

# PENNSYLVANIA



## An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings

**American Bar Association Juvenile Justice Center**

*and the*

**Juvenile Law Center**

*in collaboration with*

**National Juvenile Defender Center**

**Northeast Juvenile Defender Center**

## **American Bar Association Juvenile Justice Center**

The American Bar Association's commitment to improving the nation's juvenile justice system spans well over two decades. Beginning in the early 1970's with the creation of the comprehensive, twenty-four volume set of IJA/ABA Juvenile Justice Standards, the ABA has been a central voice in promoting thoughtful and balanced juvenile justice system reform. The Juvenile Justice Center seeks to disseminate relevant and timely information, provide training, technical assistance, research, model program design, standards implementation, and advocacy. The Juvenile Justice Center responds to a vast assortment of issues and provides guidance to state and local bar associations, juvenile defense attorneys, prosecutors and judges, youth workers, legislators and policymakers. The Center created the National Juvenile Defender Center in 1998. The Center, and its active Juvenile Justice Committee, are housed with the ABA's Criminal Justice Section.

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The Project Team

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# EXECUTIVE SUMMARY

There are more than 40,000 children involved in delinquency proceedings in the Commonwealth of Pennsylvania. Since 1972, state law has provided that each of these children is entitled to an attorney at every stage of the delinquency process. Despite this legal mandate, there are serious deficiencies in the delivery of indigent defense to accused and adjudicated youth. The availability and quality of defense representation varies widely across the Commonwealth. In failing to render effective advocacy, a system cannot protect individual rights, provide rehabilitation, or effectively hold youth accountable for their actions.

In 1995, a national assessment of the legal representation of children in delinquency proceedings was conducted by the American Bar Association (ABA) Juvenile Justice Center, Youth Law Center (YLC) and Juvenile Law Center (JLC). The findings—that indigent juvenile defense was woefully inadequate—were published in *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*. *A Call for Justice* laid the foundation for closer examination of the juvenile indigent defense systems in individual states.

This assessment of access to counsel and quality of representation that children receive in delinquency proceedings in the Commonwealth of Pennsylvania is thus part of a nationwide effort to address deficiencies and identify strengths in juvenile indigent defense practices. The purpose of this assessment is to take a closer look at juvenile defense practices in Pennsylvania, identify the systemic and institutional barriers that impede the development of an improved legal service delivery system, highlight innovative practices and offer recommendations for change. In 2002, Juvenile Law Center and the American Bar Association Juvenile Justice Center jointly initiated the first Pennsylvania-specific survey of lawyers representing delinquent children to gain a better understanding of how the Juvenile Act's requirement was being met—and practiced—in delinquency courtrooms around the state.

Juvenile Law Center and the ABA Juvenile Justice Center hope that this project—the most comprehensive of its kind ever undertaken in Pennsylvania—will raise the quality of representation for children by fostering a climate in which children will be routinely represented by highly skilled, well-

resourced, dedicated, and effective attorneys who understand the importance of their role in promoting and protecting children's legal rights and well-being.

In measuring delinquency court practice in Pennsylvania, we used as benchmarks the Institute for Judicial Administration/American Bar Association Juvenile Justice Standards Relating to Counsel for Private Parties (*IJA/ABA Juvenile Justice Standards*). These standards, adopted by the ABA in 1979 and 1980, are the preeminent code guiding the behavior of attorneys who represent children in delinquency proceedings. The standards delineate children's attorneys' basic obligations to their clients.

The survey results, combined with observations in delinquency courtrooms across the state, reveal that most attorneys who represent delinquent children are not meeting the *IJA/ABA Juvenile Justice Standards*. Ineffective advocacy results in children being subjected to inappropriate interventions. Where effective advocacy occurs, it strengthens the core values of juvenile justice system—treatment and rehabilitation—and promotes public safety.

## STUDY OVERVIEW

This report has several sections. The Introduction examines the practical importance of lawyers for children in delinquency proceedings, and Chapter One describes the structure and key organizations in the Commonwealth's juvenile justice system.

Chapter Two describes the role of defense counsel at each major stage of a delinquency case. It illustrates the process and complexities of representation in juvenile court. *IJA/ABA Juvenile Justice Standards* for counsel representing juveniles are referenced, as well as Pennsylvania statutory requirements.

Chapter Three highlights survey data collected from attorneys around the state. These self-reported practices are compared to the *IJA/ABA Juvenile Justice Standards*. The analysis of the survey data is complemented by information that investigators collected during site visits to 17 of Pennsylvania's 67 counties.

Chapter Four presents promising approaches. During site visits, investigators observed individual defenders who were not only articulate and well prepared in delinquency court, but the children they represented were engaged and demonstrated an understanding of the court process. These attorneys developed creative strategies for trial and disposition.

Chapter Five offers recommendations for improving access to counsel and quality of representation.

## MAJOR FINDINGS

### I. Barriers to Providing Juvenile Defense Services

Pennsylvania does not have a uniform system for providing indigent defense to children and youth in the juvenile justice system. As with adults, each of the 67 counties in the state bears sole responsibility for devising and implementing its system for the appointment of counsel. Pennsylvania provides neither state funding for, nor statewide oversight of, indigent defender services. Lacking resources, time and training, the majority of defense lawyers representing indigent persons, including children, do not confer with their

clients in a meaningful manner, research relevant case law, review files, conduct necessary pre-trial investigations, secure necessary expert assistance, or prepare adequately for hearings, dispositions and appeals.

### ***Pennsylvania's Indigent Juvenile Defense System is Characterized by a Lack of Standards & Accountability***

One of the biggest challenges confronting this study was the lack of data collection, maintenance, and reporting by county defender offices. Pennsylvania, as a whole, has no systemic data collection about indigent defense, including juvenile representation. While district attorneys and juvenile courts generally track case-specific information, public defender offices have few, if any, reporting requirements. Many juvenile defenders, when asked, could only give rough estimates of their caseloads and none could provide specific data regarding: race and gender of juveniles served; types of offenses; numbers of juveniles diverted; numbers of motions and appeals filed; or numbers of adjudications or dismissals. During site visits, juvenile defenders repeatedly mentioned that they need an improved system for tracking statistics of the number of cases and outcomes.

### ***Indigent Defense Receives Inadequate Resources To Provide Adequate Representation***

Support services, such as investigators and expert witnesses, are essential to quality representation. Without investigation and preparation, adequate representation cannot be assured, however competent counsel may be. Nearly 60% of juvenile defenders say that lack of support services limited their ability to effectively represent juveniles. Assessment investigators observed a wide disparity of resources among county defender offices. These differences, however, were overshadowed by the resource disparity with prosecutors' offices. Seventy-one percent of juvenile defenders described themselves as having worse resources than local prosecutors.

Assessment investigators confirmed a tremendous difference between the resources available to the prosecution and to indigent defense attorneys in terms of investigators, technology and other critical resources.

## **II. Barriers Limiting Access to Counsel**

### ***Excessive Caseloads Prevent Lawyers from Having Meaningful Contact with Their Clients***

Juvenile defense attorneys across Pennsylvania report a wide range of caseloads, from a low of one to a high of slightly more than 620. In general, lawyers for juveniles in public defender offices are in more populated counties; their average caseloads are larger and, more likely, overwhelming. A majority of the public defender offices report that caseload pressures limit their ability to represent juvenile clients effectively: 27% say caseload pressures limit their ability "severely" or "considerably," another 33% say they "somewhat" limit their ability to provide representation.

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*Support services, such as investigators and expert witnesses, are essential to quality representation.*

### *Children Frequently Waive the Right to Counsel*

In spite of the law's clear mandate for counsel and the harmful consequences of not having a lawyer, there is a high incidence of children waiving the right to counsel. In 2001, legal representation was waived in 11% of all delinquency dispositions involving hearings, including some of the most critical proceedings affecting a child's liberty interests. For example, in some cases youth were unrepresented during judicial waiver, that is during hearings at which a juvenile court judge, after hearing evidence, transferred youth from juvenile to adult criminal court. This practice is particularly alarming because it can result in youths' criminal incarceration in the most restrictive circumstances—adult jails and prisons.

### *The Timing and Manner of Appointing Counsel Impairs Representation of Juveniles*

Pennsylvania does not have a uniform system for assigning counsel to accused juveniles. Each county develops its own process without state oversight. In one county, for instance, the parent of an accused juvenile must apply in person at the public defender's office. Juveniles whose parents fail to apply are usually assigned counsel moments before the adjudicatory hearing. By contrast, in another county, counsel is assigned far earlier—prior to a juvenile's intake interview with juvenile probation.

When accused youth request an attorney, guidelines to determine indigence, and, therefore, eligibility for court-appointed counsel, also vary from county to county. When youth request counsel, some county defender offices require the parent to complete a form. Unfortunately, this form, designed for adult indigence determinations, is rarely adapted for juveniles.

### *In Some Counties, There Are Fundamental Deficiencies in the Treatment of Juveniles With Limited English Proficiency*

The Commonwealth now has substantial communities of recent immigrants and many of these communities are growing rapidly. Latinos and Latinas are the largest group of people with limited English proficiency.

Despite the obvious need for culturally sensitive interpretation and written translation assistance to persons with limited English proficiency, Pennsylvania has no statewide system for providing interpreter services in court proceedings. Further, Pennsylvania has no system for certifying the competence of interpreters in any language. The absence of both undermines the ability of the Pennsylvania court system to determine facts accurately and to dispense justice fairly.

The problem of access to competent interpreter services is especially pronounced in juvenile court, where the child, who is the defendant, is often placed in the position of interpreting the proceedings for his or her parents.

### **III. Barriers to Effective Practice**

Unfortunately, excellent representation was not widespread across Pennsylvania. Attorneys candidly disclosed their own ineffectiveness in representing

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accused and adjudicated youth, and in the majority of sample counties, assessment investigators noted widely varying levels of advocacy. What was likewise apparent from interviews of defense attorneys is that many care deeply about the youth they represent, but know little about adolescent development and are not trained to consider degrees of culpability in delinquent behavior. Virtually every assessment investigator reported that pre-trial, disposition and appellate advocacy was non-existent in the jurisdictions they visited.

### ***The Level of Defense Advocacy for Accused Youth at Detention Hearings Was Consistently Poor***

One of the more vexing problems at detention hearings is the lack of inquiry into the sufficiency of the charges against juveniles. In Pennsylvania the purpose of the detention hearing is to determine, among other things, “whether *probable cause* exists that the child has committed a delinquent act.” However, a quarter of juvenile defenders reported probable cause findings are not made at detention hearings; and, according to assessment investigators, this was an under-reported figure.

With few exceptions, juvenile defenders were not involved, in any systemic way, in meeting with county policy-makers (e.g., county commissioners, probation, court administration) about detention center admissions policies or conditions of confinement. Several defenders were unaware of their detention center’s daily population or whether it exceeded its licensed capacity. This is particularly disturbing given that overcrowding in juvenile detention facilities has been a historic problem in some counties. In 2001, 10 of the state’s 23 juvenile detention facilities had average daily populations that exceeded their licensed capacities.

### ***In Most Counties Defense Counsel Seldom Seek Discovery, File Pre-Trial Motions or Go to Trial***

Public defenders in counties with high volume were seen as knowledgeable, but also with having too many cases to be adequately prepared. Apart from discovery requests, only 1% of court-appointed counsel reported regularly filing pre-trial motions. Put differently, 99% said they file pre-trial motions (e.g., suppression of evidence or violation of *Miranda* rights) “sometimes,” “rarely,” or “never.” The most common reason for limited motion practice expressed by defense attorneys was time constraints, followed by the informality of the process.

### ***At Disposition Hearings, Most Defense Attorneys Are Not Effectively Protecting Their Clients’ Rights and Advocating for Their Treatment Needs***

Among the self-reported steps taken by juvenile defenders preparing for disposition hearings, less than half usually prepare witnesses (e.g., the youth or the youth’s family) for disposition hearings, and the majority (52%) do so “rarely,” or “never.” Less than one-third of the respondents usually investigate alternative placements for juveniles at risk of placement. And 20% of defenders reported not even reading court-ordered evaluations or assessments.

Site visits confirmed that many juvenile defenders are unfamiliar with various disposition programs to which their clients are referred, their goals and

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philosophies, the funding mechanisms that drive them, and their record of effectiveness with various kinds of offenses. With two notable exceptions, no person in the defender offices we visited had toured juvenile disposition programs outside their locales to speak with program operators or youth.

The quality of attorney representation at dispositions for court-involved youth in need of therapeutic intervention is especially vexing. The non-adversarial nature of the juvenile defenders' in-court relationships with probation deserves special mention. With few exceptions, defenders did not challenge the accuracy, credibility, and weight of probation reports for juveniles needing mental health treatment, drug and alcohol dependent youth, or youth adjudicated delinquent for arson or sex offenses.

### ***Post-Disposition Representation of Adjudicated Youth Is Virtually Non-Existent***

The quality of representation for *committed* youth is also minimal. In Pennsylvania, juvenile courts must hold routine disposition review hearings to keep track of juveniles placed in residential facilities. Of the 40 public defender offices that confirmed representing youth at disposition reviews, only 9% usually interview the youth before the hearing, while slightly more usually review the treatment reports (26%), and 15% routinely interview probation officers before the review hearing. None of the respondents routinely interview treatment staff. With one exception, no one from these offices writes, telephones or visits committed youth. "We don't have the time or budget, so we rely on juvenile probation to visit clients and report to the court," said one defender.

The failure of attorneys to be present and prepared for review hearings for committed youth is a serious problem. Attorneys simply do not monitor their clients' progress in programs or institutional placements, assure that the services ordered by the courts are provided, or confirm that conditions in programs and institutions are lawful.

Appeals from juvenile delinquency dispositions are rare in Pennsylvania. Like adult criminal appeals, most juvenile appeals are brought by the county public defender's office or its equivalent. However, although 68% of defender offices with caseloads in excess of 20 did not file a single appeal on behalf of adjudicated juveniles, the same organizations file many appeals for their adult clients. In 2001, the Pennsylvania Superior Court—the intermediate appellate court—issued seven published opinions reviewing challenges brought by adjudicated youth. The same court issued approximately 150 published opinions reviewing challenges to criminal court convictions and sentences. Moreover, the Superior Court issued almost 30 decisions in *habeas* petitions brought by adults challenging terms and conditions of their confinement under the post-conviction relief act, and issued none in juvenile matters.

### ***Kids are Different: Juvenile Defense Work is Rarely Informed by Knowledge of Adolescent Development***

An extraordinarily high number of children in the juvenile justice system have mental health or learning needs that affect their ability to assist defense counsel. Moreover, children grow, develop, and learn at different rates: twelve-

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year-olds are different from 16-year-olds. However, training for defenders about mental health or adolescent development is relatively non-existent. Eight of ten lawyers in public defender offices reported receiving no training about child development, despite common knowledge that having children as clients poses particular challenges.

There are no delinquency-exclusive training programs for juvenile defenders across the state, although Pennsylvania lawyers are annually mandated by the state Supreme Court to participate in Continuing Legal Education (CLE). The Pennsylvania Bar Institute, the leading provider of CLE programs, offers a semi-annual training about child advocacy, but this is directed primarily at dependency court practice. Significantly, the ABA Juvenile Justice Center developed a training curriculum that applies the findings of adolescent development research to practice issues, but Pennsylvania has no delivery system for the curriculum.

Several areas of training for juvenile defenders suggested by assessment investigators and noted routinely in interviews with judges and probation officers include interviewing and counseling court-involved adolescents; understanding mental health assessments and treatment; drug and alcohol-dependent juveniles; and basic and special education.

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#### **IV. Barriers to Fairness**

##### ***Remnants of Parens Patriae Prevents Fair Adjudicatory Hearings***

More than three decades after *In re Gault* guaranteed that juvenile courts would provide meaningful hearings to youth, many children do not receive fair trials. Assessment investigators identified several aspects of the adjudicatory hearing as compromising justice: decision makers routinely review youth's school records or probation officers' social reports prior to or during trial; defense counsel do not insist on adherence to rules of evidence or proof "beyond a reasonable doubt" for adjudication; and, hearings are often too brief, too confused, or too treatment oriented.

##### ***Over-Dependence on Juvenile Probation Undermines Fairness***

While assessment investigators interviewed many competent and caring probation officers, the system's over-dependence on their role has tipped the scales toward a "best interest" system in delinquency cases in lieu of a system that demands the Commonwealth prove its case. Interestingly, several chief juvenile probation officers interviewed acknowledged their undue influence with judges, prosecutors, youth and families. These same leaders appreciated the adversarial framework because it "preserved balance" and "checked" their power. But, inadequate representation of juveniles by defense counsel distorts that influence, making it bigger than it should be.

#### **CONCLUSIONS AND RECOMMENDATIONS**

To guarantee fair and effective representation to all juveniles through all phases of the delinquency process, the Commonwealth, including its judicial districts and counties, must increase resources for juvenile defenders and

improve quality of representation at detention, trial, disposition and post-disposition. Moreover, juvenile defenders must become more proactive in addressing systemic juvenile justice issues across the Commonwealth of Pennsylvania. The conclusions below are followed by specific recommendations to the relevant entities charged with the responsibility of providing just and fair treatment to Pennsylvania's youth.

