IJA/ABA Joint Commission. Singer, supra.

Related Standards

3.111
3.182

3.182
Criteria for Dispositional Decisions—Delinquency

IN DETERMINING THE TYPE OF SANCTION TO BE IMPOSED FOLLOWING ADJUDICATION OF A DELINQUENCY PETITION AND THE DURATION OF THAT SANCTION WITHIN THE STATUTORILY PRESCRIBED MAXIMUM, THE FAMILY COURT SHOULD SELECT THE LEAST RESTRICTIVE CATEGORY AND TIME PERIOD CONSISTENT WITH THE SERIOUSNESS OF THE OFFENSE, THE JUVENILE'S ROLE IN THAT OFFENSE, AND THE JUVENILE'S AGE AND PRIOR RECORD.

AFTER DETERMINING THE DEGREE OF RESTRAINT AND THE DURATION OF THE DISPOSITION TO BE IMPOSED, THE COURT SHOULD SELECT THE TYPE OF PROGRAM OR SERVICES TO BE OFFERED ON THE BASIS OF THE JUVENILE'S NEEDS AND INTERESTS.

Source

Linda Singer, Proposed Standards Relating to Disposition of Juveniles Adjudicated Delinquent, Standards 2.1 and 2.2 (IJA/ABA, September 1975); Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 14.15 (July 1976).

Commentary

In establishing maximum sentences for categories of offenses, it is anticipated that the legislature will take into account the harm caused or risked in a typical case. However, no code can articulate the infinite variations of circumstances and characteristics involved in a particular offense. Hence, the standard recognizes that family courts should have discretion to select the actual disposition to be imposed in an individual case.

The standard endorses the procedure adopted by the IJA/ABA Joint Commission and Standards and Goals Task Force under which the family court judge first determines the minimum degree of restraint and the minimum term within the statutorily set maximum necessary to satisfy society's interests in protection, deterrence, and equity, and then selects, within these bounds, the type of program that best fits the juvenile's needs and interests. This division reflects the multiple purposes that dispositions serve. The decision on the length of disposition and degree of restraint required precedes the determination of the services or program to be provided in order to encourage provision of a full range of services and programs at all levels of restraint and to avoid basing custodial decisions on service needs. The standard contemplates that the family court judge will designate the type of program (e.g., foster care, vocational training, or drug treatment), and that the correctional agency will select the specific home, facility, or service to which the juvenile will be directed.

Consistent with the standards on intake, the Task Force and IJA/ABA provisions, and the recommendation

of the National Advisory Commission on Criminal Justice Standards and Goals, Corrections, (U.S. Government Printing Office, Washington, D.C., 1973), and other commentators, see e.g., David Fogel, We Are the Living Proof: The Justice Model for Corrections (W.H. Anderson Co., Cincinnati, 1975), among others, this provision establishes a preference for use of the "least restrictive alternative" that is appropriate. This would require the judge to consider and reject the least drastic category of sanctions before considering the next most severe category. Hence, continuous confinement in a secure facility would be "a last resort reserved only for the most . . . serious offenses and repetitive offenders." Singer, supra, 3.3(e) (ii); Task Force, supra. Four objective criteria--seriousness of the offense, the juvenile's role in that offense, and the juvenile's age and prior record--are provided to guide the dispositional decision and promote consistency. Many current statutes and models provide little assistance or direction to judges faced with the difficult task of balancing the concerns of society and the needs of the juvenile. See e.g., Uniform Juvenile Court Act, Section 31 (National Conference of Commissioners on Uniform State Laws, 1968); Model Act for Family Courts, Section 34 (Department of Health, Education, and Welfare, Washington, D.C., 1975). The four criteria recommended in the standard are intended to promote dispositional consistency and provide a basis for explanation, comparison, and review of dispositional decisions. See Standards 3.189 and 3.191. Definitions of each of these appear in the commentary to Standard 3.143.

Related Standards

3.181
3.183
3.184
3.185
3.186
3.187
3.188
3.189
3.1810
3.191

3.183
Dispositional Alternatives and Criteria—Noncriminal Misbehavior

IN DETERMINING THE DISPOSITION TO BE IMPOSED FOLLOWING ADJUDICATION OF A NONCRIMINAL MISBEHAVIOR* PETITION, THE FAMILY COURT JUDGE SHOULD SELECT THE LEAST RESTRICTIVE ALTERNATIVE AND TIME PERIOD CONSISTENT WITH THE NATURE AND CIRCUMSTANCES OF THE CONDUCT UPON WHICH THE ADJUDICATION WAS BASED; THE AGE, INTERESTS, AND NEEDS OF THE JUVENILE; THE INTERESTS AND NEEDS OF THE FAMILY; THE PRIOR CONTACTS OF THE FAMILY WITH THE INTAKE UNIT AND FAMILY COURT; THE RESULTS OF THOSE CONTACTS; AND THE EFFORTS OF PUBLIC AGENCIES TO PROVIDE SERVICES TO THE JUVENILE AND HIS OR HER FAMILY.

THE DISPOSITIONAL PERIOD IN NONCRIMINAL MISBEHAVIOR MATTERS SHOULD NOT EXCEED 6 MONTHS. HOWEVER, THE FAMILY COURT SHOULD BE AUTHORIZED TO EXTEND THE DISPOSITIONAL PERIOD FOR UP TO 6 MONTHS, FOLLOWING A HEARING AT WHICH THE SAME CRITERIA AND PROCEDURES APPLY AS IN THE ORIGINAL DISPOSITIONAL HEARING. THE BURDEN OF PROOF SHOULD REST WITH THE STATE TO SHOW BY CLEAR AND CONVINCING EVIDENCE THAT CONTINUATION OF THE DISPOSITION IS NECESSARY. ONLY ONE EXTENSION SHOULD BE AUTHORIZED.

THE DISPOSITIONAL ALTERNATIVES IN NONCRIMINAL MISBEHAVIOR MATTERS SHOULD INCLUDE ORDERS REQUIRING THE PROVISION OF PROGRAMS AND SERVICES TO THE JUVENILE AND/OR HIS OR HER FAMILY; COOPERATION BY THE JUVENILE AND FAMILY WITH OFFERED PROGRAMS AND SERVICES; THE CONTINUATION OR DISCONTINUATION OF BEHAVIOR BY THE JUVENILE AND FAMILY; OR PLACEMENT OF THE JUVENILE IN FOSTER CARE, A NONSECURE GROUP HOME, OR OTHER NONSECURE RESIDENTIAL FACILITY.

IN NO CASE SHOULD THE DISPOSITIONAL ORDER OR THE ENFORCEMENT THEREOF RESULT IN THE CONFINEMENT OF A JUVENILE IN A SECURE DETENTION OR CORRECTIONAL FACILITY OR INSTITUTION.

Source

See generally, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 14.4 (July 1976).

Commentary

The standard sets forth the considerations that should apply and the alternatives that should be available for dispositions in noncriminal misbehavior cases. When dealing with dispositions in noncriminal misbehavior cases, it is recommended that the primary concern should be to assist the family in resolving its problem and conflicts and to provide needed services, not to punish. The criteria

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*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

o be used in making the disposition-
l decision reflect this family
mphasis. For example, the standard
ecommends that the needs and inter-
sts and prior contacts of the family
be considered as well as those of the
juvenile. Cf. Standard 3.182.

Related Standards

3.112
3.182
3.184
3.189
3.1811

One of the most frequently cited abuses of noncriminal behavior dispositions has been that juveniles found to have committed a "status offense" often have their liberty restricted more severely and for longer periods than those adjudicated delinquent. See e.g., P. Lerman, Child Convicts, Transaction, 8, 35-44 (July-August 1971); G. Wheeler, National Analysis of Institutional Length of Stay (Ohio Division of Research, Planning and Development, 1974); R. Sarri, R.D. Vinter, and R. Kish, Juvenile Justice: Failure of a Nation (National Assessment of Juvenile Corrections, May 1974); Program Announcement: Deinstitutionalization of Status Offenders, Attachment A (LEAA, Washington, D.C., 1975). In order to correct this problem, the standard states that juveniles found to have engaged in noncriminal misbehavior should not be placed in secure correctional or detention facility, that dispositions should be limited to 6 months unless there is clear and convincing evidence that a continuation is required, that in no event should the duration of the original disposition and any continuation exceed a total of 1 year, and that the disposition should always be the least restrictive alternative available. It should be noted that the proposed bar on use of secure correctional or detention facility was not intended to prohibit use of group homes or shelter facilities which place some limits on access and egress. More precise definitions of these terms will be included in the set of standards to be recommended in March 1977.

3.184
Dispositional Alternative and Criteria—Neglect and Abuse

DISPOSITIONS FOLLOWING ADJUDICATION OF A NEGLECT AND ABUSE PETITION SHOULD ADEQUATELY PROTECT THE JUVENILE WHILE CAUSING AS LITTLE INTERFERENCE AS POSSIBLE WITH THE AUTONOMY OF THE FAMILY. THEY SHOULD BE DESIGNED TO ALLEVIATE THE IMMEDIATE DANGER TO THE JUVENILE, TO MITIGATE OR CURE ANY HARM ALREADY SUFFERED, AND TO AID THE JUVENILE AND THE JUVENILE'S PARENTS, GUARDIAN, OR PRIMARY CARETAKER SO THAT THE JUVENILE WILL NOT BE ENDANGERED IN THE FUTURE.

IN DETERMINING THE DISPOSITION TO BE IMPOSED, THE FAMILY COURT JUDGE SHOULD SELECT THE DISPOSITION CONSISTENT WITH THE NATURE AND CIRCUMSTANCES OF THE NEGLECT OR ABUSE; THE AGE, MATURITY, INTERESTS, AND NEEDS OF THE JUVENILE; THE INTERESTS AND NEEDS OF THE FAMILY; THE PRIOR CONTACTS OF THE FAMILY WITH THE INTAKE UNIT AND FAMILY COURT; THE RESULTS OF THOSE CONTACTS; AND THE EFFORTS OF PUBLIC AGENCIES TO PROVIDE SERVICES TO THE JUVENILE AND HIS OR HER FAMILY.

DISPOSITIONAL ALTERNATIVES IN NEGLECT AND ABUSE CASES SHOULD INCLUDE ORDERS REQUIRING: THE PROVISION OF SERVICES, COUNSELING, THERAPY OR TREATMENT TO THE JUVENILE AND/OR THE JUVENILE'S FAMILY; COOPERATION BY THE JUVENILE AND FAMILY WITH THE OFFERED SERVICES, COUNSELING, THERAPY, OR TREATMENT; THE CONTINUATION OR DISCONTINUATION OF BEHAVIOR BY THE JUVENILE OR THE JUVENILE'S PARENT, GUARDIAN, OR PRIMARY CARETAKER; INFORMAL OR CASEWORK SUPERVISION; AND PLACEMENT OF THE JUVENILE IN A DAY-CARE PROGRAM, WITH A RELATIVE, OR IN A FOSTER HOME, GROUP HOME, OR RESIDENTIAL TREATMENT CENTER.

JUVENILES SHOULD NOT BE REMOVED FROM HOME UNLESS:

a. THEY HAVE BEEN ABUSED OR OTHERWISE ENDANGERED AS DEFINED IN STANDARD 3.113;

b. THERE IS CLEAR AND CONVINCING EVIDENCE THAT THEY CANNOT BE ADEQUATELY PROTECTED FROM FURTHER NEGLECT OR ABUSE UNLESS REMOVED; AND

c. OUT-OF-HOME PLACEMENT IS LESS LIKELY TO BE DAMAGING TO THE JUVENILE THAN ALLOWING THE JUVENILE TO REMAIN WITH HIS OR HER FAMILY.

IF SIBLINGS ARE REMOVED, THEY SHOULD ORDINARILY BE PLACED TOGETHER.

Sources

Robert Burt and Michael Wald, Proposed Standards Relating to Neglect and Abuse, Standard 6.3 and 6.4 (IJA/ABA, Draft, January 1976); Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standards 14.25-14.27 (July 1976).

Commentary

This standard sets forth the considerations that should apply to and the alternatives that should be available for dispositions in neglect and abuse cases. At the outset, it makes clear that although the purpose of such dispositions should be to protect the juvenile from further harm, every effort should be made to provide that protection without removing the juvenile from his or her home. Hence, the factors listed in the second paragraph of the standard, like those recommended for dispositions in noncriminal misbehavior cases, focus on the family, not just the juvenile, see Standard 3.183; a broad range of alternatives in addition to removal are suggested; and the criteria for removal urge that out-of-home placements should be limited to those cases in which no other measure can adequately protect the juvenile from further harm. Unlike most current statutes, the standard does not speak in terms of the "best interest of the child." Although the determination of what measures will provide adequate protection for a child who has been neglected and abused is not a simple one, it is far narrower and less complex than attempts to decipher what the child's best interests are and how they can be most effectively served. See Burt and Wald, supra, Task Force, supra; see also Robert Mnookin, Foster Care: In Whose Best Interest, 43 Harvard Education Review, 599 (1973).

