

# **YOUTH COURT TRAINING MANUAL**

*By*

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## **I. INTRODUCTION**

### **A. Origins and Purposes**

Society enacts laws to protect itself from those who would otherwise bring harm to persons and property. Those laws serve to protect members of society from attacks on their persons and property. Thus, in most societies laws have been enacted to prohibit attacks on individuals, such as murder, assault, battery and rape, as well as unauthorized abuses of property, such as arson, theft, burglary and trespass.

To enforce these laws protecting members of society from one another, systems of justice have been developed to determine whether someone has violated the laws of that society and, if so, what punishment should be imposed for the violation. Thus, different societies have adopted various forms of courts and trials to determine guilt and innocence and have likewise established various forms of punishment for those found guilty of violating the laws of that society.

Throughout history, these systems of justice made little or no distinction between adults and youths who committed crimes. Only in modern times have societies begun to recognize and treat differently crimes committed by adults versus crimes committed by youths. The creation of Family Courts<sup>1</sup> in the New York State judicial system represented one such change. Under that system, a youth charged with a criminal offense may have his or her guilt or innocence and, if necessary, punishment decided in a court system that recognizes their young

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<sup>1</sup> Family Courts have jurisdiction over cases involving youths under age 16.

age and so keeps their identities' confidential. That system also recognizes as a goal the hope that a youth who has violated the law may nevertheless be redirected toward lawful conduct and not suffer permanently the stigma that follows from a criminal conviction and sentence of an adult.

The Family Court is a system of justice operated by adults, which functions only in part to determine the guilt or innocence of youths and to punish their misconduct. The Family Court system serves numerous other purposes, primary among which is the resolution of disputes between estranged parents about the custody and support of minor children. The Family Court is well prepared to handle matters related to criminal conduct by youths where guilt must be determined by rules of evidence and where criminal violations by a particular youth are particularly egregious or are repeated. Similarly, the Family Court system is less well prepared to handle cases involving youths who have committed no prior offenses and have admitted their guilt of the crime for which they have been arrested.

Those cases require that some form of punishment be imposed to deter both the individual youth and others who might be similarly inclined from committing such crimes. Those cases do not require, however, that the first-time, non-serious offender be treated by the same system and punishments created to treat repeat offenders and those charged with serious offenses.

Youth Court is a new approach to addressing such early, anti-social, delinquent and criminal behavior. In Youth Court, a youth who has admitted guilt appears for a sentencing hearing before a jury of peers. The jury is drawn from any young people who wish to volunteer to participate, and may include offenders whose cases have been adjudicated in Youth Court

previously. The jury is presented with evidence relevant to sentencing, deliberates, and passes sentence. Sentences typically include community service, counseling, restitution and will stress rehabilitation.

Youth Court thus serves in the hope that it will enhance the chances that a youth who has committed a criminal offense will, through his or her experience in Youth Court, avoid criminal conduct in the future. Youth Court will also afford those who participate in it exposure to a system of justice through direct participation and decision-making.

## **B. Organization**

Youth Court is a not-for-profit private corporation incorporated under the name "Colonie Youth Court, Inc." It is operated by a **board of directors** comprised of individuals drawn from various components of the communities involved. These include law enforcement, social service groups, elected officials, educators and business people, among others. Each community that wishes to establish a Youth Court program in their area applies for membership to "Colonie Youth Court, Inc." and creates their own local advisory board. These local advisory boards are responsible for, among other things, obtaining funding for their programs and the day-to-day operations of their respective Youth Courts. The board of directors of "Colonie Youth Courts, Inc. establishes the rules by which Youth Court operates, assists in obtains funding, and generally oversees the functioning of Youth Court.

The day-to-day operations of each respective Youth Court are directed by the local **Youth Court Director**. The director is an adult selected by the local advisory board. The director screens potential cases for referral to Youth Court pursuant to criteria described below.

The director also schedules cases for hearings before the Youth Court, assigns teams to the cases, arranges for juries, reviews the sentences imposed by Youth Court, and supervises the service of whatever sentence is imposed by the Youth Court. The director reports to the advisory board on all aspects of the operations of Youth Court and is also the principal point of contact with Youth Court for all outside parties and individuals in their communities.

A **jury** of youths, usually five, will determine the sentence in each case. Jurors will be drawn from among any students from schools within the geographic area served by this Youth Court who volunteer to participate. Volunteer jurors may serve without the need to complete a course of instruction. In addition, each jury will include a Jury Foreperson who is a member of Youth Court, and a jury may include offenders whose cases have been adjudicated previously in Youth Court and who are serving on a jury as a condition of their sentence.

The jury will be given instructions by the student judge on their role in determining an appropriate sentence and the factors, which they should take into consideration. Jurors will then apply the knowledge they have obtained in the decision of cases. Jurors will be led in their deliberations and discussions by a Jury Foreperson, who is a member of the program, to insure full and complete discussion and development of appropriate factors in deliberations.

Student participants, known as **Youth Court members**, consist of students 18 years of age or younger enrolled in any school within the jurisdiction of the Youth Court who have completed a multi-week course of law-related instruction. Areas of instruction will include an overview of the criminal justice system from arrest through appeal, the organization of youth court, including jurisdiction, operation, procedure and roles, the penal law, the consequences of crime to victims, the courts, the police, the probation office, and the community at large, the role

of sentencing in rehabilitation of offenders, the range and effectiveness of rehabilitative actions and programs that are available, and sentencing issues, including aggravating and mitigating circumstances, and the nature and type of evidence that is admissible and probative in sentencing. Members will serve in Youth Court on five member teams which for each case will function in turn as Judge, Prosecutor, Defender, Clerk/Bailiff and Jury Foreperson.

Each team of Youth Court members will be assigned a **Student Advisor or mentor**. The advisor will be an adult with experience in the criminal justice system. The advisor will be available to team members, individually and collectively, as they prepare to fulfill their individual functions in assigned cases.

Youth Court members who satisfactorily complete the training program are asked to commit themselves to participate in Youth Court for a period of one year from the completion of their training. A member who wishes to continue for an additional period of time beyond the one year commitment may ask to do so at or near the completion of the one year. During their participation in Youth Court, members are expected to maintain standards of conduct consistent with their participation in a system of justice. In particular, members are expected to obey the law, a code of conduct (found in Appendix E) and applicable school rules of conduct. Failure to do so may result in termination of a member's participation in Youth Court. See Appendix E.

### **C. Jurisdiction**

Cases may come within the jurisdiction of Youth Court depending on two factors -- the **offense** and the **offender**. Generally, offenses fall into one of four categories depending on the seriousness of the offense. Those four categories are felonies, misdemeanors, violations and

violations of school rules and regulations. The seriousness of an offense is determined for these purposes by the maximum penalty which the law permits to be imposed for a violation. Thus, a crime is a **felony** if the maximum penalty is over one year in prison. This includes all serious crimes, such as murder, selling narcotics, bank robbery and kidnapping. A **misdemeanor** is any crime punishable by one year or less in county jail and a \$1,000 fine; it includes shoplifting, the unauthorized use of a vehicle or credit card, possession of small quantities of narcotics, driving while intoxicated and possession of fireworks. A **violation** is any offense punishable by fifteen days or less in jail and includes disorderly conduct, harassment, loitering and various traffic offenses. The maximum penalty for a violation of school policy can range from a warning to the student being expelled.

Youth Court cases will be limited to offenses constituting misdemeanors and other violations of law or school policy committed within the geographic area served by this Youth Court. Thus, the offenses, which may be referred to Youth Court, will be those misdemeanors and violations which occurred within the geographic boundaries served by this Youth Court.

The second factor is the **offender**. The offender may be any youth 18 years old or younger who is charged with a misdemeanor, violation, traffic infraction or violation of school rules and regulations. It is not required that the offender reside within the geographic area of this Youth Court, but the residence of the offender may be a factor in determining whether a youth is referred to Youth Court insofar as the youth must be able to return to this area on a regular basis for Youth Court appearances, the service of any sentence and for any counseling that is required as part of a sentence.

The offender must also have acknowledged responsibility for the offense charged and voluntarily agree to proceed in Youth Court. The decision of an offender to proceed in Youth Court will be made after consultation with the Youth Court director and with a written acknowledgment of guilt of the crime charged and consent to proceed in Youth Court. Each offender will also be required as part of the process in Youth Court to participate as a juror in a future Youth Court case.

### **D. Operation**

Virtually every case begins with an **arrest**. An arrest, among other things, formally advises an individual that he or she has been charged with committing a crime. An individual is arrested when police have developed evidence to establish probable cause to believe that a crime has been committed and that a particular individual committed that crime. An arrest may be formal, as when police actually locate an offender and take that person into their custody, or it may be less formal, as where an individual is notified of charges and asked to surrender at the police station or is given an appearance ticket, in the nature of a traffic ticket, notifying him or her to appear in court at a particular date and time to answer the charges.

Whether formal or informal, an arrest is cause for the police to process an individual - obtain fingerprints, take photographs and record biographical information of the individual arrested.<sup>2</sup> Unless removed from the information systems, this information concerning an arrested

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<sup>2</sup> Youth Court may also receive referrals for traffic violations or from school authorities for certain alleged violations of school rules and regulations. These cases will, of course, not commence with any type of arrest by law enforcement officials and will not involve any type of processing as describe here.

individual becomes a permanent part of the system of information upon which law enforcement authorities and others rely in conducting future investigations.

If arrested formally, the individual will then be released on bail (money posted with the court to insure that an individual will not flee to avoid the charges) or on other conditions. The individual may then obtain an attorney and pursue all rights guaranteed under the Constitution and laws of this country. These rights include, among others, requiring the prosecution to prove the charges beyond a reasonable doubt at a trial and to cross-examine the witnesses who testify to prove the charges.

### **1. Referral to Youth Court**

For certain individuals eighteen or under, what occurs after they have been charged with a crime may include referral to Youth Court. After arrest or the institution of charges, the youth is interviewed by the Youth Court Director. At this interview, which includes the youth's parents or guardians, the youth is advised of the possible availability of Youth Court, is given a brochure describing Youth Court,<sup>3</sup> and is given the opportunity to consider whether to seek a disposition of his or her case through Youth Court.

The Youth Court Director, after consultation with the referring agency, makes the determination whether a referral may be appropriate for disposition through Youth Court. The Director considers the police report concerning the charges and any additional information provided by the police together with the results of the interview of the youth and his or her parents or guardians and determines whether to offer the youth the opportunity to proceed in Youth Court. The criteria by which the Director makes this determination focus on the youth's

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<sup>3</sup> A sample brochure is attached hereto at the beginning of this manual.

potential for benefiting from Youth Court by avoiding future unlawful conduct. The Director will consider the nature of the offense charged, whether there is any significant history or pattern of misconduct by the youth, the youth's school record, and the nature of the youth's home environment.

These criteria will be weighed in each case by the Director. Factors may be present in one case but absent in another or may vary from case to case, all of which requires the Director to consider each case separately and individually in deciding whether the youth should be referred to Youth Court. However, one criterion is an absolute requirement in every case before a youth can be referred to Youth Court: every youth referred to Youth Court must admit their wrongdoing - in essence, plead guilty - before their case will be referred.

This criterion is founded on the primary purpose of the Youth Court - to discourage criminal conduct by youths and to encourage youths who have committed crimes to respect and abide by the law. The first step in this process for any youth is the acknowledgment that he or she has in fact violated the law and is willing to accept punishment for that violation. This criterion does not prohibit anyone from asserting their right to contest criminal charges by going to trial. As noted above, that option remains available to any individual charged with a criminal offense. However, it does limit the option of Youth Court to those who have the best chance of benefiting from its availability and procedures.

Nor does the fact that the issues in Youth Court will not include deciding whether a youth is guilty or innocent of the crime charged limit its subject matter to unimportant issues of punishment. The issues to be decided by Youth Court procedures and juries go to the heart of the administration of justice - to what extent was the youth responsible for the crime as compared

to others involved or even compared to the victim? What sentence will fairly punish the misconduct both to deter the offending youth from future misconduct and to discourage others who might be inclined to commit the same violation? In cases where the youth's version of events differs from that of others involved or from that of a victim, who should be believed?

When a youth is offered and accepts referral to Youth Court, then, the youth and his parent(s) or guardian(s) must sign a form entitled Advice of Rights and Consent to Participate in Youth Court.<sup>4</sup> This document serves several purposes. The written consent to proceed in Youth Court provides the basis for Youth Court to receive a case for disposition. The document also functions as the equivalent of a plea of guilty to the crime charged but leaves the youth free to present to Youth Court any evidence or arguments available that, while guilty, there are reasons why the punishment should be reduced.

The form provided advises the youth of the options for proceeding on the pending charges, the procedures to be followed in Youth Court and of his or her rights and responsibilities there, and that the choice to proceed with sentencing in Youth Court is made freely and voluntarily. The form also describes for the youth the rights, such as the right to trial and to an attorney, which would be available if he or she proceeded with the criminal charges through traditional judicial procedures and that the youth waives, or gives up, those rights by choosing to proceed in Youth Court.