- *The Commonwealth, judicial districts and counties should ensure that sufficient resources are available to increase the number of attorneys representing juveniles in delinquency proceedings and increase the availability of non-lawyer support—including, paralegals, social workers, investigators and experts.*
- *The juvenile defense system should receive sufficient funds to adequately compensate court-appointed counsel. It is in children's interests that their attorneys be paid enough to do their jobs.*
- *Attorneys representing youth in delinquency proceedings should receive training in trial advocacy skills, as well as comprehensive and on-going training on: adolescent development; communicating with adolescent clients, witnesses and victims; elements of effective treatment programs, especially for youth with special needs; evaluating youth competence; and representation in collateral legal matters including child welfare, education and mental health.*
- *Caseloads should be low enough to permit every attorney to offer prompt, full and effective counseling and representation to each client. Caseloads must be fixed at levels which will not compel lawyers to forgo investigations required in both contested and uncontested cases, to be less than diligent in preparation for trial, or to cease representation at disposition.*
- *Courts and state/county bar associations should use their authority to adopt, or urge the adoption of the IJA/ABA Juvenile Justice Standards for representation of delinquent youth in juvenile court.*
- *Juvenile defenders should increase their communication with their counterparts across the state about juvenile court practice.*

## **Commonwealth**

### ***The Executive Branch Should:***

- a) Adopt the recommendation in the 2003 Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System to establish an independent, state-level Indigent Defense Commission to oversee the delivery of defense services, including juvenile defense, and promulgate uniform, effective minimum standards.
- b) Through the Pennsylvania Department of Public Welfare (DPW), clarify that counties can seek state reimbursement through the needs-based budgeting process for the cost of court-appointed

counsel for delinquent youth. DPW should also develop guidelines for county juvenile courts to work with their county Children and Youth Service agency administrators to include court-appointed counsel fees and related services in the annual county needs-based budget. DPW should clarify that there are circumstances in which IV-E administrative costs would be available for eligible delinquent youth.

- c) Through DPW, regularly communicate with juvenile defenders about the performance of public and private provider services to delinquent youth. DPW should notify juvenile defenders of public and private delinquency programs operating under provisional licenses.
- d) Through the Pennsylvania Commission on Crime and Delinquency, continue and expand the availability of juvenile defense capacity building grants.
- e) Through the Juvenile Court Judges' Commission (JCJC), continue to encourage juvenile court judges to provide community leadership by participating in the county budget process to advocate for sufficient funding for indigent juvenile defense.
- f) Through JCJC's Center for Juvenile Justice Training and Research, include juvenile defenders in training programs for juvenile court judges and probation officers.

#### ***The Supreme Court of Pennsylvania Should:***

- a) Adopt standards for defense attorneys representing children in delinquency proceedings that establish guidelines for maximum caseloads and minimum compensation levels, allowing counsel to perform in a competent manner.
- b) Direct the Administrative Office of Pennsylvania Courts to track and publish the scope and frequency of delinquency appeals, separate from the appellate docket for adult criminal matters.
- c) Adopt the recommendations of the Juvenile Court Procedural Rules Committee for statewide rules of practice and procedure for juvenile court practice to the extent that they are consistent with the findings of this report.

#### **Counties**

##### ***Juvenile Courts Should:***

- a) Ensure that no juvenile goes unrepresented at any stage of the juvenile court process, and presume the indigence of children for the purposes of appointment of counsel.
- b) Take leadership to ensure that counsel representing juveniles are appropriately trained and adequately compensated and that minimum standards are met. Judges should raise the overall quality of

representation of the attorneys who appear before them by demanding that they meet the *IJA/ABA Juvenile Justice Standards*.

- c) Sponsor cross-discipline trainings for the county's juvenile justice professionals—including judges, prosecutors, defenders and probation staff—that apply the findings of adolescent development research to practice issues confronted by these juvenile court practitioners.

***Juvenile Probation Officers Should:***

Be responsive to the inquiries of juvenile defenders and engage juvenile defenders in regular, on-going communication throughout the delinquency process—from intake to post-disposition review.

***Public Defender Offices Should:***

- a) Negotiate contracts with county commissioners and/or judicial districts that permit them to refuse to accept cases that rise above their capacity to provide prompt, full and effective counseling to each client.
- b) Ensure that juvenile defenders have the resources available to investigate and prepare cases properly from commencement through appeal, including access to needed social workers, investigators, experts and interpreters.
- c) Ensure that all juvenile defenders receive regular, on-going and comprehensive training and supervision.
- d) Encourage attorneys to specialize in juvenile defender work and eliminate any promotional or other office policies that act as barriers to remaining in such work.
- e) Develop a strong post-disposition practice by: remaining actively involved after disposition to ensure that juveniles receive appropriate treatment services; take steps to improve unacceptable and unlawful conditions in facilities where clients are confined; and counsel juveniles on the full extent of their post-trial rights and responsibilities.
- f) Maintain accurate data on caseloads, outcomes and other juvenile justice information essential to effective planning and evaluation of services.
- g) Participate in national and statewide associations such as the Northeast Regional Defender Center (of the National Juvenile Defender Center) or the Pennsylvania Association of Criminal Defense Lawyers (PACDL) to exchange information about a variety of juvenile topics, including other defender assessments and the performance of various public and private treatment programs for delinquent youth.

***The Pennsylvania and Local Bar Associations Should:***

Become advocates for indigent defenders representing accused and adjudicated youth by supporting the above recommendations and by adopting policies that will promote their implementation.



# INTRODUCTION

This assessment of access to counsel and quality of representation in Pennsylvania delinquency proceedings is part of a national undertaking to review indigent defense delivery systems and to evaluate how effectively attorneys in juvenile court are fulfilling constitutional and statutory obligations to their clients. This study is designed to provide information about the role of defense counsel and the delinquency system, identify structural or systemic barriers to more effective representation of youth, identify and highlight promising practices within the system, and make viable recommendations for ways in which to improve the delivery of defender services for youth in the justice system.

There has never been a comprehensive statewide study of indigent juvenile defense services in Pennsylvania, but the Pennsylvania Supreme Court Committee of Racial and Gender Bias in the Justice System recently reported serious quality deficiencies for criminal defense services and severe under-funding of public defender services. Pennsylvania, South Dakota and Utah are the only three states that provide no state funds to ensure that indigent individuals—adults and juveniles—are afforded adequate defense services. In the absence of state support and oversight, counties alone bear the responsibility for providing these services.

## Counsel's Role in Ensuring Due Process

*At their best, lawyers are more than just legal advocates; they are problem-solvers with the skills and tools to help connect their clients and their families with needed services and support before, during and after legal hearings that focus attention on a child. They are able to develop rapport with the child, explain the legal process in a developmentally appropriate way, and provide the court and involved agencies with the child's unique perspective, remaining in the case while other adults may come and go. The child's lawyer may become the only consistent institutional memory of the minor's case, having a broad view of the child's history and legal needs.<sup>1</sup>*

*Young people are liable to overestimate their own understanding of a situation, underestimate the probability of negative outcomes, and make judgments based on incorrect or incomplete information.*

*In addition to protecting the liberty interests of their accused clients, well-trained and well-resourced defenders also enhance the overall functioning of the juvenile justice system.*

Lack of legal counsel is particularly devastating to children who cannot express their own views and may not fully understand the decisions they are making. Children and adolescents are not just little adults. Although young people can approach decisions in a manner similar to adults under some circumstances, many decisions that juveniles make involve unfamiliar tasks, choices with uncertain outcomes, and ambiguous circumstances. Young people are liable to overestimate their own understanding of a situation, underestimate the probability of negative outcomes, and make judgments based on incorrect or incomplete information. Although adults are also prone to these misperceptions, juveniles' lack of experience increases their vulnerability.

Further, even juveniles who are represented may have lawyers who are not sufficiently knowledgeable about their developmental and linguistic limitations to communicate effectively with them. Lawyers may actually compromise the client's case by arguing against the child's own wishes or by failing to convey the juvenile's perspective to the court, providing the child with only the illusion of representation.

Recent legislative trends at the state and federal levels have exacerbated the problems associated with inadequate representation. In 1995, Pennsylvania adopted amendments to the state's Juvenile Act, 42 Pa. Cons. Stat. § 6301 *et seq.* (the Act), which significantly altered the operation and purpose of Pennsylvania's juvenile courts. Juveniles in Pennsylvania's delinquency system are now subject to increasingly harsher penalties at younger and younger ages, and the protections afforded by judicial discretion, procedural requirements and confidentiality have been eroded. The impact of juvenile court adjudication can be long lasting. Some of the collateral consequences youth face in the short term include transmission of delinquency information to a child's public or private school, and, in some instances, transfer of a juvenile to a disciplinary school.<sup>2</sup>

In addition to protecting the liberty interests of their accused clients, well-trained and well-resourced defenders also enhance the overall functioning of the juvenile justice system. With the extraordinarily high number of youth in the justice system with mental health or special learning needs, defender assistance in suggesting effective treatment programs and monitoring the adequacy of rehabilitative services is essential. A number of studies of youth in the juvenile justice system have found psychiatric disorders to be three to five times higher than in the general population of young people. Many children and adolescents in the juvenile justice system have fared poorly in school and have significant educational needs.

Moreover, defense representation at disposition and post-disposition can ensure that youth fully understand and participate in all phases of the justice system, including rehabilitation. "The [adjudicated] child who feels that he has been dealt with fairly and not merely expeditiously or speedily as possible will be a better prospect for rehabilitation."<sup>3</sup>

### ***Gault* and Its Impact on Efforts to Ensure Due Process in Delinquency Proceedings**

In a series of cases decided more than thirty years ago, the United States Supreme Court recognized a juvenile's right to be tried fairly,<sup>4</sup> including the right to the assistance of counsel to submit a defense. In the most sweeping of

these cases, *In re Gault*,<sup>5</sup> Gerald Gault was brought before a juvenile court judge without notice of the charges against him and without a lawyer. His accuser—his neighbor—never appeared in court, but testimony was given by the arresting officer, who described what the neighbor had told him. Gault was charged with making lewd phone calls.

For an offense for which an adult could have received a fine of not more than fifty dollars or more than two months in jail, the juvenile court committed Gerald Gault to the Arizona State Industrial School for up to six years. He challenged his adjudication of delinquency, and the U.S. Supreme Court held that the Fourteenth Amendment's Due Process clause applied to children. The Court held that in the context of adjudications of delinquency, children were persons within the meaning of the Fourteenth Amendment, and that no state could deprive them of liberty without due process of law. This meant that at trial juveniles had a right to notice of the charges, a right to counsel, and a right to confront witnesses against them.

In establishing a constitutional right to appointed counsel for juveniles, the Supreme Court rejected arguments that probation officers or the juvenile court itself could appropriately represent a child. Given the "awesome prospect" of incarceration up to the age of majority, the Court found that an accused juvenile is entitled to an attorney "to make skilled inquiry into the facts, to insist upon the regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it."<sup>6</sup> In addressing the argument that bringing lawyers into juvenile proceedings would destroy the informality of the proceedings, the Court turned to the Report of the President's Commission on Law Enforcement and the Administration of Justice, *The Challenge of Crime in a Free Society* (1967):

*Informality is often abused. The juvenile courts deal with cases in which facts are disputed and in which, therefore, rules of evidence, confrontation of witnesses, and other adversary procedures are called for... [J]uveniles often need the same safeguards that are granted to adults. And in all cases children need advocates to speak for them and guard their interests, particularly when disposition decisions are made. It is the disposition stage at which the opportunity arises to offer individualized treatment plans and in which the danger inheres that the court's coercive power will be applied without adequate knowledge of the circumstances.*

*Fears also have been expressed that the formality lawyers would bring into juvenile court would defeat the therapeutic aims of the court. But informality has no necessary connection with therapy ....<sup>7</sup>*

Congress expressed similar concern over the need to safeguard children's rights when it enacted the Juvenile Justice and Delinquency Prevention Act (JJDP) in 1974.<sup>8</sup> The Congressional statement of findings specifically observed that "understaffed, overcrowded juvenile courts, probation services, and correctional facilities are not able to provide individualized justice or effective help."<sup>9</sup> The JJDP created the National Advisory Committee for Juvenile Justice and Delinquency Prevention (NAC) to develop national juvenile standards. The resulting Standards for the Administration of Juvenile Justice<sup>10</sup> required that children be represented by counsel in all proceedings arising from a delin-

*In establishing a constitutional right to appointed counsel for juveniles, the Supreme Court rejected arguments that probation officers or the juvenile court itself could appropriately represent a child.*

quency action, beginning at the earliest stage of the decisional process. In 1980, the *Institute for Judicial Administration/American Bar Association (IJA/ABA), Joint Commission on Juvenile Justice Standards* also promulgated extensive standards. They called for representation of children in all stages of delinquency proceedings and they defined the role of counsel. The *IJA/ABA Standards Relating to Counsel for Private Parties* are attached as *Appendix C*.

When Congress reauthorized the JJDP in 1992, it re-emphasized the importance of lawyers in juvenile delinquency proceedings. The “Congressional Findings and Declaration of Purpose” in the reauthorization noted the inadequacies of prosecutorial and public defender offices to provide individualized justice or effective assistance. Moreover, Congress added that a purpose of the Act is “to assist State and local governments in improving the administration of justice and services for juveniles who enter the system.” Also embedded in the reauthorization were the seeds of a nationwide assessment strategy.

In the fall of 1993, the American Bar Association Juvenile Justice Center, in conjunction with the Youth Law Center and Juvenile Law Center, received funding from the federal Office of Juvenile Justice and Delinquency Prevention to initiate the Due Process Advocacy Project. The intent of the project was to build the capacity and effectiveness of juvenile defenders through increasing access to lawyers for young people in delinquency proceedings and enhancing the quality of representation those lawyers provide. As part of the Due Process Advocacy Project, the collaboration produced *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*<sup>11</sup> in 1995, which was the first national assessment of the state of representation of youth in juvenile court and an evaluation of training, support, and other needs of practitioners. Since that time, juvenile defender assessments have been conducted in Georgia, Kentucky, Louisiana, Maryland, Montana, North Carolina, Ohio, Texas, Virginia, and Washington to analyze state-specific policies and practices. Several other states are in the preliminary stages of the assessment process.

### **Methodology for Pennsylvania Assessment**

In the spring of 2002, Juvenile Law Center, in conjunction with the American Bar Association Juvenile Justice Center and the Northeast Juvenile Defender Center, received funding from the Pennsylvania Commission on Crime and Delinquency to study the capacity and effectiveness of lawyers for young people in delinquency proceedings in Pennsylvania.<sup>12</sup>

Pennsylvania provides no state funding and oversight of the indigent defense system. It has no uniform central statewide data collection on indigent defense, and keeps no centralized records of indigent defense expenditures and caseloads. Juvenile Law Center, therefore, attempted to gather such information by designing and distributing a survey that asked defense attorneys a broad range of questions related to the delivery of indigent defense services for accused or adjudicated children and youth. The 70-question survey was distributed to lawyers in every Pennsylvania county, reaching approximately 450 juvenile defenders. Along with hundreds of court-appointed attorneys, every public defender office received a survey. The text of the survey is available through Juvenile Law Center and is available on-line at [www.jlc.org](http://www.jlc.org).

Although survey responses were received from 58 of 67 counties, including 50 county defender offices, there was great variance in the quality of data. See *Appendix A*, State Chart 1. Taken as a whole, the survey responses drew profiles of how legal representation is provided to a large percentage of children in the delinquency system in Pennsylvania and of the variations by county. From the responses, we collected information concerning the following:

*Organization and Staffing* — the number of public defenders, paralegals, legal secretaries, social workers, investigators and other support staff; the assignment of lawyers and staff to juvenile matters; the juvenile unit.

*Caseloads* — the number of juvenile cases handled by the public defender in a given year (however, many offices failed to provide this information because they have no mechanisms in place to track caseloads), and the impact caseload size has on the program's ability to represent juveniles effectively.

*Waiver* — the number of juveniles who waive the right to counsel and the circumstances under which such waivers occur.

*Duration and Scope* — whether attachment of counsel continues through adjudicatory hearings to disposition hearings, disposition review hearings, and appellate proceedings.

*Training* — the availability of various types of training for juvenile defenders and the adequacy of the available training.

*Language Access* — the availability of juvenile defenders to communicate with non-English speaking clients.

*Resources* — the resources available to juvenile defenders, especially compared with prosecutors.

*Barriers to Representation* — defender views on factors within the system they believed hinder their ability to provide representation to juvenile clients.

Juvenile Law Center and its investigators then gathered on-site qualitative and quantitative data from a cross-section of 17 of the Commonwealth's 67 counties: Allegheny, Berks, Blair, Bucks, Cambria, Dauphin, Erie, Franklin, Lackawanna, Lancaster, Lehigh, Monroe, Montgomery, Philadelphia, Potter, Tioga, and Venango. See *Appendix A*, State Chart 2. The sites included five of Pennsylvania's six most populous counties; twelve others that were selected on the basis of population size, demographic diversity, percentage of minority population, poverty rates, and crime rates. The sample sites were also representative of the Commonwealth's three geographic regions—East, Central and West.

