

DRAFT as of October 21, 2008  
*Mental Health/Juvenile Justice Diversion Subcommittee  
of the Models for Change Initiative in Pennsylvania*

**MODEL PRE-ADJUDICATION DIVERSION POLICY  
FOR PENNSYLVANIA**

*Prepared by the  
Diversion Subcommittee of the  
Mental Health/Juvenile Justice state work group of  
the Models for Change Initiative in Pennsylvania*

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## **Executive Summary**

This model policy was developed by the Diversion Subcommittee of the state Mental Health/Juvenile Justice work group for the Models for Change Initiative. The Subcommittee recognizes that pre-adjudication diversion as an alternative to formal processing in the juvenile justice system in certain cases can serve many desirable goals, including avoiding stigma and a record for the youth. The purpose of the model policy is to set forth fundamental values and practice standards that ought to underpin any pre-adjudication diversion policy in Pennsylvania as follows:

- ✚ Pre-adjudication diversion provides opportunities for youth who are charged with delinquent acts, or at imminent risk of being arrested/charged, to avoid an adjudication of delinquency.
- ✚ The Pennsylvania Juvenile Act and Rules of Juvenile Court Procedure provide mechanisms to divert youth away from further formal processing within the justice system. Thus, both our legislature and state supreme court endorse the fundamental principle that pre-adjudication diversion is appropriate in certain circumstances.
- ✚ Diversion efforts should be aligned with the goals of balanced and restorative justice (BARJ), which include holding offenders accountable to victims, providing competency development for offenders, and ensuring community safety.
- ✚ Certain youth who would otherwise face formal processing in the justice system should be considered for pre-adjudication diversion. These include:
  - Youth charged with non-violent offenses
  - Youth charged with low-level offenses
  - First time youth offenders
  - Youth referred by district magistrates for failure to pay fines and fees in summary offense cases
- ✚ Because summary offenses are a significant conduit into the juvenile justice system, counties should assure that diversion policies and programs adequately address this population of youth to avoid unnecessary entries into the system.
- ✚ Counties must ensure that pre-adjudication diversion is made available to all eligible youth no matter the youth's race, ethnicity, gender, or sexual orientation, and is fairly administered, and that youth participation in diversion is voluntary.
- ✚ Families should have access to sufficient information and supports in order to make informed decisions and participate effectively with juvenile justice authorities in the planning and implementation of diversion plans. Alternatives should be available to youth whose families are unable, unwilling or unavailable to participate.

- ✚ Pre-adjudication diversion is especially important for special needs populations -- those with mental health disorders, substance abuse treatment needs, or developmental disabilities -- as they are over-represented in the juvenile justice system. Effective community-based services and programs must be identified or, when necessary, developed for these youth.
- ✚ Because of the critical role they play in diversion, certain stakeholders -- particularly law enforcement officials, intake probation -- require basic and specialized training about mental illness, substance abuse and developmental disabilities, and should develop specific protocols for dealing with these special needs youth.
- ✚ It is critical that diversion policies and practices incorporate safeguards to prevent “net-widening” – subjecting more youth to formal justice system intervention than would be the case in the absence of these initiatives.
- ✚ There must be clarity and accountability in the administration of pre-adjudication diversion programs. Consequently, each county diversion program must have written guidelines that set forth a formal referral process (including who is responsible for making referrals), the screening and assessment process, clearly articulated eligibility requirements, criteria for acceptance, and available community resources that can serve as alternatives to formal processing in the juvenile justice system.
- ✚ The conditions of any diversion program should be clearly and completely reflected in a formal written agreement between the youth and the diversion program. Each written agreement should be tailored to an individual youth’s particular needs and situation to maximize his/her ability to successfully complete the requirements.
- ✚ A youth must not be prosecuted for the same offense in the future if the youth successfully completes the conditions of the diversion agreement/program.
- ✚ As part of their diversion programs, counties should assist youth in getting their records expunged in conformance with 18 Pa.C.S.A. § 9123, preferably at minimum cost to the youth.
- ✚ Any diversion protocol should include an outcome measurement component to track juveniles’ outcomes to evaluate the effectiveness of a county’s diversion policies and practices.
- ✚ Successful diversion programs depend on long-term involvement, commitment, and support from all key stakeholders.

