

Case Assessment

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June 2024

Originally published as Chapter 4 of
NDAA's Handbook for Juvenile Court Prosecutors



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Introduction

This article provides a framework for prosecutors to assess a juvenile case for charging and other decisions. Deciding whether to file/issue charges is one of the most important decisions a prosecutor makes. Such decisions may profoundly impact the life of a youth and others involved in the case. By conducting a comprehensive case assessment, prosecutors can make informed decisions regarding whether to file/issue charges, as well as other decisions such as whether to divert a case, whether to decline to prosecute a case in the interest of justice, and whether to transfer a case to adult court. The main purpose of case assessment in many jurisdictions is to determine if the facts presented are legally sufficient to support the filing/issuance of charges. Each and every element of a charge must be supported by admissible evidence; each element must be able to be proven beyond a reasonable doubt at trial. Only after it is determined if the case is legally sufficient can decisions be made on filing/issuance, transfer, and diversion. If a case is not legally sufficient, the case must be returned to the submitting/referring agency with a request for further information or declined to prosecute.¹

This framework recognizes that jurisdictions differ in terms of when prosecution agencies may have cases submitted/referred to them from different agencies; and that the contents of a case file vary from jurisdiction to jurisdiction. This framework also recognizes that juvenile court prosecutors generally must make decisions in shorter periods of time than their adult counterparts. Juvenile court prosecutors across the country have different local laws, rules of court, procedures, and office guidelines to follow when assessing a case. However, there are many aspects of a comprehensive case assessment that juvenile court prosecutors in every jurisdiction can utilize at the relevant point in their cases. The framework provided in this article is designed to be read in conjunction with NDAA's *Handbook for Juvenile Court Prosecutors* ([Publications-Juvenile-Prosecutors-Handbook-1.pdf](#)): *NDAA National Prosecution Standards*, Fourth Edition (2023), Section V, Juvenile Justice (Chapter 1) and *NDAA Juvenile Prosecution Principles and Guidelines* (2023) (Chapter 2).

Obtaining the Case File

When a case is first received from the submitting/referring agency, you should take an inventory of what the case file contains. The most important part of this initial review is to make sure you have all the documents and evidence available to make informed decisions pertaining to the case. Obtaining missing documents or evidence is critical; there could be one piece of evidence that changes the nature and/or direction of the case. The witness statement that shows the youth was not involved, the audio recording where the "clear" admission of guilt is not as clear as expected, the photograph which does not show what you expected it to; these are all realistic possibilities that prosecutors encounter in the normal course of their investigations.

¹ NDAA, *National Prosecution Standards*, JJ 2023, 5-1.3.

Items Needed for a Thorough Case Assessment

Police Reports. Review all paperwork, including police reports, evidence vouchers, photographs, etc. Law Enforcement officers may prepare numerous forms of paperwork when they respond to a location and/or make an arrest. The paperwork may contain information based upon law enforcement officer observations, interviews, evidence they collected, and information they were given by others.

To ensure that you have all the police paperwork pertaining to the case, the following questions should be asked of the involved law enforcement agency:

- How many officers responded?
- What are their names and shield/badge numbers?
- What paperwork is required to be completed in this situation? (Check to see if your office has a checklist of police paperwork that may exist.)
- Did different units respond?
- Do different units fill out different reports/paperwork?
- Were crime detection programs used (such as those that record and determine the location from which gunshots were fired, license plate readers, cameras . . .)?
- If so, are there reports, analyses, photos, video, and other evidence from these programs?
- Did the officers take pictures and/or video?
- Did the officers take notes beyond what is contained in the standard paperwork?
- Did the officers have body worn cameras?
- Which paperwork contains the statements of the victim(s) and witness(es)? Were those statements recorded?
- Is the case file you have in your possession missing anything? (Show the officers what you have in hard copy and electronically.)