Teams of investigators visited each of the 17 counties to conduct interviews (pursuant to standardized protocols), observe judicial proceedings and gather documentary evidence. The focus of these observations was on the role of defense counsel. Investigators interviewed and talked with judges, juvenile public defenders, court-appointed counsel, district attorneys, court personnel and administrators, probation personnel and administrators, case managers, mental health experts, school resource officers, detention center personnel and administrators, service providers, key stakeholders, policy advocates, children and parents.

The teams also observed court proceedings, toured facilities, and—to the extent possible—collected statistical and documentary evidence. When necessary, follow-up phone calls were made to gather additional or clarifying information. The site visits to Pennsylvania counties complemented and enhanced the written surveys. The visits were not intended to evaluate specific courts or individuals—and none are identified, with two exceptions. First, promising models and practices are identified. Second, some specific sites are identified when presenting publicly-available data collected outside the process of site visits, particularly when there is waiver of counsel or high caseloads.<sup>13</sup> Assessment staff also conducted a literature review of all studies relevant to indigent defense services and a review of pertinent case law on these matters.

### **Presentation of Findings**

This report focuses on the provision of juvenile defense services to poor children and youth in Pennsylvania. We begin with an explanation of the status of youth in the juvenile justice system to convey basic demographics and secondary data important to the report's context. Chapter One provides an overview of Pennsylvania's juvenile justice system. Chapter Two presents information on the role and responsibilities of defense counsel in delinquency proceedings. Chapter Three details the findings of the assessment and discusses issues and systemic barriers facing the juvenile defender system. Chapters Four and Five highlight promising defense strategies and offer recommendations for improving Pennsylvania's system of indigent juvenile defense.

# CHAPTER ONE

## Pennsylvania's Juvenile Justice System

### Statistical Overview & Trends

Pennsylvania is the sixth largest state, with about 12.2 million people.<sup>14</sup> Children under the age of 18 make up nearly 25% of the population (3,050,000). Of the total youth population 85% are white (2,592,500), 13% are African-American (396,500), 4% are Hispanic (122,000), and 2% are Asian (61,000).<sup>15</sup>

Data from the Pennsylvania State Police and the Pennsylvania Juvenile Court Judges' Commission's Disposition Reports for the five-year period from 1997 through 2001 provide a broad picture of juvenile crime and case processing in Pennsylvania:

- *Total juvenile dispositions have risen.* From 1997 to 2001, the number of juvenile court dispositions increased by 16.1%—from 36,593 in 1997 to 42,486 in 2001. Delinquency dispositions vary by county. See Appendix A, State Chart 3. About 1 in 4 juvenile court dispositions in Pennsylvania consists of probation supervision. About 1 in 10 involves placement in a residential facility.
- *Juvenile arrests have declined in recent years, both in absolute terms and as a proportion of all arrests.* Annual juvenile arrests decreased 16.2% during the 1997–2001 period, from 122,019 in 1997 to 102,209 in 2001. In 1997, juvenile arrests represented 27.6 % of all arrests, while by 2001 the proportion had fallen to 23.4%.
- *Violent arrests have decreased.* From 1997 to 2001, annual juvenile arrests for violent crimes—murder, non-negligent manslaughter, forcible rape, robbery and aggravated assault—decreased from 5,308 to 4,720.
- *Juvenile drug offenses have increased.* Juvenile arrests for offenses involving the sale or possession of drugs defied the larger trend,

rising 29.2% during the 1997–2001 period, from 5,319 in 1997 to 6,873 in 2001. Juvenile dispositions in which a drug offense was the most serious substantiated charge, rose from 3,239 to 4,118 during the same period, an increase of 27%.

- *Secure detention admissions have risen.* Admissions to secure juvenile detention increased by 16.7 % during the period of 1997 to 2001, from 17,506 in 1997 to 20,421 in 2001. Philadelphia alone accounted for about 30% of the state’s total detention admissions in the latter year.
- *Juvenile court dispositions in Pennsylvania’s juvenile justice system primarily involve males.* In 2001, males accounted for 79.2% of all juvenile court dispositions, 83.8% of probation dispositions, 89.7% of dispositions involving placement, and 97.9% of transfers to criminal court.
- *Demographics.* The majority of juvenile court delinquency dispositions in 2001 involved white children (53.4%) followed by African-American children (34.6%), Hispanic children (7.2%) and Asian children (.7%).

### **Pennsylvania’s Juvenile Act**

The Pennsylvania Juvenile Act, 42 Pa. Cons. Stat. § 6301 *et seq.* (the Act), governs proceedings for state involvement in the lives of children accused of criminal acts. Over the last thirty years, amendments have been enacted that in general increase consequences for delinquent behavior. These include: authorizing fingerprinting and photographing of juveniles (1980); relaxing confidentiality restrictions related to the records of some categories of juvenile offenders (1981, 1986, 1989); and prohibiting “consent decrees”—a period of community supervision without an adjudication of delinquency—without the district attorney’s consent (1986).

The Act took its present shape in 1995 when the General Assembly amended it to place greater emphasis on public safety and greater accountability on adjudicated youth. These amendments altered the purpose clause by requiring additional “attention to the protection of the community [and], the imposition of accountability for offenses committed,” and also required attention to “the development of competencies to enable children to become responsible and productive members of the community.”<sup>16</sup> The amendments further relaxed confidentiality restrictions, opening juvenile proceedings to the public;<sup>17</sup> required disclosure of juvenile court adjudications, dispositions and related information to a child’s school,<sup>18</sup> and required certain juveniles aged 15 and older to be charged in adult criminal court if they commit certain crimes enumerated in the Act.<sup>19</sup>

### **The Delinquency Process**

Lawyers for children have a role to play from arrest until the case ends.

- *Intake*—Juvenile offenders come to the attention of the juvenile court in a variety of ways, the most common of which is police

referral to a county juvenile probation officer.<sup>20</sup> At that point the probation officer can release the youth to his or her own parents or other responsible adults or place the youth in a juvenile detention facility. Once in detention the juvenile must be accorded a hearing within 72 hours to determine if probable cause exists to believe the youth is delinquent and if further detention is warranted.<sup>21</sup>

- *Informal Adjustment & Consent Decrees*—Prior to the filing of a delinquency petition, a probation officer meets with the accused youth and may refer that youth and his family for counseling or other assistance, or prescribe other informal action with a view to an “informal adjustment.”<sup>22</sup> With the consent of the prosecutor, the juvenile court can also enter a consent decree to resolve the case at any time prior to adjudication. Under a consent decree, the court suspends the proceedings against the juvenile, typically placing the juvenile under parental supervision.<sup>23</sup>
- *Adjudication*—At the adjudication hearing (trial), a judge has a range of options that include adjudicating the youth as a delinquent, dismissing the case, or continuing the case in anticipation of dismissal contingent on the youth voluntarily attending counseling, paying restitution, or other such condition. When the court finds that a youth is “delinquent,” it has concluded that the youth committed a crime and is in need of treatment, supervision or rehabilitation.<sup>24</sup>
- *Disposition*—If the juvenile is found delinquent, the court will hold a disposition (sentencing) hearing to determine the most appropriate treatment, generally after receiving a predisposition report from the offender’s probation officer. The predisposition report should address the best way to protect the public while meeting the youth’s needs.

The Act allows judges to choose from a range of disposition alternatives. The judge can order any service or program that would be available to dependent (abused or neglected) children. It can also order: probation with conditions; commitment to a private institution; commitment to a state-operated institution; community service; or payment of fines, costs or restitution as appropriate for rehabilitation.

In the case of commitment to an institution, the Act authorizes an initial commitment of no more than 4 years.<sup>25</sup> The initial commitment may be extended or modified if the court finds that doing so would effectuate the original purpose of the commitment order, but may not extend beyond the youth’s twenty-first birthday. The court must hold a disposition review hearing every nine months.<sup>26</sup>

- *Release from Jurisdiction*—A juvenile may be released from jurisdiction of the juvenile court at any time by the committing court. When the youth turns 21, the jurisdiction of the juvenile court terminates if the juvenile has not been released prior to that time.<sup>27</sup>

*Lawyers for children have a role to play from the time of arrest until the case ends.*

### **Private and Public Treatment Programs for Delinquent Youth**

- *Private Treatment Providers*—In Pennsylvania, the majority of adjudicated youth receive court-ordered treatment services from the private sector. More than 500 private operate providers operate programs for delinquent youth, including secure and non-secure residential placement programs, staff-secure group homes, day treatment, alternative schools, shelter-care, foster care, wilderness programs, specialized mental health and drug and alcohol, and sex offender treatment programs. All privately operated programs are inspected, licensed and regulated by the Department of Public Welfare, but it is county Children and Youth Service agencies (CYS) that enter into contracts with private providers used by juvenile courts. Placements in private residential programs accounted for 85% of all placements ordered by Pennsylvania juvenile courts in 2001 (3,652). Most private providers are in-state, but a substantial number of juveniles are also sent to providers out-of-state.
- *State-Operated Institutions*—The Pennsylvania Department of Public Welfare administers and manages a network of Youth Development Centers, Youth Forestry Camps, and Secure Treatment Units. There are a total of 13 such state facilities, 5 of which are operated for the state by private contractors, with an overall capacity of 769 beds (532 secure and 237 non-secure, including an 18-bed community re-entry program and a 64-bed facility for females). In 2001, the court made 473 commitments to state-operated institutions, representing 11% of all placements.

The secure care programs are designed for serious juvenile offenders, many of whom have histories of unsuccessful placements in other facilities. Specialized services are available for sex offenders, substance abusers, emotionally disturbed and developmentally delayed offenders and offenders with dual (mental health and substance abuse) diagnoses. Secure care facilities have perimeter fencing, physical security mechanisms for internal control and high staff-to-offender ratios.

### **Basic Structure & Funding of the Juvenile Justice System**

In marked contrast with centralized, “top-down” systems found in other states, Pennsylvania’s juvenile justice system is highly decentralized. It is largely operated by county governments which use a diverse mix of more than 500 private delinquency service providers to supplement public programs. The county juvenile court is responsible for adjudicating the juvenile offender, determining appropriate dispositions and ordering rehabilitative services.

### ***County Roles and Responsibilities***

- *Juvenile Courts*—County courts of common pleas are the heart of the juvenile justice system. These courts are courts of general juris-

diction and hear civil and criminal matters. Although Pennsylvania has 67 counties, several have combined judicial districts; therefore, there are 60 common pleas courts, which have from one to 95 judges. There is great regional variance in how juvenile justice is administered.

Every court of common pleas has designated a judge or judges for juvenile cases. Statewide, there are approximately 100 juvenile court judges. Larger counties tend to have permanent "juvenile divisions" of the common pleas courts, while smaller ones merely hold regularly scheduled "juvenile days." Juvenile courts are responsible for adjudication (trial) and disposition (sentencing) in juvenile cases. There are currently no statewide rules governing juvenile court procedure and practice in Pennsylvania. Local rules, specific to each county, govern juvenile court practice.<sup>28</sup>

Juveniles have a right to appeal final juvenile court orders to the Superior Court of Pennsylvania. A subsequent appeal to the Supreme Court of Pennsylvania from a decision of the Superior Court is discretionary.

- *Juvenile Probation*—County juvenile probation officers in Pennsylvania serve as the primary points of contact with court-involved youth from intake through case termination. Pennsylvania has almost 1,500 juvenile probation officers, all working under the county's chief juvenile probation officer, who is appointed by the juvenile court. They are responsible for initial screening, predisposition investigation and recommendations to the court, probation supervision, and "aftercare" or post-commitment supervision. In many counties, they are also responsible for victim services.
- *County Children and Youth Agencies*—County Children and Youth Services (CYS) provide and pay for the county share of services that juvenile courts order. CYS develop the county's budget for delinquency services. Each CYS agency enters into contracts with the private treatment providers used by their county's juvenile courts. CYS agencies are reimbursed by the state for portions of these expenditures. See, "Act 148" Funds below.
- *Indigent Defense in Pennsylvania*—Youth are entitled to legal representation "at all stages" of delinquency proceedings.<sup>29</sup> Pennsylvania delegates indigent defense to individual counties,<sup>30</sup> which provide defense services to people unable to afford counsel through local public defender offices. Each public defender office is county-funded, with no financial assistance from state government or programmatic oversight at the state level.

By statute, each county (by its county executive or commissioners) is required to appoint a public defender. The relevant statutory authority for the operation of public defender offices provides:

(County) Council shall appoint a Public Defender, learned in the law and admitted to the practice of law in the Commonwealth, who shall exercise those powers and duties

assigned and/or granted to this office by law, this charter, or by ordinance;

The Public Defender may appoint such number of assistants, including a first assistant, to assist him in the discharge of his duties. The Public Defender shall determine the number of assistants who shall perform on a full-time basis; and

The Public Defender shall prepare annual budget requests based on staffing and compensation levels which support full-time operations to the extent required, subject to the budgetary approval of Counsel. The Public Defender may employ part-time assistants.<sup>31</sup>

Pennsylvania law offers no further guidance to counties on how their public defender office is to be structured. In addition to public defenders, indigent defendants may be represented by court-appointed counsel, if the public defender has a conflict of interest. The county also provides funding for all court-appointed counsel.

- *Detention Centers*—There are 23 secure juvenile detention facilities in Pennsylvania that take temporary custody of juveniles awaiting adjudication, disposition or placement. Some house only youth from their own counties, and others serve regional areas. With a combined total of 761 beds, these 23 facilities had 20,410 admissions in 2001, with a median length of stay of 10 days.<sup>32</sup> On an average day in 2001, eight detention centers exceeded their licensed bed capacities.<sup>33</sup>

### ***State Roles and Responsibilities***

The state's roles and responsibilities relating to indigent defense are encompassed within three executive branch offices: the Department of Public Welfare, the Pennsylvania Commission on Crime and Delinquency, and the Juvenile Court Judges' Commission. Each has responsibilities for various aspects of the Commonwealth's justice system, but none has sole accountability for policy, planning and evaluation of total system performance.

- *Pennsylvania Department of Public Welfare*—DPW has three primary responsibilities in the justice system. It licenses and regulates delinquency treatment programs and advises juvenile courts regarding institutional placements. Second, it also operates 13 state facilities for delinquent youth. Third, it provides federal and state funds to counties to partially reimburse them for the services provided to delinquent youth.
- *Pennsylvania Commission on Crime and Delinquency*—PCCD administers state and federal funding streams addressing crime and delinquency. The Juvenile Justice and Delinquency Prevention

Committee (JJDPCC) is a state advisory group that provides advice and recommendations to the Governor's Office, the General Assembly and PCCD's Board of Directors, about juvenile justice policy. In addition to facilitating statewide policy recommendations, JJDPCC directs the distribution of approximately \$24 million of various federal and state funding streams designated for juvenile justice projects and delinquency programs.

- *Juvenile Court Judges' Commission*—JCJC is a statutorily-created body that collects and disseminates Pennsylvania juvenile court statistics, establishes administrative and procedural standards for juvenile courts, and sets personnel practices and employment standards for juvenile probation departments. The Commission's nine judge-members are nominated by the Chief Justice of the Pennsylvania Supreme Court, are appointed by the Governor for three-year terms, and are served by a permanent staff which provides consultant services to the Commonwealth's 67 counties on matters ranging from the efficiency of administrative procedures to program development. On-site consultations and evaluations are conducted at the request of counties.

### *Juvenile Justice Funding*<sup>34</sup>

Most Pennsylvania juvenile justice system costs come from a mix of federal, state and county dollars. County shares are determined by a detailed schedule of state reimbursements laid out in the Public Welfare Code.<sup>35</sup> As is discussed more fully below ("Act 148" Funds), the state allocates to each county an amount, determined through the "unified needs-based budgeting process," for services to delinquent children and youth.

In addition to federal dollars, the principal sources of funding for juvenile justice in Pennsylvania come from:

- *"Act 148" Funds*—Under the Public Welfare Code, the state provides reimbursement for some of the costs of county-purchased services for juveniles, including day treatment, counseling, foster and institutional care, and detention. Act 148 reimbursement varies from 50% to more than 80% of covered costs. For instance, in-home and community-based services that the state wishes to encourage (such as counseling, referral, and day treatment services) are generally 80% reimbursed, while reimbursement rates are set lower for secure detention (50%), secure residential (60%), and non-community-based residential services (60%). Every year an allocation is set for each county, determined by the Department of Public Welfare on the basis of the county's "Children and Youth Services Plan and Budget Estimate" for dependent and delinquent youth. The plan is submitted by the CYS, after consultation with the juvenile court.
- *Special Grants*—In addition to the above, the Pennsylvania Commission on Crime and Delinquency administers a number of grant programs that fund local juvenile justice agencies, and the Juvenile Court Judges' Commission administers a state-funded grant-in-aid

program that supports staff positions in virtually all county juvenile probation departments. Some of these grants require the county to pay for some portion of the expense covered by the grant with its own matching funds.