The alternatives suggested in the third paragraph of the standard stress the provision of counseling, homemaker, or other services to the family. Such services should be designed to address the specific harms that have occurred or the particular dangers that the juvenile faces. As is pointed out in Judith Areen, Intervention Between Parent and Child: A Reappraisal of the State's Role in Child Neglect and Abuse Cases, 63 Georgetown Law Journal 887, 915, 918-920 (1975), there are strong fiscal as well as psychological advantages in trying to protect children in their own homes. See Justine Polier, The Invisible Legal Rights of the Poor, 12 Children 214, 218 (1965); Joseph Goldstein, Anna Freud, and Albert Solnit, Beyond the Best Interests of the Child (The Free Press, New York City, 1973); Burt and Wald, supra. In many instances, a team approach may be the most effective means of providing the range of interrelated services that are required.

The recommended restrictions on removal follow from the above arguments; the limits on out-of-home placements contained in the standards on dispositions in delinquency and noncriminal misbehavior cases, see Standards 3.181-3.183; and the fact that in many jurisdictions, removal remains the most frequent disposition employed in neglect and abuse cases, and short-term foster care appears to be "the exception rather than the rule." Areen, supra, 912-913. The standard recommends that the State must demonstrate with clear and convincing evidence that none of the alternatives short of removal can adequately protect the child. This would constitute a significant change from current practice. It is anticipated that the requirement for such proof will help to direct attention to the need for nonremoval alternatives. Both the IJA/ABA and Task Force provisions would require a lower level of proof for removal in abuse cases than in neglect cases. See Burt and Wald, supra, Standard 6.4; Task Force, supra, Standard 14.27. Because the danger involved and the inadequacy of any inhome safeguards are usually easier to prove in cases involving abuse, this distinction appears to add unnecessary complexity.

Subparagraph (c), together with the review procedures in Standards 3.189 and 3.1812, is intended to insure that a juvenile is not taken from one bad home situation only to be placed in another. Task Force, supra; Burt and Wald, supra.

The recommendation that if siblings are removed, they should ordinarily be placed in the same foster home, is adopted from the model provisions proposed by Professor Areen. It is intended to preserve family and sibling ties to the greatest extent possible by eliminating the scattering of brothers and sisters among a number of foster homes. Areen, supra, 936.

Related Standards

3.113
3.154
3.181
3.182
3.183
3.189
3.1812
3.1813

3.185
Criteria for Termination of Parental Rights

THE FAMILY COURT SHOULD BE AUTHORIZED BUT NOT REQUIRED TO TERMINATE PARENTAL RIGHTS WHEN:

a. A JUVENILE HAS BEEN ABANDONED, AS DEFINED IN STANDARD 3.113(a);

b. A JUVENILE HAS BEEN PHYSICALLY ABUSED AS DEFINED IN STANDARD 3.113(b);

c. A JUVENILE HAS BEEN REMOVED FROM THE HOME PURSUANT TO STANDARD 3.184 AND HAS REMAINED IN OUT-OF-HOME PLACEMENT FOR 6 MONTHS OR MORE;

d. A JUVENILE'S PARENTS HAVE PREVIOUSLY BEEN FOUND TO HAVE NEGLECTED OR ABUSED THAT JUVENILE OR ANOTHER JUVENILE IN THE SAME HOUSEHOLD; OR

e. A JUVENILE'S PARENTS COMPETENTLY, VOLUNTARILY, AND INTELLIGENTLY CONSENT.

PARENTAL RIGHTS SHOULD NOT BE TERMINATED IF: TERMINATION WOULD BE DETRIMENTAL TO THE JUVENILE BECAUSE OF THE CLOSENESS OF THE PARENT-CHILD RELATIONSHIP; THE JUVENILE HAS BEEN PLACED IN A RESIDENTIAL FACILITY BECAUSE OF HIS OR HER PHYSICAL OR MENTAL HEALTH PROBLEMS AND TERMINATION IS NOT NECESSARY TO PROVIDE A PERMANENT FAMILY HOME; THE JUVENILE HAS BEEN PLACED WITH A RELATIVE WHO DOES NOT WISH TO ADOPT HIM OR HER; THE JUVENILE CANNOT BE PLACED IN A FAMILY ENVIRONMENT; OR THE JUVENILE OBJECTS.

FOLLOWING TERMINATION, THE JUDGE SHOULD BE AUTHORIZED TO ORDER THE JUVENILE TO BE PLACED FOR ADOPTION; PLACED WITH A LEGAL GUARDIAN; OR IF NO OTHER ALTERNATIVE IS AVAILABLE, PLACED IN LONG-TERM FOSTER CARE. THE CASE SHOULD BE REVIEWED BY THE FAMILY COURT EACH YEAR UNTIL A PERMANENT PLACEMENT HAS BEEN MADE.

Sources

See generally, Robert Burt and Michael Wald, Proposed Standards Relating to Neglect and Abuse, Standards 8.2(b), 8.4, and 8.5 (IJA/ABA, Draft, January 1976); Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 14.32 (July 1976).

Commentary

This standard describes the situations in which the family court should consider terminating a juvenile's legal relationship to his or her parents, thus making the juvenile eligible for adoption; the factors that should tilt the balance against termination even though the basic conditions are present; and the procedures that should be utilized to increase the chances that a juvenile will have the opportunity to grow up in a stable family environment.

Termination of parental rights presents many difficult issues. On the one hand, the Supreme Court has recognized a parent's "natural right" to control and supervise his/her children, Griswold vs. Connecticut, 381 U.S. 479 (1965), although this right is not absolute, see Prince vs. Massachusetts, 321 U.S. 158 (1944), and various commentators have pointed out that removing a juvenile from even neglectful or abusing parents can have a detrimental emotional impact on the child. See Joseph Goldstein, Anna Freud, and Albert Solnit, Beyond the Best Interests of the Child, (The Free Press, New York City, 1973); John Bowlby, Child Care and the Growth of Love (Penguin Press, Baltimore, 1965). On the other hand, as is pointed out by Judith Areen, Intervention Between Parent and Child: A Reappraisal of the State's Role In Child Neglect and Abuse Cases, 63 Georgetown Law Journal, 887, 928 (1975):

> [S]ome parents who are unwilling to assume the care of their own children also are unwilling to consent to their adoption, [or] . . . cannot be located.

Most States currently provide for a waiver of the natural parents' rights at an adoption proceeding. Others provide that parental rights may be terminated when their child is adjudged to be neglected. About half the States also permit termination to occur as a separate proceeding, prior to adoption but sometime after the adjudication of a neglect petition. The standard endorses this third approach, because it provides an opportunity for counseling and other services as well as time to relieve the causes for the abuse or neglect. Accord, Burt and Wald, supra; Task Force, supra; Areen, supra. It is anticipated that the issue of termination will arise at the review hearing held 6 months after disposition in cases in which a juvenile has been removed from the home. See Standard 3.1812. However, termination, at that time, should not be made mandatory. But see Task Force, supra; Burt and Wald, supra, Standard 8.3; Areen, supra.

The standard would permit termination in cases of abandonment or abuse regardless of the parent's prior record or whether the juvenile has been in out-of-home placement. See Standard 3.113(a)-(b). However, in keeping with the policy of trying to protect and provide support for the child without removal set forth in Standard 3.184, termination in abuse cases in which there is no record of previous neglect or abuse, in which the juvenile has not been removed, or in which the juvenile's parents have not given their consent are expected to be exceedingly rare. See Burt and Wald, supra. The provision on consent is drawn from the Model Children's Code Section 7.6(c)(4) (American Indian Law Center, 1976). Consent to termination of parental rights should only be accepted following a determination that the consenting individual is able to and does understand the nature and consequences of his action, and that the consent is not the result of any promise, inducement, force, bargain, or threat. See Standard 3.176.

The standard recommends further that even though the conditions listed in subparagraphs (a)-(e) may be present, the court should not terminate parental rights if termination would be detrimental to the juvenile because a close parent-child relationship still exists; would be unnecessary in order to secure a stable family living arrangement for the juvenile or would not result in such a living arrangement; or if the juvenile objects. It should be noted that under Standards 3.132 and 3.133, both the

juvenile and the juvenile's parents would be entitled to counsel at termination proceedings and that under Standard 3.169, a guardian ad litem may be appointed when very young children or children who are mentally ill or mentally retarded are involved, or when a child's interests require it.

Finally, in recognition that too often juveniles removed from their home have not been placed with a family on a permanent or long-term basis, and in recognition of the importance of stable interpersonal relationships to emotional development, Goldstein, et al., supra, 31-35; Areen, supra, 889, 914, the standard recommends that judicial oversight of the case not end until a permanent placement--preferably adoption--has been made. Accord, Burt and Wald, supra, Standard 8.5. The review was set on an annual basis because of the 6 month acclimation period which many jurisdictions require before adoption can be finalized.

Related Standards

3.113
3.161
3.184
3.1812

3.186
Predisposition Investigations

PREDISPOSITION INVESTIGATIVE SERVICES SHOULD BE AVAILABLE TO AND UTILIZED BY FAMILY COURTS. PREDISPOSITION INVESTIGATIONS SHOULD BE CONDUCTED BY THE AGENCY RESPONSIBLE FOR THE PROVISION OF SUPERVISORY SERVICES TO JUVENILES AND SHOULD BE GOVERNED BY WRITTEN GUIDELINES AND RULES ISSUED BY THAT AGENCY. WHENEVER POSSIBLE, SEPARATE UNITS SHOULD BE ESTABLISHED TO CONDUCT SUCH INVESTIGATIONS.

PREDISPOSITION INVESTIGATIONS SHOULD NOT BEGIN UNTIL THE PETITION HAS BEEN ADJUDICATED, UNLESS THE INFORMED WRITTEN CONSENT OF THE RESPONDENT HAS BEEN OBTAINED. IN NO CIRCUMSTANCES SHOULD INFORMATION OBTAINED DURING THE PREDISPOSITION INVESTIGATION BE CONSIDERED BY THE COURT PRIOR TO ADJUDICATION.

PREDISPOSITION INVESTIGATIONS SHOULD BE DESIGNED AND CONDUCTED SO AS TO OBTAIN ONLY THAT INFORMATION ESSENTIAL TO THE MAKING OF DISPOSITIONAL DECISIONS. THEY SHOULD BE AUTHORIZED TO INCLUDE EXAMINATION OF COURT RECORDS AND THE RECORDS OF LAW ENFORCEMENT AND OTHER PUBLIC AGENCIES; INTERVIEWS WITH THE VICTIM, WITNESSES TO THE CONDUCT ON WHICH THE PETITION IS BASED, THE SUBJECT OF THE PETITION, HIS OR HER FAMILY, GUARDIAN, OR PRIMARY CARETAKER, AND SCHOOL AND SOCIAL SERVICE AGENCY PERSONNEL; AND REFERRAL OF THE SUBJECT OF THE PETITION FOR A DIAGNOSTIC PHYSICAL OR MENTAL HEALTH EXAMINATION. BEFORE A PERSON MAY BE REFERRED FOR A PHYSICAL OR MENTAL HEALTH EXAMINATION, THERE SHOULD BE A HEARING AT WHICH THE NEED FOR SUCH AN EXAMINATION HAS BEEN ESTABLISHED. ORDERS AUTHORIZING REFERRAL FOR A DIAGNOSTIC EXAMINATION SHOULD NOT REQUIRE CONFINEMENT OR INSTITUTIONALIZATION UNLESS NONCONFINING ALTERNATIVES ARE UNAVAILABLE OR WOULD BE INEFFECTIVE.

IN REQUESTING AN INTERVIEW WITH THE SUBJECT OF A PETITION OR HIS OR HER FAMILY, AND AT ITS INCEPTION, THE PERSON CONDUCTING THE PREDISPOSITION INVESTIGATION SHOULD EXPLAIN THE PURPOSE OF THE INTERVIEW, THE USES OF THE INFORMATION OBTAINED, AND THE DISPOSITIONAL ALTERNATIVES, AND SHOULD ADVISE INTERVIEWEES THAT THEY MAY DECLINE TO PARTICIPATE IN THE INTERVIEW AND THAT THEY ARE ENTITLED TO BE REPRESENTED BY COUNSEL.

Sources

See generally, Fred Cohen, Proposed Standards Relating to Dispositional Procedures, Standards 2.1-2.4 (IJA/ABA, Draft, April 1975); Josephine Gittler, Proposed Standards Relating to the Juvenile Probation Function: Intake and Predisposition Investigative Services, Standards 2.1-2.4, 3.1, and 3.4 (IJA/ABA, Draft, January 1976).

Commentary

This standard encourages the use of predispositional investigations in delinquency, noncriminal misbehavior, and neglect and abuse proceedings, and outlines the timing and scope of such investigations and the procedural safeguards that should apply. Consistent with Standard 3.141, the standard does not specify whether the unit conducting predispositional investigations should be within the executive or judicial branch. The IJA/ABA Joint Commission, Gittler, supra, and the Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 21.1 (July 1976), recommend that predisposition investigations be performed by an executive agency rather than by probation officers working directly for the family court. But see Richard Kobetz and Betty Bosarge, Juvenile Justice Administration, 428-431 (International Association of Chiefs of Police, 1973). This is premised on the belief that the administrative burdens of overseeing the operations of an intake unit or probation and investigatory services are more appropriately lodged in the executive branch so that the resources of the family court can be concentrated on hearing, adjudicating, and determining the disposition of the cases submitted under its jurisdiction.

