

ABA TASK FORCE ON JUVENILE JUSTICE STANDARDS
RELATING TO CROSSOVER, DUAL-JURISDICTION AND MULTI-SYSTEM YOUTH
HENNING DRAFT
AUGUST 12, 2011
YOUTH LAW CENTER COMMENTS 3-22 -12

GENERAL COMMENTS:

1. Do you really want to include multi-system youth in these standards? That encompasses most youth in juvenile justice, and trying to cover multi-system youth has resulted in an unwieldy document. It will still be a wonderful public service just to focus on crossover and dual jurisdiction youth from child welfare.
2. Similarly, there are a number of sections that relate to specific issues that could come up for crossover youth, but have not been tailored to address their particular issues. This results in an overly broad draft that does not flow well. For example, the sections on specialty courts, school issues, pregnant and parenting youth, and the extended sections on adjudication and disposition at the end appear to have been lifted from other work and plunked into this draft. The reader is going along thinking about crossover, and suddenly is reading about a more general issue such as how specialty courts work or due process at adjudicatory hearings. These topics are well-covered in other standards and publications. If they are to be included, they should be shortened and revised to direct attention at the specific ways these topics affect crossover and dual-jurisdiction youth. We suggest that you do some more work to narrow the court process sections and then ask for comments again – we ran out of gas by about page 40.
3. The standards and commentary are not parallel. In some places the commentary makes great points that are not covered by the standards. At the same time, there are places where additional commentary would help to highlight particular standards. Once the standards are in, someone could go through and make sure the standards and commentary are parallel.
4. The commentary at B.2.3(c) seemed really great and we suggest moving it to the front introduction section.

5. Because of the emphasis on information sharing, it is important to underscore the need to comply with state and federal laws governing confidentiality and privilege, including special requirements such as those that apply to the sharing of mental health records and information about pregnancy and reproductive services; to limit the purposes for which the information may be used; and to prohibit the use of shared information for prosecution.
6. If you are going to have the section on the role and duties of delinquency counsel, you should add a similar section on the role and duties of dependency counsel. Vigorous representation by dependency counsel is essential to prevent crossover, or if it occurs, to assure that it is done in the most expeditious, least restrictive and protective way possible for the youth.

Our specific comments and suggested changes are included in tracked changes at pertinent points in the draft.

INTRODUCTION

Youth are referred to delinquency court through numerous pathways, which vary by jurisdiction. Some youth are referred by the prosecuting authority following an investigation by police; some are referred by parents; many are referred by other youth-serving systems, such as schools, child welfare agencies, mental health providers, or drug or alcohol treatment providers. Many of these youth have needs that can and should be addressed by one or more of these other systems without courts exercising delinquency jurisdiction.

Youth referred by the child welfare system to juvenile court are often referred to as “crossover youth.” Dependent youth whose cases remain open simultaneously with delinquency court jurisdiction are frequently referred to as “dual-jurisdiction” youth. Youth in the delinquency system who require services from multiple sources are often called “multi-system” youth.

This volume of Standards seeks to address the many issues that arise when youth who have been in the child welfare system appear at the with multiple problems and needs end up at the front door of juvenile justice. door of juvenile court. Under what circumstances should the juvenile justice system assume jurisdiction? What can be done to address their needs in the child welfare system? How should youth that appropriately

Comment [YLC1]: We suggest moving the material in B.2.3(c) into this section and revising what is here as needed.

Comment [YLC2]: This paragraph seemed to come first, before the discussion of specific issues. Just suggest moving it in the sequence.

do “cross over” appropriately in the system be served in the juvenile justice system? How should the juvenile justice system manage the re-entry of youth with multiple needs back into the community?

~~A credible body of research and an emerging body of data confirm that C~~rossover, dual-jurisdiction and multi-system youth ~~—especially youth whose delinquent conduct precedes involvement in the child protection or child welfare system, youth exiting a residential or correctional placement who require intervention from the child welfare system, and youth who commit delinquent acts and also have a substantial dependency or neglect history—~~have an increased need for mental health, chemical health, and educational services.¹ By promptly and accurately identifying crossover, dual-jurisdiction and multi-system youth, and by creating appropriate protocols for handling these cases, professionals can more accurately assess the case, determine whether referral to the juvenile system is warranted and identify the needs of the youth.²

~~This volume of Standards seeks to address the many issues that arise when youth with multiple problems and needs end up at the door of juvenile court. Under what circumstances should the juvenile justice system assume jurisdiction? How should youth appropriately in the system be served? How should the juvenile justice system manage the re-entry of youth with multiple needs back into the community?~~

School-based behavior has increasingly become a source for referral of students to law enforcement and juvenile court. In Pennsylvania, school-based arrests almost tripled from 1999 to 2007.³ In Florida, in 2007-08, there were over 21,000 referrals from schools to the state’s juvenile justice system—over two thirds for misdemeanors.⁴ In North Carolina, almost 16,500 students were referred to juvenile court by schools in 2008-09.⁵ Other states have had similar histories.⁶ As racial disparities in school

Comment [YLC3]: Suggest adding a paragraph that says the decision whether to allow youth to cross over and accountability for what happens to them in juvenile justice if they do cross over are especially important given the research on poor outcomes for crossover youth. Recent studies of youth in Los Angeles found that crossover youth had much worse outcomes than other youth who remained in the child welfare system. The research is included with these comments.

Comment [YLC4]: This paragraph needs a tie in to crossover youth, or it should be deleted....

¹ Is there a CWLA cite for this?

² CWLA Guidebook, xiv-xvii, 2008

³ *TEST, PUNISH, AND PUSH OUT: How “Zero Tolerance” and High Stakes Testing Funnel Youth Into the School-to-Prison Pipeline*, Advancement Project (March 2010), at 4.

⁴ Id. at 4.

⁵ Id. at 18.

⁶ Id. at 18.

discipline have increased as well, students of color disproportionately bear the burden of such disciplinary practices.⁷

The American Bar Association, through the work of its Commission on Youth at Risk and through policies adopted by the Association, has recognized that teens who have been maltreated or who are in foster care are at high risk of being referred to the juvenile justice system:

[T]he average juvenile delinquency rate for youth previously abused or neglected is 47% higher than for children with no abuse or neglect histories. Researchers have found children who had at least one foster care placement (many children have multiple placements) significantly more likely to find themselves subject to a delinquency court petition.⁸

In addition, recent studies have shown that more than 45% of youth referred to juvenile probation in some jurisdictions have a diagnosable mental health disorder.⁹ That percentage is higher among youth held in juvenile detention, with one study finding roughly two thirds of youth in detention with a diagnosable mental health disorder.¹⁰ That study also revealed that sixty percent of those with mental health disorders also meet criteria for a substance abuse disorder.¹¹

Every day decision-makers refer some youth to the juvenile justice system, while directing others into different youth and family serving systems. Indeed, many youth in the major youth-serving systems-- education, juvenile justice, child welfare, and behavioral health (which includes mental health and drug and alcohol services)-- are remarkably similar to one another, even though they may be assigned different labels. Youth can be referred to different systems based on their traits or conduct, or based on

Comment [YLC5]: What is the tie in to crossover youth? Would it make more sense to cite research on the incidence of mental health diagnoses among foster youth (i.e., the youth who would be crossing over)? Suggest that this whole section be tightened up and possibly reorganized to relate to crossover youth....

⁷ Id. at 15, 18.

⁸ FEBRUARY 2008 ABA POLICY AND REPORT ON CROSSOVER AND DUAL JURISDICTION YOUTH, at <http://www.abanet.org/youthatrisk/crossoveryouthpolicy.html>.

⁹ See, e.g., Gail A. Wasserman, et al., Gender Differences in Psychiatric Disorders at Juvenile Probation Intake, Vol. 95, No. 1, American Journal of Public Health 131-147 (January 2005). See also Larkin S. McReynolds, et. al., Psychiatric Disorder in a Juvenile Assessment Center, Vol. 54, No. 2 Crime & Delinquency 313-334 (April 2008)(finding 30% of youth referred to a juvenile assessment center in Florida had a diagnosable mental health disorder).

¹⁰ K.R. Skowrya & J.J. Cocozza, *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System*, Skowrya and Cocozza (National Center for Mental Health and Juvenile Justice/Policy Research Associates 2006)

¹¹ Id.

the traits or conduct of their parents, rather than by their needs or even the needs of society. Unfortunately, this sorting process often reflects disparities in class or race.¹²

This is particularly true in the realm of crossover youth. Behavior that would, in other settings, be handled by parents or informally by the relevant agency lands foster children in juvenile delinquency proceedings.

Although other systems are ~~equipped—and even~~ mandated - to respond to these youths' needs and to protect the public by addressing their behavior, they are short on efforts and quick to conclude that youth are beyond their control, too often youth find themselves in juvenile court. Of the dependency, education, behavioral health, and delinquency systems-- the four suits in the service delivery deck-- delinquency is always the trump suit. If there is any conduct that falls within the definition of a delinquent act, the juvenile court can assume jurisdiction if it chooses. Although the juvenile justice system is a service-delivery system, it is ultimately punitive as well as rehabilitative, and it should be used only when necessary. When other systems give up too quickly, foster youth suffer from unnecessary incarceration, and are relegated to a system with well-recognized deficiencies in services for youth who have educational disabilities and mental health service needs. Involvement in the juvenile justice system can stigmatize and result in long-term consequences that may affect a youth for a lifetime.¹³

While there are serious offenses for which referral to juvenile court is ~~obviously~~ appropriate, in many circumstances referrals are not the result of a thoughtful matching of a youth to the most appropriate system. Referral to the juvenile justice system should be carefully considered. It should ~~and~~ not be made for convenience, or because services are not readily available in other systems.

By examining the use of the delinquency system for youth who would be better served in other systems, this volume hopes to encourage thoughtful reconsideration of ~~the practices~~the practices that result in the unnecessary referral of youth to juvenile courts. This volume seeks to prescribe circumstances under which youth should be diverted from juvenile court, or served by it more effectively. Moreover, this volume seeks to answer

¹² Need citation for this statement. Addressing the Unmet Needs of Children and Youth in the Juvenile Justice and Child Welfare Systems, <http://cjjr.georgetown.edu/pdfs/ed/edpaper.pdf>, may have some useful data.

¹³ Refer to Juvenile Justice Collateral Consequences policy and project.

questions like: What do we expect juvenile court to deliver in terms of services, risk management or public policy that other systems cannot? When referrals are made to juvenile court, how should the juvenile justice stakeholders contribute to answering these questions? When youth with multiple needs are appropriately under juvenile court jurisdiction, how can their needs be met so that society's interest in protection is satisfied while giving these youth the best opportunity to become productive citizens?

Referral to Juvenile Court

These Standards first seek to address how the juvenile court, through judicial leadership, prudent prosecutorial discretion, thoughtful defense advocacy, and appropriate probation decisions, can control the entry of youth through the court's front door. The Standards provide guidance to judges and juvenile court personnel on when and how youth who are referred by and would be better served by other systems should be diverted from the juvenile justice system.

These Standards thus begin by building upon the traditional authority of the juvenile court and its probation or intake staff to safeguard the juvenile justice system's jurisdiction, to divert youth from the system, and to order services and oversee their delivery. These Standards envision the juvenile court as Gatekeeper and, when appropriate, Diverter or Case Manager for these youth.

Youth who are Appropriately in Juvenile Court

There are two categories of youth covered by these Standards: crossover youth and dual jurisdiction or multi-system youth. Crossover youth are those who are referred by the child welfare system to juvenile court. When the juvenile court asserts jurisdiction, there will be questions about whether the youth's child welfare case should be closed at any time before or after an adjudication of delinquency. These Standards offer guidance for those responsible for resolving that inquiry, [including timelines for decision, due process protections and criteria for the decision on crossover.](#)

Dual jurisdiction youth are those who fall under the jurisdiction of both the child welfare and juvenile justice systems, while multi-system youth are those who, while under juvenile court jurisdiction, need services from other systems. Almost all youth fall into this latter category, especially since almost all will be of compulsory school age.

Delinquent youth may also need drug or alcohol treatment or mental health services. Some may be pregnant or be parents with children in the child welfare system.

In this volume, we address the obligations of the juvenile court when crossover and dual-jurisdiction youth are appropriately referred to the juvenile justice system. [We address detention issues while the decision is being made about crossover, during case processing, and as a disposition.](#)

Youth who are appropriately under juvenile court jurisdiction may be placed on probation (sometimes called community control) and remain in their home, or be placed outside their homes in either secure or non-secure settings. In either circumstance, attention must be paid to the youths' service needs. These Standards address the juvenile court's obligation to ensure that multi-system youth receive services from other systems, including, where appropriate, services that are normally provided by the child welfare system. The Standards also address the juvenile court's continuing responsibility to determine whether, how, and for how long delinquent youth are served by more than one system.

Youth Returning to the Community from Placement and Exiting the Juvenile Justice System

States differ in the way they allocate responsibility for youth in placement or for youth returning to the community after placement (often known as re-entry, re-integration, or aftercare). Some states assign that responsibility to a state agency or other youth authority, while others leave the responsibility in the hands of judges. These Standards address the responsibility of the juvenile justice system as a whole to plan and facilitate re-entry for youth who are dual status or needing services from multiple systems, regardless of who has responsibility for that function.

Specifically, these Standards address the responsibility of the re-entry authority to ensure that youth have a timely, seamless return to school; access to behavioral health services (mental health or drug and alcohol treatment); and, if necessary, a pathway into the child welfare system. Increasingly, child welfare agencies are willing and able to extend foster care placements and services, when needed, until a youth turns 21. For those youth who are not ordered into placement at disposition, but who are under probation supervision, the juvenile court has the added responsibility - at the time of case closing - to ensure that youth have access to needed services from other systems. This

Comment [YLC6]: Not sure if this goes here, but suggest including this somewhere in the introductory pages -- the need to prevent unnecessary detention. All too many youth in child welfare are incarcerated for alleged acts that would not qualify for detention, but for the fact that the child is in foster care. We will have additional comments in the standards on detention.

Comment [YLC7]: Again, we suggest narrowing the scope of the standards to cover crossover and dual-jurisdiction youth, not everyone in the system. This section could then focus on re-entry of those populations.

requires advance discharge planning that does not inappropriately extend the time of juvenile court supervision.

* * *

While these Standards build upon the existing Institute of Judicial Administration/American Bar Association (IJA/ABA) Standards and are necessarily directed at juvenile justice stakeholders,¹⁴ it is our hope that other systems – including the child welfare, education, and mental health systems – will join our effort to reduce unnecessary arrests and referrals to juvenile court by adopting and expanding upon these Standards. For the purposes of this volume, the juvenile justice system’s stakeholders have the primary responsibility of diverting youth from the system, when appropriate, or serving them at every stage of the juvenile justice process.

¹⁴ Need footnote about what the IJA/ABA Standards are.

GENERAL PRINCIPLES

1. Because youth involved with the juvenile justice system face immediate and potentially long-term adverse consequences, arrests and referrals to law enforcement by youth-serving agencies should only be initiated if the alleged delinquent conduct is serious or repeated, presents a threat to public safety, and cannot be dealt with outside the juvenile justice system.
2. Cooperation between the juvenile justice system and other youth-serving systems is essential to: identifying conduct that warrants or does not warrant referral to the juvenile justice system; developing protocols that discourage inappropriate referrals to juvenile court; and implementing positive support systems and behavioral modification strategies that reduce referrals to juvenile court.
3. All youth need and have a right to adequate care, education, and physical and behavioral health services. Allegations or findings of misconduct or delinquency do not diminish these rights, nor do they absolve state and local jurisdictions of their responsibility to provide services to effectuate these rights.
4. Information-sharing between and among juvenile justice and other youth-serving agencies should be regulated to balance the youth's need for coordinated services, treatment and care with the youth's need for privacy, and protection against self-incrimination and must comply with state and federal laws governing confidentiality and evidentiary privilege.
5. Secure confinement pending the decision on referral, during the court process and as a dispositional option, may be used only when needed for the protection of the community or there is a danger of flight. Continuity of services in the least restrictive setting consistent with public safety is essential when youth are removed from their home or community and placed in the custody of the juvenile justice system.
6. To the extent feasible, services for youth in custody should be provided by appropriate youth-serving agencies in the community; when this is not feasible, comparable services should be provided or made available to the youth in custody.

Comment [YLC8]: Is the idea to bring community services into the facility or to provide services in the community? The meaning is not clear. Maybe this could be reworded?

7. Parents, guardians and caretakers of youth involved in the juvenile justice system are entitled to respect and, consistent with their child's legal interests, safety and well-being, the opportunity to participate in decision-making involving the youth.

8. The obligation of the juvenile justice system to ensure or provide youth services should not adversely affect the severity of a youth's disposition, the duration of incarceration, or the length of probation supervision.

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

10. Youth released from custody should be reunited with their families when in the youth's best interests; when reunification is not in the youth's best interest, he or she should be placed in the care of the child welfare or other appropriate system.

11. Youth should not be treated more harshly in the juvenile justice system because of their involvement in the child welfare system.

Comment [YLC9]: Don't understand this one. Do you mean that youth should not be subjected to a more onerous disposition because of resource issues? Because needed services at a less restrictive level are not available? This sentence should be reworked to convey the intended meaning. We have added 11. as possibly covering at least part of what was intended here.

PART I: DEFINITIONS

1.1 For the purpose of these Standards, the listed terms are defined as follows:

(a) **Child Welfare System** (also **Dependency System**): Legal structure including courts, residential facilities, foster placements, and services designed to promote the well-being of children alleged or found to be status offenders or to be abused, neglected, abandoned, homeless, or exploited by ensuring safety, achieving permanency, improving well-being, and strengthening families to care for their children successfully.

(b) **Collateral Consequences:** Consequences flowing from arrest or adjudication, other than the direct dispositional order, that may have an impact on ~~Non-judicial prohibitions or disqualifications that likely will deny~~ opportunities for future education, financial aid, employment, housing, immigration status, public benefits, legal rights, or other individual rights or benefits, ~~to youth who have been arrested or adjudicated delinquent.~~

(c) **Critical Youth Services:** Services required for the well-being of youth, including supervision, housing, clothing, nutrition, education, recreation, and physical and behavioral health care.

(d) **Crossover Youth:** Youth referred from the child welfare system to juvenile court, or by the juvenile court to the child welfare system. (Sometimes crossover youth are known concurrently to the juvenile justice and child welfare systems. These standards refer to those youth as Dual-Jurisdiction, or Dual Status, youth.)

(e) **Dependency System:** See Child Welfare System.

(f) **Diversion:** The referral of an accused youth, without adjudication of criminal or delinquency charges, to a youth service agency or other program outside the juvenile justice system, accompanied by a formal termination of all legal proceedings against the youth concerning the case upon successful completion of the program requirements.

(g) **Dual-jurisdiction Youth:** (also **Dual Status Youth**) Youth under the concurrent jurisdiction of the child welfare system and the juvenile justice system.

