8 The Adjudication Hearing

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§ 8-1 Timing of Hearings

Generally, if the juvenile is being detained or held in shelter care pending the adjudication hearing, the Juvenile Act requires that the court schedule the hearing for no later than ten days from the date of the filing of the petition.[1] As is discussed more fully in the chapter on detention, under certain circumstances this ten-day deadline may be extended by court order for a single additional ten-day period in order to secure evidence. In case of failure to hold a hearing within the ten- or twenty-day timetable, the juvenile must be released, unless the delay was occasioned by the actions of the juvenile or the juvenile's attorney.[2]

The Juvenile Act imposes no explicit deadline for holding adjudication hearings in cases in which juveniles are not detained or held in shelter care, and the Rules of Juvenile Court Procedure for Delinquency Matters only require that the adjudicatory hearing "be held within a reasonable time."[3] However, it seems clear that at some point, a delay in bringing a juvenile to adjudication may work a denial of "the essentials of due process and fair treatment" required by the constitution. As the Superior Court has pointed out,

> *in its protective role the state must consider the importance of time in a developing child's life in attempting to fashion a successful rehabilitation program for each juvenile. As the juvenile years are marked with significant changes and rapid development, children experience an acceleration in the passage of time so that, to a juvenile, one year may seem to be five. To ensure successful rehabilitation, the reformation program…must commence within a reasonable time of the child's delinquent act so that the child can comprehend the consequences of his act and the need for reform. As a result, the concept of 'fundamental fairness' in juvenile proceedings would seem to require that at least some limit be placed on the length of time between the delinquent act and the case disposition….*[4]

As a matter of good practice, JCJC Standards Governing Hearing Procedures provide that priority in scheduling hearings must be given to cases involving juveniles waiting in detention or shelter care, but that an adjudication hearing for a juvenile who is not in detention must be held within 90 days after the filing of the petition. The 90-day timetable is to be extended only for a specific period of time, and then only (1) by agreement of the parties or (2) for reasonable cause shown.[5]

§ 8-2 General Conduct of Hearings

One of the most important responsibilities of a juvenile court judge is that of establishing and maintaining the appropriate atmosphere in delinquency hearings. The Juvenile Act calls for "informal but orderly" hearings in delinquency matters.[6] According to the JCJC Standards Governing Hearing Procedures:

> *The atmosphere of the hearing should encourage the maximum participation of all concerned. It should be evident that it is the intent of the judge to determine the facts of the case and provide for a forum that is consistent with the public interest and is intended to arrive at a disposition that provides balanced attention to the protection of the community, imposition of accountability for offenses committed and development of competencies to enable the child to become a responsible and productive member of the community*.[7]

What sorts of hearing practices set the tone called for here? What concrete steps must be taken to "encourage the maximum participation of all concerned" in delinquency hearings? How can a juvenile court judge help to ensure that interests and points of view that are important to the proper resolution of delinquency matters are adequately represented in hearings?

Judges ought to consider how a typical delinquency hearing looks from the gallery, rather than the bench.

For most judges, a useful first step might be to try to imagine how things look from the gallery, rather than the bench. To outsiders, delinquency hearings can sometimes seem rushed, perfunctory, bewildering. Particularly in busy courtrooms, those in the rear may have no idea what those in the front are doing, or even which team is which. They have been formally "summoned" here, perhaps, but it is not clear what their role is, or how their presence is necessary. And often the whole thing is over—admissions have been accepted, a sheriff's deputy is literally shooing them into the hall—before they know what's happened, or why.

Judges who wish to change this picture—to create a forum that is both orderly and inclusive—should consider the following steps:

- *Enlarge the courtroom, at least in your mind*. Delinquency hearings in Pennsylvania are not intended to be for professionals only. The people who don't sit at the counsel table—victims, witnesses, family members, their supporters and friends—matter too. Their views, their comprehension of the process and its purposes, their understanding and acceptance of its outcomes, all matter. Simply bearing this in mind could significantly change a judge's approach and attitude, and ultimately be reflected in the way hearings are routinely conducted.

- *Slow down*. Especially in busy courts, it can be tempting to aspire to merely mechanical case-processing efficiency—to want to cycle through a crowded docket as rapidly as possible and to treat everything that slows the process down as an obstacle or a distraction. What often gets overlooked in this sort of haste are the real purposes of delinquency hearings. It may be that the problem lies elsewhere—too many

hearings scheduled for the same day, too little time allocated to each one, too few judges and masters assigned to delinquency cases, etc. But it all has to stop—or rather slow down—here.