## **Purpose of Model Policy**

This model policy was developed by the Diversion Subcommittee of the state Mental Health/Juvenile Justice work group for the Models for Change Initiative. (*See Diversion Subcommittee membership list attached at Appendix A.*) This model policy was developed in direct response to two key findings of a survey conducted in 2007 of county juvenile justice stakeholders, including judges, prosecutors, defense attorneys and juvenile probation officers. First, although Pennsylvania's Juvenile Act provides a statutory basis for diversion, most Pennsylvania counties currently do not have a formal written policy on diversion. Second, there is a need for statewide standards regarding diversion in order to ensure that diversion is made available to all eligible youth throughout the Commonwealth and is fairly administered. Consequently, the purpose of this model policy is to set forth fundamental values and practice standards that ought to underpin any pre-adjudication diversion policy in Pennsylvania. Stakeholders can use and adapt this model in crafting county-specific diversion policies that will guide local practice in a manner that is still consistent with statewide standards.

Diversion as an alternative to formal processing in the juvenile justice system in certain cases can serve many desirable goals. These include avoiding stigma and a record for the youth. Juvenile delinquency records can follow an individual through his/her life and can have adverse affects on many aspects of the youth's future. For example, juvenile records can pose a significant barrier to finding employment, joining the military, obtaining student loans, and, in some cases, obtaining a driver's license. Well-structured diversion programs can direct youth and their families into appropriate services and interventions outside the over-burdened justice system, and involve the community and victim in that process

### **I. Definition of *Pre-Adjudication* Diversion**

In general, the term diversion refers to channeling youth away from initially penetrating the juvenile justice system, or out of the system if they have already entered, including efforts to avoid "deep end" placements for youth already adjudicated delinquent/convicted. It is important to note that this model policy focuses on "pre-adjudication" diversion at the front-end of the juvenile justice pipeline. Pre-adjudication diversion is defined as providing opportunities for youth who are charged with delinquent acts, or at imminent risk of being arrested/charged, to avoid an adjudication of delinquency.

Examples of pre-adjudication diversion currently in use in Pennsylvania include informal adjustment, consent decrees, deferred adjudication, adjudicating a youth dependent in lieu of a delinquency adjudication, treatment courts, school-based peer courts, community accountability boards, and youth aid panels.

## **II. Statutory Basis and Role of Pre-Adjudication Diversion in the Juvenile Justice System**

As described below, the Pennsylvania Juvenile Act and Rules of Juvenile Court Procedure provide mechanisms to divert youth away from further formal processing within the justice system. Thus, both our legislature and state supreme court endorse the fundamental principle that pre-adjudication diversion is appropriate in certain circumstances.

- *Informal adjustment.* 42 Pa.C.S. § 6323 and Rule 312 specifically provide for informal adjustment as an alternative to filing a delinquency petition and proceeding to adjudication when doing so would be in the best interest of the public and the child, and when the juvenile and his guardian consent.
- *Consent decrees.* 42 Pa.C.S. § 6340 and Rule 370 permit the court to enter a consent decree, with the consent of the Commonwealth and the juvenile, after the filing of a delinquency petition and before adjudication to place the juvenile under court supervision as an alternative to adjudication.
- *Deferred Adjudication.* 42 Pa. C.S. § 6341b and Rule 409(b) allow the court to release the juvenile from the court's jurisdiction, if it does not find that the child needs supervision, treatment, or rehabilitation.

## **III. Youth Eligible for Diversion**

Certain youth who would otherwise face formal processing in the justice system should be considered for pre-adjudication diversion. Specifically, the following categories of youth could be eligible:

- Youth charged with non-violent offenses
- Youth charged with low-level offenses
- First time youth offenders
- Youth referred by district magistrates for failure to pay fines and fees in summary offense cases

A juvenile's participation in a diversion program should be voluntary. Success will depend on the juvenile's willingness to accept services and sanctions voluntarily, and is best implemented with family involvement (*see Part IX on family involvement below*).