(h) **Family Court:** A unified court with jurisdiction over one or more of the following: cases involving delinquency; abuse and neglect; status offenses; the need for emergency medical treatment; voluntary and involuntary termination of parental rights proceedings; adoption proceedings; appointment of legal guardians for juveniles; intrafamily criminal offenses; proceedings in regard to divorce, separation, annulment, alimony, custody, and support of juveniles; proceedings under the Uniform Reciprocal Enforcement of Support Act. *See IJA-ABA Standards Relating to Court Organization and Administration 1.1.*

(i) **Guardian ad Litem:** A court-appointed advocate for the child, who is often but not always a lawyer. GALs may also include Court Appointed Special Advocates. The GAL in most states is charged with being an advocate for the child's "best interests," and is thus different from attorneys who are client-directed pursuant to the ABA Model Rules of Professional Conduct, in particular Rules 1.2 (scope of representation), 1.6 (confidentiality of information) and 1.14 (clients with a diminished capacity).

Comment [YLC10]: Hmmm - is there a way not to use this title and just refer to "the court"? In California, Family court is for cases involving dissolutions of marriage, child support and child custody/visitation. Dependency and juvenile justice cases are handled in the Juvenile Court.

Comment [YLC11]: This term is used in two senses: the GAL appointed in dependency pursuant to CAPTA and a GAL appointed for a child who has no parent. It also could mean a GAL appointed for a youth who is not competent to make his or her own decisions.

(j) **Juvenile Justice System (also Delinquency System):** Legal structure including law enforcement agencies, courts, detention facilities, probationary and re-entry services for diverting, detaining, adjudicating, and supervising youth alleged or found to have violated the law. For purposes of these Standards, the Juvenile Justice System does not include dependency proceedings.

(k) **Juvenile Court (also Delinquency Court):** Court and court personnel responsible for diverting, adjudicating, detaining, confining, and supervising youth alleged or found to be delinquent. For purposes of these Standards, a Juvenile Court is not responsible for dependency proceedings.

(l) **Minor Delinquent Behavior:** ~~Disorderly conduct, unruliness, behavior constituting a nuisance, status offenses, and Delinquent~~ conduct that does offenses not rising to the level of significant or repeated personal harm, significant or repeated property loss or damage, or a credible threat of significant personal harm.

(m) **Multi-system Youth:** Youth involved with the juvenile justice system who require services from more than one other youth-serving system or agency.

(n) **Person In Need of Supervision:** A child under the age of 18 who does not comply with statutory provisions that may include attending school, running away, or violating curfew, behaving in a way that is unsafe or out of control, or often disobeying his or her parents, guardians or other authorities.

(o) **Status Offense:** Conduct that is prohibited only for persons under a specified age.

(p) **Youth:** A person who has not yet attained the age at which he or she should be treated as an adult for purposes of criminal law, including a person up to and including the age of 21 who, as a result of a delinquency petition, remains subject to the juvenile court's order of commitment or to conditions of probation or release that in any way restrict his or her liberty.

(q) **Youth-serving System (also Youth-serving Agency):** A system or agency responsible for providing care and supervision or educational, behavioral health, medical, drug or alcohol treatment, residential, or other services to youth.

Comment [YLC12]: Again, while you have qualified it by saying "For the purpose of these standards", it might still be confusing -- note that in California, the Juvenile Court does include dependency.

Comment [YLC13]: The focus should be on the actual behavior not the category of the offense. The concept is "less serious" behavior - relatively speaking. Consider eliminating this after seeing if it is really needed in the standards.

Comment [YLC14]: Do other states define this as misdemeanor behavior? Behavior that constitutes an infraction?

Comment [YLC15]: We are hoping that this will not be a focus of the standards, and that this can be eliminated.

Comment [YLC16]: States vary in whether they include all of these - for example, in California, we no longer have the out of control part, except as it relates to being out of the control of parents... Cal. Welf. & Inst Code section 601

Comment [YLC17]: In California, this is what we call PINS...should you pick either Status Offense or PINS and eliminate the other definition?

Comment [YLC18]: In California, the offense must be committed before age 18, but court jurisdiction may extend to 21 or 25 depending on the disposition.

If the intention is to define youth who are subject to juvenile court jurisdiction, would it help to use the JJDPa definition? It is: "Juvenile Offender: An individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations" as defined in state law. 60 Fed. Register 28450 (May 31, 1995).

Possible Commentary:

- *Howard proposes that we have commentary regarding the placement of some status offenses in the child welfare system and some in the delinquency system. States that receive JJDP money are not allowed to place status offenders in detention or correctional facilities.*

Comment [YLC19]: Suggest adding commentary about the fact that terminology varies, as does the system of representation for youth....

Comment [YLC20]: Well, not exactly - status offenders can be held in secure confinement pursuant to the loophole in the JJDP for violation of Valid Court Orders. But that could be mentioned, along with commentary that current recommendations are that the Valid Court Order loophole should be eliminated.

PART II: SYSTEMS COLLABORATION AND COORDINATION OF SERVICES FOR CROSSOVER, DUAL-JURISDICTION AND MULTI-SYSTEM YOUTH

A. STATE STRUCTURE AND LEGISLATION

2.1 LEGISLATIVE PROVISIONS FOR EFFECTIVE CARE OF CROSSOVER, DUAL-JURISDICTION AND MULTI-SYSTEM YOUTH

(a) State systems should ensure that crisis intervention and support services are implemented that may prevent the need for arrest and juvenile justice referral, and that involve behavioral health, education, and/or child welfare agencies in preventing the need for crossover to juvenile justice.

(b) State laws should provide for joinder of agencies with legal obligations to serve youth in juvenile court proceedings, to facilitate inter-agency coordination, planning, and accountability.

(c) State laws should ensure that no crossover, dual-jurisdiction, or multi-system youth will be disqualified or terminated from critical youth services because of the youth's involvement in the juvenile justice system.

~~(b)-(d)~~ State and federal laws should eliminate funding barriers and statutory restrictions that inhibit concurrent jurisdiction by the child welfare and juvenile justice systems.

~~(e)~~ (e) States should ensure that **mandatory** arrest provisions in domestic violence or juvenile justice statutes do not mandate arrest for youth who engage in minor delinquent behavior in congregate care facilities in the child welfare, juvenile justice, or other youth-serving systems.

(f) States should ensure that congregate care facilities in the child welfare, juvenile justice or other youth serving systems are able to meet the needs of the

Comment [YLC21]: Not clear what you are getting at. Eliminating all barriers to concurrent jurisdiction could result in widening the net to include more youth in the delinquency system.

Comment [YLC22]: This is good, but needs to be broadened to include juvenile arrest statutes?

youth they serve including addressing normative adolescent misbehavior without relying on law enforcement as a means of discipline.

Possible Commentary:

Youth are sometimes presented at the front door of juvenile justice on the premise that there is “no other place” to send them, even though they are already legally eligible for and entitled to receive services in other systems. Often this happens during a behavioral crisis or other deteriorating situation in a child welfare placement. State systems must provide crisis intervention services that may address the presenting issues, and also should provide support and respite services to caregivers that could save placements. In addition, state law should provide for bringing the various agencies with legal obligations to the youth together. Often, sister agencies may be able to provide behavioral supports and other services that appropriately address the issues that prompted referral to the delinquency system.

- Youth are often referred to the juvenile justice system for behavior that would be within the expected range of misbehavior for adolescents, were they not in the child welfare system. Fist fights, vandalism, minor drug use, conflict with authority figures, and even minor theft are things that parents across America deal with on a regular basis without involving the court system. Foster care providers and biological parents may sometimes need help addressing these issues and states should implement crisis services and provide other support to caregivers when problems arise. The Standards call for state systems to provide alternative means of addressing such misbehavior before calling law enforcement or referring youth to the delinquency system. At the same time, some misbehavior is more serious, and nothing in this section prohibits the discretionary arrest of youth who engage in delinquent behavior. Youth-serving agencies and congregated care facilities may call the police whenever appropriate. However,
- Part (c) of this standard recognizes that broad definitions in contemporary domestic violence statutes define domestic violence to include any criminal or delinquent behavior that is alleged to have been perpetrated against a co-inhabitant of any residence, including congregated care facilities. By contrast, this standard encourages discretion in the arrest and referral of youth to the juvenile justice system, especially youth referred by or receiving services from a child welfare or other youth-serving agency or facility. Similarly, statutes governing juvenile arrest and referral to the juvenile justice system should provide discretion and encourage referral to services that may prevent the need for crossover to the delinquency system.

Comment [YLC23]: Please remove this and substitute language that encourages child welfare agencies not to routinely call law enforcement when there is a disturbance at the group home.

2.2 STRUCTURE OF STATE SYSTEMS FOR JUVENILE JUSTICE AND CHILD WELFARE

State systems should be structured so that:

(a) a single state agency is responsible for the licensing and regulation of programs for delinquent and dependent youth, and all residential facilities should meet minimum licensing standards;

Comment [YLC24]: We agree, and are just checking to make sure everyone knows that a sizeable number of states do not have this....

(b) non-secure juvenile justice programs have access to child welfare funding;

(c) child welfare services are available to juvenile courts and the courts may at any appropriate stage of the juvenile court proceedings enter any order authorized for a dependent youth; and

(d) dependent youth who are not adjudicated delinquent should not be placed in residential facilities that are primarily for the care of delinquent youth.

Comment [YLC25]: We disagree - especially for crossover youth, this provision could severely limit the availability of good placements. And as noted below, states are getting IV-E money precisely because the money is to serve delinquent youth. For this population, which truly represents a cross-over of characteristics the purity of placements would impede serving those youth. For example, what if a youth was in a good child welfare placement with no problems, and picked up a delinquency case? Wouldn't we want the youth to be able to stay put?

HOWARD MOR OR MAY NOT ADD BLACK LETTER AND COMMENTARY PARAGRAPH ON FEDERAL FINANCIAL PARTICIPATION.

Possible Commentary:

Too often foster and dependent youth in the juvenile justice system are deprived of funding and protections they would otherwise receive in the foster care or child welfare systems. These standards encourage states to ensure that any youth sent to non-secure residential care as a result of a delinquency or status offense petition receive the same protections that other foster youth receive under Title IV-E of the Social Security Act.

Comment [YLC26]: This is good...such an important issue.

B. JUVENILE COURT ORGANIZATION, POLICIES AND PROCEDURES

Comment [YLC27]: Section on role of dependency counsel should be added and address counsel's role from front end to back end (preventing crossover, coordinating with other system players, discharge planning etc...)

2.3 JUVENILE COURT POLICIES, PROTOCOLS, AND RULES

(a) Juvenile courts should promote policies and protocols that ensure the fair treatment of crossover, dual-jurisdiction, and multi-system youth in diversion, detention, adjudication, and disposition decisions and eliminate practices that result in the unnecessary adjudication, detention, or prolonged incarceration of youth who are or should be involved in served by the child welfare system.

(b) Juvenile courts should establish policies and protocols for screening delinquency complaints involving youth who are referred by or receiving services from the child welfare or other youth-serving systems. Such policies and protocols should:

~~i. Recognize the in loco parentis role of the child welfare agency and require the agency to fulfill the role a responsible parent would be expected to fulfill when a youth comes into contact with the juvenile justice system.~~

~~i. provide for crisis resolution and other support to caregivers that would remove the need for referral to the delinquency system;~~

~~ii. include probation, child welfare and education and behavioral health agencies and community service providers in the screening process, using joinder provisions when needed to bring agencies before the court;~~

~~iii. limit secure confinement to situations where the youth meet detention criteria applied to other youth;~~

~~iv. set strict timelines for the screening process;~~

~~v. establish a process to determine whether a youth is better served in the juvenile justice or child welfare system or by concurrent jurisdiction~~

~~vi. permit concurrent jurisdiction by the child welfare and juvenile justice systems when appropriate, and~~

~~ii. provide, provide that a youth's arrest or adjudication of delinquency will not result in the closure of a child welfare case or the termination of services from other youth-serving agencies solely because of the youth's involvement in the juvenile justice system.~~

(c) Consistent with standards related to information sharing and confidentiality in this volume, and state and federal laws governing confidentiality and privilege, juvenile courts should develop policies and protocols ~~to for ensure~~ the prompt notification ~~and involvement of the child's caregiver, child welfare caseworker, and attorney providers, caseworkers, or advocates serving youth in the child welfare or other youth-serving systems~~ when a youth who is under the care of the child welfare system is arrested or referred to the juvenile court and for the involvement of other personnel in youth serving agencies as appropriate.

Comment [YLC28]: "Ensure" sounds like they have to notify and involve all these individuals.

(d) Develop policies for involving other youth serving systems or service providers in resolving the presenting behavior.

- *These Standards implement the ABA Policy and Report on Crossover and Dual Jurisdiction Youth adopted by the American Bar Association in February 2008. The report said:*

As of September 30, 2009 (the latest national statistics available), across the country there were over 158,687 youth ages 13 through 20 in foster care. That constitutes over a third of the total foster care population.

Comment [YLC29]: Again, this material is really good, and we suggest moving it to the front introductory section.

Based on a Chicago study, we have learned that the average juvenile delinquency rate for youth previously abused or neglected is 47% higher than for children with no abuse or neglect histories. Researchers have found children who had at least one foster care placement (many children have multiple placements) significantly more likely to find themselves subject to a delinquency court petition.

Practitioners agree: youth in foster care, whose lives have become the responsibility of state or local governments, face a strong likelihood of appearing at some point before a juvenile court, charged with some type of offense. The Child Welfare League of America (CWLA) noted that although the social problem of child maltreatment has, through extensive research, been clearly related to later delinquency, youth who find themselves crossing over from the care of a child welfare agency to the involvement of a juvenile justice agency too often fall between the cracks of the two systems. Youth services system fragmentation negatively affects these dual-jurisdiction cases (also known as “crossover youth” cases), and it is a reason for these recommendations, which are being introduced with urgency due to the large numbers of youth currently affected by the lack of appropriate laws and policies related to crossover youth.

CWLA has found these crossover youth more likely to be detained upon an arrest than their non-abused/neglected peers and then remain longer in custody and under the jurisdiction of the delinquency (juvenile justice) system. Staying “out of trouble” is only one challenge facing youth in foster care. In addition to their maltreatment histories, they generally come from very disadvantaged families and neighborhoods. By adolescence, they have too often only achieved low educational outcomes, have few employment opportunities, frequently face mental health problems, and may “transition” at adulthood from the foster care system to homelessness. No surprise, then, that they are at high risk of juvenile delinquency infractions.

Even where minor offenses would not have involved police or the courts - if a youth had been living with their parents - a teenager in a foster home or congregate group care setting is commonly subjected to penal sanctions and incarceration. A recent scholarly article concluded that there was a “child welfare system bias” in favor of processing misbehaving youth through the juvenile justice system.

If police are contacted because of a foster youth’s minor act of misbehavior, this policy promotes the youth’s diversion from the juvenile justice system. It is hoped that foster parents and caseworkers will seek to have the child remain in foster care rather than detained in juvenile detention facilities, something that most biological parents of youth who commit similar infractions would want. Further, foster parents and

Comment [YLC30]: This is good, and we added standards to go with it above...

caseworkers would also hopefully advocate for a noncriminal resolution of any minor acts committed by the youth.

From experiences in addressing crossover youth in New York City, Los Angeles, Ohio, and Pennsylvania, we have learned of law, policy, and practice related approaches to this issue that can help assure foster youth are fairly treated in terms of approaches taken in response to their misbehavior. Clearly, every youth who has committed a serious crime, such as a crime of violence, should be prosecuted as appropriate by the juvenile justice system. However, for minor acts of delinquency or juvenile status offenses (running away, truancy, difficult at-home behavior), it is important to learn from research and program advancements about better ways of legally addressing the needs of crossover youth.

Comment [YLC31]: This is great, and we added standards to cover this above - employing crisis interventions and interagency supports....

2.4 JUVENILE COURT LEADERSHIP

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

Comment [YLC32]: Agree with this concept, but does it go here?

2.5 JUVENILE AND CRIMINAL COURT JURISDICTION

Juvenile courts should consider whether the the availability of services from the child welfare and other youth-serving systems have fulfilled their duties to the youth before considering awhen determining whether to transfer youth to the delinquency system. criminal court and should establish protocols to ensure that youth who receive services from multiple systems are not disadvantaged in discretionary transfer decisions solely due to their involvement in other systems.

Comment [YLC33]: "availability of services is often a cop-out. Sadly, some system claim that they have tried everything even though their placement decisions were ill-conceived or few efforts were made. We suggest alternative ways of characterizing this.

Comment [YLC34]: Did you mean to include adult criminal court? We changed it to delinquency court on the theory that it was a mistake.

2.51 DUE PROCESS IN CROSSOVER DETERMINATIONS

- Youth shall have a right to counsel, a court hearing, the right to testify and present evidence and the right to cross-examine witnesses on the question whether their dependency case will be terminated and they will be handled in the delinquency system, or as a dual jurisdiction case.
- Courts shall make the decision on crossover or dual jurisdiction according to specific criteria that include a consideration of:
 - Whether the behavior is something that would not result in other children being referred to the juvenile justice system;
 - What services would be available in juvenile justice that were not available in the child welfare system;
 - What services were supposed to be provided in the child welfare case, and whether the services were actually provided;

Comment [YLC35]: This may go in section 4 instead of here, but there needs to be a section on the actual court process for crossover determinations. You have a section on making delinquency cases into dependency cases, but not a section on making delinquency dependency cases into delinquency cases or dula jurisdiction cases.

Comment [YLC36]: Elsewhere, there should be a section on the role and duties of counsel in this situation. Crossover could frequently be averted at this point and vigorous advocacy is very important. For example, if the youth is acting out, but it turns out that needed behavioral health services were never provided, or that the placement itself is not a good fit, perhaps the fist fight or vandalism at the group home takes on a different importance.

- Whether inadequacies in the previous placement may have contributed to the behavioral issues (e.g., understaffing bullying, staff abuse, or other deficiencies in the placement);
- Whether the previous placement itself was inappropriate for the youth;
- Whether crisis intervention, respite or other support services to the youth and/or caregiver could alleviate the need for a delinquency court referral; or other deficiencies in the group home);
- Whether the delinquency system is able to provide reasonable efforts to prevent placement or reunite the youth with his or her family;
- Whether the delinquency system has placements to serve the youth, if he or she does not qualify for secure confinement;
- Whether the youth would be detained in secure confinement longer than is needed simply because of being from the child welfare system;
- The Court shall order crossover, only if it finds that the child can no longer be appropriately served in the child welfare system.
- During and after the crossover proceedings, the Court shall order that the child must be held in a non-secure setting unless it finds that the child is a danger to the community or poses a risk of flight.
- Courts shall make an order that sets forth the expected services for any youth determined to meet the criteria for crossover, and shall set regular status review hearings to assess compliance with the order.

2.6 DOCKETING PROCEEDINGS INVOLVING CROSSOVER AND DUAL-JURISDICTION YOUTH

(a) Consistent with standards related to information sharing and confidentiality in this volume and state and federal laws governing confidentiality and evidentiary privilege, juvenile court staff should have access to the docket of all family court cases so they can identify youth and families with multiple legal proceedings within the court.

