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# THE ROLE OF THE PROSECUTOR IN JUVENILE JUSTICE: ADVOCACY IN THE COURTROOM AND LEADERSHIP IN THE COMMUNITY

JAMES C. BACKSTROM\*

## I. INTRODUCTION

Dealing with juvenile crime is one of the most challenging areas facing prosecutors in America today. During the 1980s and continuing until 1995, there was an unparalleled increase in the number of criminal offenses committed by juveniles in this country. Statistics on juvenile violence show that arrests of juvenile offenders for murder skyrocketed between 1985 and 1993, rising approximately 150%.<sup>1</sup> Juvenile arrests for aggravated assault also rose dramatically by over 120% from 1983 to 1994.<sup>2</sup> Total arrests of juveniles for serious violent offenses increased by 67% between 1985 and 1994.<sup>3</sup> Arrests of juveniles for weapons offenses rose by 93% during this same timeframe.<sup>4</sup> In many areas of our country, substantial growth has occurred in nonviolent, juvenile crime as well.<sup>5</sup> The growth rates in juvenile crime between 1985 and 1994<sup>6</sup> have far outpaced the rate for adults, which began to decline in most categories beginning in 1992.<sup>7</sup>

These alarming statistics cover youth from all backgrounds. Rising rates

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1. See BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1997, at 209 (1997) [hereinafter STATISTICAL ABSTRACT].

2. See Howard N. Snyder, *Juvenile Arrests 1996*, JUV. JUST. BULL. 5 (Nov. 1997).

3. See STATISTICAL ABSTRACT, *supra* note 1, at 209.

4. See *id.*

5. See FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS FOR THE UNITED STATES 1994, at 221 (1995) [hereinafter CRIME REPORTS 1994].

6. See *id.*

7. See FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS FOR THE UNITED STATES 1993, at 225 (1994); CRIME REPORTS 1994, *supra* note 5, at 225; FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS FOR THE UNITED STATES 1995, at 216 (1996) [hereinafter CRIME REPORTS 1995]; FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS FOR THE UNITED STATES 1996, at 222 (1997) [hereinafter CRIME REPORTS 1996]; FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS FOR THE UNITED STATES 1997, at 243 (1998) [hereinafter CRIME REPORTS 1997].

of juvenile crime have occurred not only in the urban areas of our country, but also in suburban and rural areas. Perhaps the most significant example of the encroachment of juvenile violence into rural America has been the rash of tragic school shootings that have occurred in recent years in Jonesboro, Arkansas; Stamps, Arkansas; West Paducah, Kentucky; Pearl, Mississippi; Bethel, Alaska; Moses Lake, Washington; Blackville, South Carolina; and Redlands, California.<sup>8</sup> These school shootings, which occurred from 1995 to 1998, left twenty-one children dead and many others seriously wounded.<sup>9</sup> The suspects in these cases were between the ages of eleven and seventeen.<sup>10</sup> These types of multiple killings by children were unheard of even a decade ago, and, while they are not reflective of typical juvenile violence in America today, they do represent a very alarming trend which cannot be ignored.

Fortunately, our nationwide rates of violent juvenile crime fell slightly in 1995 for the first time in almost a decade.<sup>11</sup> Decreases in overall levels of juvenile crime in the United States continued in 1996 and 1997.<sup>12</sup> This decline is obviously good news and hopefully predictive for the future. The actual decrease in juvenile crime these past three years, however, may not be significant enough to offset the ominous predictions for the decades ahead, given the large increase we will see in the number of juveniles in our country over the next twenty years.

Estimates in a 1998 Bureau of the Census report reflect a growth in juvenile population of approximately 22% between 1990 and 2010.<sup>13</sup> Given these population predictions, the overall number of juvenile crimes committed may be dramatically higher in the next twenty years unless we start large-scale, community-wide efforts to address this problem. We can ill afford to sit back and wait.

The challenge that prosecutors in America face in dealing with juvenile crime is not merely a reflection of increasing caseloads. No longer does the prosecutor serve merely as the gatekeeper to the juvenile court system by determining which juveniles should be charged with crimes, who should be diverted from prosecution, and whether or not efforts should be made to seek waiver or transfer to adult criminal court. While these basic, core functions remain for all prosecutors to cope with the sharp rise in juvenile crime between 1980 and 1994 and the foreboding predictions for the future, today's juvenile prosecutor must do far more. Increasing expertise is needed to address the more

8. See Richard Lacayo, *Toward the Root of the Evil*, TIME, Apr. 6, 1998, at 38.

9. *Id.*

10. *Id.*

11. See Snyder, *supra* note 2, at 4.

12. See CRIME REPORTS 1995, *supra* note 7, at 222; CRIME REPORTS 1996, *supra* note 7, at 222; CRIME REPORTS 1997, *supra* note 7, at 243.

