

THE SCHOOL DISTRICT OF PHILADELPHIA'S

**SEVENTH and EIGHTH GRADE
JUVENILE JUSTICE/CRIMINAL JUSTICE
CURRICULUM
2004-2005
*TEACHER'S EDITION***

DEVELOPED BY THE PHILADELPHIA DISTRICT ATTORNEY'S OFFICE



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JUVENILE JUSTICE/CRIMINAL JUSTICE CURRICULUM

This curriculum is designed to teach seventh and eighth grade students about the juvenile/criminal justice system and the consequences of delinquent/criminal conduct. The curriculum also covers victim awareness issues including the impact of gun violence, the fiscal impact of crimes such as auto theft on society, the impact of drug and alcohol use along with the consequences for selling drugs. Students will be given an opportunity to explore the relevance of the subject matter to their own lives, consider ways to avoid involvement and offer anti-crime strategies for general application. By fleshing out the issues at this early age we can insure that Philadelphia's young people have the information relevant to making decisions in their own lives about delinquent/criminal conduct. We often assume that young people know or should know what they are faced with. This erroneous assumption has been made about juveniles who are already in the system and the assumption is probably even less valid for juveniles who are not.

As a general proposition, we should do more to publicize the consequences of delinquent and criminal conduct. We lose the maximum deterrent impact of mandatory/minimum and recidivist statutes when would be perpetrators don't know the penalty for their action. This curriculum starts the education early and in a formal way.

The curriculum subject matter will be taught through traditional lectures, mock trials, case studies, scenarios, guest speakers, videos and panel discussions combining law enforcement with students. Research papers and testing will help us gauge the student's understanding, but will also help us learn from them. The curriculum is as follows:

Introduction to American Jurisprudence

Editorials, headlines, social commentary and media attention in general most often highlight the perceived deficiencies in the American legal system. Although practice and theory are sometimes worlds apart, American Jurisprudence has demonstrated a genuine interest in realizing its theoretical promise. We try to practice what we preach. This introduction begins by examining a criminal trial and the safeguards afforded all Americans by our state and federal constitutions, in particular our Fourth (search and seizure) and Fifth Amendment (double jeopardy, self incrimination) rights.

Content

There are five important participants in every criminal trial. They are:

1. A judge who applies the law, hears and decides the facts and then determines the outcome of the case. Sometimes a jury decides the facts and applies the law after being instructed by a judge.
2. The victim (in some cases the victim may be society at large) against whom the crime was committed.
3. The defendant, the person accused of committing the crime.

4. A defense attorney who represents the defendant and works to protect the defendant's rights.
5. The prosecutor who represents the victims, presents the evidence of guilt and has the burden of proving the accused committed the offense.

A criminal trial is a search for the truth. Testimony and evidence are presented for the judge or jury to consider when determining whether the defendant is guilty. Because the prosecutor has the burden of proving the defendant's guilt, the prosecutor presents first at trial. There may be other witnesses in addition to the victim called to help establish the defendant's guilt. Most criminal cases include the police officer(s) that conducted the investigation that led to the evidence being acquired and the defendant's arrest. Later, when we consider the Fifth Amendment we will discuss the defendant's role at trial, but suffice it to say that the accused may, but does not have to testify.

The following mock trial script can help students understand the roles of the judge, prosecutor, defense attorney, victim and defendant.

MOCK TRIAL EXERCISE

TEACHER SERVES AS NARRATOR: The trial you are about to witness involves an incident that occurred in the school cafeteria. A student was punched by another student. As a result, one student, the victim, sustained a cut lip and a chipped tooth and the other student, the defendant, was arrested and has been charged with simple assault.

NARRATOR: The prosecutor, played by (student's name) will try to prove the defendant's guilt and the defense attorney played by (student's name) will try to show that the defendant is not guilty. The judge, the Honorable (student's name) will preside over the trial and will decide whether the defendant is guilty or not guilty.

TRIAL

JUDGE: 1. Members of the jury, you are about to perform one of the most serious duties of citizenship. You are going to decide whether a fellow person is guilty of a crime. Pay close attention to everything that is done and said in this courtroom so that you can perform your duties well.

2. The district attorney has charged the defendant with simple assault. Under our Constitution, the defendant is presumed innocent unless and until proven guilty. The district attorney has the burden of proving the defendant guilty beyond a reasonable doubt. The defendant has the right to remain silent and to present no evidence. You must not hold it against the defendant if he/she chooses not to testify at this trial.

3. I shall describe, in a general way, what will take place. First the district attorney may, if he/she wishes, make an opening statement in which he outlines the case against the defendant. The defendant's attorney may make a statement outlining the defense case, either immediately following the district attorney's opening statement or later in the trial.

Second, the district attorney will present evidence; he/she may call witnesses to testify. The defense has a right to cross-examine witnesses called by the district attorney in order to test the truthfulness and accuracy of their testimony. After the district attorney has presented the Commonwealth's case, the defense counsel may present evidence for the defendant. The defendant has no obligation to offer evidence or to testify himself. The district attorney may, of course, cross-examine any witnesses presented by the defense. While you are deciding the facts of this case you will have to judge the credibility and weight of the testimony and other evidence. By credibility I mean the truthfulness and accuracy.

Third, after all the evidence has been presented, counsel for both sides will have an opportunity to make their closing arguments to you. I shall then give you my final charge which will include instructions

on the rules of law that apply to the case and whatever additional guidance I think you need for your deliberations. You will then decide what your verdict will be.

OPENING STATEMENTS

PROSECUTOR: Good morning your honor. The evidence will show that the defendant struck the victim for no good reason and that she meant to hurt her. The evidence will show that the defendant split the victim's lip and chipped her tooth. At the end of this trial I will come back and ask you to find the defendant guilty of simple assault. Thank you.

DEFENSE ATTORNEY: Good morning your honor. The evidence will show that my client did not commit a crime. All that occurred here was an altercation between two students and when you find out how and why the altercation occurred you will agree that my client must be found not guilty. Thank you.

Prosecution's case Direct examination 1st witness

Prosecutor: The commonwealth calls the victim to the stand.

