

NDAA Juvenile Prosecution Principles and Guidelines

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Purpose

These policy positions were developed to strengthen and support the work of juvenile prosecution. They are designed to be read in conjunction with NDAA's *National Prosecution Standards*, Fourth Edition (2023), Section V, Juvenile Justice. While every state has its own juvenile code/statute, these policy positions can be used to guide decision-making at each stage of a case and to ensure that outcomes for youth and communities are fair, just, and equitable. These policy positions can also be used to inform local policies and guidelines. Recognizing juvenile prosecution as a specialized and critical practice not only helps prosecutors but also elevates the practice of juvenile law.

Goals of Prosecution

- **Principle:** The primary duty of a prosecutor is to seek justice while fully and faithfully representing the interests of the state.¹
- **Principle:** Prosecutors have a duty to give effect to the purpose clause of the juvenile code in their jurisdictions.
- **Principle:** Prosecutors are encouraged to adopt a balanced consideration of community safety, the youth's accountability to victims and communities, and the rehabilitative and treatment needs of the youth.²
- **Principle:** Prosecutors should seek to resolve juvenile prosecutions as quickly as possible, without compromising due process, fairness, and thoroughness.³

Commentary

Support for these policies can be found in the NDAA *National Prosecution Standards*, Fourth Edition (2023), the American Bar Association *Model Rules of Professional Conduct* (2023), and in the National Council of Juvenile and Family Court Judges, *Enhanced Juvenile Justice Guidelines* (2019) cited below. These policies promote fairness, balance, accountability, and efficiency in juvenile cases.

¹ NDAA, *National Prosecution Standards*, Part V, Juvenile Justice (hereinafter "NDAA, *National Prosecution Standards*, JJ 2023"), 69.

² See generally, *Id.*, 5-1.9.

³ See National Council of Juvenile and Family Court Judges, *Enhanced Juvenile Justice Guidelines* (2019), 16-17, www.ncjfcj.org/publications/enhanced-juvenile-justice-guidelines/.

Organizational Priorities

Policy: Elected prosecutors are encouraged to make juvenile court a priority in their offices.

- **Principle:** Juvenile court units should be staffed with prosecutors who desire to work in juvenile court; who desire to intervene effectively in the lives of youth and deter them from future criminal conduct.⁴
- **Principle:** Office assignments should provide for stability of prosecutors assigned to juvenile court and minimize turnover.
- **Principle:** Prosecutors in juvenile court should receive ongoing specialized training and professional development.⁵
- **Principle:** Prosecutors should maintain a presence in communities, and to the extent possible, should take an active role in prevention and early intervention efforts.⁶ Where feasible, resources should be allocated to allow juvenile court prosecutors to have a presence in their communities, including having time to attend relevant community events and attend community-based meetings.

Commentary

Historically, juvenile court was often used as a training ground for newly hired prosecutors. Frequently, less experienced assistants were assigned to juvenile court and juvenile court assignments were made for short term duration. As juvenile court has become more complex and specialized, it has become more important to staff juvenile court units with both new and experienced prosecutors. Juvenile court units in each jurisdiction can be strengthened by staffing them with attorneys who have an interest in juvenile prosecution and an ability to balance the needs of youth, victims, and community safety in a manner that is consistent with that jurisdiction's juvenile code/statute.

Juvenile court prosecutors must be properly trained and must receive ongoing training throughout their tenure in juvenile court. Juvenile court prosecutors must have intricate knowledge of many different concepts, including but not limited to adolescent brain development, adjudicative competency, the effects of exposure to violence on children, risk assessment tools, diversion programs and disposition programs, evidence-based practices and programs, and ethical considerations, and must know how to prepare for complex hearings and trials, including but not limited to competency hearings, transfer hearings, and suppression hearings pertaining to constitutional rights.

To the extent possible, juvenile court prosecutors should maintain a presence in communities and work collaboratively with law enforcement, schools, and other juvenile justice stakeholders to prevent and reduce juvenile crime. Prosecutors can support efforts to prevent and reduce crime in many ways,⁷ including but not limited to:

- Collaborating with schools, including schools that have high rates of offenses, to maximize resources and develop effective strategies to reduce offending.