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

(c) Generally, the same judge should consider legal issues that relate to all members of the same family. Due process, however, requires that each charge of delinquency be considered by a neutral judicial officer at an adjudicatory hearing that comports with principles of fundamental fairness.

Comment [YLC37]: Very tricky area. May need more explanation. What is meant by access to the docket? Is the purpose to determine whether there is a pending case involving custody of the youth? Is it just to identify parties, or does it include access to additional information?

Comment [YLC38]: This protection should not be limited to adjudicatory hearing. It may be inappropriate for a judge to determine detention, disposition, or post-disposition matters.

Comment [YLC39]: Not clear what this means. How broad is legal issues that relate to all members of the same family? Given the restriction in delinquency, what guidance is this standard offering?

(d) Juvenile and family courts should develop policies that allow for the consolidation of post-adjudication matters involving dual-jurisdiction youth. The policies should be consistent with the following principles:

i. When feasible, a single judge should hear all dispositional and post-dispositional matters involving dual-jurisdiction youth. After a youth has been adjudicated delinquent, the youth's juvenile court disposition proceedings should be consolidated with child welfare and other family court proceedings concerning the youth as set forth in the Standards Relating to Disposition in this volume.

ii. The court should ensure continuity of legal representation for the youth in the delinquency matter as set forth in the Standards Relating to Defense Counsel in this volume.

iii. The court should require that representatives responsible for case management and supervision of the youth in the dependency and juvenile justice systems attend the consolidated proceeding.

iv. The court should ensure, to the extent consistent with the missions of the dependency and juvenile justice systems, that youth and family case plans be aligned in terms of goals, services, and responsibility for implementation.

(e) To the extent possible, services and other legal proceedings relating to the youth and family should not be delayed pending resolution of a delinquency case.

Possible Commentary:

IJA/ABA Standards Relating to Court Organization and Administration 1.1B indicates "the same judge should consider the different legal issues that relate to all members of the same family. Further, the Standards advise that a "judge who presides at an adjudicatory hearing should conduct the disposition hearing of the case." See also 1994 ABA Resolution 10C – Unified Children and Family Courts. We should look for ADDITIONAL CITATION FROM THE NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES RESOURCE GUIDE. The Standard proposed here recognizes, however, that there are times when a judge who presides over dual- jurisdiction and crossover youth may become so engaged in the family that it becomes difficult for the judge to fairly adjudicate the youth's involvement or non-involvement in delinquency at an adjudicatory phase. Even when the judge is capable of employing the mental gymnastics necessary to avoid bias, the appearance of impropriety may dictate assignment of the youth's adjudicatory hearing to a neutral fact-

finder. Thereafter, cases may be consolidated for dispositional and post-dispositional proceedings.

The standard proposed here is consistent with IJA/ABA Standards Relating to Disposition Procedures 2.1 A and D that indicate that “Information that is relevant and material to disposition may be obtained by persons acting on behalf of the juvenile court only after an adjudication” and “It should not be assumed that more information is also better information, or that the accumulation of dispositional information, particularly of the subjective and evaluative type, is necessarily an aid to decision making.”

Example: Philadelphia has a special docket for crossover court. Pittsburgh has a special dependency-delinquency docket. Special docketing systems for crossover youth may be beneficial for systems integration, coordinating multiple agencies involved, reducing complication of getting all of the agencies involved, helping court allocate enough time to hear all of the matters and issues raised, ensuring effective delivery of services, and avoiding inconsistent or duplicative orders or services. Crossover courts and special dockets should address concerns about investigation and due process by ensuring that crossover and dual-jurisdiction cases are not consolidated before the fact-finder until after adjudication.

Notwithstanding the benefits of consolidate proceedings, the desire for consolidation should not be used to delay the resolution of other legal matters involving the family or to delay the provision of services needed by the youth from other youth-serving systems. Even when a youth is detained pending conclusion of a delinquency case, the youth will often need services from other youth-serving systems and may benefit from placement in other systems as an alternative to detention when consistent with public safety.

2.7 SPECIALTY COURTS

(a) A jurisdiction may create one or more specialty courts if it finds that the traditional juvenile court cannot effectively address cases involving youth with particular needs or characteristics.

(b) Specialty courts should be developed and implemented by an interdisciplinary team that includes representatives from the judiciary, prosecution, defense, and

Comment [YLC40]: This was one of the sections that caused us to wonder about the scope of the document. If this section is going to be included, it should be tailored to crossover youth. As written, it looks like it came from another set of standards...and again, we are not convinced that multi-system youth should be covered in the crossover piece...you could still have a short section saying that these issues might well be addressed in specialty courts, and then refer people to other standards on specialty courts.

relevant service providers. Team members should be familiar with the issues to be addressed by the specialty court, and the team as a whole should have the legal, procedural, and treatment expertise to address both the juvenile justice and rehabilitative needs of the youth. Prospective members without sufficient expertise should be trained prior to joining the team.

(c) Specialty courts should have access to services from systems that have expertise related to the court's specialty.

(d) Specialty courts should have rigorous intake and screening procedures to ensure that it accepts only those youth who are appropriate for the court.

(e) Specialty courts should utilize incentives for positive behavior, graduated responses to negative behavior, close judicial oversight, a non-adversarial team approach, coordination of services, and meaningful re-entry strategies.

(f) Specialty courts should be presided over by a judge.

(g) Specialty court judges should have authority to discharge the case for youth who have successfully completed the requirements of the court.

Possible Commentary:

Although Juvenile and Family Courts are themselves specialty courts that give individualized attention to youth, some larger jurisdictions may find that adequate attention cannot be given when it comes to certain needs. When a large jurisdiction faces large numbers of youth challenged by mental health problems, drug and/or alcohol problems or other characteristics that require special attention, specialty courts may provide a way to effectively intervene.

Specialty courts are characterized by frequent court appearances to facilitate close judicial involvement. They are centralized so that one judge becomes intimately familiar with the youth and family, and the youth and family, likewise, become familiar with the judge. The judge also becomes familiar with the subject matter dealt with by the specialty court, the best ways to address the needs of the youth and the resources available to address those needs. These courts are also characterized by non-adversarial involvement of members of an interdisciplinary team who work with the judge to implement effective treatment and supervision strategies that include clear incentives for positive performance, clear responses to negative behavior and intensive monitoring. The youth's participation in specialty courts is generally voluntary and should not be coerced to meet funding quotas.

The ultimate reward of most specialty courts is the dismissal of the triggering delinquency charges. Participation, however, may require an admission to the charges and the waiver of other rights. Consequently, if the participant fails to successfully complete the program, an adjudication of delinquency is imminent. Some fear that the

regiment of intense conditions such courts impose may increase the likelihood of failure and, for that reason, specialty courts may be viewed as having the potential to “widen the net” that causes young people to further penetrate the juvenile justice system. To alleviate that possibility, specialty courts must first employ rigorous intake and screening procedures to ensure that only appropriate youth are allowed to participate. Obviously, a youth who does not have a substance abuse problem should not be in a drug treatment court. Nor should a youth who did not commit a delinquent act be in a mental health court. However, even when a youth is appropriate, to wit he or she possesses the identified special need and there is probable cause to believe they committed a delinquent act, the specialty court must use an approach that reflects an understanding of the nuances of the presenting problem. For example, in drug treatment court everyone, including the prosecutor, has to agree that relapse is part of recovery. When relapse occurs a graduated response and/or increasing the level of care is appropriate, but not termination. When properly implemented approaches like this can actually “shrink the net” in that such infractions committed by youth on traditional probation would likely result in placement.

In addition, when youth are unable to successfully complete the specialty court, the team should assess whether the youth should be referred to other, more appropriate programs, services, or placements and should not automatically detain or incarcerate the youth for failure to complete the specialty court program. In short, specialty court should be treatment based courts. Any sanctions imposed, should serve a treatment – not punitive - purpose.

Specialty courts should not sacrifice or compromise due process for the sake of treatment. The tension between the rehabilitation and due process makes the defense counsel’s role particularly complicated in specialty courts. Notwithstanding the non-adversarial nature of specialty courts, rules of professional conduct dictate that defense counsel should remain loyal to the client in all circumstances and should zealously advocate for the child’s stated interest.

Anything in Models for Change on Specialty Courts?

C. INTERSTATE COOPERATION

2.8 CROSSOVER , DUAL-JURISDICTION AND MULTI-SYSTEM YOUTH CROSSING STATE AND LOCAL JURISDICTIONS

(a) Each jurisdiction individually or with neighboring states and jurisdictions should develop procedures consistent with the Interstate Compact for Juveniles that will facilitate cooperation by justice system personnel and youth-serving agencies in addressing cross-jurisdictional issues, including expediting necessary transport of youth across jurisdictions, avoiding scheduling conflicts, and where

Comment [YLC41]: This, too, seemed like something that would be better addressed in a whole separate set of standards for interstate issues. If it is included, it should be drastically shortened to address the interstate issues for crossover youth.

Comment [YLC42]: Depending on the circumstances the UCCJEA and/or ICPC may also apply.

appropriate and permitted by law, provide a presumption that legal proceedings will take place in the jurisdiction where the youth has the most significant ties.

(b) Policies and procedures to facilitate cross-jurisdictional cooperation should abide by principles of confidentiality and privacy set forth in the Standards relating to Information and Record Sharing in this volume.

(c) Policies and procedures that focus on reducing delay, uncertainty, and unnecessary detention for youth, and providing prompt resolution of interstate matters.

Possible Commentary:

Many youth are subject to the jurisdiction of more than one state. The Interstate Compact for Juveniles should be amended by adopting principles and procedures that are consistent with these Standards. The Compact should give juvenile courts the option of transferring supervision of a youth, in appropriate circumstances, to ensure efficient delivery of services to youth in need of services from more than one system.

D. INFORMATION SHARING AND DATA COLLECTION

Comment [YLC43]: Good to separate out Data Sharing and Data Collection

2.9 DEFINITIONS

(a) “Information” refers to any communications, recorded or unrecorded, records, and materials ~~and recorded or unrecorded communications~~ that may and do identify individuals.

Comment [YLC44]: Emphasize that all communications are included by placing first. Oral exchanges are sometimes viewed as outside the scope of information sharing rules.

(b) “Data” refers to information that is captured for aggregate reporting purposes that may or may not identify individuals.

2.10 PURPOSES OF INFORMATION SHARING AND DATA COLLECTION

(a) Information sharing and data collection, which is necessary for any effective collaboration and coordination of services for crossover, dual-jurisdiction, and multi-system youth, should serve three primary goals:

i. Information sharing for individual case planning and decision-making. States should authorize and facilitate the sharing of information about individual youth between and among multiple systems and agencies to reduce duplication of effort (e.g., multiple assessments) and enhance understanding of the youth’s needs and circumstances for coordinated case planning and ensure that information sharing protocols comply with all

state and federal statutes governing confidentiality and privilege and provide appropriate protection for the privacy of youth and their families.

Comment [YLC45]: Realize that this is a purpose section, but authorization and facilitation must be consistent with confidentiality requirements and privilege.

ii. *Data collected and shared for law, policy, and program development.* States should authorize and facilitate the collection of non-identifying data for aggregate reporting on the characteristics of multi-system, dual-jurisdiction, and crossover youth and on the processes for their handling. Such data should be used for the improvement of policies and practices and for better coordinated responses involving multiple agencies.

~~iii. *Data.*~~ *Data collected and shared for program evaluation and performance measurements.* States should authorize and facilitate the collection of non-identifying data ~~collection~~ for aggregate reporting to measure the effectiveness of programs and practices designed to achieve improved youth and system outcomes.

Comment [YLC46]: Make parallel to prior subsection.

2.11 POLICIES AND PROCEDURES FOR CONFIDENTIALITY DURING INFORMATION SHARING

(a) All states should develop and require the use of protocols for information sharing about individual crossover, dual-jurisdiction, and multi-system youth from arrest to termination of jurisdiction.

(b) All agreements or protocols to share information between the juvenile justice system and other youth-serving systems and agencies should follow state and federal legal, constitutional, and ethical principles regarding the confidentiality of personally identifiable information. All agreements or protocols should specify the purposes of information sharing and limit the information shared to the specified purposes.

(c) Absent an explicit exception under applicable state and federal law, juvenile justice agencies and stakeholders should always obtain informed written consent from the youth and, when applicable, the parent or guardian of the youth, before sharing personally identifiable information between agencies serving the youth. The consent should state in terms specific to the individual youth, the purpose of sharing the information and the time frame within which it will be shared. Where the youth and/or the parent or guardian is limited in their ability to speak English, informed consent shall be obtained in a language they understand and any written consent form will be appropriately translated. Where either the youth and/or the parent or guardian is limited in their literacy skills, informed consent shall be obtained in a manner that is understandable.

(d) Information about multi-system youth should be shared with and used by youth-serving agencies in a manner that [complies with state and federal laws governing confidentiality, including redisclosure, and privilege and](#) does not violate the youth's due process rights as respondents or defendants in delinquency, criminal, summary offense, status offense, and child welfare cases, including their rights against self-incrimination.

(e) States should prohibit [the re-disclosure of information](#) shared and limit its use to the coordination of case management and the continuity and integration of services and treatment.

Comment [YLC47]: Do you mean all re-disclosure? How does this relate to interagency information sharing?

(f) Juvenile justice officials sharing information about dual jurisdiction or multi-system youth should ensure that any youth-serving agency and system receiving that information is aware of and adheres to rules and standards governing confidentiality of juvenile court records, [including records that contain materials subject to other restrictions, such as health and mental health records, and limitations on the use of records for specified purposes.](#)

(g) The [juvenile court](#) should develop a docketing, filing, and records-disclosure system that will allow court staff to redact and separate records and information that may be disclosed from those that may not be disclosed pursuant to state and federal confidentiality laws.

Comment [YLC48]: All agencies, not just the court, should have this capacity. Few do.

2.12 DATA COLLECTION FOR LAW, POLICY, AND [PROGRAM DEVELOPMENT](#)

Comment [YLC49]: This is good, and we suggest also including outcome data - perhaps borrowing from some of the child welfare research for ideas - things like completion of high school, GEDs, homelessness, employment, subsequent arrests.

(a) All states should develop and use data collection protocols to [identify and improve outcomes for crossover, dual-jurisdiction and multi-system youth and to reduce unnecessary referral to, and penetration deeper into, the juvenile and criminal justice systems.](#)

(b) Each state and local jurisdiction should develop a system for collecting, reporting, and sharing aggregate data regarding crossover, dual-jurisdiction, and multi-system youth for one or more of the purposes identified in 2.10 of these standards. [The system for collecting data should also track the number of crossover, dual-jurisdiction and multi-system youth referred to the juvenile justice system by- age, alleged offense, placement immediately preceding referral, race, gender, ethnicity, language status and LGBT status, unless the jurisdiction is so small that the identity of a youth would be revealed if the data was disaggregated.](#)

Comment [YLC50]: Include multi-system youth only if they are in the other parts of the standards...

(c) All data collection protocols should follow the legal, constitutional, and ethical principals regarding the confidentiality of personally identifiable information.

(d) Each state and local jurisdiction should review the aggregate data collected to determine how best to allocate resources to the various youth-serving agencies and systems within the state, to improve procedures for handling youth who engage in unlawful behavior while in the care or custody of a youth-serving agency, and to improve the coordination and continuity of care and treatment for youth who have needs in multiple youth-serving systems.

Possible Commentary:

- *Information Sharing: These Standards are meant to supplement, and not override, the many state and federal legal, constitutional, and ethical principals regarding the confidentiality of personally identifiable information. Because these laws and provisions change often, juvenile justice stakeholders should remain familiar with current law and guidelines regarding confidentiality. These provisions include but are not limited to the Family Education Rights and Privacy Act, Health Insurance Portability and Accountability Act, state and federal drug and alcohol laws, and state law protecting juvenile justice records, mental health records, and physical and behavioral health information.*
- *Data Sharing: These Standards should supplement existing IJA-ABA Standards Relating to Monitoring and Standards Relating to Planning for Juvenile Justice.*
- *It is important to track the source of referral to the juvenile justice system of dual-jurisdiction, crossover, or other youth with multi-system needs. Information regarding the source of referral can be used to identify possible gaps in services, sources of inappropriate referral, and priorities for funding. Referral sources may include schools, special education programs, child welfare systems, drug or alcohol treatment programs, and mental health facilities.*
- *Data tracking may inform resource allocation and aid in the development of policy and practice. Data should be collected with an eye toward reducing the number of inappropriate referrals to, and preventing unnecessary penetration deeper into, the juvenile justice system of youth with multi-system needs. In addition, data collection should be used to improve services for crossover and dual-jurisdiction youth in the juvenile justice system. Data collection may help intake officials in the juvenile justice system determine whether to accept jurisdiction of youth with multi-system needs and ensure that youth with multisystem needs are getting discharged into appropriate systems.*
- *Data Collection Protocols may also track the following:*

Comment [YLC51]: Need to tailor these to crossover youth....

- *The number of youth involved in the juvenile justice system who are also being served by or have previously been served by other youth-serving systems;*
- *The number of youth in the juvenile justice system in need of mental health intervention, substance abuse, or special education services;*
- *The number of youth referred by the juvenile justice system to other youth-serving agencies or systems, but who were ultimately rejected by or denied services, treatment, or care from the latter;*
- *The number of crossover and dual-jurisdiction youth referred to the juvenile justice system by to age, alleged offense, placement immediately preceding referral, race, gender, ethnicity, language status and LGBT status;*
- *The number of youth referred to the juvenile justice system who are pregnant or have children of their own.*
- *Patterns and trends of delinquent behavior – (e.g., a county in Pennsylvania looked at the increase in delinquency).*

Comment [YLC52]: This sounds great, but how would you track it?

Comment [YLC53]: This should not be discretionary. We have included it in the standards.

2.13 ACCESS TO COURT RECORDS

(a) Access to and the use of juvenile records should be strictly controlled to limit the risk that disclosure will result in the unnecessary denial of opportunities and benefits to juveniles.

i. Information Information contained in court records involving youth alleged or adjudicated delinquent or dependent should be closed to the public. Any court rule, agreement, or protocol allowing dissemination of information contained in these records should be consistent with federal and state confidentiality laws.

ii. Juvenile justice officials sharing information about dual jurisdiction or multi-system youth should ensure that any youth-serving agency and system receiving that information is aware of and adheres to rules and standards governing confidentiality of juvenile court records.

iii. When multiple juvenile and family court proceedings are consolidated on behalf of one youth or family, the courts should develop a docketing, filing, and records-disclosure system that will allow court staff to redact and separate records and information that may be disclosed from those that may not be disclosed pursuant to state and federal confidentiality laws.

Comment [YLC54]: Is this different from 2.11(f)?

(b) The youth's defense counsel and the prosecutor in any juvenile or criminal case should have access to all family court records involving the youth, consistent with federal and state confidentiality laws.

Comment [YLC55]: It is not appropriate for the prosecutor to have unfettered access to all family court records.