- *Identify the players*. Who are all those people in the back? Too many judges take no trouble to find out. As a result, in the course of the hearing, they miss opportunities both to learn and to teach. The people in the back, of course, are equally at a loss, since the routine participants in delinquency hearings—the prosecutor, the probation officer, the public defender, the clerk, the recorder, the tipstaff—are well-known to one another and rarely identify themselves. The result is a kind of wall of incomprehension separating the insiders from the outsiders, requiring everyone to guess at everyone else's identity. Fortunately, it isn't hard to break through. In some courtrooms, for example, there are sign-in sheets for those attending hearings. The clerk may read out the names of those present at the start of the hearing, or the sheet may be kept on the bench to be consulted by the judge throughout.

- *Explain, articulate, translate*. If the nonprofessionals attending delinquency hearings are to understand and participate in the proceedings, they will from time to time need guidance, if not a translation. It is largely up to the judge to explain what is happening and why for the benefit of those unfamiliar with the court process—and not only to describe the mechanics of the system but to articulate the principles behind it. But judges can also encourage probation officers, attorneys and others routinely involved in delinquency hearings to express their thoughts and assumptions clearly, and to steer away from lingo, acronyms, and other unfamiliar forms of shorthand that have the effect of keeping outsiders out.

- *Observe some formalities*. Many of those in the courtroom will have just this one experience of the juvenile justice system. What sort of impression will they take with them? The informality and lack of solemnity with which delinquency hearings in some jurisdictions were conducted may have suggested—to victims, to community members, and perhaps most disastrously to juveniles and their families—that delinquency matters were not taken seriously. A judge can do something to counteract this impression simply by insisting that everyone in the courtroom show proper respect for the occasion.

- *Remember courtesies*. Judges should not leave it to others to extend common courtesies to those in attendance at hearings—such as the courtesy of acknowledging them directly, of welcoming them, of thanking them for their time, and of apologizing for long waits, crowded conditions, and so on. (Of course, if the court's facilities or scheduling practices are such that apologies are *always* in order, the judge has a responsibility to advocate for concrete changes as well.) Even more importantly, when a delinquency matter is unexpectedly continued, or witnesses are dismissed because their testimony is not needed, or an offer of admissions eliminates the need for an adjudication hearing, the judge should not neglect to say something by way of explanation and apology to those who have been inconvenienced.

§ 8-3 Public Attendance at Hearings

The Juvenile Act provides for varying degrees of openness in hearings on delinquency petitions:[8]

- *In camera hearings*. The general rule is that juvenile hearings are closed to all except "the parties, their counsel, witnesses, the victim and counsel for the victim, other persons accompanying a party or a victim for his or her assistance, and any other person as the court finds have [sic] a proper interest in the proceeding or in the work of the court."[9] The juvenile's parent or guardian will normally be present, as persons assisting a party, and can in fact be compelled to attend where it is in the best interests of the juvenile.[10] From this list it will be seen that even a so-called "closed" hearing may be attended by quite a crowd, particularly if the court construes operative terms (such as "proper interest") liberally.

Public attendance at delinquency hearings can provide valuable teaching opportunities.

- *Hearings closed by agreement*. The juvenile and the attorney for the Commonwealth may agree to close a hearing, though not presumably to "the parties, their counsel, witnesses, the victim," and the other categories listed above.[11]

- *Open hearings in certain serious cases*. Except by agreement of the parties, the public cannot be excluded from delinquency hearings involving (1) any felony allegedly committed by a juvenile of at least 14 or (2) certain enumerated felonies allegedly committed by a juvenile of 12 or 13.[12] The enumerated felonies are roughly the same as those that are excluded from juvenile court jurisdiction when committed by a juvenile of sufficient age using a deadly weapon (see table and discussion at § 6-3). They include:
  - Murder
  - Voluntary manslaughter
  - First degree felony aggravated assault
  - First degree felony arson
  - Involuntary deviate sexual intercourse
  - Kidnapping
  - Rape
  - First degree felony robbery
  - Robbery of a motor vehicle
  - Any attempt, conspiracy, or solicitation to commit any of these offenses.