⁴ See NDAA, *National Prosecution Standards*, JJ 2023, 5-1.2.

⁵ NDAA, *National Prosecution Standards*, JJ 2023, 5-1.2, 5-1.3.

⁶ *Id.*

⁷ *Id.*, 73 (Commentary).

- Conducting presentations in schools and public forums on the juvenile justice system and topics such as substance use prevention, the importance of attending and remaining in school, and making good decisions.⁸
- Bringing stakeholders together to share resource information and ensure that community members are aware of resources available to children and families.
- Sharing statistics about juvenile crime and crime trends (to the extent consistent with confidentiality laws), so that they can work collaboratively with communities and other juvenile justice stakeholders to design strategies that will reduce offending and make communities safer.
- Launching and supporting initiatives to build and improve relationships between law enforcement and youth.⁹

Intake/Charging Decisions/Diversion

- **Principle:** When consistent with the laws and juvenile justice system in a jurisdiction, a prosecutor should make all charging decisions, including diversion decisions.¹⁰
- **Principle:** In many jurisdictions, state law prohibits filing on children below a certain age. For those states, there should be a written office policy regarding charging younger youth.
- **Principle:** Diversion should be considered for appropriate low-level and first-time offenses.
- **Principle:** Charges should only be filed in cases supported by legally sufficient evidence. Cases unsupported by legally sufficient evidence should be sent back to the referral source for further investigation, dismissed or declined to prosecute with no further action. They should not be diverted.¹¹
- **Principle:** Diversion policies should be in writing and set forth general guidelines for a youth's participation in the diversion process.
- **Principle:** Diversion programs should utilize validated screening and assessments to determine the risk and needs of the individual youth, including the assessment of possible commercial sexual exploitation and human trafficking issues.
- **Principle:** Participation in diversion should be voluntary. Youth and their parent/guardian must sign all agreements should they choose to participate.
- **Principle:** To the extent permitted by law, victims must be notified of all charging decisions, including a referral to diversion. Their input should be sought prior to making the decision.
- **Principle:** To the extent consistent with confidentiality laws, a protocol should be in place to identify youth who have been or are currently involved in the child welfare system, to share information, access resources and coordinate services.

⁸ See e.g., Bronx District Attorney's Office CONCEPT Program, www.bronxda.nyc.gov/html/outreach/community-affairs-unit.shtml.

⁹ See generally, OJJDP, "Interactions between Youth and Law Enforcement," Literature Review (2018), ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/interactions-youth-law-enforcement.pdf.

¹⁰ NDAA, *National Prosecution Standards*, JJ 2023, 5-1.5 (Commentary), 74.

¹¹ *Id.*

- **Principle:** In determining whether to file formal charges or divert a case, the following factors¹² should be considered in deciding what result best serves the interests of the community, the victim, and the youth:

With respect to the offense:

- Sufficiency of the evidence;
- The seriousness of the alleged offense including whether the conduct involved violence or bodily injury to others, including the victim;
- Whether the offense involved the possession or use of a firearm;
- Whether the offense involved gang/crew activity;
- Parental involvement in the offense;
- A history of non-enforcement of the statute violated;

With respect to the youth:

- The role of the youth in the offense;
- Whether the youth admits guilt or involvement in the offense charged (if allowed by statute), and whether the youth accepts responsibility for the conduct, and the youth's attitude regarding the offense;
- Whether the youth is a commercially sexually exploited youth;
- The nature and number of previous cases presented by law enforcement or others against the youth, and the disposition of those cases;
- Any mitigating circumstance of the youth;
- The youth's potential for rehabilitation;
- The youth's age, maturity, and mental status;
- Mental health, substance use, and other possible treatment needs;
- Physical, developmental, social and psychological needs of the youth;
- The dangerousness, risk, or threat posed by the youth to persons or property of others;
- Parental support of the youth and other protective factors;
- Any undue hardship caused to the youth;

With respect to the victim:

- Victim input;
- Harm to the victim;
- Availability of restitution to the victim;

¹² See generally, NDAA, *National Prosecution Standards*, JJ 2023, 5-1.