- *County Budgets*—County tax dollars pay for everything that is not funded by the above sources, including court-appointed counsel for accused and adjudicated juveniles. County budgets also pay for juvenile court support staff, most probation staff, building and operating costs, local dollar matches required for state and federal grants, and amounts that exceed the Act 148 reimbursement level.

# CHAPTER TWO

## The Role of Counsel in Delinquency Proceedings in Pennsylvania

This section of the assessment describes the role of defense counsel at each major stage of a delinquency case.<sup>36</sup> While not covering in depth every aspect of representation of juveniles charged with delinquency,<sup>37</sup> this chapter does illustrate the process and complexities of representation in juvenile court and explicitly references certain IJA/ABA *Juvenile Justice Standards* for counsel representing juveniles. The entire IJA/ABA *Standards Relating to Counsel for Private Parties* are attached as *Appendix C*.

### Legal and Ethical Requirements of the Right to Counsel

*The Sixth Amendment to the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense.”<sup>38</sup> The Pennsylvania Constitution similarly provides that the “accused hath a right to heard by himself and his counsel ....”<sup>39</sup>*

In the landmark 1963 case *Gideon v. Wainwright*,<sup>40</sup> the United States Supreme Court held that the constitutional right to counsel requires the appointment of an attorney to represent a poor person charged with a felony offense. A few years later, the Supreme Court extended *Gideon* to delinquency proceedings, when it held in *In re Gault*<sup>41</sup> that accused youth facing the prospect of incarceration have the right to counsel. *Gault* recognized that a system in which children’s interests are not protected is a system that violates due process. Attorneys representing juveniles in the juvenile justice system must be prepared to assist clients to “cope with problems of law, to make skilled inquiry in the facts, to insist upon regularity of the proceedings, and to ascertain whether [the client] ... has a defense and to prepare and submit it.”<sup>42</sup> These principles

*Accused youth facing the prospect of incarceration have the right to counsel.*

were reaffirmed a few years later when the U.S. Supreme Court declared, “[w]e made clear in [*Gault*] that civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile court,”<sup>43</sup> and held that juveniles were constitutionally entitled to proof “beyond a reasonable doubt” during an adjudication hearing.

Pennsylvania incorporates these constitutional requirements of due process and the right to counsel for juveniles accused of crimes in its Juvenile Act, which explicitly states children in Pennsylvania are entitled to legal representation “at all stages” of delinquency proceedings.<sup>44</sup> At a minimum, this means children must have an attorney representing their interests from the detention hearing through the time their delinquency petition is discharged. The Juvenile Act requires that “counsel must be provided for a child unless his parent, guardian, or custodian is present in court and affirmatively waive it.”<sup>45</sup> The parent, guardian, or custodian, however, may not waive counsel for a child if their interests conflict with the interests of the child.

Moreover, the professional obligations of representation under Pennsylvania’s Rules of Professional Conduct include the following: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”<sup>46</sup>

### The Attorney-Client Relationship

To be effective, both in meeting charges against clients and in dealing with social and family issues, juvenile defenders must establish good relationships with their clients. The *IJA/ABA Juvenile Justice Standards* state: “Counsel should seek from the outset to establish a relationship of trust and confidence with the client.”<sup>47</sup> This takes considerable time and effort. Young people charged with crimes are often distrustful of adults, including their own attorneys. Counsel must patiently explain and emphasize that what clients tell them is confidential. Attorneys must build relationships with clients that will enable them to share deeply personal information.<sup>48</sup>

Going through the juvenile justice system can be a confusing and frightening process. Young people often have incorrect notions of what might happen to them. Therefore, it is vital that defenders take time to keep clients informed before and after court appearances and other significant events. “*The lawyer has a duty to keep the client informed of the developments in the case, and of the lawyer’s efforts and progress with respect to all phases of representation.*”<sup>49</sup> Clients should be told exactly how to get in touch with counsel and when their attorney will next be in contact. Clients should be advised of what to do if rearrested and what their responsibilities are between court appearances.

### Arrest & Detention

Arrest is the most frequent door into the juvenile court system. Juvenile probation may choose to “divert” the case from formal court review, if the charges are not serious enough or if the youth is a first-time offender.<sup>50</sup> However, if probation declines to divert the case, a delinquency petition requesting court action will be filed, and in the meantime the youth will either be released or detained

*Civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile court*

*Going through the juvenile justice system can be a confusing and frightening process. Young people often have incorrect notions of what might happen to them.*

in state custody. If the juvenile is detained, a detention hearing must occur within 72 hours at which the juvenile must be represented by counsel.<sup>51</sup>

For youth who are not detained, the first meeting with their attorney is often at the initial court appearance. That is *not* because there is no role for counsel earlier in the process. In fact, early intervention by lawyers, to investigate the charges, provide legal advice, and explore alternatives to secure detention, may have significant impact on the entire course of the case.

Getting arrested can be frightening, especially if children are detained. By the time youth meet their attorneys, they may have been questioned by many adults, including police officers, probation officers, or family members. A youth may view additional adult questioning with distrust. Thus, at the start of a case, lawyers must make an extra effort to build a relationship with their clients. Counsel must take the time to explain that their job is to help their clients defend against the charges. In addition to asking for information, it is vital that counsel take the time to discuss with clients what is likely to happen in court. The *IJA/ABA Juvenile Justice Standards* provide that during the initial stages of representation,

*[m]any important rights of clients involved in juvenile court proceedings can be protected only by prompt advice and action. The lawyers should immediately inform clients of their rights and pursue any investigatory or procedural steps necessary to protection of their clients' interests.*<sup>52</sup>

## Detention Hearing

If a youth is detained, counsel's first opportunity to question removal of the juvenile will be at the detention hearing, where the allegations must be presented by the Commonwealth in juvenile court and proven by probable cause.<sup>53</sup> Counsel should "*immediately consider all steps that may in good faith be taken to secure the child's release from custody.*"<sup>54</sup>

At a detention hearing, counsel should "*be prepared, where circumstances warrant, to present facts and arguments relating to the jurisdictional sufficiency of the allegations, the appropriateness of the place of and criteria used for detention. The attorney should also be prepared to present evidence with regard to the necessity for detention and a plan for pretrial release of the juvenile.*"<sup>55</sup>

Effective representation and advocacy at this stage of the proceedings has a significant influence on the ultimate disposition of the case. Juveniles who are securely detained prior to adjudication—rather than released to parents or placed in community-based program—are much more likely to be incarcerated at disposition than youth who have not been detained, regardless of the charges against them.<sup>56</sup> Thus, it is vital that defenders contest secure detention and explore less restrictive alternatives as early as possible.

## Pre-Trial Advocacy & Preparation

The pretrial stage of the proceedings sets the foundation for strategies at adjudication, negotiation with prosecutors, and development of appropriate dispositions. It is a critical period in which attorneys must: investigate the facts; obtain discovery from prosecutors; acquire information about a client's per-

*At a detention hearing, counsel should "be prepared, where circumstances warrant, to present facts and arguments relating to the jurisdictional sufficiency of the allegations, the appropriateness of the place of and criteria used for detention."*

sonal history through school authorities, probation officers, and child welfare personnel; and file pre-adjudication motions. Attorneys must confer with a client *“without delay and as often as necessary to ascertain relevant facts and matters of defense known to the client.”*<sup>57</sup>

*“Where the circumstances warrant, counsel should promptly make any motion material to the protection and vindication of the client’s rights, such as motions to dismiss the petition, to suppress evidence, for mental examination, for severance, or to disqualify a judge.”*<sup>58</sup> Pretrial motions may be crucial to defense efforts, and there are benefits to filing motions even when they are denied. The prosecutions’ written responses and testimony given at hearings on motions may provide valuable discovery material. “Locking” witnesses into their pretrial testimony may be helpful in preparing for trials. Filing clearly meritorious pretrial motions can also strengthen clients’ positions for negotiating favorable dispositions.

As is true at the arrest and detention stage, during the pretrial process there is a great danger of lost opportunities to provide effective representation. The pressure of high caseloads or the distant location of detention facilities can make it difficult for counsel to meet with clients, establish good relationships, learn more about clients’ families, conduct effective investigations, file pretrial motions and consider appropriate dispositions. Overburdened defenders may rely on information from the prosecutors to assess cases, or may simply have no time for motions practice. Detained clients may have limited contact with their attorneys, and may feel abandoned and become hostile.

### **Adjudication and Plea Negotiation**

Juvenile adjudication hearings are the equivalent of trials in the adult criminal justice system. Prosecutors must prove “beyond a reasonable doubt” that a youth committed the offense charged. In Pennsylvania, juveniles do not have a constitutional right to trial by jury<sup>59</sup> and consequently, trials are before either judges or juvenile court masters. At the adjudicatory hearing, defense counsel should be thoroughly familiar with the results of pretrial investigations, advance defense theories, utilize experts when needed, and emphasize the heavy burden that the prosecution bears to prove guilt.<sup>60</sup>

Sometimes, even if trials are not won, defenders can accomplish other goals. They may get charges reduced. Or they may present mitigating factors or other evidence that illustrates the limited role of their clients in the events at issue. That information can affect judges’ decisions regarding dispositions.

A significant percentage of juvenile court trials in Pennsylvania are uncontested. In 2001, the Pennsylvania Juvenile Court Judges’ Commission reported 6,235 agreements, the second most frequently utilized disposition accounting for 14.7% of all delinquency hearings.<sup>61</sup> Counsel must ensure that clients understand the significance of admission and its implications for the future. Young people often feel particular pressure simply to resolve the matter. Counsel must ensure that clients have a complete understanding of what it means to admit, especially since following the admission, if they violate terms and conditions of probation they are more vulnerable to incarceration, and if they are arrested again, they are more likely to have enhanced penalties or be handled in the adult criminal system than if they were found not guilty at trial. *“A lawyer should not participate in an admission of responsibility by the client for purposes of*

*Counsel must ensure that clients understand the significance of admission and its implications for the future.*

*securing informal or early disposition when the client denies responsibility for the acts or conditions alleged.*"<sup>62</sup>

Counsel must prepare their clients for questions judges will ask before they can accept a plea. Judges will ask youth questions covering their mental capacity, whether the plea is voluntary, whether they understand the constitutional rights that are forfeited, and whether the admission has a factual foundation. In practice, however, admission "colloquies" range in scope from extensive inquiries to a few brief questions. Even under the best circumstances, young people have difficulty understanding what is going on. *IJA/ABA Juvenile Justice Standards* proffer that juvenile courts should not accept pleas without determining that youth have the mental capacity to understand their legal rights and the significance of their pleas.<sup>63</sup>

With caseload pressures on courts and counsel, there is a real danger that defense counsel will cut corners. In busy courtrooms, attorneys may describe the Commonwealth's offers in brief conversations with their clients. Instead, counsel must take extra care to fully explore the offer and alternatives in private areas where clients have opportunities to ask questions and express their concerns.

## Disposition

The significance of disposition cannot be overstated. Juvenile dispositions historically have been aimed at providing "treatment, supervision, rehabilitation and welfare" in a way that best serves the individual needs of the juvenile.<sup>64</sup> All the reasons which demand provision of counsel to children for adjudicative purposes apply at this point in the juvenile justice process. *"The active participation of counsel at disposition is often essential to protection of clients' rights and to furtherance of their legitimate interests. In many cases the lawyer's most valuable service will be rendered at this stage of the proceeding."*<sup>65</sup>

Defense counsel is particularly well suited to assure the integrity of the dispositional process by resisting improper pressures exerted by press or police and by insisting that statutory and constitutional procedures be observed. Most adjudicated juveniles are unlikely to identify abuses or to protect themselves effectively against them. It is equally clear that an attorney's participation is necessary to test the evidence of social workers, probation officers, psychiatrists or psychologists. Children or, in most cases, their parents, are initially at a substantial disadvantage in dealing with adult professional witnesses or their products, even if they understand the foundation and possible interpretations of the expert opinion.<sup>66</sup>

Sometimes, courts order, or can be asked to order, assessments of young people—such as psychiatric, psychological, educational or neurological evaluations. These evaluations will be much more useful if counsel knows the purpose of the assessment and provides useful information to the evaluator. In addition, counsel can ask the evaluator to identify the young persons' emotional, educational and other needs. Counsel must be sure that clients understand the process, are not frightened, and cooperate.

Courts have broad discretion in ordering dispositions. From less restrictive to more restrictive, potential dispositions include fines, restitution, community service, unsupervised probation while living at home, closely supervised pro-

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*Representation does not end at the disposition hearing. There are many things that can be done for clients after the disposition hearing: direct appeals of issues arising during the pretrial process or adjudication hearings, periodic reviews of dispositions, petitions to the court for particular services such as drug or mental health treatment, or challenges to dangerous or unlawful conditions of confinement.*

bation at home, placement in a group home in the community, placement in a highly structured residential program, placement in a “staff secure” (but not locked) program, and commitment to a locked institution. This array of dispositions, however, may not be available in every county. At a minimum, when commitment is part of the disposition, the Juvenile Act requires the court to “impose the minimum amount of confinement that is consistent with the protection of the public and the rehabilitation needs of the child.”<sup>67</sup>

To promote the least restrictive alternative at disposition, counsel should call witnesses, such as family members, teachers, or ministers, and should present other evidence, such as letters of support, education, or medical records, or evidence of participation in community or church activities. Counsel should be prepared to discuss the needs of their clients, what services would meet those needs, and what placement would not meet those needs, and whether those needs can be met by the dispositions proposed by probation. More than any other stage of the juvenile justice system, counsel should explore every possible resource during the dispositional process. The process offers many opportunities to influence the outcomes of their clients' cases—and, therefore, their clients' lives.

### Post-Disposition Representation

Representation does not end at the disposition hearing. There are many things that can be done for clients after the disposition hearing: direct appeals of issues arising during the pretrial process or adjudication hearings, periodic reviews of dispositions, petitions to the court for particular services such as drug or mental health treatment, or challenges to dangerous or unlawful conditions of confinement. The *IJA/ABA Juvenile Justice Standards* recognize the responsibility of counsel to continue representation after disposition: “*The attorney should be prepared to counsel and render or assist in securing appropriate legal services for the client in matters arising from the original proceeding.*”<sup>68</sup> Additionally, lawyers who represent juveniles at trial or on appeal ordinarily should be prepared to assist clients in post-disposition actions either to challenge the proceedings leading to placement or to challenge the appropriateness of treatment facilities.<sup>69</sup>

*Appeals*—In Pennsylvania, youth in juvenile court have the same appellate rights as their adult counterparts. “A juvenile judged to be delinquent has a right to appeal. Furthermore, a juvenile has the right to effective assistance of counsel on appeal. This right includes, at a minimum, the right to have counsel properly preserve and effectuate his appeal.”<sup>70</sup> Counsel, in keeping with national standards, should file appropriate notices of appeal and provide or arrange for representation perfecting appeals.<sup>71</sup> There are strong arguments to pursue appeals in appropriate cases. Felony adjudications (especially for such crimes as sex offenses), may have important implications for plea bargaining or sentencing if the youth gets in trouble in the future, either in juvenile or adult criminal court.

*Post-Disposition Review*—In Pennsylvania, courts keep track of juveniles they have placed in residential facilities primarily by means of routine disposition review hearings. The Juvenile Act requires courts to hold formal hearings reviewing delinquency commitments at least every nine months.<sup>72</sup> Although in

some courts this is a perfunctory proceeding, it need not be. If there are grounds for release from confinement, if clients are not receiving needed services such as drug treatment or special education, or clients are in jeopardy due to lack of security or other dangerous conditions in institutions, if home conditions have changed, or if community programs have opened, counsel should use disposition reviews as opportunities to bring such matters to the attention of the juvenile court.

*Extraordinary writs*—such as *habeas corpus* and *mandamus*, are available to challenge a youth's confinement as illegal, either because the confinement itself is unlawful (when minors, for example, are held in adult jails despite statutory prohibitions) or because juveniles have been held beyond the time permitted by statute, or the conditions of confinement are harmful.

Children and youth may need particular services for a variety of reasons. Some dispositions make release from confinement contingent upon completion of specific programs in institutions. Thus, judges may require youth who have abused alcohol or illegal drugs to complete detoxification, treatment, or counseling before being released. In overcrowded state institutions, treatment programs may be over-subscribed and youth may wait until there are openings. Sometimes the delays in receiving treatment prevent youth from being released by the time set in disposition orders. Such circumstances require vigorous advocacy by counsel.

In other situations, the nature of offenses, probation officers' reports, or independent evaluations indicating mental health problems may require particular treatment services during confinement. In addition, some youth need representation in related non-delinquency proceedings, such as school suspensions or proceedings to provide special education services while in placement. In cases where youth are held under dangerous or unlawful conditions, counsel may argue for release from the institution, special protection for clients, or the provision of specific needed services within the institution.



# CHAPTER THREE

## Assessment Findings

In Pennsylvania, most attorneys who defend children accused of criminal acts do not engage in the type of advocacy required by the United States or Pennsylvania Constitutions and by codes of professional responsibility governing the conduct of lawyers. Additionally, survey responses, research and site visits confirm that there are wide differences in practice among lawyers for delinquent children in counties across the state. For example, some attorneys always interview their clients before hearings, while others rarely do so. Some attorneys always advocate on behalf of a client's special needs (e.g., mental health and education), while others never do so.