If a youth or the parents or guardians declines to agree to any of these requirements, the youth cannot proceed in Youth Court and will automatically proceed with his or her case through the traditional court system. Likewise, if a youth, once referred to Youth Court, declines

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<sup>4</sup> A sample is attached at Appendix C-1.

to perform any duty or function required by Youth Court up to and including the completion of any sentence imposed by Youth Court, the youth may be sent back to the traditional court system. The youth will then begin proceedings in the traditional court or school setting as if there had been no referral to Youth Court.

## **2. Proceedings in Youth Court**

As set forth in detail below, once a case has been referred to Youth Court, a hearing will be held to determine what sentence should be served by the youth. In general terms, those proceedings are as follows.

A date for the sentencing hearing will be scheduled by the Coordinator within days of a youth being referred to Youth Court. The date of the hearing will be within approximately four weeks of the referral. A team of five Youth Court members will then be assigned by the Director to that case. One member will be designated for that case as the judge, another as the prosecutor, a third as the defender, a fourth as the jury foreperson and the fifth as the clerk/bailiff. The roles of each are more fully described below. In the weeks before the hearing each member will then prepare to perform their particular functions at the hearing.

At the hearing the prosecutor will present whatever evidence he or she thinks appropriate to show the jury the nature of the crime committed by the youth, any resulting harm and any other facts which the prosecutor believes should be considered by the jury in determining the sentence. The defender presents whatever facts and evidence the defender and defendant believe the jury should consider. The judge rules on what evidence the jury may consider and instructs the jury as to the issues before it. The clerk/bailiff keeps the records in the courtroom and otherwise assists the judge in moving the hearing along. The jury of up to five

youths then deliberates in private over what sentence to impose. The jury foreperson leads the deliberations and insures that all members have a fair opportunity to express their views and that the jury's decision accurately represents the decision of the jury.

The sentence imposed by a jury may include any or all of the following. A youth may be sentenced to perform community service for a certain number of hours. Thus, for example, a youth may be required to perform 10 or 20 or 50 hours of community service. The Director will then advise the youth where the service must be performed. The service may be cleaning a park or assisting at a community function or any task which assists the community or any community organization in any way. The sentence may also include restitution -- a requirement that the youth repay the victim of the crime whatever financial loss was suffered as a result -- or that the youth repair or clean up any damage caused by his or her conduct. It may also include counseling or mediation in appropriate cases. Other forms of sentences may also be appropriate in certain cases depending on the youth and the criminal conduct.

### **3. Confidentiality of Youth Court Proceedings**

Certain records concerning each case are generated and maintained by the local advisory boards of Youth Court. These records contain personal information about each youth, the crime charged, the sentence imposed, the service of any sentence, and so forth. People outside Youth Court may occasionally express a desire to review these records for their own purposes. These people may include law enforcement authorities, school authorities, educational institutions, potential employers, the media, neighbors or others.

According to the governing rules of Youth Court, all such records should remain confidential. The records generated in the course of Youth Court proceedings are the property of

Youth Court, not of any governmental entity, and will be collected and maintained by the Youth Court Director consistent with this policy of confidentiality.

### **E. Training Program**

Youth Court involves serious issues in real cases with actual consequences. Those participating in it will help to decide the responsibility of one of their peers for a criminal offense and what sentence he or she should serve as a result of that misconduct. The decision of Youth Court can serve to determine whether a youth spends 50 hours of his or her time in community service or only 10, whether a victim is compensated for any loss resulting from a crime or not or how much was lost, and whether one person or another is telling the truth about certain matters.

For this reason a training program has been instituted and required for participation in Youth Court. That program is designed to educate participants on the theory and functioning of a system of criminal justice, such as Youth Court, and to prepare them to fulfill the roles required for the successful operation of that system. The program, the successful completion of which is required for participation, consists of this Instructions Manual and a series of training sessions held once each week. Participants are expected to become familiar with the contents of this Manual. The training sessions will consist of a combination of lectures and presentations by prosecutors and defense attorneys, police, victims, judges, probation officers and others about their various roles in the criminal justice system, a written examination concerning certain fundamental matters in the course, and mock hearings in which all participants will perform the functions to be filled in Youth Court. The successful completion of this training program is required to become a member of Youth Court.

## **II. SUBSTANCE: OFFENSES AND PUNISHMENT**

### **A. INTRODUCTION**

1. Conduct is criminal only if society has determined, through its elected representatives, that it should be prohibited and has enacted a law specifically prohibiting it.
  - a. For example:
    - i. Shoplifting is a criminal offense because the state legislature has enacted a law prohibiting it.
    - ii. Selling alcoholic beverages to anyone was a crime in the 1920's and 1930's during Prohibition when Congress prohibited it, but it is not a crime today since that law was repealed.
  - b. A list and description of the offenses, which may come before the Youth Court, are set forth below in Section B.
1. Criminal conduct must be punished.
  - a. The reasons for punishment and the factors, which should be considered in determining the appropriate punishment, are set forth below in Section C.

### **B. OFFENSES**

#### **1. GENERALLY**

Offenses generally protect persons (for example, assault), property (for example, theft) and the general welfare (for example, narcotics).

#### **2. OFFENSES AGAINST PERSONS**

##### **a. Assault (PL<sup>5</sup> 120.00)**

- i. A person is guilty of assault in the third degree if he or she intentionally or recklessly causes physical injury to another person, or negligently causes physical injury to another person by means of a deadly weapon or a dangerous instrument.
- ii. "Intentionally" means to act with the conscious objective of taking such action.
- iii. "**Recklessly**" means to act with the knowledge that a certain result is likely to occur and to act with a conscious disregard of that risk.
- iv. "Negligently" means to act while failing to perceive a substantial and unjustifiable risk that harm will result.

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<sup>5</sup> "PL" refers to the New York State Penal Law. The number following indicates the section of the Penal Law defining the offense. Copies of the Penal Law provisions referred to herein may be found in this manual in Appendix A & B.

- v. Third degree assault, a misdemeanor, is distinguished from first and second degree assault and aggravated assault primarily by the difference in the physical injury which the offender intends and which results (for example, a minor bruise versus a broken nose versus permanent disfigurement).
  - vi. **EXAMPLES:** Punching or kicking another person causing bruises or pain but no broken bones; recklessly or carelessly playing with a knife and cutting another person.
- b. **Disorderly Conduct (PL 240.20)**
- i. This statute prohibits a variety of behavior which causes public inconvenience, annoyance or alarm, or creates the risk of same, including, among other things, fighting and violent behavior, unreasonable noise, abusive or obscene language or gestures in a public place, disturbing any lawful assembly or meeting and obstructing vehicles or pedestrians.
  - ii. **EXAMPLES:** A party which gets out of control, a group of individuals harassing pedestrians on the street with obscenities.
- c. **Harassment (PL 240.25, 240.26, 240.30)**
- i. These statutes prohibit anyone from following another person in public places, repeatedly committing acts which place a person in reasonable fear of physical safety, or making telephone calls with no legitimate purpose.
  - ii. **EXAMPLES:** A rejected boyfriend continues to follow his former girlfriend even after repeated requests to stop; repeated telephone calls to a person with no purpose other than to bother.
- d. **Jostling (PL 165.25)**
- i. This statute protects against pickpockets.
  - ii. The statute prohibits intentionally and unnecessarily placing one's hands in the vicinity of another person's pocket or handbag while in a public place.
- e. **Loitering (PL 240.35, 240.36)**
- i. This statute prohibits remaining in a public place for purposes of begging, gambling or engaging in deviate sexual behavior.
- f. **Menacing (PL 120.14, 120.15)**
- i. These statutes generally prohibit anyone from taking actions, which are calculated to place another person in fear of injury or death, whether it be accomplished by means of a weapon or repeated acts intended to create such a fear.
  - ii. **EXAMPLE:** Pointing a gun at another person; repeatedly threatening to harm or kill someone.

- g. **Reckless Endangerment (PL 120.20)**
  - i. This statute prohibits any act, which creates a substantial likelihood of physical injury to another person.
  - ii. **EXAMPLES:** Recklessly driving a car in a parking lot dangerously close to people; throwing water balloons onto sidewalks from upper floors of hotels.
- h. **Sexual Abuse (PL 130.55, 130.60, 130.65)**
  - i. This statute prohibits subjecting another person to sexual contact without the other person's consent.
  - ii. A person less than seventeen years old is deemed unable to consent.
  - iii. **EXAMPLES:** Intentionally touching a woman's breasts or buttocks for sexual gratification without her consent; doing so to a person less than seventeen years old even if she consented.
- i. **Unlawful Imprisonment (PL 135.05)**
  - i. This statute prohibits restraining another person.
  - ii. **"Restrain"** means intentionally to restrict another person's his or her will from one place to another or by confining that person to one place.
  - iii. **EXAMPLES:** Locking a person in a room against his or her will; physically restraining a person in a car when they attempt to leave.
- j. **Unlawful possession of weapons (PL 265.01, 265.05)**
  - i. Unlawful for anyone under age 16 to possess, among other things, a BB-gun or a dangerous knife.
  - ii. Unlawful for anyone to possess, among other things, a stun gun, switchblade knife, blackjack, brass knuckles, chuka stick or "Kung Fu star."

### 3. OFFENSES AGAINST PROPERTY

- a. **Criminal Mischief (PL 145.00)**
  - i. Intentionally damaging property in an amount less than \$250.
  - ii. Recklessly damaging property in an amount greater than \$250.
  - iii. **EXAMPLES:** Driving a car across a private lawn intending to cause damage; pulling aerials off parked cars; throwing rocks near parked cars and having one break the windshield.
- b. **Computer crime (PL 156.05, 156.20)**
  - i. Using a computer without authorization.
  - ii. Although having authorization to use a computer intentionally alters or destroys computer data or a computer program of another person.
  - iii. **EXAMPLES:** Deleting information from a database; planting a virus in a program to destroy it.

- c. **Forgery (PL 170.05)**
  - i. Falsely completing a written document with intent to deceive.
  - ii. **EXAMPLES:** Creating false work papers to obtain employment; signing a parent's name to a document to claim parental authorization.
  
- d. **Petit<sup>6</sup> Larceny (PL 155.25)**
  - i. **Larceny**" is stealing property from another person.
    - A. .... **EXAMPLE:** Stealing athletic equipment from a school gymnasium.
  - ii. **"Robbery"** is stealing property from another through force or the threatened use of force.
    - A. **EXAMPLE:** Forcing a person to give up his money by threatening to beat him up.
  - iii. **"Burglary"** is the unlawful entering of a building to steal property.
    - A. **EXAMPLE:** Breaking into a business to steal money or property.
  - iii. **"Petit larceny"** is stealing property from another of a value of \$1,000 or less.
  
- e. **Possession of Burglary Tools (PL 140.35)**
  - i. Possession of tools adapted for or generally used to make forcible entry into premises.
  
- f. **Possession of Stolen Property (PL 165.40)**
  - i. Possessing stolen property knowing that it has been stolen where the value of the property is \$1,000 or less.
  
- g. **Reckless Endangerment of Property (PL 145.25)**
  - i. Recklessly engaging in conduct which creates the risk of causing damage to property exceeding \$250.
  
- h. **Tampering (PL 145.14, 145.15)**
  - i. Tampering with the property of another with the intent to cause substantial inconvenience to that person.
  - ii. Making a connection with a telephone line or any other public utility without the right to do so.

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<sup>6</sup> Pronounced "petty". "Petit" is French for small. Grand larceny also derives from the French word for large.

iii. **EXAMPLES:** Pouring sugar down the gas tank of another's automobile; accessing a telephone line subscribed to by another person and making long distance calls without that person's consent.

**i. Theft of Services (PL 165.15)**

- i. Avoiding payment for services received from any vendor, including but not limited to hotels, telephones, cable television, service stations and stores.
- ii. **EXAMPLES:** Ordering a meal at a restaurant and then refusing to pay for it; filling a car with gas and then refusing to pay for it.

**j. Trespass (PL 140.05, 140.10, 140.15)**

- i. Entering or remaining on premises without permission and where a person has no right to be.

**k. Unauthorized Use of a Vehicle (PL 165.05)**

- i. Using a motor vehicle in any way without the consent of the owner.
- ii. Although having custody of a motor vehicle with the permission of the owner, the vehicle is intentionally not returned to owner when agreed or demanded.

**l. Unlawful Use of a Credit Card (PL 165.17)**

- i. Using or displaying a credit card, which has, been revoked or cancelled while attempting to obtain property or services.

**4. OFFENSES AGAINST THE GENERAL WELFARE**

**a. Criminal Impersonation (PL 190.25)**

- i. Impersonating another person or acting as the representative of another person and acting with intent to obtain a benefit or to injure another person.
- ii. **EXAMPLE:** Using another person's identification to obtain alcoholic beverages.