With respect to other factors:

- The existence of appropriate treatment services available through juvenile court, child protective services, or through diversion;
- The decision made with respect to similarly situated youth;
- Recommendations of the referring agency, victim, law enforcement agency, and advocates for the youth, in consideration of the youth's rehabilitative potential.

This is not an exhaustive list but provides a starting point for consideration.

Commentary

Charging decisions are a critical part of prosecutorial function. Prosecutors have the statutory authority and responsibility to file charges, and they have knowledge of the elements of offenses and rules of evidence necessary to determine legal sufficiency.

Programs that divert youth from involvement in the juvenile justice system have increased in response to the growing recognition that such involvement is often not necessary and can even adversely affect young people and communities. Diversion programs provide an opportunity to address problematic behavior while at the same time avoiding the stigma of adjudication. Very often, this involvement can connect youth with positive peers, positive adults, and activities that build upon their strengths and promote resiliency.

While it may be tempting to divert cases not supported by legally sufficient evidence in order to obtain services for the youth, this should be avoided. Without legally sufficient evidence to support a charge, there is no legal basis for diversion. Diversion in the absence of legally sufficient evidence may well be a violation of *Model Rules of Professional Conduct*.¹³ In those jurisdictions where police, probation agencies, or court counselors make decisions to divert youth from prosecution, these agencies, to the extent permitted by law should seek input from the prosecuting authority before such decisions are made to ensure that the case is supported by legally sufficient evidence.

If, after an initial screening, it is determined that a diversion is inappropriate or if the youth fails to successfully complete a diversion program, the case should be re-referred to the prosecutor for formal charges. This is important, because if no charges are filed, the youth is not held accountable and does not benefit from an intervention.

Because of the high proliferation of youth who crossover from the child welfare system to the juvenile system, protocols should be put in place that allow for early identification of such youth. These cases require extensive collaboration and efforts should be made to implement coordinated case assignment, joint assessment processes and coordinated case plans and supervision.¹⁴

¹³ American Bar Association, *Model Rules of Professional Conduct* (2023), Rule 3.8, www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/.

¹⁴ Georgetown University Center for Center for Juvenile Justice Reform, *The Crossover Youth Practice Model (CYPM): An Abbreviated Guide* (2015), drive.google.com/file/d/1lUXfhHxnknx5XctxJU3iBMW-eVDLcll/view?pli=1).

Waiver/Transfer

- **Principle:** The transfer of cases to Criminal Court should be reserved for the most serious, violent, and chronic youth.¹⁵
- **Principle:** Prosecutors should make transfer decisions on a case-by-case basis and take into account the individual factors of each case, including, among other factors, the gravity of the current alleged offense, the level of harm to the victim, the record of previous delinquent behavior, the risk level of the youth, the age and maturity level of the youth, and the availability of adequate treatment and dispositional alternatives in juvenile court compared to adult court.¹⁶

Commentary

Transfer decisions should be made on a case-by-case basis, considering the individual factors of each case. Prosecutors should evaluate which system best supports public safety, holds the youth accountable, addresses rehabilitation and treatment needs, and develops the youth's skills in reducing future delinquency or criminal behavior.

Prosecutors are encouraged to review research and juvenile crime data around juvenile reoffending and consider if their existing policies are supported by the research and data. Evidence-based policies are not only more likely to achieve the desired result, but such policies also provide a defensible basis for the exercise of prosecutorial discretion.

Discovery¹⁷

Discovery: A prosecutor should, at all times, carry out his or her discovery obligations in good faith and in a manner that furthers the goals of discovery, namely, to minimize surprise, afford the opportunity for effective cross-examination, expedite trials, and meet the requirements of due process. To further these objectives, the prosecutor should pursue the discovery of material information, and fully and promptly comply with lawful discovery requests from defense counsel.

Duty to Disclose Exculpatory and Impeachment Evidence: Due process requires that the prosecutor provide defendants with any evidence that is favorable to them whenever that evidence is material to either their guilt or punishment, pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. The "Brady Rule" applies to evidence that negates the guilt of the accused or evidence that mitigates the crime committed by the accused. Due process also requires that the Government disclose impeachment evidence for witnesses who will be testifying at trial, pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), and its progeny.