Adherence to the principles set forth in the IJA/ABA *Juvenile Justice Standards* by all parties to delinquency proceedings—attorneys, judges, and juvenile probation officers—would ensure both a consistently high and uniform level of practice on behalf of children. As one commentator has noted, this lack of uniformity in representation harms clients: “[I]t is important that every lawyer at least adopt a uniform posture and role so that what counsel does and what is expected of him will not vary from lawyer to lawyer; otherwise an undue risk exists that the lawyer will impose his own personal child rearing preferences upon his client.”<sup>73</sup>

Many of the professionals involved in Pennsylvania's juvenile justice system share a genuine concern for the children they serve. They recognize the enormous responsibilities they bear in helping accused and adjudicated youth and their families navigate the juvenile justice system. But even with the presence of well-intentioned and caring individuals in the justice system, this assessment found that, largely because of structural problems and institutional barriers, the futures of young people in Pennsylvania county are compromised—a significant percentage of youth pass through the delinquency system without effective advocates or adequate safeguards to protect their interests.

Our intent is not to blame the many dedicated attorneys who are handling difficult cases and laboring under tremendous systemic burdens. Rather, we

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highlight their problems and needs in order to build their capacity. We seek to support their ability to help each child “cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it.”<sup>74</sup> No less than an adult, “the child requires the guiding hand of counsel at every stage in the proceedings against him.”<sup>75</sup>

### **I. Barriers to Providing Juvenile Defense Services**

In 2003, the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System (Bias Commission), reported a crisis in indigent defense. “Pennsylvania is not fulfilling its obligation to provide adequate, independent defense counsel to indigent persons.”<sup>76</sup> The Bias Commission did not specifically examine indigent defense for juveniles, but its findings are material to this assessment because the “long term neglect and under-funding” of indigent defense is exacerbated in the juvenile defense setting, which has always competed for attention, status and resources with its adult counterpart.

Pennsylvania does not have a uniform system for providing indigent defense to youth in the juvenile justice system. As with adults, each of the 67 counties in the state bears sole responsibility for devising and implementing its system for the appointment of counsel. Pennsylvania provides neither state funding for, nor statewide oversight of, indigent defender services. Lacking resources, time, and training, the majority of defense lawyers representing indigent persons, including children, do not confer with their clients in a meaningful manner, research relevant case law, review files, conduct necessary pre-trial investigations, secure necessary expert assistance, or prepare adequately for hearings, trials, dispositions and appeals.

#### ***Pennsylvania’s Indigent Juvenile Defense System Lacks Standards and Accountability***

The lack of comprehensive standards and statewide oversight of indigent defender workload raised serious questions for the 2003 Bias Commission. It recommended the adoption of uniform binding indigent defender standards to meet its concerns regarding conflicts of interest, compensation/contracts for services, attorney eligibility, workload, and approving requests for investigators.<sup>77</sup>

The force of the findings and recommendations of the Bias Commission are equally applicable to Pennsylvania’s indigent juvenile defense system. Our written survey responses show, and research and site visits confirm, an absence of uniformity in standards and quality of representation among the juvenile defense systems across counties. Investigators who visited more than one county often remarked on the varied quality of juvenile defender practices. “There are no uniform standards or expectations for juvenile defense lawyers in Pennsylvania. One juvenile defender’s adherence to professional behavior—like interviewing a client before a hearing—does not transfer across county lines.” Juvenile defenders also lacked knowledge or awareness of juvenile court practice in neighboring counties. Notably, none of the juvenile public defenders we interviewed knew the names of their counterparts in neighboring counties.

*A significant percentage of youth pass through the delinquency system without effective advocates or adequate safeguards to protect their interests.*

*Pennsylvania, as a whole, has no systemic data collection on indigent defense, including juvenile representation.*

And no juvenile defender interviewed was familiar with the *IJA/ABA Juvenile Justice Standards*.

One of the biggest challenges conducting this study was the lack of data collection, maintenance, and reporting by county defender offices. Pennsylvania, as a whole, has no systemic data collection on indigent defense, including juvenile representation. There are no centralized records of indigent defense expenditures, caseloads, or even a directory of the indigent defense bar. While district attorneys and juvenile courts generally track case-specific information, public defender offices have few, if any, reporting requirements.<sup>78</sup> Many defenders, when asked, could only give rough estimates of their caseloads and none could provide specific data regarding: race and gender of juveniles served; types of offenses; numbers of juveniles diverted; numbers of motions and appeals filed; or numbers of adjudications or dismissals. During site visits, juvenile defenders repeatedly mentioned the need for an improved system for tracking statistics or the number of cases and outcomes.

### *Some Counties Lack Strong, Engaged Leadership and Supervision*

Juvenile defenders in some counties expressed the view that their chief public defenders failed to provide leadership and were not engaged in the juvenile defense functions of the office. Among the complaints were that administrators did not advocate for greater funds and resources for the defense of children, even allowing for the complexities of such advocacy within the county-controlled environment. Further, few chief public defenders sought out other sources of funding—such as federal or state grants (e.g., PCCD capacity building awards) or philanthropic support for innovative representation (e.g., Open Society Institute or Equal Justice Works fellowships). “They are either content with the system and do not want to upset the little funding they do receive or are frustrated but feel little hope in effecting change.”<sup>79</sup>

Many public defender offices lacked a supervisory structure for juvenile defenders, who were often entry-level attorneys assigned to juvenile court. This often begins at the top. In several counties visited, the chief public defenders were unfamiliar with delinquency court practice, having never observed or practiced in juvenile court. Where a supervisor was ostensibly assigned, the management was routinely flawed. One supervisor interviewed—a seasoned, capable and accomplished attorney—was utterly uninformed about delinquency court practice. What he reported did not square with investigators’ observations of detained juveniles shackled throughout an adjudicatory hearing, or *ex parte* conversations between juvenile probation and the judge.

### *Indigent Defense Receives Inadequate Resources*

Support services, including but not limited to investigators and expert witnesses, are essential to quality representation. Without investigation and preparation, adequate representation cannot be assured, however competent counsel may be.<sup>80</sup> Fifty-eight percent of juvenile defenders say lack of support services limited their ability to effectively represent juveniles.

Assessment investigators observed a wide disparity of resources among county defender offices. These differences, however, were overshadowed by

*Many public defender offices lacked a supervisory structure for juvenile defenders, who were often entry-level attorneys assigned to juvenile court.*

the resource disparity with prosecutors' offices. Sixty-six percent of juvenile defenders described themselves as having worse resources than local prosecutors. *See Appendix B, Chart 1.* Investigators confirmed a tremendous difference between the resources available to the prosecution and to indigent defense attorneys in terms of investigators, collateral support, technology, and other critical resources. Juvenile defenders identified the lack of support services as the leading factor that hinders effective representation.

*No Access to Investigators and Experts*—With few exceptions, juvenile defense lawyers rarely conduct investigations, visit crime scenes, track down witnesses or retain experts in their clients' cases. Survey results, and our own conversations with juvenile defense attorneys around the state, suggest that attorneys are overwhelmingly relying on the information collected by prosecutors to inform the representation of their clients. To some extent, that may be because over 76% of juvenile defense attorneys do not have access to investigators and therefore cannot conduct independent investigations of cases. Consequently, attorneys themselves conduct witness interviews, and may examine crime scenes, unmindful of, or ignoring, the potential problems on cross-examination. *See Appendix B, Charts 2 and 3.* More than half the juvenile defenders also reported no access to process servers.

Most juvenile public defenders in offices which employ investigators—part-time or full-time—could not recall a single instance in which they used an investigator on a case. Investigators in county defender offices that employ them spend most of their time on such matters as indigence screening and serving subpoenas for adult clients. Needs of the juvenile division are ignored. For this reason, in part, juvenile defense lawyers rarely reported issuing subpoenas compelling witnesses to appear in court. Some defenders cited the lack of seriousness of juvenile cases and the absence of harm to their clients as reasons for not investigating. Without investigative resources, many attorneys said they typically encourage clients to do their own investigations. "I rely on the client and the client's parent to bring in witnesses," commented one lawyer.

The lack of investigative support extends to court-assigned conflict counsel. An often heard comment from conflict lawyers was, "juveniles rarely need it." This group, which primarily consists of solo practitioners, also stated they lacked the time to ask for investigative services. The current process for getting investigative assistance, which is to file a motion with the court, was seen as too time-consuming.

When asked about the quality of advocacy for juveniles charged with felony-grade crimes, such as sexual assault, many juvenile defense lawyers expressed a need for an investigator; 60% believed the investigative support they received was inadequate. *See Appendix B, Chart 4.* Several juvenile defenders told investigators that the lack of investigation clearly influenced the outcome of their cases. A juvenile court judge in one county felt very strongly that even a part-time investigator would greatly improve the representation of clients. Juxtaposed with the vast resources of local law enforcement at the disposal of the district attorney, the public defender who does not have investigative capabilities is severely disadvantaged and cannot raise a solid defense.

The lack of resources also prevents defense counsel from hiring experts to offer testimony on matters such as culpability or amenability to treatment. More than half the juvenile defenders (60%) either lack access to experts or stated that the quality of experts is inadequate. *See Appendix B, Chart 5.* Similar findings were made by the Bias Commission, though with respect to adult criminal defense. For example “in [one county] an attorney could recall only one case in which he had an expert witness. A lawyer in one county told us that as a pharmacist’s son he felt competent to testify on pathology. In [another county] we were informed that a case that might require a psychologist and forensic expert might exhaust the whole budget.”<sup>81</sup> In delinquency matters there is also a great need for defense experts, but juvenile defenders experience these same budgetary pressures.

The need for experts and investigators goes beyond discovery for trial. These services are also required for effective representation in every phase of juvenile court, including dispositions and reviews for youth committed to rehabilitative centers.

*Inadequate Technology*—Lack of technology plagues public defender offices in nearly all counties. At the most fundamental level, 15% of juvenile defenders lack adequate telephone services. *See Appendix B, Chart 6.* In one county, the juvenile attorney lacked voice mail and had limited access to the services of a lone secretary who served the entire office. The attorney was quick to note that improving phone service would make her more accessible to clients and witnesses. A third of juvenile attorneys cannot access the Internet to receive e-mail or research statutes or case law. *See Appendix B, Chart 7.* The Bias Commission reported an even greater paucity of technology resources—few public defender offices had computers; offices in the remaining counties often had out-of-date computers that in some cases had been donated by district attorneys’ offices.<sup>82</sup>

Several counties visited by assessment investigators were particularly striking for the contrasts between the few outdated computer terminals shared by public defenders and the state-of-the-art computer systems used by every juvenile probation officer to track case-specific information. All but one of the public defender offices visited lacked computerized case management or tracking systems, despite having unwieldy caseloads that make proper file tracking and management critical. Public defenders had to rely on paper filing systems that were both labor-intensive and difficult to maintain. Better technology would enable attorneys under severe time pressures to better maintain files and also enable public defenders to spot conflicts.

*Limited Training and Professional Development*—Lack of training on effective representation of juveniles at all stages of the proceedings was reported as a contributing factor to inadequate representation at all the sites visited and surveyed. In Pennsylvania there is no training or minimum experience required for attorneys working in juvenile court. No county has minimum performance standards for juvenile defense attorneys.<sup>83</sup>

Only 21% of public defender offices reported the availability of a criminal law training program for all new attorneys. Training resources specific to juvenile defense practice were virtually non-existent. Eighty-eight percent do not have an office training manual, while those that do lack a section on delinquency court practice; and 83% do not have a budget for lawyers to attend training programs. Thus, with few exceptions, juvenile defense attorneys do not attend specialized training programs, and, when they do, they must often pay all or part of the costs themselves. The majority of juvenile defense lawyers, including court-appointed conflict counsel, report that the training they receive is strictly on-the-job, learning as they handle cases. "The only requirement necessary to represent children in delinquency court is possession of a valid attorney's license, and judges never even ask for that," commented a juvenile defense attorney. Assessment investigators said that entry-level juvenile defense lawyers practicing in public defender offices learn, albeit informally, from more experienced attorneys; they thus have a slight training advantage over entry-level court-appointed lawyers.

Lack of training produces disturbing outcomes. In several counties assessment investigators observed juvenile defendants who lacked the basic skills necessary to present evidence and demonstrated little knowledge of the law. Several juvenile court judges interviewed openly resented shouldering the responsibility of ensuring new attorneys adequately represented accused youth. In one county, the juvenile court judge demanded the chief public defender assign an attorney with more defense training and experience. "It's preferable to have quality counsel represent accused youth whose liberty is at stake," remarked the same judge.

During site visits, juvenile defenders repeatedly stated that they need additional training on disposition alternatives, funding mechanisms, and working with other systems such as mental health. Many attorneys also reported an interest in developing basic trial advocacy skills. Several court personnel also noted the need for defense lawyer training on communication skills with children and families.<sup>84</sup>

This problem does not need to exist. Some of our site visits revealed very positive training programs, many of which could be emulated elsewhere. Some offices provided extensive training prior to assigning cases to lawyers; others had creative training mechanisms such as mentoring by experienced attorneys.

*Limited Compensation*—In its assessment of adult indigent defense, the Bias Commission reported that salaries for public defenders, including juvenile defenders, are seriously inadequate, especially when contrasted with the salaries of lawyers in district attorney's offices. This has equal bearing on juvenile indigent defense. In Centre County, for example, the district attorney makes \$116,000 per year and the chief public defender makes \$57,000.<sup>85</sup> Even in counties where starting attorneys in the two offices begin at the same salary, severe salary disparities are evident as district attorneys and public defenders move into more senior ranks. Public defenders find it difficult to repay their student loans; coupled with the general inadequacy of resources, that has a demoralizing effect upon many young public defenders. They leave their jobs as a result, creating a serious attrition problem for most public defender offices.

### ***Public Defenders and Assigned Counsel Lack Professional Independence***

Whether counsel for indigent persons are public defenders or assigned counsel, they are often subject to political pressures. Chief public defenders in all counties except Philadelphia are appointed and retained by local county commissioners. In addition, dependence on county funding allows county commissioners to control the public defenders' budget and sometimes to interfere in the operations of their offices.<sup>86</sup>

Nor are assigned counsel free from political influence. The lack of uniform standards and oversight of the appointment process give judges unfettered discretion in the selection of contract attorneys and the appointment of attorneys in specific cases. Judges are free, for example, to appoint friends or acquaintances to cases rather than attorneys who may be more qualified or more experienced. In addition, appointed counsel might tailor their representation by dampening their zeal to advocate for their clients to avoid displeasing the judge, thereby preserving their chances for future appointments. Aside from the conflicts created by the appointment process itself, the lack of standards and oversight mean that there are no established and uniform procedures or mechanisms for holding attorneys accountable for the quality of representation.<sup>87</sup>

The prevalence of part-time public defenders also compromises the quality of representation by creating conflicts of interest for attorneys. In several mid-sized and rural counties, both the chief public defender and the assistants work part-time while maintaining private law practices. At a minimum, this situation creates the appearance that the part-time defenders pay more attention to private matters than the cases of indigent defendants.<sup>88</sup>

## **II. Barriers Limiting Access to Counsel**

### ***Excessive Caseloads Prevent Lawyers from Having Meaningful Contact with Clients***

Juvenile defense attorneys across Pennsylvania report a wide range of caseloads, from a low of one to a high of slightly more than 620. It is difficult to ascertain precise caseload statistics because none of the juvenile defenders in public defender offices track that information; they have neither the time nor the means to account for these figures themselves. However, the Center for Juvenile Justice Training and Research of the Pennsylvania Juvenile Court Judges' Commission recently began tracking attorney representation in delinquency proceedings in the state, as a whole, and in each county. Legal representation of juveniles in delinquency proceedings throughout Pennsylvania, during 2001, was most often provided by public defenders, who were involved in 62.4% of the delinquency dispositions involving hearings. Court-appointed attorneys provided legal representation in 12.3% of delinquency dispositions, involving hearings.<sup>89</sup> See *Appendix B*, Chart 8.

At a county level, the office caseloads of juvenile defenders vary. See *Appendix A*, State Chart 4. In general, lawyers for juveniles in public defender offices are in more populated counties; their average caseloads are larger and, more likely, overwhelming. A majority of the public defender offices report that case-

load pressures limit their ability to represent juvenile clients effectively: 27% say caseload pressures limit their ability “severely” or “considerably,” another 33% say they “somewhat” limit their ability to provide representation. *See Appendix B, Chart 9.* More than a third of those responding said that the time available to meet with and prepare clients before their cases are called is inadequate. In addition, almost half say that the time they have to confer with clients after their case is called is inadequate.<sup>90</sup>

Counsel in less populated jurisdictions (i.e., the 50 counties classified as counties of the 4th class and higher) reported fewer such problems. With much greater control over their caseload, few appointed counsel reported feeling that their ability to represent young clients effectively was limited by the size of their caseload. However, for appointed counsel carrying 100 or more cases, the impact on representation was similar to that experienced by public defenders with high caseloads.

