

HENNEPIN COUNTY ATTORNEY'S OFFICE
Children & Families Division
M E M O R A N D U M

TO: Youth prosecution staff

CC: Mary Moriarty
Hennepin County Attorney

FROM: Sarah Davis
Director, Children & Families Division

RE: Youth prosecution guidelines

DATE: Spring 2023

Since Mary took office in the new year, she has sought to share with you her vision, expectations, and other guidance to support your understanding of how things will be different under her leadership. I have sought to do the same since I joined the office and this memo is intended to provide additional clarification and guidance, specific to youth prosecution, as you evaluate cases involving youth respondents.

First, I want to acknowledge that leadership changes can be challenging. I recognize that as we build relationship and trust in our shared work there may be questions or uncertainty. I invite you to reach out to me to ask questions and share your perspective as we lean into working together.

As we continue our efforts to provide appropriate direction related to our vision and expectations, I will continue to work closely with you on the analysis of more difficult cases, at least in these early days. Please know this does not reflect distrust – it is a recognition that some cases will be handled differently than they have in the past. As I've started to get to know you, my prediction has been confirmed that we have incredibly talented, professional attorneys in this office. However, it would be unfair to expect you to know how to implement our vision and expectations without fully communicating and assisting as you navigate the application of high-level principles to complicated cases.

The guidance in this memo is intended to be actionable. But it cannot answer all possible questions. I look forward to continuing our conversations around these important issues.

I. General Principles

Our goal within youth prosecution is to improve community safety and wellbeing through both individual and system accountability that leads to positive outcomes for youth, families, and our communities, while simultaneously centering victims and their healing. To accomplish this, we will use an intentional approach grounded in the Positive Youth Development framework (see more on this below) to solve problems, meet needs and ensure

community safety. We are focused on accountability, treatment and healing; not punishment. Another way that I think about accountability is that it is focused on stopping the harm from happening and repairing the harm that has happened, as opposed to punishment, which is focused on enforcing rules.

To this end, when a youth is referred to our youth prosecution division, we must do everything in our power to:

- Ensure community safety by preventing the instant conduct from happening again or escalating
- Center victims and support their healing
- Seek interventions that will support the youth respondent to be successful in the future and reduce future system involvement

Youth development science and research, including but not limited to research related to brain development, are the foundation of our approach, meaning that it should deeply inform the decisions you make based on the unique facts and circumstances of the child and case in front of you. We are not here to rigidly implement policies based on categories of offenses. We are also not here to make decisions about cases with no regard for the unique circumstances of each youth and case we are considering. We are here to proactively problem-solve, meet needs, achieve positive outcomes for everyone involved, and support community safety. Children are unique and complex, and so are the cases that you work on.

In addition to science and research related to brain development, there is a growing body of research demonstrating that system involvement increases the likelihood of recidivism, deeper system involvement and future incarceration. As we work to align our practice with this evidence, we will make every effort to keep children out of the court system when possible, and to mitigate harm for those who are system involved when we can do so in a way that simultaneously accomplishes our goals of accountability, community safety, treatment and healing. To that end, we will focus our charging and prosecutorial efforts on cases where this is needed to achieve our goals.

II. Case Analysis and Decision-Making Framework

The science is clear that human brains are generally not fully formed until the mid 20s. Among that last parts of the brain to fully develop is the pre-frontal cortex – the area of the brain that impacts many important functions, including:

- Impulsivity
- Ability to consider risk and consequences
- Empathy and
- Susceptibility to peer pressure.

This is important to our work because these functions significantly impact youth behavior and decision making, and because a youth's developing brain and malleability present a unique opportunity for positive change.

The point of citing these scientific realities is not to suggest that there should be no accountability when a child engages in behavior that endangers people or causes harm. “Treating kids as kids” means understanding the science and engaging in practices and interventions that leverage the science to impact behavior.