Continuing Duty: If at any point in the pretrial or trial proceedings the prosecutor discovers additional witnesses, information, or other material previously requested or ordered which is subject to disclosure or inspection, the prosecutor should promptly notify defense counsel and provide the required information.

¹⁵ NDAA, *National Prosecution Standards*, JJ 2023, 5-1.7.

¹⁶ *Id.*

¹⁷ *Id.*, 4-9.1.

Plea Negotiations

- **Principle:** Prosecutors should engage in plea negotiations in juvenile court cases.
- **Principle:** Similarly situated youth should be offered substantially similar plea agreement opportunities, taking into consideration community safety, the rehabilitative and treatment needs of the youth, family support, and other appropriate factors relevant to juvenile disposition/sentencing, including victim input.¹⁸
- **Principle:** Alford pleas¹⁹ (pleas that do not involve an admission to the act) should be avoided in juvenile court because they do not require personal acceptance of responsibility for the illegal conduct. (The youth gains access to programs while maintaining that he/she never committed any illegal acts.)
- **Principle:** Prosecutors should be encouraged to consider many forms of plea agreements to find one that might serve the interests of justice in a particular case. The following are general starting places for plea negotiations and how to hold the youth accountable through a plea agreement: agree to forego transfer/waiver into adult court in exchange for plea in juvenile court and juvenile disposition; within juvenile court, agree to allow the youth to plea to a lesser charge; offer pre-adjudication diversion; offer post-adjudication but pre-disposition diversion.

Commentary

Plea agreements in juvenile court are an effective way to help youths accept responsibility for their conduct. The guilty plea is often the beginning of rehabilitation and prosecutors should find suitable ways to settle juvenile court cases.

Proper factors²⁰ to consider while negotiating pleas in juvenile court include, but are not limited to:

With respect to the offense:

- Nature, severity, and classification of the offense;
- Whether the offense was committed in an especially heinous, cruel or depraved manner;
- Plea agreements previously made with similarly situated youths;
- Whether the offense involves the possession or use of a firearm;
- Whether the offense involves gang/crew activity;
- Parental involvement in the offense;
- Sufficiency of the evidence at trial;
- Any mitigating circumstances involving the offense;

¹⁸ NDAA, *National Prosecution Standards*, JJ 2023, 5-1.8.

¹⁹ *North Carolina v. Alford*, U.S., 400 U.S. 25 (1970).

²⁰ See generally, NDAA, *National Prosecution Standards*, Part VI, Plea Negotiation and Agreements.

With respect to the youth:

- The role of the youth in the offense;
- Whether the youth admits guilt or involvement in the offense charged, and whether the youth accepts responsibility for the conduct, and the youth's attitude regarding the offense;
- Whether the youth is a commercially sexually exploited youth;
- The nature and number of previous cases presented by law enforcement or others against the youth, and the disposition of those cases;
- Any mitigating circumstances of the youth;
- The youth's age, maturity, and mental status;
- Mental health, substance use, and other possible treatment needs;
- Physical, developmental, social and psychological needs of the youth;
- The youth's potential for rehabilitation;
- The dangerousness, risk, or threat posed by the youth to persons or property of others;
- Any cooperation by the youth;
- The youth's strengths;
- Parental support of the youth and other protective factors;
- The risk to the community posed by the youth;

With respect to victims and/or witnesses:

- The availability and willingness of the victim(s) and witnesses to testify;
- Any physical or mental impairment of the victim(s) or witnesses;
- The witness's relationship to the youth;
- Victim's input;
- Availability of restitution to the victim;
- Any possible improper motive of the victim(s) or witnesses;
- The age of the victim(s) or witnesses and the likelihood of re-traumatization if forced to testify;
- Vulnerability on the part of the victim;
- Any other undue hardship to the victim(s) or witnesses caused by testifying;
- The existence and extent of harm, including economic harm, physical injury and emotional trauma suffered by the victim(s) or witnesses.

This is not an exhaustive list but provides a starting point for consideration.