The recommendation that investigative services should be available to the family court is not intended to imply that an investigation must be performed when the family court judge already has substantial information concerning the respondent as a result of the adjudicatory hearing or a report prepared in conjunction with a recently concluded case. See e.g., Gittler, supra; Cohen, supra; and Uniform Juvenile Act, Section 28 (National Conference of Commissioners on Uniform State Laws, 1969); but see Model Act for Family Courts, Section 30 (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975); National Advisory Commission on Criminal Justice Standards and Goals, Corrections, Sections 5.14 and 16.10 (U.S. Government Printing Office, Washington, D.C., 1973); ABA, Standards Relating to Sentencing Alternatives and Procedures, Section 4.1 (Approved Draft, 1968).

Predispositional investigations should not be initiated until after the adjudication hearing without the informed written consent of the respondent, and under no circumstances should the information obtained through the predisposition investigation be presented to or considered by the judge prior to adjudication. See e.g., Gittler, supra; Cohen, supra; Task Force, supra, Standard 14.7; National Advisory Commission, Corrections, supra, Section 5.15; Uniform Act, supra, Section 28. Such reports may contain highly prejudicial information that although irrelevant to the determination of the truth of the allegations, may be extremely difficult for any judge to disregard during the adjudication hearing. It is anticipated that the most common situations in which consent will be given to begin a predisposition investigation before adjudication will be when the respondent intends to admit the allegations in the petition or when the respondent is in custody and wishes to minimize the time between adjudication and disposition.

For the reasons indicated in the commentary to Standard 3.146, predisposition investigations are limited to the collection of information essential to the making of the dispositional decision. Although the scope of predisposition investigations is somewhat broader than that recommended for intake, the general principle that the accumulation of dispositional information, particularly of a subjective nature, does not necessarily

improve decisionmaking still applies. Cohen, supra, Standard 2.1(d); see also, Michael Altman, Proposed Standards Relating to Juvenile Records and Information Systems, Standard 3.1 (IJA/ABA, Draft, January 1976); Task Force, supra, Standard 14.5, and Standard 28.1.

The standard permits examination of court records, law enforcement records, school records, and the records of social service agencies, interviews with the complainant, the victim, witnesses, school and social service personnel, as well as with the respondent and his or her family, guardian, or primary caretaker. In so doing, it attempts, like the other disposition standards, to strike a balance between the treatment and "just desserts" models and between the need for adequate dispositional information and the right to privacy of respondents and their families. Unlike the Gittler provision, the standard does not encourage interviews with "individuals having knowledge of the juvenile." Gittler, supra, Standard 2.4(a). Such a broad prescription would seem to sanction the wholesale neighborhood and school checks that the remainder of the provisions are intended to halt.

The standard provides for the observance of other procedural safeguards intended to guarantee that the predispositional investigation does not impinge upon the rights of the respondent or others. With regard to interviews with the respondent and his or her family, guardian, or primary caretaker, the standard requires that the interviewees be informed of the purposes of the interview, the possible outcome, that any statement may be used against them at the disposition hearing, and that they are entitled to be represented by counsel. See Standards 3.132, 3.133, 3.146. The Cohen and Task Force provisions only apply such safeguards to the subject of the proceeding. Cohen, supra, Standard 2.2(b); Task Force, supra, Standard 14.7. However, because Standards 3.112, 3.113, 3.132, and 3.133 recognize that dispositional proceedings may directly affect the families of persons subject to delinquency, noncriminal misbehavior, or neglect and abuse proceedings, as well as the respondents themselves, it appears appropriate to expand the scope of the protections. See also Standard 3.146.

Finally, the standard provides that a respondent, following adjudication, may be required to submit to a physical or mental health diagnostic examination after a hearing at which the need for such an examination has been clearly and convincingly proven. Such examinations should be on an out-patient basis except when out-patient facilities are not available or for some reason could not provide the type of examination that is necessary. The order should specify the nature and objectives of the proposed examination as well as the place where the examination should take place. It is intended that when confinement is required, it should be for as short a period as possible, and that in no event should it exceed 30 days. See Cohen, supra at 2.3(d); Task Force, supra, Standard 14.7.

Related Standards

3.132
3.133
3.141
3.146
3.181
3.182
3.183
3.184
3.185
3.187
3.188

3.187
Predisposition Reports

PREDISPOSITION REPORTS IN DELINQUENCY, NONCRIMINAL MISBEHAVIOR,* AND NEGLECT AND ABUSE MATTERS SHOULD CONTAIN ONLY INFORMATION THAT IS ESSENTIAL TO MAKING DISPOSITIONAL DECISIONS. WRITTEN RULES AND GUIDELINES SHOULD BE ESTABLISHED TO GOVERN THEIR PREPARATION AND DISSEMINATION.

THE PREDISPOSITION REPORT SHOULD BE DIVIDED INTO THREE SECTIONS. IN DELINQUENCY PROCEEDINGS, THE FIRST SECTION SHOULD CONTAIN INFORMATION CONCERNING THE NATURE AND CIRCUMSTANCES OF THE OFFENSE UPON WHICH THE ADJUDICATION IS BASED, THE JUVENILE'S ROLE IN THAT OFFENSE, THE PERIOD, IF ANY, FOR WHICH THE JUVENILE WAS DETAINED PENDING ADJUDICATION AND DISPOSITION, THE JUVENILE'S AGE AND THE JUVENILE'S RECORD OF PRIOR CONTACTS WITH THE INTAKE UNIT AND THE FAMILY COURT.

IN NONCRIMINAL MISBEHAVIOR AND NEGLECT AND ABUSE PROCEEDINGS, THE FIRST SECTION OF THE PREDISPOSITION REPORT SHOULD CONTAIN INFORMATION CONCERNING THE NATURE AND CIRCUMSTANCES OF THE CONDUCT, NEGLECT, OR ABUSE UPON WHICH THE ADJUDICATION WAS BASED, THE PRIOR CONTACTS WITH THE FAMILY COURT OR INTAKE UNIT WHICH THE PERSON ADJUDICATED AND HIS OR HER FAMILY, GUARDIAN, OR PRIMARY CARETAKER HAVE HAD, THE RESULTS OF THOSE CONTACTS, AND THE AGE OF THE JUVENILE WITH REGARD TO WHOM THE PETITION WAS FILED.

SECTION TWO OF PREDISPOSITION REPORTS SHOULD CONTAIN ONLY THAT INFORMATION ESSENTIAL FOR SELECTING A PARTICULAR DISPOSITIONAL PROGRAM. SUCH INFORMATION MAY INCLUDE:

a. A SUMMARY OF THE HOME ENVIRONMENT, FAMILY RELATIONSHIPS, AND BACKGROUND;

b. A SUMMARY OF THE JUVENILE'S EDUCATIONAL AND EMPLOYMENT STATUS;

c. A SUMMARY OF THE INTERESTS AND ACTIVITIES OF THE JUVENILE WITH REGARD TO WHOM THE PETITION WAS FILED;

d. A SUMMARY OF THE INTERESTS OF THE JUVENILE'S PARENTS, GUARDIAN, OR PRIMARY CARETAKER; AND

e. A SUMMARY OF THE RESULTS AND RECOMMENDATIONS OF ANY SIGNIFICANT PHYSICAL OR MENTAL HEALTH EXAMINATIONS.

SECTION THREE SHOULD CONTAIN AN EVALUATION OF THE FOREGOING INFORMATION, A SUMMARY OF THE DISPOSITIONAL

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*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

ALTERNATIVES AVAILABLE, AND A RECOMMENDATION AS TO DISPOSITION.

PREDISPOSITION REPORTS SHOULD BE WRITTEN, CONCISE, FACTUAL, AND OBJECTIVE. THE SOURCES OF THE INFORMATION, THE NUMBER OF CONTACTS MADE WITH SUCH SOURCES, AND THE TOTAL TIME EXPENDED ON INVESTIGATION AND PREPARATION SHOULD BE CLEARLY INDICATED.

THE PREDISPOSITION REPORT AND ANY DIAGNOSTIC OR MENTAL HEALTH REPORT SHOULD NOT CONSTITUTE A PUBLIC RECORD. HOWEVER, THESE REPORTS SHOULD BE MADE AVAILABLE TO COUNSEL FOR THE STATE, FOR THE JUVENILE, AND FOR THE PARENT, GUARDIAN, OR PRIMARY CARETAKER SUFFICIENTLY PRIOR TO ANY DISPOSITIONAL PROCEEDING TO ALLOW FOR INDEPENDENT INVESTIGATION, VERIFICATION, AND THE DEVELOPMENT OF REBUTTAL INFORMATION. NO DISPOSITIONAL DECISION SHOULD BE MADE ON THE BASIS OF A FACT OR OPINION THAT HAS NOT BEEN DISCLOSED. PREDISPOSITION AND DIAGNOSTIC REPORTS SHOULD ALSO BE MADE AVAILABLE TO THE PUBLIC AGENCY DIRECTED TO TAKE CUSTODY OF OR PROVIDE SERVICES TO THE JUVENILE.

Sources

See generally, Fred Cohen, Proposed Standards Relating to Dispositional Procedures, Standards 2.3-2.4 (IJA/ABA, Draft, April 1975); Josephine Gittler, Proposed Standards Relating to the Juvenile Probation Function: Intake and Predisposition Investigative Services, Standard 2.4 (IJA/ABA, Draft, January 1976).

Commentary

The standard sets out the principles governing the content and distribution of predisposition reports. Like the standards on intake and predisposition investigations, it specifies that only information essential to the dispositional decision should be collected, summarized, and presented to the family court. See Standards 3.146 and 3.186. Also like the previous standard and the provisions on intake, Standard 3.187 encourages the development of written rules and guidelines to implement this principle and to promote consistency. The Advisory Committee on Standards recommends the development of rules and guidelines governing the preparation and dissemination of predisposition reports as an action that each State can take immediately without a major reallocation of resources to improve the administration of juvenile justice. Such rules should be developed jointly by the family court and the agencies or agency responsible for predispositional investigations.

The division between the objective and social history sections of the predisposition report for delinquency cases corresponds to the separation of the decision regarding the length of sanction/degree of restraint from that concerning the type of program, proposed in Standard 3.182. It is intended to facilitate the court's ability to base its length of sanction/degree of restraint decision solely on offense-related factors, age, and prior record, thus promoting consistency and fairness. Although a similar separation is not recommended for dispositional decisions in noncriminal misbehavior and neglect and abuse cases, there appears to be no reason why the three-part report format should not be used in such cases as well. Nothing in the standard is intended to prohibit the inclusion of statements of the victim, if any, and witnesses regarding the nature and seriousness of the offense, conduct, neglect, or abuse on which the petition was based.

Section two of predisposition reports may include information about the home environment, family relationships, employment and educational status, and the interests and

activities of the juvenile involved, the interests of the juvenile's parents, guardian, or primary caretaker, and any significant medical or mental health findings. Which of these types of information will be included in a particular report should depend on the nature of the case and the needs and characteristics of the respondent, but the standard makes clear that only social history information essential for the dispositional decision should be included. Information regarding the attitude of the juvenile is not included because of the difficulty of assessing, for example, "the difference between feigned and genuine resolve to mend one's ways or between genuine indifference to the law's commands and fear engendered defiance." President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, 17 (U.S. Government Printing Office, Washington, D.C., 1967). But see Task Force, supra. However, Standard 3.188 does recommend that the parties be allowed to address the court at the dispositional hearing.

The provision in the standard recommending that the source of information contained in the report be identified and that the number of contacts with such sources and the time expended in preparing the report be noted is intended to facilitate the correction of any inaccuracies in the predisposition report and assist the family court judge in weighing the information presented and assessing the performance of the probation agency investigative staff. To further assure that dispositional decisions are not based upon misleading or unreliable information, the standard recommends disclosure of the report and any other information presented to the court orally or in written form, to counsel for the State, the juvenile, and the parents. Such disclosure is essential to assure the fairness and accuracy of the process. See ABA, Standards Relating to Sentencing Alternatives and Procedures, Section 4.4 (Approved Draft, 1968). As was stated by Mr. Justice Fortas in Kent vs. United States, 383 U.S. 541, 563 (1966):

> . . .[I]f the staff's submissions include materials which are susceptible to challenge or impeachment, it is precisely the role of counsel to "denigrate" such matter. There is no irrebuttable presumption of accuracy attached to staff reports. . . . [I]t is equally of "critical importance" that the material submitted to the judge . . . be subjected, within reasonable limits having regard to the theory of the Juvenile Court Act, to examination, criticism and refutation.

The scope of disclosure suggested in Standard 3.187 is somewhat broader than that proposed in the IJA/ABA and Task Force provisions in that disclosure to counsel for the parents is made explicit because of the direct interest of parents in dispositional hearings. See Standard 3.133. Disclosure is not made directly to the parties when an attorney is present to allow some discretion in disclosing particularly sensitive information to an individual without jeopardizing his or her interests. However, the principles of client autonomy recommended in Standard 3.134 still apply. The 1968 ABA sentencing standards allow the limited excision of presentence reports by the court in "extraordinary cases." ABA, supra, Section 4.4.