Diversion is especially important for special needs populations -- those with mental health disorders, substance abuse treatment needs, or developmental disabilities -- as statistics demonstrate their over-representation in the juvenile justice system. The large influx of youth with mental health problems and other special needs has raised concerns that the juvenile court has become the de facto treatment system for too many youth. The juvenile justice system is not well-equipped nor the appropriate venue for effectively treating these youth although these issues are likely to interfere with their rehabilitation. This underscores the need for collaboration

between the juvenile justice system and other youth service agencies to ensure that youths receive the treatment they need while ensuring public safety (*see Part VI on collaboration below*).

At the same time, it is critical that diversion policies and practices incorporate safeguards to prevent “net-widening” – instead of reducing the number of youth formally processed through the justice system, special programs may actually subject more youth to formal justice system intervention than would be the case in the absence of these initiatives.<sup>1</sup> To avoid such an undesired result, diversion programs must focus on those youth who would otherwise be subject to formal processing within the justice system but for an intervention.

Finally, counties must ensure that diversion is made available to all eligible youth no matter the youth’s race, ethnicity, gender, or sexual orientation, and is fairly administered.

#### **IV. Diversion and Summary Offenses**

In accordance with Juvenile Act provisions 42 Pa.C.S. § 6303(a) and § 6304.1, a youth charged with a summary offense may appear in juvenile court if the offense is committed in conjunction with a delinquent act or if the youth fails to comply with the sentencing terms for the summary offense. Summary offenses, therefore, are a significant conduit into the juvenile justice system. Counties should assure that diversion policies and programs adequately address this population of youth to avoid unnecessary entries into the system. Examples of summary offenses include underage drinking, disorderly conduct and retail theft.

#### **V. Diversion, Accountability to Victims and Other Goals of Balanced and Restorative Justice**

Diversion efforts should be aligned with the goals of balanced and restorative justice (BARJ), which include holding offenders accountable to victims, providing competency development for offenders, and ensuring community safety. Appropriate needs- and strengths-based interventions that assist youth in avoiding adjudications or convictions should also help youth to be accountable for the harm they have caused and provide the youth with the opportunity to learn the impact of their offense and make reparation to the affected victim/community. Any diversion program or service should include advance notification with an opportunity to comment to the victim of the offense consistent with the Pennsylvania Victims Bill of Rights, 18 P.S. § 11.201.

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<sup>1</sup> See, e.g., Center of Juvenile and Criminal Justice, *Widening the Net in Juvenile Justice and the Dangers of Prevention and Early Intervention*, available at <http://www.cjcj.org/pubs/net/netwid.html>.

## **VI. Collaboration**

Successful diversion programs depend on long-term involvement, commitment, and support from all key stakeholders, including:

- Law enforcement departments
- Probation departments
- Courts
- Prosecutor's office
- Public defender's office
- Children and Youth agencies
- Managed care organizations
- Schools and public education agencies
- Families
- Child advocates
- Community organizations
- Mental Health/Mental Retardation agencies
- Drug & Alcohol Abuse treatment agencies

## **VII. Identify and Develop Effective Diversion Programs**

In order to successfully divert youth, especially those with mental health disorders, substance abuse problems, and/or developmental disabilities, effective community-based services and programs must be identified or, when necessary, developed. Counties should assess what services and programs exist and those that are lacking or absent. Counties should create formal written agreements with treatment providers and educational agencies to provide services and programs to fill any identified gaps. At the same time, as explained in Part IV above, safeguards must be developed to ensure that special programs do not in fact subject more youth to formal justice system intervention than would be the case in the absence of the programs, as such an outcome would be antithetical to the purposes of diversion.

## **VIII. Clarity and Accountability**

### *a. Referral and Eligibility*

Referrals to any diversion program should be dictated by written guidelines that set forth a formal referral process, including who is responsible for making referrals (i.e., school officials, police officers, probation officers, prosecutors, family, etc.), the screening and assessment tool to be used, clearly articulated eligibility requirements, criteria for acceptance, and available community resources and other alternatives to further processing in the juvenile justice system.