**b. Falsely Reporting an Incident (PL 240.50, 240.55)**

- i. Reporting to official authority the occurrence of a crime, fire, emergency or child abuse knowing that the report is false.
- ii. **EXAMPLES:** Falsely telling police that a crime has occurred; setting off a fire alarm when no fire has occurred.

**c. Fireworks (PL 270.00)**

- i. Selling or possessing fireworks.

- d. **Obstruction of Governmental Administration (PL 195.05)**
  - i. Acting in any way intentionally to impede, impair or obstruct any public employee in the performance of his or her official duties.
  - ii. **EXAMPLE:** Giving false information to police investigating a crime.
  
- e. **Possession of Controlled Substances (PL 220.03, 221.05-.40)**
  - i. Possessing any type of controlled substance.
  - ii. Felonies involving controlled substances are those involving sale or the possession with intent to sell.
  - iii. Possess more than two ounces of marihuana is a felony.
  
- f. **Vehicle Violations (V&T<sup>7</sup> 511, 600)**
  - i. Includes driving without a license, driving with a suspended license and leaving the scene of an accident.
  
- g. **Driving While Intoxicated (V&T 1192)**
  - i. Operating a motor vehicle while one's abilities are impaired.
  
- h. **Giving Alcohol to Minors (PL 260.20, 260.21)**
  - i. Giving alcoholic beverages to minors under the age of 21.

## C. SENTENCING ISSUES

- 1. **General Considerations**
  - a. The punishment of those who have violated the law serves several purposes which must be considered in imposing any sentence which is just and fair:
    - i. Deterrence of Offender. It punishes the offender so as to discourage him or her from committing further offenses in the future.
    - ii. Deterrence of Others. Punishing those who violate the law discourages by example others who might be so inclined from committing similar offenses.
    - iii. Rehabilitation. Punishment may be fashioned so as to assist the offender to learn to modify his or her behavior in the future to act within the law.
    - iv. Retribution. When an offender violates the law and in the process causes harm to a victim or to the community in some way, that sense of wrong is avenged by punishing the offender.

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<sup>7</sup> "V&T" refers to the New York Vehicle and Traffic law. The number following is the section of that law.

- b. Any sentence which is just and fair must consider the individual factors of the offender as well, for no two crimes are identical and no two offenders are identical.
  - i. The sentencing of an offender requires an examination of a number of factors concerning both the offender and the offense.
- c. Factors
  - i. Personal Characteristics of the Offender
    - A. Age
      - 1. Did the offender's relative immaturity contribute to the offense or was the offender of sufficient age that he or she should have known better? Compare a 13 year old girl shoplifting cosmetics from a store with a 16 year old girl.
    - B. Health
      - 1. Did the offender suffer from any health problems, which contributed to the offense?
    - C. Family Circumstances
      - 1. Does the offender's home life encourage or discourage future lawful conduct?
    - D. Prior Incidents
      - 1. Has the offender had any prior arrests or encounters with law enforcement authorities?
      - 2. Has the offender had any prior relevant conduct problems at his or her school?
      - 3. Compare an offender guilty of assault who has no prior .....record of assaultive behavior anywhere with an offender who has three prior school suspensions for fighting.
    - E. Academic Record
      - 1. Has the offender demonstrated a reasonable dedication to schoolwork?
    - F. Extracurricular Activities
      - 1. Has the offender participated in extracurricular activities to any extent?
    - G. Employment Record
      - 1. Has the offender held any jobs and, if so, what is his or her employment record? Does the employer speak well or ill about the offender?
    - H. Punishments Already Imposed
      - 1. Has the offender already received some punishment for his/her conduct by parents or school officials?
  - EXAMPLE:** Compare an offender who has performed in school at least at an average level and participates in several extracurricular activities while working part-time at a local store with an offender who has academic problems

at school, participates in no activities and holds no job.

ii. Intent

- A. Although the offender is guilty of the offense, did he or she display an intent to commit the offense or did they act recklessly or in the heat of the moment?

**EXAMPLE:** Compare an offender guilty of assault who went looking to beat up the victim and surprised him with an offender who was provoked by the victim to fight and was carried away in the fight.

- B. Entrapment: Police conduct, which presents an offender with an opportunity to commit an offense, resulting in the offender's arrest.
- C. Duress or Coercion: Acts or threats by others, which may force the offender to commit the offense.

**EXAMPLE:** Compare an offender who plans and leads the theft of school equipment with an offender who participates in such an offense because one of the participants threatened to beat him up if he did not participate.

iii. Motive

- A. The reason why a person takes a particular action.
- B. Did the offender commit the offense to help another person or himself or herself or did he or she commit the offense to injure another?
- D. Compare an offender who joins a demonstration protesting government policies regarding the homeless and is arrested for disorderly conduct as an act of civil disobedience with an offender joins a group of friends in a large group at a plaza and refuses a policeman's direction to move on just to have some fun.

iv. Victim

- A. Is the victim especially vulnerable to the offense or did the victim in some way provoke the offense?
- B. Compare an offender who taunts and assaults a younger child with an offender who is provoked by the victim to fight.
- C. Was the harm suffered by the victim minimal or did it significantly affect the victim in some way?
- D. Compare an offense which causes a loss to the store owner of certain goods with an offense which causes a store to close for several days while the damage is repaired or which somehow discourages customers from returning.

v. Role in the Offense

- A. If the offender participated with others in the offense was he or she an organizer or leader of the illegal activity or was he or she a minor participant?

B. Compare the offender who instigates the theft of equipment from a school with the offender who "went along for the ride" or the offender who drove the car which damaged a lawn with the passenger in the car.

vi. Acceptance of Responsibility

A. Does the offender acknowledge responsibility for his or her conduct and sincerely demonstrate remorse or regret or, while admitting guilt, does the offender excuse, minimize or otherwise attempt to avoid responsibility for the offense?

B. Compare the offender who acknowledges his responsibility for taking his neighbor's car without permission with the offender who, while acknowledging guilt, attempts to shift blame to the neighbor for leaving the keys in the car.

### **III. PROCEDURE: ROLES AND RULES**

#### **A. ROLES OF THE PARTICIPANTS AT THE SENTENCING HEARING**

##### **1. THE ROLE OF THE PROSECUTOR**

###### **a. Function**

The function of the prosecutor at the sentencing hearing is to represent the interests of the people of the community. All crimes affect not only the victim in each case, but the community as a whole.

###### **b. Duties and Obligations**

Generally, the prosecutor has an obligation to recommend to a jury that a specific sentence be imposed on the offender and to offer evidence in support of that recommendation. A prosecutor in youth court must evaluate the facts of each case and determine what sentence is appropriate to recommend in order to:

- i. punish the offender for what he or she did;
- ii. deter the offender from committing future criminal acts;
- iii. deter others from committing similar crimes;
- iv. compensate the victim for any harm suffered;
- v. rehabilitate the offender.

More specifically, the prosecutor has the following duties and obligations in youth court:

1. investigate the circumstances of the offense by interviewing witnesses and reviewing reports;
2. review the statute violated;
3. investigate the background of the offender;
4. decide what sentence to recommend;
5. prepare for a sentencing hearing;
6. disclose certain information to the defender;
7. present evidence, such as reports and the testimony of witnesses, at the sentencing hearing to support the sentence recommendation that he/she will ultimately make;
8. cross-examine witnesses called by the defender;
9. object to improper or irrelevant arguments or evidence offered by the defender;
10. present a final argument or summation to a jury as to why the sentencing recommendation is appropriate; and
11. act fairly and in the interest of justice.

## **2. THE ROLE OF THE DEFENDER**

### **a. Function**

The function of the defender is to represent the offender, the person who committed the offense.

### **b. Duties and Obligations**

Generally, the defender in youth court must evaluate the facts of each case and the offender's background and determine what sentence is appropriate to recommend to the jury on behalf of the offender.

More specifically, the defender has the following duties and obligations in youth court:

1. Investigate the circumstances of the offense by interviewing the offender and other witnesses and reviewing reports;
2. Review the statute violated;
3. investigate the background of the offender;
4. decide what sentence to recommend;
5. prepare for a sentencing hearing;
6. disclose certain information to the prosecutor;
7. present evidence, such as reports and the testimony of witnesses, at the sentencing hearing to support the sentence recommendation that he/she will ultimately make;
8. cross-examine witnesses called by the prosecutor;
9. object to improper or irrelevant arguments or evidence offered by the prosecutor;
10. present a final argument or summation to a jury as to why the sentencing recommendation is appropriate; and
11. act fairly and candidly.

## **3. THE ROLE OF THE CLERK/BAILIFF**

### **a. Function**

The function of the clerk/bailiff is to maintain accurate records of court proceedings and to help ensure the orderly operation of the court. The clerk/bailiff is an employee of the court system. The clerk/bailiff is a neutral participant.

### **b. Duties and Obligations**

The clerk/bailiff has the following duties and obligations in youth court:

1. precede the judge into court and call the court to order; ("All rise, Youth Court is now in session, the Honorable Judge\_\_\_\_\_ presiding, please be seated")
2. announce each particular case; ("Participants in the case involving

- Jane Doe, please rise.")
3. require prosecutor, defender and offender to state their names for the record. ("Will the prosecutor, defender, and the offender please state their full names.");
  4. insure that all documents and forms, which are required, are prepared and present in court at the hearing;
  5. provide judge with court folder for each case to be heard;
  6. maintain accurate records of what takes place during each case and the names of all participants in the case (i.e., the name of each case, the case number, the names of all participants, including witnesses, the date of sentencing hearing and the sentence imposed);
  7. render general assistance during the court sessions as requested by the judge;
  8. safeguard the records of each case until they are turned over to the youth court director;
  9. administer an oath to each witness; (When the witness is called, stand and face the witness, raise your right hand and tell the witness: "Raise your right hand. Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?" Then tell the witness to be seated on the witness stand).
  10. help maintain order in the courtroom, i.e., proper conduct in court by participants and spectators;
  11. escort the jurors into a room to deliberate at the conclusion of the hearing;
  12. serve as a liaison between the jury and the judge;
  13. escort the juror's back into the courtroom once they reach a verdict and hand the verdict sheet to the judge to review;
  14. after the judge has reviewed the verdict sheet, ask the foreperson to stand;
  15. close proceedings ("There being no further matters before this court, the Court stands adjourned. All rise.")

#### **4. THE ROLE OF THE JUDGE**

##### **a. Function**

The function of the judge is to preside over the sentencing hearing. The judge, in a sense, is like a referee who ensures that the correct procedures are followed in all cases.

##### **b. Duties and Obligations**

The judge has the following duties and obligations in youth court:

1. be fair and impartial (If there is any possibility that a judge may not be fair in a particular case, he/she must not preside over the hearing.

For example, if the judge had a disagreement with the offender in the past or is good friends with the offender or victim, the judge should not preside at the hearing);

2. explain to the jury their function, either by reading to the jury from section 5(a) of this section of the manual, or by conveying to the jury the substance of that information;
3. explain to the jury their duties and obligations, either by reading to the jury from section 5(b) of this section of the manual, or by conveying to the jury the substance of that information;
4. explain to the jury what procedure will be followed at the hearing (For example, state "We will proceed today as follows: the offender will first admit guilt, the prosecutor and defender will first make opening statements to you presenting the facts they expect to establish during the hearing in support of their respective positions, they then will present evidence about the crime and the offender's background, the prosecutor and defender will then be given an opportunity to present to you their arguments as to why a certain sentence should be imposed and then you will retire to the jury room and decide what sentence is appropriate");
5. read the specific charge and take a plea to that charge. (For example, "Jane Doe, it has been charged that on September 18, 1995, at Macy's at the Crossgates Mall, at about 6:30 p.m., you took cosmetics valued at \$45.75, and left the store without paying for them. How do you plead, guilty, or not guilty?");
6. rule on objections (decide what evidence, physical evidence or testimony, is proper or relevant after prosecutor or defender objects);
7. instruct the jury on what evidence to consider, how to deliberate and how to return the verdict at the conclusion of the arguments, either by reading to the jury from sections 5(a) and 5(b), nos. 6-9, of this section of the manual, or by conveying to the jury the substance of that information;
8. ask the foreperson whether the jury has reached a verdict and what it is;
9. sentence the offender after verdict. (For example, "The jury has sentenced you to serve 30 hours of community service, with the following special conditions: [list]."). Since sentencing is one of the most important functions of the Judge and may be a critical factor in convincing the offender to desist from such activities in the future, the judge's sentence should include the following, where appropriate:
  - a) a comment on the jury's determination (For example, "I think that this sentence is fair and appropriate for the offense(s) committed here. We all have to understand that society has rules to protect all of us, and that, even though we are young, we have obligations to follow those rules.");

- b) a recognition of the offender's acceptance of responsibility for his or her actions (For example, "I listened carefully to your testimony this evening, and I believe that you are truly sorry for your actions and that you have learned a valuable lesson from this experience."); and
- c) an expression of support for the offender's future. (For example, " Based upon what occurred here, I am confident that you will complete your community service and fulfill the special conditions imposed upon you, and that thereafter, you will be an asset to the community.").