Notwithstanding the broad recommendations for disclosure to the parties, the information contained in the predisposition report investigation should not constitute a public record. Much of the social history

information is of a highly personal nature. Public release of such information or of diagnostic reports may have a detrimental impact on the respondent and his and her family. Similarly, the report is to be given to the public supervisory agency rather than directly to the private or public program to which the juvenile or family will be directed. The agency should release to the program only that information essential to the delivery of the specific services to be offered.

Related Standards

3.132
3.133
3.143
3.144
3.145
3.146
3.151
3.152
3.153
3.154
3.182
3.183
3.184
3.186
3.188

3.188
Dispositional Hearings

A PERSON ADJUDICATED UNDER THE DELINQUENCY, NONCRIMINAL MISBEHAVIOR,* OR NEGLECT AND ABUSE JURISDICTION OF THE FAMILY COURT SHOULD BE ENTITLED TO A DISPOSITIONAL HEARING, SEPARATE AND APART FROM THE ADJUDICATORY HEARING. AT THAT HEARING, THE ATTORNEY FOR THE STATE, THE JUVENILE, AND THE JUVENILE'S PARENTS, GUARDIAN, OR PRIMARY CARETAKER SHOULD BE AFFORDED AN OPPORTUNITY TO PRESENT EVIDENCE IN THE FORM OF DOCUMENTS AND WITNESSES CONCERNING THE APPROPRIATE DISPOSITION; TO EXAMINE AND CONTROVERT ANY WRITTEN EVIDENCE; AND TO CROSS-EXAMINE ANY WITNESSES. IN ADDITION, THE PARTIES AND THEIR COUNSEL SHOULD BE AFFORDED AN OPPORTUNITY TO ADDRESS THE COURT.

THE PARTIES SHOULD ALSO BE ENTITLED TO COMPULSORY PROCESS FOR THE APPEARANCE OF ANY PERSONS, INCLUDING CHARACTER WITNESSES, AND PERSONS WHO HAVE PREPARED ANY REPORT TO BE UTILIZED AT THE HEARING.

THE COURT MAY RELY ON EVIDENCE, TO THE EXTENT OF ITS PROBATIVE VALUE, THAT IS RELEVANT AND MATERIAL TO THE OBJECTIVES OF THE HEARINGS AND WAS NOT OBTAINED IN VIOLATION OF THE ADJUDICATED PERSON'S CONSTITUTIONAL RIGHTS, EVEN THOUGH SUCH EVIDENCE WOULD NOT HAVE BEEN ADMISSIBLE AT AN ADJUDICATORY HEARING.

WHEN MORE THAN ONE JUVENILE IS ADJUDICATED FOR COMMITTING A PARTICULAR ACT OF DELINQUENCY, EACH SHOULD HAVE A DISPOSITIONAL HEARING SEPARATE AND APART FROM THOSE OF THE CORESPONDENTS UNLESS THEY ARE MEMBERS OF THE SAME FAMILY.

THE DISPOSITIONAL DECISION SHOULD BE MADE IN ACCORDANCE WITH THE CRITERIA AND PROCEDURES SET FORTH IN STANDARDS 3.182 THROUGH 3.184. THE FAMILY COURT JUDGE SHOULD EXPLAIN THE TERMS OF THE DISPOSITION TO THE RESPONDENT AND SHOULD STATE, ON THE RECORD, THE FACTS AND REASONS UNDERLYING THE DISPOSITIONAL DECISION.

Sources

Fred Cohen, Proposed Standards Relating to Dispositional Procedures, Standards 6.2-6.3 (IJA/ABA Draft, April 1975); Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standards 14.7 and 14.8 (July 1976); National Advisory Commission on Criminal Justice Standards and Goals, Corrections, Section 5.17(2)(b) (U.S. Government Printing Office, Washington, D.C., 1973).

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*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

Commentary

This standard sets out the procedures and rights that should apply to dispositional hearings. The commentary to the ABA, Standards Relating to Sentencing Alternatives and Procedures, Section 5.4 (Approved Draft, 1968) outlines a threefold purpose for such hearings:

> [T]o inform the court as an aid to the exercise of its sentencing discretion, to give the parties an opportunity to assure both that the court's information is accurate and that factors which they think relevant to the sentencing decision will come to its attention, and to allow for the imposition of sentence in an atmosphere which, while it may not affirmatively contribute to the rehabilitation of the offender, will at least not give him further cause to leave the sentencing stage with a sour attitude.

Accordingly, the standard recommends inter alia, that all parties have an opportunity to present evidence and be heard, that all parties have the assistance of counsel, and that the terms of and reason for the dispositional decision should be explained.

Specifically, the standard endorses bifurcation of adjudicatory and dispositional hearing. The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, 35 (U.S. Government Printing Office, Washington, D.C., 1967) suggests the following benefits of separate adjudicatory and sentencing hearings:

> It makes possible a controlled and relatively narrowly focused inquiry into the facts of the alleged conduct at adjudication and a more general and searching inquiry into factors bearing upon need for supervision at disposition, thus reducing the danger that the limitations of the adjudicatory hearing will unduly narrow the dispositional determination and that the demands of information appropriate to the dispositional hearing will unduly enlarge the scope of the adjudicatory hearing.

Both the IJA/ABA Joint Commission and the Standards and Goals Task Force on Juvenile Justice approve the concept of a bifurcated hearing, although the Task Force provision indicates that the disposition hearing may be held "immediately after the adjudication hearing." Task Force, supra, Standard 14.7; see also Monard G. Paulson and Charles H. Whitebread, Juvenile Law and Procedures, 167 (National Council of Juvenile Court Judges, 1974). Under Standard 3.161, dispositional hearings should be held within 15 days of adjudication. No minimum time is specified, although the parties should have prior notice and sufficient time to review the predisposition report and prepare for the hearing. See Standards 3.186 and 3.187.

The standard provides that at the hearing, all parties should be entitled to subpena, question, cross-examine witnesses, and present documentary evidence. It is anticipated that most of this evidence and testimony will be directed to defining the needs, desires, and opportunities available to adjudicated individuals and, in delinquency, noncriminal misbehavior, and neglect and abuse cases, to their families. Among the witnesses who may be called are individuals who prepared or provided information for predispositional and diagnostic reports. This is in accordance with the IJA/ABA and Task Force provisions

and is intended to permit examination of how the information contained in the report was obtained and the basis of the conclusions therein. See also Uniform Juvenile Court Act, Section 29(d) (National Conference of Commissioners on Uniform State Laws, 1968).

All relevant and material evidence, including hearsay, may be considered in making the dispositional decision, except for evidence gathered in violation of the respondent's constitutional rights. Although, as indicated by the provisions recommending that the parties should be entitled to call and cross-examine witnesses, direct testimony is preferred, all the evidentiary rules required to assure a fair hearing on the merits need not apply in dispositional proceedings so long as there are adequate indicia that the evidence is trustworthy. The exception endorses the position adopted by the 1973 National Advisory Commission on Criminal Justice Standards and Goals and is premised on the belief that "the integrity of the judiciary is compromised when it bases its decision on materials found in violation of the constitution." National Advisory Commission, supra, 192.

The recommendation that the judge explain the terms of the disposition and the facts and reasons on which the disposition is based follows the lead to the National Advisory Commission on Criminal Justice Standards and Goals, supra; the ABA, Standards Relating to Sentencing Procedures and Alternatives, supra; as well as the standards adopted by the IJA/ABA Joint Commission and the Standards and Goals Task Force on Juvenile Justice. It is anticipated that articulation of the reasons underlying the choice of disposition will not only avoid misunderstandings of the terms imposed, but also will help to improve dispositional decisionmaking through the development of written dispositional and correctional policy and by providing a basis for appellate review. To assist the respondent in understanding the disposition imposed, the judge should indicate the more severe and less severe alternatives, if any, that were rejected.

Related Standards

3.147
3.155
3.156
3.157
3.182
3.183
3.184
3.186
3.187
3.189
3.1810
3.1811
3.1812
3.1813
3.191

3.189
Review and Modification of Dispositional Decisions

AT ANY TIME DURING THE DISPOSITIONAL PERIOD, A JUVENILE, HIS OR HER PARENTS OR GUARDIAN, OR AN INDIVIDUAL OR AGENCY IN WHOSE CARE OR CUSTODY A JUVENILE HAS BEEN PLACED SHOULD BE ENTITLED TO APPLY TO THE FAMILY COURT TO REDUCE THE DURATION OF THE DISPOSITION OR THE DEGREE OF RESTRAINT IMPOSED, ON THE GROUNDS THAT IT:

a. EXCEEDS THE STATUTORY MAXIMUM;

b. WAS IMPOSED IN AN ILLEGAL MANNER;

c. IS INEQUITABLE IN LIGHT OF THE PRESCRIBED DISPOSITIONAL CRITERIA OR THE DISPOSITIONS IMPOSED BY JUDGES IN THE SAME OR OTHER FAMILY COURTS FOR SIMILAR CONDUCT; OR

d. THAT BECAUSE OF CHANGED CIRCUMSTANCES AT THE TIME OF THE APPLICATION, A REDUCTION IN DURATION OR DEGREE OF RESTRAINT WOULD PREVENT AN UNDULY HARSH OR INEQUITABLE RESULT.

IN ADDITION, THE COURT SHOULD HAVE THE AUTHORITY TO REDUCE THE DURATION OF A DISPOSITION OR DEGREE OF RESTRAINT ON ITS OWN INITIATIVE FOR ANY OF THE ABOVE-LISTED REASONS, TO REDUCE THE DEGREE OF RESTRAINT WHEN IT APPEARS THAT ACCESS TO REQUIRED SERVICES IS NOT BEING PROVIDED, AND TO TERMINATE THE DISPOSITION WHEN THE REQUIRED SERVICES CANNOT BE PROVIDED UNDER LESS RESTRICTIVE CONDITIONS.

Sources

Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 14.21 (July 1976); see also, Linda Singer, Proposed Standards Relating to Dispositions of Juveniles Adjudicated Delinquent, Standards 4.1(d)(i) and 5.1(a) and (b) (IJA/ABA, Draft, September 1975).

Commentary

The standard suggests a mechanism through which delinquency, noncriminal misbehavior, and neglect and abuse dispositions that are illegally or improperly imposed or unduly harsh in light of the dispositional criteria set forth in Standards 3.182, 3.183, and 3.184, the dispositional decisions of other judges in similar cases, the lack of required services, or changed circumstances, may be corrected or modified. The standard is intended to cover only reductions in the length of the disposition or the degree of restraint imposed so as not to deter respondents and their families from exercising their rights. Standards 3.1810, 3.1811, and 3.1813 provide for increasing the length or restrictiveness of dispositions following a willful

violation of the terms of a dispositional order. Appellate review of dispositional decisions is discussed in Standard 3.191.

Although a number of groups have recommended disposition or sentence review procedures, the scope and purpose of such reviews vary widely. The most restrictive of these procedures permit review of the legality of the imposition procedure only. See e.g., Uniform Rules of Criminal Procedure, Sections 631, 632 (National Conference Commissioners on Uniform State Law, 1974). Others place more emphasis on review of the action of the supervising agency or the continued appropriateness of the dispositional plan. See e.g., Model Act for Family Courts, Section 37(a)(3) and 38(a)(1); Lindsey Arthur and William Gauger, Disposition Hearings: Heartbeat of the Juvenile Court, 69 (National Council of Juvenile Court Judges, 1974). The ABA, Standards Relating to Sentencing Alternatives and Procedures, Section 6.1 (Approved Draft, 1968) recommend that courts have the power to reduce and modify sentences "if new factors bearing on the sentence are made known," and the National Advisory Commission on Criminal Justice Standards and Goals, Corrections, Section 5.11 (U.S. Government Printing Office, Washington, D.C., 1973) recommends appellate review of sentences to assure that the sentence is consistent with statutory criteria and with sentences imposed in similar cases and to determine whether the sentence is otherwise excessive or imposed in the prescribed manner. See also Wisconsin Council on Criminal Justice Special Study Commission on Criminal Justice Standards and Goals, Juvenile Justice Standards and Goals, Section 14.1(k) (2d Draft, November 1975) (automatic review of delinquency dispositions every 6 months and on request of the juvenile).

Standard 3.189, following the recommendations of the IJA/ABA Joint Commission and the Standards and Goals Task Force on Juvenile Justice, incorporates many of the features of these other proposals. However, unlike other provisions, the standard is intended to apply to noncriminal misbehavior and neglect and abuse proceedings as well as delinquency cases. The authority to modify dispositions is placed in the family court rather than in correctional or treatment agencies in order to increase the visibility and accountability of dispositional decisionmaking. The standards to be prepared by March 31, 1977 on the Supervisory Function will include a provision for the awarding of a limited amount of "good time" by correctional agencies to reward compliance with dispositional orders and program or facility regulations. Task Force, supra, Standard 14.21(c); Singer, supra, Standard 5.1(c).