Adjudication

- **Principle:** Prosecutors should appear and represent the interests of the state at every hearing involving a juvenile respondent/defendant. At the adjudicative hearing (trial), prosecutors should assume the traditional adversarial role of a prosecutor, acting in the best interests of justice and community safety.²¹
- **Principle:** Prosecutors must comply with all discovery obligations and are encouraged to implement open file policies wherever possible.

Commentary

Juvenile court is a formal, adversarial system that requires legal representation for the state and the youth at every stage of the court process. Prosecutors may be the only voice victims and communities have in court. It is incumbent on prosecutors to attend every hearing to protect the community and advance the rights of crime victims, while ensuring that the youth is held accountable and that the youth's rehabilitative and treatment needs are being met. Prosecutors are encouraged to work collaboratively with defense counsel and encourage communication about individual cases and systemic issues where appropriate.

Discovery obligations are generally the same in juvenile court as they are in criminal court. Prosecutors in juvenile court must be well-trained on discovery obligations, including all ethical considerations and must have a full understanding of the consequences of failure in this area of practice.²²

Screening and Assessment

- **Principle:** Prosecutors should utilize validated screening and assessment instruments to assess the risk of re-offense, the needs, strengths and/or behavioral health issues of youth referred to the system, including the risk of commercial sexual exploitation and human trafficking.
- **Principle:** Prosecutors should support and/or adopt policies that encourage the free exchange of information by protecting the youth's right to confidentiality with respect to information obtained from him/her during screening and assessment.

Commentary

During the initial stages of screening and assessment, there may be interviews and communications between youth, family members and juvenile court personnel. To encourage youth to share information openly and truthfully during these processes, it is recommended that prosecutors support and/or adopt policies regarding the confidentiality of statements made during these processes. Provisions that encourage the free exchange of information when addressing potential behavioral issues can lead to better outcomes for youth and for the community as well.²³

²¹ NDAA, *National Prosecution Standards*, JJ 2023, 5-1.9 (Commentary), 73.

²² American Bar Association, *Model Rules of Professional Conduct*, Rule 3.8(d).

²³ Models for Change, *Juvenile Diversion Guidebook* (2011), 53, modelsforchange.net/publications/301/Juvenile_Diversion_Guidebook.pdf.

Dispositions

- **Principle:** Prosecutors should take an active role in dispositional hearings and make recommendations after reviewing the entire case file and all disposition/sentencing reports so that they can recommend a disposition that balances community protection, accountability, and the rehabilitative and treatment needs of the youth.
- **Principle:** The primary factors affecting a youth's disposition/sentence should be the seriousness of the crime, the protection of the community, accountability to the victim and the community, and the rehabilitative and treatment needs of the youth.²⁴
- **Principle:** At the dispositional hearing, the prosecutor should make the court aware of the impact of the youth's conduct on the victim and the community.
- **Principle:** Dispositions should be tailored to the individual risk level of the youth. Interventions should be developmentally appropriate and build upon the specific needs and strengths of the youth.
- **Principle:** Accountability must be promoted when there is non-compliance. Incentives can be incorporated to acknowledge positive progress. Barriers to non-compliance should be explored before the imposition of sanctions. If sanctions are appropriate, they should be graduated, swift, and certain.
- **Principle:** Family involvement in the youth's rehabilitation and/or treatment should be encouraged wherever possible and appropriate.
- **Principle:** Dispositions should include conditions and programs consistent with best practices and evidence-based interventions. When possible and when consistent with the need to protect the community and the youth's rehabilitative and treatment needs, community-based interventions rather than residential interventions should be utilized.
- **Principle:** The prosecutor's office should periodically review diversion and dispositional programs to ensure that they provide appropriate supervision, treatment, and services for the youth they serve.²⁵

Commentary

Over the past 30 years, there have been many advances in effective approaches to juvenile rehabilitation. Based on neuroscience and social science studies, policies and practices can be designed to decrease recidivism and improve positive outcomes for young people.

When considering the dispositional alternatives, it is important to analyze the needs and strengths of each young person. Dispositions should be tailored in a way that will encourage pro-social behavior and outcomes. The importance of connecting youth to positive peers, adults and activities cannot be overstated.