Site visits revealed in more detail the impact of high caseloads. To assess-ment investigators visiting the most populated counties, it was evident that heavy caseloads prevent lawyers from having any meaningful contact with their clients. In some counties it was common practice for attorneys to meet clients at the courthouse on the day of the hearing—literally as they sat down at counsel table—because they could not manage to meet with them earlier. Various observers of the system reported that the inability of attorneys to meet with their clients early and establish a meaningful attorney-client relationship with them adversely affected children’s understanding of the proceedings, their ability to assist in their own defense, and their willingness to trust lawyers.

Lack of contact allows some defense attorneys to process these children more expeditiously through the system. Several juvenile probation officers expressed frustration at having to fill the vacuum left by lawyers who have no contact with their clients. “These kids desperately want to talk to someone and it usually ends up being us. The public defender isn’t there for them,” one probation officer shared. The majority of young people we interviewed at detention centers mistakenly believed that what they told their probation officers was confidential. Consequently, children and their families often rely on probation officers for help because they cannot reach their attorneys; disclosing information that can be shared with the court or the Commonwealth because probation officers do not have a confidential relationship with children and their families.

Detention staff in one county reported, “[t]he kids never see their lawyers and the lawyers never return their phone calls. After awhile, the kids just stop trying.” Similar sentiments were expressed by practically every staff person in the detention centers visited. Detention staff also report that those attorneys who are most likely to visit their clients in detention are retained attorneys, not appointed counsel. “For the most part, the kids have no idea whatsoever what is going on with their cases. They ask us to help them and we don’t know what to say,” said a detention center staffer. It is not uncommon for detention staff, in individual cases, to take on the burden of calling a child’s lawyer to find out the status of the case, especially if it appears that a child has fallen through the cracks in the system.

The harm associated with high caseloads is not limited to detention and is evident to many working in juvenile court. Judges, defense counsel, prosecutors and others related that juvenile defenders burdened with high caseloads

*Various observers of the system reported that the inability of attorneys to meet with their clients early and establish a meaningful attorney-client relationship with them adversely affected children’s understanding of the proceedings, their ability to assist in their own defense, and their willingness to trust lawyers.*

are unable to effectively protect the rights of children in Pennsylvania. Many believed high caseloads prevented well-intentioned and skilled public defenders from filing pretrial motions, preparing for trial and seeking *de novo* appeals. They simply do not have the time. Many defenders verified that caseloads do impede their ability to spend meaningful time with clients to explain the process, consequences and options available to them before adjudication. The lack of contact with attorneys continues when children are incarcerated.

The impact of these circumstances on youth in the justice system is devastating. Children represented by overworked attorneys receive the clear impression that their attorneys do not care about them and are not going to make efforts on their behalf. Lawyers operating under such pressures fail to offer meritorious arguments on behalf of their clients; they do not present their clients in the best possible light. Furthermore, young people become passive and distrusting of their lawyers, sometimes withholding important information because, as one youth put it, “it don’t make no difference anyhow.”

These findings are not unique to juvenile defender offices. The Bias Commission concluded, “Lawyers representing indigent defendants in Pennsylvania often have unmanageable caseloads far exceeding professional guidelines.” In Pennsylvania there are no mandatory caseload limits for public defenders and court-appointed counsel.<sup>91</sup> However, *IJA/ABA Juvenile Justice Standards* state “[i]t is the responsibility of every defense office to ensure its personnel can offer prompt, full and effective counseling and representation to each client. A defender office should not accept more assignments than its staff can adequately discharge.”<sup>92</sup>

The impact of high caseloads has a debilitating impact on the attorneys as well. Burnout is a real problem for many caring juvenile defense attorneys. More than one public defender felt hopeless about receiving any support from the public defender’s office, noting that complaints about caseload are viewed as an inability of individual lawyers to handle their work—not as a systemic problem. Many lawyers expressed frustration at not being able to do all they wanted for their clients, and at the resulting unfairness to the children.

### *Children Frequently Waive the Right to Counsel*

Despite the directives of the U.S. Supreme Court in *Gault* that legal representation is a cornerstone of the justice system, large numbers of children in the state still appear in juvenile court without a lawyer. Data from the Pennsylvania Juvenile Court Judges’ Commission, juvenile defender responses to written surveys, and site visits reveal large numbers of youth throughout Pennsylvania go unrepresented, even during some of the most critical proceedings that affect their liberty.

Failing to provide counsel is unfair for several reasons. As a result of immaturity or anxiety, unrepresented youth may feel pressure to resolve their cases and may precipitously enter admissions without obtaining advice from counsel about possible defenses or mitigation. Youth without counsel may be influenced by prosecutors or judges, who are sometimes pressured to clear cases from their calendars. Youth may not understand the possible consequences of admitting offenses, such as potential incarceration or the resulting criminal records. Even where there is a colloquy before the judge, youth may not under-

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stand the terminology or the principles discussed, or they may be too intimidated by the proceedings to listen closely. Indeed, research and experience indicate that even adult defendants have difficulty understanding the court's admonitions when they enter pleas, and there is no reason to believe that juveniles have any better understanding of the process.<sup>93</sup>

In spite of the law's clear mandate for counsel and the harmful consequences of not having a lawyer, there is a high incidence of children waiving the right to counsel. In 2001, legal representation was waived in 11% of all delinquency dispositions involving hearings, including some of the most critical proceedings affecting liberty interests. *See Appendix B, Chart 8.* For example, in some cases youth were unrepresented during judicial waiver—that is, during hearings at which a juvenile court judge, after hearing evidence, transferred youth from juvenile to adult criminal court. Although the number of judicial waiver hearings without counsel is small, this practice is particularly alarming because it can result in youths' criminal incarceration in the most restrictive circumstances—adult jails and prisons.

A significant percentage of waivers occurred at hearings that resulted in adjudication and placement. In 2001, children were unrepresented at hundreds of adjudicatory hearings on delinquency allegations at which they were placed on consent decree probation (486 proceedings), regular probation (1,284 proceedings), or sent to residential placements (351 proceedings).<sup>94</sup>

Though waiver of counsel was not reported in all counties, it occurs in urban, mixed and rural counties alike. *See Appendix A, State Chart 5.* Written surveys confirmed these practices. Assessment investigators also observed waiver of counsel in jurisdictions not captured by JCJC data—waiver at detention hearings. This practice should be tracked since it is well documented that children who are detained at their initial hearings are far less likely than their counterparts to have favorable outcomes at adjudication or disposition. Detention is a pathway to subsequent incarceration.<sup>95</sup>

The reasons for waiver of counsel vary. Assessment investigators found that in some counties, the assistance of counsel is technically available, but children must formally request the appointment of an attorney. Waiver of counsel is sometimes induced by suggestions that lawyers are not needed because no serious dispositional consequences are anticipated. Judges and attorneys at one site reported that children in "lightweight" cases are "allowed" to waive counsel, especially when parents are present. Yet parents may be unable to provide helpful advice in such circumstances, and in some situations, parents' views may increase their children's legal risk.

### ***The Timing and Manner of Appointing Counsel Impairs Representation of Juveniles***

Several theories support prompt appointment of counsel for accused youth. One is that juvenile court clientele are predominately poor. A second is that since children are the clients, and since they are inherently without resources, family income is irrelevant. Whatever the theory, representation can be provided promptly only if counsel is readily available without cost, and if youth and their parents know that free counsel is available. The *IJA/ABA Juvenile Justice Standards* emphasize prompt appointment of counsel, prescribing systemic

methods for assigning counsel from the outset, as well as ensuring continuity of counsel through the various stages of the juvenile court process. In many counties assessment investigators visited, these standards were not being met. The timing of appointment, indigence eligibility and continuity of representation vary by county.<sup>96</sup>

*Timing of Appointments*—Too frequently, assessment investigators encountered instances where youth were not provided with attorneys in time to provide meaningful representation. The time at which the right to counsel attaches has a critical impact on access to and quality of representation. Many important rights of accused children can be preserved only through prompt action by counsel. Youthful clients stand in particular need of prompt, well-considered advice from someone who is expressly and solely identified with advancing their legal interests. That person cannot be the arresting officer, probation officer or parent.

Pennsylvania does not have a uniform system for assigning counsel to accused youth. Each county develops its own process without state oversight. In one county, for instance, the parent of an accused juvenile must apply *in person* at the public defender's office. Children whose parents fail to apply are usually assigned counsel moments before the adjudicatory hearing. By contrast, in another county, counsel attaches far earlier—*prior to* a juvenile's intake interview with juvenile probation.

Under Pennsylvania law the right to counsel for an individual accused of crime extends to a broader range of proceedings than are covered by U.S. Supreme Court holdings. The Supreme Court of Pennsylvania has held that the right to counsel attaches at arrest.<sup>97</sup> In juvenile cases, the Pennsylvania Juvenile Act entitles juveniles "to representation by legal counsel at all stages of any proceedings," including representation during the intake process.<sup>98</sup>

Assessment investigators reported that detained youth typically were appointed counsel at the detention hearing, *after* the juvenile's intake interview with juvenile probation. Consequently counsel in such situations rely heavily on the information provided by probation or the prosecutor; and such information is often incomplete or weighted in favor of the prosecution, since it will be comprised of arrest reports that led to detention in the first place. Attorneys could not present clients' cases in a favorable light because there is no time to investigate the charges; obtain information from schools or families; develop relationships with clients or families; or receive even the most basic facts from clients, let alone develop information that would be persuasive in arguing for dismissal, diversion, or release from custody. Charges, or portions of charges, are rarely dismissed, and juveniles are released less than a quarter of the time. See *Appendix B*, Chart 10.

Counsel entered the case even later for accused juveniles released from custody and living with a parent or guardian. Interview arrangements are usually made by mail, with anywhere from two days to four weeks elapsing between the juvenile's arrest and the first meeting with probation. In most counties, youth or their families are responsible for securing counsel. Contact information about the public defender's office is usually distributed during the intake interview; rarely is attorney information distributed to juveniles prior to intake. These practices violate the *IJA/ABA Juvenile Justice Standards'* prescription that a juvenile should have an *unwaivable* right to the assistance of counsel at intake.<sup>99</sup>

*Too frequently, assessment investigators encountered instances where youth were not provided with attorneys in time to provide meaningful representation.*

Assessment investigators noted several contributing factors for attorney unavailability. First, juveniles and their families are not aware of their right to counsel, and, if they are, do not regard counsel as necessary until a delinquency petition is filed and the juvenile is told to appear at a judicial hearing. Some attorneys believe their involvement in intake proceedings is unnecessary, and advocate only at the adjudicatory proceedings. One probation officer we spoke with supported this position, noting defense attorney intervention at intake was counterproductive because it antagonizes the intake officer.<sup>100</sup> Finally, in counties that have flat fee schedules (rather than hourly rates), there is little financial incentive for counsel to enter a case early.

*Indigence Determination*—There are many problems with the screening process to determine indigence and the common requirement that parents do so in person. The form typically used for screening is designed for adult indigence determinations and is rarely adapted for juveniles. It asks for personal information, such as identification of persons living within the household, monthly income and employment information, asset information, allowable monthly expenses such as child support, child care, medical and dental expenses, transportation costs, and monthly costs such as rent, food, and credit cards. This information was used inconsistently in the screening process throughout the state.

Several offices use the federal poverty guidelines of the U.S. Department of Health and Human Services. In at least one county, unless the youth has assets, they qualified for the appointment of counsel regardless of parental income. Other county offices routinely reject requests for appointment of counsel for children if parental income is above guidelines—resulting in many of these youth proceeding to adjudicatory hearings *pro se*. Some juvenile court administrators reported that even when juveniles receive court-appointed counsel, the court's child support unit will re-check a family's income against child support guidelines; the court will then, sometimes, require families to reimburse the county for attorney fees.

Restrictive eligibility criteria are not practiced by all county defender offices. Some counties deem all children to be indigent. One chief defender explained her philosophy to ignore parental income criteria for accused juveniles. "It's a fiction to believe juveniles can hire their own lawyers. They'd rely on their parents for financial support if private counsel was required. And because youth [accused of delinquent behavior] sometimes find themselves at odds with their parents in regard to the need and quality of legal representation, it is imperative, especially in those cases, that court-appointed representation be available to all youth." Moreover, several chief juvenile probation officers believe forcing parents of any socio-economic class to retain counsel for their children in a delinquency matter forces a conflict in representation. Financial pressure may often lead parents to encourage their children to forego counsel in an effort to seek a low cost resolution.

*Appointment of Conflict Counsel*—The mechanism for appointing conflict counsel is also troubling. Many counties resort to *ad hoc* arrangements to secure representation to indigent children ineligible for defender agency services because of conflicts of interests.<sup>101</sup> Only 70% of juvenile defender offices reported the appointment of alternate counsel when a conflict of interest occurs in representation. Assessment investigators learned that several public

defender offices have no written conflict policy and occasionally represent co-defendants in the same case.<sup>102</sup> Other defender offices, upon discovering a conflict, petition the court for independent counsel. In general, however, youth who receive conflict counsel do not meet them until the day of trial. This is attributable, at times, to slow responses of court administration, unavailability of conflict counsel, or unavailability of the children themselves.

Notably, even when counsel is appointed at detention hearings, potential conflicts of interest are ignored. Thirty percent of juvenile defenders reported that co-defendants lack separate counsel at detention hearings. Thirty-seven percent reported detention hearings for co-defendants are held simultaneously. Our investigators who observed detention hearings believe these self-reported statistics are low. Attorneys from defender offices were typically the only defense attorneys present for detention hearings representing all juveniles—even co-defendants.

### ***In Some Counties, There Are Fundamental Deficiencies in the Treatment of Juveniles With Limited English Proficiency***

No one should be put at a disadvantage in court by reason of race, ethnicity or gender. Yet due process is jeopardized if litigants with limited English proficiency (LEP) are unable to have access to competent interpreters and other language assistance.

In a separate chapter dealing with litigants with limited English proficiency, the Pennsylvania Bias Commission Report concluded that as immigrant, migrant, and refugee populations grow in many Pennsylvania counties, fair access to the judicial system remains a significant problem for those with language and cultural differences.<sup>103</sup> Despite the obvious need for culturally sensitive interpretation and written translation assistance to persons with limited English proficiency, Pennsylvania has no statewide system for providing interpreter services in court proceedings. Further, Pennsylvania has no system for certifying the competence of interpreters in any language. The absence of both undermines the ability of the Pennsylvania court system to determine facts accurately and to dispense justice fairly.<sup>104</sup>

Recent increases in the number and proportion of foreign-born U.S. residents suggest that ethnic, cultural and linguistic diversity will continue to challenge courts. The Commonwealth now has substantial communities of recent immigrants and many of these communities are growing rapidly. Latinos and Latinas are the largest group of people with limited English proficiency. The Census Bureau estimates that more than 970,000 persons over age four in Pennsylvania speak a language other than English at home and that nearly 370,000 of these individuals do not speak English “very well.”<sup>105</sup>

There is limited data available on the number of youth in the juvenile justice system who have limited English proficiency. However, the Bias Commission specially found that “[t]he problem of access to competent interpreter services is especially pronounced in juvenile court, where the child, who is the defendant, is often placed in the position of interpreting the proceedings for his or her parents.”<sup>106</sup> In addition to the obvious potential for conflict of interest, the use of a bilingual child as an interpreter can be detrimental to both the defendant and to the family unit. During an adjudicatory hearing for one

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youth whose mother did not speak English, an assessment investigator observed juvenile probation translating for the parents. Moreover, our investigator, a fluent Spanish speaker, reported that the juvenile probation officer's translation was erroneous in that he did not provide verbatim translation, and left out entire sections of witness testimony.

Moreover, the county defender officers we surveyed reported a variety of problems providing culturally competent personnel and services, including recruiting staff and service providers who are bilingual and culturally competent; conducting in-service training of staff in cultural competency; and translating documents and forms into Spanish.

The disparate treatment of Latino youth in the juvenile justice system across the nation was recently documented in *Dónde Está La Justicia?*, the first-ever comprehensive report on the disparities Latino youth face in the juvenile justice system.<sup>107</sup> The report found that the juvenile justice system failed to provide adequate bilingual services to Latino youth and failed to ensure cultural competency of staff working with Latino youth in the system. As the Spanish-speaking population of the United States increases, the need for bilingual services for youth in the justice system also increases. For individuals who speak little or no English, legal procedures must be explained in Spanish and documents must be translated. Spanish-speaking parents are cut off from communicating with their children and with decision makers in the system if bilingual staff and services are not available.

### III. Barriers to Effective Practice

In the course of our study, investigators observed defense attorneys who effectively represented their juvenile clients. Those lawyers challenged the Commonwealth to prove its case through evidentiary objections, motions, arguments and contested hearings. In court, they were articulate and prepared. Their arguments were supported with relevant facts and law. When their clients faced being placed in out-of-home placements, they provided the court with compelling alternatives. And when a disposition decision had been reached, they spent time explaining the court order, opportunities for appeal, and the importance of complying with the judge's directive.