(c) There shall be no standing orders for access to records, and strict policies for disclosure shall be established.

Comment [YLC56]: Do you really mean criminal case - e.g., where the youth is transferred to the adult system? If not, delete?

Possible Commentary:

Comment [YLC57]: b) just doesn't look right -- maybe it is technically all right because it says consistent with other laws, but it looks too broad in light of the other provisions limiting access.

- *These Standards build on existing IJA/ABA STANDARDS RELATING TO JUVENILE RECORDS AND INFORMATION SERVICES, 15.1 (A) and (B), which call for the strict control of access to and use of juvenile records.*
- *States should identify factors that trigger public availability. Factors may include: e.g., certain types of offenses, youth reaching age of majority. However, public access must be narrowly circumscribed for crossover and dual-jurisdiction youth. For example, many states allow the public to access records of certain serious offenses in the juvenile delinquency system. If that youth is also involved in the dependency system, his/her dependency record should not also be made publicly available.*
- *State laws should rarely make an entire file available to the public but should carefully delineate the types of information and portions of files that may be made public.*

Comment [YLC58]: I would put this in the standard and say that the court should review the file to determine which portions, if any should be released, provide notice to the parties, etc. Although this is another area where the standards really should apply to all youth

E. **CROSS-SYSTEM TRAINING**

2.14 NEED FOR CROSS-SYSTEM TRAINING

(a) Juvenile courts should promote cross-system training for all stakeholders in the juvenile justice and child welfare systems – including, but not limited to law enforcement officers, prosecutors, defense counsel, parents' counsel, judges, *guardians ad litem*, court appointed special advocates, probation officers, and youth-serving agency staff, as well as school administrators, teachers, counselors, and social workers.

Comment [YLC59]: This could apply to all youth. The standards should tailor cross-system training to cover issues that affect crossover and dual jurisdiction youth.

(b) Cross-system training should include, but not be limited to the following topics:

- i. the structure, court process, commonly used terminology, and legal nomenclature, policies, requirements, and limitations of requirements of the juvenile justice and child welfare systems that apply to youth under their jurisdiction;

- ii. the scope of services and procedures for accessing services from the child welfare, mental health, juvenile justice, and education systems as well as from state, local, and community-based drug and alcohol treatment providers;
- iii. information regarding any memoranda of understandings or other agreements between and among the various youth-serving agencies regarding the provision of services for youth;
- iv. youth and adolescent development, brain development, disabilities, trauma, and resiliency development;
- v. sexual orientation and gender-identity issues; ~~and~~
- vi. cultural competence;
- vii. [research on what works and doesn't work in achieving good outcomes for youth in the system, including crossover research.](#)

Possible Commentary:

- *Juvenile courts should be familiar with evidence-based practices regarding the care and rehabilitation of youth in need of services from multiple agencies and systems. As appropriate, the court may promote training and strategies on positive youth development.*
- *[Professionals in other systems often have unrealistic perceptions about what will happen to youth in the juvenile justice system. It is important for them to understand that juvenile justice faces immense challenges in serving youth with serious mental health needs and providing comprehensive educational services in an institutional setting. It is also important for them to be aware of the research showing that crossover youth have worse outcomes than youth who remained in the child welfare system when they are deciding whether to refer a child to the delinquency system or developing service plans for youth who have crossed over.](#)*

PART III: ARREST AND REFERRALS TO THE JUVENILE JUSTICE SYSTEM

3.1 GUIDELINES FOR YOUTH-SERVING AGENCIES

- (a) Youth-serving agencies should have protocols for responding to ~~minor~~ delinquent behavior by youth in their care. These protocols should:
 - i. be developed in consultation with [juvenile justice stakeholders, including probation, child welfare, behavioral health, education, law enforcement officials, prosecutors, defense attorney, advocates, and community service providers](#)~~other juvenile justice stakeholders;~~

Comment [YLC60]: "Youth-Serving Agencies" is so broad is almost meaningless. Are you talking about schools? Group Homes? Child welfare agencies? After school programs? The standards in this section appear to refer to child welfare caregivers... Need to be more targeted... and make this consistent with the definition in the initial sections...

Comment [YLC61]: How is this defined? Don't we need protocols for responding to all potentially delinquent behavior?

i.1 set forth the process to be followed in case of a behavioral emergency or program failure;

ii. aim to prevent unnecessary referrals to the juvenile justice system;

iii. specify, and to the extent feasible, prioritize behavioral management strategies and caregiver support the agency should utilize instead of immediate referral to law enforcement and include a plan for exercising the child welfare agency's parental care and custody role when a child is referred to law enforcement; and

iv. be in writing, made available to agency staff and youth served by the agency, and be incorporated into any agency staff training.

(b) Staff in youth-serving agencies and facilities should be trained in crisis intervention techniques, including strategies to de-escalate youth behavior arising out of mental health or other disability-related needs.

(c) Public agencies that contract with private youth-serving agencies should, in the contracts, set forth the circumstances under which those agencies may refer youth to law enforcement, and should provide guidance on alternative referrals in case of a behavioral crisis or placement problem.

Possible commentary:

- *The IJA/ABA Standards volume on Corrections Administration, Part VIII, "The Disciplinary System" classifies infractions into major infractions, minor infractions, and petty infractions. This may have some suggestions for our standards on minor misconduct, and certainly we can refer to it in commentary (in the Annotated Standards volume at pages 58-60).*

3.2 RESPONSIBILITIES OF LAW ENFORCEMENT IN RESPONDING TO REFERRALS INVOLVING CROSSOVER, DUAL-JURISDICTION, AND MULTI-SYSTEM YOUTH

(a) In deciding whether to arrest, divert, warn, detain, or refer a youth to the juvenile court, law enforcement officers should consider the youth's involvement with other youth-serving systems or agencies that might ensure the youth's appearance in court and reduce the youth's risk of danger to the public.

(b) Law enforcement agencies should develop inter-agency crisis intervention strategies that discourage arrests of youth experiencing emergency mental health crises that do not create a serious risk to public safety. When youth need to be removed from the custody of a youth-serving agency to obtain emergency psychiatric or other mental health intervention, law enforcement officers should

Comment [YLC62]: Wrong word? Do you mean inappropriate referrals?

Comment [YLC63]: The protocol should include a provision requiring the agency with care, custody and control of the child to act like a parent should and respond if child is referred to law enforcement. The commentary points out the problems crossover youth face after referral but don't adequately address the agency's care and custody role after referral.

Comment [YLC64]: This is very interesting, but again, does it belong in these standards? If it is included, it needs to be substantially shortened and tailored to crossover and dual-jurisdiction youth.

take them into custody without arrest and transport them to a more appropriate facility or hospital for the safety, care, and stabilization of the youth.(c) When a youth appears to be homeless, a runaway, or declines to give a home contact, the law enforcement agency has an affirmative duty to determine if the youth is under the care or supervision of the child welfare agency, or should be referred to the child welfare agency.

i. When a youth who has been committed to the child welfare agency has been arrested ~~and is committed to the care of a child welfare agency~~, the law enforcement agency should notify the child-child's caregiver and child welfare caseworker ~~welfare agency~~ in the same way it would be required to notify the youth's parent or guardian.

Or: when law enforcement officers arrest a youth who is committed to the child welfare agency, the officer should notify the child's caregiver and welfare case worker in the same way it would notified the youth's parent or guardian.

ii. When a youth is arrested and appears to be homeless or a runaway and is not under the care or supervision of a child welfare agency, the law enforcement agency should refer the child to the appropriate agency.

Possible Commentary:

- *These standards supplement the IJA-ABA Juvenile Justice Standards Relating to Police Handling of Juvenile Problems and the IJA-ABA Standards Relating to Interim Status: The Release, Control and Detention of Accused Juvenile Offenders Between Arrest and Disposition, Part V, Standards for the Police, 5.1-5.7, which already provide extensive guidance to police officers in deciding how to respond to youth behavior. Consistent with these standards, law enforcement officers should not refer youth to juvenile court for minor delinquent behavior, but may, if necessary and appropriate, refer the youth to a diversion program suitable for the youth's age, mental capacity, and developmental stage.*
- *This standard recognizes that child welfare and other youth-serving agencies, providers, and facilities will on occasion need to call the police for assistance in responding to a mental health or behavioral crisis involving youth in their care and to ensure the safety of other youth within its care. Too often the youth's mental health or behavioral crisis gets redefined as criminal behavior. To address this concern, some communities have introduced police-based crisis intervention teams so that officers trained in mental illness management learn to divert persons suspected of having serious mental illness by bringing them to special mental health assessment centers rather than jail. See MacArthur Foundation Collaboration Between Criminal Justice and Mental Health Systems.*

- *Early notification to the child welfare system by law enforcement is necessary to “promote prompt post-arrest involvement of providers, caseworkers, or advocates acting on the youth’s behalf; to ensure fair treatment of foster youth in the juvenile detention, incarceration, or probation decisions; and to eliminate practices that result in detention or prolonged incarceration of youth due to foster care status or an absence of suitable placement options.” (ABA Youth At Risk Policy February 2008(h)).*

3.3 RESPONSIBILITIES OF LAW ENFORCEMENT, SCHOOLS, AND JUVENILE COURTS IN RESPONDING TO SCHOOL-RELATED CONDUCT

- The primary authority responsible for school discipline and school safety is the school principal. Law enforcement personnel, including school resource officers, should work with school officials to ensure that referrals to the juvenile court from schools are not referrals that would be more appropriately handled by the school.
- To avoid the danger of inappropriate referrals to the juvenile justice system, schools should adopt written policies and establish protocols regarding the presence and use of school resource officers within each school in accordance with the principles set forth in section (d) below. Law enforcement and school officials should review on an annual basis the need to maintain a permanent presence of law enforcement based on these criteria.
- Law enforcement officials should not initiate formal law enforcement intervention for school-related conduct except as permitted in written protocols developed in accord with principles set forth in section (d) below. Formal law enforcement intervention includes issuance of a citation, ticket, or summons, filing of a delinquency petition, referral to a probation office, searches, use of restraints, or actual arrest.
- School officials and law enforcement should work together to develop written protocols governing the relationship between law enforcement and schools. These protocols should clearly articulate that school resource officers are not to be used to enforce school disciplinary codes but should receive referrals only when the conduct constitutes a violation of the law justifying referral to the juvenile justice system. The protocols should aim to secure the school environment while also reducing the number of youth who are unnecessarily arrested or referred to the juvenile and criminal justice systems. Juvenile courts may also initiate or be involved in the development of protocols.

Such protocols should:

Comment [YLC65]: Unclear why this section is included in this at all. It appears out of place, as it is not necessarily applicable to just crossover youth. We suggest taking it out, unless there is some evidence that these youth are somehow more likely to be referred by a SRO and then the standards should focus on those issues alone.

Comment [YLC66]: This appears to be the only section focused on “school”. There could actually be a separate education section that focused on the special educational needs of crossover youth. Some of the issues that could be addressed, include: proper educational placement stability of educational placement prior to and after coming in contact with the delinquency system; immediate enrollment; over-placement in alternative schools; need obtain educational records; need for thorough educational assessment; need to do proper credit assessment and recovery for them; need to establish educational rights holder; need to determine if has any special needs (special education, LEP, Migrant), etc.; providing appropriate transition planning and reentry advocacy.

Comment [YLC67]: This section appears to assume that law enforcement should have a presence in every school. This is not a view that we share.

Comment [YLC68]: Again, this would be fine if the standards were about school disciplinary processes, but anything included here should relate to crossover or dual jurisdiction youth - not general school disciplinary due processes.

- i. Recognize school officials, and not law enforcement, as the primary authority responsible for school discipline and school safety;
 - ii. Discourage school officials from seeking and law enforcement personnel from initiating a law enforcement intervention for minor delinquent behavior;
 - iii. Allow law enforcement officials to transport a truant youth back to school without an arrest or referral to the juvenile justice system, and encourage school officials to develop educational, social services, and public health responses to truancy in lieu of arrest;
 - iv. Encourage a law enforcement partnership with schools to promote programs that are preventive, educational, and recreational to guide young people away from negative behaviors;
 - v. Develop guidelines that limit disruption in educational placement or receipt of educational services resulting from law enforcement intervention;
 - vi. Encourage schools to implement disciplinary practices that:
 - a) are age and developmentally-appropriate;
 - b) are culturally competent;
 - c) engage the family; and
 - d) keep youth in school.
 - vii. Reject zero tolerance policies, mandatory suspension, expulsion, arrest, or referral of students to juvenile or criminal court, without regard to the circumstances or nature of the offense or the student's history.
 - viii. Establish procedures that allow students to appeal disciplinary decisions or file grievances for abusive conduct by law enforcement or school officials to a neutral body.
- (e) Law enforcement personnel who may have regular contact with students should receive extensive training that includes the following topics:
- i. Child and adolescent development and psychology;

Comment [YLC69]: Same comment throughout - this needs to be tailored to the subject of the standards.

- ii. The effects of neglect and trauma, including the exposure to violence;
 - iii. Bullying, including bias-based and sexual harassment;
 - iv. Dating violence;
 - v. Youth with disabilities and the protections afforded to youth under the Individuals with Disabilities Education Act (IDEA);
 - vi. The unique needs of youth who are involved in judicial proceedings;
 - vii. Delinquent subculture, including gang trends, graffiti, drug trends, auto theft and burglary conspiracies;
 - viii. Conflict resolution and peer mediation;
 - ix. Cultural competence and gender and sexuality sensitivity;
 - x. Research-based practices in de-escalation and alternative responses to the use of restraints against youth except in situations involving an arrest and significant threat to the immediate physical safety of a member of the school community.
- (f) Students should be afforded the opportunity to contribute to the development of school-law enforcement protocols and memoranda of understanding.
- (g) When law enforcement personnel are assigned to schools, the involvement of the police with students should not be relegated to arrest and enforcement. Law enforcement and students should interact in other ways that foster positive relationships and a better understanding of each other.
- (h) Juvenile courts should annually review all school based reports and referrals for patterns. If a pattern of referral from a school or school district is indicated, the juvenile court should initiate the development of protocols that will reduce inappropriate referrals from the schools.
- (i) In order to protect confidentiality and safeguard youth from potential stigma and school discipline consequences, juvenile courts should not inform schools of a youth's involvement in the court system for conduct which occurred off school grounds unless the conduct is likely to have an impact on school safety.

- (j) Both school districts and law enforcement should maintain publicly available data, with protections for personally identifiable information, documenting the following items on an annual basis:
- i. Number of law enforcement personnel deployed and/or assigned to each school;
 - ii. Number of school-based arrests (arrests of students that occur on school grounds during the school day or on school grounds during school-sponsored events) at each school, broken down by offense, student's age, grade level, race, sex, disability status, eligibility for free or reduced lunch, English language proficiency, status as a court involved youth, and disposition/result;
 - iii. Number of referrals to the juvenile justice system for each school, broken down by offense, student's age, grade level, race, sex, disability status, eligibility for free or reduced lunch, English language proficiency, and disposition/result; and
 - iv. Number of citations, summons or other actions taken by police personnel for each school, broken down by offense, student's age, grade level, race, sex, disability status, eligibility for free or reduced lunch, English language proficiency, and disposition or result.
 - v. Number of suspensions and expulsions at each school, broken down by offense, student's age, grade level, race, sex, disability status, eligibility for free or reduced lunch, English language proficiency, status as a court involved youth, and disposition/result.

(j) Legislatures should repeal or amend laws, including zero tolerance ~~laws,~~ ~~that~~ laws that require schools to refer youth to law enforcement agencies for minor delinquent behavior.

(k) Legislatures should protect the confidentiality of juvenile court records by amending statutes that require courts and/or law enforcement agencies to notify schools about arrests to prohibit such notification unless the student conduct is likely to have an impact on school safety.

Possible commentary:

- *Include commentary on these types of situations: where law enforcement is permanently stationed at school, temporarily present, and when the school requests intervention.*
 - *What are collateral consequences of permanent presence?*

- *What should periodic reviews to maintain permanent presence look like*
- *Commentary on SRO's and the powers they have or don't have, include them in definition of law enforcement*
- *Commentary on protocols that govern relationship between schools and law enforcement. Talk about how these are negotiated agreements. What is the role of the juvenile court in initiating or participating in the development of the protocols? Bring in Judge Teske and Clayton County example.*
- *Insert commentary on PBIS and restorative practices as alternatives to expulsions and referrals. Reference existing ABA policy. (Youth at Risk Policy?)*
- *Commentary on the use of metal detectors, provide research on the psychological impact of law enforcement tactics in schools, what are the implications on increasing referrals to courts and other implications*
- *Commentary about complaints of law enforcement conduct in schools, or excessive referrals. Give examples of how a system might work. Talk about civilian complaint review boards.*
- *Insert information on the disparate impact of referrals to the juvenile court system as a result of zero tolerance and overuse of law enforcement. Also discuss the disparate impact on educational outcomes of this population.*

In the late 1980's, some school districts began to implement zero tolerance policies to address problems of drug abuse and gang violence in the schools.¹⁵ In 1994, Congress passed the Gun Free Schools Act, which required that states adopt mandatory harsh penalties for students found with firearms and other weapons on school campuses. While the legislation did require that the state laws also authorize the head of each local educational agency to modify the expulsion mandate on a case-by-case basis,¹⁶ most if not all states or schools ignore this additional mandate,¹⁷ and zero tolerance policies began to proliferate across the nation as a measure to address not only gun violence and drug abuse, but general misbehavior in the schools.

¹⁵ Skiba, Russell, et al. *Are Zero Tolerance Policies Effective in Schools? An Evidentiary Review and Recommendations*, by the American Psychological Association Zero Tolerance Task Force, 2006; <http://www.apa.org/ed/cpse/zttfreport.pdf>

¹⁶ 20 U.S.C.A. § 7151(b)(1).