### *b. Written Agreements*

The conditions of any diversion program should be clearly and completely reflected in a formal written agreement between the juvenile and the diversion program. Each written agreement should be tailored to an individual youth's particular needs and situation to maximize

his/her ability to successfully complete the requirements. All written agreements ought to contain the following:

- Measureable objectives/conditions to be met by the youth (e.g., hours of work, sums of money), rather than vague conditions or obligations (e.g., “show respect”). These objectives/conditions should be described in detail with a timeline for completion.
- Identification of other persons (aside from the juvenile) who are responsible for taking specific actions. Their actions should be described in detail with a timeline for completion.
- A formal process for reviewing and monitoring compliance with the agreement. This process should include identification of personnel to monitor compliance via periodic home/non-delinquent placement settings/office visits and/or phone contact with the juvenile and his/her family.
- Consequences to the juvenile if he/she fails to satisfy the measureable objectives or comply with the terms of the agreement, including whether charges may be filed/re-filed if the juvenile fails to satisfy/comply. Consequences should include graduated sanctions – that is, sanctions short of expulsion from the diversion program.
- A statement of the definite, limited duration of the agreement. Agreements should provide for closure of the case once the juvenile has satisfied all requirements.
- Informed consent indicating that the juvenile was notified of his/her right to refuse diversion and to demand an adjudication hearing before a judge. The agreement should also make clear that the juvenile may terminate the agreement at any time and request an adjudication hearing.
- Demonstrated family involvement in the design and implementation of the diversion program, including attendance at planning meetings, provision of information regarding rights and logistics, and opportunities to provide relevant information and concerns. Existing programs should encourage family involvement in all appropriate stages of the diversion. Family involvement may include involvement by parents, guardians, adult biological relatives, and other supportive adults defined as family members by the youth, such as neighbors or clergy members. (*See Part IX below on family involvement.*)

*c. Bar on Future Prosecution for the Same Offense*

If a juvenile successfully completes the conditions of a diversion agreement/program, he/she should not be prosecuted for the same offense in the future.

*d. Expungement*

Pursuant to Title 18 Pa.C.S.A. § 9123, a juvenile's record – which includes police and court records -- may be expunged in a number of situations, including when a complaint is not substantiated, the petition is dismissed by the court, or a consent decree is successfully completed. Successful diversion should lead to one of these qualifying results. Juveniles who successfully complete diversion programs should, therefore, be encouraged to pursue the expungement of their delinquent court history and police record. As part of their diversion

programs, counties should assist youth in getting their records expunged in conformance with 18 Pa.C.S.A. § 9123, preferably at minimum cost to the youth.

## **IX. Family Involvement and Support Systems**

For purposes of this model policy, the term “family” may include parents, guardians, adult biological relatives, and other adults defined as family members and supportive adults by the youth, such as neighbors or clergy members. Families should have access to sufficient information and supports in order to make informed decisions and participate effectively with juvenile justice authorities in the planning and implementation of diversion plans. Such participation includes:

- Choosing supports, services, and providers
- Setting goals
- Monitoring outcomes
- Creating follow-up plans

Juvenile justice authorities should be trained to encourage family participation, to promote mutual respect with the family, to honor the cultural diversity of the family, and to support collaborative processes and policies. When appropriate, authorities should:

- Meet at times convenient for families
- Provide bi-lingual staff or interpreters when necessary
- Provide access to programs that align with a family’s culture and experience
- Support families by referring them to peer support and advocacy resources

Alternative programming and/or resources should be available and offered to youth whose families are unable, unwilling or unavailable to play a major role in diversion planning and implementation. When appropriate, families should be offered assistance in identifying supports and resources to facilitate their participation.

However, it is important to note that youth should not be excluded from diversion because they do not have families who are available to participate in this process. For youth involved in the dependency system, juvenile justice authorities should, where appropriate, encourage and facilitate the participation of county children & youth agencies and/or foster families in diversion planning and implementation.

## **X. Special Considerations for Diversion by Law Enforcement**

Consistent with local policies, law enforcement agencies should develop written protocols that aid officers in making appropriate decisions about diversion based on the nature of the incident, the behavior of the youth, and available community resources and alternatives to the juvenile justice system. Law enforcement officials’ compliance with these protocols will ensure that all eligible youth are diverted from the juvenile justice system at the same rate.