²⁴ See NDAA, *National Prosecution Standards*, JJ 2023.

²⁵ NDAA, *National Prosecution Standards*, JJ 2023, 5-1.2.

In addition to those criteria considered during plea negotiations, the following are proper factors to consider when making disposition recommendations:

With respect to the youth:

- Physical, developmental, emotional, social, and psychological needs of the youth;
- Mental health challenges the youth may be experiencing;
- Other treatment, rehabilitative, and skill-building needs of the youth;
- Parental or other support of the youth as well as other protective factors;
- Any pre-disposition reports that may have been completed;
- The youth's risk assessment scores/levels, where applicable;
- The youth's level of success with prior probation or other disposition/sentencing conditions.

Reducing Ethnic and Racial Disparities

- **Principle:** Prosecutors should continue their efforts to participate with other juvenile court stakeholders to reduce ethnic and racial disparities.
- **Principle:** Prosecutors should maintain a well-qualified staff that is reflective of the community and must promote policies that discourage any type of disparate treatment.
- **Principle:** Prosecutors should be pro-active in maintaining and reviewing data from all decisions points in the juvenile justice process to identify areas where disparities may exist.
- **Principle:** Prosecutors should be proactive in developing ways to improve relations between youth and law enforcement.²⁶

Commentary

According to OJJDP, in 2020, Black youth were 2.3 times more likely to be arrested than their white peers. In 2019, black youth were 4.4 times more likely than their white peers to be in residential placement.²⁷ Prosecutors must be proactive in analyzing statistics similar to these and design strategies in collaboration with other stakeholders to reduce racial and ethnic disparities in the juvenile and criminal justice systems. The five points of contact where disproportionate minority contact most often occurs are: arrest; diversion; pre-trial detention; disposition commitments; and adult transfer.²⁸

To be eligible to receive federal funding, states are required to implement plans to reduce disproportionate minority contact, as outlined in the Juvenile Justice and Delinquency Prevention Act, which was reauthorized and amended by the Juvenile Justice Reform Act of 2018.²⁹

²⁶ See generally, OJJDP, "Interactions between Youth and Law Enforcement."

²⁷ Liz Ryan, "Celebrating Youth Achievements and Promise During Black History Month," February 13, 2023, ojjdp.ojp.gov/blog/celebrating-youth-achievements-and-promise-during-black-history-month.

²⁸ OJJDP, "Racial/Ethnic Disparities (R/ED)," accessed June 8, 2023, ojjdp.ojp.gov/programs/racial-and-ethnic-disparities.

²⁹ *Id.*

Victims

- **Principle:** Crime victims should have the same rights in juvenile court that they have in adult criminal court.
- **Principle:** Prosecutors should make the court aware of the impact of the youth's conduct on the victim and the community.
- **Principle:** Prosecutors must be familiar with and comply with all victims' rights laws in their jurisdictions.
- **Principle:** Victims should be kept informed of proceedings and their input should be considered at all decision points in a case, including charging and diversion decisions, plea bargaining, and disposition/sentencing. Where permitted by law, victims should be informed of the final outcome of a case, and should be given information regarding a youth's release from a facility or information on how to access that information.
- **Principle:** Prosecutors should work to ensure confidentiality laws do not hinder victims' rights or prevent victims from accessing essential information.
- **Principle:** Prosecutors should ensure that victims have a safe and comfortable waiting area in the prosecutors' office and courtroom when their presence is needed at those locations.
- **Principle:** Prosecutors should be aware of all services and resources available to victims to ensure that information is shared with them.
- **Principle:** Prosecutors should ensure that interpreters are available for victims for interviews, case updates, and other communications between the victim and prosecutor.

Commentary

Every state and the District of Columbia have some form of victims' rights legislation. It is essential for prosecutors to understand their responsibility to victims and to put it into practice daily. When victim advocates are available, prosecutors should cultivate a good working relationship with them, and take advantage of their expertise in protecting the rights of victims and referring victims to services.