Body Worn Cameras (BWC). To the extent feasible, review all BWC footage. This form of digital evidence is likely of vital importance to your case. BWC footage may show an offense in progress, the aftermath of an offense, and may show the actions of victim(s), witness(es), and law enforcement. BWC footage may also show injuries, property damage, tangible evidence, and may lead you to additional witnesses and additional evidence. BWC footage may also contain evidentiary tools such as excited utterances, present sense impressions, and admissions. The way words were used, emotions displayed, and surrounding circumstances may significantly impact the prosecutor's assessment of the strength or nature of a case. (Remember that other video footage may exist, beyond BWCs, such as on social media, surveillance videos, etc.)

As part of case assessment, a prosecutor must have a full understanding of:

- How BWCs are shared with the prosecutor's office.
- Whether BWCs are redacted by law enforcement prior to being shared with the prosecutor's office.
- Whether the prosecutor has all the BWC footage from all locations relevant to the case and from all officers involved at each location.

Additional Video Evidence. Review all video evidence including surveillance video footage. It may show the actual incident from a different perspective than the other evidence you have reviewed. Even if video footage does not show the actual incident, it may show the path of escape, the moments preceding the incident or potential witnesses. Ensure that law enforcement has canvassed for all types of video evidence, including but not limited to electronic doorbells, private or business security cameras, video camera footage from vehicle dash cams, red light cameras, license plate readers, or video from cameras set up in high crime areas. Be mindful that business vehicles such as trash trucks or buses may have cameras onboard that may have caught an incident.

911 calls and Radio Transmissions. Listen to 911 calls, police radio transmissions and review any accompanying transcripts. 911 calls generally contain information that is vital to a case, including information about what is occurring during the crime, the demeanor of victims/witnesses (see BWC section), and descriptions of suspects. 911 calls may contain excited utterances and/or present sense impressions that may be admissible at trial. Radio transmissions may contain conversations between law enforcement and victims/witnesses, information that explains the actions of law enforcement, information regarding identification procedures, descriptions of suspects, and a timeline for when a person was taken into custody.

Victim/Witness Evidence. Review all statements made by victims and witnesses to law enforcement and other relevant entities (such as statements made to private security guards at a location) to the extent permissible by law. Audio or video interviews, including those shown on BWCs are especially helpful because you can see the demeanor and hear the exact words used by a witness which will assist you in making credibility decisions. If feasible in your jurisdiction, interview the victim(s) and witness(es) prior to deciding whether to file/issue charges. (See NDAA's *Handbook for Juvenile Court Prosecutors* ([Publications-Juvenile-Prosecutors-Handbook-1.pdf](#)) Chapter 5, "Working with Victims During the Early Stages of a Case.") Review all photographs and video footage of victims and witnesses, including on BWCs, surveillance videos, social media, etc.

Questions to ask law enforcement about victim/witness evidence:

- Were written statements taken?
- Are written statements contained in the police reports? Did any of the victims/witnesses call 911?
- Were any victim or witness statements recorded?
- If so, do you have all the recordings, or access thereto?
- Was an identification procedure done? If so, by what officers, and with which witnesses?
- Does your police agency have access to prior law enforcement contacts with victims and/or witnesses?
- If so, can they legally share them with the prosecutor under confidentiality laws?

Criminal History. Check the rules of evidence in your state to determine if a victim or witness may be impeached for having a criminal record and if you may legally obtain this information. Some states may allow impeachment for conviction of misdemeanors, some allow only for felony convictions, and some require the crime to be one of moral turpitude and do not consider the degree of the crime. The definition of a crime of moral turpitude will vary from state to state.

Identification Procedures. Review all paperwork, photographs, and audio/video recordings pertaining to identification procedures, and if feasible in your jurisdiction interview all the police officers and victims/witnesses involved.

Questions to ask law enforcement about identification procedures:

- Was a show-up/line-up/photo line-up done? Who transported the victim/witness to the show-up/line-up/photo line-up location? Who apprehended the youth who was the subject of the show-up/line-up/photo line-up?
- Was a photo array conducted? If so, where? By whom? Was it a “blind”² procedure?
- If a line-up was conducted, was it a photo or in-person line-up? (Each jurisdiction does identification procedures differently.) If so, where? By whom? Was it a “blind” procedure?
- Were pictures and audio/video taken during the line-up?
- What was said to the victim/witness prior to the photo array/line-up?
- Where line-up fillers kept separate and out of view of the victim/witness prior to the line-up?
- If a photo array or line-up was conducted were all photos and any notes by the victim submitted?
- What was the result of the photo array/line-up?
- Did the victim/witness express any hesitation in his/her identification?