Unfortunately, excellent representation was not widespread across Pennsylvania. During the course of this study, juvenile defense attorneys candidly disclosed their own ineffectiveness in representing accused and adjudicated youth; and in the majority of sample counties, investigators noted widely varying levels of advocacy. While a significant number of youth proceed through juvenile court proceedings without legal representation, many others have attorneys who are ill-prepared and insufficiently trained.

One common perception among assessment investigators was that public defenders were the most knowledgeable of the types of lawyers who appeared in juvenile court, but frequently had too many cases. In busy court systems, this caseload problem led to rushed representation and perfunctory trials. Assessment investigators in suburban and rural counties concurred that public defenders were so overworked they sometimes compromised by hastily negotiating pleas, regardless of whether such settlements were appropriate. Private counsel had sufficient time, but often lacked experience, underestimated the

serious consequences of juvenile court adjudications, or simply followed the directions of their employers—the child’s parents.

What was likewise apparent from interviews of defense attorneys is that many care deeply about the children they represent, but most know little about adolescent development and are not trained to consider degrees of participation, responsibility and culpability in delinquent behavior. Virtually every investigator declared that pre-trial, disposition and appellate advocacy were non-existent in many jurisdictions.

### ***Defense Advocacy for Accused Youth at Detention Hearings Was Consistently Poor***

The level of defense advocacy at detention hearings observed by investigators was consistently poor throughout the course of this study. With few exceptions, court-appointed lawyers (public defenders or panel attorneys), came into the process too late to achieve results at the detention hearing, and then typically did not meet again with their clients until they were brought back to court for the adjudicatory hearing. Written responses of juvenile defenders confirmed their appointment the same day as the detention hearing (67%), and a majority of those respondents met with their detained client for fewer than 15 minutes.

Assessment investigators observed nearly 100 detention hearings across the state, noting only a handful of instances where defense counsel was assigned prior to a hearing, had reviewed the charging documents, interviewed the client, and discussed possible release options. More often than not, attorneys had no information about the youth or the charges, making the role of defense advocate perfunctory at best.

Juvenile defenders often said that advocacy efforts they made to gain release were futile. The majority of juvenile defenders reported juveniles are released infrequently at detention hearings. *See Appendix B, Chart 10.* To many investigators, it appeared pre-ordained that youth would remain in detention. In the surveyed counties, most juveniles remained in secure detention following the hearing. Arguments for less restrictive settings were seldom advanced, in part, because defenders, especially new attorneys, were not familiar with alternatives such as electronic monitoring, pre-hearing intensive supervision, or other community-based alternatives. In most cases, when a juvenile was released, it was because juvenile probation made the recommendation.

One of the more vexing problems at detention hearings is the lack of inquiry into the sufficiency of the charges against juveniles. In Pennsylvania, the purpose of the detention hearing is to determine, among other things, “whether *probable cause* exists that the child has committed a delinquent act.”<sup>108</sup> However, a quarter of juvenile defenders reported probable cause findings are *not* made at detention hearings. Again, this appears to be an under-reported figure, according to site visit observations. An investigator’s observation about one county applies statewide: “Sufficiency of the evidence is not even an afterthought in this county. There were no victims or witnesses present. Not even the arresting officer. The evidentiary hearing was based solely on the reading of the police report by juvenile probation. What is missing is someone whose job it is to immediately challenge the Commonwealth’s allegations and argue the inadequacy of specific charges.”

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Thirty percent of juvenile defenders reported that charges are never dismissed, even in part, at detention hearings. In interviews juvenile defenders often expressed the view that advocacy efforts at this stage were futile. One juvenile court master was observed who stated on the record that there was no probable cause for the charges against a juvenile, but ordered him to remain in secure detention because of improper parenting. No one argued that this was not a valid reason for detention and that the case should have been treated as a dependency matter. Another public defender reported that arresting officers were never called to testify at probable cause hearings. He added that he believed this would do nothing but upset the court, cast defenders in a bad light, and hurt future clients.

With few exceptions, juvenile defenders were not involved in meeting with county policy-makers (e.g., county commissioners, probation personnel, court administration personnel) concerning detention center admissions policies or conditions of confinement. Several defenders were unaware of their detention center's daily population or whether it exceeded its licensed capacity. This is disturbing since overcrowding in juvenile detention facilities has been a historic problem in some counties. In 2001, 10 of the state's 23 juvenile detention facilities had average daily populations that exceeded their licensed capacities.<sup>109</sup>

Several detention center administrators interviewed for this study said they would welcome more involvement and communication with juvenile defenders; but, as one noted, "[w]e rarely see them. If they are here, it's limited to talking with their client about his or her individual case...and in those instances, attorneys don't ask us for favorable reports about the child's stay."

### ***Defense Counsel Seldom Seek Discovery, File Pre-Trial Motions or Go to Trial***

Inquiries into pretrial motions practice and trial performance yielded important information about barriers to effective representation. Public defenders in counties with high volume, while viewed as knowledgeable and experienced, carried too many cases to adequately prepare. Attorneys with inadequate time to prepare cases cannot research or write effective pretrial motions. Assessment investigators confirmed survey findings regarding the lack of pretrial preparation and the low level of trial performance.

*Discovery*—In Pennsylvania, there are no formal rules governing pre-adjudicatory discovery and inspections in juvenile court. Defense attorneys routinely rely on the Commonwealth to disclose information, making access to information dependent on the good will of prosecutors. Where the relationship between defense counsel and the state is good, this informal procedure may work in many cases; where the relationship is not friendly, discovery was simply non-existent. In several jurisdictions, the informal nature of discovery is abused by both prosecutors and defense counsel. In one county, for example, prosecutors redact police reports containing the contact information of victims and witnesses. In another county a defense attorney used his access to prosecutors' files as a rationale for not conducting his own investigations. Defense attorneys rarely request exhibits, documents, photographs or the circumstances surrounding identification of the juvenile by voice, photograph or in-person identification.

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defense counsel.*

*Pre-Trial Motions*—Apart from discovery requests, only 1% of court-appointed counsel report regularly filing pre-trial motions. Put differently, 99% said they file pre-trial motions (e.g., suppression of evidence or violation of *Miranda* rights) “sometimes,” “rarely,” or “never.”<sup>110</sup> See Appendix B, Chart 11. The most common reason for a limited motion practice expressed by defense attorneys was time constraints, followed by the informality of the process. A common practice is to make oral motions in court rather than file written motions. However, many defenders state that motions practice is not necessary or even helpful to their clients because most masters and judges do not like to deal with motions and frown upon lawyers who file them. A defender in one county stated: “Our bench can’t stand suppressing evidence in juvenile cases. Clearly a child arrested for dealing crack cocaine needs help, and [the court] doesn’t give much thought to the [police] search and seizure. Those federal and state constitutional prohibitions are relaxed when the defendant is underage.” Several attorneys also said that motions practice rarely occurs because ineffective assistance of counsel is not an issue in juvenile cases and therefore, they do not feel compelled to raise legal issues.

*Trials*—Contested trials are a rarity in the juvenile courts of Pennsylvania. The far more common practice is for cases to be resolved by pleas. Overall, as with motions, there is a general sense of resignation among defense attorneys about the outcome of contested adjudications, because some courts are less interested in inquiring into the guilt or innocence of a child, and more intent on dispensing treatment or punishment. Those sentiments were strongest in so-called “best interest” jurisdictions. Here, “good” defense attorneys were described by court staff as “knowing the judge’s preferences” and “understanding the judge is looking out for the kids’ best interests.”

Youth likewise noted that other than promises to “talk with the prosecutor” about their cases, lawyers did not interview witnesses, review evidence or obtain testing. Overwhelmingly, the detained youth we interviewed—those facing the most serious charges—felt out-of-touch with their public defenders. Many did not know what was happening in their cases, their next court date or even the name of their attorney. None had an attorney’s business card. In contrast, those defendants whose families retained private counsel were better informed, aware of their next court date, and knew their attorneys.

### ***At Disposition Hearings Defense Attorneys Are Not Effectively Protecting Their Clients’ Rights and Advocating for Their Treatment Needs***

This study also reviewed the scope and effectiveness of defense representation at disposition hearings, that is, *after* the finding that a child in fact committed the alleged act.<sup>111</sup> Counsel for adjudicated youth are authorized to support or challenge the bases for juvenile court dispositions. Pennsylvania’s Juvenile Act provides that in disposition hearings “all evidence helpful in determining the questions presented, including oral and written 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.”<sup>112</sup> This relaxed evidentiary standard—making “helpfulness” the test of admissibility—is qualified by the right of “parties or their counsel...to examine and controvert written reports so

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received and to cross-examine individuals making the reports.”<sup>113</sup> Defense counsel is particularly well suited to test evidence at disposition, although this seldom happens.

In general, disposition recommendations are made by juvenile probation officers, who are court employees, with defenders rarely challenging these recommendations. We found that many defenders are simply unaware of disposition resources, and overwhelmingly rely on information collected by probation to inform their representation. This practice is exacerbated and supported by the fact that 94% of juvenile attorneys do not have access to independent investigators or social workers.<sup>114</sup>

Several judges told investigators that disposition advocacy was one of the weakest areas of defense attorney practice in juvenile court. These judges expressed frustration that attorneys did not offer more creative disposition alternatives, and indicated that they would be willing to consider other options for the child if they were recommended. One judge observed that effective advocates “challenge juvenile probation to better serve children. They push for more alternatives. These attorneys know the needs of their clients and explain it in court.” Less-than-effective attorneys, however, “don’t know their clients’ needs or the services that can treat them.”

Youth also pointed out the shortcomings of their counsel in disposition representation. Youth in secure detention were the most vocal about the lack of contact they had with their attorneys *after* an adjudication. “I’ve been here for three weeks and haven’t heard from my lawyer, even though I’ve called him,” said one child awaiting her disposition hearing. “I have no idea where I’m going,” she said. Such lack of contact reinforces the general feeling among youth that public defenders are not independent advocates at all. Many reported that their lawyers did not care about them as individuals, that their attorneys were not trustworthy, and that their attorneys were allies with the prosecution.

Among the self-reported steps taken by juvenile defenders preparing for disposition hearings, less than half usually prepare witnesses, and the majority (52%) do so “rarely,” or “never.” Less than one-third of the respondents usually investigate alternative placements for juveniles at risk of placement; and 20% report not reviewing court-ordered evaluations/assessments. *See Appendix B, Chart 12.*

This study demonstrated that most juvenile defenders are unfamiliar with treatment programs to which their clients are referred, their goals and philosophies, the funding mechanisms that drive them, and their record of effectiveness with various kinds of offenses. With one notable exception, no person in the defender offices we visited had toured juvenile disposition programs—inside or outside their jurisdictions—to speak with program operators or youth.

The quality of attorney representation at dispositions for children requiring therapeutic intervention is particularly troubling in light of the need for individualized and specialized treatment plans necessary for this population. Only two defender offices in the 17 counties sampled employ social workers trained to assist attorneys with disposition planning. Despite the gravity of the decisions made at this stage of juvenile court proceedings, defenders (with few exceptions) did not challenge the accuracy, credibility, and weight of probation reports for youth needing mental health treatment, drug and alcohol dependent youth, or youth adjudicated delinquent for arson and sex offenses.

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Defense counsel ineffectiveness at disposition is not solely attributable to lack of resources and training, but also to confusion of roles. The fact that many attorneys are not making it a regular practice to advocate on behalf of their client's dispositional needs is also due to some defense counsel's belief that it is probation's responsibility, and not their own, to identify the child's needs and request appropriate services. Several defenders viewed contested disposition hearings as obstacles to getting children back on track. For youth having multiple contacts with the court system, many defenders viewed their role as a combination of advocate and guardian, with the goal of salvaging children. Even in a county known for adversarial adjudicatory hearings, the same comments were heard with respect to disposition. "Juvenile probation is not looking to hurt my clients by placing them [in out-of-home placements] where they'll be forced to attend school, receive counseling and be monitored." As noted earlier, the juvenile court system differs from county to county with respect to the level of cooperation between the offices of the district attorney, public defender and juvenile probation. But in most counties these offices avoid legal confrontation at disposition, even when healthy disagreement would enable the court to fashion a more effective—and sometimes less restrictive—order of disposition.

### ***Post-Disposition Representation of Adjudicated Youth Is Virtually Non-Existent***

Juvenile defenders in the Commonwealth also fell short of zealous advocacy when it came to the scope and quality of their representation in disposition review hearings and appeals.<sup>115</sup> All defenders in public defender offices report representing juveniles at disposition review hearings. While only 15% of conflict counsel report ending their representation at disposition, this number appeared underreported to assessment investigators. Interestingly, waiver of counsel does not seem prevalent at this stage. Several public defenders explained that though conflict attorneys discontinue representing youth after disposition, the public defender will represent these minors at review hearings. Additionally, defenders, in general, rarely take appeals in juvenile cases. In 2001, of the 31 defender offices that reported caseloads in excess of 20, 68% did not file a single appeal and 23% filed fewer than five appeals. *See Appendix B, Chart 13.*

*Inadequacy at Disposition Review*—The involvement of counsel at review hearings for youth who are at home on probation is minimal. In Pennsylvania, most judges do not actively oversee youth on probation; instead, a probation officer monitors progress. In practice, defense counsel is not even informed when a juvenile has satisfied probation and rarely receives notice that the juvenile court's jurisdiction is discharged.

Defense counsel involvement is more problematic when probation alleges a violation. Defenders are seldom prepared to represent youth when probation revocation is sought; their role is unclear, too. There is no state law or rule of procedure applicable to juvenile court regarding revocation of juvenile probation. Consequently, revocation varies by county. In the absence of guidance, one prominent commentator has suggested that juveniles at least be given an opportunity to present evidence, to confront and cross-examine witnesses, and to show, that even if a violation occurred, the circumstances do not warrant revocation.<sup>116</sup> In practice, however, most juveniles do not receive such opportuni-

*The involvement of counsel at review hearings for youth who are at home on probation is minimal.*

ties. Defenders reported marginal preparation and involvement in these matters. Only 6% contest adverse recommendations at a formal hearing. Two percent interview the juvenile, and 1% interview the juvenile probation officer.

Several probation officers expressed uneasiness about the absence of counsel when violations are alleged. “Of course the child has to meet the terms and conditions of probation, but sometimes I feel we set-up kids to fail. Some have [learning and mental health] problems [and difficult home lives] that prevent them from fulfilling these conditions. When they return to court, the judge takes our word for it that they’ve gotten their chance and need placement.”

The quality of representation for *committed* youth is also minimal. In Pennsylvania, juvenile courts are statutorily bound to hold routine disposition review hearings to keep track of juveniles placed in residential facilities.<sup>117</sup> These are important opportunities to measure the rehabilitative progress of the juvenile in placement, review the necessity of continued placement and address any obstacles to release. Youth with negative treatment reports might have their commitments extended or be transferred to more secure facilities.

Of the 40 public defender offices that confirmed representing youth at dispositional reviews, only 9% usually interview the youth before the hearing, while slightly more usually review the treatment reports (26%), and 15% routinely interview probation officers before the review hearing. None of the respondents routinely interview treatment staff. With one exception, no one from these offices writes, telephones or visits committed youth. “We don’t have the time or budget, so we rely on juvenile probation to visit clients and report to the court,” said one defender.

The failure of attorneys to be present and prepared for review hearings for committed youth is a serious problem. It means that attorneys do not monitor their clients’ progress in programs or institutional placements or assure that the services ordered by the courts are actually provided and that conditions in programs and institutions are lawful.

*Inadequacy in Appealing Trial Court Decisions*—This study confirms a 1993 study of juvenile appeals: “[A]ppeals from juvenile delinquency dispositions are a rare event in Pennsylvania.”<sup>118</sup> Like adult criminal appeals, most juvenile appeals are brought by the county public defender’s office or its equivalent. However, as noted earlier, although 68% of defender offices with caseloads in excess of 20 did not file a single appeal on behalf of adjudicated juveniles, the same organizations file numerous appeals for their adult clients. The findings of this decade-old study—that appeals are taken on behalf of adults 11 times more often than juveniles—appears to be still true today.

In 2001, the Pennsylvania Superior Court—the intermediate appellate forum that hears all appeals challenging juvenile and criminal adjudications—issued seven published opinions reviewing challenges brought by adjudicated youth. The same court issued approximately 150 published opinions reviewing challenges to criminal court convictions and sentences. Moreover, the Superior Court issued almost 30 decisions in *habeas* petitions brought by adults challenging terms and conditions of their confinement under the post-conviction relief act, and issued none in juvenile matters.

Levels of advocacy surrounding juvenile appeals substantially mirror the findings from ten years earlier when the problem was first brought to light. Almost all defenders, in describing the decision to take an appeal, omit any ref-

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erence to the child or parents or guardian as participants in the process. More typical is the absence of any decision-making process at all. This is especially true in busy court systems, where defenders have little time between cases and the thought of an appeal often never arises. With only a few exceptions, neither the juvenile nor the parents are advised of the child’s right to appeal.