Reviews may be initiated by the juvenile, the juvenile's parent or guardian, the person or agency serving as the primary caretaker or supervisor of the juvenile, and by the court itself. The suggested grounds for review are designed to encourage utilization of the dispositional criteria and to assure that the respondent and/or family have been offered the types of programs and services identified in the dispositional order. The standard specifies that if the ordered programs or services cannot be made available at the specified level of restraint or at a lesser level of restraint, the court may terminate the disposition. This provision is intended to stimulate the provision of a wide range of vocational, educational, medical, psychiatric, and other services in the community, as well as institutions, so as to reduce the incentive to remove juveniles

from their homes or to place them in more secure facilities than necessary because there are no other means for providing the services they need or desire. See Task Force, supra; Singer, supra.

Related Standards

3.155
3.156
3.157
3.182
3.183
3.184
3.188
3.1810
3.1811
3.1812
3.1813

3.1810
Enforcement of Dispositional Orders—Delinquency

THE AGENCY RESPONSIBLE FOR THE SUPERVISION, CARE, AND CUSTODY OF A JUVENILE WHO HAS BEEN ADJUDICATED DELINQUENT SHOULD BE AUTHORIZED TO APPLY TO THE FAMILY COURT IF IT APPEARS THAT A JUVENILE HAS WILLFULLY FAILED TO COMPLY WITH ANY PART OF THE DISPOSITIONAL ORDER. A COPY OF THE APPLICATION SHOULD BE PROVIDED TO THE JUVENILE, THE JUVENILE'S ATTORNEY AND PARENT, GUARDIAN, OR PRIMARY CARETAKER, AND THE FAMILY COURT SECTION OF THE PROSECUTOR'S OFFICE.

NO MORE THAN 5 DAYS AFTER THE APPLICATION HAS BEEN FILED, UNLESS AN EXTENSION HAS BEEN GRANTED UNDER STANDARD 3.162, A HEARING SHOULD BE HELD TO DETERMINE WHETHER THE TERMS OF THE DISPOSITIONAL ORDER HAVE BEEN VIOLATED AND, IF SO, WHETHER THERE ARE ANY CIRCUMSTANCES JUSTIFYING THE VIOLATION. AT THE BEGINNING OF THE HEARING, THE JUVENILE SHOULD BE ASKED TO ADMIT OR DENY THE ALLEGATIONS. THE PROCEDURES SET FORTH IN STANDARD 3.176 SHOULD BE UTILIZED IN ACCEPTING ANY ADMISSION. IF THE ALLEGATIONS ARE DENIED, THE STATE SHOULD BE REQUIRED TO PROVE WILLFUL NONCOMPLIANCE WITH THE TERMS OF THE DISPOSITIONAL ORDER BY A PREPONDERANCE OF THE EVIDENCE. EACH PARTY SHOULD BE AFFORDED AN OPPORTUNITY TO PRESENT EVIDENCE AND CROSS-EXAMINE WITNESSES AND SHOULD BE ENTITLED TO COMPULSORY PROCESS.

IF IT IS DETERMINED THAT THE JUVENILE HAS NOT COMPLIED WITH THE DISPOSITIONAL ORDER AND THAT THE VIOLATION IS NOT JUSTIFIED, THE COURT SHOULD BE AUTHORIZED:

a. TO WARN THE JUVENILE OF THE CONSEQUENCES OF CONTINUED NONCOMPLIANCE AND ORDER THE JUVENILE TO MAKE UP ANY TIME MISSED FROM THE EDUCATIONAL, VOCATIONAL, TREATMENT, COMMUNITY SERVICE, OR OTHER PROGRAM IN WHICH HE OR SHE IS SUPPOSED TO PARTICIPATE OR MAKE ANY MISSED PAYMENTS IF A FINE OR RESTITUTION HAS BEEN IMPOSED;

b. MODIFY EXISTING CONDITIONS OR IMPOSE ADDITIONAL CONDITIONS CALCULATED TO INDUCE COMPLIANCE IF IT APPEARS THAT A WARNING WILL BE INSUFFICIENT; OR

c. IMPOSE THE NEXT MOST SEVERE TYPE OF SANCTION IF IT APPEARS THAT THERE ARE NO PERMISSIBLE CONDITIONS REASONABLY CALCULATED TO INDUCE COMPLIANCE.

THE COURT SHOULD BE AUTHORIZED TO ADD TIME MISSED FROM ANY PROGRAM SPECIFIED IN THE DISPOSITIONAL ORDER TO THE LENGTH OF THE DISPOSITION, SO LONG AS THE TOTAL DISPOSITIONAL PERIOD DOES NOT EXCEED THE STATUTORY MAXIMUM.

THE TERMS OF THE MODIFIED DISPOSITIONAL ORDER SHOULD BE EXPLAINED IN THE MANNER SET FORTH IN STANDARD 3.188. A VERBATIM RECORD SHOULD BE MADE OF ALL ENFORCEMENT PROCEEDINGS, AND THE RIGHTS TO COUNSEL AFFORDED FOR DISPOSITIONAL PROCEEDINGS IN STANDARDS 3.132 and 3.133 SHOULD APPLY.

WHEN THE CONDUCT ALLEGED TO CONSTITUTE A WILLFUL FAILURE TO COMPLY WITH THE DISPOSITIONAL ORDER ALSO CONSTITUTES A DELINQUENT OFFENSE, A COMPLAINT RATHER THAN AN ENFORCEMENT APPLICATION SHOULD BE FILED AND THE MATTER REFERRED TO INTAKE.

Sources

Linda Singer, Proposed Standards Relating to Dispositions, Standard 5.1(d) (IJA/ABA, Draft, September 1975); Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 14.22 (July 1976); see also National Advisory Commission on Criminal Justice Standards and Goals, Corrections, Section 5.4 (U.S. Government Printing Office, Washington, D.C., 1973).

Commentary

The standard follows closely the positions adopted by the IJA/ABA Joint Commission and the Standards and Goals Task Force on Juvenile Justice. It recommends the procedures to be followed when there are substantial violations of the terms of a dispositional order imposed after an adjudication for delinquency. It is anticipated that less significant violations will be dealt with through nonjudicial disciplinary proceedings. Such proceedings are discussed in Standard 3.2 and will be addressed in more detail in the standards in the Supervisory Function Chapter. In conformity with the IJA/ABA and Task Force provisions, it is intended that when participation in any type of remedial, educational, vocational, treatment, service, or other program is prescribed, compliance should be defined in terms of attendance and participation and not in terms of performance.

Neither the source Task Force nor the IJA/ABA provisions discuss the hearing procedures or the rights to be accorded the juvenile. But see National Advisory Commission, supra. In adult probation revocation hearings, the Supreme Court has held that although revocation proceedings are not the equivalent of a criminal trial, probationers are entitled to notice, to disclosure of the evidence against them, to present evidence and witnesses on their own behalf, to cross-examine witnesses called by the State, to a "neutral and detached" hearing body, to a statement of the findings, and to counsel when necessary to effectuate the other rights. Gagnon vs. Scarpelli, 411 U.S. 790 (1973). Accordingly, the standard requires that a copy of the enforcement application be delivered to the juvenile, his/her attorney, and parent, guardian, or primary caretaker as well as to the attorney for the State. The provision of counsel to juveniles and their parents and the inclusion of the prosecutor in such proceedings, although not required under Gagnon, supra, follows the reasoning that underlies Standards 3.131-3.134. The standard also provides for the presentation and cross-examination of witnesses by all parties, an explanation of the terms of and reasons for modifications in the dispositional order, and a transcript of the proceedings. Consistent with Standards 3.171 and 3.188, the standard also provides for compulsory process. Because of the less formal nature of the proceeding, the level of proof is set at a preponderance of the evidence rather than beyond

a reasonable doubt. But see National Advisory Commission, supra, (substantial evidence); Model Act for Family Courts, Section 39 (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975) (clear and convincing proof). This provision, like Standard 3.174, does not specify the rules of evidence to be applied. Under Gagnon, revocation decisions may be based, in part, on hearsay.

Upon determining that a violation has occurred and that there is no good excuse for noncompliance, the standard recommends three enforcement alternatives. As with the original dispositional decision, the choice of sanction is structured so as to emphasize that the least restrictive alternative that is likely to induce compliance should be utilized.

The first alternative is simply to warn the juvenile of the consequences of further noncompliance and order him or her to make up any time or payments missed. Such a procedure has been recommended by the ABA, Standards Relating to Probation, Section 5.1 (Approved Draft, 1970) as well as the IJA/ABA Joint Commission, Singer, supra; the Standards and Goals Task Force, supra; and the National Advisory Commission, supra.

If the family court judge concludes that a warning would be unlikely to induce compliance, the next option is to modify or add to the conditions already imposed. Such modifications should be designed to encourage compliance. Hence, it would ordinarily be inappropriate to order a juvenile to attend a vocational training program, for example, because of failure to report to his/her counselor each week.

Finally, if neither a warning nor modification of conditions appear sufficient to gain compliance, the judge may impose the next most restrictive form of sanctions. The standard would permit but not require the amount of time missed from the dispositional program, time to be added to the disposition, but unlike the source provisions, it makes explicit that the statutory maxima should still apply. See Standard 3.181.

Finally, to provide the juvenile with all the procedural protections that are applicable when there are allegations of delinquent conduct, including the requirement of proof beyond a reasonable doubt, see Standards 3.171 and 3.173, and to make the imposition of limits on the length of dispositions more practicable, the standard recommends that when the alleged violations of the dispositional order constitute a delinquent offense, the matter should be handled as a new delinquency proceeding rather than as an enforcement action. Singer, supra; Task Force, supra.

Related Standards

3.111
3.158
3.171
3.176
3.177
3.181
3.182
3.188
3.2

3.1811
Enforcement of Dispositional Orders—Noncriminal Misbehavior

ANY OF THE PARTIES TO THE DISPOSITIONAL HEARING FOLLOWING ADJUDICATION OF A NONCRIMINAL MISBEHAVIOR* PETITION SHOULD BE AUTHORIZED TO APPLY TO THE FAMILY COURT IF IT APPEARS THAT THERE HAS BEEN A WILLFUL VIOLATION OF ANY PART OF THE DISPOSITIONAL ORDER. A COPY OF THE APPLICATION SHOULD BE SERVED ON EACH OF THE OTHER PARTIES AND SENT TO THEIR ATTORNEYS.

NO MORE THAN 5 DAYS AFTER THE APPLICATION HAS BEEN FILED, UNLESS AN EXTENSION HAS BEEN GRANTED UNDER STANDARD 3.162, A HEARING SHOULD BE HELD TO DETERMINE WHETHER THE TERMS OF THE DISPOSITIONAL ORDER HAVE BEEN VIOLATED AND, IF SO, WHETHER THERE ARE ANY CIRCUMSTANCES JUSTIFYING THE VIOLATION. THE COURT SHOULD FOLLOW THE PROCEDURES AND THE PARTIES SHOULD BE AFFORDED THE RIGHTS SET FORTH IN STANDARD 3.1810 FOR ENFORCEMENT HEARINGS IN DELINQUENCY CASES.

IF IT IS DETERMINED THAT A VIOLATION HAS OCCURRED AND THAT THE VIOLATION IS NOT JUSTIFIED, THE COURT SHOULD BE AUTHORIZED:

a. TO WARN OF THE CONSEQUENCES OF CONTINUED NONCOMPLIANCE AND ORDER THAT TIME MISSED FROM ANY PROGRAM SPECIFIED IN THE DISPOSITIONAL ORDER BE MADE UP; OR

b. MODIFY EXISTING CONDITIONS OR IMPOSE ADDITIONAL CONDITIONS CALCULATED TO INDUCE COMPLIANCE, IF IT APPEARS THAT A WARNING WILL BE INSUFFICIENT.

THE COURT SHOULD BE AUTHORIZED TO ADD TIME MISSED FROM ANY PROGRAM SPECIFIED IN THE DISPOSITIONAL ORDER TO THE LENGTH OF THE DISPOSITION, SO LONG AS THE TOTAL DISPOSITIONAL PERIOD DOES NOT EXCEED THE TIME LIMITS SET FORTH IN STANDARD 3.183.

A VERBATIM RECORD SHOULD BE MADE OF ALL ENFORCEMENT PROCEEDINGS.

WHEN THE CONDUCT ALLEGED TO CONSTITUTE A WILLFUL FAILURE TO COMPLY WITH THE DISPOSITIONAL ORDER ALSO MEETS THE DEFINITION OF NONCRIMINAL MISBEHAVIOR SET FORTH IN STANDARD 3.112, A COMPLAINT RATHER THAN AN ENFORCEMENT APPLICATION SHOULD BE FILED AND THE MATTER REFERRED TO INTAKE.

Sources

None of the standards or reports reviewed address the criteria and alternatives that should apply to

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*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendation of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

enforcement of dispositional orders in noncriminal misbehavior proceedings. The procedures are based on those recommended for delinquency proceedings by: Linda Singer, Proposed Standards Relating to Dispositions, Standard 5.1(d) (IJA/ABA, Draft, September 1975); Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 14.22 (July 1976); see also National Advisory Commission on Criminal Justice Standards and Goals, Corrections, Section 5.4 (1973).

