

JUVENILE MATTERS

Attorney General Executive Directive Concerning the Handling of Juvenile Matters by Police and Prosecutors

Issued October 1990

The subject-matter of this Executive Directive was carefully studied by numerous practitioners in the juvenile justice field, including representatives from state, county and local law enforcement and prosecuting agencies, the courts, correction agencies and non-law enforcement juvenile service providers. The following Executive Directive represents the consensus of these juvenile justice practitioners. Their contributions to the policy development of this Executive Directive are gratefully acknowledged.

ATTORNEY GENERAL EXECUTIVE DIRECTIVE No. 1990-1:

Whereas, it is decidedly in the public interest that the entire New Jersey law enforcement community should respond fairly, predictably and uniformly to acts of juvenile delinquency; and

Whereas, the Criminal Justice Act of 1970, N.J.S.A. 52:17b-98, states that it is the public policy of this State:

to provide for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State, in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State.

Now, therefore, I, Robert J. Del Tufo, Attorney General of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby DIRECT that all law enforcement agencies and officers in this State shall in the course of handling all juvenile matters seek to implement and achieve the following goals and objectives:

a. To dedicate adequate law enforcement resources to the prevention and control of juvenile delinquency, to make the best possible use of these limited resources and to ensure that all law enforcement officers are adequately trained and informed regarding juvenile laws, policies and procedures;

b. To promote uniform law enforcement policies and procedures for the handling and prosecution

of juvenile offenders;

c. To ensure that the interests of the public are properly represented in the handling and prosecution of juvenile matters, and to safeguard the rights and interests of victims and witnesses involved in delinquency matters;

d. To promote whenever possible the rehabilitation of juveniles involved in minor offenses by means of early intervention and by encouraging the diversion of these cases, instead of referring these matters to a court for formal adjudication, provided that this can be done without jeopardizing the public safety; and

e. To identify and deal appropriately with the small core of juvenile "Impact Offenders," who by their serious repetitive criminal activity are responsible for a disproportionate percentage of all crimes committed by juveniles. For the purposes of this Executive Directive, the term "Impact Offender" shall mean a juvenile who is a chronic or repetitive offender, and whose repetitive offenses, if committed by an adult, would constitute indictable crimes, whether against persons or property. This term shall also include a juvenile over the age of fourteen who, if he or she were an adult, would qualify as a professional criminal within the meaning of N.J.S.A. 2C:44-3b.

Furthermore, so as to achieve and implement the objectives and goals enumerated above, and so as to provide appropriate guidance to police officers and prosecutors in the sound exercise of discretion in their handling of juvenile matters, I do hereby further DIRECT the following:

1. School Zone Working Group. The School Zone Narcotics Enforcement Working Group established pursuant to Directive 5.14 of the Statewide Action Plan for Narcotics Enforcement shall reconvene to examine ways to enhance cooperation between the law enforcement community and the professional educational community with respect to delinquency prevention and intervention and with respect to the goal of achieving crime-free schools. The membership of this Working Group may be expanded as necessary to address these additional concerns. The Working Group shall recommend specific guidelines or directives to the Attorney General and the Commissioner of Education, and shall develop model agreements or memoranda of understanding between local law enforcement agencies and appropriate school officials concerning the following areas:

The reporting of criminal or delinquent activity occurring on school property;

The reporting of any fire-setting activity occurring on school property;

The duties and responsibilities of law enforcement officers assigned to patrol in and around school property;

The entry by law enforcement officers onto school property for the purpose of effecting an arrest, taking a juvenile into custody or seizing contraband;

Coordinating referrals to and from law enforcement agencies and providing appropriate services to juveniles and their families; and

Law enforcement participation in student instructional or awareness programs concerning crime, juvenile justice, health or other related issues.

PROVISIONS CONCERNING THE EXERCISE OF POLICE DISCRETION

2. Designation of Juvenile Officers. It shall be the policy of this State that the appropriate handling of juvenile matters shall be a high priority of the entire law enforcement community. Every law enforcement agency having patrol jurisdiction shall designate at least one sworn officer to handle and coordinate juvenile matters. This designated juvenile officer need not be assigned full-time to handle juvenile matters where the extent of juvenile delinquent activity and the resources available to the agency makes full-time assignment impractical. Where, however, the volume or seriousness of juvenile delinquent activity so warrants, a juvenile unit or bureau should be established and provided with sufficient resources to accomplish the principles, policies and objectives set forth in this Executive Directive.