Good morning. Can you tell us what happened on April 18, 2000 that brings you to court?

Victim: That witch (pointing at the defendant) punched me for no reason.

Prosecutor: How many times were you punched?

Victim: Once.

Prosecutor: Where did that occur?

Victim: In the cafeteria.

Prosecutor: What injuries, if any, did you sustain?

Victim: My lip was split and my tooth was chipped.

Prosecutor: Did you go to the doctor?

Victim: The doctor and the dentist.

Prosecutor: No further questions.

Cross-examination

Defense attorney: Isn't it true that you called my client's mother a name?

Victim: I was just playing.

Defense attorney: Isn't it true that you and all your friends constantly tease my client?

Victim: No, that isn't true.

Defense attorney: No further questions.

Direct examination 2nd witness

Prosecutor: The commonwealth next calls school police officer Jones. What did you see on April 18, 2000 that brings you to court?

Police Officer Jones: I was in the cafeteria and I saw the defendant standing over the victim. The victim was on the floor, bleeding from her mouth.

Prosecutor: What did you do?

Police Officer Jones: I broke up the crowd and took the defendant to the office.

Prosecutor: No further questions.

Cross-examination

Defense attorney: Isn't it true that you never saw my client hit the victim?

Police Officer Jones: That's true, but I did hear her say if you get up I'll hit you again.

Defense attorney: No further questions.

Prosecutor: The commonwealth next calls the victim's mother.

Would you please describe your daughter's condition when she came home from school on April 18, 2000.

Victim's mother: Her lip was split and her tooth was chipped.

Prosecutor: Did she need medical attention?

Victim's mother: Yes. She went to the doctor for stitches and the dentist to cap her tooth.

Prosecutor: What did the medical and dental treatment cost?

Victim's mother: \$500.00

Prosecutor: The prosecution rests.

**Defense case
Direct examination 1st witness**

Defense attorney: The defense calls the defendant to the stand.

Ms. Defendant, can you tell us what happened on April 18, 2000 that brings you to court?

Defendant: Ms. Victim and her friends surrounded me in the cafeteria. Ms. Victim called my mother a name and they all started coming closer, so I pushed her away. She slipped and hit her face on the ground and that's when the school police officer grabbed me.

Defense attorney: Did you mean to hurt Ms. Victim

Defendant: No! I only pushed her to defend myself.

Defense attorney: No further questions.

Cross-examination

Prosecutor: The victim was all in your face, wasn't she?

Defendant: Yes.

Prosecutor: She was looking you in the eyes, wasn't she?

Defendant: Yes.

Prosecutor: Then she called your mother a name, didn't she?

Defendant: That's right.

Prosecutor: Then you pushed her in the chest didn't you?

Defendant: Yes.

Prosecutor: Then she fell back (demonstrating) didn't she?

Defendant: Yes.

Prosecutor: Well if she fell back (demonstrating) how did she split her lip and chip her tooth? No further questions.

Defense attorney: Defense rests.

CLOSING ARGUMENTS

Defense attorney: Your honor, this was no assault. This was an accident brought on by the victim's own actions. She and her friends teased my client and placed her in fear when they surrounded her. Only then did she push the victim. I ask you to find my client not guilty.

Prosecutor: Your honor, the evidence is clear. Granted, the victim called the defendant's mother a name, but there was no justification for striking the victim. The injuries could not have resulted from being pushed, like the defendant claims, only from being punched. I ask you to find the defendant guilty as charged.

Judge's Instruction to the jury

Judge: Ladies and gentlemen of the jury. The defendant has been charged with the crime of simple assault. In order to find the defendant guilty of simple assault, you must find that all of the following elements have been established beyond a reasonable doubt:

1. That the defendant caused bodily injury to _____.

2. That the defendant's conduct in this regard was intentional, knowing or reckless. A person acts intentionally with respect to bodily injury when it is his conscious object or purpose to cause such injury. A person acts knowingly with respect to bodily injury when he/she is aware that it is practically certain that his/her conduct will cause such a result. A person acts recklessly with respect to bodily injury when he/she consciously disregards a substantial and unjustifiable risk that bodily injury will result from his/her conduct.

If, after considering all the evidence, you find that the Commonwealth has established each of these elements beyond a reasonable doubt, then you should find the defendant guilty of simple assault. Otherwise, you must find the defendant not guilty of simple assault.

Although the Commonwealth has the burden of proving that the defendant is guilty, this does not mean that the Commonwealth must prove its case beyond all doubt and to a mathematical certainty. A reasonable doubt is a doubt that would cause a reasonably careful and sensible person to hesitate before acting upon a matter of importance in his/her own affairs. A reasonable doubt must fairly arise out of the evidence that was presented or out of the lack of evidence presented with respect to some element of the crime.

Poll the class as if it were the jury. Guilty or not guilty?

Discuss why students voted as they did.

Discuss the concepts burden of proof and reasonable doubt.

Discuss the credibility analysis of the witnesses.

Discuss the significance of the evidence

Discuss the roles of the prosecutor and defense attorney.

Search and Seizure

Amendment IV [1791] to the United States Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

Article 1, Section 8 to the Pennsylvania Constitution

The people shall be secure in their persons, houses, papers, and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

People in the United States of America are protected against unreasonable searches and seizures by the police and other governmental agencies. This protection does not extend to all searches and seizures, only unreasonable searches and seizures. The question therefore becomes "when is a search or seizure unreasonable?" The Fourth Amendment to the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution help to answer this question by requiring that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

The Warrant Requirement

A warrant is a court order giving the police the right to arrest (seize) and/or search and seize property. The amendment says that you have to have probable cause in order to get a warrant. When obtaining a warrant the officer must swear to or affirm the factual support for the probable cause. Sometimes, an arrest may be made or a search may be conducted without a warrant. For example when the police witness a crime they can make an arrest without getting a warrant, but probable cause is still necessary. Therefore, any search or seizure is unreasonable absent probable cause.

Probable Cause

What is probable cause? The language of the Fourth Amendment does not define probable cause. The Amendment says probable cause has to be supported by oath or affirmation, but no definition of the concept itself is given. The courts have been left to define probable cause. When a warrant is issued the court decides whether probable cause exists. When a warrantless search is conducted or an arrest without a warrant is made, the police decide initially whether probable cause exists, but their actions are later subject to judicial review.