All law enforcement personnel should receive basic training about mental illnesses, substance abuse problems, and developmental disabilities and about appropriate responses to

youth with such special needs. A cross-section of police officers should receive specialized training on how to utilize a non-adversarial, crisis-intervention approach to safely gain control of situations involving youth with mental illnesses, substance abuse problems, and/or developmental disabilities to prevent unnecessary and inappropriate juvenile justice involvement. When possible, mental health workers and substance abuse counselors should participate in training sessions to encourage collaboration and cross-system understanding. Each law enforcement agency should have enough trained staff and police officers available to cover all time shifts and geographic districts within their jurisdiction. Specialized training should at a minimum cover the following topics:

- Signs and symptoms of mental illnesses, substance abuse, and developmental disabilities
- The impact of special needs on juveniles, families, and communities
- Stabilization and de-escalation techniques
- Diversion programs and other alternatives to arrest.
- Community resources including crisis response services, and inpatient and outpatient treatment options

Call takers and dispatchers should also receive training to prepare them to quickly collect the most pertinent information to determine whether mental illness, substance abuse, and/or developmental disabilities may be a factor in calls for service and to subsequently dispatch calls to appropriate responders.

#### **XI. Special Considerations for Diversion by Intake Probation**

As one of the initial points of formal contact with the juvenile justice system, intake probation is an ideal setting for screening, identification, and diversion of eligible youth from penetration into the juvenile justice system. Probation officers should systematically collect information relevant to the case while balancing the interests of the juvenile, the victim, and the safety of the community. Use of a mental health and substance abuse screening mechanism and a standardized risk assessment on all juveniles by intake probation officers is one of the most important strategies for appropriately assessing a youth's risk factors and determining whether a case should be dismissed, diverted, or formally referred to juvenile court. As set forth in the Mental Health/Juvenile Justice Work Group of the Pennsylvania MacArthur Foundation Models for Change Initiative's *Mental Health/Juvenile Justice Joint Policy Statement*, instruments used for screening and assessment should be "standardized, scientifically-sound, contain strong psychometric properties, and demonstrate reliability and validity for identifying the mental health and substance abuse treatment needs of youth...All personnel who administer screening and assessment instruments must be appropriately trained and supervised."

Intake probation personnel should receive training to enable them to recognize signs and symptoms of mental illnesses, substance abuse disorders, and developmental disabilities. Additionally, intake probation officers should be well acquainted with diversion programs available as alternatives to formal processing in the juvenile justice system. Written protocols about eligibility requirements and diversion programs available in the community should be developed to provide an objective, consistent framework to guide probation officers in making

referrals/recommendations to court. To expand accountability and improve future service delivery, intake probation offices should develop standardized tracking forms, or similar mechanisms, to keep clear records of actions completed and decisions made in all cases.

## **XII. Special Considerations for Diversion of Youth Who Commit School-Based Offenses**

The educational mission of schools is critical to the development of a productive and law-abiding adult citizenry. Schools can serve as a first line of prevention, intervention, and diversion by providing in-school services targeted at promoting healthy student behaviors that in turn support academic achievement and general positive school climate. By partnering with other child-serving systems, schools can help assure seamless service for the educational needs of the student, while supporting effective responses to unacceptable behavior. In order to assure those effective responses, public school entities should develop a written protocol, consistent with applicable federal and state laws, that outlines the procedures to follow when a student commits an offense on school property during school hours. These protocols should reflect the principles of this diversion policy by providing mechanisms for referral to resources other than law enforcement. Overall, the protocol should be designed to help the school entity to continue to be involved in and meet the student's educational needs as opposed to simply informing law enforcement officials about offenses.

At minimum, school protocols should outline which school personnel have the authority to decide whether or not to contact law enforcement and under what circumstances. It should be noted that current Pennsylvania law only requires school personnel to report the discovery of prohibited weapons on school grounds and does not require the reporting of other offenses committed on school grounds.<sup>2</sup>

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<sup>2</sup> Pennsylvania law at 24 P.S. § 13-1317.2 specifically provides as follows:

f) All school districts and area vocational-technical schools shall report all incidents involving possession of a weapon prohibited by this section as follows:

(1) The school superintendent or chief administrator shall report the discovery of any weapon prohibited by this section to local law enforcement officials

(2) The school superintendent or chief administrator shall report to the Department of Education all incidents relating to expulsions for possession of a weapon on school grounds, school-sponsored activities or public conveyances providing transportation to a school or school-sponsored activity. Reports shall include all information as required under section 1303-A.