13. See BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, POPULATION PROJECTIONS OF THE UNITED STATES BY AGE, SEX, RACE, AND HISPANIC ORIGIN: 1995 TO 2050, at 72, tbl. 2 (1996); BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, U.S. POPULATION ESTIMATES BY AGE, SEX, RACE, AND HISPANIC ORIGIN: 1990-1997, at 28, tbl. 1 (1998).

severe levels of violence now being seen, as well as new laws dealing with victim rights, transfer to adult court, and expanded juvenile court jurisdiction. Today's juvenile prosecutor must not only serve as an advocate for justice, for the victim, and for community values, but he must also serve as a negotiator and dispositional advisor in juvenile cases. Even more importantly, today's juvenile prosecutor must go beyond the courthouse and become a community leader and teacher, working with civic, social, and church groups, as well as schools, to prevent juvenile crime before it occurs. This Article addresses both the ongoing core functions and the expanding challenges facing today's juvenile prosecutor.

## II. ORGANIZING THE PROSECUTOR'S OFFICE TO RESPOND MOST EFFECTIVELY TO JUVENILE CRIME

### A. *Assigning an Experienced and Trained Juvenile Prosecutor Is Critical*

Working with juvenile cases may be the most important work any prosecutor will do during her career. It is vital, therefore, that juvenile prosecutors receive appropriate training and be selected on the basis of their skill and competence.<sup>14</sup> The chief prosecutor should look to issues such as "knowledge of juvenile law, interest in children and youth, education, and experience" in determining which assistants should be assigned to handle juvenile court matters.<sup>15</sup> Prior criminal trial experience and adequate training to develop trial skills is also very important.<sup>16</sup>

The practice of assigning juvenile court cases to entry level prosecutors, which historically has been the pattern in many prosecutors' offices in the United States, must change. Juvenile cases are clearly as important as those involving adult offenders. In fact many would argue that in today's world juvenile cases are even more important than those involving adult offenders. Tomorrow's adult criminals are being seen in juvenile court today. Juvenile cases often pose technical difficulties not always seen in adult cases. Additionally, the presentation of evidence and dispositional alternatives require expertise that the new, undertrained, or less experienced prosecutor cannot provide. Juveniles who commit criminal offenses require special attention. The chances of successful rehabilitation with juvenile offenders may be greater than with most adult offenders. Therefore, "[i]t is vital to have a single, trained, experienced deputy who can evaluate the case, the juvenile's criminal and social history and the [dispositional] alternatives" in the effort to obtain

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14. See NATIONAL DIST. ATTORNEYS ASS'N, NATIONAL PROSECUTION STANDARDS § 92.1d, at 251 (2d ed. 1991) [hereinafter NATIONAL PROSECUTION STANDARDS].

15. *Id.*

16. *See id.*

justice.<sup>17</sup>

*B. Vertical Prosecution of Juvenile Cases Should Occur Whenever Possible*

Vertical prosecution, assigning the same prosecutor from initial charging through disposition, ensures continuity in the handling of juvenile cases. The lack of continuity resulting from using different prosecutors in the same case may reduce the opportunity for obtaining meaningful consequences and successful rehabilitation. “Vertical prosecution provides a message that the prosecution will stand firm,”<sup>18</sup> both to the juvenile’s attorney and to the court. It is beneficial to have one person applying consistent criteria in an effort to hold juveniles accountable for their behavior. “Continuity [will also] be accomplished by assigning all probation violations and future cases to [the same] prosecutor” who handled the initial prosecution, whenever possible.<sup>19</sup> In larger jurisdictions “[v]ertical prosecution may not be [an alternative] in those cases waived or transferred to adult court” because those cases are usually prosecuted by the adult prosecution unit.<sup>20</sup> However, the adult unit prosecutor should discuss all of the details surrounding the juvenile’s background with any juvenile prosecutor who has previously dealt with the youth to ensure the most effective prosecution and the most appropriate sentence.