¹⁷For example, the California Department of Education states on its website that the Gun Free Schools Act of 1994 "requires" school districts to adopt "zero tolerance" in regards to firearms in order remain eligible for funding. "Zero Tolerance: Information regarding zero tolerance policies for firearms in schools;" <http://www.cde.ca.gov/ls/ss/se/zerotolerance.asp>

- *As zero tolerance spread, so did the related consequence of referring schoolchildren to the juvenile and criminal justice systems. In too many school districts throughout the nation, police personnel have now taken on the role of school disciplinarian, utilizing police tactics such as searches, handcuffing and arrests to address minor disciplinary problems.*¹⁸
- *Compounding the problem is the lack of clearly articulated roles and responsibilities of police officers who are called to or assigned to schools and an adequate governance structure to regulate police activities in the schools. Districts that permit a permanent presence for law enforcement officers, sometimes referred to as School Resource Officers (SROs), School Liaison Officers (SLOs) or School Safety Officers (SSOs), tend to do so through a Memorandum of Understanding (“MOU”). However, while such MOUs address matters such as compensation structure, hiring, termination, and the sharing of information and resources, most, if not almost all, of the MOUs do not adequately address the most controversial concerns raised by the police presence in the schools: the details of the police officer’s responsibilities in the schools and how decisions involving searches and arrests should be made.*¹⁹ *Such MOUs do not address the nuances of many school interactions that could technically be considered a violation of the penal law but that may not require a law enforcement response—for example should a minor hallway disturbance be considered disorderly conduct leading to an arrest or should it be considered childish behavior resulting in detention? These MOU’s do not address the need to develop a range of responses that take into consideration the youth’s age and developmental capacity. Moreover, these MOU’s do not address situations where school officials request intervention from law enforcement agencies outside of school. Finally, too often parents and students are unaware of the MOUs and there is no accountability system that enforces them.*
- *While recent Supreme Court decisions have provided some clarity into students’ First and Fourth Amendment rights in schools, the controversies adjudicated by the court did not involve law enforcement activities in the schools, which presumably would trigger stronger privacy protections. For*

¹⁸ Advancement Project, EDUCATION ON LOCKDOWN: THE SCHOOLHOUSE TO JAILHOUSE TRACK (Mar. 2005); Johanna Wald & Dan Losen, “Defining and Re-directing a School-to-Prison Pipeline,” NEW DIRECTIONS FOR YOUTH DEVELOPMENT (No. 99, Fall 2003), American Civil Liberties Union and New York Civil Liberties Union, CRIMINALIZING THE CLASSROOM: THE OVER-POLICING OF NEW YORK CITY SCHOOLS (2007).

¹⁹ See, e.g., Memorandum of Understanding between Duxbury, MA Public Schools and Duxbury Police Department, www.duxbury.k12.ma.us/documents/mouduxpolice.pdf; Memorandum of Understanding between Westfield Washington, IN Public Schools and Westfield Police Department, www.westfield.in.gov/egov/docs/1186157545_384521.pdf; Department of Justice Model Memorandum of Understanding, http://www.cops.usdoj.gov/files/ric/CDROMs/SROPerfEval/GuidePDFs/Tool_1.pdf; Phillissa Cramer, “City secretly renewed police control over school safety in 2003,” June 26, 2009, available at <http://gothamschools.org/2009/06/26/city-secretly-renewed-police-control-over-school-safety-in-2003/>;

example, in the recent *Safford Unified School District et al. v. Redding*, 557 U.S. ____ (2009) decision, the Court affirmed the standard for a search of a student first promulgated in *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), which held that the Fourth Amendment applies to students who are searched by a school officer but that given the “special needs” of schools to maintain order and discipline, school administrators need only reasonable suspicion, rather than probable cause, to search students. The Court set a two pronged test to determine the constitutionality of a school search: (1) whether there are “reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school” and (2) whether the scope of the search is reasonable. In *Safford*, the court determined that a search of the girl’s backpack and outer clothing was justified under the reasonable suspicion standard, but that requiring her to pull out her underwear was not justified. The Court has not determined what test is appropriate when the search had been conducted by a police officer stationed permanently in the school.

NOTE: KRIS ALREADY TONED DOWN THE LAST SENTENCE IN EFFORT TO STRIKE COMPROMISE BETWEEN GEORGE’S DESIRE TO TAKE IT OUT AND OTHER COMMITTEE MEMBERS DESIRES TO MAKE IT STRONGER. WE NEED TO SHORTEN THIS PARAGRAPH.

- Schools throughout the country have successfully implemented policies and practices that (1) reject or limit the reliance on SROs and SLOs as the way to secure safety, (2) respond to misbehavior through a process that embraces the educational process, and (3) focus on preventing misbehavior from occurring in the first place. For example, both the Denver Public Schools and San Francisco Unified School District prohibits school staff from requesting police intervention in offenses that are deemed not serious.²⁰ The Los Angeles Unified Schools District, Minneapolis Public Schools, and the New Orleans Recovery School District are examples of where school discipline policies use a non-punitive approach that emphasizes prevention and effective intervention.²¹

²⁰ Denver Public Schools Matrix Attachment B, http://webdata.dpsk12.org/policy/pdf/Policy_JK-R_Attachment_B.pdf; SFUSD Student and Parent/Guardian Handbook, p.67, http://portal.sfusd.edu/data/pupil/SFUSD_StudentHandbook_2008-2009_ENGLISH.pdf

²¹ Los Angeles Unified School District, Discipline Policy Bulletin, http://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/FLDR_ORGANIZATIONS/STUDENT_HEALTH_HUMAN_SERVICES/SHHS/DISCIPLINE_POLICY/BUL-3638.0.PDF; LAUSD Policy Bulletin Attachment G, http://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/FLDR_ORGANIZATIONS/STUDENT_HEALTH_HUMAN_SERVICES/SHHS/DISCIPLINE_POLICY/DISCIPLINE_POLICY_ATTACHMENTS/ATTACHMENT%20G.PDF; Minneapolis Public Schools Policy 5200, <http://www.stopschoolstojails.org/sites/default/files/New%20Orleans%20Student%20Code%20of%20Conduct.pdf>; Louisiana Recovery School District Code of Conduct, p. 13, <http://www.stopschoolstojails.org/sites/default/files/New%20Orleans%20Student%20Code%20of%20Conduct.pdf>

A recent report released by the New York Civil Liberties Union, Brown University’s Annenberg Institute for School Reform, and Make the Road New York examined six New York City public schools that are successfully maintaining safety while simultaneously promoting a nurturing school environment and limiting the role of police personnel in the schools.²² The schools highlighted in the report serve at-risk student populations similar to schools that employ some of the most draconian discipline policies. Yet none of the schools currently have metal detectors, although some did at one time. These schools now emphasize alternatives to harsh discipline and have higher graduation and attendance rates and lower incident and suspension rates than schools that serve similar populations and that employ metal detectors and zero tolerance policies. These schools provide real-life examples that schools may maintain safety without relying on aggressive police tactics and zero tolerance disciplinary practices.

- *In addition, states are beginning to legislate restrictions on school and law enforcement activities. Florida passed a new law in 2009 that encourages the use of alternatives to referral to law enforcement that includes restitution and restorative justice; requires school boards to enter into agreements with law enforcement to develop guidelines for reporting acts that pose a serious threat to school safety to law enforcement; and clarifies that zero tolerance policies do not require the reporting of petty acts of misconduct and misdemeanors.²³ [In a speech to the Section of Litigation in September 2010, Secretary Duncan alluded to states and districts that are currently going through similar revisions – need to research and insert this information here.]*
- *Also include commentary on recognition by the U.S. Department of Education on the inappropriate use of law enforcement as a result of zero tolerance, OCR data collection and monitoring of law enforcement referrals, and OCR statements on misuse of zero tolerance policies.*

PART IV: INTAKE AND DETENTION

4.1 RESPONSIBILITIES OF PROBATION AT INTAKE

²² Udi Ofer et al., *Safety with Dignity: Alternatives to the Over-Policing of Schools*, a report by the New York Civil Liberties Union, Annenberg Institute for School Reform at Brown University, and Make the Road New York (July 2009).

²³ FLA. STAT. ch. 1006.13 (1), (4)(a) & (c) (2009)

Comment [YLC70]: You have now spent 8 pages, close to 20% of the Standards on Crossover Youth, talking about school discipline and the role of law enforcement at school, with virtually no mention of crossover or dual jurisdiction. We agree that these are critically important issues, and that school often serve as a feeder to juvenile justice, but again, urge that these issues be addressed in a different set of standards. Alternatively, this section should be shortened and focused on crossover and dual jurisdiction youth in the school context.

(a) Probation and intake officers should develop written policies and protocols to guide intake decisions involving youth who may become crossover youth or dual jurisdiction youth. ~~with multi-system needs.~~ Policies and protocols should:

i. seek to prevent the unnecessary processing of youth in the juvenile justice system after referral from other youth-serving agencies for minor delinquent behavior, or where the case would not be referred to the delinquency system, but for the fact that the youth is in the child welfare system;

~~and~~

i.1 delineate the circumstances under which referrals will not be accepted (for example, when the child welfare agency wants to use the threat of juvenile justice as a “scared straight” threat, where the primary presenting factor appears to be that another system has no place to put the youth; or where it is clear that another agency with legal duties to the child has simply decided not to work further with a youth);

i.2 prohibit the intake of youth would clearly not be well-served in the juvenile justice system because of developmental disabilities, mental illness, or other cognitive limitations;

ii. encourage intake officers to divert or refer youth with multi-system needs who engage in minor delinquent behavior to other more appropriate youth-serving agencies.

(b) Consistent with Standards on Information Sharing in this volume, intake officers should review information in court and other relevant databases to determine whether a youth or a youth’s family is or has been involved in other youth-serving systems or agencies.

(c) In deciding whether to recommend a formal petition, diversion, or non-intervention by the juvenile court, intake officers should:

i. consider information known at the time of screening about the youth’s mental health status, treatment history, prescribed medications, educational status, and care and supervision by other youth-serving agencies and systems;

ii. attempt to determine whether and to what extent the youth’s alleged behavior was related to the youth’s disabilities or special education, mental health, or substance abuse needs; ~~and~~

iii. avoid duplication of services when the youth is already receiving or may receive similar services from a less restrictive, less coercive agency outside of the juvenile justice system; ~~and.~~

iv. refuse to be the default placement for the failures of other agencies to fulfill their duties to the child. When this appears to be the case, intake officers should attempt to informally resolve the situation, and failing that, ask the court to assist in bringing the other agencies to the table.

(d) Intake officers should not file, nor recommend the filing of a delinquency petition if the youth's conduct is more appropriately addressed by another youth-serving agency or system and the allegations involve minor delinquent behavior.

(e) When diversion is appropriate, the intake officer should refer the youth to a community-based program that is suitable for the youth's age, ethnicity, gender or sexual identity, mental capacity, and developmental stage.

Possible Commentary:

- *These Standards supplement the IJA-ABA Juvenile Justice Standards Relating to the Juvenile Probation Function: Intake Services and Predisposition Investigative Services, but give special attention to the needs of crossover and multi-system youth.*
- *These Standards recognized that there are jurisdictions in which the probation officer does not have authority to recommend petitioning or non-petitioning of cases, but when they do, this standard should be followed. ABA Standards Relating to Probation Intake 2.8 provide ample guidelines to assist the probation department in determining whether to recommend the filing of a petition. Probation should consider whether petitioning would cause undue harm to the youth or exacerbate the problems that led to his or her delinquent acts, whether the youth presents a substantial danger to others, and whether referral to the court has already served as a desired deterrent.*
- *Need to reference ABA Youth At Risk Policies February 2008.*
- *Policies and protocols should be evidence-based and rely on principles of resiliency and positive youth development*
- *Community-based programs may be run by non-profit, for profit, the court or other governmental entities.*

4.2 RESPONSIBILITIES OF PROBATION IN RECOMMENDING DETENTION OR RELEASE

(a) Probation officers should develop or adopt internal written policies, protocols, and risk assessment instruments to guide release and detention decisions involving youth with multi-system needs.

(b) In deciding whether to recommend release or detention for youth coming from the child welfare system with multi-system needs, the intake officer should use an objective risk assessment instrument, and shall apply the same objective risk criteria applied to other youth. That criteria shall be directed at whether the

Comment [YLC71]: This section needs to focus on treating crossover and dual jurisdiction youth just like other youth. We suggest that you take a look at the Annie E. Casey JDAI detention materials. They would make quick work of this issue by only allowing secure confinement if the youth is eligible for confinement based on an objective risk assessment. This would be the perfect protection against being detained on low level offenses because you are in foster care....

youth poses a risk of danger to the community or poses a flight risk pending the adjudication of the case. ~~consider:~~

- ~~i. the seriousness and circumstance of the alleged behavior;~~
- ~~ii. the youth's prior contact with the juvenile justice system;~~
- ~~iii. the care and services available from other youth serving agencies to address the youth's needs and reduce the youth's risk of flight or reoffending prior to trial;~~
- ~~iv. the risk that detention will jeopardize placement or interrupt treatment or services provided by other youth serving agencies; and~~
- ~~v. the risk to public safety, including the safety of other youth and employees in other youth serving agencies.~~

(c) The intake officer should not recommend detention:

i. solely because no suitable placement has been identified for a youth in the dependency system;

i.1 where there have been no reasonable efforts to prevent out of home placement or promote reunification;

i.2 where the child welfare agency is using detention as a respite for caregivers or a scare tactic for youth; or

~~ii. when, when~~ other youth-serving systems are providing, or can provide placement and services that meet the youth's needs and protect the public's safety.

(d) The intake officer should not recommend secure detention on the grounds that it is difficult to identify a non-secure option at the level of confinement. Youth should never be held in a higher level of confinement than is needed to protect the public and assure attendance in court, and the system needs to develop needed individual or group non-secure placements for this population;

(d.1) The intake officer should not recommend secure detention when a youth's special medical, physical, or mental health needs cannot be effectively met in the secure facility. The officer may recommend a suitable detention alternative.

(e) Consistent with Standards relating to Information Sharing in this volume, if a youth is detained, the intake officer should:

Comment [YLC72]: It seems better to have a short succinct statement, and this is the one used in JDAl. This guarantees that youth from child welfare are not taken in "for their own good" or because "there is no place else to put them." The rules need to be objective for all youth and there should be no wiggle room for claims that no nonsecure placements are available

i. advise other youth-serving agencies of the temporary nature of a youth's detention and attempt to preserve appropriate placement, care, and services the youth is receiving from those agencies;

ii. ~~provide~~, provide detention staff with information about a detained youth's special medical, mental health, educational, and other needs; and

iii. ~~help~~, help facilitate communication between the detention staff and other youth-serving agencies to ensure continuity of services while the youth is in detention or shelter care.

Possible Commentary:

- Refer to JDAI standards.
- These standards supplement the IJA-ABA Juvenile Justice Standards Relating to the Juvenile Probation Function: Intake Services and Predisposition Investigative Services, 2.8-2.16, but give special attention to the needs of crossover and dual-jurisdiction youth.

Comment [YLC73]: YES !!!!!

4.3 CONVERTING DELINQUENCY TO DEPENDENCY AND MAINTAINING DUAL-JURISDICTION

NOT SURE WE AGREE WITH THIS SECTION FOR YOUTH WHO HAVE NOT PREVIOUSLY BEEN IN CHILD WELFARE. IF THE REASON FOR TRANSFER TO DEPENDENCY IS BETTER SERVICES, WHY SHOULD PARENTS LOSE THEIR RIGHTS? AND WHAT SERVICES COULD THOSE BE ANYWAY, SINCE THIS SET OF STANDARDS CALLS FOR IV-E FUNDING TO DELINQUENT YOUTH, AND EVEN OUTSIDE THE SYSTEM ALL KIDS CAN GET MEDICAID, SSI, AND SPECIAL ED. FUNDING – WHAT SERVICES ARE WE TALKING ABOUT? See below....we tried to fix the standards to cover this....

Comment [YLC74]: Again - it was curious that there was not a court process section on the more common situation of crossover to delinquency - we suggested text earlier in the draft, but it could go here, as well...

Comment [YLC75]: We suggest separate sections on diversion and transfer of pending cases.

Comment [YLC76]: In California, we have case law prohibiting this kind of mechanism - forcing a family into dependency when the real issue is access to services that should have been paid for through the special ed. system. In re Christopher T. v. San Francisco Unified School District (N.D. Cal. 1982) 553 F.Supp. 1107

(a) States should give juvenile court judges authority to convert a delinquency petition into a dependency when a youth has been abused or neglected or person in need of supervision petition when risks and needs can be better managed by the dependency system and there is consent of the prosecution and the defense.

Comment [YLC77]: The court should have this authority whether or not the prosecutor and the child's attorney agree.

(a.1) States should provide youth with counsel to advise them and a formal hearing when there is a recommendation to move delinquency cases to dependency court. The youth must have counsel, an opportunity to be heard, and the court must advise the youth of the potential consequences of such a transfer.

(a.2) When the reason for transfer of a delinquency case to dependency court is the desire of providing better services, and the family has not previously been under dependency jurisdiction, the state shall provide a “no fault” provision that allows jurisdiction, but does not limit parental rights.

(b) The juvenile court judge should exercise inherent or statutory authority to dismiss a delinquency petition or convert a delinquency petition to a dependency or person in need of supervision petition when the youth will receive more appropriate services from the dependency system and there is consent of the prosecution and the defense.

Comment [YLC78]: Court cannot be bound by the parties in making dismissal decisions.

(c) The decision to dismiss a delinquency petition or convert a delinquency petition into a dependency or person in need of supervision petition may be made at any time but should be made as soon as necessary relevant information can be obtained.

Comment [YLC79]: Avoid barring later decisions.

(d) At any stage of a juvenile court proceeding, the juvenile court judge may, at the request of defense counsel, review court databases to determine if the youth is involved in other youth-serving systems.

(e) When a youth has pending a delinquency charge or has been adjudicated delinquent, a judge presiding over dependency proceedings involving the youth should be authorized to keep the dependency matter open to ensure that the youth receives necessary dependent services.

Possible Commentary:

Common dependency issues include: youth who are chronically truant; youth who have been abused or whose caregivers (for whatever reason) are unable to or refuse to provide adequate care for the youth; youth who have no caregivers; youth suffering from unaddressed medical issues; and, youth suffering from mental illness and/or behavioral problems to the extent that they are unable to properly socialize in the home, school, or community. Dependency issues, while potentially detrimental to the health, safety, and socialization of the youth, do not rise to the level of delinquency behavior because the youth’s conduct is not criminal. When a youth plagued with dependency issues does commit a delinquent act, courts should have the authority to make appropriate use of both the delinquency and dependency systems,

When addressing dependency issues, the Court’s duty is to ensure that the youth is safe and his/her needs are being met. When addressing delinquency issues, the Court has to also consider community safety. Standard 4.3 establishes that when community safety concerns can be addressed while treating the youth in the

dependency system, the delinquency petition should be converted into a dependency petition. This will ensure that the youth receives the specialized treatment and services afforded by the dependency system. Likewise, when a youth is already in the dependency system, but commits a delinquent act, the court should maintain the youth's access to the specialized treatment and services afforded by the dependency system, so long as public safety is not compromised. Public safety in this context also includes the safety of other youth in dependent care.

The system should provide a process for defense attorneys, prosecutors, probation officers, children and youth workers and school officials ~~should collaborate~~ to determine when it is appropriate to divert a delinquency case into the dependency system or to convert a filed delinquency petition into a dependency petition. ~~Only when the youth, the youth's attorney, and the prosecutor agree should the existence of a dependent petition or dependent issues be brought to the attention of the judge hearing the delinquency matter at the pre-adjudication stage.~~

The disclosure of dependency issues could unfairly prejudice the fact finder toward either side. Examples: Information about substance abuse treatment would be unfairly prejudicial for a youth charged with drug possession and disclosures about parental neglect could create inappropriate sympathy for a youth charged with theft. When, however, the parties agree that the youth's culpability is no longer in dispute, they should provide the court with the relevant dependent history.

Comment [YLC80]: It may not always be collaborative. Sometimes there are going to be serious disagreements, so there needs to be a process in place to facilitate the decision.