3. Training Working Group. A Juvenile Justice Police Training Working Group shall be established which shall consist of representatives from the Division of Criminal Justice, Division of State Police, County Prosecutors Association, Association of Chiefs of Police, county and local police academies, state and county juvenile officers associations and from the academic and juvenile justice fields, as appropriate. This Working Group shall review and where necessary provide recommendations to the Attorney General and the Police Training Commission regarding the adequacy of mandatory basic police training curricula pertaining to the juvenile justice system. The Training Working Group shall also identify in-service juvenile justice-related training needs and develop appropriate training curricula and other materials for use by academies and law enforcement agencies in developing and providing juvenile justice training for police officers.

4. Juvenile Officers Manual. The Division of Criminal Justice, in consultation with the County Prosecutors Association and the Association of Chiefs of Police, shall develop and issue to all law enforcement agencies an updated Juvenile Officers Manual, which shall summarize all applicable criminal and juvenile statutes, case law, court rules and statewide law enforcement policies, guidelines and operating procedures concerning the handling of juveniles. This manual shall be periodically reviewed and, when necessary, updated material shall be issued to law enforcement agencies.

5. Standardized Recordkeeping and information Sharing. So as to improve recordkeeping and access to information on delinquency and juvenile offenders, a Juvenile Records and Information Working Group shall be established which shall consist of representatives from the Division of Criminal Justice, Division of State Police, Association of Chiefs of Police, County Prosecutors Association and the Juvenile Delinquency Commission. The Juvenile Records and Information Working Group shall develop recommendations to the Attorney General regarding reasonable standardized law enforcement data collection and reporting procedures, recordkeeping practices and information sharing procedures, including recommendations concerning the development of a centralized repository of law enforcement information relating to juvenile matters, as authorized by the Code of Juvenile Justice. The Working Group's recommendations to the Attorney General shall take into account and seek to minimize any additional administrative burdens upon law enforcement agencies and officers.

6. Arrest, Charging and Diversion Guidelines Working Group. It shall be the policy of this State to provide guidance to police officers in the exercise of their discretion in the handling of juvenile matters, and it shall also be the policy of this State to encourage law enforcement agencies to divert from formal court proceedings those juvenile who are involved in minor delinquent activity. A Juvenile Arrest, Charging and Diversion Guidelines Working Group shall be established for the purpose of developing model guidelines and procedures, consistent with the policies, principles and objectives set forth in this Executive Directive, concerning the prevention and control of delinquent activity, the handling by police of juvenile offenders and appropriate police response to juvenile-family crisis incidents, including the use, where warranted, of curbside warnings and stationhouse adjustments. This Working Group shall consist of representatives from the Division of Criminal Justice, Association of Chiefs of Police, County Prosecutors Association, State and county juvenile officers associations, and other juvenile justice agencies as appropriate.

7. Standards For Arrest and Filing Complaints.

a. It shall be the policy of this State that a juvenile should ordinarily be taken into custody, consistent with the laws of arrest, and that a complaint should be filed, where any of the following circumstances exist:

The delinquent activity involves the commission of an indictable offense;

The delinquent activity is committed by a juvenile identified as an Impact Offender, or by a juvenile who has charges pending or has a history of committing repetitive disorderly persons offenses; or

The delinquent activity constitutes a violation of a supervisory condition of probation, parole, home detention or suspended sentence.

b. Notwithstanding any other provision of this Executive Directive, it shall be the responsibility of all sworn law enforcement officers to take into custody any juvenile where there is probable cause to believe that the juvenile has committed an act of delinquency that would constitute a violation of any offense defined in Chapter 35 or 36 of Title 2C ("The Comprehensive Drug Reform Act"), as required by Directive 5.7 of the Statewide Action Plan for Narcotics Enforcement. Where a juvenile is taken into custody for an act of delinquency involving a violation of any offense defined in Chapter 35 or 36 of Title 2C, a complaint alleging delinquency shall be filed.

c. Subject to the provisions of subsections a. and b. of this section, it shall be the policy of this State that a complaint ordinarily should not be filed where the delinquent activity involves a petty disorderly persons offense or disorderly persons offense, other than a repetitive disorderly persons offense or a disorderly persons offense involving the use or possession of a controlled dangerous substance or drug paraphernalia.