*C. Juvenile Cases Should Be Processed As Quickly As Possible*

“Time is a major consideration in handling juvenile cases. Children often fail to remember what action they took yesterday, let alone several months earlier.”<sup>21</sup> The longer it takes to complete a juvenile case, the more likely the child will lose the long-term message.<sup>22</sup> While speedy processing of all juvenile cases is a goal, timely response is most important when dealing with serious, violent, or habitual offenders.<sup>23</sup> These offenders serve as an example to other

17. NATIONAL DIST. ATTORNEYS ASS’N, RESOURCE MANUAL AND POLICY POSITIONS ON JUVENILE CRIME ISSUES 3 (1996) [hereinafter JUVENILE CRIME ISSUES].

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. The National District Attorneys Association (NDAA) has defined serious, violent, and habitual offenders as follows:

- a serious offender is one who is caught for the first time having committed multiple felony offenses, a major economic crime, repeated misdemeanor crimes of violence, or other offenses defined by a local jurisdiction as serious;

juveniles. “Therefore, the [juvenile justice] system needs to demonstrate that the community has expectations of behavior, will not tolerate violations of those expectations and will swiftly sanction any violations.”<sup>24</sup> When the crime is far removed from the ultimate disposition of the case, such a demonstration cannot be made.<sup>25</sup>

### III. THE PROSECUTOR SERVES AS THE GATEKEEPER TO THE JUVENILE JUSTICE SYSTEM

#### A. Charging Function

A prosecutor serves as a gatekeeper to the juvenile justice system by determining who should be charged with crimes, who should be diverted from prosecution, and whether or not efforts will be made to seek waiver or transfer to adult criminal court. “The discretionary decision to charge or not charge is the heart of the prosecutorial function.”<sup>26</sup> The exercise of appropriate prosecutorial discretion is as essential in juvenile court as it is in adult court. “Such discretionary decisions require legal expertise, consistency of purpose and accountability.”<sup>27</sup> The decision as to which charges, if any, are appropriate or whether the juvenile should be diverted into a program designed to ensure accountability without charging should be based upon all of the available facts and evidence in a case. While the prosecutor’s primary duty is to seek justice and to protect the public safety, in exercising prosecutorial discretion, it is also appropriate to consider the “special interests and needs of the juvenile to the extent” that this can be done without compromising “the safety and welfare of the community.”<sup>28</sup>

A juvenile prosecutor should have the right to screen cases to determine whether the facts of each case are legally sufficient for prosecution.<sup>29</sup> Legal sufficiency exists only in those cases in which a prosecutor reasonably believes the charges can be proven by admissible evidence at trial. In other words, the prosecutor must determine that there is sufficient probable cause to believe “that a delinquent act was committed and that the juvenile accused committed

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- a violent offender is one who was involved in the commission of a felony crime of violence;
  - an habitual felony offender is one who was found guilty of at least two prior felonies.

*Id.* at 1-2. None of these categories is mutually exclusive.

24. *Id.* at 4.

25. *Id.*

26. *Id.* (citing *Brown v. Dayton Hudson Corp.*, 314 N.W.2d 210, 214 (Minn. 1981)).

27. *Id.* at 4.

28. NATIONAL PROSECUTION STANDARDS, *supra* note 14, § 92.1b, at 250.

29. *Id.* § 92.2a, at 251.

it.<sup>30</sup> If not, no charges should be pursued.<sup>31</sup>

In some jurisdictions in this country, the prosecutor's office does not have the responsibility by law or practice to initiate juvenile court prosecutions. The National District Attorneys Association ("NDAA") believes that such a system is inappropriate.<sup>32</sup> The NDAA sets forth the following reasons for this conclusion:

- Prosecutors have a responsibility to represent the state in court on juvenile cases and, therefore, should have the right to determine what cases are filed in that court.
- Prosecutors are unable to utilize an effective prosecution policy or effectively implement prosecution standards without control over the charging decision.
- Prosecutors are trained on the legal aspects of the charging process.
- Prosecutors give public safety a high priority in their decision making process.
- Prosecutors take into consideration the interests of the victim and have a process for giving and receiving information from victims.
- Prosecutors have access to both the criminal and social background of the juvenile.
- Prosecutors are more easily accountable to the public than are other individuals in the juvenile justice system.<sup>33</sup>

Charging is an executive function which the judicial branch should not perform because of the need to maintain appropriate separation of powers. Also, charging is not an appropriate police or corrections department responsibility because of the need to ensure proper legal review of the sufficiency of the evidence to proceed.<sup>34</sup> Prosecutors are governed by ethical standards that are not applicable to police or corrections officials. The decision to charge someone with a crime is appropriately a decision that should be made by an independent prosecutor who serves in the executive branch of government, free from political influence or pressure.