**Please remember that the examples given above are only suggestions, and that you are encouraged to develop your own comments, and to add comments appropriate to the facts of the particular case before you.**

## **5. THE ROLE OF THE JURY**

### **a. Function**

The function of the jury in youth court is to decide the appropriate sentence for an offender after examining the evidence in the case and hearing from the prosecutor, defense counsel and the offender. This decision should be based on the goals of sentencing in Youth Court: specific deterrence of the offender, general deterrence of other potential offenders, rehabilitation, and retribution or punishment. (See, Chapter II, Part C, '[1][a]'). One of the purposes of youth court is to allow offenders to be judged by a jury of their peers. The right to have a jury of one's peers sit in judgment is one of the basic constitutional rights in our democracy.

### **b. Duties and Obligations**

Jurors have the following duties and obligations in youth court:

1. be fair and impartial by basing their decision on the evidence in the particular case and not extraneous factors;
2. settle disputed issues of fact presented by the advocates;
3. avoid discussing the case with other jurors until deliberations begin;
4. communicate with only the judge and clerk by way of written notes;
5. follow the court's instructions;
6. deliberate with other jurors by candidly expressing your opinion as to what the sentence should be and why;
7. reach a unanimous verdict as to the appropriate sentence;
8. inform the clerk, by way of written note, through the foreperson, that a verdict has been reached; and
9. announce verdict in open court through foreperson.

## 6. THE ROLE OF THE FOREPERSON

### a. **Function**

The function of the foreperson is to lead the deliberations of the jury to the extent of encouraging the participation of all the jurors in the process, mediating any disputes between jurors and keeping the jurors focused on the decision-making process. Despite this responsibility, the foreperson's vote on a particular sentence is entitled to no greater weight than that of the other jurors.

### b. **Duties and Obligations**

The foreperson, in addition to those of a juror, has the following additional duties and obligations in youth court:

1. lead the jury's deliberations by stimulating discussion amongst the jurors;
2. maintain order in the jury room, insuring an open discussion of the facts and the appropriate sentence;
3. require each juror to state his/her views as to what the offender's sentence should be and why;
4. call for a vote during the deliberations as to the appropriate sentence;
5. communicate with the judge, in writing, when a juror or the jury has a question or needs guidance during their deliberations;
6. announce the jury's verdict.

## B. RULES OF EVIDENCE

### 1. **Discretion of Judge**

Evidence consists of the testimony of witnesses and physical exhibits such as reports or photographs. At a youth court sentencing hearing, any evidence is admissible that is relevant and material to the issue of sentencing. In other words, any evidence that would have an impact on the appropriate sentence an offender should receive is admissible. Evidence, which does not relate to the issue in question, is not admissible and the party against whom it is offered should object. For example, evidence that an offender failed a driver's test is irrelevant to what an appropriate sentence should be in a shoplifting case and the defender should object to any such evidence. If the judge agrees with an objection, he or she "sustains" the objection. If the judge does not think the objection is appropriate, he or she "overrules" the objection. Objections should be made and sustained only in the most extraordinary circumstances. For example, it would be inappropriate for a police officer or store security guard to testify that someone "looks like a criminal" or imply that they committed

another crime in the past without facts supporting that implication. The judge has the ultimate discretion to exclude evidence if it is irrelevant, immaterial or too prejudicial.

## 2. **Burden of Proof**

In order to establish the guilt of a person at a trial the government is required to establish the person's guilt, beyond a reasonable doubt. At a sentencing hearing, guilt has already been established. Therefore, neither the prosecutor nor the defender bear any burden of proof. The jury need only find the evidence believable or credible in order to rely on it.

## C. **PREPARING FOR THE SENTENCING HEARING**

In order to present an effective case during the sentencing hearing preparation is essential. Preparation consists primarily of interviewing witnesses, taking statements, collecting or creating physical evidence, and preparing outlines or notes for the direct and cross examinations of witnesses, and opening and closing statements. During the interviews, it will be helpful to take notes of important relevant information. These notes will be helpful when preparing the questions to ask the witnesses on the stand and in preparing for your final arguments. Keep in mind that witnesses do not have to speak to you if they choose not to.

Although it is always preferable to call witnesses at the hearing who have first hand information about the offense, particularly in the case of the prosecution, this is frequently not possible. For example, in a shoplifting case, the store clerk or security guard who witnessed the offense may be unable to attend the youth court proceeding. In that case, a written statement is the best alternative.

You should always assume that your witnesses will be unable to appear in youth court and that your evidence will consist of a written statement. The preferred method for obtaining that statement is to interview the witness in the presence of a third party (preferably another youth court member) who is able to appear in Youth Court and testify to the substance of the statement. You should then prepare a written statement based on the interview, either in narrative form or in question and answer format, signed by the witness in the presence of the third party. The third party may then appear in youth court and testify, and you can question that third party, eliciting that the third party was present when you interviewed the witness, that the witness signed the statement, etc. You should then move to admit the statement as an exhibit and either you or the third party should read the statement to the jury.

**It is highly recommended that each Youth Court participant contact his or her advisor or mentor as soon as a case is assigned to them. Advisors can be invaluable in terms of providing advice and direction.**

## 1. Preparation required by prosecutor

### a. Receive and review arrest report or the report of offense

In preparing for the hearing the initial source of information about the offender's crime, will, in all likelihood, come from the arrest report or some other report that details the offense. This report should be obtained from the youth court coordinator as soon as available and reviewed in detail.

### b. Obtain information for sentencing by contacting witnesses.

The most important source of information about the crime and the offender will be witnesses. All witnesses who possess relevant information should be interviewed. All witnesses should be interviewed with a critical eye. Do not be afraid to question inconsistencies or a version that does not sound right.

#### i. Arresting officer

The arresting officer should usually be the first witness the prosecutor speaks to. Oftentimes, the arresting officer has spoken to any victims and the offender. The prosecutor should ask the officer what the victim said and what the offender said. The arresting officer should also be able to provide you with the phone number and address of the victim and possibly of some witnesses.

#### ii. Victim, if any.

The victim, if any, should always be interviewed. Preferably the interview should take place in person but an interview over the telephone may suffice. The victim should be questioned about the circumstances of the crime, including what damage was caused, the cost of repairing any damage, how the offender acted and what steps the offender has taken to right the wrong caused since the crime was committed.

#### iii. Other witnesses, if any.

If there were any witnesses to the offense, they should be interviewed. They should be questioned in detail about what they saw and heard during the commission of the offense.

#### iv. Others who may have information about offense or offender

- A. Friends/Acquaintances
- B. Co-defendants
- C. School officials
- D. Community leader

## E. Family Members

The prosecutor may wish to interview any other individuals, such as acquaintances, co-offenders, school officials or community leaders who may have some insight into the offense or the offender's past or character. These witnesses may possess information relevant to the ultimate sentencing recommendation made by the prosecutor. They may know facts about the offense and whether the offender committed similar acts in the past.

### c. **Prepare for sentencing hearing**

- i. Advise any witnesses of date, time and location;
- ii. Prepare any statements, documents or other objects for use at the hearing;
- iii. Disclose evidence and witnesses to defense counsel;
- iv. Prepare witnesses to testify-direct and cross-examination;
- v. Prepare direct and cross-examinations;
- vi. Prepare final argument to the jury.

After interviewing witnesses and investigating the circumstances of the crime, the prosecutor must prepare for the sentencing hearing itself. All witnesses must be advised of the date, time and location of the hearing. As discussed above, if they will not be able to attend the hearing, a written statement should be prepared and signed by the witness to introduce at the hearing. Arrangements should be made to bring any other documents or reports or any other evidence, such as photographs, to court. The prosecutor must also remember to comply with his/her obligation to provide the defender with various documents and information.

The prosecutor must also prepare the witnesses to testify. This means discussing with them what you will ask them on the stand and how you will ask it. It also means preparing them for cross-examination by anticipating what the defender will ask and explaining that to the witness.

Finally, the prosecutor must decide on the appropriate sentencing recommendation and must prepare his/her final argument to the jury. This argument should be organized and well thought out. The objective is to present a persuasive argument for the sentence you propose based upon the evidence submitted at the hearing.

## 2. **Preparation required by defender**

### a. **Receive and review arrest report or other report of offense**

As stated previously, the arrest report or any other report concerning the offense is an important source of information and should be obtained as soon as available and reviewed in detail.

**b. Contact offender**

For the defender, one of the most important steps in preparing for the hearing is contacting and interviewing the offender. The offender's name, address, and phone number can be obtained from the youth court director. The defender represents the interests of the offender and must communicate that to the offender during the initial contact. One of objectives of meeting is to assure the offender that he/she can trust you and that you are representing his/her best interests.

**i. Arrange meeting**

A meeting with the offender should be arranged as soon as possible. Facilities will be provided for such a meeting. Do not arrange to meet the offender at any other location, unless the youth court director consents to the location.

**ii. Obtain background information**

- A. Family background
- B. Academic record
- C. Employment background, if any
- D. Hobbies, extracurricular activities, if any

During the interview with the offender, the defender should attempt to learn as much as possible about the offender's background. The objective is to obtain positive information about the offender that can be used at the sentencing hearing. The defender should ask the offender about his/her family. The offender should be asked where they go to school, how they are doing in school and what, if any, extracurricular activities they are involved in. The offender should be asked about their employment record or about any volunteer organizations they are, or have been, involved with. The offender should also be asked about any hobbies or interests they may have.

**iii. Obtain offender's version of offense**

The offender's version of how and why the offense was committed should be obtained during this interview. This information will be critical to the defense of the offender. The offender's version should be viewed with a critical eye. Do not be afraid to question inconsistencies or a version that does not sound right. If a jury thinks that an offender is down playing his/her role or that the offender is not completely candid with them, they may impose a harsher sentence.

**iv. Discuss possible explanatory or mitigating circumstances**

Although the offender must admit guilt in order to participate in the program, the defender should still explore possible mitigating circumstances or defenses with the offender. These circumstances may still be relevant at the sentencing hearing in order to insure an appropriate sentence, to lessen the seriousness of the offense or the culpability of the offender. Mitigating circumstances may result in a more lenient sentence. Simply by asking the offender why he or she committed an offense will often reveal possible mitigating circumstances or a defense. Examples of such circumstances are drug or alcohol use, peer pressure, problems at home and self-defense. There is almost always some reason that can be offered for the offense being committed that will present the offender in a somewhat more favorable light to the jury.

**v. Discuss and identify possible witnesses**

**A. Witnesses to offense, if any**

Often times the offender is the only one who can identify important eyewitnesses. The offender should be asked the names and addresses of any witnesses to the offense. This information should be written down so that the defender will be able to contact them.

**B. Character witnesses**

- (1) Teachers/School officials
- (2) Employers
- (3) Friends or Acquaintances
- (4) Neighbors
- (5) Youth Court Director

The offender should be asked the names and addresses of any possible character witnesses. These witnesses may include teachers or other school officials, past or present employers, friends, acquaintances and neighbors. This information should be written down so that the defender will be able to interview them and possibly call them as witnesses at the hearing.

**c. Contact others to discuss offender and offense**

An important duty of the defender is to interview all of the witnesses that possess relevant information.

i. **Arresting officer**

The defender should interview the arresting officer concerning the details of the offense. In addition the officer should be asked for the name and phone number of witnesses if this information is not otherwise known. Oftentimes, favorable information about the offender can also be obtained from the arresting officer. For instance, if the offender admitted guilt immediately or was otherwise very cooperative with the officer, this may be information the defender would like to bring to the jury's attention at the hearing.

ii. **Victim, if any**

The defender should also interview the victim, if any, and if the victim agrees. The victim does not have to speak to the defender and may, in all likelihood, refuse. However, if the victim agrees to speak to the defender, the circumstances of the offense should once again be explored. The victim may possess information favorable to the offender that could be used at the sentencing hearing.

iii. **Witnesses to crime, if any**

Any witnesses to the offense should also be interviewed as to the circumstances of the crime.

iv. **Potential character witnesses**

The defender should identify potential character witnesses and interview them. Each of these witnesses should be questioned about their background, how they know the offender, how long they have known the offender, the offender's reputation in the community and what their opinion is of the offender.

d. **Prepare for sentencing hearing**

- i. Advise any witness of date, time and location;
- ii. Prepare any statements, documents or other objects for use at the hearing;
- iii. Disclose evidence and witnesses to prosecutor;
- iv. Prepare direct examination of defendant and review with defendant;
- v. Prepare witnesses to testify-Direct and Cross-Examination;
- vi. Prepare direct and cross-examinations;
- vii. Prepare final argument to the jury.