8. Curbside Warnings and Stationhouse Adjustments.

a. The New Jersey Code of Juvenile Justice and Court Rules provide that certain delinquency complaints filed by a law enforcement officer may be diverted by court personnel to a "Juvenile Conference Committee" or to an "intake service conference." These judicially-administered diversion options have proven to be extremely effective, and provide an excellent opportunity to resolve matters that, while warranting the filing of a complaint by law enforcement, need not be presented to a judge for formal adjudication. There are numerous occasions, however, where less serious matters can be satisfactorily resolved or "adjusted," either at curbside or at the police stationhouse, without the need for a formal adjudication of delinquency, the filing of a complaint or even the taking of a juvenile into custody. It shall therefore be the policy of this State to encourage the use of "curbside warnings" or "stationhouse adjustments" as an appropriate law enforcement response to non-serious juvenile activity that does not warrant either the taking of a juvenile into custody or the filing of a complaint alleging delinquency.

b. For the purposes of this Executive Directive, a "stationhouse adjustment" would ordinarily entail warning the juvenile about the future consequences of his or her continued delinquent activity, and notifying the juvenile's parent(s) or guardians about the matter. Where a "stationhouse adjustment" is used to resolve a minor juvenile matter, the law enforcement agency should keep a record of the identity of the juvenile and the date and nature of the offense involved, consistent with recommended recordkeeping procedures to be developed by the Juvenile Arrest, Charging and Diversion Guidelines Working Group in consultation with the Juvenile Records and Information Working Group. These recommended procedures shall be designed to minimize any additional administrative burdens upon law enforcement agencies and officers. The Juvenile Arrest, Charging and Diversion Guidelines Working Group and the Division of Criminal Justice shall provide ongoing technical assistance and guidance to law enforcement agencies in the appropriate use of "stationhouse adjustments."

PROVISIONS CONCERNING THE EXERCISE OF PROSECUTORIAL DISCRETION

9. Designated Prosecution Staff.

a. Each county prosecutor shall allocate sufficient legal, investigative and support resources to aggressively prosecute juvenile matters and to achieve and implement the principles, policies and objectives set forth in this Executive Directive. At least one assistant prosecutor in each county prosecutor's office shall be designated to supervise the investigation, screening and prosecution of juvenile matters, and at least one county investigator or detective in the county prosecutor's office shall be assigned responsibility, whether on a full-time or part-time basis, for performing investigative and case preparation functions in juvenile matters. Where the volume or seriousness of juvenile cases so warrant, a separate juvenile unit or section should be established.

b. Each county prosecutor shall make certain that assistant prosecutors who are on call to provide legal assistance to law enforcement officers have sufficient experience and expertise to provide competent legal advice concerning the Code of Juvenile Justice and applicable criminal laws and court procedures pertaining to the handling of juvenile offenders. Law enforcement agencies throughout the county should be encouraged to call the prosecutor's office for advice concerning juvenile matters whenever needed.

c. The Division of Criminal Justice, in conjunction with the County Prosecutors Association, shall provide for the in-service training of assistant prosecutors and county prosecutor investigative personnel assigned to handle juvenile cases. Training shall be made available at least twice annually for designated assistant prosecutors and investigative personnel concerning the principles, policies and objectives set forth in this Executive Directive, the laws and

procedures relating to juvenile delinquency and youth offenders, the prevention and control of delinquency, and the availability and appropriate use of dispositional and detention alternatives.

10. Screening of Complaints.

a. Each county prosecutor shall make certain that no delinquency complaints charging an indictable offense, a repetitive disorderly persons offense or a violation of any offense defined in Chapter 35 or 36 of Title 2C are diverted from the court without the consent of the prosecutor, as required by law.

b. Each county prosecutor shall issue and implement written guidelines concerning the screening and handling of juvenile complaints. In addition to those factors specified in the Code of Juvenile Justice for diversion recommendations, prosecutorial screening guidelines should incorporate the following criteria:

Whether the facts constitute prima facie evidence that a delinquent act has been committed by the juvenile;

Whether the juvenile is an Impact Offender;

Whether the juvenile has previously been adjudicated delinquent or diverted in juvenile proceedings; and

Whether the matter involves any adult codefendants, and whether diversion of the juvenile would adversely affect the prosecution of such adult codefendants.

c. Prosecution screening guidelines developed by each county prosecutor shall reflect the policy of this State that, absent special circumstances, the prosecutor should not consent to the matter being diverted from court in the following circumstances:

The complaint alleges a crime of the first or second degree;

The complaint is filed against a juvenile identified as an Impact Offender;

The juvenile is charged with an indictable offense involving infliction of serious bodily injury, the use or possession of a deadly weapon or arson;

The juvenile is charged with an indictable offense and a) has previously been adjudicated delinquent for an indictable offense, or b) has previously been diverted to a Juvenile Conference Committee or intake conference for an indictable offense.