Probable Cause to Arrest

The courts have said that when the police know of facts and circumstances sufficient to warrant a reasonable man to believe that a crime has been or is being committed by the person to be arrested, there is probable cause to arrest. Breniger v. United States, 338 U.S. 160, 69 S. Ct. 1302 (1949). The facts supporting probable cause must provide a good description of the person to be arrested

Probable Cause to Search and Seize

Probable cause to search and seize property exists when there is substantial probability that the items to be seized are the proceeds, instruments or evidence of crime and that these items are currently at the location to be searched.

School Searches

The Fourth Amendment applies to public school officials, but probable cause and a search warrant are not required. The search need only be reasonable to be legal. The reasonableness requirement is satisfied when, at the time of the search, reasonable suspicion exists that evidence of a crime or a violation of a school rule will be recovered and that the scope of the search is related to the circumstances justifying the search.

Reasonableness may also be established by showing an overall purpose that justifies the search. For example, using metal detectors to search all students entering a school is justified by the overall interest in keeping weapons out of the school. Also, the search must not be overly intrusive. The nature of a search with metal detectors makes it reasonable. It is conducted quickly, it does not require touching the student and the intrusion is no greater than what people experience at an airport or any number of government buildings.

Scenarios for discussion.

Edward's mother believes that he stole ten dollars from his sister, Ayesha. Edward's mother searches his room, without a warrant. Have Edward's Fourth Amendment rights been violated?

Unless Edward's mother is a police officer or some other agent of the government he is not protected against his mother's search.

Malik is robbed at point of gun. He provides the following description of the robber to the police: a white male, about 16 years old with brown hair. The next day, the police arrest every 16 year old, white male with brown hair at Malik's school. Did the police have probable cause to arrest?

The description was not specific enough to constitute probable cause.

The police receive information from a reliable source that marijuana will be delivered to a store in West Philadelphia on June 30th. They get the address of the store and apply for a search warrant. They conduct the search on July 30th. Was the search legal?

The police waited too long. Probable cause to search requires that the facts establish that the evidence sought will probably be at the location when the search is conducted.

A teacher sees a student smoking a cigarette in a school rest room in violation of school rules. The vice principal searches the student's purse and finds marijuana. Was the search legal?

The search was legal because it was based on reasonable suspicion that evidence of a violation of a school rule would be recovered.

Protection Against Being Tried for the Same Offense Twice and Against Self Incrimination

Amendment V to the United States Constitution [1791]

No person shall be ... subject for the same offense to be put in jeopardy of life or limb; nor shall in any criminal case be compelled to

be a witness against himself, nor be deprived of life, liberty or property without due process of law;

Article I, Section 10 of the Pennsylvania Constitution

No person shall, for the same offense, be twice put in jeopardy of life or limb;

Double jeopardy

Double jeopardy is a legal concept that refers to facing charges for an offense after already having been tried for the same offense. In the United States, we are protected against being placed in jeopardy more than once for the same crime by the Fifth Amendment. When a person is tried and found not guilty, that person cannot be tried again for the same charges.

Protection Against Self Incrimination

During the mock trial the judge instructed the jury that “[t]he defendant has the right to remain silent and to present no evidence” and that the jury “must not hold it against the defendant if he/she chooses not to testify at this trial”. In addition to not testifying at trial, someone accused of a crime cannot be **compelled to be a witness against himself** even before trial. You have the right to remain silent and, when the police take someone into custody, the police have to warn that they have the right to remain silent and that anything they say can and will be used against them. This warning is referred as the Miranda warning. The Supreme Court of the United States created this rule in response to a case called *Miranda v. Arizona* decided in 1966.

Question

Do you think someone accused of a crime should have to tell their side of the story? Why or why not?

Definitions of Criminal Acts

Remember the definition of simple assault given to the jury by the judge in the mock trial:

1. That the defendant caused bodily injury.
2. That the defendant’s conduct in this regard was *intentional, knowing or reckless*.
 - a. A person acts intentionally with respect to bodily injury when it is his conscious object or purpose to cause such injury.
 - b. A person acts knowingly with respect to bodily injury when he/she is aware that it is practically certain that his/her conduct will cause such a result.
 - c. A person acts recklessly with respect to bodily injury when he/she consciously disregards a substantial and unjustifiable risk that bodily injury will result from his/her conduct.

These requirements are known as the elements of a crime. A crime is only a crime, as opposed to an accident, when the defendant's conduct was *intentional, knowing or reckless*. This doesn't mean that there is no legal liability for injuries that result for non-criminal acts. Law suits are brought by individuals against other people seeking payment for injuries, damaged property or other harm suffered due to non-criminal acts. However, when a crime is committed, the government, not an individual, will prosecute the accused.

Crimes Code

Crimes are defined by law. In Pennsylvania, we have a crimes code created by our state legislators. The elements of each crime are stated in the code. The code also defines the classes of offenses which range from misdemeanors, less serious crimes, to felonies, more serious crimes. Misdemeanors and felonies can be of the first, second or third degree, with first being the most serious.

Sentencing

The law also establishes the possible penalties. In Pennsylvania every crime has a maximum sentence. For example, the maximum sentence for robbery is twenty years incarceration. A judge can, therefore sentence a person convicted of robbery to up to twenty years, but not more than twenty years unless the person was also convicted of other charges. For example, if the defendant also committed a simple assault during the robbery and was convicted of that charge also he could be sentenced to an additional two years of imprisonment, the maximum for simple assault.

Firearms Violations

A person must have a license to carry a firearm in their car or concealed on their person outside their home or place of business. In order to get a license you must be 21 years old. A person with a felony conviction cannot get a license to carry. If you are under 18 years old you may not possess a firearm anywhere, unless you are legally hunting or target shooting and are accompanied by a parent or adult who has the permission of your parent. If you are over 18 and are going hunting or to a shooting range you may carry your unloaded gun without a license.