After interviewing witnesses and investigating the circumstances of the crime, the defender must prepare for the sentencing hearing itself. All witnesses must be advised of the date, time and location of the hearing. As discussed above, if the witnesses are unable to attend the hearing, a written statement should be prepared and signed by the witness to introduce at the hearing. Arrangements should be made to bring any other documents or reports or any other evidence, such as photographs, to court. The defender must also remember to comply with his/her obligation to provide the prosecutor with various documents and information.

The defender must also prepare the offender and any other witnesses to testify. This means discussing with them what you will ask them on the stand and how you will ask it. It also means preparing them for cross-examination by anticipating what the prosecutor will ask and explaining that to the witness.

Finally, the defender must decide on the appropriate sentencing recommendation and must prepare his/her final argument to the jury. This argument should be organized and well thought out. The objective is to present a persuasive argument for the sentence you propose based upon the evidence submitted at the hearing.

**c. Preparation required by judge**

**a. Become familiar with youth court rules and regulations**

The judge should be fully familiar with the youth court rules as they pertain to the proper procedure to be followed during the sentencing hearing.

**b. Review charges**

The judge should also be fully familiar with the charges against the offender. This requires contacting the youth coordinator and obtaining and reviewing a copy of the formal charges against the offender and a copy of the statute or code that was violated.

**c. Prepare scripts for various stages of proceedings**

The judge may either prepare his or her own "script" to be used during various stages of the proceeding from the suggestions in this manual or may adapt a "script" used by another youth court member who previously served as a judge. A sample "script" is attached in Appendix C, p. C-3.

#### 4. Preparation required by Clerk/Bailiff

a. **Review charges**

The clerk/bailiff should be familiar with the charges against the offender. This requires contacting the youth coordinator and obtaining and reviewing a copy of the formal charges against the offender and a copy of the statute or code that was violated.

b. **Prepare scripts for various stages of proceedings**

The clerk/bailiff must also obtain copies of scripts to be used during various stages of the proceeding by him/her from the youth court manual or coordinator. If no such scripts exist, the clerk must prepare the scripts.

c. **Be prepared to substitute for any of the three other participants in event any are unable to attend**

In the event that another participant is unable to attend the sentencing hearing, the clerk/bailiff must be prepared to substitute for that person. In the event that a participant, such as the prosecutor or defender, is unable to appear for the hearing on short notice, the hearing may have to be adjourned in order to allow the clerk to properly prepare for his/her role.

#### 5. Discovery obligations of prosecutor and defender

a. **Information that must be disclosed to opponent**

1. No later than one hour before the actual sentencing hearing, the prosecutor and defender **must** provide to the other:
  - i. Copies of any statements, documents or other objects, which are intended to be used in any way at the sentencing hearing;
  - ii. A list of any witnesses intended to be called to testify at the hearing. The list should include the witnesses address and phone number.

**Early disclosure of this material is highly recommended and encouraged. In the event the material is not disclosed in a timely fashion, the judge may preclude the evidence if it results in unfairness to your opponent.**

2. The prosecutor has a continuing obligation to provide to the defender any evidence that is favorable to the offender, i.e., information that would help the offender receive a more lenient sentence. **This information must be turned over to the defender as soon as practicable after it is received by the prosecutor.**

**b. Purposes of Discovery**

This information is disclosed to the other side to avoid surprising a participant with evidence at the hearing, to facilitate preparation and to avoid unnecessary delays at the hearing. Surprising an opponent is not fair and may result in the hearing being postponed or delayed in order to allow an advocate an opportunity to investigate the evidence. The hearing is a search for the truth and "sandbagging" an opponent with information does not facilitate the truth-seeking process.

**c. Sanctions for failure to comply with discovery obligation**

**i. Possible Court orders for failure to comply**

If either party fails to comply with the requirement to disclose this information, the judge may issue an order as fairness and justice requires. The judge may:

1. delay or adjourn the hearing to give the opposing party an opportunity to review and investigate the late disclosure;
2. refuse to admit as evidence any statement or object not disclosed or the testimony of any witness not disclosed;
3. issue any other order that may be appropriate in a given case. (i.e., fine the party who failed to disclose the information); or,
4. recommend disciplinary sanction to the Youth Court coordinator.

**ii. Factors to be considered**

In deciding what remedy is appropriate, the judge should consider the following factors:

1. Whether nondisclosure was intentional or inadvertent;
2. Prejudice, if any, to opposing party;
3. Date when evidence was first known to participant seeking its admission;
4. Importance of evidence to sentencing decision;
5. The effect of any sanction on the offender's entitlement to a fair hearing; and
6. Any other factors which appear in a given case to be relevant to fairness and justice

## **D. INTRODUCING EVIDENCE AT THE SENTENCING HEARING: PHYSICAL EVIDENCE AND THE TESTIMONY OF WITNESSES**

### **1. Physical Evidence**

Physical evidence consists of any document or object, as distinguished from the testimony of a witness. Examples of physical evidence that may be used at a sentencing hearing are: statements, reports, receipts, estimates, or photographs. Physical evidence introduced at the hearing are known as exhibits.

The prosecutor or defender may wish to bring a piece of physical evidence to the jury's attention during the hearing. In order for the jury to consider a piece of physical evidence, it must be accepted into evidence at the hearing by the judge. Certain requirements must be met before physical evidence can be introduced as an exhibit at the sentencing hearing.

#### **a. Formally introducing the physical evidence at the hearing**

There are certain procedural steps that must be taken in order to actually introduce physical evidence at the hearing as an exhibit.

##### **i. Pre-mark all exhibits.**

During the preparation for the hearing, the prosecutor and defender must decide what physical evidence they will introduce at the hearing and in what order they will introduce the evidence. Once this decision is made, the evidence should be marked for identification. What this means is that a notation should be placed on an exhibit sticker (to be supplied) which will be affixed on the exhibit that identifies it by number or letter and as a government's (prosecutor's) or offender's (defender's) exhibit. Traditionally, prosecutor's use numbers and defender's use letters to mark their exhibit. For example, a prosecutor would mark his/her first exhibit as "Government's Exhibit #1" and the Defender would mark his/her first exhibit as "Offender's Exhibit A."

##### **ii. Establish a foundation for the physical evidence at the hearing**

In order to introduce physical evidence at the hearing a foundation must first be established. An advocate can not simply show an item of physical evidence to the jury before a foundation has been established. It must be demonstrated to the judge that the physical evidence is relevant to the issue in the case. At the hearing any evidence that relates to what the appropriate sentence should be is relevant. In other words, the document or object must have

something to do with the offender or the circumstances of the crime.

Either through a witness or an oral statement to the jury, the person offering the exhibit must establish generally what the evidence is and how it relates to the case under consideration. For example, if an advocate wished to introduce a police officer's arrest report into evidence, a foundation could be established by asking the police officer on the stand to identify the document and asking the officer whether it pertained to the case under consideration. If the officer was not available to testify, the advocate who wanted to introduce the report would simply identify the document for the judge and jury.

**iii. Formally asking the judge to accept the physical evidence as an exhibit at the hearing.**

Once a foundation for a piece of physical evidence has been established, the advocate asks the judge to admit the exhibit into evidence. For example, the defender would state: "At this time your honor, I offer defender's exhibit A into evidence." The evidence is then shown to the opposing advocate who then has an opportunity to object or not to the introduction of the exhibit into evidence. If the opposing advocate has no objection, the judge accepts the physical evidence into evidence and it is read to the jury by a witness or the advocate or shown to the jury. If a proper foundation is not established, i.e. the relevancy of the physical evidence is not shown, the opposing advocate can object to it being introduced into evidence and shown to the jury. The judge would then have to rule on whether to introduce the exhibit or not.

**SAMPLE:** (To introduce the statement of a witness)

Q. Now I'd like to show you what's been marked as prosecution exhibit #1 for identification. Do you recognize that document?

A. Yes I do.

Q. Can you tell us what it is generally?

A. It is a statement given by Jane Doe, store security for Macy's Department store relating to the theft of property on June 2, 1995.

Q. When was that statement taken?

A. June 25, 1995.

Q. Were you present when it was taken?

A. Yes I was.

Q. Is it signed?

A. Yes it is.

Q. By whom?

A. Jane Doe.

[Q. (If not signed) Is the statement a fair and accurate representation of what Jane Doe told us concerning this incident?

A. Yes it is.]

Q. Your honor, at this time I would like to offer this statement as prosecution's exhibit #1 and have the witness read it to the jury.

A. [Witness reads statement.]

## 2. **The testimony of witnesses**

Evidence is also presented to a jury through the testimony of witnesses, such as the victim, the arresting police officer and the offender. While preparing the case for the hearing, the prosecutor and the defender should identify which witnesses they wish to ask to testify at the hearing. If the witness is unable or unwilling to testify, a statement should be obtained from the witness and introduced as an item of physical evidence as described above.

If the witness agrees to testify, he/she must be prepared to testify as described previously and must be informed of the date and time of the hearing.

At the hearing, the witness is called to the witness stand as follows: "At this time, your honor, I call John Doe to the stand." The witness then takes an oath to tell the truth before sitting in the witness stand.

Once the witness is seated in the witness stand, the participant that asked them to testify asks the witness questions. This is called direct examination. Before the examination begins, the questioner asks the court for permission to examine the witness. The questioning then begins. When the questioner finishes, the judge is

informed that there are no further questions. When the direct examination concludes, the opposing participant is given an opportunity to question the witness. This is called cross-examination. After the cross-examination, additional questions are permitted in the judge's discretion. This questioning is known as redirect and recross examination.

**a. Direct Examination**

**i. Objectives**

A witness is called to the stand by a participant to inform the jury of relevant information. The objective of direct examination is to have the witness convey that information to the jury in a clear, believable and logical manner. As mentioned previously, physical evidence may be introduced into evidence through a witness if the witness is familiar with the exhibit.

**ii. Form of Questions on Direct examination**

Witnesses should be asked open-ended questions that ask for specific information on direct examination. Questions that begin with the words " who, what, where, when, how and why " are usually allowed. Leading questions are not permitted on direct examination. A leading question suggests the answer to the witness. For instance, the question, " Isn't it true that John Doe broke your window on March 2, 1994", is a leading question. On direct examination, the question is properly asked as follows: "What happened on March 2, 1994 at approximately 2:00 P.M.?"

If the form of the question is not proper, the other side may object. The judge will then have to rule on whether the form of the question was proper. If not, the judge should simply ask the questioner to rephrase the question.

**iii. Sample direct examinations**

The following are sample direct examinations. They are only samples. Witnesses will have to be asked additional and different questions depending on their background and the information you wish to elicit. These sample questions therefore should not be followed exactly. Be creative.

**1. Sample direct examination questions for the victim of a theft**

- a. Please state your name for the record
- b. Where do you live?
- c. How long have you lived there?

- d. Do you live there with anyone else?
- e. Who do you live there with?
- f. Are you married?
- g. Do you have any children
- h. How many
- i. How old are you?
- j. Are you employed?
- k. Where are you employed?
- l. Where is that located?
- m. What is your position there?
- n. How long have you worked there?
- o. Where were you on March 2, 1994 at approximately 2:00 P.M.?
- p. What happened at that time? (witness describes what he/she saw or heard)
- q. Did you see who did it?
- r. Do you see that person in court today?
- s. Please point the person out
- t. How much did the item cost?
- u. Did you provide me with a receipt for the item?
- v. I'd like to show you government's exhibit 1 for identification. Do you recognize this as the receipt?
- w. Does the receipt contain information about the cost of item?
- x. Your honor, I'd like to introduce this receipt into evidence as government's exhibit 1.
- y. May I show it to the jury, your honor?
- z. What other costs, if any, did you incur because this item what taken?

**2. Sample direct examination questions for police officer who arrested offender**

- a. Please state your name for the record
- b. Are you employed?
- c. Where are you employed?
- d. What is your position?
- e. How long have you been a police officer?
- f. Were you involved in an investigation or arrest on March 2, 1994?
- g. Who was arrested?
- h. Do you see that person in court today?
- i. Please point the person out
- j. Did you speak to the victim of the offense?
- k. What did the victim tell you?

- l. Did you complete a report after investigating this offense?
- m. I'd like to show you government's exhibit 2 for identification. Do you recognize this as your police report pertaining to this offense?
- n. Your honor, I'd like to introduce this report into evidence as government's Ex. 2.
- y. May I show it or have the witness read it to the jury, your honor?