Judges in a number of jurisdictions have found that inviting, encouraging and facilitating the attendance of the media and interested members of the public can be of great benefit to the work of the court. When the local media understand the unique mission of the juvenile court and the operations of the juvenile justice system, community support for court programs can be enhanced and balanced news coverage in high profile cases is more likely to result. Except in jurisdictions where the relationship between the news media and the court would make such invitations ill-advised, judges are encouraged to consider this approach. However, there are limits, and the judge must draw the line where an atmosphere of intimidation or

disorder would result from public and media attendance. Pre-hearing meetings to set confidentiality ground rules are good practice in any case in which members of the public will be attending. And where necessary, judges are given discretion to close portions of hearings or take other action to safeguard the confidentiality of mental health and medical information as well as institutional and probation reports.[13]

§ 8-4 Hearing Procedures

Adjudicating a youth "delinquent"—that is, determining that he or she has committed a delinquent act within the court's jurisdiction *and* is in need of treatment, supervision or rehabilitation[14]—involves four distinct steps:

- *Jurisdictional determination*. According to JCJC Standards Governing Hearing Procedures, an adjudication hearing should commence with a determination that the juvenile court has jurisdiction over the matter petitioned.[15] (For a discussion of the exact boundaries of Pennsylvania delinquency jurisdiction, see § 4-4.)

- *Fact-finding*. If the court determines that it has jurisdiction to hear the matter, "and has assured that the child is fully aware of all constitutional rights," it may proceed to hear evidence (or accept admissions) on whether the juvenile committed the delinquent acts alleged in the petition.[16] Under the Juvenile Act, the accused is "entitled to the opportunity to introduce evidence and otherwise be heard in his own behalf and to cross-examine witnesses"[17] as well as to be represented by counsel.[18] JCJC Standards Governing Hearing Procedures specify that "the district attorney shall represent the Commonwealth" in these proceedings.[19]

The fact-finding phase of a delinquency proceeding is subject to strict constitutional and statutory safeguards.

- *Ruling on offenses*. Within seven days of hearing the evidence or accepting admissions, the court must enter a finding specifying which if any of the offenses alleged in the petition the juvenile has been proven beyond a reasonable doubt to have committed.[20] For each delinquent act proven or admitted, the court must specify the grading and counts. If the court dismisses the allegations as unproven, it must also release a juvenile who has been detained, unless there are other grounds for detention,[21] and order the destruction of fingerprints and photographs.[22]

- *Adjudication of delinquency*. If the court has found beyond a reasonable doubt that the juvenile committed any delinquent act,[23] it must proceed—either immediately or at a postponed hearing—to hear evidence regarding whether the juvenile is "in need of treatment, supervision or rehabilitation" and therefore delinquent.[24]

Record Requirements

Under the Rules of Juvenile Court Procedure, all adjudication hearings must be recorded. The recording must be transcribed whenever (1) a party requests it, (2) an appeal is taken, or (3) the court otherwise orders transcription.[25]

Evidence

Traditionally, the juvenile court's "therapeutic" mission was thought to justify the consideration of all sorts of evidence in a delinquency hearing that would not have been admissible in a criminal one.[26] Now that it is well-established that accused juveniles have the right to confront and cross-examine witnesses against them,[27] as well as to exclude illegally obtained evidence and extrajudicial statements that would be inadmissible in criminal proceedings,[28] the juvenile court must obviously be more selective in admitting evidence. In general, while the court is engaged in determining whether or not the juvenile committed the acts alleged in the petition, evidence that would not be competent in a criminal proceeding should not be admitted. It is only at subsequent hearing phases—in which the issue is whether the juvenile needs treatment, supervision or rehabilitation, or what form of disposition is appropriate—that evidence rules, particularly technical rules that have nothing to do with basic fairness, may be relaxed.

The court must take care to avoid prematurely considering evidence that bears only on the question of appropriate dispositions. At a disposition hearing, evidence from social reports "may be received by the court and relied upon to the extent of its probative value even though not otherwise competent in the hearing on the petition."[29] But prior to that phase it is likely to be both irrelevant and highly prejudicial. Accordingly, the Juvenile Act as well as JCJC Standards specifically rule out the once-common practice of allowing information from a social study of the juvenile to be disclosed to the judge during the fact-finding phase. The Juvenile Act actually prohibits the court from ordering even the *preparation* of a social report in a contested case involving a juvenile who has not yet been found to have committed a delinquent act.[30] In practice, however, unless the juvenile objects, the routine in many counties is not to wait, but to begin assembling social report information before any fact-finding has occurred. In any case, the JCJC Standards Governing the Development of the Social Study provide that "adequate precautions must be taken to assure that information from the social study report will not be disclosed to the Court prior to adjudication."