A person who carries a firearm without a license, but would have been eligible for a license is guilty of a misdemeanor. A person who is not eligible for a license, but carries a firearm is guilty of a felony of the 3rd degree. Any person who delivers a firearm to a minor is guilty of a felony of the 3rd degree.

Federal firearms penalties

Up to this point we have been referring to the state's criminal justice system. However, many criminal acts also constitute federal crimes and can be prosecuted in federal court. In particular, many drug and gun offenses are also federal crimes. Project Safe Neighborhoods is an initiative headed in Philadelphia by Patrick L. Meehan the United States Attorney for the Eastern District Of Pennsylvania that causes Philadelphia gun and drug cases to be prosecuted in federal court.

In federal court the penalties are much more severe than in state court. For example the maximum sentence for carrying a gun without a license under Pennsylvania law is seven years in prison. Under federal law, someone who has a record of three prior adjudications or convictions for drug offenses and/or crimes of violence must serve, at least, 15 years in prison. The following outline describes federal sentencing for firearms violations. Notice that for many of the crimes listed, life in prison is a possible sentence.

I. POSSESSION OR RECEIPT OF A FIREARM OR AMMUNITION BY A PROHIBITED PERSON - 18 U.S.C. § 922(g)

– **Maximum Sentence = 10 years in prison without parole.**

– You are *prohibited from possessing a firearm*, if you are:

– a convicted felon (previously convicted of a crime punishable by more than one year in prison)

– a fugitive from justice

– a drug user or addict

– under indictment

– a person subject to a domestic restraining order

– a person with a misdemeanor conviction for domestic violence, or

– an illegal alien.

– **Maximum Sentence = Life without parole**

– **Mandatory Minimum Sentence = 15 years without parole**

– Applies to you if you are convicted of possessing a firearm or ammunition and you have previously been convicted of three (3) serious drug offenses (e.g., Possession with intent to deliver or distribution of drugs) or crimes of violence (e.g. aggravated assault, burglary, robbery).

II. POSSESSING OR CARRYING A FIREARM DURING A DRUG CRIME OR VIOLENT CRIME - 18 U.S.C. § 924(c)

– **Maximum Sentence = Life without parole**

– **Mandatory Minimum = 5, 7, 10 years consecutive (in addition to) to sentence for underlying crime**

– Applies to you if you possess, carry, or use a firearm during a drug crime or crime of violence.

III. CAREER OFFENDER - U.S. SENTENCING GUIDELINES § 4B1.1

– **Minimum Sentence = 22 to 27 years without parole**

– Applies to you if:

– you have two prior convictions for a serious drug crime or a crime of violence; and

– you commit another serious drug crime or crime of violence.

Note: if you are in possession of or use or carry a gun in furtherance of the serious drug offense or crime of violence, you face a sentence of *30 years to life* in prison *without parole*.

IV. POSSESSION OF STOLEN FIREARM or AMMUNITION - 18 U.S.C. §§ 922(i); (j)

Maximum Sentence = 10 years without parole

If you possess a stolen firearm or ammunition, or steal a firearm from a licensed gun dealer, you face a maximum sentence of *10 years* without parole.

V. ARMED ROBBERY/ BANK ROBBERY/ CARJACKING 18 U.S.C. §§ 1951, 2113, 2119, 924(c)

– Maximum Sentence = Life without parole

– Minimum Sentence = 5, 7, 10, or 25 years without parole

If you commit an armed robbery of an interstate business, such as a bank, a grocery store, a liquor store, or restaurant, or commit an carjacking with a firearm, you face a mandatory minimum sentence of 5 years in prison. If you point the gun or brandish the gun, you face a mandatory minimum sentence of 7 years in prison and if fire the gun, you face a mandatory minimum sentence of 10 years in prison *without parole*.

If you commit a second, third, fourth armed robbery or carjacking with a firearm, you face a consecutive (that is, in addition to) mandatory minimum sentence of *25 years in prison for every additional offense*. For example, if you commit three armed robberies or armed carjackings with a firearm, you face a mandatory minimum sentence of *55 years* in prison in addition to sentencing guidelines for the robbery.

VI. POSSESSION OF CERTAIN FIREARMS - 18 U.S.C. §§ 922(o), 922(k), 922(v), 26 U.S.C. § 5861

Maximum Sentence = 10 years without parole

It is unlawful to possess an unregistered machine gun, a firearm with altered or obliterated serial number, a sawed-off shotgun, semi-automatic assault weapons manufactured after September 13, 1994, a firearms silencer, and body armor.

Maximum Sentence = Life without parole

Mandatory Minimum Sentence = 10 years without parole

If during or in furtherance of a serious drug offense or a crime of violence, a person possesses:

– a semi-automatic assault weapon or a sawed-off shotgun, the offender faces a mandatory minimum sentence of *10 years* in prison in addition to the sentence for the drug offense or crime of violence.

– a machine gun or a destructive device, or if the machine gun or destructive device is equipped with a firearms silencer or muffler, the offender faces a mandatory minimum sentence of *30 years* in prison in addition to the sentence for the drug offense or crime of violence.

VII. POSSESSION OF A FIREARM IN A SCHOOL ZONE

Maximum Sentence = 5 Years without parole

NOTE: A firearm is defined as **any weapon** (including a starter gun), which will expel a projectile by means of an explosive or is designed or may be readily converted to do so. This includes the frame or receiver or any such weapon, any firearm muffler or silencer or any destructive device. 18 U.S.C. § 921(a)(3)(4),

When a person receives a federal sentence he or she can be sent to any federal prison in the country. That means they may spend a long time locked up in a place that is far away from their family and friends. If the sentence is a mandatory sentence there is no way to shorten the time.

Illustration

Mr. S was found guilty of selling drugs at age 18. He was placed on probation. When he was 19 he was again found guilty of selling drugs and sentenced to six months in prison. At age 22 Mr. S was convicted of robbery after he threatened his neighbor with a knife and took some money. He went to jail for two years. Upon returning home Mr. S decided to visit his friends on the corner where he used to sell drugs. While there, one of his so-called "friends" hands him a gun and says "you can keep this for protection". What none of them knew was that the corner was under police surveillance. As soon as the police see the gun they come out of hiding and arrest Mr. S.