**3. Sample direct examination questions for offender**

- a. Please state your name for the record
- b. Where do you live?
- c. How long have you lived there?
- d. Do you live there with anyone else?
- e. Who do you live there with?
- f. How old are you?
- g. Do you go to school?
- h. Where do you go?
- i. What grade are you in?
- j. What classes are you taking?
- k. Do you work?
- l. Where?
- m. Doing what?
- n. Are you involved in any extracurricular activities?
- o. What are they?
- p. Where were you on March 2, 1994 at approximately 2:00 P.M.?
- q. What happened at that time?
- r. Why did you do that?
- q. Have you ever been arrested before?
- r. Is there anything else you would like to tell the jury? (offer apology)

**4. Sample direct examination questions for character witness**

- a. Please state your name for the record
- b. Where do you live?
- c. How long have you lived there?
- d. Do you live there with anyone else?
- e. Who do you live there with?
- f. Are you married?
- g. Do you have any children?
- h. How many?

- i. How old are you?
- j. Are you employed?
- k. Where are you employed?
- l. Where is that located?
- m. What is your position there?
- n. How long have you worked there?
- o. Do you know the offender, John Doe?
- p. How do you know him?
- q. When did you first meet him?
- r. What is your relationship to him?
- s. How many times have you had an opportunity to speak to him?
- t. Do you know where he lives?
- u. Where?
- v. Had you heard anything about the reputation or character of John Doe in the community in which he lives prior to March 2, 1994?
- w. What have you heard?
- x. Do you have an opinion as to the character or reputation of John Doe prior to March 2, 1994?
- y. What is your opinion?

**b. Cross-examination**

After a prosecutor or defender conducts a direct examination of a witness, their opponent is given an opportunity to cross-examine the witness.

**i. Objectives**

The objectives of cross-examination are to elicit information favorable to your position and to cast doubt on testimony that was unfavorable to your position. When appropriate, the questioner should attempt to cast doubt on the testimony of the witness by showing that the witness previously gave a different version, the witness' testimony is improbable, or that the witness is biased or prejudiced because of his/her relationship to the offender or victim. Not every witness need be cross-examined. If the witness did not hurt your position on direct examination, you may decide not to cross-examine the witness.

**ii. Form of Questions on Cross-examination**

Witnesses can be asked leading questions on cross-examination. The questioner may, however, also use open ended questions.

iii. **Sample cross-examinations**

The following are sample cross-examinations. They are only samples. Witnesses will have to be asked additional and different questions depending on their background and the information you wish to elicit. These sample questions therefore **should not be followed exactly**. Be creative.

1. **Sample cross-examination questions for the victim of a theft**

- a. Isn't it true that when you approached John Doe, he immediately told you what he did?
- b. He didn't say he didn't do it, did he?
- c. He didn't say someone else did it, did he?
- d. He didn't struggle with you did he?
- e. He didn't threaten you, did he?
- f. Isn't it true that he apologized to you immediately?
- g. He told you he took the item because his he needed a gift for his grandmother and couldn't afford one correct?
- h. He told you his grandmother was in the hospital and sick, correct?

One of the purposes of the above questioning is to show that the offender is an honest person, who admitted his guilt immediately and didn't try to hide it. It also is intended to show that the offender is not a violent person. In addition, it demonstrates that there was a sympathetic reason for the crime.

2. **Sample cross-examination questions for the arresting police officer**

- a. Officer, you didn't see the crime occur, did you?
- b. You weren't in the store at the time, were you?
- c. You arrived after the victim called the police correct?
- d. When you arrived at the store, John Doe was cooperative, wasn't he?
- e. He didn't struggle, did he?
- f. Isn't it true that when you first spoke to John Doe, he immediately told you what he did?
- g. He didn't say he didn't do it, did he?
- h. Isn't it true that he apologized to the victim in your presence?
- i. He told you he took the item because his he needed a gift for his grandmother and couldn't afford one correct?

- j. He told you his grandmother was in the hospital and sick, correct?
- k. You've never arrested John Doe before, have you?
- l. In fact, to your knowledge, John Doe has never been in trouble before, correct?

One of the purposes of this line of questions is to show that the officer was not a witness to the crime and therefore his testimony is of minimal value. It also is intended to show that the offender was honest with the police officer and therefore is, arguably, a good person. It also elicits the offender's explanation for committing the crime. Finally, the fact that the officer has not arrested the offender before can be used to argue that he has not committed crimes in the past.

### **3. Sample cross-examination questions for the offender**

- a. You stole the item on March 2, 1994, didn't you?
- b. You claim that you did it because you wanted to get something for your sick grandmother and had no money, correct?
- c. You didn't try to get a part time job to earn the money for a gift, did you?
- d. You didn't ask you mother for money for a gift, did you?
- e. You didn't ask your father, did you?
- f. You didn't ask your sister, did you?
- g. You didn't try to make your grandmother a gift, did you?
- h. You didn't tell the victim you needed a gift for your sick grandmother before you stole the item, did you?
- i. When was the last time you bought something for yourself?
- j. Where did you get that money from?
- k. How much did that cost you?
- l. You only admitted the crime and apologized after you were caught red handed, correct?
- m. You've committed similar offenses in the past, haven't you?
- n. In fact, two months ago, you stole a pair of pants, didn't you?
- o. Your grandmother didn't need pants, did she?

One of the purposes of this line of questions is to establish that there were other legal or legitimate ways to get something for the offender's grandmother. Another purpose is to show that the offender only admitted the crime after being caught "red-handed." Another purpose is to show that the person stole in the past and therefore the punishment should be greater this time.

#### **4. Sample cross-examination questions for a character witness**

- a. You're a friend of the offender, aren't you?
- b. A very good friend, correct?
- c. You are a friend of his family, correct?
- d. How long have you known his family?
- e. You are here to help a friend, correct?
- f. You weren't at the victim's store on March 4, 1994, were you?
- g. Aside from what you have heard, you don't know what happened, correct?
- h. Prior to March 4, 1992, how many times have you spoken to other people about the offender's character or reputation?
- i. Prior to March 4, 1992, how many times have you spoken to the offender?

One of the purposes of this line of questioning is to show that the witness and the offender are friends in order to argue that the witness' opinion is suspect because of the prior relationship. The argument is that friends may protect one another. Another purpose is to show that the witness was not present during the crime and therefore the testimony is not that relevant. This questioning is also intended to show that the opinion given is really that of the witness and not the community because the witness has not spoken to many people about the offender's character.

#### **c. Redirect examination and recross-examination**

After a witness has been cross-examined, the party that initially asked the witness to testify, will be given a brief opportunity to conduct a redirect examination in order to ask follow-up questions that clarify or explain anything the witness testified to on cross-examination.

After a redirect examination, the party that cross-examined the witness, will be given a brief opportunity to cross-examine the witness as to questions asked on redirect.

### **E. THE SENTENCING HEARING**

#### **1. Clerk/Bailiff calls case**

One of the duties of the clerk/bailiff is to call the court to order, and to announce what case will be heard next. Once the case is called, all parties will step forward

and be seated at their tables. The clerk will then ask for the names of the parties. For instance, the clerk will ask the prosecutor and the defense counsel for their names. The prosecutor would respond "Jane Doe, for the government." Defense counsel would reply, "John Doe, for the offender, Paul Smith."

## **2. Admission of guilt**

Although the offender will have previously admitted his/her guilt, this will be reaffirmed before the sentencing hearing in order to conclusively establish the offender's guilt before the jury. The judge will read the charge to the participants. For instance the Judge will say, "It is charged that on February 1, 1993, in this town/city and the State of New York, Jane Doe, intending to deprive another of property, wrongfully took a pair of jeans from the Gap store located in the Colonie mall, without paying for the jeans."

The judge will then ask the offender how he or she pleads to the charge. In order to participate in Youth Court, the offender must respond by saying that he or she admits to or is guilty of the charge.

## **3. Opening Statements**

Prior to any witnesses testifying or evidence being introduced, the judge will permit the prosecutor and the defender an opportunity to present opening statements.

An opening statement is an advocates first opportunity to present to the jury the facts of the case in a light most favorable to their cause. It should be short, concise and contain only facts you believe the evidence will show. An opening statement should not be argumentative and therefore you should not explicitly state why you believe a specific sentence is appropriate. However, you may state during your opening what your ultimate sentencing recommendation will be.

### **a. Prosecutor's opening**

The first advocate to address the jury at this stage is the prosecutor.

#### **i. Describe offense**

The prosecutor should begin the opening by explaining the evidence of the offense to the jury in the light most favorable to the government. For example in an assault case, the prosecutor may begin by stating that "This case involves the theft of a pair of jeans from Macy's by Jane Doe on June 5, 1995." The prosecutor should then detail the circumstances of the offense. This statement should convey how serious the offense was. It should contain information that the prosecution intends to introduce through witnesses and physical evidence.

ii. **Discuss any factors relevant to sentencing**

Any other factors that would support the sentence to be recommended and which the evidence during the hearing will support should also be mentioned during the opening. For example, the emotional or financial harm suffered by the victim, the offender's past criminal conduct or if the offender showed no remorse for the crime should be mentioned during your opening. Do not make unwarranted attacks on the offender's character. For instance, never compare an offender to an animal or call the offender names. The opening must be based upon the evidence in the case.

iii. **Recommend sentence or otherwise**

At the conclusion of the opening, the prosecutor should inform the jury that at the conclusion of the case, the jury will be asked to impose a specific sentence.

iv. **Sample opening by a prosecutor**

"May it please the court, Mr./Miss Doe (defender), members of the jury. I'd like to begin by thanking you for your time and attention in this matter. I now have the opportunity to present to you an opening statement. An opening statement is a preview of what the evidence will show during this hearing. Now what will the evidence show?"

On May 2, 1994, John Doe (offender), while hosting a party at his parents' home without their knowledge, served liquor to minors and seriously damaged his neighbor's home to the tune of \$1,500.00. The evidence will show that on that day in May, John Doe "spread the word" at his school that he would be throwing a graduation party that night. Approximately 50 underage students showed up that evening and began to party. During that party, John Doe served alcohol to minors, some of whom were his friends. He served them alcohol even though he knew some of them were driving. Things began to get out of control at about 11:00 A.M. At around that time, a neighbor came to John Doe's home and complained about the noise. John Doe became angry and began to yell at the neighbor. After the neighbor left, John Doe began to throw beer bottles at the neighbor's home. Soon a number of his friends began to join in. Eventually, three windows were broken which cost \$1,500.00 to replace. Eventually the police were called. When they arrived, John Doe began to yell and curse at them. He struggled as they placed handcuffs on him. The police then took him away and contacted his parents.

The evidence will also show that John Doe is a poor student who rarely attends class. More importantly, a judge has already declared him a person in need of supervision, which means that even his parents can not control him.

At the conclusion of the evidence in this matter, I will ask you to impose a sentence of 80 hours of community service, restitution, and psychological counseling for this offender. Thank you very much."

**b. Defender's opening**

After the prosecutor addresses the jury, the defender will have an opportunity to make an opening statement to the jury.

**i. Description of offense (if different from prosecution version)**

The defender should begin the opening by describing the evidence of the offense to the jury in the light most favorable to the offender. For example, in a provoked assault case, the defender might say that "On June 6, John Doe did hit Jane Doe, but only after she teased and taunted him about being short." The defender would then explain the circumstances of the offense from the offender's perspective.

**ii. Discuss any factors favorable to the defender**

During his/her opening, the defender should point out any factors that are favorable to the offender, as long as they are based upon evidence the defender expects to introduce during the hearing. For instance, if the offender has led an otherwise law-abiding life, it should be pointed out that this is the offender's first criminal offense. Likewise, if a character witness will testify that the offender is an otherwise honest person or has contributed to the community, these things should be brought to the jury's attention. In addition, any defense or legitimate excuse for committing the offense should be recounted to the jury.

**iii. Recommend sentence or otherwise**

At the conclusion of the opening, the defender should recommend that the jury impose a specific sentence.

**iv. Sample opening by a defender**

"May it please the court, John Doe, Ms. Doe (prosecutor) members of the jury. I'd like to begin by thanking you for your time and attention in this matter. John would also like to thank you for your time here. I now have the opportunity to present to you my opening statement which will present to you a more complete picture of John Doe the person and the events of the evening in question.

What is this case really about? It's really about John Doe, my client. Who is John Doe? You will learn that John Doe is not the irresponsible person the prosecution has tried to portray. Rather John Doe has lead a very straight and responsible life, albeit, with a few minor detours. John Doe is 15 years old and attends Saratoga High School. He is a "B" student who

hopes to go to college some day and study accounting. He plays in their band and plays soccer and baseball. He has numerous friends.

John's problems have only recently begun. In 1991, his parents' divorced and his father moved to California. His mother remarried a year later to someone John did not care for. His parents' divorce crushed John. He was lost. He felt abandoned. As if his parents' didn't care about him. His life was falling apart. He rebelled, probably a cry for help. When his father left, John's responsibilities at home grew. At times he had to babysit his brothers. At times he had to console his mother late at night and couldn't get up for school the following day. That is why his attendance was poor. As time went on, John's frustrations grew and his behavior changed. His mother felt he needed help. Then the unfortunate incident of May 2 occurred. John is sorry it did and wished it never had. He has apologized to his parents, his neighbor, the police officers involved and his friends. He has begun to make restitution.