Hospital/EMS/Medical Records. Review all medical records that you legally have access to or can legally obtain (explore obtaining a HIPAA waiver from the victim(s)). These records can provide information on the extent and nature of victim injuries, statements made for diagnosis and treatment that may be admissible at trial, future treatment needs, and discharge recommendations.

Photographs. Review all photographs, including those of the scene, victim, youth, and physical evidence.

Social Media. Review all social media available to you pertaining to the case, to the victim(s), to the witnesses, and to the youth(s). Evaluate whether you can obtain additional social media evidence, through public searches, consent, or search warrants. Preservation letters should be sent to social media companies so that the evidence does not get removed.

Scientific Records. Review all reports pertaining to fingerprint evidence, serology evidence, DNA evidence, etc. You must have a thorough understanding of the laws in your jurisdiction pertaining to this type of evidence in the juvenile context.

Juvenile Admissions. Review all statements made by the youth, including but not limited to statements at the scene, statements during transport, and statements at the police precinct; evaluate the admissibility of each one based on the facts and the laws in your jurisdiction. It is important to have a full understanding of the laws in your jurisdiction pertaining to juvenile admissions. Your jurisdiction may have laws requiring that a parent or attorney be contacted prior to speaking to a youth, that a statement be recorded, that a

² A blind procedure is an identification procedure where the administrator does not know the identity of the suspect. See National Institute of Justice, “Live Police Lineups: How Do They Work?”, accessed April 26, 2023, nij.ojp.gov/media/image/19686.

statement be taken at a specific location or type of location, or that require a youth to speak with a defense attorney before being interviewed by law enforcement. Factual considerations regarding whether a statement was made voluntarily by a youth include but are not limited to: where the statement was made, what the room looked like, how long the youth was in custody, how long the interview lasted, how many members of law enforcement participated in the interview, how the *Miranda* warnings were read, whether the statements were audio or video recorded, whether the youth was given food and drink, whether weapons were visible during the interview, whether promises or threats were made to the youth, and whether any force was used against the youth.

Additional Considerations During Case Assessment

Confidentiality of Records. There may be records, statements or evidence in your case that is protected by confidentiality laws. The types of records that may be protected by law in your jurisdiction include, but are not limited to, medical records, counseling/mental health/therapy records, child welfare records, search warrant affidavits containing confidential informant information, social service records, and records containing juvenile or criminal history. Be mindful of confidentiality laws when speaking to victims and witnesses to ensure that you do not reveal confidential information. The law may require that you not share these records absent a court order, that you redact them, or that you not use them in your decision-making. It is important that you have a full understanding of the confidentiality laws in your state with respect to different types of records. When you come across records that may be confidential, it is a good practice to discuss with your supervisor how to proceed regarding those records.

Law Enforcement Records. Many jurisdictions require prosecutors to turn over to defense counsel disciplinary records of police officers and other impeachment material³ such as adverse credibility findings that can be used at a hearing or trial. It is important to review these records, to the extent permissible by law, including any cases in which an officer was found not credible by a court and determine whether these records or findings impact your case. This type of information may help to assess the credibility of your law enforcement witnesses. You must have a full understanding of the laws in your jurisdiction and your office's policies regarding obtaining and disclosing this information.

Conclusion

The evidence described in this article is thorough although not an exhaustive list of items that are important when evaluating a case for filing/issuance and other decisions. Due to time constraints in juvenile court and the volume of cases, not everything mentioned in this article may be possible to obtain. Furthermore, some items may not be legally permissible in your jurisdiction. As a juvenile court prosecutor, it is your duty to be familiar with the legal, evidentiary and policy rules in your jurisdiction. Making an informed decision at the earliest possible time will enable you to make decisions about whether and how the case should proceed, which will fulfill your ultimate duty to seek justice.

³ *Brady v. Maryland*, 373 US 83 (1963); *Giglio v. United States*, 405 US 150 (1972).