Mr. S is charged with carrying a firearm without a license, a felony of the 3rd degree. He is, therefore, facing a maximum (the most he could get) of three and one half years to seven years in prison. However, because of Mr. S' record of three prior convictions for drug dealing and robbery, his case is adopted for prosecution in federal court. He is convicted and sentenced to a mandatory sentence of 15 years in prison. He is sent to a prison in Minnesota.

After serving one year, Mr. S decides to turn his life around. He becomes a model prisoner who learns a trade and, on one occasion, provides information to the guards that helps prevent a riot. The guards are so appreciative that they tell Mr. S that he deserves another chance and that he should be allowed to go home. They promise to support him if he ever goes back to court.

Mr. S' lawyer is able to schedule a hearing to see if the judge will release Mr. S. At the hearing Mr. S tells the judge about his progress and his commitment to do the right thing. The guards, as promised, came all the way from Minnesota and tell the judge about the riot Mr. S prevented. They also recommend that Mr. S be allowed to go home.

*The judge looks down at Mr. S and says "I'm glad to hear that you've finally decided to turn your life around. I appreciate what you've accomplished and how you helped prevent the riot in Minnesota. However, **You have 14 more years to serve.**"*

Conspiracy

When a defendant conspires with someone else to commit a crime he may be found guilty of conspiracy and sentenced for conspiracy as a separate charge. Under Pennsylvania's Crimes Code, "[a] person is guilty of conspiracy with another person or persons to commit a crime if with intent of promoting or facilitating its commission he:

- (1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

- (2) agrees to aid such other person or persons in the planning or commission of such crime or an attempt or solicitation to commit such crime.

A person has to perform an overt act, something in pursuit of the conspiracy, in order to be convicted of conspiracy. Watching a robbery victim's movements, when he goes to the bank, would be an overt act. If the overt act can be proven, the defendant will be held liable for everything that happens during the commission of the crime as an accessory. For example, many robbery lookouts wind up being charged with and convicted of murder because someone was killed during the robbery they conspired to commit.

Drug offenses (sale and use)

Before discussing the criminal justice ramifications of drug involvement, consider the health consequences. Billions of dollars a year are spent just on treating the medical complications of addiction. Among the many health consequences of addictions are sudden cardiac arrest, irreversible kidney and liver damage, AIDS, fetal harm and many cancers, including cancers of the lung, bladder, breast, pancreas, larynx, liver and oral cavity. Moreover, people die everyday in this city for no other reason than they put drugs into their bodies. Sometimes, the dead are not much older than the sixth, seventh and eighth grade students learning this curriculum. Finally, if the drugs don't kill you physically they will destroy the way you live your life. Drugs control your day-to-day existence, causing you to do things you would never otherwise do. No one plans on becoming an addict, but once you bring drugs into your life addiction is sure to follow. None of the addicts we see in our neighborhoods planned on living off handouts and living on the streets. Drugs made those decisions for them.

Drug crimes

Drugs are often the driving force behind many other crimes. Users often perpetrate robberies, burglaries and other thefts and drug dealers rob, shoot and kill one another with alarming frequency. The two underlying crimes relate to the use and sale of illegal drugs.

There is a separate set of laws called the Controlled Substance, Drug, Device, and Cosmetic Act (Controlled Substances Act) that establishes which drugs are illegal and the penalties for possessing and selling these drugs. The Controlled Substances Act lists the illegal drugs by schedule and prohibits their possession, sale and manufacture. Drugs such as heroin, marijuana and cocaine are illegal for anyone to possess. Other drugs, like codeine, are legal with a prescription, but illegal without a prescription.

Forfeiture

The law in Pennsylvania allows prosecutors to take property that is used to commit a drug trafficking offense or that is the proceeds of drug trafficking. A car used to transport drugs, a house out of which drugs are sold, the money gained from selling drugs or anything bought with the money may be seized and forfeited to the District Attorney's

Office. Often, when drug dealers are prosecuted, they lose their freedom and their possessions.

Federal penalties for drug offenses

The penalties for drug offenses depend on the kind of drug and the amount possessed. For example, possession with the intent to deliver or delivery of two to ten grams of cocaine or crack cocaine warrants a one-year mandatory sentence with a maximum of ten years in prison. One to five grams of heroin warrants a two-year mandatory sentence with a maximum of fifteen years in prison. Drug dealing is another crime that could result in federal prosecution. Where five grams of crack cocaine would result in a one-year sentence in state court, the federal sentence would be five years in prison.

The difference between state and federal sentencing for crack cocaine has been debated for some time. It is true that longer terms of imprisonment are mandated by federal law than those required under state law when defendants are convicted for selling large amounts of crack cocaine, but maybe crack warrants the stiffer penalties. During the 60s and 70s, drug addicts were a rarity and everyone knew the one or two addicts who walked the neighborhood streets. However, by the late 1980s, overwhelming numbers of emaciated men and women with an appearance not unlike that of the "walking dead" had begun to roam the neighborhood streets all over Philadelphia, day and night, trying to finance their addiction by any means necessary. Street corner retail outlets and the "crack house" phenomenon came into being because of the tremendous demand for crack. Both have affected the quality of life all over our city. The users who frequent these drug establishments often perpetrate property crimes and violent offenses in the surrounding neighborhoods. Crack houses are havens for prostitution and the fencing of stolen goods, and are often characterized by unsanitary conditions, illegal electrical hookups and dilapidated structures. In addition to these dangers are the dangers inherent to drug trafficking in general. Drug wars with their intended and unintended casualties have turned some of our communities into war zones. Finally, we must never overlook the fact that crack is poison. Not only can it kill its user in a physical sense, but spiritually as well. The horror stories about mothers and fathers abusing, selling and/or neglecting their children are all too commonplace.

One opinion would say that crack merits different treatment and whoever decides to sell this poison should know that the penalties might include the prospect of federal prosecution. Federal involvement in both investigating and prosecuting drug crimes has been an important part of the Philadelphia plan of attack. Federal pre-trial detention and the substantial prison terms imposed in federal court have helped to rid our neighborhoods of those who have tried to destroy our communities. The people of Philadelphia are working hard to take back their neighborhoods and the combined efforts of local and federal prosecutors are a necessary part of the struggle.