Comment [YLC81]: What does "inappropriate sympathy" mean in this context? We suggest taking this paragraph out - it meshes pre and post-adjudication issues that are dealt with elsewhere.

4.4 JUDICIAL RESPONSIBILITIES REGARDING **DETENTION**

(a) In deciding whether to release or detain a youth with multi-system needs, the juvenile court judge ~~should consider~~ all apply the same objective risk criteria applied to other youth. That criteria shall be directed at whether the youth poses a risk of danger to the community or poses a flight risk pending the adjudication of the case.

- ~~i. the seriousness and circumstances of the alleged behavior;~~
- ~~ii. the youth's prior contact with the juvenile justice system;~~
- ~~iii. the care and services available from other youth serving agencies to address the youth's needs and reduce the youth's risk of flight or reoffending prior to trial;~~
- ~~iv. the risk that detention will jeopardize placement or interrupt treatment or services provided by other youth serving agencies; and~~

Comment [YLC82]: Again - use the Casey JDAI materials...make this co-extensive with the probation officer section

Comment [YLC83]: As with the intake probation function, it seems better to have a short succinct statement, and this is the one used in JDAI. This guarantees that youth from child welfare are not taken in "for their own good" or because "there is no place else to put them." The rules need to be objective for all youth and there should be no wiggle room for claims that no nonsecure placements are available.

~~v. the risk to public safety, including the safety of youth and staff in other youth-serving agencies.~~

(b) The juvenile court judge should not detain a youth solely because no suitable placement option has been identified in the dependency system.

i. The court shall not detain a youth in secure confinement absent evidence of reasonable efforts to prevent out of home placement or promote reunification.

ii. The court shall not order secure detention where the child welfare agency is using detention as a respite for caregivers or a scare tactic for youth;

iii. The court shall not order secure detention when other youth-serving systems are providing, or can provide placement and services that meet the youth's needs and protect the public's safety.

iv. The court shall not order youth to be held in a higher level of confinement than is needed to protect the public and assure attendance in court, and shall ensure that the system develops needed individual or group non-secure placements for this population;

(c) The juvenile court judge should not securely detain a youth when the secure facility cannot effectively meet the youth's special medical, physical, or mental health needs. The judge may order a suitable detention alternative.

(d) When the judge has concurrent jurisdiction over delinquency and dependency matters, the judge should order the appropriate child welfare agencies to:

- i. arrange a suitable placement for the youth; or
- ii. continue treatment and services for the youth in detention and identify and provide services the youth will need upon release.

~~(e) The juvenile court judge should not securely detain a youth when the secure facility cannot effectively meet the youth's special medical, physical, or mental health needs. The judge may order a suitable detention alternative.~~

(e) When other youth serving agencies have a legal obligation to the youth, the court may join those agencies to facilitate appropriate nonsecure or noncustodial placement of the youth.

Possible Commentary:

Comment [YLC84]: These subsections should be parallel with the probation intake subsections. We started to fix it, but you should do it when all of the language is in.

Comment [YLC85]: Again, use JDAI objective risk assessment as your guide and emphasize that the court's role is to treat youth like other youth, but also not allow juvenile justice to be a dumping ground when other agencies do not fulfill their legal obligations.

- *These Standards supplement the Basic Principles and General Procedural Standards (Parts III and IV) of the IJA-ABA Standards Relating to Interim Status: The Release, Control and Detention of Accused Juvenile Offenders Between Arrest and Disposition, 1.1 – 4.7.*

4.5 INTAKE AND DETENTION DECISIONS INVOLVING PREGNANT AND PARENTING YOUTH

(a) In deciding whether to detain, petition, divert, or not intervene in response to alleged behavior by pregnant or parenting youth, juvenile justice authorities should seek to minimize potential harm to the health of the youth and the youth's child and minimize disruption in the child's living arrangements.

Comment [YLC86]: This could be a whole separate set of standards. What is unique to cross over youth? Suggest deleting this section. If it remains in the standards, tailor it to crossover youth.

(b) To protect the health of youth referred to the juvenile justice system who are pregnant or have recently given birth, the appropriate justice authority should consider alternatives to detention during a youth's pregnancy and during the first eight months of the newborn's life, when no significant public safety concerns exist.

Comment [YLC87]: Delicate area, especially if applied to pregnant youth. Also problematic if it affects the minor parent's right to family integrity.

(c) When public safety concerns require detention, the appropriate justice authority should take steps to protect the health and special prenatal needs of pregnant juveniles by:

- i. ensuring that pregnant youth receive complete prenatal care, including access to regular doctor visits, child-birth classes, and special dietary supplements;
- ii. taking steps to reduce the risk of trauma and infection through comfortable and sanitary living conditions;
- iii. Ensuring access to counseling regarding family planning, if requested; and
- iv. reducing further risk of unwanted pregnancy; and
- v. prohibiting the use of restraints during the term of pregnancy except where significant public safety concerns exist, in which event the detention and health care staff should cooperate to use the least restrictive restraints necessary for security, which should not interfere with the prisoner's pregnancy.

(d) During labor and delivery, the appropriate justice authority should:

- i. take the detained youth to an appropriate medical facility without delay, and

ii. prohibit the use of shackles or restraints, except in extraordinary circumstances absent an individualized finding that security requires restraint, in which event detention and health care staff should cooperate to use the least restrictive restraints necessary for security, which should not interfere with the youth's labor and delivery.

(e) After delivery, the appropriate justice authority should provide services and make arrangements for the mother and child to be together during the first eight months, in the least restrictive means possible that are consistent with the public safety concerns by:

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

ii. ensuring that youth are provided appropriate postnatal care, including access to parenting classes, continued doctor visits, and counseling; and

iii. facilitating visits by the children, including regular overnight and contact visits to foster bonds between the youth and child when the child cannot reside with their mother in detention or it is not in the best interest of the child to reside with their mother in detention.

(f) Any diversion, disposition, and re-entry plan developed for youth who are pregnant or parents should include steps that reduce the chance that the system itself will create grounds for termination of parental rights.

[Fathers?](#)

Possible Commentary:

- *We should cross reference Minimum Standard for Adult Prisoners, Vol. 23 – 6.9(b) Treatment of Prisoners.*
- *Any diversion, disposition or re-entry plan involving pregnant and parenting youth should utilize evidence-based programs that use public health models of intervention.*
- *The deep bond which babies form with their primary caregivers is the foundation on which other long-term relations will be based. Babies at 6 months develop the capacity to form attachment and by 12-14 months their primary attachment figure is usually well-established. If attachments are not formed in early childhood we may see: disruptions in affect regulation, aggressive behavior, less social competence, decrease ability to learn and later psychopathology and crime. Citation?*
- *See Jeannette Crenshaw, Healthy Birth Practices, from Lamaze International, #6 Keep Mother and Baby Together – It's Best for Mother, Baby, and Breastfeeding describes the many benefits of keeping mothers and babies*

Comment [YLC88]: Many young men in the system have children, as well. If you leave this in, need to address their issues.

together in the mother's hospital room in the hours and days immediately after birth.

PART V: REFERRING YOUTH FOR SERVICES

5.1 ACCESSING MENTAL HEALTH SERVICES

- (a) Every jurisdiction should have a comprehensive system that:
- i. prevents the unnecessary involvement in the juvenile justice system of youth in need of mental health treatment, including those with co-occurring substance abuse disorders;
 - ii. allows for the early identification of youth in the juvenile justice system who have mental health needs and co-occurring disorders; and
 - iii. provides for timely access by youth in the juvenile justice system to appropriate mental health treatment by qualified professionals within the least restrictive setting that is consistent with public needs.
- (b) Comprehensive systems should provide:
- i. screening and assessment at key transition points in the system;
 - ii. a continuum of services, short-term interventions and crisis management, evidence-based treatment, and continuity of care, at all stages of the system, including diversion and re-entry;
 - iii. policies that ensure family involvement, with services that are age and developmentally-appropriate, youth-centered, family-focused, community-based, multi-system and collaborative, culturally competent, and offered in the least restrictive setting;
 - iv. protections against self-incrimination when youth participate in court-ordered screening, assessment, and treatment; and
 - v. sustainable funding mechanisms to support the above.
- (c) States should authorize juvenile courts to obtain or order services for youth with mental health needs in a timely manner and without impediments such as altering legal custody of the youth or transferring jurisdiction to another court.

Possible Commentary:

Comment [YLC89]: As in other sections, this needs to be tailored to crossover issues. What mental health service issues are unique to this population? If you leave this section in, could access to mental health services be a way to prevent crossover? Also, you need to add a prohibition on bringing youth into either child welfare or delinquency simply to provide access to services.

- *The principles above are taken from the Mental Health/ Juvenile Justice Joint Policy Statement adopted by Pennsylvania officials in 2006 as part of Models for Change, a juvenile justice initiative supported by the John D. and Catherine T. MacArthur Foundation. Much of the Joint Policy Statement is based on principles and recommendations found in Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System (2006), which was developed by the National Center for Mental Health and Juvenile Justice with support from the Office of Juvenile Justice and Delinquency Prevention. Blueprint for Change can be found at www.ncmhjj.com. The joint Policy Statement can be found at <http://www.modelsforchange.net/publications/142>.*
- *The current IJA/ABA standards only reference mental health services along with “mental retardation,” under Court Organization and Administration at 1.1A:*

Mental illness and retardation commitment proceedings concerning juveniles and adults should be governed by the law of the jurisdiction applicable to such proceedings for non-adjudicated persons.
- *Reports and studies document that the failure of multiple systems to effectively serve youth in their communities has driven youth with behavioral health disorders into the child welfare and juvenile justice systems in large numbers.²⁴ Recent large-scale empirical studies suggest that as many as 65%-75% of youth involved in the juvenile justice system have one or more diagnosable psychiatric disorders.²⁵ Most of these youth do not have mental health issues that are acute enough to justify involuntary mental health commitment – thus, these Standards address the vast majority of youth who are referred to juvenile court because their problems have been undiagnosed, or they have not received mental health services elsewhere. Left untreated,*

²⁴ See, e.g., United States House of Representatives, Committee on Government Reform Minority Staff, Special Investigations Division (July 2004). INCARCERATION OF YOUTH WHO ARE WAITING FOR COMMUNITY MENTAL HEALTH SERVICES IN THE UNITED STATES. Washington, D.C.: House of Representatives; United States General Accounting Office (2003). CHILD WELFARE AND JUVENILE JUSTICE: FEDERAL AGENCIES COULD PLAY A STRONGER ROLE IN HELPING STATES REDUCE THE NUMBER OF CHILDREN PLACED SOLELY TO OBTAIN MENTAL HEALTH SERVICES. Washington, D.C. U.S. GAO.

²⁵ Shufelt, J. & Coccozza, J. (2006). *Youth with Mental Health Disorders in the Juvenile Justice System: Results from a Multi-State Prevalence Study*. Delmar, N.Y.: National Center for Mental Health and Juvenile Justice.

court-involved youth with behavioral disorders sink deeper into the juvenile justice system as they fail terms of probation, skip school, and fail to adjust to the requirements of placement facilities. Un-identified, un-treated youth in such facilities pose a safety risk to both themselves and other youth.

- *For (c), we should look for case examples and literature we could use in the commentary, especially those cases where parents are made to give up custody of their children to obtain mental health services. It may also be important to break through artificial jurisdictional walls between courts, e.g. a juvenile court and a probate court, which forces the juvenile court to give up jurisdiction without provision for oversight and re-entry of the youth once discharged from some facility.*

5.2 ACCESSING SERVICES FROM OTHER YOUTH-SERVING AGENCIES

(a) States should ensure that juvenile justice officials are able to obtain or order services from other youth-serving agencies and systems.

(b) Juvenile justice officials, in consultation with other youth-serving agencies and systems, should develop protocols for screening, assessing, and referring youth for services from other agencies. The protocols should address:

- diversion from juvenile court;
- provision of services to youth while under juvenile court supervision, whether in the community or in placement;
- ~~re-re~~-entry; ~~and~~
- ~~timely, timely~~ access to appropriate services;
- a prohibition on the assumption of jurisdiction over youth solely to provide access to services.

Comment [YLC90]: Does this section duplicate earlier ones? E.g., 2.1?

PART VI: DELINQUENCY ADJUDICATION

6.1 DUE PROCESS AT ADJUDICATORY HEARING

(a) Charges of delinquency should be adjudicated at a hearing by a neutral fact-finder not ~~unduly~~ influenced by knowledge of ~~or~~ prior interactions with the youth or the youth's family in other legal matters. The rules of evidence should prohibit

Comment [YLC91]: This whole last section needs to be reconsidered -- it reads like a delinquency court process protocol. If it is kept in these standards, it needs to be substantially shortened and tailored to crossover and dual jurisdiction youth.

the court from reviewing records relating to child welfare proceedings and other social services materials until after the adjudicatory phase.

Comment [YLC92]: Should there be an exception for if they are proffered by the defense?

(b) Social records and other information relating to a youth's involvement in dependency or other youth serving systems should not be used as evidence against the youth in a delinquency adjudicatory hearing, unless admissible under the rules of evidence.

Comment [YLC93]: Take this out, as it is confusing and is covered in (a). If you leave it in, need to clarify what the situations would be that override the basic rule.

Possible Commentary:

- *The IJA-ABA Standards Relating to Adjudication of youth charged with delinquency apply with equal force to all youth charged with delinquency, including crossover ad dual-jurisdiction youth. Due process rights at an adjudicatory hearing should never be compromised in order to secure services for multi-jurisdiction youth.*
- *Notwithstanding the preference for consolidated hearings involving multi-system youth, all delinquency adjudicatory hearings, including those involving multi-system youth, require strict adherence to due process and the rules of evidence. As such, a fact-finding hearing should be conducted by a neutral fact-finder who is not unduly influenced by prior interactions with the youth and neither the prosecutor nor the defense counsel should introduce information about a youth's mental health status, disabilities, cognitive limitations or history of abuse and neglect unless relevant to some materially contested legal issue, such as whether the youth had the requisite intent to commit the offense alleged, is competent to stand trial, has an affirmative defense to the offense charged or has the mental capacity to plead guilty.*

6.2 LEGAL REPRESENTATION AT ADJUDICATORY HEARING

Comment [YLC94]: From this point on, the standards appear to have lost their focus. Everything in here should be tailored to crossover and dual jurisdiction youth.

(a) Youth charged with delinquency are entitled to representation by competent, loyal, and zealous counsel. Although dual-jurisdiction and crossover youth may be represented by an advocate or *guardian ad litem* who is appointed to represent the best interests of the youth in a dependency proceeding, that best interest advocate should not also serve as the youth's lawyer in a delinquency case.

(b) If, after a reasonable effort to secure their presence, no parents or guardians are present with a youth during the adjudicatory hearing, or if the youth's parents or guardians have been excluded from the hearing pursuant to the rule on witnesses, the court may appoint a *guardian ad litem* to assist the youth and the youth's defense counsel.

(c) When a youth has been appointed both a *guardian ad litem* and defense counsel, the youth's defense counsel should continue to take direction from the client, not the *guardian ad litem*.

(d) Jurisdictions should adopt laws and rules that prohibit the use of incriminating statements in the delinquency adjudicatory hearing when those statements have been made by a youth to a *guardian ad litem* or other advocate not bound by the rules of the attorney-client confidentiality, unless the youth knowingly, voluntarily, and intelligently waives the right against self-incrimination.

Possible Commentary:

- *In many jurisdictions, the guardian ad litem's role in dependency proceedings is inconsistent with the role of attorney for the youth in delinquency proceedings. In these jurisdictions, the guardian ad litem acts in the best interest of the youth and is not bound by attorney-client confidentiality, while counsel for the youth in a delinquency proceeding must strictly adhere to the rules of confidentiality, including those governing the attorney-client privilege and client "secrets," and must zealously advocate for the youth's stated interest. Thus, although the court may appoint a guardian ad litem to represent a youth in a dependency proceeding or to support a youth who has no parent in a delinquency proceeding, See IJA ABA Standards Relating to Adjudication 1.4 C, D, that guardian ad litem cannot substitute for the youth's lawyer.*
- *If, for some compelling reason, the youth's guardian ad litem is subsequently appointed as the youth's lawyer in a delinquency case, the lawyer should explain to the youth and state on the record that the lawyer's role has changed and he or she is no longer acting in the best interest of the youth but will instead be bound by rules of confidentiality and must zealously represent the youth's stated interests.*
- *Youth will often trust and confide in their guardians ad litem, without realizing that the GAL is not normally bound the rules of the attorney-client confidentiality. As a result, a youth may not realize that his or her incriminating statements may be repeated to the court or the law enforcement officials. Although these incriminating statements may not be used at an adjudicatory hearing, they may be used when determining how to best treat or supervise the youth if found to be delinquent. Maybe use STATE V. GOODE from SOUTH CAROLINA as an example of a privilege created.*
- *ABA ETHICS OPINION—ASK JAY ELLIOT.*
- *The ABA House of Delegates in August, 2011 will act on a model code that calls for lawyers of dependent children over a certain age to be client directed. Given the timing, we should rethink this section.*

Comment [YLC95]: The commentary is more directed at crossover than the current standards text. Consider using some of this good stuff in the tailored standards.

PART VII: DISPOSITION

7.1 INFORMATION GATHERING AND INFORMATION SHARING FOR DISPOSITION

Consistent with the Standards relating to Information Sharing in this volume, records relating to a youth's dependency may be reviewed by the juvenile court after adjudication to avoid conflicting orders and to ensure coordination of case management and the provision of effective services and treatment at the delinquency disposition.

Possible Commentary:

- See also 1994 ABA Resolution 10C – Unified Children and Family Courts.

Comment [YLC96]: Suggest deleting this because it is now covered in 6.1 and other sections on records sharing. If you leave it in, should it be coordinated with the standard on separating court records so that the delinquency judge gets only those records needed to avoid inconsistency, etc.

7.2 DISPOSITION PROCESS

(a) If a youth is adjudicated delinquent, the youth's disposition should be consolidated with dependency or other legal proceedings involving the youth and the youth's family, if the court determines that such proceedings will, advance the goals of the state's juvenile justice code, including the best interests of the youth, and promote efficiency and effective coordination of services.

Comment [YLC97]: Wouldn't this happen earlier? Is this different from dual jurisdiction?

Comment [YLC98]: Vague standard.

(b) Any risk or needs assessment tools used in disposition planning for multi-system youth should be tailored to the array of dispositional options provided by the dependency system and other youth-serving systems and should be grounded in research and validated for the purposes for which they are being used.

Comment [YLC99]: Not clear what this means. Do you mean, for example, consider placing the youth in a IV-E eligible foster care placement, reunification services?

(c) Jurisdictions should develop protocols to establish multi-agency teams or case resolution committees to aid disposition planning for multi-system youth. These teams should include representatives from youth-serving agencies necessary to address the youth's needs, as well as the youth's parent or guardian, prosecutor, probation officer, ~~and~~ defense counsel, and the youth. Each agency representative should have authority to bind the agency to the youth's service plan. The following principles should be included within the protocols:

Comment [YLC100]: Cross over youth? Youth involved in multiple proceedings, e.g., mental health and/or child welfare as well as delinquency? If this means youth who need other services, it includes virtually all youth in the delinquency system.