11. Predisposition Detention.

a. Each county prosecutor should seek the predisposition detention of juvenile offenders only in those cases where such detention is necessary and appropriate to protect public safety or to assure the juvenile's appearance at court proceedings, and it shall be the policy of this State that each county prosecutor should recommend the use of alternatives to detention in cases where the safety of the community would not be threatened thereby, and where the subsequent appearance by the juvenile at court proceedings would not be jeopardized. Prosecutors in no case shall advocate the use of predisposition detention as a form of punishment directed against a juvenile prior to an adjudication of delinquency.

b. Each county prosecutor, working in conjunction with the Family Court, detention center and local law enforcement agencies, shall seek to develop alternatives to secure detention. Each county prosecutor should encourage and facilitate the development of home detention programs as an alternative form of detention for qualified juvenile offenders who would otherwise be detained in a secure facility. Home detention programs should include the following:

A written agreement outlining the conditions for home detention, which should be signed by the juvenile and a parent or guardian;

ongoing supervisory contact with the juvenile pending case disposition;

Notification to the appropriate local law enforcement agency of the juvenile's release to home detention; and

Return of the juvenile to a detention center upon a violation of a substantial program condition.

12. Prosecutor's Role in Disposition Hearings.

a. Each county prosecutor shall take an active role in recommending appropriate dispositions for juveniles adjudicated delinquent, and such recommendations to the court shall take into account the nature and seriousness of the offense, the juvenile's prior delinquency record and the juvenile's need for and amenability to rehabilitation. In recommending dispositions to the court, prosecutors shall consider the interests and needs of the juvenile, but a prosecutor's recommendations should be based principally upon concern for the safety and welfare of the community.

b. Each county prosecutor shall ensure that the court at a dispositional hearing is fully informed as to the impact of the juvenile's conduct on the victim, where such information has not otherwise been included in the pre-disposition report. Where a juvenile is adjudicated delinquent for an offense involving loss to the victim resulting from personal injuries or property damage, prosecutors should ordinarily seek an order for restitution to the victim as part of the disposition.

c. In all cases in which probation is an appropriate disposition, prosecutors should recommend to the court those specific terms and conditions of probation which are appropriate to the circumstances of the case and which are authorized under the Code of Juvenile Justice.

13. Short-term Commitment Disposition Option.

a. Each county prosecutor should encourage the establishment of a program of short-term commitment, as authorized by the Code of Juvenile Justice, so as to have this disposition option available to be used as a special deterrent (sometimes referred to as "shock incarceration") in the hopes of discouraging certain appropriately chosen juveniles from becoming career criminals or "Impact Offenders." Each county prosecutor should consider recommending this form of brief detention in those cases where a supervisory or probationary disposition is inadequate, but where long-term commitment to a state correctional institution is not necessary to protect the public safety and might actually prove to be counterproductive by allowing an impressionable juvenile to be negatively influenced by close, long-term contact with more serious, repetitive or hardened juvenile offenders.

b. Where the option is available, each county prosecutor should consider recommending short-term commitments for the following categories Of juvenile offenders, provided that commitment to a state correctional institution is not otherwise warranted:

First-time offenders adjudicated delinquent for a first or second degree crime;

Persistent offenders who have repeatedly been adjudicated delinquent for crimes or offenses that,

considered in isolation, would not normally warrant commitment to a state correctional institution, e.g., persistent criminal mischief or joyriding;

Juveniles who have committed a substantial violation of probation or have significantly violated non-custodial program requirements;

First-time offenders involved in the distribution of controlled dangerous substances or anabolic steroids;

Juveniles adjudicated delinquent for an offense committed while on suspended sentence to a state correctional institution;

Juveniles adjudicated delinquent for offenses involving a deadly weapon.

c. The county prosecutor should not necessarily request a full 60-day commitment. Rather, the prosecutor's recommendation to the court with respect to the specific term of commitment should be based upon a careful consideration of all relevant factors, including the seriousness of the offense, the juvenile's age, prior history of delinquency, present participation in school or gainful employment and amenability to being positively influenced by this type of disposition.