What do the students think about federal sentences?

What strategies would students implement to end drug sales in Philadelphia?

What can be done to keep people from using illegal drugs?

Offenses committed in school (zero tolerance) Discuss the District Code of Conduct.

Aggravated Assault on School personnel

Aggravated assault is a felony. Simple assault is a misdemeanor. While simple assault requires only bodily injury or an attempt to cause bodily injury, aggravated assault usually involves **serious** bodily or an attempt to cause **serious** bodily injury. However, when the victim is someone given special protection under the law, bodily injury or an attempt to cause bodily injury is enough to warrant the felony charge. Teaching staff are given this special protection.

Terroristic Threats

A person makes a terroristic threat when he or she communicates directly or indirectly to another person(s) that he or she intends to commit a crime of violence with the intent to scare the person(s), cause the evacuation of a building, place of assembly or facility of public transportation or otherwise cause serious public inconvenience. If the threat disrupts operations at a public place, the offense is graded as a felony. Otherwise, the crime is a misdemeanor.

In school cases the prosecution does not have to prove the maker has the ability to carry out the threat or that the person threatened believed the threat or was frightened by it.

Theft

A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, moveable property of another with intent to deprive him of the property or if he unlawfully transfers or exercises unlawful control over, immovable property of another or any interest therein with intent to benefit himself or another not entitled to benefit. The grading of a theft depends upon what is stolen or the value of what is stolen. Theft of a car, motorcycle or firearm is a felony of the 3rd degree. Theft of property valued at over \$2,000.00 is a felony of the 3rd degree.

Auto theft

As stated above, theft of a car or motorcycle (or any motor propelled vehicle) is a felony of the 3rd degree. This crime is given felony status because of the serious impact it has on individuals and our city as a whole. Insurance rates skyrocket because of auto theft. Accidents involving stolen cars result in serious and sometimes fatal injuries to the occupants of the stolen car and innocent drivers and pedestrians. Many of the cars stolen were the sole source of transportation for the owner. Often, because of the high cost of insurance, people can only afford minimum coverage. When someone steals their car, there is no insurance money to replace it. There is no such thing as "joy riding" because auto theft doesn't bring joy to anyone. In 2003 there were 3072 arrests for auto theft in

Philadelphia. Approximately 1131 involved juveniles. Many were placed in juvenile facilities and ordered to pay restitution. Some were sentenced as adults because they severely injured or killed someone and some were sentenced to wheel chairs or the grave because they severely injured or killed themselves.

In addition to being charged with actually stealing the vehicle, someone who drives a vehicle without the consent of the owner can be charged with **unauthorized use of automobiles** and will be guilty of a misdemeanor. If a person acquires an automobile knowing that someone else stole it, he will be charged with **receiving stolen property** and will be guilty of a felony of the 3rd degree.

What can be done to stop auto thefts?

What would you do if a friend drove up in a nice SUV and invited you to go for a ride and you noticed that he was using a screwdriver as a key?

Burglary

A person is guilty of burglary if he enters any structure, vehicle or place adapted for overnight accommodation or carrying on business, with the intent to commit a crime. No one has to be present provided the building or structure is not abandoned.

Robbery

A person is guilty of robbery if, in the course of committing a theft, he inflicts bodily injury or threatens bodily injury or removes property from a person by force however slight. Also, if the threat or infliction of bodily injury occurs while attempting to commit a theft or during flight after committing a theft, robbery will be charged.

John breaks into his neighbor's house believing that the neighbor is away on vacation. His friend, Robert, acts as the lookout while John climbs through a window. The neighbor, however, missed his flight and is at home when John breaks in. The neighbor catches John trying to take a TV set. John punches his neighbor and runs. What can John be charged with? Burglary, attempted theft, conspiracy and robbery.

What can Robert be charged with? Burglary, attempted theft, conspiracy and robbery.

Suppose John broke in just looking for a place to sleep? If there is no intent to commit a crime there is no burglary. However, John may be guilty of criminal trespass which does not require the intent to commit a crime, only the breaking in or sneaking in to a property.

Suppose the property had no windows or doors and had been unoccupied for six years? The property may be legally abandoned and, if that is the case, no burglary has occurred.

Sexual Offenses

The law protects us from unwanted sexual contact with others.
It is a crime to force someone to have sex.

felonies. The offender will then initially have no contact with Juvenile Court though it is possible for him to file a motion to be decertified:

A juvenile will be processed as an adult if he is aged 15 or older at the time of the offense and is charged with:

1. Aggravated Indecent assault.
2. Carjacking
3. Involuntary Deviate Sexual Intercourse
4. Kidnapping
5. Rape
6. Robbery of the first degree
7. Voluntary Manslaughter
8. Conspiracy to commit murder or any of the foregoing

and a deadly weapon is used, or no deadly weapon is used but the defendant was previously adjudicated for any of the above.

Third, Juvenile Court does not have jurisdiction over any offenses committed by a juvenile once he suffers a conviction in Criminal Court. It can be assumed that the legislators reasoned that once an offender had been subjected to the Criminal Court's procedures and sentencing scheme, it would be foolhardy to afford him the protection of the Juvenile Act. Fourth, the Juvenile Court will not extend its jurisdiction to an offender who committed a delinquent act while a juvenile, but either eluded capture or court appearance until after he turned 21. Finally, the Juvenile Court does not have jurisdiction over an offender charged only with a summary offense. However if a juvenile is charged with both summary offenses and delinquent acts, then the Juvenile Court will assume jurisdiction over the entire criminal incident.

Certification

In some cases the District Attorney's Office or the Probation Department, depending on the county, will move to transfer the juvenile to Criminal Court. Certain factors must be present in order for this motion to be made. First the juvenile must be at least 14 years of age at the time of the alleged conduct. Second, the juvenile must be charged with an offense which would be considered a felony if charged in Criminal Court. Third, the District Attorney's Office or the Probation Department, depending on the county, must provide the juvenile, his guardian, and counsel with written notice of the intent to transfer at least three days prior to the hearing. Pursuant to the Victims' Bill of Rights, the victim is also to be notified of such a hearing.