### *B. Development of Charging and Disposition Guidelines*

Many prosecutor's offices have adopted written charging and disposition guidelines. In Minnesota, for example, prosecutors are required to do so by

30. *Id.* § 92.2b, at 251.

31. *Id.*

32. *See id.* § 92.2, at 251-54; JUVENILE CRIME ISSUES, *supra* note 17, at 4-5.

33. JUVENILE CRIME ISSUES, *supra* note 17, at 4-5.

34. *See id.* at 5.

law.<sup>35</sup> Adopting such guidelines does not limit the discretion of a prosecutor's office in charging and disposing of cases, but does assure the public that prosecutors are exercising this discretion by looking at fair, non-discriminatory, and appropriate factors. Charging and disposition guidelines for juvenile cases should, therefore, be developed by the prosecutor's office.

### C. *Diversion*

The decision to divert a case [from prosecution] is [also] a charging decision because it is a determination that sufficient evidence exists to file a charge in court but that the goals of prosecution can be reasonably reached through diversion. Prosecutors should consider establishing diversion programs for appropriate first-time or low-level juvenile offenders [who pose no apparent danger to the public safety]. Diversion programs should contain criteria to insure that the diverted juvenile offender is held accountable for his/her actions and that restitution is made to the victim of the crime where appropriate. Diversion programs can also play an important role in education and prevention efforts which are critical to efforts to reduce rising levels of juvenile crime in this [country]. In the event an agency other than the prosecutor's office coordinates a juvenile diversion program, the prosecutor should be involved in establishing the eligibility criteria and other guidelines for the program. Any diversion program should contain provisions to insure that diverted juveniles who do not successfully complete the program are referred back to the prosecutor's office for prosecution.<sup>36</sup>

The NDAA's National Prosecution Standards for Juvenile Justice address the factors that should be taken into consideration by a prosecutor in determining whether to charge juveniles formally or whether to divert them from prosecution. These factors include:

- (1) The seriousness of the alleged offense;
- (2) The role of the juvenile in that offense;
- (3) The nature and number of previous cases presented by the police or others against the juvenile, and the

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35. See MINN. STAT. ANN. § 388.051, Subd. 3 (West 1997). A copy of the Charging and Disposition Guidelines of the Dakota County Attorney's Office for either adult or juvenile offenses may be requested by calling (651) 438-4440.

36. JUVENILE CRIME ISSUES, *supra* note 17, at 5.



disposition of those cases;

- (4) The juvenile's age and maturity;
- (5) The availability of appropriate treatment or services . . .;
- (6) Whether the juvenile admits guilt or involvement in the offense charged;
- (7) The dangerousness or threat posed by [the] juvenile to the person or property of others;
- (8) The provision of financial restitution to victims; and
- (9) Recommendations of the referring agency, victim, and advocates for the juvenile.<sup>37</sup>

As with charging and disposition guidelines, the use of diversion-program guidelines will lead to public confidence that eligibility standards for the program are fair, nondiscriminatory, and appropriate. These guidelines will also assist juvenile offenders, their attorneys, and parents in clearly understanding who is eligible for the program and what the program requirements will be.

#### *D. Prosecution of Juveniles in Adult Criminal Court*

Juveniles who commit crimes are usually subject to the jurisdiction of juvenile court. In certain situations, depending upon the seriousness of the crime, the threat to public safety, the age of the juvenile, the juvenile's criminal history and other relevant factors, the juvenile offender may be tried in adult criminal court. The process by which this is accomplished is commonly referred to as transfer, waiver, or certification depending upon the jurisdiction. Whether or not a juvenile offender should be prosecuted in adult court is one of the most critical decisions facing the juvenile justice system.<sup>38</sup>

A number of jurisdictions throughout America have adopted changes, or are considering changes, in laws pertaining to the process of certifying serious, violent, and habitual offenders to adult court. For example, Minnesota adopted such changes in 1995.<sup>39</sup> Three main categories exist under the laws in various states regarding how the decision of whether a juvenile should be prosecuted as an adult are made:

- (1) the legislature mandates the transfer of a juvenile case to adult court . . .;

37. NATIONAL PROSECUTION STANDARDS, *supra* note 14, § 92.2g, at 253.

38. JUVENILE CRIME ISSUES, *supra* note 17, at 6.

39. *See* MINN. STAT. ANN. § 260.125 (West 1998).