Required Findings

Within seven days of hearing the factual evidence on a delinquency petition, "the court shall make and file its findings whether the acts ascribed to the child were committed by him."[31] The seven-day deadline may be extended only by agreement of the parties, but failure to meet it is not grounds for dismissal or discharge. In any case, the best practice is to make the factual finding, if at all possible, at the conclusion of the fact-finding hearing.

Again, the court's finding that the juvenile committed a delinquent act is not the equivalent of a finding of delinquency. The latter requires a separate finding—that the juvenile is *currently* "in need of treatment, supervision or rehabilitation"—which can be and often is made at a separate disposition hearing, especially where the allegations of delinquency were not admitted by the juvenile. (See the following chapter on "Delinquency and Disposition Determinations.") In theory, a court may find that the juvenile committed the acts alleged in the petition, but further conclude that no treatment, supervision, or rehabilitation is needed—in which case a dismissal and discharge are warranted. However, the Juvenile Act provides that, even without further proof, the fact that the juvenile has committed an act constituting a felony is sufficient to sustain a finding of a need for treatment, supervision, or rehabilitation.[32]

§ 8-5 Admissions

At any time after a petition is filed, the Rules of Juvenile Procedure for Delinquency Matters allow the juvenile to tender an admission (1) acknowledging facts, (2) accepting an adjudication of delinquency, and/or (3) agreeing to a particular disposition.[33] Before accepting an admission, the court must confirm that it is knowing and voluntary by getting answers to the following questions:

- Does the juvenile understand the nature of the allegations admitted?
- Is there a factual basis for the admission?
- Does the juvenile understand that he or she has the right to a hearing before the judge, and is presumed innocent until found delinquent?
- Is the juvenile aware of the dispositions that could be imposed?
- Does the juvenile know that the court is not bound by the terms of any agreement unless it is accepted?
- Has the juvenile consulted with an attorney or validly waived the right to counsel?
- Has the juvenile consulted with a guardian about the decision to admit?
- Does the juvenile have any questions?

Note that the court must either ask these questions and get answers on the record, or else elicit the same information from the juvenile in written form. If the latter procedure is used, the court must at least ask questions on the record that serve to authenticate the juvenile's completion of the form, understanding of its contents, and agreement with the statements made.

Good Practice in Accepting Admissions

Particularly in busy courtrooms, a substantial proportion of the cases scheduled for adjudication hearings—including those in which victims, witnesses, family members and supporters are assembled and ready—move on to formal fact-finding and dispositional issues without ever fully examining the events that gave rise to the petition.

Judges must ensure that case resolutions involving admissions do not ignore victim and community interests.

Juvenile court judges bear the ultimate responsibility for assuring that case resolutions involving admissions or negotiated settlements serve purposes beyond the immediate convenience of the parties. In particular, judges have an obligation to take steps to ensure that such resolutions do not slight the interests of victims and the community, ignore the real needs of juveniles, fail to impose accountability for offenses committed, or otherwise sweep away unresolved problems:

- *Get the facts*. Busy prosecutors can sometimes be content with very general admissions that dispose of the case without settling key factual issues. A judge should not be, particularly when the means of clarifying the issues are right in the courtroom. A juvenile may admit to attempted credit card fraud, but how did he come by the credit card—by happenstance or by theft? If the prosecutor's summary of the Commonwealth's case passes over a point like this, the judge should inquire. The idea is not to stir up factual disputes for their own sake. But what if the credit card-holder is right in the gallery? Delinquency adjudications, and the dispositions based on them, should as far as possible reflect reality—and not the incomplete, ambiguous version of reality that too often emerges when factual issues are not put to the test of an evidentiary hearing.

- *Address the gallery*. In too many courtrooms, victims, witnesses, family members and others are assembled for adjudication hearings, detained for a time, and dismissed without explanation or apology when admissions make their testimony unnecessary. As was noted earlier (see "General Conduct of Hearings," § 8-2, above), a better procedure is for the judge to address them directly, to explain what is happening and why, to thank them for taking time to contribute to the resolution of the matter, and to apologize for having inconvenienced them.

- *Engage the victim of the crime*. Judges should not focus so narrowly on the business being transacted in front of the bench that they forget that the hearing is for the victim, too. (See "The Victim's Place," § 8-7, below.)