Commentary

With two exceptions, this standard parallels the provisions for enforcement of dispositional orders in delinquency cases. Like Standard 3.1810, it provides for notice of the alleged violation; a prompt hearing at which the violation must be proven by at least a preponderance of the evidence; the rights of the juvenile and the juvenile's parents, guardian, or primary caretaker to counsel, to compulsory process, and to present and cross-examine witnesses; for imposition of the least restrictive alternative likely to induce compliance; and for an explanation of the terms of and reasons underlying any modifications of the dispositional order. See Standards 3.132, 3.133, 3.171, and 3.188. It also recommends that modification of the dispositional order should be designed to induce compliance with those portions of the order that were violated, and that new instances of noncriminal misbehavior be handled through a complaint rather than through an enforcement proceeding. Filing a new complaint would allow continuation of dispositions beyond the limits proposed in Standard 3.184, but only after an adjudication proceeding at which the rights of the juvenile should be fully protected.

However, in keeping with the tripartite nature of dispositional proceedings in noncriminal misbehavior cases, see Standard 3.183, any of the parties, not just the State, may bring an enforcement action to gain compliance with the dispositional order by either of the other parties. Hence, if a juvenile fails to attend any program specified in the order, either the juvenile's parents or the State may apply to the court; if the parents fail to attend the counseling sessions required by the court, either the juvenile or the State may seek to enforce the order; and, if the public agency charged with providing a service to the juvenile or family fails to do so, either of the private parties may seek relief. It is anticipated that in an instance in which the State fails to comply, the modification procedure outlined in Standard 3.189 will be preferred. The family court's contempt powers are intended to be the primary means for enforcing orders directed at public agencies when the warning procedure set forth in subparagraph (a) appears unlikely to gain compliance.

The second distinction between this standard and Standard 3.1810 is the recommendation that imposition of the next most severe type of sanction not be available as a means of enforcing a dispositional order. Cf. Standard 3.1813. This follows from the recommendation in Standard 3.183 that in noncriminal misbehavior cases, dispositional orders and their enforcement should never result in the confinement of a juvenile in a secure detention or correctional facility or institution.

A more detailed explanation of the procedures and criteria applicable in enforcement proceedings is contained in the Commentary to Standard 3.1810.

Related Standards

3.112
3.158
3.171
3.183
3.186
3.189
3.1810
3.1813

3.1812 Review of Dispositional Orders—Neglect and Abuse

IN ADDITION TO THE RIGHT TO REVIEW PROVIDED BY STANDARD 3.189, A HEARING TO REVIEW THE DISPOSITIONAL DECISION IN NEGLECT AND ABUSE CASES SHOULD BE HELD AT LEAST EVERY 6 MONTHS TO DETERMINE WHETHER CONTINUED EXERCISE OF THE FAMILY COURT'S DISPOSITIONAL AUTHORITY IS NECESSARY.

PRIOR TO THE HEARING, THE AGENCY RESPONSIBLE FOR THE PROTECTION, CARE, OR CUSTODY OF THE JUVENILE SHOULD SUBMIT TO THE COURT A REPORT ON THE SERVICES OFFERED TO THE FAMILY; THE RESPONSE TO THOSE SERVICES; THE PROGNOSIS FOR CESSATION OF INTERVENTION; AND A RECOMMENDATION REGARDING THE APPROPRIATE DISPOSITION. A COPY OF THE REPORT SHOULD BE PROVIDED TO THE ATTORNEY FOR THE JUVENILE, THE ATTORNEY FOR THE JUVENILE'S PARENTS, GUARDIAN, OR PRIMARY CARETAKER, AND TO THE FAMILY COURT SECTION OF THE PROSECUTOR'S OFFICE.

AT THE HEARING, EACH OF THE PARTIES SHOULD BE AFFORDED THE OPPORTUNITY TO PRESENT EVIDENCE AND TO CALL AND CROSS-EXAMINE WITNESSES AND SHOULD BE ENTITLED TO COMPULSORY PROCESS. A VERBATIM RECORD SHOULD BE MADE OF ALL REVIEW PROCEEDINGS.

A JUVENILE IN AN OUT-OF-HOME PLACEMENT SHOULD BE RETURNED HOME IF THE PREPONDERANCE OF THE EVIDENCE INDICATES THAT RETURN WILL NOT SUBJECT THE JUVENILE TO ANY OF THE DANGERS LISTED IN STANDARD 3.113. SUPERVISION AND ANY NECESSARY SERVICES SHOULD CONTINUE FOR AT LEAST 6 MONTHS FOLLOWING RETURN OF A JUVENILE TO HIS OR HER HOME.

AT THE CONCLUSION OF THE HEARING, THE FAMILY COURT JUDGE SHOULD EXPLAIN, ON THE RECORD, ANY CHANGES DETERMINED NECESSARY AND THE FACTS AND REASONS UNDERLYING THE DECISION.

Sources

See generally, Robert Burt and Michael Wald, Proposed Standards Relating to Neglect and Abuse, Standards 7.4(a) and 7.5(b) (IJA/ABA, Draft, January 1976); Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standards 14.30-14.31 (July 1976).

Commentary

This standard provides for automatic review of dispositions in neglect and review cases. As noted in the commentary to the provision adopted by the Standards and Goals Task Force on Juvenile Justice, supra:

> Under present practice, the purpose of providing services to the family or removing the child from the home on a "temporary" basis is to facilitate the safe reunion of parents and child. But more often than not this objective is thwarted. In establishing and executing

plans to return the child, agency performance is woefully inadequate in many cases. In addition, some parents either effectively abandon the child or fail to make reasonable efforts to reunite the family. As a result children are often "lost" in the foster care system--remaining "in limbo" without a stable placement for periods of many years.

The judicial oversight provided by this standard, and the procedures recommended in Standards 3.189--modification of dispositional decisions at the request of a party--and 3.183--enforcement of dispositional orders--are intended to assure that neglected or abused juveniles receive the protection they need; that families of such juveniles receive the services they need; that such services continue for as long as necessary, but no longer; and that every effort is made to reunite families when a child has been removed from his/her home. The 6-month time limit is intended to be a maximum. It does not represent the recommended minimum duration for dispositional orders in neglect and abuse cases.

The standard provides for a report by the agency responsible for carrying out the dispositional orders indicating what has been done to protect the child; to alleviate any harm suffered; and to assist the family to overcome the problems that led to the neglect or abuse. See Standard 3.184. Like the standards on detention, preadjudication procedures, and predisposition reports, Standard 3.1812 recommends that the agency report be disclosed to counsel for the parties to assure its accuracy and to allow them to prepare for the hearing. See Standards 3.155-3.157, 3.167, and 3.187. Disclosure of the report should be sufficiently before the hearing to allow such preparation to occur. As in other hearings provided for throughout these standards, all parties should have the means and opportunity to present evidence and witnesses, and to cross-examine the witnesses called by other parties. See e.g., Standards 3.171, 3.188, 3.1810, 3.1811, and 3.1813. Under Standards 3.132 and 3.133, both the juvenile and the juvenile's parents should be entitled to counsel.

The standard uses the same test for returning a juvenile to his or her home as is recommended for removal--i.e., whether the child can be protected from further neglect or abuse by some measure short of removal. The lower level of proof required for return provides an incentive for supplying help to the juvenile's parents, guardian, or primary caretaker to permit the child's safe return. The 6 months of continued services and supervision following return is to provide assistance and protection during the difficult transition period. See Burt and Wald, supra.

The explanation called for in the final paragraph is part of the effort in these standards to make discretionary decisions more accountable and consistent. See e.g., Standards 3.147, 3.155-3.157, and 3.188. It is intended to help the parties understand their responsibilities as well as to provide a basis for review.

Related Standards

3.113
3.184
3.189
3.1813
3.191

3.1813 Enforcement of Dispositional Orders—Neglect and Abuse

ANY OF THE PARTIES TO THE DISPOSITIONAL HEARING FOLLOWING ADJUDICATION OF A NEGLECT AND ABUSE PETITION SHOULD BE AUTHORIZED TO APPLY TO THE FAMILY COURT IF IT APPEARS THAT THERE HAS BEEN A WILLFUL FAILURE TO COMPLY WITH ANY PART OF THE DISPOSITIONAL ORDER. A COPY OF THE APPLICATION SHOULD BE SERVED ON EACH OF THE OTHER PARTIES AND SENT TO THEIR ATTORNEYS.

NO MORE THAN 5 DAYS AFTER THE APPLICATION HAS BEEN FILED, UNLESS AN EXTENSION HAS BEEN GRANTED UNDER STANDARD 3.162, A HEARING SHOULD BE HELD TO DETERMINE WHETHER THE TERMS OF THE DISPOSITIONAL ORDER HAVE BEEN VIOLATED AND, IF SO, WHETHER THERE ARE ANY CIRCUMSTANCES JUSTIFYING THE VIOLATION. THE COURT SHOULD FOLLOW THE PROCEDURES AND THE PARTIES SHOULD BE AFFORDED THE RIGHTS SET FORTH IN STANDARD 3.1810 FOR ENFORCEMENT HEARINGS IN DELINQUENCY CASES.

IF IT IS DETERMINED THAT THE DISPOSITIONAL ORDER WAS VIOLATED AND THE VIOLATION WAS NOT JUSTIFIED, THE COURT SHOULD BE AUTHORIZED:

a. TO WARN OF THE CONSEQUENCES OF CONTINUED NONCOMPLIANCE AND ORDER THAT TIME MISSED FROM ANY PROGRAM SPECIFIED IN DISPOSITIONAL ORDERS BE MADE UP; AND

b. TO MODIFY EXISTING CONDITIONS OR IMPOSE MEASURES CALCULATED TO INDUCE COMPLIANCE, IF IT APPEARS THAT A WARNING WILL BE SUFFICIENT.

A VERBATIM RECORD SHOULD BE MADE OF ALL ENFORCEMENT PROCEEDINGS.

Sources

None of the standards or reports reviewed address the criteria and alternatives that should apply to enforcement of dispositional orders in neglect and abuse proceedings. The procedures are based on those recommended for delinquency proceedings by: Linda Singer, Proposed Standards Relating to Dispositions, Standard 5.1(d) (IJA/ABA, September 1975); Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standard 14.22 (July 1976); see also National Advisory Commission on Criminal Justice Standards and Goals, Corrections, Section 5.4 (1973).

Commentary

This standard sets forth the procedures and alternatives available for enforcement of dispositional orders in neglect and abuse cases. As in the provision on enforcement in noncriminal misbehavior matters, the juvenile, the parent, or the State may initiate the enforcement action, and the family court's contempt powers are intended to serve as a prime means for securing compliance when a public agency fails

to provide services ordered by the family court. See Standard 3.1811 and the commentary thereto; see also Standards 3.189 and 3.1812. Like Standard 3.1810, it provides for notice of the alleged violation; for a hearing at which the violation must be proven by a preponderance of the evidence; for the rights of the juvenile and the juvenile's parents, guardian, or primary caretaker to counsel, to compulsory process, to present evidence and cross-examine witnesses; for imposition of the least intrusive alternative likely to induce complaince; and for an explanation of the terms of and reasons for any modification of the dispositional order. See Standards 3.132, 3.133, 3.171, and 3.188. It also recommends that modifications should be designed to induce compliance with the dispositional order and reduce the potential for harm to the child.

The term "measures to induce compliance" is intended to include removal of a child from his/her home for foster care placement when the criteria for removal set forth in Standard 3.184 are met. See Standard 3.1810; but see Standard 3.1811.

The standard does not recommend that a new complaint be filed when the conduct constituting the alleged violation also constitutes a new instance of abuse of neglect. Such a provision is unnecessary because of the lack of time limits on dispositional orders in neglect and abuse cases and the higher level of proof required for removal under Standard 3.184(b). But cf. Standards 3.1810 and 3.1811.

Related Standards

3.113
3.132
3.133
3.158
3.161

3.172
3.173
3.184
3.188
3.189
3.1810
3.1811
3.1812

3.19
Appellate Procedures

3.191
Right to Appeal

THE RESPONDENT IN A DELINQUENCY, NONCRIMINAL MISBEHAVIOR,* OR NEGLECT AND ABUSE PROCEEDING SHOULD BE ENTITLED TO APPEAL TO THE APPROPRIATE APPELLATE COURT TO REVIEW THE FAMILY COURT'S ADJUDICATION OR DISPOSITIONAL ORDER. RESPONDENTS SHOULD ALSO BE ENTITLED TO APPEAL INTERLOCUTORY ORDERS THAT IMPOSE SIGNIFICANT RESTRAINTS ON THEIR LIBERTY. APPEALS OF OTHER INTERLOCUTORY ORDERS SHOULD BE PERMITTED BY LEAVE OF THE APPROPRIATE APPELLATE COURT.