The evidence will show that John is a person who needs not your scorn, but your help, your understanding, and your guidance; At the conclusion of the evidence in this matter, I will ask you to give him that help, guidance and understanding by asking you to impose a sentence of 20 hours community service, restitution and psychological counseling. Thank you very much."

#### **4. The introduction of evidence**

Once guilt is established, the sentencing hearing will begin.

##### **a. Judge asks prosecutor if any evidence to be offered**

The judge will begin the hearing by asking the prosecutor whether there is any evidence they wish to introduce that is relevant to what the appropriate sentence should be.

##### **b. Prosecution then offers its evidence**

###### **i. Arrest report or other report of offense**

If a police report or any other report was completed that details the offense, it should be marked as an exhibit and offered into evidence by the prosecution. The circumstances of the offense are always relevant and should be presented to the judge and jury by the prosecutor. The defense counsel may object to the introduction of any portion of the report that is irrelevant or unduly prejudicial. Once introduced into evidence, the relevant portions of the report should be read to the jury by the witness or the prosecutor.

###### **ii. Victim/Witnesses or their statements**

If the victim is willing to appear in court, he/she should be called as a witness to testify to the circumstances of the crime and the effect the crime had on him/her. (i.e., physical or mental injury, damage, amount of restitution, affect on business or their lives).

The prosecutor should also call any witnesses to the crime, if they are willing to appear in court, to detail what they saw or heard.

In the event a victim or witness is unwilling or unable to attend the hearing, a written or oral statement should be obtained from the witness. The jury should then be told what the witness said. If the statement is written, it should be marked as an exhibit and introduced into evidence.

If a witness is called to testify at the hearing, the clerk/bailiff must administer an oath to the witness before the witness testifies, for example, "Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?"

After the witness has testified for the prosecutor, the defender will have the opportunity to cross-examine the witness. Additional questions by the prosecutor and defender will be permitted in the discretion of judge.

### **iii. Proof of amount of damage**

If the crime involved theft or property damage, a relevant issue for the sentencing hearing is the amount of damage. Evidence of the extent of damage and/or the monetary amount of damage should be offered at the hearing. The victim or a witness should testify concerning the extent of the damage and what the item cost or what it will cost to replace the item. A photograph of the damage would also be admissible and helpful to the jury. A receipt to show what an item cost or an estimate of what it will cost to repair or replace an item is also admissible.

### **iv. Evidence concerning background of offender<sup>8</sup>**

Evidence concerning an offender's background may be admissible at the sentencing hearing if relevant. Evidence of similar past conduct, if any, by the offender should be presented to the jury by the prosecutor. Other offenses committed by the offender in the past that are not similar, may be admissible but only after the judge rules, out of the presence of the jury, that such evidence is relevant to an issue in the case. For instance, if the offender testifies, the prosecutor may be able to cross-examine the offender as to previous offenses involving dishonesty in order to show that the offender may not be candid on the witness stand.

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<sup>8</sup> See Section II (b)(5) above.

**v. Any other evidence relevant to sentencing**

Since it is difficult to address every category of admissible evidence, other relevant evidence may be admissible in the judge's discretion.

**c. Defense then offers its evidence**

After the prosecution has presented its evidence, the judge will ask the defender if there is any evidence the offender would like to present in his defense. At this stage, the defender will have an opportunity to present testimony and physical evidence that will support the ultimate sentencing recommendation made by the defender.

**i. Documents or objects**

Any documents or objects that lessen or mitigate the seriousness of the offender's conduct should be introduced into evidence. For example, any report that offers a version that contradicts the prosecutor's version or that helps the offender's case, in any way, should be offered into evidence. The prosecutor may object to the introduction of the exhibit if it is irrelevant to the issue of sentencing. Once introduced into evidence, the relevant portions of a document should be read to the jury by the witness or the defender.

**ii. Witnesses or their statements**

The defender may also call witnesses to support the ultimate sentencing recommendation. In the event a witness is unwilling or unable to attend the hearing, a written or oral statement should be obtained from the witness. The jury should then be told what the witness said. If a witness agrees to testify, the clerk must administer the oath before the witness testifies.

After the witness has testified for the defender, the prosecutor will have the opportunity to cross-examine the witness. Additional questions by defender and prosecutor will be permitted in the discretion of judge.

**A. Offender**

The offender should ordinarily testify as to what he or she did and the reasons for doing it. An offender may not wish to testify if they do not have a reasonable explanation for committing their crime, if they are too nervous or if they have a lengthy criminal history. If the offender does not wish to testify, a statement prepared by the offender should be read to the jury. If the offender wishes to testify, it is important to humanize the offender for the jury by eliciting, in addition to the facts of the

offense and other mitigating circumstances, his or her background and interests in as much detail as possible.

**B. Witnesses to offense.**

The defender should also call any witness to the offense on behalf of the offender if their version somehow mitigates the offender's involvement in the offense or offers a justifiable excuse. For instance, in an assault-type case, the offender may be guilty of striking someone but it may have occurred after the offender was teased or taunted. A witness who was present during the teasing or taunting should testify to what he or she saw or heard.

**C. Character witnesses**

The defender should also consider calling witnesses who can testify about the character of the offender. For example, witnesses who can testify that the offender is an honest person or a hard working person or that the offender contributes to his/her community should be called as witnesses. If such witnesses are not called at the hearing, the defender should investigate the character of the offender, and if positive information exists, it should be brought to the jury's attention by the defender.

**5. Arguments/Summations**

After the witnesses have testified, the judge will permit the defender and the prosecutor an opportunity to present their recommendations for a sentence to the jury and their reasons why the recommendation is appropriate. The arguments must be based upon evidence admitted during the hearing. The arguments should be organized and carefully thought out. The objective of the argument is to persuade the jury that the sentence you recommend is the most appropriate under the circumstances.

**a. Defender addresses judge and jury**

The first advocate to address the jury during summations is the defender.

**i. Description of offense (if different from prosecution version)**

The defender should begin the argument by describing the evidence of the offense to the jury in the light most favorable to the offender. For example, in a provoked assault case, the defender might say that "On June 6, John Doe did hit Jane Doe, but only after she teased and taunted him about being short." The defender would then explain the circumstances of the offense from the offender's perspective.

**ii. Rebut or refute arguments expected to be made by prosecutor**

During the defender's argument, the defender should address arguments he or she expects to be made by the prosecutor since the defender will not have another opportunity to address the jury. Reasons why the prosecutor's expected argument is weak or should not be followed should be pointed out to the jury.

**iii. Discuss any factors favorable to offender**

During his/her argument, the defender should point out any factors that are favorable to the offender, as long as they are based upon evidence admitted during the hearing. For instance, if the offender has led an otherwise law-abiding life, it should be pointed out that this is the offender's first criminal offense. Likewise, if a character witness has testified that the offender is an otherwise honest person or has contributed to the community, these things should again be brought to the jury's attention. In addition, any defense or legitimate excuse for committing the offense should be recounted to the jury.

**iv. Recommend sentence or otherwise**

At the conclusion of the argument, the defender should recommend that the jury impose a specific sentence.

**v. Sample final argument by a defender**

"May it please the court, Ms. Doe (prosecutor) members of the jury. I'd like to begin by thanking you for your time and attention in this matter. John would also like to thank you for your time here. I now have the opportunity to present to you my arguments as to what sentence is appropriate for John and why.

What is this case really about? It's really about John Doe, my client. Who is John Doe? You now know that he is a good student. He is a person involved in many school activities. He is active in his community. You heard from people who know him well and who think he is a good person and a contributing member of society. He is a good person. You've heard no one testify to the contrary.

Now even good people make mistakes in our society. It's an unfortunate characteristic of human nature. John has admitted his mistake. He does not deny that he had a confrontation with the victim. He's sorry about that. He wished it never happened, but it did. He is not saying that he is innocent. He is not saying that the victim deserved what happened. He simply has told you why he did it. He did something in the heat of passion. He loved the victim and was having trouble dealing with rejection. It happens. It happens every day. Some

people can't control themselves at all in these situations. The papers periodically have stories of heat of passion crimes. People kill other people in the heat of passion. They brutally attack people in the heat of passion. They totally degrade people in the heat of passion. In the heat of passion, John crossed the line here. He admits that. But he didn't cross that far. He realizes his mistake in judgment. He is not in denial. He looks to you for understanding.

As I said earlier, it's part of human nature to make mistakes. An old and wise proverb that we are all familiar with states this concept well. "To err is human". Isn't it true? Haven't we all at one time or another erred or crossed that line? But we came back. John crossed a line; but has come back. He is a good person.

The balance of the old proverb I just made reference to is quite poignant here. As you may know the entire proverb goes as follows: "To err is human, to forgive is divine." "To forgive is divine." You have to opportunity to be divine today. To forgive. To punish and forgive John for what he did.

I submit to you that because John realizes he was wrong, because he is a contributing member of the community, because he is a good person, because he is human, his sentence should not be severe. He is not someone who needs to be taught a lesson. He has already learned his lesson. I therefore ask you, on behalf of John and all those who are human, to impose a sentence of 10 hours of community service. Thank you very much."

## **b. Prosecutor addresses jury**

After the defender addresses the jury, the prosecutor will have an opportunity to make a sentencing recommendation to the jury.

### **i. Describe offense**

The prosecutor should begin the argument by explaining the evidence of the offense to the jury in the light most favorable to the government. For example in an assault case, the prosecutor may begin by stating that "This case involves a brutal unprovoked assault on the victim, Jane Doe, by this offender." The prosecutor should then detail the circumstances of the offense. This statement should convey how serious the offense was. It should contain information that the prosecution introduced through witnesses and physical evidence.

### **ii. Discuss any factors relevant to sentencing**

Any other factors that would support the sentence to be recommended and which the evidence during the hearing supported should also be mentioned during the argument. For example, the emotional or financial

harm suffered by the victim, the offender's past criminal conduct or if the offender showed no remorse for the crime should be used as part of your argument for a specific sentence. Do not make unwarranted attacks on the offender's character. For instance, never compare an offender to an animal or call the offender names. The argument must be based upon the evidence in the case.

**iii. Rebut or refute arguments expected to be made by prosecutor**

During the prosecutor's argument, the prosecutor should address arguments made by the defender. Reasons why the defender's argument is weak or should not be followed should be pointed out to the jury.

**iv. Recommend sentence or otherwise**

At the conclusion of the argument, the prosecutor should recommend that the jury impose a specific sentence.

**v. Sample final argument by a prosecutor**

"May it please the court, Mr./Miss Doe (defender), members of the jury. I'd like to begin by thanking you for your time and attention in this matter. I now have the opportunity to present to you my arguments as to what sentence is appropriate and why. My argument will be based upon the facts presented at the hearing we just conducted.

Now what have those facts shown? I submit that they have shown the following: On May 2, 1994, John Doe (offender), without provocation, brutally attacked the victim in this case, Jane Doe. The evidence has shown that on that day in May, Jane Doe was walking to school when the offender approached her and blocked her way. He demanded that she speak to him about their recent breakup. When the victim tried to walk by, he tripped her. He then grabbed her and would not let go. When the victim called him a few names because he tripped her, he began to smack her. It wasn't until a neighbor intervened that the offender stopped his attack.

Now the offender would have you believe that the attack was provoked by the victim. He claims that all he wanted to do was talk to her and she caused him to lose his temper by refusing to talk to him.

Does this story make sense to you members of the jury? You heard from the victim and the witnesses. According to them, the victim was simply minding her own business and tried to avoid a confrontation with the offender. It was he who would not take "no" for an answer. It was he who was invading her space. It was he who stooped so low as to trip her and then smack her. I submit that this crime was a brutal and uncalled for attack. The offender's conduct demonstrates his character and lack of self-control. His conduct here compels a severe sentence. A sentence that will send a message to him. A message that he went too far, that people don't act this

way in a civilized culture and that we won't condone this type of behavior. I submit to you that justice in this case cries out for a stern sentence and I submit to you that he be sentenced to the maximum amount of community service that you can impose. That would be the only sentence that will teach him a lesson and deter others from doing the same thing. Thank you very much."

## **6. Instructions to jury**

At the conclusion of all arguments, the Judge has the obligation to instruct the jury on what evidence it may consider, how it should consider evidence, how to deliberate generally and how to deliver their verdict. This is done in open court.

## **7. Jury deliberations**

### **a. Jurors discuss case in private**

The deliberations of the jury will be conducted in private. Only the jurors may participate in this process. If anyone else attempts to participate in the deliberations or attempts to influence the jury's decision once deliberations begin, the judge or court clerk should be notified immediately.

### **b. Decision must be unanimous**

The decision of the jury as to the appropriate sentence must be unanimous. That means that everyone must agree on the same sentence. This decision making process may not be easy. It will require candid discussion among all the jurors. Jurors will need to present their reasons to the other jurors as to why a particular sentence is appropriate.