- *Call upon the juvenile*. Generally, a judge should not accept an admission of facts without inviting the juvenile to say something for himself. One kind of accountability—and not the least important kind—is simply accountability for explanations, if not apologies. That form of accountability can be severely undercut by a proceeding in which the juvenile never feels called upon to speak, to look anyone in the eye, to face up to anything publicly, or even to acknowledge that he is the person everyone is talking about. A perfunctory "Do you have anything to say?" may elicit nothing, of course. But judges should be aware of tendencies of their own that discourage responses from juveniles—such as the tendency to cut embarrassing pauses short, to suggest answers, to interrupt and scold. (Adults often "listen" to young people by arguing them into silence.) Even a direct, pointed question is unlikely to draw a meaningful response unless the judge is willing to wait—to let the hearing grind to a halt—for what may seem like a long time. And yet, considering the substantial investment that the juvenile justice system makes in arresting, processing, trying, placing, treating, and supervising a typical juvenile offender, doesn't it make sense for the official overseeing this sprawling project to make some effort—including the effort of waiting through a silence of 10 or 20 seconds—to find out what is going through his mind?

§ 8-6 Consent Decrees

At any time before the court has entered findings and an adjudication order, the parties may move to have the proceedings suspended pursuant to a consent decree imposing negotiated supervision conditions.[34] The court may not enter a consent decree over the objection of either the juvenile or the attorney for the Commonwealth.[35] On the other hand, the court need not approve a consent decree that is inconsistent with the public interest merely because the parties have agreed to it. Consent decree terms and conditions, like disposition orders, must "provide balanced attention to the protection of the community, accountability for offenses committed and the development of competencies to enable the child to become a responsible and productive member of the community."[36] Moreover, victims are entitled to submit prior comment on the appropriateness of a negotiated consent decree.[37] Before approving a consent decree, a judge should always confirm that any required consultation with the victim has in fact occurred. In addition, as was noted in the previous discussion of "Informal Adjustment" (see § 4-7), the views of law enforcement may also shed light on the appropriateness of a proposed consent decree.

Consent decrees must further the purpose of the Juvenile Act.

Juvenile court judges should ensure that consent decrees are framed in terms that reflect the balanced purposes of the Juvenile Act. In other words, consent decree conditions that are meant to impose accountability for and repair the harm of offenses committed, such as restitution or community service obligations, should be clearly designated "accountability" provisions. Terms and conditions that are intended to protect the public, such as reporting obligations, associational restrictions, and curfews, should be laid out under a "community protection" heading. And provisions that require the juvenile to attend school, cooperate in therapy or counseling, attend groups, or otherwise develop skills or address deficits, should be denominated "competency" provisions. This approach has the virtue of clarifying, for the benefit of the juvenile and his family, the victim, and others interested in the case, what the juvenile justice system intends to accomplish through the consent decree. It also helps to ensure that district attorneys, juvenile probation officers, and others involved in negotiating consent decrees do not overlook essential provisions, and that judges do not approve consent decrees that are incomplete. (For more detailed information on appropriate terms and conditions for diverted cases, see the discussion of "Informal Adjustment" at § 4-7, above.)

Under the Rules of Juvenile Court Procedure for Delinquency Matters, the court is required to explain to the juvenile—"on the record or in writing"—the terms, conditions and duration of the consent decree and the consequences for violating it.[38] Although consent decrees in many jurisdictions are submitted on paper and approved routinely, without the appearance or participation of the juvenile, his family, or the victim, valuable opportunities may be lost thereby. The better practice, if possible, is for the interested parties to be present in court for the approval and entry of the consent decree. Only an in-court consent decree procedure makes it possible for the judge to do all the following:

- Articulate both the specific terms and the broader purposes of the consent decree.

- Ensure that the parties, particularly the juvenile and his family, understand what is expected of them, and the consequences of failure to comply.

- Make it clear that the court's own authority is behind the consent decree.

- Call upon the juvenile to explain his conduct and acknowledge responsibility for it.

While one of the primary purposes of the consent decree procedure is to avoid imposing the stigma of delinquency adjudication on juveniles who are willing to accept supervision without it, it should never be employed in a case in which a juvenile is unwilling to admit wrongdoing.

When a juvenile has successfully fulfilled the terms and conditions of a consent decree, he is discharged by the probation office, the original petition is dismissed, and no further proceedings may be brought against him on the basis of the conduct alleged in the original petition.[39] On the other hand, if the juvenile violates conditions imposed by the consent decree or has a new delinquency petition filed against him while subject to a consent decree, the attorney for the Commonwealth, following consultation with juvenile probation, may reinstate the original petition.[40]

The consent decree may be for a term of up to six months.[41] However, upon motion, the court may discharge the juvenile earlier, or extend the consent decree for up to an additional six months.