THE STATE SHOULD BE ENTITLED TO APPEAL THE ADJUDICATION OR DISPOSITIONAL ORDER IN NEGLECT AND ABUSE PROCEEDINGS AND THE FOLLOWING TYPES OF ORDERS IN DELINQUENCY AND NONCRIMINAL MISBEHAVIOR CASES:

a. ORDERS THAT DECLARE A STATUTE UNCONSTITUTIONAL;

b. ORDERS THAT DISMISS A CASE ON SUCH GROUNDS AS DOUBLE JEOPARDY, FAILURE TO COMPLY WITH THE TIME LIMITS SPECIFIED IN STANDARD 3.161, OR FAILURE OF THE PETITION TO

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*The National Advisory Committee on Juvenile Justice and Delinquency Prevention does not concur with the recommendations of the Advisory Committee on Standards regarding jurisdiction over noncriminal misbehavior. See Commentary to Standard 3.112.

STATE A CAUSE OF ACTION UNDER THE APPLICABLE STATUTE;

c. ORDERS THAT BY SUPPRESSING STATE EVIDENCE ARE LIKELY TO RESULT IN DISMISSAL OF THE CASE; OR

d. ORDERS THAT DENY TRANSFER OF THE CASE TO A COURT OF GENERAL JURISDICTION.

OTHER PARTIES SHOULD BE ENTITLED TO APPEAL DISPOSITIONAL ORDERS THAT MATERIALLY AFFECT THEIR LIBERTY OR INTERESTS.

Source

See generally, Michael Moran, Proposed Standards Relating to Appeals, Standards 1.2(a), 2.2, and 2.3 (IJA/ABA, Draft, September 1975).

Commentary

This standard outlines the right to appeal afforded in delinquency, noncriminal misbehavior, and neglect and abuse proceedings. In general, it recognizes the principle adopted in the IJA/ABA provisions on appeal, supra, Standard 1.2(a) that:

> In order to recognize the goals of the entire juvenile justice system, it is essential that there be one appeal of right afforded to all parties materially affected by a juvenile court order, to review the facts found, the law applied, and the disposition ordered.

It is contemplated that appeals from family court proceedings will be of the same nature and directed to the same court as appeals from other divisions of the highest court of general jurisdiction and that they will be based on the evidence adduced in the family court rather than constituting trials de novo.

Although the right to appeal in criminal or juvenile proceedings has never been formally held to be guaranteed by the Constitution, it has been statutorily afforded to adult criminal defendants in every State and to juveniles adjudicated delinquent in an overwhelming majority of jurisdictions. However, as the President's Commission on Law Enforcement and Administration of Justice observed, "by and large the juvenile court system has operated without appellate surveillance," and "the quality of justice in the juvenile court system has thereby been adversely affected in several ways." Task Force Report: Juvenile Delinquency and Youth Crime, 40 (U.S. Government Printing Office, Washington, D.C., 1967).

The standard recommends that respondents have the right to appeal both the adjudication and the dispositional order.

> Review in either case aims toward the development of a greater uniformity of practices within the jurisdiction; development of a consistent rationale behind dispositional or adjudicatory decisions; and rectification of error made in individual situations. (Moran, supra, Commentary to Standard 1.2.)

It is anticipated, however, that the modification procedures set forth in Standard 3.189 will be the usual review mechanism for dispositional orders. The Commentary to that standard contains a discussion of the criteria for review of such orders.

The standard follows the IJA/ABA recommendations by providing for interlocutory appeals--i.e., appeals of preadjudication orders--by respondents. It recommends that

respondents should be entitled to appeal detention orders or other orders significantly restricting their liberty--e.g., commitment to a mental health facility or transfer of the case to another division of the highest court of general jurisdiction--but that review of other orders--e.g., denial of a suppression motion--prior to disposition should be left to the discretion of the appropriate appellate court. The IJA/ABA provisions do not define this authority other than to permit the appellate court to decline review. The ABA Standards Relating to Criminal Appeals, Section 1.3 (Approved Draft, 1970) permits such appeals but indicates that they should only be used in exceptional circumstances.

The standard also recommends that the State should be entitled to appeal from final orders in neglect and abuse cases but limits the State's appeal rights in delinquency and noncriminal misbehavior cases. This reflects the traditional division between civil and criminal proceedings. The commentary to the ABA Standards Relating to Criminal Appeals, supra, 34-35 notes that "[t]he subject of prosecution appeals has occupied more space in articles and lectures than any other topic dealing with criminal appeals . . . , [and that] there are considerable differences among the states and the federal government as to the appropriate scope of prosecution appeals." The four grounds recommended by the standard follow those proposed by the IJA/ABA Joint Commission. Moran, supra; see also ABA, Standards Relating to Criminal Appeals, supra.

Subparagraph (a) provides an opportunity for the State to challenge a ruling by the family court that a State statute violates the Federal or State constitution. This is to assure that questions of constitutional dimension receive full review and that there will be a definitive ruling on which the public and State and local officials can base future conduct. Subparagraphs (b) and (c) provide for State appeals of pretrial rulings that preclude or significantly impede prosecution of the case. Opportunity for such appeals has been recommended by the ABA, Standards Relating to Criminal Appeals, supra, and the President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society, 140 (U.S. Government Printing Office, Washington, D.C., 1967), as well as by the IJA/ABA Joint Commission. Moran, supra. See also 18 U.S.C. Section 3734 (Supp. 1975). The final subparagraph recommends that the State be able to appeal orders denying transfer of a delinquency case to another division of the highest court of general jurisdiction for trial as a criminal proceeding. See Standard 3.116 and 3.121. It is anticipated that such appeals will take place soon after entry of the order and not after disposition in order to avoid the inherent difficulty of trying to reconstruct a transfer hearing after adjudication or trial. See Charles Whitebread, Proposed Standards Relating to Waiver of Juvenile Court Jurisdiction, Standard 2.4 (IJA/ABA, Draft, February 1975).

Finally, the standard recommends that the right to appeal dispositional orders should be extended to other parties materially affected by those orders--e.g., parents or service agencies in noncriminal misbehavior cases. Consistent with the IJA/ABA provision and Standard 3.133, parents should not be authorized to appeal a delinquency adjudication on their child's behalf.

In order to avoid unnecessary delay and uncertainty, strict time

limits on appeals are recommended in Standard 3.161. To assure the fairness and adequacy of appellate proceedings, Standard 3.192 provides for counsel on appeal and the availability of a transcript or other record of the family court proceedings. Furthermore, it is anticipated that in most cases, the order of the family court will be stayed pending appeal. The family court should be authorized to stay its order upon application by the respondent. The decision whether or not to stay a dispositional order should always take into account the safety and needs of the juvenile. Criteria to guide such decisions should be developed to promote consistency. See Moran, supra, Standards 5.1-5.3.

Related Standards

3.158
3.161
3.171
3.189
3.192

3.192
Right to Counsel and a Record of the Proceedings

PARTIES ENTITLED TO APPEAL UNDER STANDARD 3.191 SHOULD BE ENTITLED TO BE REPRESENTED BY COUNSEL AND TO A COPY OF THE VERBATIM TRANSCRIPT OF THE FAMILY COURT PROCEEDINGS AND ANY MATTER APPEARING IN THE COURT FILE. COUNSEL SHOULD BE APPOINTED IF THE PARTY MEETS THE CRITERIA SET FORTH IN STANDARD 3.132 OR STANDARD 3.133. THE TRANSCRIPT AND OTHER MATERIALS SHOULD BE PROVIDED AT PUBLIC EXPENSE IF A PARTY IS UNABLE TO OBTAIN IT FOR FINANCIAL REASONS.

AFTER ANNOUNCING AND EXPLAINING THE DISPOSITIONAL DECISION, THE FAMILY COURT JUDGE SHOULD INFORM THE PARTIES OF THEIR RIGHT TO APPEAL, THE TIME LIMITS AND MANNER IN WHICH AN APPEAL MUST BE TAKEN, AND THEIR RIGHTS TO COUNSEL ON APPEAL AND TO THE RECORD OF THE PROCEEDINGS.

Sources

Michael Moran, Proposed Standards Relating to Appeals, Standards 3.1-3.3, and 4.2 (IJA/ABA, Draft, September 1975); see also Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standards 13.8 and 16.7 (July 1976).

Commentary

This standard sets forth the axillary rights required to effectuate the right of appeal. It is intended that the right to counsel and to a record of the proceedings apply when a respondent or other private party is the appellee as well as when he/she is the appellant.

The standard recommends that any party entitled to an appeal under Standard 3.191 should be entitled to counsel for that appeal and to have counsel appointed if they meet the eligibility requirements set out in Standards 3.132 and 3.133. Although In re Gault, 387 U.S. 1 (1967) did not hold that the right to appeal delinquency adjudications is constitutionally required, once an appeal is provided, both the due process and equal protection clauses of the Fourteenth Amendment to the U.S. Constitution would seem to require that a fair and adequate procedure for appeal be provided. Counsel to identify and argue the issues on appeal appears essential to the fairness and adequacy of the proceedings. See e.g., Douglas vs. California, 372 U.S. 353 (1963); ABA, Standards Relating to Criminal Appeals, Section 3.2 (Approved Draft, 1970); Moran, supra; Task Force, supra. Because fundamental rights are at issue in noncriminal misbehavior and neglect cases as well as in delinquency proceedings, the right to counsel on appeal is extended to parties in all three types of proceedings. Accord Standards 3.131-3.133, and 3.171; see Cleaver vs. Wilcox, 499 F.2d 940 (C.A. 9, 1974).

3.134
3.171
3.188
3.191

The same reasoning applies to the provision of a full record of the proceedings. See e.g., Griffin vs. Illinois, 351 U.S. 12 (1956); ABA supra, Section 3.3; President's Commission, supra; Moran, supra; Task Force, supra; see also Model Act for Family Courts, Section 54(c) (U.S. Department of Health, Education, and Welfare, Washington, D.C., 1975). As was noted by the Supreme Court in the Gault case:

> Failure to make a record, may be . . . to saddle the reviewing process with the burden of attempting to reconstruct a record and to impose upon the Juvenile Judge the unseemly duty of testifying under cross-examination as to the events that transpired in the hearings before him. (In re Gault, supra, 58.)

However, nothing in the standard is intended to prevent the parties from stipulating to a mutually agreeable statement of the facts and history of the case in lieu of a verbatim transcript. See Moran, supra, Standard 4.3.

The explanation called for in the second paragraph of the standard, like the notices provided for in Standards 3.146, 3.155-3.157, and 3.166, is to assure that the parties fully understand their right to appeal, to counsel on appeal, and to a record of the proceedings. It is to be made by the family court judge immediately following the description of the terms of disposition and the statement of the facts and reasons underlying the dispositional decision that is called for in Standard 3.188.

Related Standards

3.131
3.132
3.133

3.2
Noncourt Adjudicatory Proceedings

WHENEVER A GOVERNMENT AGENCY, INSTITUTION, OR PROGRAM SEEKS TO ABRIDGE SUBSTANTIALLY A JUVENILE'S RIGHTS, CURTAIL ESSENTIAL BENEFITS ACCRUING TO A JUVENILE, OR IMPOSE SERIOUS SANCTIONS AGAINST A JUVENILE, THERE SHOULD BE A HEARING TO DETERMINE WHETHER THE ALLEGATIONS ON WHICH THE PROPOSED ACTION IS BASED ARE TRUE AND WHETHER THE PROPOSED GOVERNMENT ACTION IS APPROPRIATE. IN CONJUNCTION WITH SUCH A HEARING, THE JUVENILE SHOULD BE ENTITLED TO:

a. TIMELY WRITTEN NOTICE OF THE ALLEGATIONS;

b. REPRESENTATION;

c. PRESENT EVIDENCE AND CALL AND CROSS-EXAMINE WITNESSES;

d. AN IMPARTIAL DECISIONMAKER;

e. WRITTEN FINDINGS DELINEATING CLEARLY THE FACTS AND REASONS UNDERLYING THE DECISION; AND

f. AN OPPORTUNITY FOR REVIEW.

Sources

See generally, Goldberg vs. Kelly, 397 U.S. 254 (1970); Morrissey vs. Brewer, 408 U.S. 471 (1972); William Buss and Stephen Goldstein, Proposed Standards Relating to Schools and Education, Standards 5.1-5.3 (IJA/ABA, Draft, January

1976); Andrew Rutherford and Fred Cohen, Proposed Standards Relating to Corrections Administration, Standard 8.9 (IJA/ABA, Draft, April 1976); Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, Standards 20.5 and 20.6 (July 1976).

Commentary

The family court is not the only forum in which juveniles may have to defend against or challenge the deprivation of their rights. Executive branch agencies are authorized to impose disciplinary measures including solitary confinement or loss of "good time" against juveniles in correctional facilities; to suspend or expel juveniles from school; and to terminate welfare payments or other essential benefits accruing to juveniles. This standard sets forth the procedural rights that should apply to administrative determinations to impose such sanctions. It reflects the belief that juveniles as well as adults are entitled to those due process rights necessary to preserve fundamental fairness. The standard is intended to be broad enough to allow for the diversity of out-of-court adjudications and yet specific enough to assure that minimum safeguards are present whenever a significant deprivation or sanction is possible regardless of the form or purpose of the proceeding. Recommendations regarding the specific criteria and procedures that should be employed in disciplinary proceedings and supervision hearings and definition of what constitutes "serious" sanctions or "substantial" abridgement of rights will be provided in subsequent standards.

