

## 5.1 Overview

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### A. Role of the Juvenile Court Counselor

A juvenile court counselor must evaluate each complaint received alleging that a juvenile has committed a delinquent act. The juvenile court counselor then decides whether the complaint will be filed as a juvenile court petition or will be diverted from the court system. Because there is no magistrate or district attorney involved in this initial determination, the juvenile court counselor serves as the gatekeeper to the juvenile justice system.

The juvenile court counselor first evaluates the complaint to determine whether the allegations, if true, would constitute a delinquent act. If the allegations are not legally sufficient, the counselor should not approve the filing of a juvenile court petition. If the allegations are legally sufficient and constitute a *nondivertible* offense, a juvenile court petition must be filed. *See infra* “Nondivertible and divertible offenses” in § 5.3A, Preliminary Inquiry. If the allegations are legally sufficient but constitute a *divertible* offense, the juvenile court counselor decides whether a juvenile petition should be filed or whether the matter can be diverted from the juvenile court system through referral to community services.

### B. Importance to Juvenile's Counsel

Although the decision whether to file a juvenile petition is crucial, the juvenile has no right to an attorney at this stage of the process. An understanding of intake and diversion, however, is often necessary for the juvenile's attorney to provide effective representation. Because only the juvenile court counselor has the authority to divert cases from court, counsel should be prepared to use any opportunity that might lead to diversion and a non-judicial resolution of the case.

First, counsel might be involved at the intake stage if privately retained or through prior appointment for the juvenile on another case. Counsel should advise the client on strategies most likely to lead to diversion and should participate in the intake interview if allowed. Second, if intake did not occur because of a missed appointment or similar circumstance, counsel should try to convince the juvenile court counselor or the court that the juvenile should have an intake evaluation that could lead to diversion. Finally, an offense initially deemed nondivertible by the juvenile court counselor might actually be divertible and the juvenile may still be eligible for an intake evaluation. *See infra* “Nondivertible and divertible offenses” in § 5.3A, Preliminary Inquiry.