- i. The juvenile court should designate a lead agency within the team that will be responsible for coordinating services for the youth.
- ii. The juvenile court should mandate that team meetings are completed before disposition and expedited when a youth is detained pending disposition.

iii. The juvenile court should order that a written report be distributed by the team to probation, the prosecutor, defense counsel, and the youth three days before the disposition hearing.

iv. The youth should be included and encouraged to participate in the multi-agency team meeting. The youth's strengths should be highlighted and supported by the team, and the youth should have an opportunity to express views and objections to any service plan. If the youth or the youth's parents are limited in their ability to speak ~~do not speak~~ English, an interpreter ~~a translator~~ should be provided. A youth's refusal or inability to participate should not prevent the multi-agency team from planning for the youth.

Comment [YLC101]: "Interpreter" is for oral language services and "translator" is for written language services.

iv. When a youth participates in a multi-agency team meeting, the youth should be advised that the team will consider any information the youth provides in making placement decisions. The youth should have the aid of defense counsel to help the youth understand and articulate views and objections at team meetings.

v. Information sharing in multi-agency meetings should adhere to the Standards relating to Information Sharing in this volume.

vi. The multi-agency team should support its recommendations with a statement of reasons explaining how the recommendations will advance the goals of the state's juvenile justice code and the best interests of the youth.

(d) Youth who are subject to multiple judicial proceedings should be afforded the same due process, procedural regularity, and fairness as any other youth at a delinquency disposition hearing.

(e) All parties should be allowed to review and respond to any document, witness, or other evidence provided to the court at the disposition hearing, including any evidence provided by the multi-agency team.

Comment [YLC102]: Review and respond to any witness? Do you mean review testimony or cross examine any witness?

(f) If the juvenile court orders detention or out of home placement, The juvenile court's disposition should include:

Comment [YLC103]: Assumes out of home placement.

i) a reunification or permanency plan

ii) a plan to maintain the youth's connection to his or her caregiver and to others who are important to the youth, and

ii) a preliminary re-entry plan, with expectations of where, after release from detention or residential placement, the youth will live, be educated, work, and receive appropriate services from other youth-serving agencies and systems.

(g) The court may delay or suspend disposition in a delinquency case and recommend referral to an appropriate youth-serving agency for expedited investigation and service delivery when a youth adjudicated delinquent is in need of services, has not yet been referred, and can be served by that agency with minimal risk to public safety.

Comment [YLC104]: Unintended consequences if the youth remains detained while all this is getting sorted out. Would these services be part of a disposition order?

Comment [YLC105]: What if the youth has been referred but nothing has happened?

Possible Commentary:

- See also, *Standards Relating to Dispositional Procedures, Part II: Dispositional Information.*
- Collectively, the team should have: 1) the authority to make the recommendation and the funding source to pay for the recommended disposition services and placement to avoid a battle between the child welfare and delinquency agencies. 2) Clearly articulated goals/outcomes for the youth; and 3) youth-centered, age-appropriate, family-focused, community-based, multi-system and collaborative, culturally competent positive youth development activities offered in the least restrictive setting age – either in placement or at home – as part of the disposition to create success in the youth’s life and set him or her on a different trajectory.
- Any risk assessment instrument should be grounded in research and best practices and validated for the purposes for which they are being used.
- Notwithstanding the preference for multi-agency teams to assist in disposition planning, a youth remains entitled to due process at the delinquency disposition hearing. Thus, a lawyer representing a youth in a delinquency disposition should advocate for the youth’s stated legal interests and defer to the youth in decisions about whether to make or agree to a specific dispositional recommendation. *IJA/ABA Standards Relating to Counsel for Private Parties 5.2 Control and Direction of the Case, 9.3(a) Counseling Prior to Disposition.*
- **ADD COMMENTARY TO DISCUSS SOME OF THE RATIONALE AS WELL AS THE CONCERNS/CONSIDERATIONS WHEN INCLUDING THE CHILD.**

7.3 DISPOSITION OPTIONS

(a) A juvenile court judge ordering disposition for a ~~crossover multi-system~~ youth should select from among any of the disposition options legislatively available for ~~all youth in the respective youth serving systems~~. The judge should order the least restrictive disposition that furthers the goals of the juvenile justice system. Disposition options include the termination of delinquency jurisdiction, referral to other youth-serving systems, maintaining dual jurisdiction, or disposition in the delinquency system with access to services from other youth-serving systems or agencies

(b) States should give juvenile courts authority to review service, treatment, and disposition plans of other youth-serving systems and ~~override those that are in conflict with the goals of the juvenile justice system~~. join other agencies with legal obligations to the youth to coordinate planning and assure that existing legal obligations to the youth are fulfilled.

Comment [YLC106]: Override is too strong - the court can make them do what they are already suppose to do....

(c) All youth adjudicated delinquent should have access to publicly-funded ~~critical~~ youth services available to other youth.

(d) Judges and probation officers serving multi-system youth should assist the youth in obtaining services from other youth-serving systems. The juvenile court should develop protocols and procedures for expeditious service delivery to the youth from other public and private youth-serving agencies.

Possible Commentary:

- *As recognized in the Standards relating to Cross-System Training in this volume, effective disposition planning requires that all juvenile court judges, probation officers, and lawyers be trained about the availability of resources in the community, including services available from community-based, school-based, faith-based, nonprofit, and other public and private agencies. To assist youth in accessing these services, the juvenile court should work with other youth-serving agencies to develop protocols and procedures, memoranda of understanding, purchase of service agreements, and contracts for interagency referrals and expedited service delivery from public and private youth-serving agencies.*

7.4 MODIFICATION OF DISPOSITION

(a) The court should have authority to periodically review, and if necessary, modify any service, treatment, or placement provided to a ~~multicrossover system~~ youth at disposition.

Comment [YLC107]: If it stays in, this section should be reviewed and revised to address specific crossover issues.

(b) States should allow any party in a delinquency case to petition the court at any time after disposition to:

- i. reduce the restrictiveness or duration of disposition when more appropriate or less restrictive service or placement options have become available to the youth from other youth-serving agencies or systems; or
- ii. increase the restrictiveness or duration of disposition when the youth has violated the terms or conditions of his or her disposition and the services being provided are not adequately addressing the youth's needs or ensuring public safety and there are no other less restrictive options.

(c) The court may only increase the restrictiveness or duration of disposition for a crossovermulti-system youth after a hearing that comports with due process and affords the youth to be represented by counsel and an opportunity to be heard.

(d) Unless the youth consents, neither the restrictiveness nor the duration of disposition should be increased solely to ensure the youth's access to funding for services or placement. The youth shall not be required to be subject to the punitive sanctions of continued delinquency court jurisdiction and probation sanctions solely to ensure access to funding for services or placement.

Comment [YLC108]: Youth should not have to choose to continue to be subject to the penal sanctions that may be imposed under probation supervision just to get needed services when they have met the rehabilitative goals of the disposition.

Possible Commentary:

- Add commentary on the fact that sometimes the problems are not the fault of the youth. Services were not provided, or were inappropriate to address the issues the youth has. Also, sometimes, the youth needs a different or less restrictive placement, not a higher level of care.
- *Sometimes youth wish to continue with services, treatment, and even placement after disposition is scheduled to conclude. The youth may consent to extend duration of disposition to ensure continued funding and continuity of services. State law should ensure that youth who have completed the requirements of disposition have a right to stay put in a program or placement, if they so desire without being subject to the punitive sanctions and consequences of continued delinquency court/probation supervision.*
- *Need to add commentary to address those states in which the court loses jurisdiction upon entry of the dispositional order. The juvenile court should have some inherent authority to revisit those cases.*

PART VIII: POST-DISPOSITION AND RE-ENTRY

8.1 RE-ENTRY AND DISCHARGE PLANNING

Comment [YLC109]: Another area that could be a stand alone set of standards...if it stays in, tailor it to crossover.

(a) Re-entry planning should be designed to provide youth in residential placement a combination of services, support, and supervision to promote their successful life in the community after discharge. Services and support should begin at disposition, continue while a youth is in placement, anticipate the youth's release from placement, continue until the youth is discharged from juvenile court supervision, and extend thereafter through connections to other opportunities, support, or services, including those provided to dependent youth.

Comment [YLC110]: Re-entry and discharge planning should include consideration of and coordination with the child welfare system to ensure that dual jurisdiction and crossover youth receive the benefits to which they may be entitled to from the child welfare system.

(b) Discharge planning should be designed to meet the immediate needs of youth discharged from placement and ensure a smooth transition to implementation of the post-release aspects of the re-entry plan.

Possible Commentary:

- This definition comes from the Joint Policy Statement on Aftercare that was adopted by Pennsylvania leadership on January 1, 2005. See <http://www.modelsforchange.net/about/States-for-change/Pennsylvania/Work-highlights0.html>
- Discuss benefit of the team model and re-assessments in re-entry planning.

Comment [YLC111]: Discuss the benefits and opportunities that may be available to dual jurisdiction and crossover youth through the child welfare system (e.g. Fostering Connections transitional supports and services.)

8.2 POLICIES GOVERNING RE-ENTRY AND DISCHARGE PLANNING

(a) State and local jurisdictions should have policies that require re-entry planning. Policies may include, but are not limited to, laws, regulations, inter-agency protocols, memoranda of understanding, and court rules.

(b) Policies governing re-entry and discharge planning should:

- require the juvenile justice system to begin re-entry planning at disposition and complete discharge planning well in advance of discharge;
- require timely, coordinated, and cross-system services that, at a minimum, address continuity of education (including special education), housing, and the need for behavioral, mental health, physical health and employment services;
- allow for the filing of a dependency petition before a youth's 18th birthday if it appears the youth will need housing or other voluntary services when juvenile court jurisdiction terminates; and
- prohibit delays in identifying, securing, or arranging for appropriate post-discharge services from extending the duration of residential placement.

Comment [YLC112]: Include consideration of and coordination Federal law permits extended foster care benefits for youth who are adjudicated after the age of 18 if permitted under state law.

Possible Commentary:

- *The timing of a dependency petition may be delayed in cases where juvenile and dependency services are available beyond age 18, so long as the petition is filed while the youth is still eligible for extended services by the dependency court.*
- *Policies should encourage those planning for discharge and re-entry to engage the youth and the youth's family. Multi-disciplinary teams should be convened, if appropriate, to work with the youth and youth's family before discharge.*
- *Re-entry and discharge planning should ensure that educational credits earned in detention or residential placement will be appropriately allocated or transferred to the youth's school upon discharge.*

Comment [YLC113]: This should be part of a separate education section and applicable to all detained youth

8.3 RESPONSIBILITIES OF RESIDENTIAL FACILITIES

(a) Residential placement staff should be attentive to the preliminary re-entry plan and cooperate with the appropriate juvenile justice authorities to modify the plan as necessary.

(b) Prior to a youth's discharge, the residential staff, juvenile justice professionals responsible for re-entry, the youth, and the youth's family and counsel should review the preliminary re-entry plan developed in accord with the Standards relating to Post-Disposition and Reentry in this volume and develop a discharge plan that addresses where the youth will live, be educated, work, and receive appropriate services from other agencies and systems.

(c) Residential placement staff should supervise youth in residential placement and provide or secure them timely and appropriate services and support from other youth-serving agencies and systems.

Comment [YLC114]: Nothing in 8.3 or 8.4 is specifically tailored to the crossover population. Each sections could be shortened to one bulleted point and included in section 8.2

8.4 IMPLEMENTATION OF DISCHARGE PLAN AND POST-DISCHARGE SUPERVISION

Youth discharged from residential placement who remain under supervision of the court or state youth authority should have case managers assigned to ensure implementation of the youth's discharge plan and timely access to services from appropriate youth-serving agencies and systems.

8.5 COURT ORGANIZATION TO SUPPORT RE-ENTRY AND DISCHARGE OF DUAL JURISDICTION OR MULTI-SYSTEM YOUTH

(a) When courts share jurisdiction over dual jurisdiction or multi-system youth, the courts should work together to establish a non-duplicative system for developing, modifying, and implementing re-entry and discharge plans.

Comment [YLC115]: This section seems like a rehash of other sections. Suggest taking it out. If it stays in, tailor it to crossover youth.

(b) Consistent with Standards relating to Information Sharing in this volume, the juvenile justice system should develop procedures for the exchange of relevant and necessary information about dual jurisdiction or multi-system youth eligible for discharge with any youth-serving agency responsible for the provision of services or implementation of any part of the discharge or re-entry plan.

Possible Commentary:

- *These Standards should supplement the IJA-ABA Standards Relating to Court Organization and Administration.*
- *In re-entry and discharge planning, the juvenile justice system will need to share information about individual youth with other youth-serving agencies and systems, such as behavior or mental health providers, schools, medical care facilities, drug and alcohol treatment providers.*

PART IX: **APPEALS**

9.1 RIGHT TO APPEAL

(a) Dual-jurisdiction and multi-system youth should have the same right to appeal any final order of the juvenile court as does any other youth subject to the court's jurisdiction. This right should include a review of the facts found, law applied, and the disposition ordered.

(b) Youth involved in multiple legal matters may seek review of:

- interlocutory orders of the juvenile court by leave of the court of appeals;
- inconsistent orders by a single judge or different judges with jurisdiction over the youth's delinquency and dependency matters; and
- orders that do not provide for the least restrictive alternative to achieve the goals of multiple systems.

Possible Commentary:

- *These Standards should supplement the IJA-ABA Standards Relating to Appeal and Collateral Review.*
- *Inconsistent orders between and among different courts include orders for placement in different locations and conflicting levels of restrictiveness in placement.*

9.2 PROCEDURES AND ADVICE OF RIGHTS

Comment [YLC116]: This is way too detailed, and you could collapse 9.1., 9.2 and 9.3 if these issues are to be included. Need to explain how this material relate to this population of youth?

(a) At the conclusion of any judicial proceeding involving youth and families with multiple legal matters, the judge should:

- i. prepare a final written order clearly delineating the court’s rulings, the facts found, the law applied, and the disposition ordered and reasons therefore; and
- ii. advise the youth and the youth’s family of the right to appeal any final judgment and disposition relating to allegations of delinquency.

(b) The youth should be entitled to a copy of any document in the court file and the verbatim transcript of any proceeding that might relate to the appeal, including but not limited to, the adjudicatory and dispositional hearings.

Possible Commentary:

- *The principles set forth in this standard are true in all cases, but warrant special emphasis in the context of youth and families with multiple needs. The appellate rights and needs are easy to forget or neglect when dependency and delinquency cases are consolidated.*

9.3 TIMING AND STAY PENDING APPEAL

(a) A youth who files a timely post-disposition motion for relief should be entitled to a tolling of the time in which to appeal.

(b) In any proceeding involving youth and families with multiple legal matters, the youth should be entitled to seek a stay of any dispositional order from the appellate court if the youth can show a likelihood of irreparable harm and success on the merits.

(c) A stay should be granted upon a showing that the harm to the youth if the stay is not granted will be greater than the harm to the public interest if granted.

Possible Commentary:

- *Special procedural safeguards are necessary to ensure that youth are not penalized because of delays or missed appellate deadlines caused by the youth’s involvement in multiple legal matters.*
- *Appeals are a key part of a system of accountability and fairness. These values are important not only to the parties who appear in juvenile court, but to all stakeholders in the juvenile justice system and the public at large.*

Comment [YLC117]: As in some other sections, the commentary, particularly this bullet and the next are the heart of the matter. Somehow the standards themselves need to convey the importance of appellate review both to correct errors and to clarify the law.

Appellate courts serve an important public purpose. They give meaning to imprecise words in statutes and constitutions. They guide trial courts, by interpreting the law through affirming or reversing decisions made at the trial level. The appellate process helps clarify the meaning of statutes, and how they are appropriately implemented. The appellate process furthers fidelity to the law, and promotes uniformity across a jurisdiction. Appellate case law mitigates the effects of justice by geography.

There are relatively few appeals from decisions of judges who hear both delinquency and dependency cases. There is no substantial body of appellate law to resolve cross-system issues, or competing orders involving youth and families who are involved with delinquency and dependency systems. In part, this is because there is little synchronicity in decisions by judges who hear delinquency cases and those who hear dependency cases. There is a paucity of appeals, too, because the process takes too long to do a youth any good, judges in delinquency and dependency cases are too rarely required to state the reasons for their decisions on the record, and lawyers for youth often do not receive the training and resources to appeal orders in delinquency and dependency cases. Appellate courts are left applying an “abuse of discretion” standard that will rarely lead to a decision for a youth who appeals.

ADD: Competing, conflicting or inconsistent orders.

Appeals will be important to successful implementation of these Standards, since appeals provide for clarification and more uniformity in addressing the problems of youth served by multiple systems. Thus, these Standards encourage judges to give statements of reasons on the record for their orders of adjudication, disposition, or other significant orders. The Standards also allow for stays pending appeal; and leave intact current Standard 4.1 of IJA ABA Standards Relating to Appeal and Collateral Review, which calls for a “system for expediting and granting preferences to appeals from the juvenile court.”

PART X: **COLLATERAL CONSEQUENCES & RECORDS EXPUNGEMENT**

10.1 OBLIGATIONS OF THE JUVENILE AND FAMILY COURT

(a) Juvenile and family courts should make every effort to prevent the transfer of juvenile court records, other than those identified in the Standards Related to Information Sharing above, and minimize the potential for prejudicial collateral consequences that imperil a youth’s appropriate placement and access to needed services.

Comment [YLC118]: There is nothing about collateral consequences other than expungement in this section, so it should be taken out.

Comment [YLC119]: We suggest consolidating a shortened version of this in the sections on records, so everything on records is in one place. You could have a “see reference” after the material on Discharge...

(b) The juvenile court or law enforcement agency should prevent the transfer of records to a youth's school prior to adjudication of an offense. After adjudication, schools should only be notified of a youth's off-campus offense when a significant and immediate public safety concern exists.

Possible Commentary:

Consistent with Standards relating to Information Sharing in this volume and IJA-ABA Standards Relating to Juvenile Records and Information Sharing, youth should be protected from any disclosure that does not meet an appropriate service-related, rehabilitative, or safety purpose.

The consolidation of multiple legal proceedings and the sharing of information among multiple agencies and systems serving youth and families should not increase the release of family court records unrelated to delinquency and should not increase the risk that youth will be exposed to collateral consequences such as the deprivation of civil rights or privileges such as driving privileges, military service, college admission, employment, public education, public housing or other public assistance.

10.2 EXPUNGEMENT OF JUVENILE AND FAMILY COURT RECORDS

(a) Youth entitled to expungement of records in accord with the *IJA-ABA Standards Relating to Juvenile Records and Information Services* should retain that right even when the youth is involved in other youth-serving agencies or systems.

(b) When expungement of delinquency records is ~~permitted~~warranted, these records should be expunged from all files and databases in the juvenile and family court and in any youth-serving or family court agency that obtained the records from the juvenile justice system.