The Supreme Court has stated on a number of occasions that "the 'right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society.'" Joint Anti-Fascist Committee vs. McGrath, 341 U.S. 123, 168 (1951) (Mr. Justice Frankfurter, concurring) as quoted in Mathews vs. Eldridge, 424 U.S. 391, 333 (1976). Hence, the standard recommends that there should be a hearing whenever there is a substantial abridgment of a juvenile's rights, termination of an essential benefit to a juvenile, or imposition of a more than a de minimus sanction against a juvenile by a public agency. See Goldberg vs. Kelly, supra; Morrissey vs. Brewer, supra; Goss vs. Lopez, 419 U.S. 565 (1975). Whether or not this hearing must precede the agency's action depends on the interest at stake, the impact of the action on the juvenile, and the burden that such a hearing would create on the agency. Mathews vs. Eldridge, supra, 335.

The notice requirement recommended in subparagraph (a) is intended to afford the juvenile an opportunity to prepare a defense to the allegations. To allow the construction of such a defense, the notice should include the reasons for the agency's action or the conduct of the juvenile on which that action is based and the procedural protections to which the juvenile is entitled throughout the proceedings. See Standard 3.164; Rutherford and Cohen, supra; Buss and Goldstein, supra; Task Force, supra; Goldberg vs. Kelly, supra; Morrissey vs. Brewer, supra; In re Gault, 387 U.S. 1 (1967); see also, Goss vs. Lopez, supra.

Subparagraph (b) recommends that juveniles be entitled to representation at noncourt adjudicatory proceedings. The subparagraph is not intended to suggest that such representation must be provided by an attorney. An agency staff member

CONTINUED

2 OF 3

not involved in the preparation of the action, a volunteer from a regular volunteer program, an ombudsman, or a law student may be able to perform this advocacy role satisfactorily. Wolff vs. McDonnell, 418 U.S. 564, 592 (Mr. Justice Marshall concurring in part, dissenting in part); accord Rutherford and Cohen, supra; but see Buss and Goldstein, supra. Although stating that a welfare recipient "must be allowed to retain an attorney if he so desires," in order to defend against a termination of welfare benefits, Goldberg vs. Kelly, supra, 270, the Supreme Court has held that counsel is not constitutionally required in most disciplinary proceedings, in most parole or probation revocation proceedings, or in proceedings to suspend a child from school for 10 days or less. Wolff vs. McDonnell, supra; Morrissey vs. Brewer, supra; Gagnon vs. Scarpelli, 411 U.S. 778 (1973); Goss vs. Lopez, supra. Nevertheless, the Advisory Committee on Standards concluded that assistance in "delineat-[ing] the issues, present[ing] the factual contentions in an orderly manner, conduct[ing] cross-examination, and generally safeguard-[ing] . . . ," the interests in jeopardy, Goldberg vs. Kelly, supra, 270, is as essential to assure fairness for juveniles involved in noncourt adjudicatory proceedings as it is for those involved in proceedings before the family court. See Standards 3.132 and 3.134.

Subparagraph (c) recommends that juveniles be entitled to present evidence and to call and cross-examine witnesses. In Greene vs. McElroy, 360 U.S. 474, 496-497 (1959), the Supreme Court observed that:

> Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealously. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment. . . . This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, . . . but also in all types of cases where administrative . . . actions were under scrutiny.

See Goldberg vs. Kelly, supra, 270; see also Morrissey vs. Brewer, supra. However, the Court limited the rights to present evidence and call witnesses in prison disciplinary proceedings to situations in which permitting an inmate to do so "will not be unduly hazardous to institutional safety or correctional goals," and left whether to permit cross-examination "to the sound discretion of the officials of state prisons." Wolff vs. McDonnell, supra, 566, 569. Moreover, in Goss vs. Lopez, supra, 583, the Court concluded that simply allowing the juvenile "to give his version of the events will provide a meaningful hedge against erroneous action," although it indicated that when expulsion or suspensions of longer than 10 days are

involved or in "unusual situations" involving short suspensions, "more formal procedures" may be required. Id., 584. Both the IJA/ABA Joint Commission and the Standards and Goals Task Force on Juvenile Justice urge that juveniles be provided the means for demonstrating that the agency's case is untrue. Rutherford and Cohen, supra; Buss and Goldstein, supra; Task Force, supra. In the disciplinary hearing context, the Task Force reasoned that:

> The court in Wolff did not view this right as a mandate of due process because of its concern about the risk of reprisals by adult prison inmates, one against the other, should the court declare this a constitutional requirement. However, in juvenile institutions where primary emphasis is placed on programs of reeducation and rehabilitation the likelihood of violent reprisals is far less severe.

Following these recommendations, the Advisory Committee on Standards concluded that whether constitutionally required or not, juveniles should be accorded the rights to present evidence and to call and cross-examine witnesses in situations meeting the "seriousness" requirements discussed above. See Standards 3.171 and 3.1810.

The impartial decisionmaker called for under subparagraph (d) may be an administrative board, an appointed or agreed-upon arbitrator, or a single agency official. The individual or individuals serving in the adjudicatory function should not have been involved in the investigation or preparation of the case or have a personal interest in its outcome. The importance of a "neutral and detailed hearing body" was stressed in both the Goldberg and Morrissey decisions. See also, Wolff vs. McDonnell, supra; Buss and Goldstein, supra; Rutherford and Cohen, supra; Task Force, supra; but see, Goss vs. Lopez.

Subparagraph (e) recommends that at the conclusion of the hearing, the decisionmaking body or individual prepare written findings explaining the basis for the decision. This is part of the effort throughout these standards to make discretionary decisions more consistent, comprehensible to the parties, and open to review. See e.g., Standards 3.147, 3.155-3.157, and 3.188. Each of the sources for this standard lists a written statement by the hearing board or official regarding the facts relied on and the reasons for the decision as a minimum requirement of due process. See Goldberg vs. Kelly, supra; Morrissey vs. Brewer, supra; Rutherford and Cohen, supra; Buss and Goldstein, supra; Task Force, supra; but see, Goss vs. Lopez, supra.

Finally, as a means of assuring that the above rights have been afforded, that the decision is supported by the evidence, and that any action taken is in accordance with the law, subparagraph (f) urges that the juvenile have a right to judicial or administrative review. Such a right to review from administrative decisions is already provided in one form or another in most States. See Standard 3.191; Task Force, supra, Standard 20.6; Buss and Goldstein, supra; Rutherford and Cohen, supra.

As is evident from the above-cited decisions of the Supreme Court, adjudicatory decisions are made at many levels and constitutional guarantees are not limited to the courthouse. The Advisory Committee on Standards is confident that the introduction of due process

procedures whenever significant rights of or benefits to a juvenile are threatened will enhance rather than disrupt or impede the operation of schools, correctional facilities, and other agencies and thereby improve the administration of juvenile justice.

Related Standards

3.132
3.146
3.147
3.155
3.156
3.157
3.164
3.171
3.188
3.1810
3.1811
3.1813

General Implementation Plan

As indicated in the introduction to this report, one of the purposes of the Juvenile Justice and Delinquency Prevention Act of 1974 is to "encourage the implementation of national standards on juvenile justice . . . [through] recommendations for administrative, budgetary, and legislative action at the Federal, State, and local level to facilitate . . . [their] adoption . . ." U.S.C. Section 5602(5) (Supp. 1976). Implementation recommendations to facilitate the adoption of particular standards have been set forth in the Commentaries to Standards 3.112, 3.143, 3.144, 3.145, 3.151, 3.153, and 3.154. Set out below is an explanation of the criteria that the Advisory Committee on Standards has used in considering the various strategies available to implement the entire body of standards, and two strategies that appear to meet those criteria.

Framework for Decisionmaking

In assessing the possible mechanisms for implementing standards for juvenile justice and delinquency prevention, three considerations appear to be of prime importance:

1. Does the proposed strategy fall within the legal and practical authority of the Federal Government?

2. Are the resources available sufficient to support the proposed strategy? and

3. Does the proposed strategy contain adequate procedures for gaining State and local support for and participation in the implementation process?

1. Does the proposed strategy fall within the legal and practical authority of the Federal Government? The principal role of the Federal Government in the effort to strengthen and improve State and local juvenile justice and delinquency prevention systems is to provide strong leadership and necessary assistance. Past implementation efforts that have attempted to mandate a sweeping set of Federal standards have proven less effective than anticipated in areas such as juvenile justice, which are primarily the responsibility of State and local government, which are subject to major conflicts over objectives and goals, and for which there are few reliable means of measuring the impact of change. Although federally developed standards can provide direction on issues and policy of national concern, they cannot realistically be expected to anticipate the needs, structure, and particular priorities of each state and locality. Hence, any strategy has to demonstrate sensitivity to the nature of the social and political realities at the State and local levels.

2. Are the resources available sufficient to support the proposed strategy? No matter how essential, the portion of Federal, State, and local budgets that can be devoted to any purpose is limited. Thus, an implementation strategy that requires massive allocations of resources is impractical. For example, the personnel and funds required to monitor State and local compliance with mandated standards in all the areas covered by this and subsequent reports of the Advisory Committee on Standards would be prohibitive. Thus, implementation strategies must incorporate some selection or prioritization process and provide for the pooling of resources and energies.

3. Does the proposed strategy contain adequate procedures for gaining State and local support for and participation in the implementation process? As noted earlier, juvenile justice and delinquency prevention are primarily a State and local responsibility. Accordingly, an implementation strategy must include incentives that will encourage States and communities to reassess the manner in which services are delivered to children and in which they deal with youth crime in light of the proposed standards, to identify the most serious problems, and to make the necessary procedural and substantive changes.

Recommended General Strategies

1. Under Section 223 of the Juvenile Justice and Delinquency Prevention (JJDP) Act, supra, 42 U.S. Section 5633, State criminal justice planning agencies (SPAs), in order to receive block grant funds, must prepare a State juvenile justice and delinquency prevention comprehensive plan. Such plans must provide, among other things, for an advisory group appointed by the Governor and representing local and State government, law enforcement, juvenile justice, youth services, public welfare, health, education agencies, and private organizations concerned with the problems and activities of youth. This structure appears to be a logical channel for the following standards implementation activities.

States, through their Juvenile Justice Advisory Groups or Interdepartmental Councils such as that established in California and on the Federal level by Section 206 of the JJDP Act, supra, 42 U.S.C. Section 5616, should be asked to assess the recommended standards against their own needs, problems, and experience, and identify priority areas. In many States, this prioritization process is already underway in conjunction with the State standards and goals program. These priorities would then become the basis of a Coordinated State Juvenile Justice and Delinquency Prevention plan designed to meet the planning requirements for JJDP Act funds and other Federal youth programs such as those under the Comprehensive Employment and Training Act of 1973 (P.L. 93-203) and Title XX of the Social Security Act (P.L. 93-647). One agency--in most cases the State criminal justice planning agency--would serve as the lead agency in performing the planning and staff coordination functions.

The portions of coordinated State JJDP plans that require interagency cooperation or focus directly on standards implementation would be submitted to the Federal Regional Councils for review and ultimately to the Federal Interdepartmental Coordinating Council. At the same time, the Federal Regional Councils, the Federal Interdepartmental Coordinating Council, and individual agencies would be working to integrate Federal funding and technical assistance programs, to promote coordination of Federal agencies and

personnel at the regional, State, and local levels, and to eliminate artificial barriers, conflicting requirements, and other impediments to the adoption of the standards.

This strategy meets the three criteria noted above. By linking implementation to the provision of Federal funds and by having States set their own priorities, it conforms to Federal legal and practical implementation authority. By utilizing and coordinating existing programs and agencies, it avoids the creation of new administrative entities and massive new funding programs, although some additional or redirected funds may be necessary to assist in fostering the coordinated planning process. Finally, the link between Federal funds and standards implementation together with the public interest in youth crime and delinquency prevention should provide the necessary incentives for State and local support.

2. The juvenile justice and delinquency prevention system includes many groups of professionals seeking to improve the system's effectiveness and fairness, and the subject of youth crime and its prevention is a matter of great public concern. The continuation of these systems-improvement activities by professional groups and the focusing of this public concern can greatly assist the efforts to gain adoption of the recommended standards. Hence, as a corollary to the above-described governmental planning strategy, national professional organizations should be encouraged to consider the recommended standards in developing their own accreditation programs and more richly detailed professional standards.

Although outside the purview of these implementation recommendations, another method through which implementation may be accomplished is litigation. Courts have and continue to play a role, often a leading one, in standards implementation and systems change. It is likely that in some instances in which other implementation efforts have failed, the standards may be adopted through judicial decree.

Conclusion

There should be no illusions about the effort that will be required to accomplish the planning, design, and coordinating activities recommended above. The energies and cooperation of individuals and agencies at all levels of government and in the private sector will be needed. However, the Advisory Committee on Standards believes that these strategies and standards represent a workable means of strengthening juvenile justice throughout the United States.

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