Victims must be provided safe and comfortable waiting areas, informative case updates, and interpreter services when needed. While a victim's right might include procedural notifications, a request for restitution, and the opportunity to make victim impact statements, the most basic right of every victim of crime is being treated with dignity, respect, and sensitivity throughout the criminal justice process.³⁰ Confidentiality laws may adversely impact crime victims and prosecutors should support legislation that allows victims access to relevant information involving their cases.

³⁰ Constitution of Maryland, Article 47, Crime Victims' Rights, msa.maryland.gov/msa/mdmanual/43const/html/00dec.html.

Gangs/Crews

The impact of gang/crew activity by youth requires the juvenile justice system to address the problem.

- **Principle:** Adequate resources should be given to prosecutors to assist in the prosecution of gang-related violence and the protection of victims and witnesses.
- **Principle:** Prosecutors must prioritize the identification and prosecution of gangs/crews and gang/crew behavior.
- **Principle:** Prosecutors must know what gangs/crews exist in their jurisdiction and neighboring jurisdictions.
- **Principle:** Specialized prosecution is necessary to assist in the effective prosecution of crimes committed for the benefit of gangs/crews. Prosecutors in large jurisdictions should be encouraged to share information and provide technical assistance regarding gang prosecution with small jurisdictions.
- **Principle:** Prosecutors should work with other community stakeholders to develop comprehensive plans to combat gang/crew violence and prevent youth from joining gangs.

Prosecutors can raise awareness about gang/crew activity and support prevention efforts by giving community presentations on:

- Risk factors for gang/crew membership³¹;
- Positive activities in which youth can participate;
- Signs of gang/crew membership that parents should look for³²;
- Type of gang/crew activity happening in specific communities;

Factors to consider when making decisions in various stages of a case, including diversion, charging, plea bargaining, sentencing/disposition:

- The youth's role in the gang/crew;
- The youth's length of time in the gang/crew;
- Whether or not gang/crew membership played a role in the current offense;
- The youth's history of gang/crew offenses.

Commentary

A gang can be defined as a group of individuals that band together for a common cause and are involved in criminal activity; many gangs are highly organized and operate across state lines. A crew is a more loosely knit group, often based in a neighborhood. These are usually individuals who grew up in or who have

³¹ National Gang Center, "Review of Risk and Protective Factors for Juvenile Delinquency and Youth Gang Involvement," accessed August 7, 2023, nationalgangcenter.ojp.gov/spt/Risk-Factors.

³² OJJDP, *A Parent's Quick Reference Card: Recognizing and Preventing Gang Involvement* (2015), ojjdp.ojp.gov/library/publications/parents-quick-reference-card-recognizing-and-preventing-gang-involvement.

family roots in that neighborhood. Regardless of Gang or Crew affiliation, both groups are often associated with a variety of crimes, including drug trafficking, gun possession, assaults, and even homicides.³³ They may exist in cities, smaller cities, rural, and suburban environments.

Prosecutors must set a high priority within their offices concerning gang/crew issues. Prosecutors assigned to a gang-related crime unit would be well served to understand the dynamics of gang/crew recruitment and engagement, and the various incentives for joining a particular gang or crew. Depending on the size of the jurisdiction and the gang/crew problems in existence, the availability of community programs that address such issues may vary. Check your state's laws for definitions or elements of gang or crew-related crimes and applicable sentencing provisions. One issue often overlooked is the ability to protect witnesses who testify against gang members from retribution by the gang. Witnesses often will not come forward with information about a crime, and if they do, they express concern that testifying will result in retaliation by the gang members against themselves or their families. Horrific cases of such retaliation have occurred.³⁴ Prosecutors must be aware of all available programs that protect victims and witnesses.

Small and medium size jurisdictions may not have the staff and resources to create such units. To provide the most reasonable alternatives for these offices, it is hoped that larger offices can provide assistance. The experience and information available to the larger office, if shared, could assist smaller offices in protecting their communities from gang-related crime.

Guns and Other Dangerous Weapons

- **Principle:** Prosecutors should prioritize cases involving guns and other dangerous weapons, and to the extent possible, should provide enhanced supervision on these cases to ensure that outcomes promote accountability, protect the community, and address the rehabilitative and treatment needs of the youth.
- **Principle:** Prosecutors should maintain statistics on these cases and collaborate with other stakeholders to suppress gun violence.