§ 8-7 The Victim's Place

Whether an adjudication hearing is suspended by the entry of a consent decree, is resolved by admissions, or proceeds through the taking of evidence to formal fact-finding, the victim has a right to be acknowledged and included in the process:

- *Groundwork*. Creating a place for victims in juvenile court begins outside the courtroom, of course. As administrators and leaders of their courts, judges should continually monitor the effectiveness and adequacy of local efforts to bring victims into the justice process. Do victims receive consistent, accurate, timely, and sensitive notification regarding court proceedings? Is there an orientation program to help them understand their rights? Is there a separate victim/witness waiting area in the courthouse? Are there victim advocates to accompany them to hearings? Is any effort made to determine their satisfaction with the process afterwards, or to offer them post-disposition advice and guidance?

  Victims ultimately depend upon judges to enforce and give substance to their participation rights.

- *Pre-hearing consultation*. Pennsylvania's Crime Victims Act and the Rules of Juvenile Court Procedure for Delinquency Matters give victims of juvenile offenders the right to be notified and given an opportunity to submit comment prior to several key case processing events.[42] In general, victims have a right to be heard before cases are

resolved wholly or partially by any sort of agreement. Victims have the right to have their input considered in disposition decision-making as well. While prosecutors and probation offices are given the primary responsibility for soliciting victim input in juvenile cases, victims ultimately depend upon judges to enforce and give substance to their consultation rights. If the judge *always* demands to know what the victim thought about a proposed consent decree or negotiated plea arrangement, or why there is no impact statement in the predisposition report, prosecutors and probation departments will make it their business to find out—and will not come to court until they do.

- *Sequestration*. As a matter of basic due process, a victim who is to be a witness in an adjudication hearing may have to be excluded from the hearing room during some part of the fact-finding phase. However, keeping in mind victims' own hearing attendance rights as well the practical and symbolic value of victim presence and participation in juvenile hearings, judges should take steps to keep these periods of sequestration to an absolute minimum, including requiring prosecutors to present their cases in such a way as to permit victims to return to the courtroom as soon as possible. In any case, judges should make sure that victims understand the purpose and necessity of sequestration.

- *Participation*. What has been said above about the judge's role in encouraging "maximum participation" in juvenile hearings (see "General Conduct of Hearings," §8-2), applies with special force to encouraging victim participation. Juvenile court judges must be alert for opportunities to acknowledge the victim's presence in the courtroom, to explain the court's methods and procedures, and to articulate the principles they are intended to serve. Once the fact-finding phase is concluded, the judge should take the opportunity afforded by the victim's presence to describe the disposition process, to solicit victim input orally, to gather additional details regarding written victim impact statements (see below), and where appropriate to orchestrate impromptu victim-offender interactions.

- *Opportunity/encouragement to speak*. No matter what the posture of the case, victims should always be afforded some opportunity to tell the court what they experienced and how it felt. A victim who has been given a chance to speak regarding these matters is more likely to accept the outcome of the judicial process—to feel that something like justice has been done. The victim's account may also help the juvenile to understand the consequences of his wrongdoing more fully. As long as the judge retains control of the situation, even the victim's anger may be good for the juvenile to hear. And it should lead to better disposition decision-making as well, by giving the court a deeper understanding of the harm caused by the juvenile's offense and the steps that must be taken to repair it. But affording victims a meaningful opportunity to speak in court will take groundwork as well—such as a victim advocate's help in the preparation of a statement, as well as an opportunity to speak with and receive support from an advocate after the hearing is over.

§ 8-8 Accommodating Young Witnesses

Witnesses in adjudication hearings must be placed under oath, subject to penalties for perjury, and competent to testify. Since children and young adolescents are often key witnesses in juvenile proceedings, a juvenile court judge must develop techniques for accurately assessing young people's competence, drawing out and interpreting their testimony, monitoring their examination by others, and adapting courtroom procedures to accommodate their needs.

Courtroom routines and procedures may have to be altered to accommodate young witnesses.