Here is a basic framework that should help you make decisions:

- Recognize that children are children.
 - The scientific realities above are the starting point for case analysis. We will regularly provide resources, trainings, and other information, but you should continually supplement your understanding of the latest research and we hope you will share with us resources that you find helpful.
 - Use the information available to you about the specific child and circumstances of the case, in the context of the research and science, to analyze a case and make decisions.
 - Note that we are taking a close look at how we use adult certification and EJJ. Research has demonstrated that sending children to the adult criminal system often has a negative impact on long-term community safety and the youth. However, there have been cases where we have certified youth and that remains a prosecutorial tool available to us. We will develop a new policy related to EJJ and adult certification, but in the meantime we will continue to closely review individual cases and you can anticipate that we will use adult certification and EJJ less often than before.

- Familiarize yourself with Positive Youth Development and prioritize interventions that are grounded in this approach.
 - [Positive Youth Development | Youth.gov](#)
 - [Key Principles of Positive Youth Development | Youth.gov](#)
 - [Positive Youth Development | DASH | CDC](#)

- Seek to mitigate harm for those who are system involved when it is possible to do so in a way that simultaneously accomplishes our goals of accountability, community safety, and healing.
 - System involvement leads to increased risk for future and deeper system involvement – sometimes the best intervention is to keep children out of the court system entirely and use other interventions.
 - We are beginning to look at our diversion process and practices and anticipate changes.

- Engage our community and system partners proactively to achieve our goals. There are experts all around us. Be sure to tap into that wealth of knowledge and experience.
 - We will partner closely with our new Community Affairs Division in our work. If you have ideas on community partnerships that should grow or gaps that we need to fill, please share these with me or with Jen White.
 - We want to be able to rely on the expertise of our system partners where appropriate to accomplish our goals. This includes accepting findings of

incompetence by Psychological Services and not circumventing the out-of-home placement screening process implemented by probation by requiring OHP as a condition of a plea. However, there may be times when you have concerns about the process or practice being utilized by our system partner, or you may have a unique case in which a competency challenge or plea conditioned on OHP may be appropriate. In these situations, please reach out to discuss the case and seek approval for an exception.

- Consider the “collateral” consequences of our decisions, including Department of Human Services disqualifications, public records, immigration, etc.
 - We expect that you will consider the full impact of your decisions as you seek to accomplish our shared goals. We will provide training and support to ensure that you understand these impacts.

III. Centering Survivors/Victims and Their Families

The victims and families we work with may be working through trauma, dealing with the multi-faceted impact of the crimes committed against them, and trying to navigate a system with which they are unfamiliar. Sometimes they are grieving the loss of loved ones. We must center them, support them, and prioritize their healing throughout our work.

With the leadership of our Victim Services unit, we will help survivors and their families heal by striving to meet their stated needs, even when we do not have sufficient evidence to pursue a case or are not pursuing the dispositional outcome that they support. While they may not always agree with our legal approach, we must never lose sight of their need for information and understanding of what is happening with their case.

We will communicate early and often with victims, including sharing our focus on accountability, safety, treatment, and healing/rehabilitation. We will also be transparent about how we honor and value their perspective as we make decisions.

IV. Utilizing a Racial Equity Lens

The racial disparities in our youth justice system in Hennepin County (and across Minnesota) are deep and pervasive. Racial disparities harm our community, lead to distrust, and have a negative impact on community safety. You can anticipate that we will be proactive in identifying and addressing racial disparities at decision points within our sphere of control, as well as within our sphere of influence. As we work to build out our work within this priority, your ideas and input are welcome.

V. Case Types Currently Requiring Review

As noted at the beginning of the memo, I will continue to work closely with you at

times as we seek common understanding of how to approach our cases. As part of that process, the following case decisions currently require approval:

- Adult certification
- Any case involving youth who were ages 10-12 years old at the time of the incident
- Competency challenges – we will generally respect the competency findings made by court evaluators and will challenge findings of incompetency only when approved by me or Mary.
- Out-of-home placements as part of a plea agreement – if you believe that a plea agreement conditioned on an out-of-home placement is necessary for community safety, please seek approval from me.

One final point of clarity on an issue that has come up recently: We consider it settled law that judges in juvenile court can order a CWOP over our objection. We will not argue contrary to this position.

I am genuinely looking forward to partnering with you in our shared work. Please do not hesitate to reach out to connect or ask questions.