Commentary

The availability, distribution, and use of guns by youth in the commission of crimes continues to impact communities. Teens obtain access to guns and other weapons from a wide variety of sources, including their home, friends, family members and their neighborhood. Cities across the country are reporting increases in youth shootings, including where youth are the victims.³⁵

Prosecutors should continue to take a firm stance on youth who possess or use dangerous weapons, while also ensuring that their rehabilitative needs are met. To the extent possible, cases involving dangerous weapons should be reviewed by supervisors throughout their pendency, and statistics should be maintained regarding how many juvenile cases the office handled regarding dangerous weapons, what areas the

³³ Government of the District of Columbia Metropolitan Police Department, *Understanding and Avoiding Gangs* (2011), mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/understanding_avoiding_gangs.pdf.

³⁴ U.S. Attorney's Office, Northern District of Georgia, "Eight gang members sentenced to federal prison for their roles in the execution of a teenage gang member for suspected 'snitching,'" press release, November 30, 2022, www.justice.gov/usao-ndga/pr/eight-gang-members-sentenced-federal-prison-their-roles-execution-teenage-gang-member.

³⁵ Liz Szabo, "Pandemic Stress, Gangs, and Utter Fear Fueled a Rise in Teen Shootings," KFF Health News, March 14, 2023, khn.org/news/article/teen-shootings-gun-violence-pandemic-stress-gangs-trauma-fear/.

incidents occurred in, and whether anyone was injured. Prosecutors should collaborate with law enforcement and other stakeholders including community groups, to address, and suppress gun violence in their jurisdictions by sharing information to the extent permitted by law, by developing prevention and enforcement strategies, and advocating for strict penalties for adults who give youth access to dangerous weapons.

Human Trafficking and Commercial Sexual Exploitation of Youth

Human trafficking and commercial exploitation of youth is a growing problem in America. An estimated 1.2 million children are trafficked each year.³⁶ Prosecutors should work closely with law enforcement, child protection, and other agencies to address sexual exploitation and human trafficking of youth to protect these vulnerable victims of these crimes.

- **Principle:** Prosecutors should consider a multi-systemic approach to addressing sexual exploitation and human trafficking involving youth through partnerships with law enforcement, child protection and family services, medical and mental health providers and other groups and agencies working to keep youth safe from such exploitation.
- **Principle:** Prosecutors should consider youth arrested for prostitution as victims. Such conduct by youth should be addressed in the child protection system or through qualified service providers to the extent possible, and not through the juvenile delinquency system.
- **Principle:** Prosecutors should be trained to identify justice-involved youth who are commercially sexually exploited (CSEC).

Commentary

Child sex trafficking is a form of child abuse that occurs when a child under the age of 18 is advertised as, solicited for, or exploited through a commercial sex act, an act where something of value is given to or received by any person for sexual activity.³⁷

Several states have enacted “Safe Harbor” laws aimed at treating youth involved in prostitution as crime victims and not juvenile delinquents.³⁸ These laws are premised on the fact that youth are not voluntarily engaged in this conduct but are often being forced or coerced into it by sexual predators and human traffickers. Prosecutors should treat sexually exploited youth as victims, and such youth should be referred to the child protection system, to the extent the law allows for it, or to qualified service providers rather than the juvenile delinquency system.

If a youth who has been commercially sexually exploited commits an offense other than a prostitution-related offense, the fact that the youth has been commercially sexually exploited should be a factor when a prosecutor is making a decision regarding diversion, charging, plea bargaining, and disposition/sentencing.

³⁶ Sunrise for children.org, “Human Trafficking Statistics and Facts,” accessed August 7, 2023, sunriseforchildren.org/human_trafficking/.

³⁷ National Center for Missing & Exploited Children, “Child Sex Trafficking,” accessed August 7, 2023, www.missingkids.org/theissues/trafficking.

³⁸ Development Services Group, Inc., *Safe Harbor Laws: Changing the Legal Response to Minors Involved in Commercial Sex, Phase 3. The Qualitative Analysis* (2018), www.ojp.gov/pdffiles1/ojjdp/grants/253244.pdf.