- *Knowing what to look for developmentally*. Proper handling of a very young witness calls first of all for a realistic assessment of the child's current level of development. Basic background materials on the stages of child and adolescent development, including developmental skills typically found among children of various ages, can be found in *Child Development: A Judge's Reference Guide*, which is available from the National Council of Juvenile and Family Court Judges.[43]

- *Evaluating competence*. While testimonial competence is ordinarily presumed, courts are required to inquire closely into the mental capacities of witnesses younger than 14 before allowing them to give evidence.[44] This involves scrutinizing (1) their ability to observe and recall the events about which they will testify, (2) their capacity to understand questions and frame intelligent answers regarding those events, and (3) their consciousness of the duty to testify truthfully.[45] Confusion about the meaning of the term "oath" or about the purpose of the proceeding is not necessarily an indication of incompetence, as long as a child witness knows the importance of truth-telling.[46] Even a child who believed it was "good to lie" was found competent, where it appeared she understood that she would be punished if she did so.[47]

- *Avoiding the wrong questions*. Because judges are responsible for getting at the truth in juvenile proceedings, they must be vigilant regarding confusing, misleading, and otherwise inappropriately phrased questions, both in their own examination of young witnesses and in their monitoring of examinations conducted by attorneys. Children are more likely to give clear, complete, reliable, useful testimony if they are not faced with the following kinds of questions:

  — *Long, grammatically complex, or compound questions*. One authority suggests, as a rule of thumb, "the younger the child, the shorter the question."[48]

  — *Questions containing big, unfamiliar, or legal-technical words*. "Point to" works better than "identify."

  — *Questions that are phrased negatively*. "Did you not," etc.

  — *Questions that abruptly change the subject*. Judges should make sure that young witnesses are not confused by sudden and unexplained transitions in questioning.

— *Repetitive questions*. Again, judges should recognize that children may not understand why the same thing is being asked repeatedly, and either limit or explain the reasons for the repetition.

— *Closed yes-or-no questions*. Child witnesses should not be asked to restrict themselves to one-word answers, unless it's very clear that they understand the questions. The danger of misunderstanding can be partially avoided with open-ended follow-ups, giving them the opportunity to explain what they think their "yes" or "no" meant.

- *Adapting court procedures*. Judges should be flexible in accommodating the special needs of young witnesses in their courtrooms. Common accommodations include the following:

  — *Support persons*. Children are often allowed to have adult supporters with them while they testify, and even at times to sit in their laps while being questioned. Some difficulty is presented when an adult support person is also a witness in the case—as when both a parent and a child have evidence to give regarding the alleged victimization of the child by a third party—or where there is reason to believe the presence of the support person will influence the content of the child's testimony. The former problem at least can be overcome by having the adult supporter testify first, outside of the child's hearing.

  — *Other kinds of support*. Children should by all means be permitted to bring special blankets, stuffed animals, and other comfort objects with them into the courtroom, and to hold them while testifying.

  — *Breaks*. When children have difficulty on the stand, judges should be liberal in granting recesses and allowing attorneys and others to confer with them privately to learn what is the matter.

  — *Clearing courtroom of spectators*. In order to make it easier for a young witness to give testimony, the judge may at any time close the hearing to the general public, although the agreement of the parties may be required in a case designated an "open proceeding" by the Juvenile Act.[49]

  — *Conferring or conducting examinations in chambers*. Likewise, judges should consider taking young witnesses into their chambers where necessary, to explain the proceedings, to put fears about testifying to rest, to assess their competency, or even to conduct the examination itself. In an adjudication hearing in which the child witness is testifying for the Commonwealth, however, a preliminary competency examination may be conducted in chambers, but the testimony itself must be given in the presence of the accused.

  — *Changing physical courtroom arrangements*. There is no reason why the physical layout or seating arrangements in the courtroom cannot be temporarily changed to help put a young witness at ease (although, again,

during the adjudication phase the court must be cautious about compromising the juvenile's confrontation rights).

— *Other courtroom changes*. Many experienced juvenile court judges have developed their own "tricks of the trade" for supporting, encouraging, and alleviating the stress of children giving evidence in their courtrooms. These may involve changing their usual tone of voice or terminology, raising ice-breaking topics to establish rapport and open up communication, and even using toys, puppets, and similar devices to relax and focus the child.