(c) The juvenile court should establish policies and procedures for:

- i. notifying other youth-serving agencies and systems when a youth's delinquency records should be expunged; and
- ii. ensuring that youth-serving agencies purge all information pertaining to the youth's delinquency from agency records and files.

(d) In jurisdictions where the juvenile court or law enforcement agency is required to notify the youth's school of an arrest, adjudication, or disposition, the juvenile court should also notify the school when any juvenile court record has been expunged.

Possible Commentary:

Comment [YLC120]: Also, confidential records from other youth-serving agencies should not be made available through access to delinquency juvenile court records by virtue of a youth's crossover status.

Youth serving agencies should be notified when records should be expunged. When a youth is a dual jurisdiction or multi-system youth, several agencies may need to be notified.

The optimum protection against the inappropriate use of juvenile and family court records and the potential for unfair collateral consequences is expungement of the record. These standards supplement the IJA-ABA Standards Relating to Juvenile Records and Information Services.

The task of expungement becomes more difficult when records involving youth are shared, consolidated, or otherwise commingled with those of other youth-serving agencies. The juvenile court should take steps to notify other agencies and systems and facilitate the expungement of all juvenile justice records that have been shared or disseminated.

PART XI: RESPONSIBILITIES OF PROSECUTING ATTORNEYS

11.1 POLICIES AND PROTOCOLS

(a) Prosecutors should develop policies and protocols to guide intake decisions involving crossover and multi-system youth. Policies and protocols should encourage diversion or non-intervention for youth who engage in minor delinquent behavior and who can obtain appropriate services from other youth-serving agencies and systems.

(b) Prosecutors should work with state and local law enforcement officers and youth-serving agencies to develop protocols to handle referrals to the juvenile justice system from other youth-serving agencies and systems. Protocols should seek to reduce referrals [to the juvenile justice system](#) for minor delinquent behavior.

Possible Commentary:

- *The prosecuting attorneys have the same ethical obligations in all cases as set forth in the ABA Model Rules for Professional Conduct, Rule 3.8 (Special Responsibilities of a Prosecutor) and the IJA/ABA Standards Relating to Prosecution 1.1(A) which states that “An attorney for the state, hereinafter referred to as the juvenile prosecutor, should participate in every proceeding of every stage of every case subject to the jurisdiction of the family court, in which the state has an interest” and 1.1(B) which states that “[t]he primary duty of the juvenile prosecutor is to seek justice: to fully and faithfully represent the interests of the state, without losing sight of the philosophy and purpose of the family court.*

11.2 TRAINING

Prosecutors should participate in cross-system training in the areas set forth in Standard 2.14 of this volume.

11.3 CHARGING DECISIONS

(a) Consistent with Standards relating to Information Sharing in this volume, when youth are referred to the juvenile justice system, prosecutors should review available family court records to determine whether the youth or the youth's family is or has been served by other youth-serving systems.

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

i. solely to secure treatment or placement for a youth when a petition would not otherwise be warranted;

ii. when information available from other youth-serving agencies or systems makes clear that the youth did not have the requisite mental capacity, cognitive ability, or intent to be held responsible for his behavior; or

iii. when a youth is allegedly involved in minor delinquent behavior and can obtain appropriate services or interventions from other youth-serving agencies or systems.

(c) The prosecutor may elect not to prosecute any delinquent behavior in juvenile or criminal court when a more appropriate system or course of treatment will manage the safety risk outside of the juvenile or criminal justice system.

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

(e) The prosecutor should consider withdrawing a delinquency petition upon learning that the subject of the petition is already receiving or can receive adequate and appropriate care, treatment, and placement outside the juvenile justice system without posing a public safety risk.

Possible Commentary:

- *When youth have been referred to the juvenile justice system by other youth-serving agencies, the prosecutor should carefully review and consider information known at the time of screening about the youth's mental health status, treatment history, prescribed medications, educational status, cognitive capacity, and care and supervision from other youth-serving systems. The prosecutor should attempt to determine whether and to what extent the youth's behavior is attributable or related to the youth's disabilities.*
- *Youth who engage in aggressive behavior in a mental health facility may need an alternative treatment plan in lieu of intervention from the juvenile justice system. Likewise, a youth who has been identified as a special education student and engages in aggressive or disorderly behavior may need a new educational placement or plan in lieu of intervention from the juvenile justice system.*
- *Commentary should cross reference the ABA Youth at Risk Policies February 2008.*
- *It is recommended that the prosecutor make sure that appropriate referrals are made.*

11.4 COMMUNICATING WITH VICTIMS

To the extent permitted or required by federal and state confidentiality laws, the prosecutor should advise the victim of special circumstances involving multi-system youth leading to specific charging decisions and proposed resolution of the case. The prosecutor should advise victims of the limitations on disclosure of information about the accused youth.

Possible Commentary:

- *To the extent necessary and permissible by law, the prosecutor may explain why diversion for youth with multi-system needs is appropriate. In some cases, victim-offender mediation may be particularly useful, if the victim agrees and the youth is able to participate, in resolving delinquency matters that involve crossover or multi-system youth.*

11.5 DIVERSION

If the prosecutor diverts a crossover or multi-system youth from the juvenile justice system, the prosecutor should:

- i. refer the youth to a diversion program that is suitable for the youth's age, ethnicity, culture, gender or sexual identification, mental status, and developmental or cognitive ability; and
- ii. consider referral for [voluntary](#) treatment in lieu of community service.

11.6 DETENTION

- (a) In deciding whether to request detention, the prosecutor should consider whether the supervision and service needs of the youth can be served adequately by youth-serving agencies outside the justice system.
- (b) The prosecutor should not seek detention solely because no suitable placement has been identified in the dependency system.
- (c) The prosecutor should not seek detention when the youth is alleged to have engaged in minor delinquent behavior and detention will likely cause the youth to lose placement or services from other youth-serving systems.
- (d) The prosecutor should assure that the child welfare agency promptly takes custody of any youth ordered released by the court.

11.7 COMMUNICATING AND COORDINATING WITH YOUTH-SERVING AGENCIES

- (a) ~~If~~ The prosecutor should encourage input from probation, defense counsel, child welfare and other relevant parties when deciding whether to file a formal delinquency petition against a youth in the child welfare system, and be a part of the collaborative or court process that determines whether a youth will cross over to delinquency or be a dual jurisdiction youth. If the prosecutor declines to file a petition after a youth has been referred from a youth-serving agency, the prosecutor should communicate that decision to the referring agency.
- (b) The prosecutor should develop protocols and procedures for effective and efficient referral of youth to the child welfare system.

Possible Commentary:

- *Prosecutors should encourage child welfare officials to expedite a dependency investigation when delinquency proceedings are pending.*
- *(OJJDP Bulletin, When Systems Collide, supra at p.7).*
- *(See Effectively Intervening with Dual-jurisdiction Youth in Ohio; Children, Families, and the Courts, Ohio Bulletin, Vol. 2, No.3 Summer-Fall, 2005 p.9; OJJDP Bulletin, When Systems Collide, supra at 9).*

11.8 DISPOSITION

- (a) The prosecutor should participate in any multi-agency planning team meeting convened in accord with the Standards relating to Disposition in this volume.

Comment [YLC121]: We are not sure how to handle this paragraph. It make it seem like the prosecutor is the one calling the shots, but these standards call for a collaborative process and in some instances a court process. Is the decision whether to file a petition part of the crossover decision, and if so, wouldn't the prosecutor be a part of the collaborative process or process presided over by the court?

(b) The prosecutor should consider non-incarcerative dispositions when the youth's supervision and service needs can be met without out-of-home placement.

11.9 POST-DISPOSITION

After disposition, prosecutors should periodically review cases involving dual jurisdiction or multi-system youth.

- i. If it appears that additional or alternate services are needed to meet the needs of the youth or to ensure public safety, the prosecutor may seek to modify the dispositional plan or order to the extent permitted in the Standards relating to Modification of Disposition Orders in this volume.
- ii. If it appears that the youth no longer needs care and rehabilitation from the juvenile court and does not pose a risk to public safety, the prosecutor should consider a request to terminate the delinquency disposition early.

PART XII: RESPONSIBILITIES OF DELINQUENCY DEFENSE COUNSEL

12.1 ETHICAL OBLIGATIONS OF DEFENSE COUNSEL

(a) Defense counsel representing crossover, dual-jurisdiction, or multi-system youth are subject to the same professional obligations as other defense counsel under the *IJA-ABA Standards Relating to Counsel for Private Parties* and the *ABA Model Rules of Professional Conduct*.

Possible Commentary:

In all matters pertaining to representation of a dual-jurisdiction or crossover youth, defense counsel should abide by:

- *the IJA/ABA Standards Relating to Counsel for Private Parties;*
- *the ABA Rules of Professional Conduct;*
- *the stated interests of the youth;*
- *state and federal laws and regulations regarding confidentiality; and*
- *provisions regarding informed and voluntary waivers of confidentiality.*

Counsel defending a youth with multi-system needs in a delinquency proceeding must be vigilant not to assume the role of guardian ad litem for the youth. The role of defense counsel differs significantly from that of a guardian ad litem. Because of the Constitutional underpinnings of delinquency representation, lawyers for multi-system youth must avoid substituting their judgment for that of their clients, and must avoid a "best interest" standard of representation that applies in some jurisdictions to guardians ad litem or attorneys for dependent youth. These Standards are designed to avoid the ethical and professional

Comment [YLC122]: Similar section of responsibilities of dependency counsel should be inserted address crossover prevention. It should focus on investigation and advocacy to prevent crossover and coordination with delinquency counsel.

responsibility quandaries that arise when counsel have different standards of representation.

For additional resources, look NATIONAL JUVENILE DEFENDER CENTER, *Role of Counsel*; Kristin Henning, *Loyalty, Paternalism and Rights: Client Counseling Theory and the Role of Child's Counsel in Delinquency Cases*, 81 NOTRE DAME L. REV. 245 (Nov 2005).

12.2 TRAINING

Defense counsel should participate in cross-system training in the areas set forth in Standard 2.14 of this volume. [Include training on confidentiality, role of counsel, and privilege?](#)

12.3 INVESTIGATION AND COUNSELING

(a) Defense counsel should advise the youth and when, appropriate, the youth's parent or guardian, about the need for and implications of signing a waiver to allow counsel access to confidential records and information about the youth.

(b) Upon the youth's voluntary and informed waiver of confidentiality or receipt of a court order, defense counsel should gather all information that would likely affect the youth's custody, legal status, or course of treatment in the juvenile justice system, including information about the youth's involvement in other youth-serving systems.

(c) Defense counsel should advise the youth regarding potential options and possible implications of involvement in multiple youth-serving systems and agencies.

[\(d\) Defense counsel should advise the youth about the short and long term implications of signing a waiver to release information to law enforcement, child welfare, or youth serving agencies; ensure that youth understand the effects of disclosure and re-disclosure of information; and ensure that any waiver of confidentiality is made voluntarily. Where the youth is limited in his or her ability to speak English, the waiver should be explained in a language they understand and any written waiver form should be appropriately translated. Where the youth is limited in his or her literacy skills, the waiver should be obtained in a manner that is understandable to the youth.](#)

Possible Commentary:

- *In particular, defense counsel should help the youth understand the differences between "involuntary" systems in which courts have power to order the youth to behave in certain ways, or to receive specified services, from those "voluntary" systems in which the youth or parent has more control*

Comment [YLC123]: In addition to informing youth about the implications of signing a waiver to allow counsel access to confidential records, the attorney should make sure the youth understands privilege, his or her rights with respect to consent and confidentiality, and the implications of waiving confidentiality or privilege in releasing information to others.

over services, as well as over the degree and nature of his or her participation. Counsel should also help the youth understand the consequences of non-compliance with either system.

- *Defense counsel's obligations during the initial stages are set forth in the IJA-ABA Standards Relating to Counsel for Private Parties, 4.1 – 6.4.*

12.4 PRE-PETITION ADVOCACY BY DELINQUENCY COUNSEL

When appropriate to advance the youth's stated interests and permitted under state and federal confidentiality laws, defense counsel should provide the intake officer or the prosecutor with any information mitigating against the filing of a petition or the inclusion of certain charges in the petition. Such information should be accompanied by recommendations of alternatives, including alternative youth-serving agencies and systems, to provide needed services to the youth and, if necessary, to protect the public.

[Add something re communication with dependency counsel?](#)

Possible Commentary:

- *In appropriate cases, defense counsel may advocate that a youth be diverted from the juvenile justice system to other more appropriate youth-serving agencies and systems such as the child welfare, mental health, substance abuse treatment, education or special education systems.*
- *These standards strongly endorse holistic advocacy by the defense bar. Holistic/Comprehensive advocacy requires that defenders become aware of services, placements, and treatment opportunities outside of the juvenile justice system and encourages defenders to assist families in navigating the bureaucracies of other youth-serving systems or refer youth to organizations that may assist them in this way. Cross reference the Criminal Justice Section Task Force Report. – Gowen.*
- *In determining whether to disclose information to any person regarding a client's involvement in one or more youth-serving systems, defense counsel must abide by the rules of professional conduct in maintaining the attorney-client privilege and protecting client "secrets." Counsel owes a duty of loyalty and confidentiality to the client and may not disclose information without the youth's consent, except as permitted by the disciplinary rules of the ABA Code of Professional Conduct or as otherwise required by law. Unless required by applicable statute or Court Rule, defense counsel should not disclose information that would be contrary to the youth's stated interests in the delinquency proceedings. See IJA-ABA Standards Relating to Counsel for Private Parties.*
- *Whenever counsel discloses information about the youth's medical, mental health, educational or other needs, and such information becomes part of the juvenile delinquency record, counsel should request that information be kept separate and*

confidential from other delinquency records unless state or federal allows permits the public to access that information.

- *For additional references, see the NATIONAL JUVENILE DEFENDER CENTER 10 PRINCIPLES; NLADA provides useful guidance on the role of juvenile defense counsel.*

12.5 ADVOCACY AT DETENTION HEARING

(a) Defense counsel should present facts and arguments at the detention hearing supporting the youth's placement in the community or in the custody of youth-serving agencies other than juvenile detention agencies if consistent with the youth's stated interests. Facts and arguments should include evidence from youth-serving agencies regarding the availability of specific care, treatment, or services to meet the needs of the youth.

(b) Counsel should attempt to secure for detained youth at least the same or similar education, mental health, and other treatment services the youth had been receiving prior to detention.

(c) Consistent with Standards relating to Information Sharing in this volume, as soon as possible after a detention decision has been made, counsel should provide detention or shelter care staff with information about the youth's needs and advocate for the proper care and safety of the youth in detention or shelter care.

12.6 DISPOSITION ADVOCACY

(a) Counsel representing youth with multi-system needs should zealously represent the stated interests of the youth at any multi-agency planning team meeting or disposition hearing described in the Standards relating to Disposition in this volume.

(b) Counsel should ensure that any delinquency disposition hearing comports with the fundamental principles of due process even when that disposition hearing is consolidated with other family court proceedings.

(c) When necessary to advance the stated interests of the youth, counsel may challenge any evidence or reports submitted to the juvenile court at the disposition hearing, including any findings and recommendations submitted by the multi-agency team.

Possible Commentary:

- *Although defense is expected to and should actively participate in the multi-agency planning team, counsel remains bound to advance the stated interests of the youth. Thus defense counsel cannot support or advocate in favor of the*

team recommendation if the youth remains opposed to that recommendation. At the team meeting, counsel should make sure the youth understands the options and potential implications of each option and should help the youth express his or her views to the rest of the team. Counsel should provide the team with facts and arguments that will advance the youth's desired outcome.

- *If the youth ultimately disagrees with the team's final recommendation, counsel's advocacy must continue at the disposition hearing. While other team members will be present at the hearing to advance the team's recommendation, counsel owes a duty of loyalty to the client to correct misinformation and to present alternatives that are consistent with the youth's interest.*

12.7 POST-DISPOSITION ADVOCACY

(a) Defense counsel's advocacy on behalf of dual jurisdiction or multi-system youth should not end at the entry of the final disposition order. Counsel should maintain contact with both the client and the agency or agencies responsible for implementing the court's order to:

- i. counsel the youth and the youth's family concerning the order and its implementation;
- ii. ensure the timely and appropriate implementation of the order;
- iii. ensure that the youth's rights are respected; and
- iv. appeal any illegal disposition or other court order, as consistent with the youth's stated interests.

(b) Defense counsel should monitor the implementation of the youth's disposition order and, consistent with the stated interests of the youth and with Standards relating to the Modification of Disposition Orders,

- i. if it appears that additional or alternate services are needed to meet the needs of the youth, counsel should seek to modify the dispositional plan or order; or
- i. if it appears that the youth no longer needs care and rehabilitation from the juvenile court and does not pose a risk to public safety, defense counsel should seek to modify or terminate disposition early.

(c) States should ensure that defense counsel have the authority and funding to continue representation after disposition.

Possible Commentary:

- *These standards supplement IJA-ABA Standards Part IX of the Standards Relating to Counsel for Private Parties.*
- *When youth have both a guardian ad litem and a defense counsel, defense counsel should not delegate his or responsibilities to the guardian ad litem, unless the youth consents after full explanation of the differing ethical obligations of defense counsel and the guardian ad litem. The youth should also be allowed to withdraw that consent at any time.*
- *Many states either do not allow or do not fund defense advocacy after the entry of the disposition orders. Jurisdictions should ensure that youth are represented by counsel advocating for the stated interests of the youth at all stages of the juvenile court process. Defense counsel should have legal authority and payment to represent the youth until termination of the juvenile court jurisdiction.*

PART XIII: RESPONSIBILITIES OF DETENTION AND RESIDENTIAL STAFF

13.1 POLICIES AND PROTOCOLS

(a) Detention and residential facility staff should develop internal policies and protocols to eliminate barriers to the provision of appropriate services to detained or confined youth.

(b) Youth detained or confined in the juvenile justice system should have access to at least the same or similar treatment and services they are entitled to receive from youth-serving agencies in the community.

Comment [YLC124]: This seems really far off the court process issues, and while everything in it is surely true, it is unlikely to be read by detention or residential staff. If it must be included, put it in the sections on state or court systems.

Comment [YLC125]: If this is retained, not clear what this means. Is this to ensure that services are not denied based on status as an adjudicated delinquent? Is this different from (b)?

13.2 TRAINING

Detention and residential treatment staff should participate in cross-system training in the areas set forth in Standard 2.14 of this volume as well as best practice techniques and strategies for the treatment and handling of youth with special needs. Training should include techniques for de-escalating behavior and principles of restorative education that do not involve restraints or isolation unless absolutely necessary for the safety of the youth, staff, and other youth in the facility.

Possible Commentary:

- *Refer to the Conditions of Confinement Standards created by Mark Soler and Dana Shoenberg at the Center for Children's Law and Policy.*
- *See A.M. v. Luzern County Juvenile Detention Center, 373 F.3d 572 (2004)*
- *Discuss dangers of not having the services available to youth in detention.*