- (2) the prosecutor is vested with the discretion to determine whether to transfer a juvenile case to adult court; [and]
- (3) the juvenile court judge is vested with the discretion to determine whether a juvenile case should be transferred to adult court.<sup>40</sup>

Most jurisdictions follow a process similar to category (3) in which the juvenile court judge makes the final decision on whether a case should be transferred to adult court. However, in most of these jurisdictions, it is the prosecutor who has the discretion to determine whether the process should be initiated. In exercising that discretion, “[t]he primary factors affecting this decision . . . should be the seriousness of the crime [and] the threat to the public safety,” not what is in the best interests of the child, which has long been the standard applicable in most juvenile court proceedings.<sup>41</sup>

Many would argue that those juveniles who commit serious or violent crimes and who are over a certain age should automatically be prosecuted as adults. A number of states are considering the enactment of legislation to this effect. Minnesota has adopted this automatic, adult prosecution standard for youth who are at least sixteen years old and charged with first degree murder.<sup>42</sup> The NDAA has adopted a policy recommending that, for serious, violent, and habitual offenders fourteen years of age and older, prosecutors should be given the discretion to file such cases in adult court without judicial intervention.<sup>43</sup>

The NDAA also believes that “[o]nce a juvenile case has been transferred to adult court for prosecution, prosecutions for all further crimes committed by the youth also should occur in adult court regardless of the seriousness of the offense”<sup>44</sup> if there has been a finding of probable cause<sup>45</sup> in adult court for the

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40. JUVENILE CRIME ISSUES, *supra* note 17, at 6.

41. *Id.* at 7.

42. *See* MINN. STAT. ANN. § 260.015, Subd. 5(b); *Id.* § 260.111, Subd. 1a.

43. *See* JUVENILE CRIME ISSUES, *supra* note 17, at 7.

44. *Id.*

45. *Id.*

The notion of “probable cause” [was] added to the policy concerning this issue to address those situations in which a juvenile who is prosecuted as an adult is acquitted for the most serious crime but convicted of a lesser offense. In such a case, the acquittal on the more serious charge should not be grounds to keep future offenses involving the youth out of adult court, because a finding of probable cause concerning the commission of the more serious offense previously was made by a court or grand jury. Obviously, if evidence is brought forth resulting in the dismissal of such charge before trial, or if evidence brought forth at trial leads a judge to conclude that probable cause no longer exists as to

original offense. “In those situations where a prior case in which a juvenile is being tried as an adult has not been completed, additional charges filed against this juvenile in unrelated cases should also be dealt with in adult court.”<sup>46</sup>

#### IV. THE PROSECUTOR IS AN ADVOCATE FOR JUSTICE, THE VICTIM, AND COMMUNITY VALUES

In carrying out the prosecutorial function, the prosecutor needs to be an advocate for justice, the victim, and community values. It is easy in a juvenile justice system, which has long looked to the best interests of the child as its primary purpose, for prosecutors to lose their focus on the need to serve as advocates for justice. While prosecutors should consider the special interests and needs of a juvenile when handling a case, they should never lose sight of their primary duty to seek justice and protect the public safety and welfare of the community.<sup>47</sup>

Juvenile prosecutors should ensure that the crime victims are kept properly notified of important decisions in the case, including charging and disposition matters, in the same manner as in adult prosecutions. Victims should be notified of and offered the opportunity to attend all hearings in a juvenile case and should be contacted, if possible, prior to accepting a plea agreement. The prosecutor should also ensure that the victim has the opportunity to address the court prior to disposition. Furthermore, the prosecutor must make efforts to ensure that restitution is paid so that the victim can, to the greatest extent possible, be made whole and not suffer financial losses as a result of the criminal activity.<sup>48</sup>

Juvenile prosecutors must keep in mind that they serve the interests of all the citizens in the community. The prosecutor’s actions should be consistent with community values. To ensure awareness of these values, juvenile prosecutors should attend and participate in community meetings and other activities concerning juvenile crime or crime prevention within their jurisdictions. By doing so, they will hear firsthand the feelings of the public concerning juvenile crime and its consequences.

In reference to the pursuit of justice, the prosecutor must keep in mind the concepts of fairness and accountability. The punishment for an offense, whether it is through court disposition or is part of a diversion program, should be applied fairly to all defendants under similar circumstances and should hold juvenile offenders accountable for their actions. However, the prosecutor may

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the more serious offense in question, this same logic would not hold. Thus, no automatic presumption of adult prosecution in future cases should apply under those circumstances.

*Id.*

46. *See id.*

47. *See* NATIONAL PROSECUTION STANDARDS, *supra* note 14, § 92.1b, at 250.