The transfer hearing is divided into two parts. In the first part, the District Attorney's Office puts on a prima facie hearing, establishing that more likely than not a crime has occurred and this juvenile committed it. In the second part the District Attorney conducts a public interest hearing, providing the Court with evidence as to why the juvenile is not amenable, and should be tried in Criminal Court. It should be noted that in some cases the burden actually lies with the juvenile to prove why he should be tried in Juvenile Court. For example if the juvenile is fourteen and charged with committing an

offense at point of deadly weapon, then the Juvenile Court Judge will look to him to prove that society would nonetheless be protected were he to be adjudicated delinquent (as opposed to convicted and sentenced to jail).

Regardless of who bears the burden at the public interest hearing, the Juvenile Court Judge must consider whether society is more likely to be protected if the juvenile stands trial in Juvenile or Criminal Court. The Juvenile Act sets forth several specific factors, which are to aid a Judge in making this decision such as the impact on the victim, the community and the juvenile's level of culpability in the criminal episode. So for example the judge might consider whether a juvenile charged with a gunpoint robbery actually brandished the gun or was merely the get-away driver. The Court is also to consider the juvenile's age, prior attempts at rehabilitation, and the length of time the Juvenile Court System has left to work with the offender. For example, a transfer motion brought against a juvenile age 15 stands in a very different posture from a juvenile age 17 years 11 months. Finally, the Court should consider the resources it has available, and the juvenile's maturity level, criminal sophistication, and mental capacity including whether the juvenile is committable or mentally ill. If the latter is true then the Court will usually deny the District Attorney's transfer motion, allowing the juvenile to move to disposition in Juvenile Court.

Adjudication vs. Conviction

Unlike Criminal Court, a Juvenile Court Judge is charged with the duty of not only finding a juvenile guilty beyond a reasonable doubt but also determining whether the juvenile is in need of **rehabilitation, supervision, and treatment**. The Juvenile Court Judge usually makes this decision after a dispositional hearing. At this hearing the Judge will consider not only the delinquent acts of which the juvenile has been found guilty but also the juvenile's home and school life. Consequently, it is not uncommon for the Court to schedule the dispositional hearing on a date after the adjudicatory hearing in order to provide the Probation Department with the opportunity to prepare reports and to conduct tests on the juvenile. In this way the Court will be able to be fully informed about the juvenile including his behavior at home, at school, and among his peers. How long the Court may delay the dispositional hearing is contingent on the juvenile's custody status. If the juvenile is in custody then his dispositional hearing must be scheduled within 20 days of his being found guilty. It should be noted that the Victims' Bill of Rights provides for victims to be kept apprised of the scheduling of the dispositional hearing.

At the dispositional hearing the Court is to consider evidence of the juvenile's need for rehabilitation, supervision, and treatment. If the Court finds the juvenile guilty of a felony then absent evidence to the contrary, the Court must adjudicate the juvenile delinquent. At the dispositional hearing the Court will usually entertain the recommendations of the District Attorney's Office, the Probation Department and counsel for the juvenile. Additionally, the Victims' Bill of Rights provides for the Court to consider either an oral or written victim impact statement.

If the Court opts not to adjudicate the juvenile delinquent then the juvenile is discharged and the delinquent petition is dismissed. On the other hand, if the Court adjudicates the juvenile delinquent, then there are a variety of dispositional alternatives from which the Court may choose. Unlike Criminal Court, a judge is not limited either to

placing the delinquent on probation or in jail nor must he adhere to sentencing guidelines. Rather, the Juvenile Act mandates the Court fashion a dispositional alternative in keeping with the Juvenile Act's purposes. For example, the Court may order the delinquent to receive drug or alcohol treatment, to participate in sex offender counseling, to complete community service hours, to obtain an education, to pay restitution, fines, or costs, and to stay away from the victim. The Court may place the delinquent on probation or commit him to a delinquent facility. This decision is within the Court's discretion and usually dependent on the delinquent acts committed, the delinquent's prior contacts with the Juvenile Court System, the guardian's ability to control the delinquent inside the home, and the delinquent's home environment. While both commitments to probation and delinquent placement are open-ended contingent on the delinquent's progress, the Juvenile Act limits a court's commitment to 4 years or the sentence the delinquent would have received had he been prosecuted in Criminal Court, whichever is less. Commonly, delinquents remain in placement for anywhere from 9 months to a year. Additionally a delinquent while in placement is entitled to have his progress reviewed periodically. The Victims' Bill of Rights mandates that if a juvenile has been adjudicated of a Priority Crime, then the victim upon request may be kept apprised of all review hearings.

Placement

Delinquents may be committed either to secure or non-secure placements. If a delinquent is placed in a non-secure setting, the placement at its discretion may choose to award the delinquent periodic home passes. It is possible however for the Court to limit the number of home passes the delinquent receives. It should be noted that pursuant to the Victims' Bill of Rights, a victim is entitled to receive upon request not only a juvenile's final disposition but also prior notice of any home passes or discharge from placement. Similarly, a victim may ask to be apprised if a delinquent leaves official detention, fails to return from a home pass, and when he is ultimately apprehended.

School notification

The Probation Department is responsible for notifying the juvenile's school of the delinquent acts he committed and the dispositional order the Court entered. Additionally, if the Court adjudicates the juvenile delinquent of a felony, then the Probation Department is to provide the school with current and former probation and treatment reports. In all instances the Probation Department is to furnish the school with that information deemed necessary for the delinquent's rehabilitation.

Restitution

As part of its dispositional order, a Court may require a delinquent to pay restitution. However the amount a Court orders must be reasonably related to the delinquent's ability to pay, taking into consideration his age, and physical and mental capacity. The Probation Department must supervise the delinquent until he satisfies this restitution order completely. Therefore if the delinquent turns 21 having failed to satisfy an outstanding restitution order, then the Court may order the restitution order reduced to

judgment. The Juvenile Act mandates such reduction if the delinquent had outstanding restitution in excess of \$1000.00. Otherwise, the decision is left to the Court's discretion.

Can parents be held responsible?