14. Prosecution of Drug and Alcohol Offenses.

a. Each county prosecutor shall take steps to ensure that juveniles taken into custody for or charged with an offense involving substance abuse, including alcohol abuse, are referred as soon as possible to available substance abuse evaluation and treatment, as appropriate.

b. Each county prosecutor shall make certain that delinquency complaints filed by police alleging a violation of any offense defined in Chapter 35 or 36 of Title 2C are not diverted from the court without the prosecutor's consent, which consent should not be given except in extraordinary circumstances.

c. Where a juvenile is adjudicated delinquent for any offense defined in Chapter 35 or 36 of Title 2C, the county prosecutor shall make certain that the applicable mandatory penalties are imposed, including the Drug Enforcement and Demand Reduction penalty, forensic laboratory fee, mandatory community service for certain possessory offenses committed on or near school property, and the forfeiture or postponement of the privilege to operate a motor vehicle or

motorized bicycle.

d. Where the conduct or neglect of a parent or guardian of a juvenile who has been adjudicated delinquent appears to have significantly contributed to the juvenile's delinquency, and substance abuse by the parent or guardian is indicated, the prosecutor should ordinarily seek mandatory parental or guardian participation in substance abuse evaluation and treatment, as necessary and as may be authorized by the Code of Juvenile Justice.

e. Consistent with the provisions of the Comprehensive Drug Reform Act and the clearly expressed intention of the Legislature, it shall be the policy of this State to aggressively prosecute adults and juveniles who are involved in the distribution of controlled dangerous substances. Prosecutors should seek, in addition to substance abuse evaluation and treatment, the imposition of appropriate sanctions for juveniles adjudicated delinquent for offenses involving the possession with intent to distribute, distribution or manufacture of a controlled dangerous substance or anabolic steroid. Prosecutors should ordinarily recommend incarceration or short-term commitment in the following circumstances:

Where a juvenile is adjudicated delinquent for an offense involving the manufacture, distribution or possession with intent to distribute a controlled dangerous substance or anabolic steroid, and the juvenile has previously been adjudicated delinquent for an offense involving controlled dangerous substances or anabolic steroids; or

Where a juvenile is adjudicated delinquent for a violation of N.J.S.A. 2C:35-3, 2C:35-4; 2C:35-7, 2C:35-9. or a violation of N.J.S.A. 2C:35-5 designated as a crime of the first degree.

f. Each county prosecutor should ordinarily seek the waiver to adult court of any juvenile fourteen years of age or older who is charged with a violation of N.J.S.A. 2C:35-9, or a violation of N.J.S.A. 2C:35-3, 2C:35-4 or 2C:35-5 which involved the distribution for pecuniary gain of any controlled dangerous substance while on any school property.

15. Juvenile Adjudication, Waiver and Disposition Working Group. A Juvenile Adjudication, Waiver and Disposition Working Group consisting of county prosecutors and other juvenile justice system practitioners and experts shall be established for the purpose of examining the practice of plea negotiations in juvenile matters, the incarceration of juveniles adjudicated delinquent and the waiver of juveniles to adult court. The Working Group shall within nine months issue a report to the Attorney General, recommending guidelines and/or directives for statewide promulgation by the Attorney General.

16. Juvenile Impact Offenders. A Juvenile Impact Offender Working Group shall be established consisting of representatives of the Division of Criminal Justice, County Prosecutors Association, Association of Chiefs of Police, the Judiciary and the Department of Corrections, for the purpose of developing a comprehensive, coordinated system-wide initiative to deal with serious repetitive juvenile offenders, who account for a disproportionate percentage of all crimes committed by juveniles. The Working Group shall within nine months issue a report to the Attorney General recommending any guidelines and/or directives for the implementation and funding of a Juvenile Impact Offender Program so as to focus available resources to the prevention, identification, detention differential case processing, prosecution disposition, confinement, rehabilitation and aftercare of serious repetitive juvenile offenders.

17. Working Group Membership. The Director of the Division of Criminal Justice shall within 30 days determine and announce the membership of all Working Groups established or reconstituted pursuant to this Executive Directive. Nothing herein shall be construed to prevent the Director or his designee from at any time expanding the membership of any Working Group or Committee as appropriate.

18. Effective Date. This Executive Directive shall take effect immediately.

Dated: October 17, 1990