48. *See* JUVENILE CRIME ISSUES, *supra* note 17, at 16.

elect to exercise discretion to dismiss a case that may be technically sufficient but that lacks prosecutorial merit from a policy or economic standpoint.<sup>49</sup> The prosecutor may dismiss a case at any time in the proceedings if it is determined to be in the best interests of justice. However, care should be made to conform to appropriate guidelines in making these decisions. As mentioned above, prosecutors should adopt written charging and disposition guidelines which are available to the public to ensure both internal consistency and public accountability.

#### V. THE JUVENILE PROSECUTOR MUST SERVE AS A TRIAL AND DISPOSITIONAL ADVOCATE AS WELL AS AN EFFECTIVE NEGOTIATOR

Making a charging decision does not end the prosecutor's role and responsibilities. The prosecutor should take an active role in all phases of a juvenile case, including both adjudication and disposition.<sup>50</sup> The prosecutor should ensure that decisions involving juvenile cases are made in a timely fashion to protect juveniles' rights to speedy disposition of their cases. Cases requiring the detention of a juvenile offender should receive priority treatment. As previously mentioned, the timely resolution of juvenile cases is even more important than in the adult criminal system. Juveniles need to understand clearly the harmful nature of their actions and receive a timely disposition that holds them appropriately accountable. A disposition occurring many months after the juvenile's act will not have the same force and impact as one occurring in a more timely manner. Prompt determinations also promote public confidence in the system and fairness to the victim and to the community.<sup>51</sup>

The juvenile prosecutor should assume the traditional adversary role in the adjudicatory hearing, recognizing, however, the particular vulnerability of child witnesses. All juvenile witnesses, including suspects should they testify, must be treated fairly and with sensitivity in direct examination, cross-examination, and throughout the process.<sup>52</sup>

The prosecutor should also be involved in all plea negotiations with a juvenile or the juvenile's attorney. In negotiating pleas a prosecutor should follow appropriate guidelines for the disposition of cases to ensure fairness and public confidence in the decision. As mentioned above, efforts should be made to contact the victim prior to entering any plea agreement to obtain the victim's comments or concerns.

The prosecutor should be consulted in all decisions affecting the disposition of a case. No case should be "dismissed without providing the prosecutor with notice and an opportunity to be heard."<sup>53</sup> Juvenile prosecutors

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49. See NATIONAL PROSECUTION STANDARDS, *supra* note 14, § 92.2, at 251-54.

50. See *id.* §§ 92.5-92.6, at 256-57.

51. See *id.* § 92.2(2), at 253.

52. See *id.* § 92.5b, at 256.

53. *Id.* § 92.5d, at 256.

should take an active role in the dispositional hearing in a juvenile case, including making recommendations to the court as to what should be the appropriate disposition.<sup>54</sup> The prosecutor should review all reports prepared by the corrections department and others before making this recommendation. The prosecutor should also take into consideration what the penalty for the crime would be if it had been committed by an adult.

The prosecutor should also provide input concerning the most appropriate dispositional-program alternatives for a given case. Prosecutors should periodically evaluate the effectiveness of dispositional programs used for juvenile offenders within their jurisdictions from the standpoint of the public's and the youth's interests.<sup>55</sup> A dispositional decision which places a juvenile in a program that is not accomplishing the goals for which it was created is a waste of taxpayer resources and is not in the best interest of the juvenile offender or the public. The prosecutor should also seek new and more appropriate resources and may create these resources through diversion programs coordinated by the prosecutor's office.<sup>56</sup>

Age alone should not be a mitigating factor in the prosecutor's recommended disposition or the court's sentencing order for . . . [cases involving serious, violent, or habitual juvenile] offenders.

...

. . . The prosecutor's dispositional recommendation in the final analysis should focus upon the prosecutor's primary role of protecting the public safety [and welfare, holding the juvenile appropriately accountable for the crime committed, and] . . . meeting the needs and interests of the juvenile offender.<sup>57</sup>

Regardless of whether the juvenile or adult justice system is used to adjudicate serious, violent, or habitual juvenile offenders, meaningful sanctions should apply. Unfortunately, many states do not have sufficient resources to ensure that serious, violent or habitual offenders are placed in a correctional setting. Such resources are needed. . . . Probation alone is not an appropriate sanction for serious, violent or habitual [juvenile] offenders. [The NDAA has concluded that t]he primary factors affecting a juvenile's sentence should be

54. *See id.* § 92.6a, at 256.