(g) As used in this section, the term "weapon" shall include, but not be limited to, any knife, cutting instrument, cutting tool, nunchaku, firearm, shotgun, rifle and any other tool, instrument or implement capable of inflicting serious bodily injury.

In addition, school protocols should specify procedures to follow when the student may have a special need such as a mental health disorder, substance abuse problem, and/or a developmental disability. For example, a school-based offense may be a manifestation of a disability and thus serves as an opportunity to identify a special education need. Schools have a responsibility under the federal Individuals with Disabilities Education Improvement Act to identify students who might qualify for special education services. 20 U.S.C. § 1412(a)(3) (describing “child find” requirement.) The protocol should direct the school entity to utilize a behavior performance review tool to determine if the student may have a disability that entitles him/her to special education and related services that can be designed and provided to address the student’s educational and behavioral needs; this process may alleviate or eliminate the need to refer the student to law enforcement authorities. (For an example of a review tool, please see the “Youth Behavior Performance Review Checklist: Seven (7) Questions for Juvenile Justice and Mental Health Professionals to Ask” attached at Appendix B) For students with disabilities who already have a positive behavior support plan in place at the time of the incident, the protocol should incorporate existing state law requirements by instructing school officials to conduct a new functional behavior assessment and update the positive behavior support plan.

On the law enforcement side, the fact that a school official contacts law enforcement authorities should not necessarily lead to the filing of criminal charges. Law enforcement officials should exercise discretion in determining whether to process and arrest youth with special needs that may have played a role in the offending behavior, particularly if there are available community resources and alternatives to the juvenile justice system. For example, law enforcement officials should consider the results of any “manifestation determination” for a youth with an Individualized Education Program (IEP) as defined in the IDEA, made by the school entity regarding the incident.<sup>3</sup> *See also Part X regarding law enforcement diversion above.*

Effective, evidence-based practices that support the wellness and resiliency of youth in the school and community settings are emerging. The stakeholders listed in Part VI above should partner to implement practices which enhance academic performance and increase graduation rates, decrease discipline referrals, and provide in-school services and supports for students with special needs, as such outcomes align with the objectives of this diversion policy. An example of such a practice is the statewide School-based Positive Behavioral Support Framework that the Pennsylvania Department of Education has committed to implement. This is an evidence-based practice that has demonstrated significant positive outcomes in academic, social, and emotional sectors.

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<sup>3</sup> A “manifestation determination” is a determination that must be conducted within 10 school days of any decision to change the placement of a child with a disability (i.e., remove the child from his/her current educational placement for more than 10 consecutive school days or more than 15 cumulative school days in a school year) because of a violation of a code of student conduct. As a part of this determination, the school entity, the parent, and relevant members of the child’s IEP Team must review all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by or had a direct and substantial relationship to the child’s disability, or if the conduct was the direct result of the school entity’s failure to implement the IEP. 20 U.S.C. § 1412(k)(1)(E).

### **XIII. Outcome Measurement**

Any diversion protocol should include an outcome measurement component to track juveniles' outcomes to evaluate the effectiveness of a county's diversion policies and practices. At a minimum, outcome measurement should include:

- demographic characteristics of diverted youth (i.e., youth's race, ethnicity, gender, or sexual orientation). Counties must ensure that diversion is made available to all eligible youth and is fairly administered;
- completion rates of youth who are referred to diversion programs;
- re-arrest and recidivism rates of youth who are diverted;
- collaboration between all key stakeholders . (See Part VI on collaboration above.) This can be documented in a number of ways including multi-agency memoranda of understanding, protocols, and trainings.

This model policy is based, in part, on principles and recommendations found in the following documents:

Section 4 of *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System* (2007), which was developed by The National Center for Mental Health and Juvenile Justice and can be found at <http://www.ncmhjj.com/Blueprint/pdfs/Blueprint.pdf>.

*Criminal Justice/Mental Health Consensus Project Report* (June 2002), which was coordinated by the Council of State Governments and can be found at [http://consensusproject.org/the\\_report/toc/](http://consensusproject.org/the_report/toc/)

Chapter 6 of *The Desktop Guide to Good Juvenile Probation Practice* (June 2002), which was developed by the National Center for Juvenile Justice with funding from the Office of Juvenile Justice and Delinquency Prevention, and can be found at <http://ncjj.servehttp.com/NCJJWebsite/pdf/Chapter06.pdf>.