### **c. Advise clerk/bailiff when decision reached**

- A. Hours of community service
- B. Restitution, if any
- C. Other

Once a verdict is reached, the foreperson should note the decision on a verdict form and hand it to the clerk of the court. The verdict should indicate the specific sentence to be imposed on the offender. For instance, it should note the number of hours of community service imposed, the restitution ordered, if any, and any other sentence imposed.

## **8. Imposing the Sentence**

Once the clerk receives the verdict form, it is his/her responsibility to hand it to the judge. The clerk is not permitted to inform anyone of the sentence at this time. The judge then reviews the sentence to ensure that it is an appropriate youth court sentence.

### **a. Judge asks foreperson to state jury's decision**

Once the judge has reviewed the verdict form, the form is given to the clerk who hands it to the jury foreperson. The judge then inquires of the foreperson as follows: "Has the jury reached a verdict?" The foreperson then responds "We have, your honor."

The judge then asks the foreperson to announce the jury's verdict.

### **b. Judge imposes sentence**

The judge then asks the offender to stand and states that " Based upon your plea of guilty to [offense] it is the judgment of the jury and this court that you be sentenced to x."

### **c. Sentence is final**

As long as the sentence is an appropriate youth court sentence, it will be final. There are no appeals from the sentence. It must be served by the offender.

### **d. Limited review by Youth Court director**

In rare instances, the sentence may be reviewed and modified by the youth court director.

## IV. CONSEQUENCES OF OFFENSES

### A. INTRODUCTION

1. When an offender violates the law, his or her conduct affects the lives and jobs of a number of people.
  - a. Victims.
    - i. Psychological and emotional damage.
    - ii. Financial loss.
  - b. Justice system and law enforcement employees.
    - i. Taxpayers' money must be spent to retain such employees to perform their functions to protect the community from violations of its laws and to insure fair and just punishment.
    - ii. There is a financial cost to the community from the expenditure of its resources in the ways described below in Section C.
  - c. The offender.
    - i. Must be punished in some way for misconduct.
    - ii. Punishment may indirectly affect family, friends or associates.
2. The effects of misconduct on these individuals should be kept in mind.
  - a. Assists in understanding the roles played by various individuals in the Youth Court system.
  - b. Significant factors to be considered in determining the appropriate punishment for an offender.

### B. VICTIMS

1. By one means or another, every criminal law seeks to protect individuals, groups or the community from the conduct of individuals which would tend to cause them harm.
  - a. Thus, the commission of every offense has a victim.
  - b. A **victim** is one who has suffered harm in some form as a result of an offender's misconduct.
    - i. A victim may be an individual, a group of individuals, an institution or the community as a whole.
    - ii. The harm which results may be physical, psychological, emotional, or financial.
    - iii. The harm may be direct or indirect.
2. **Actual victims.**
  - a. Individuals or entities who suffer loss or damage as a direct result of the offender's misconduct.

i. Individual or entity

A. An individual may suffer loss or damage from the offender's misconduct.

1. **EXAMPLES:** An individual who is harassed or assaulted, an individual whose property is stolen or damaged, or an individual upon whose property someone trespasses.

B. An entity, such as a business or organization, may also suffer loss or damage from the offender's misconduct.

1. **EXAMPLES:** A business whose property is shoplifted, a Little League whose fields are vandalized, or a restaurant where the offender skips out without paying the bill.

ii. Loss or damage

A. The amount of loss or damage caused by an offender's misconduct is a significant factor in determining the appropriate penalty. See Section II(C)(1)(c)(iv).

B. A victim's loss may sometimes be readily measured in dollars and cents.

1. **EXAMPLES:** The cost or sale price of an item that is shoplifted, the bill not paid by a restaurant patron, the estimated cost of repairing the damage to property from vandalism, or the medical bill incurred for an injury.
2. There may, however, be legitimate questions about the real amount of loss.
  - a. Has the estimated loss been inflated by the victim?
  - b. Should the loss be measured by retail value (what the victim would have received for selling the property) or wholesale value (the actual cost of the property to the victim)?
  - c. Did the victim contribute somehow to the commission of the offense and, if so, should the amount of loss be reduced?

1. **EXAMPLE:** An assault victim who instigated the fight.

C. An offender's conduct may, however, cause damage to a victim in ways that are less easily measured but are nevertheless relevant to determining the appropriate sentence.

1. Psychological or emotional damage

- a. **EXAMPLES:** The victim of an assault may demonstrate continued fears or other symptoms of stress, or a piece of jewelry stolen or damaged beyond repair was given to the victim by a grandparent and so holds sentimental value beyond its actual market value.
    - 2. Loss of opportunity
      - a. **EXAMPLES:** The vandalism to playing fields may have forced a league to postpone games and thereby deny children the opportunity to play, or an individual who is injured by an offender may miss activities or events that are important to him/her.
  - iii. Direct result
    - A. For purposes of determining the appropriate punishment, the victim's loss or damage must result directly from the offender's misconduct and not from some other cause.
      - 1. **EXAMPLES:** The assault victim suffered strained knee ligaments but made it worse by failing to follow a doctor's advice, a fence destroyed by vandalism was scheduled to be replaced the next week by the victim, or other people involved in the offense and not the offender facing sentencing caused most of the damage.
3. **Potential victims**
  - a. Some misconduct is criminal even though no actual monetary or physical harm is caused to any particular victim.
    - 1. **EXAMPLES:** Menacing, reckless endangerment, or possession of burglary tools.
  - b. Monetary loss is not a factor in such cases, although the potential victim may still suffer damage in some form.
1. **EXAMPLE:** Victim of attempted sexual abuse may have residual fears even though the offender was stopped before the actual abuse occurred.
4. **Community as victim - "victimless crimes"**
  - a. Some offenses have no direct or actual victim.
    - 1. Sometimes described as "victimless crimes."
    - 2. **EXAMPLES:** Possession of marijuana or driving without a license.
  - b. Statutes prohibit conduct which has been deemed harmful to the community in some indirect way.
    - 1. Although marijuana directly affects only the user, the legislature has determined that its use contributes to other offenses (driving under the influence, disorderly conduct) and social ills and, therefore, it should be made illegal.

2. Although driving without a license by itself causes no harm, the threat to other drivers and pedestrians from allowing unlicensed drivers to operate cars on public highways is sufficient to make this a crime even though the driver has not caused any particular harm.

### C. JUSTICE SYSTEM AND LAW ENFORCEMENT EMPLOYEES

1. An offender's misconduct involves and affects various individuals who work within the justice system and law enforcement.
2. Police Officers
  - a. Every offense is investigated by a police officer.
  - b. Training
    - i. Police officers are required to complete a course of training which involves classroom study of criminal statutes and rules of procedure, interviewing, report writing, and physical training.
  - c. Duties
    - i. Receives reports or complaints of possible criminal conduct from victims or observers/ witnesses or personally observe what appears to be criminal conduct.
      - A. **EXAMPLES:** The victim of an assault or the owner of property damaged by vandals files a complaint with the police, a neighbor observes individuals around the house of a neighbor away on vacation, or a police officer observes three youths under 16 walking into woods carrying what appears to be beer.
    - ii. Investigates.
      - A. Interviews observers or witnesses.
        1. **EXAMPLES:** Asks victim of assault for identity or description of assailant or attempts to obtain description of car used to drive across victim's lawn.
        2. As part of the investigation, will generally attempt to interview the person or person suspected of committing the offense.
      - B. Examines scene or physical evidence.
        1. **EXAMPLES:** Observes property where vandalism occurred or premises from which property was stolen.
    - iii. Writes report summarizing results of investigation.
    - iv. Arrests alleged offender if sufficient evidence exists to support charges or gives the alleged offender a ticket directing him or her to appear in court to answer the charges.
    - v. Consults with others within the justice system to advise them of his/her judgments and opinions about the case and the alleged offender.
      - A. These include, among others, the prosecutor, the Probation Department or Youth Court Director (if the officer believes that the alleged offender may be appropriate for referral to Youth Court).

- vi. Testifies in court proceedings.
  - A. Preliminary hearing, grand jury, trial, sentencing.

### 3. Family Court

- a. Has jurisdiction over all juveniles charged with criminal offenses unless the juvenile is charged as an adult because of the nature of the offense or the alleged offender.
- b. If juvenile asserts his or her innocence, a trial is held before a Family Court judge to determine if the evidence is sufficient to establish the guilt of the charged juvenile.
  - i. The juvenile has the right to have an attorney represent him/her at Family Court proceedings.
  - ii. The proceedings are confidential and are not open to the general public.
- c. If the juvenile is found guilty or pleads guilty to the charge, he or she is then sentenced.
  - i. Sentence may include incarceration in a juvenile facility, probation, restitution, community service or a combination thereof.
- d. Relationship to Youth Court
  - i. Youth Court provides an alternative to Family Court proceedings for youths charged with criminal offenses.
  - ii. If an offender is referred to Youth Court, he remains under the jurisdiction of Youth Court until satisfactory completion of his or her sentence.
  - iii. If an offender fails to complete any aspect of Youth Court proceedings, including court appearances and sentence, he or she will be referred back to Family Court where proceedings on his or her case will then resume where they left off.

### 4. Youth Court Director (YCD)

#### Duties and Responsibilities

- a. Receive initial referral to Youth Court
  - i. Maintains regular contact with police officers, probation officers, Family Court personnel and other individuals who are aware of the charging of youths with crimes where the youth may benefit from referral to Youth Court.
  - ii. YCD makes determination whether an alleged offender will be referred for disposition in Youth Court.
    - A. Determination made based on factors described above in Section I(C) & (D)(1).

- B. Interviews youth and family to assist in making determination and to explain Youth Court proceedings to the youth and his or her family.
- C. Obtains required admission of guilt and waivers from youth. See Section I (D)(1) above.

b. Schedule Youths for hearings in Youth Court.

- i. Advise youth of time and place for hearing.
- ii. Assign case and roles to Youth Court team. See Sections I (D)(2) & III.
  - A. Provide team members with necessary information and documents concerning the assigned case.
- iii. Arrange for jury members to be present.
- iv. Attend all hearings.
  - A. Monitor proceedings.
  - B. Insure attendance of offenders and Youth Court members.
  - C. Review sentences imposed in Youth Court to protect against miscarriage of justice.
    - i. Insure that sentence imposed was fairly determined and within parameters of just sentence.
    - ii. YCD not authorized to substitute his or her judgment for that of Youth Court jury.
  - D. Arrange service of sentence by offender.
    - i. Payment of restitution to any victim.
    - ii. Arrange for service of any community service required as part of sentence.
      - A. Find suitable form of community service for offender.
      - B. Advise offender of requirements for completion of sentence.
      - E. Insure that offender completes service of sentence.
      - F. Maintain all required documents concerning Youth Court cases.
      - G. Report periodically as directed to Youth Court Board of Directors concerning its operations.

5. The Offender

- a. The offender's involvement in Youth Court affects the offender's life and may also affect the lives of family and friends.
  - i. The offender must meet with the YCD, appear in Youth Court, admit his or guilt before a group of peers and accept their sentence, and complete service of the sentence.
    - A. Requires time of the offender as well as possible embarrassment, humiliation, stigmatization and negative effects on his or her reputation in the community.

- ii. Family and friends may be similarly affect, although less directly.

## 6. Possible Sentences

### i. Community Service

- A. An offender may be required to perform a certain number of hours helping in the community.
  - 1. **EXAMPLES:** Helping the Parks and Recreation Department clean a town park or playground, putting up signs or stuffing envelopes for the Youth Bureau, or assisting at a community cooperative daycare center.
- B. Number of hours of service required determined by Youth Court jury.
  - 1. Determination based on extent of punishment jury finds the offender deserves.
  - 2. **EXAMPLES:** The organizer of a group which vandalized a playground receives a sentence of 35 hours of community service while the younger brother of one of the participants who went along for the ride and did only minor damage receives a sentence of 12 hours of community service.
- C. Actual service of sentence overseen by YCD.

### ii. Restitution

- A. Amount determined by Youth Court jury.
  - 1. See Section IV (B)(2)(a)(ii)(B).
- B. Payment overseen by YCD.
  - 1. May be paid on one lump sum or according to a schedule established by the YCD.

### iii. Counseling, Mediation and/or Educational courses

- A. Where outside factors, or the lack of information, or misinformation, contributed to the youth's commission of the offense, counseling or educational courses may be indicated, to enable the youth to understand and address the matter.
- B. Examples. Where alcohol or narcotics were used, alcohol and substance abuse counseling may be warranted, or where the offense is thoughtless shoplifting, a course describing the costs and effects of shoplifting may be indicated.

### iv. Other

- A. In particular cases, other forms of punishment may be found appropriate.
  - 1. **EXAMPLE:** A defendant who vandalized a playground could be sentenced to assist in repairing the damage he or she caused.