55. *See id.* § 92.6d, at 257.

56. *See id.*

57. JUVENILE CRIME ISSUES, *supra* note 17, at 10; *see also* NATIONAL PROSECUTION STANDARDS, *supra* note 14, § 92.6c, at 257 (stating that prosecutors must consider various interests before making a recommendation).

protection of the community from harm and accountability to the victim and the public for the juvenile's behavior. Factors such as the seriousness of the juvenile's prior criminal history should also be considered.<sup>58</sup>

The NDAA also believes that

[j]uvenile codes that [establish] the best interest of the child as the primary consideration of sentencing should be repealed.

As to less serious offenders, while there is a need to rehabilitate the juveniles, an important aspect of rehabilitation includes punishment. There needs to be adequate resources for the court to impose punishment through the use of appropriate and effective sanctions.<sup>59</sup>

The prosecutor's role does not end with a disposition hearing. The prosecutor should continue to represent the state's interests in all appeals, as well as in hearings concerning revocation of probation, modification of disposition, or other collateral proceedings attacking orders of the court.<sup>60</sup> The prosecutor should also take steps to let the juvenile court know if its orders are not properly being followed.<sup>61</sup> This follow-up by the prosecutor to ensure that dispositions are properly being carried out also helps maintain public confidence in our system of juvenile justice. "Failure to provide consequences for noncompliance of parole or probation conditions endangers the public, creates [a negative image of the system] . . . , and increases the likelihood that [juvenile offenders] will become more violent or habitual in their behavior."<sup>62</sup>

#### VI. THE PROSECUTOR SHOULD BE INVOLVED IN COMMUNITY OUTREACH EFFORTS TO ADDRESS JUVENILE CRIME

Perhaps the most important role for a juvenile prosecutor today is one that does not occur in the courthouse. If we are to solve the juvenile-crime crisis facing our society, education, prevention, and early intervention are the keys to success. "Education and prevention go hand in hand with effective law enforcement and prosecution efforts . . . ."<sup>63</sup> Prosecutors should become directly involved in these activities. However, police and prosecutors cannot

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58. JUVENILE CRIME ISSUES, *supra* note 17, at 10.

59. *Id.*

60. NATIONAL PROSECUTION STANDARDS, *supra* note 14, § 92.7a, at 257.

61. *Id.* § 92.7b, at 257.

62. JUVENILE CRIME ISSUES, *supra* note 17, at 10.

63. *Id.* at 17.

solve the juvenile-crime problem alone. It will take the united efforts of everyone to solve these problems, “including parents, [youth,] teachers, school administrators, faith communities, civic and business leaders, law enforcement officials,” and community-based organizations.<sup>64</sup>

Prosecutors can serve a valuable role in educating the public concerning juvenile justice issues by taking the opportunity to address these important matters in public speeches and presentations. Prosecutors also can serve a valuable role by participating in juvenile-crime-prevention programs within their communities.<sup>65</sup> As public leaders, prosecutors are in an ideal position to help coordinate prevention efforts by facilitating the creation of programs designed to help reduce juvenile crime and to promote health and safety. Examples of such programs include:

- The development of annual anti-drug poster contests enabling youth to make their own positive statements about the dangers of drug and alcohol abuse. Such programs have been established by prosecutor offices in Baltimore County, Maryland; Cook County, Illinois; Dakota County, Minnesota; and Bristol County, Massachusetts. The winning posters are made into a calendar and distributed to thousands of young people each year.
- The development of an innovative project entitled “Courtrooms to Classrooms.” This project, first implemented by the Denver District Attorney’s Office, involves a prosecutor who goes into schools to help elementary or middle school students understand how our criminal justice system works and to provide them with a positive role model. Other jurisdictions have also adopted this program.
- The establishment of an anti-drug and youth violence prevention project in Dakota, Carver, and Scott Counties in Minnesota. This is a collaborative effort coordinated by the prosecutors and sheriffs within these jurisdictions and has resulted in the training of hundreds of law enforcement officials, school administrators, and other professionals; the presentation of public forums on issues surrounding gangs and youth violence; and the preparation of informational brochures concerning these topics.
- The establishment of juvenile diversion programs for appropriate first time or low level juvenile offenders. These programs have been established by prosecutors throughout our nation.<sup>66</sup>
- The establishment of truancy-intervention programs by prosecutors

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64. *Id.*

65. *See id.*

66. Examples of prosecutor diversion programs of this nature can be found in the Denver District Attorney’s Office, Denver, Colorado; the prosecuting attorney’s office in Thurston County, Olympia, Washington; and the Dakota County Attorney’s Office, Hastings, Minnesota.