A Juvenile Court Judge may extend its dispositional order to the delinquent's parents. For example, the Court may order the delinquent's guardian to perform community service, to attend counseling or educational programs, or to pay restitution.

Admissibility of delinquency record in other proceedings

The fact that a Court has adjudicated a juvenile delinquent is admissible not only in other delinquent proceedings but also in any subsequent Criminal or Civil Court proceedings. Consequently, if the District Attorney or the Probation Department files another delinquent petition against the juvenile then at that petition's dispositional hearing the Court would be able to consider not only that he had been formerly adjudicated delinquent but also whether the disposition ordered as a result of that delinquent petition ultimately effectuated the Juvenile Act's purposes. Additionally a fact finder could be apprised of a delinquent's history at a subsequent hearing in Juvenile, Criminal, or Civil Court if the delinquent sought to testify and had been adjudged delinquent of a delinquent act considered by the courts to bear on one's credibility. Finally, if the delinquent was arrested and convicted in Criminal Court, then the Criminal Court Judge would be able to consider his juvenile record at time of sentencing.

Scenarios

1. *13 year old Spike takes Timmy's brand new bike from in front of Timmy's house. Spike lives 3 doors down. A neighbor from across the street sees the theft and reports it to the police. When confronted by the police Spike admits everything and returns the bike. What do we do with Spike?*
 - a. **If Spike was never arrested the police officer may decide to forego an arrest and leave it to Spike's parents to handle the situation. This is referred to as remedial intervention.**

2. *15 year old Spike is caught with \$200.00 worth of stolen sneakers.*
 - a. **Spike may be given the option of participating with the Youth Aid Panels (YAP). The panels are made up of volunteers from the community. The panel will enter into a contract with Spike requiring that he pay restitution, attend school, do community service, etc. If Spike complies, he will not be prosecuted.**

3. *15 year old Spike is caught riding in a stolen car. He is not enrolled in school and his parents have never appeared with him at any proceedings.*

- a. **The court might consider a Consent decree with up to six months of probation supervision. If Spike successfully completes the probation the charges will be dismissed.**
 - b. **Restitution may be included to make the victim financially whole.**
 - c. **Failure to successfully complete the probation results in prosecution of the case.**
 - d. **Spikes parents may be ordered to attend counseling.**
4. *15 year old Spike is caught driving a stolen car with a loaded gun on the front seat.*
- a. **An adjudicatory hearing would be held absent an admission to the charges. There is no right to a jury for juveniles, but all the other rights of a trial, such as the right to cross-examine the Commonwealth's witnesses and to present a defense, are available.**
 - b. **Probation with participation in Don't Fall Down in the Hood, a special program for firearms cases. Residential placement may be considered at facilities such as the Glen Mills School or St. Gabriel's which are open settings to secure placements like New Castle and South Mountain.**
5. *15 year old Spike knocks Timmy off of his bike, punches and kicks him repeatedly while he's on the ground and then rides off on Timmy's bike.*
- a. **If this is Spike's second F1 robbery it is a Direct File case.**
 - b. **If Spike used a gun it would a Direct File case.**
 - c. **If Spike had previously been adjudicated delinquent 5 times and placed twice, Certification would be considered.**

RETI-WRAP (Re-entry Transition Initiative – Welcome Return Assessment Process): In 2002, Pennsylvania enacted legislation requiring that no Philadelphia student returning from placement as a result of being adjudicated delinquent or convicted of a crime as an adult can be returned directly to the regular classroom. Prior to returning any such student to the regular classroom, the school district shall:

- (1) place the student in a transition center operated by the school district for a period not to exceed four (4) weeks.
- (2) develop a transition plan for the student that includes academic goals, identifies school and community services appropriate to the needs of the student and establishes terms and conditions the student must meet prior to returning to the regular classroom.

Philadelphia's transitional program, RETI-WRAP, is not a response to the legislation although it satisfies the legislative mandate. Even before the introduction of the law, Philadelphia's juvenile justice stakeholders, including the District Attorney's Office, had developed RETI-WRAP as a transitional program for returning students. Moreover, all of the stakeholders, including the DAs Office, continue to be involved in

monitoring the performance of RETI-WRAP as active members of the School District Coordinating Committee.

CONCLUSION

By teaching young people about the realities of the system it is hoped that they might develop **coping skills for avoiding negative influences**. Suggestions include:

- engage in pro-social activities,
- choose peers wisely/avoid joining a gang
- refrain from using alcohol or drugs
- refrain from selling drugs, gambling, riding in stolen cars, etc.
- seek positive role models, activities and situations

However, we need to hear from students as to what their understanding of crime is. Let's ask them:

- Why Do People Commit Crime? Do rap music, video games, movies, etc. influence criminal conduct? Are economic conditions the main factor? (essays, panel discussions)
- How can we reduce crime? (essays, panel discussions)

The District Attorney's Office, Defender Association, U.S. Attorney's Office, Pennsylvania Attorney General's Office, Police Department, Mayor's Office of Community Service and others interface with the schools through various programs. These efforts are not, however, coordinated in a way that insures that all of Philadelphia's public schools have access to the presentations or that the same information is presented. The proposed curriculum would create a schedule for presentations and clarity regarding the subject matter presented. Teachers will have to convey the bulk of the material because the agencies mentioned cannot be relied upon to teach the curriculum. However, with proper planning, I believe the aforementioned agencies can provide the necessary support. Often, when representatives from law enforcement, etc. visit a school we usually address a large assembly. We try to impart some wisdom and some information, but there is no opportunity for any real interaction or follow up. I anticipate that even with the implementation of the curriculum, some large gatherings or video presentations over the District's TV network will still be necessary to give all students the opportunity to hear some speakers (panelists or lecturers), but the presentations will be followed by class discussions, testing and/or essays to insure that students absorbed the information. To put it in the vernacular of students, the information from the assembly or video will be "on the test". Law enforcement, etc. will have to work to make sure that presentations are insightful and interesting. (Feedback from teachers and students will help in this regard). Similarly, victim groups, the Medical Examiner's office, Judges, the Defender Association, etc. will be coordinated to maximize the impact of their presentations.

George D. Mosee, Jr., Deputy District Attorney, July 1, 2004
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