ENDNOTES

[1] 42 Pa.C.S.§6335(a) and Rule 240(D), Pa.R.J.C.P.
[2] 42 Pa.C.S.§6335(f).
[3] Rule 404, Pa.R.J.C.P.
[4] *Commonwealth v. Dallenbach*, 1999 Pa. Super. 101, 729 A.2d 1218 (1999).
[5] 37 Pa. Code §200.305. Note that the National Council of Juvenile and Family Court Judges' *Juvenile Delinquency Guidelines* call for even tighter timelines for adjudicatory hearings. According to the Guidelines, an adjudicatory hearing for a youth who is not in detention should be scheduled for no more than twenty business days from the initial hearing, unless the nature of the case is such that longer preparation time is required.
[6] 42 Pa.C.S. §6336.
[7] 37 Pa. Code §200.321(b).
[8] 42 Pa.C.S. §6336.
[9] 42 Pa.C.S. §6336(d).
[10] See Rule 131, Pa.R.J.C.P.
[11] 42 Pa.C.S. §6336(e).
[12] 42 Pa.C.S. §6336(e).
[13] 42 Pa.C.S. §6336(f).
[14] 42 Pa.C.S. §6302.
[15] 37 Pa. Code §200.342.
[16] 37 Pa. Code §200.343.
[17] 42 Pa.C.S. §6338(a).
[18] 42 Pa.C.S. §6337.
[19] 37 Pa. Code §200.322. Note that this provision is directly at odds with the practice of permitting probation officers to represent the Commonwealth in delinquency hearings.
[20] Rule 408, Pa.R.J.C.P.
[21] Rule 408(B), Pa.R.J.C.P.
[22] 42 Pa.C.S. §6341(a).
[23] See Rule 408(C), Pa.R.J.C.P., which specifies that the court must proceed to the adjudication phase if it finds "that the juvenile committed *any* delinquent act…"
[24] 42 Pa.C.S. §6341(b).
[25] Rule 406(B), Pa.R.J.C.P.
[26] See McCarthy, Pa. Juvenile Delinquency Prac. & Proc. (4th Ed.), § 11-9, and Packel, *A Guide to Pennsylvania Delinquency Law*, 21 Vill. L. Rev. 1, 51 (1975).
[27] 42 Pa.C.S. §6338(a).
[28] 42 Pa.C.S. §6338(b).
[29] 42 Pa.C.S. §6341(d). See the discussion of this provision in § 9-2.
[30] 42 Pa.C.S. §6339.
[31] 42 Pa.C.S. §6341(a).

[32] 42 Pa.C.S. §6341(b).
[33] Rule 407, Pa.R.J.C.P.
[34] 42 Pa.C.S. §6340(a) and Rule 370, Pa.R.J.C.P.
[35] 42 Pa.C.S. §6340(b) and Rule 371, Pa.R.J.C.P. However, note that a "deferred adjudication"—in which resolution of the issue of the juvenile's need for treatment, supervision or rehabilitation is postponed pending his voluntary completion of a program of supervision, sanctions or services—may serve the same functional purpose as a consent decree, without being subject to the same statutory restrictions. See discussion at "Disposition Hearings," § 9-3.
[36] 42 Pa.C.S. §6340(c.1). See also Rule 373(A), Pa.R.J.C.P.
[37] See 18 P.S. §11.201(4) and *Comment*, Rule 370, Pa.R.J.C.P. By its terms, the Crime Victims Act provision giving victims the right to submit prior comment on the appropriateness of a consent decree applies only in personal injury or burglary cases. However, the *Comment* to Rule 370 states that "the victim(s) of the offense should be consulted" before a juvenile is placed on consent decree, without mentioning any restrictions as to the type of offense involved, and this is clearly the best practice. In general, the Rules of Juvenile Court Procedure for Delinquency Matters have dispensed with offense restrictions in extending notice and comment rights to victims in juvenile delinquency cases.
[38] Rule 370(B), Pa.R.J.C.P.
[39] 42 Pa.C.S. §6340(e).
[40] 42 Pa.C.S. §6340(d).
[41] Rule 373(B), Pa.R.J.C.P.
[42] 18 P.S. §11.201(4), Rule 311(B), Pa.R.J.C.P., and *Comment*, Rule 370, Pa.R.J.C.P.
[43] This 1993 publication can be ordered from the National Council at (775) 784-6012, or online at http://www.ncjfcj.org.
[44] *In the Interest of C.L. and P.G.*, 436 Pa.Super. 630, 648 A.2d 799 (1994).
[45] *Commonwealth v. Trimble*, 419 Pa.Super. 108, 615 A.2d 48 (1992), quoted in *In the Interest of J.R.*, 436 Pa.Super. 416, 648 A.2d 28 (1994).
[46] *In the Interest of C.L. and P.G.*, 436 Pa.Super. 630, 648 A.2d 799 (1994).
[47] *In the Interest of J.R.*, 436 Pa.Super. 416, 648 A.2d 28 (1994).
[48] This rule of thumb, along with all subsequent text material on questioning and accommodating child witnesses, has been adapted from Matthews, E., and Saywitz, K. "Child Victim Witness Manual." *California Center for Judicial Education and Research Journal* 12(1), 1992.
[49] 42 Pa.C.S. §6336(e).