*Improving Responses to People with Mental Illnesses: The Essential Elements of a Specialized Law-Enforcement Based Program* (2008), which was prepared by the Council of State Governments Justice Center in partnership with the Police Executive Research Forum, and can be found at <http://consensusproject.org/downloads/le-essentialelements.pdf>.

Mental Health/Juvenile Justice Work Group of the Pennsylvania MacArthur Foundation Models for Change Initiative's *Mental Health/Juvenile Justice Joint Policy Statement* (September 2006), which can be found at <http://www.modelsforchange.net/pdfs/MH-JJ%20Policy%20Statement.pdf>.

## APPENDIX A

### **Diversion Subcommittee of the state Mental Health/Juvenile Justice work group for the Models for Change Initiative**

#### **Members as of October 2008**

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APPENDIX B

**Youth Behavior Performance Review Checklist:  
Seven (7) Questions for  
Juvenile Justice and Mental Health Professionals to Ask**

If the answer to **ANY** of the following questions is **YES**, the student may be entitled to *individualized special education and related services* through his/her public school entity. Special education and related services can be designed and provided to address a student’s educational and behavioral needs and, consequently, alleviate or eliminate the need to access services through the JJ system. The student’s school entity has an affirmative legal duty to identify all children residing within the district who are in need of special education and related services and to provide an Individualized Education Program (“IEP”) that meets his/her needs. A student’s “parent”<sup>4</sup> can request a multi-disciplinary evaluation to determine special education eligibility by signing a “Permission to Evaluate” form.

1. Has the parent of the student requested a special education evaluation and/or expressed written or oral concern to a principal, teacher, or other school personnel that the student is in need of special education or related services?

NO \_\_\_\_\_ YES \_\_\_\_\_

2. Has the parent of the student expressed written or oral concern to a principal, teacher, or other school personnel that the student’s behavior is impeding his/her learning or that of others?

NO \_\_\_\_\_ YES \_\_\_\_\_

3. Has the parent of the student expressed written or oral concern to a principal, teacher, or other school personnel that the student has experienced a significant decline in academic performance?

NO \_\_\_\_\_ YES \_\_\_\_\_

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<sup>4</sup> In Pennsylvania, a “parent” means a biological or adoptive parent; a foster parent; a guardian who is authorized to act as the child’s parent or to make educational decisions for the child; an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child resides, or an individual who is legally responsible for the child’s welfare; or a surrogate parent who has been appointed by the child’s school district or charter/cyber school.

4. Has a current or past teacher(s) of the student or other school personnel expressed specific concerns about a pattern of behavior or academic performance demonstrated by the student?

NO \_\_\_\_\_ YES \_\_\_\_\_

5. Does a review of the student's education records (including the Permanent Record File and Disciplinary File(s)) reveal a series of suspensions for the same or similar behavior that negatively impacts the student's academic performance? Please consider the following information in making this determination:

- a. The total number of school days the student has been suspended in the current school year. \_\_\_\_\_
- b. The total number of school days the student has been suspended in the previous school year. \_\_\_\_\_
- c. The number of unexcused absences in the current school year. \_\_\_\_\_
- d. The number of grade retentions. \_\_\_\_\_

NO \_\_\_\_\_ YES \_\_\_\_\_

6. Do school personnel have knowledge of any student history of inpatient hospitalization(s) or outpatient treatment for mental health issues or concerns, and does evidence exist that the student's underlying behavior is or has been impacting negatively on the student's educational performance?

NO \_\_\_\_\_ YES \_\_\_\_\_

7. Has the documented behavior of the student indicated:
- a. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers, or
  - b. inappropriate types of behavior or feelings under normal circumstances, or
  - c. a general pervasive mood of unhappiness or depression, or
  - d. a tendency to develop physical symptoms or fears associated with personal or school problems, and
  - e. any or all of these characteristics have been exhibited over a long period of time and to a marked degree and have adversely affected the student's educational performance.

NO \_\_\_\_\_ YES \_\_\_\_\_