throughout the United States.<sup>67</sup>

- The establishment of a juvenile-tobacco-offender-diversion program in Dakota County, Minnesota. This program is a joint effort between the prosecutor's office and the county's public health department. It was designed to encourage enforcement of youth tobacco laws and ordinances by establishing a meaningful consequence for offenders and to provide assistance to youth to stop using tobacco products. Due to the high correlation between youth who use tobacco and youth who use other illegal drugs, this is an important area for purposes of crime prevention. A national study found that 95% of heavy smokers had tried illicit drugs, compared to only 27% of nonsmokers.<sup>68</sup>

Prosecutors and other law enforcement officials need to step beyond their traditional roles and become involved with these types of crime prevention programs. Efforts like these can pay many dividends in the long run by helping to reduce crime.

## VII. CONCLUSION

As the NDAA recently noted in its Resource Manual and Policy Positions on Juvenile Crime Issues, “[p]rosecutors are in the unique position of acting as society’s voice in the juvenile justice system.”<sup>69</sup> They are entrusted with insuring that those who violate our laws are brought to justice and held accountable. To do so, adequate laws must exist to ensure that violent and repeat juvenile offenders are appropriately dealt with by the juvenile justice system. Such laws may provide for adult prosecution for serious, violent, and habitual offenders or for some form of blended sentencing law<sup>70</sup> that provides adequate accountability and protection of the public safety.<sup>71</sup> Prosecutors must

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67. Examples of prosecutor-led, truancy-intervention programs are found in Los Angeles, California; St. Paul, Minnesota; and Marquette, Michigan.

68. See LLOYD D. JOHNSTON ET AL., U.S. DEP’T OF HEALTH & HUMAN SERVS., NATIONAL TRENDS IN DRUG USE AND RELATED FACTORS AMONG AMERICAN HIGH SCHOOL STUDENTS AND YOUNG ADULTS, 1975-1986, at 249, 252 (1987).

69. JUVENILE CRIME ISSUES, *supra* note 17, at 20.

70. Blended sentencing laws have recently been adopted in a number of states. These laws provide for the “blending” of juvenile and adult sanctions for certain juvenile offenders. An excellent discussion of blended sentencing, with reference to different laws within various states, is included in PATRICIA TORBET ET AL., U.S. DEP’T OF JUSTICE, STATE RESPONSES TO SERIOUS AND VIOLENT JUVENILE CRIME 11-16 (1996).

71. Minnesota adopted such a blended sentencing law in 1995 by including a category for “Extended Juvenile Jurisdiction” (EJJ). See MINN. STAT. ANN. § 260.126 (West 1998). This statute provides for dual jurisdiction over certain juvenile offenders who commit crimes that carry automatic prison sentences if committed by an adult. *Id.* EJJ juveniles are given an adult prison sentence that is stayed on the condition that they complete their juvenile disposition. *Id.*, Subd. 5. Upon completion the adult sentence is discharged. *Id.* This is just one example of new



also make sure never to underestimate the importance of dealing with low level criminal behavior appropriately and aggressively in an effort to prevent the occurrence of more serious behavior. Very few youth are apprehended for acts of violence who have not had some prior contacts with police, schools, or social workers over non-violent activities like alcohol abuse or truancy. Anti-social behavior must be addressed and appropriately dealt with from its onset.

To deal most efficiently with juvenile crime, prosecutors must also become involved in prevention and early intervention efforts in their communities. “A balanced approach to [juvenile justice] . . . is clearly warranted—one which emphasizes the enforcement, prosecution and detention of . . . juvenile offenders, to protect the public safety and ensure accountability,” and the importance of pursuing prevention and intervention initiatives aimed at crime prevention.<sup>72</sup> “Prevention and prosecution are not incompatible . . . . To the contrary, they must both be pursued with equal vigor to help reduce” juvenile crime in America.<sup>73</sup> Prosecutors must not only continue to be effective advocates in the courtroom, but must look beyond their traditional roles and become community leaders by establishing programs and participating in initiatives aimed at reducing juvenile crime before it begins.

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laws aimed at ensuring appropriate accountability for juvenile offenders committing serious offenses.

72. James C. Backstrom & Gary L. Walker, *A Balanced Approach to Juvenile Justice: The Work of the Juvenile Justice Advisory Committee*, THE PROSECUTOR, July/Aug. 1998, at 36.

73. *Id.* at 38.