Defenders proffered several justifications for this practice. Some said that the likelihood of success on appeal is slim because appellate courts try very hard to affirm the trial judge. Others suggested that appeals are futile because juveniles—even those committed—get short sentences and it takes months to decide an appeal. Several defenders spoke of the chronic under-funding of their offices: they simply do not have the resources to file juvenile appeals. Most even doubted whether appeals are truly in children’s best interests. On this point, one defender said that when taking an appeal, the client must be advised not to discuss the case with anyone, including placement counselors and teachers, while the appeal is pending. This means that the child may not be able to participate in available rehabilitation programs, such as group therapy, which are premised on the child’s admission of the crime (e.g., sexual assault) as a critical step toward rehabilitation. Taking an appeal, according to this attorney, would defeat the treatment plan.

Additionally, assessment investigators noted that trial courts generally failed to inform juveniles of their appellate rights. Under the Pennsylvania Rules of Criminal Procedure, adults must be advised of their post-trial rights on the record,<sup>119</sup> but these procedural rules do not apply to juveniles.

The juvenile court judges interviewed were of mixed opinions, most negative and some positive, about appeals brought by minors. They predicted three types of harmful effects: (1) a child may not fully engage in the treatment program if he or she holds out hope of reversal on appeal; (2) an appeal might foster disrespect for the judicial system and the law (a “beat the system” attitude), especially if the appeal results in an acquittal; and (3) a new adjudicatory or dispositional hearing only prolongs the legal saga, thereby deflecting the child’s attention and energy from more productive pursuits. According to the judges, each effect could increase the rate of juvenile recidivism. On the other hand, some judges thought that appeals might produce a positive result. “If there has been an error, or a miscarriage of justice, an appeal should remedy that. Unfair treatment only engenders contempt for the law.”

### ***Kids are Different: Juvenile Defense Work is Rarely Informed by Knowledge of Adolescent Development***

An extraordinarily high number of children in the juvenile justice system have mental health or learning needs that affect their ability to assist defense counsel.<sup>120</sup> However, training about adolescent development is relatively nonexistent in Pennsylvania for defenders of juveniles. Eight out of ten lawyers in public defender offices receive no training about adolescent development, despite common knowledge that having teens as clients poses particular challenges.

When surveyed about the availability and adequacy of training opportunities available to defenders, no topics were ranked as “adequate” by more than 50% of respondents. Forty percent of respondents ranked “adequate” the

training available on child development and disposition planning. The lowest “adequate” rankings were in the areas of detention advocacy and basic and special education systems. These rankings ranged from 15% to 20%. Generally, half to two-thirds of defenders reported they are not receiving training in these areas.

Many of the attorneys interviewed confirmed these findings. They desire, but lack knowledge about adolescent development. “If I knew more about how kids develop, I could better serve my clients,” said one defender. There are no delinquency-exclusive training programs for juvenile defenders across the state, although Pennsylvania lawyers are annually mandated by the state Supreme Court to participate in Continuing Legal Education (CLE). The Pennsylvania Bar Institute, the leading provider of CLE programs, offers a semi-annual training about child advocacy, but these are directed primarily to dependency court practice. Significantly, the ABA Juvenile Justice Center developed a training curriculum that applies the findings of adolescent development and related research to practice issues, but Pennsylvania has no delivery system for the curriculum.<sup>121</sup>

In Pennsylvania, juvenile probation officers must attend annual trainings about adolescent development. The Center for Juvenile Justice Training and Research at Shippensburg University coordinates and presents training seminars each year to more than 3,000 juvenile probation officers, juvenile court judges, and staff from both private and public residential facilities. Programs are designed to enhance participants’ skills in working with juvenile offenders.<sup>122</sup> None of the juvenile defenders surveyed and interviewed attend these programs, even though enrollment is “open to professionals in Pennsylvania’s juvenile justice system.”

*Interviewing and Counseling Adolescents*—Even when defense counsel have time to interview juveniles, many do not gather relevant information from their clients about the alleged offense that is necessary to commence investigations, file relevant motions and prepare for trial. Several probation officers said defenders in their counties use words and phrases young people do not understand and routinely do not respond to young people’s questions and concerns. One probation officer reported her county’s juvenile defender “does not develop a rapport with her [adolescent] clients and uses legal jargon that’s barely understood. She has little patience for the kids and is easily put off by shrugs and one word answers.” Because many lawyers do not effectively counsel their clients, it is often left to probation officers to explain to youth what occurred in court and what was being recommended.

*Understanding Mental Health Assessment and Treatment*—Rates of mental illnesses among young people in the juvenile justice system are at least twice as high as those in the general population.<sup>123</sup> But most juvenile defense attorneys we interviewed lack knowledge and training about the legal contexts in which mental health evaluations are needed for their clients. These circumstances include competence to waive *Miranda* rights and confess, certification to adult court, competency to stand trial, and therapeutic treatment needs.

Many juvenile defenders we interviewed were unfamiliar with measures developed to diagnose their clients (e.g., cognitive tests such as WAIS-III or WISC-III; academic achievement tests such as WRAT-III or WIAT; or emotional/personality functioning tests such as BDI or Rorschach). Nor did defend-

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ers understand how to apply the results of these measures. Several attorneys were also unfamiliar with the special Juvenile Act provision authorizing Pennsylvania juvenile courts to resort to the civil commitment procedures of the Mental Health and Mental Retardation Act of 1966 or the Mental Health Procedures Act whenever, “at a disposition hearing of a child found to be a delinquent or at any hearing, the evidence indicates that the child may be subject to commitment or detention under” either of those laws.<sup>124</sup>

Beyond the courtroom, defenders were also unfamiliar with recent policies and practices adopted in their counties to improve the identification of mentally ill youth. For example, defenders in several counties were not aware that mental health screening was a routine part of detention intake procedures, now that a majority of Pennsylvania detention centers use the Massachusetts Youth Screening Instrument—Second Version (MAYSI-2) to detect a range of mental and behavioral problems.

*Drug and Alcohol Dependent Juveniles*—Juvenile defenders were also unprepared at disposition to deal with allegations of drug or alcohol dependency. At the shallow end of the continuum, assessment investigators observed defenders who acquiesced to every demand of juvenile probation for frequent and random drug or alcohol testing, even when there was no indication that their clients were users. One defender said, “it’s good for them, and won’t do any harm.” At the deeper end, defenders failed to contest out-of-home substance abuse placements that were ordered without professional assessments by clinicians.

It can make matters worse to mingle young people with no serious treatment needs—in fact, no clinically assessed needs at all—in residential group therapy with diagnosed substance abusers. Any coerced treatment, in-patient or out-patient, should be subject to defense inquiry because it ignores recent evidence cited by the Pennsylvania Juvenile Court Judges’ Commission that unnecessary treatment of casual or experimenting drug and alcohol users tends to make matters worse, not better. “Tough responses to casual and first-offenders (shock incarceration, for example) simply serve to multiply their associations with seriously delinquent and anti-social peers.”<sup>125</sup>

*Basic and Special Education*—For various reasons schools throughout Pennsylvania have dramatically increased the number of youth referred to juvenile court and adopted severe policies to exclude them from returning to school. But almost 90% of juvenile defenders report they do not “always” advocate on behalf of the education needs of their clients to the court or education system. Most juvenile defenders reportedly do not request or review school records even when a case is school-related. One court observer witnessed the judge, defender and prosecutor question a mother about the content of school records in a school-related offense, because no one had requested the school records.

Juvenile probation officers that were interviewed complained about the exclusionary policies of some school districts, and believe defenders can and should advocate keeping youth in school. But without training about state and federal laws governing suspension, expulsion and special education services, defense counsel are less able to protect youth from inappropriate school discipline.

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#### IV. Barriers to Fairness

The fallout from inadequate defense advocacy is devastating. Ineffective advocacy results in unwarranted adjudications and inappropriate intervention. Effective advocacy, however, protects individual rights and, if adjudication is proven, conveys to youth the legitimacy of the process that holds them accountable for their actions and provides rehabilitation. Some of the barriers to achieving this promise for youth are institutional and extend beyond individual juvenile defenders.

##### *Remnants of Parens Patriae Prevents Fair Adjudicatory Hearings*

More than three decades after *In re Gault* guaranteed that juvenile courts would provide meaningful hearings, many children do not receive fair trials. Assessment investigators identified several aspects of the adjudicatory hearing as compromising justice: decision makers routinely review youth's school records or probation officers' social reports prior to or during trial; defense counsel do not insist on adherence to rules of evidence or proof "beyond a reasonable doubt" for adjudication; and, hearings are often too brief, too confused, or too treatment oriented.

In *In re Gault*, the Supreme Court applied federal constitutional protections to children in juvenile delinquency proceedings.<sup>126</sup> The Court held that juveniles facing "the awesome prospect of incarceration" have the right to counsel under the Due Process Clause of the United States Constitution.<sup>127</sup> The Court recognized that "a juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense to prepare and submit it."<sup>128</sup>

Noting that the "absence of the substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment," the Court determined that a child's interest in delinquency proceedings are not adequately protected without the adherence to due process principles.<sup>129</sup> The Court reaffirmed this view in *In re Winship* in 1970, stating: "We made clear in [*Gault*] that civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile court."<sup>130</sup> This decision established that juveniles are constitutionally entitled to proof "beyond a reasonable doubt" during the adjudication for delinquency charges.<sup>131</sup>

Despite the constitutional levels imposed on juvenile proceedings, many defense attorneys in Pennsylvania do not adequately insist on adherence to these central principles. Prior receipt by the court of information about a youth's background plainly prejudices a juvenile's ability to receive a fair trial and vitiates the constitutional presumption of innocence; but this appears to be common practice in the state. In one county assessment investigators overheard an *ex parte* conversation between the court and juvenile probation about the defendant's family history. In this same jurisdiction, it is common practice for youth to remain handcuffed during the adjudication hearing. Defense counsel in other jurisdictions reported to investigators that judges frequently were familiar with a child's history prior to hearings.

In several jurisdictions, assessment investigators reported failures of

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defense counsel to insist on constitutionally required levels of proof or standards of review. Without objection or requests for review, judges were observed refusing to dismiss delinquency petitions despite a lack of evidence, preferring to keep youth on informal probation. A number of defense attorneys complained that masters were not giving proper attention to defense motions (e.g., a motion to suppress evidence) because doing so would result in dismissal of a petition or an acquittal for the defendant. Defense attorneys also believed that judges and masters sometimes permitted the admission of evidence that was not competent, relevant, and material and that this undermined the juvenile's ability to receive a fair trial. Perhaps most significantly, several defense attorneys, but fewer probation officers, maintained that judges adjudicated juveniles delinquent even when there was not proof beyond a reasonable doubt of their guilt. Most individuals who believed judges reduced the conviction standard in juvenile court explained that this occurred because judges desired to help children. Additionally, several assessment investigators observing hearings thought the treatment-oriented atmosphere of the adjudicatory hearing adversely affected trial fairness.

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### ***Over-Dependence on Juvenile Probation Undermines Fairness***

The role of the probation officer is the most diverse and influential within the juvenile justice system in Pennsylvania. Probation officers are the backbone of the juvenile court system in every county. As a group, probation officers wield extraordinary influence in the ultimate outcome of a child's case. They play an integral role in every aspect of a child's case, from arrest through sentencing, and everyone—judges, prosecutors, clerks, even defense attorneys—heavily rely upon them. They conduct intake, interview families, investigate charges, advise youth of their rights, draft and file delinquency petitions, testify at hearings, maintain records, make recommendations and supervise youth. While assessment investigators interviewed many competent and caring probation officers, the system's over-dependence on their role has tipped the scales toward a "best interest" system in delinquency cases in lieu of a system that demands the Commonwealth prove its case.

Interestingly, several chief juvenile probation officers interviewed, acknowledged their undue influence with judges, prosecutors, youth and families. These same leaders appreciated the adversarial framework because it "preserved balance" and "checked" their power. But, inadequate representation of juveniles by defense counsel "distorts that influence, making it bigger than it should be," said one chief probation officer. Others explained their departments were too often in the position of explaining to youth what had occurred in court and what was being recommended. And, it was not uncommon for investigators to learn from probation that defense counsel never contacted them about cases and were not involved in any recommendations or planning for detention release, disposition or aftercare.

*While assessment investigators interviewed many competent and caring probation officers, the system's over-dependence on their role has tipped the scales toward a "best interest" system in delinquency cases in lieu of a system that demands the Commonwealth prove its case.*

Without early intervention by trained defense counsel whose primary obligation is to the youth, the expansive and far-reaching roles assumed by probation can create confusion for children. This study found that while probation's authority and influence were system-wide, most probation officers only reluctantly performed duties best left to others in the system; probation, of the many subsystems within the overall juvenile justice system, worked to "fill the breach" where other subsystems (such as the defense function) were not meeting their obligations.

*Probation and Intake Officers*—Intake probation officers are usually the first court personnel a child meets after being arrested. These probation officers conduct intake of children arrested on delinquency charges and are responsible for initially determining whether a child should be held in detention or released to the parents' custody. In most jurisdictions, probation used guidelines devised by the Juvenile Court Judges' Commission for making an objective assessment of relevant risk factors to justify detention. However, in some counties, this decision is made without reference to any written criteria or guidelines. Each probation officer made the determination based on his own experience, philosophy, and knowledge regarding the child's personal background and home situation. Without guidelines, this authority can be misused and ultimately harm children. In one county, juveniles who chronically missed school were routinely, and illegally, detained in secure care at the recommendation of probation. In another county, weekend detentions were typical for youth charged with non-violent offenses such as unauthorized use of an auto. One juvenile probation officer explained: "Detention is commonly used to send a message to juveniles; some kids have to get the message and detention helps."

Intake for non-detained youth varies by county, but probation officers also routinely conduct intake of all arrested youth. As mentioned earlier, arrangements are usually made by mail, with anywhere from one to four weeks elapsing between the juvenile's arrest and the first meeting with probation. In most counties visited, intake is not simply limited to gathering information about the child's personal background and home situation, but serves as an opportunity for probation officers to conduct informal investigation into the circumstances of the case. Although Pennsylvania law directly prohibits the use of incriminating statements (made during intake) against a minor, a majority of departments give juveniles formal *Miranda* warnings.

In Pennsylvania, incriminating statements made by a youth during intake shall "not be used against the declarant."<sup>132</sup> Several defenders interviewed were well-aware that "a lot of kids admit to charges during intake," but are under the mistaken impression that these incriminating materials are sealed from the Commonwealth. In many counties visited, prosecutors routinely review the intake files of juvenile probation, including their interview notes. Such knowledge gives prosecutors an upper-hand during plea negotiations and trials. Indeed, probation officers in several counties we visited stated that they have testified against juveniles in court to reveal incriminating information obtained during intake.

*Probation Officers as Prosecutors*—In most jurisdictions, probation officers not only perform intake, they also participate actively in prosecutorial functions. In several smaller counties, probation represented the Commonwealth at detention hearings. In both small and large counties, prosecutors generally rely on

probation to present the allegations to the court and to present law enforcement witnesses if necessary.

Often the probation officer will have discussed the charges with the child and his family and negotiated a plea (e.g., consent decree or deferred adjudication) prior to any involvement of the prosecutor or the public defender. The agreement is then presented to the court for final approval. In the counties where children routinely waive counsel, the public defender is not even aware of the case, let alone the outcome; and many judges commented that this practice enables a court to handle many cases “efficiently” without “interference” of defense counsel.

When asked about probation’s role at adjudication, juvenile defenders reported that probation and police often present evidence supporting delinquency petitions. Police did so 24% of the time and probation did so 22% of the time. Usually the Commonwealth’s attorney was present, but several counties reported that the Commonwealth typically deferred to others when evidence needed to be presented.

Probation officers are also responsible for charging, and in some counties, prosecuting children for violating the terms of their probation, considered “technical violations.” When these youth are accused of violating probation, their probation officers testify to the facts of the violation.

*“Expert” Witness to the Court*—Probation officers are usually relied upon quite heavily in the disposition phase of a case. The probation officer is responsible for conducting a predisposition investigation and making sentencing recommendations. In this capacity, the probation officer serves as the key witness and his or her predisposition report is the central, if not the only, piece of evidence the court considers in sentencing a child.

In many of the disposition cases assessment investigators observed, the court simply received oral testimony from the probation officer. Because probation officers are generally the only persons in contact with the child and his family, they provide the version of the facts that everyone relies upon, including public defenders. Where a report is involved, defense counsel is entitled to an advance copy for review; but many defenders reported they rarely saw the report before coming to court. Moreover, public defenders rarely present their own witnesses or experts to build a case for some kind of alternative sentence at disposition.



# CHAPTER FOUR

## Promising Approaches and Innovative Practices

The ABA Juvenile Justice Center's national assessment of access to counsel and quality of representation in delinquency proceedings identified at least six characteristics of high quality defender programs:

- Limited caseloads;
- Support for entering the case early, and the flexibility to represent the client in related collateral matters (such as dependency and special education);
- Comprehensive initial and ongoing training and available resource materials;
- Adequate non-lawyer support and resources;
- Hands-on supervision of attorneys; and
- A work environment that values and encourages juvenile court practice.

While the report reveals substantial deficiencies in access to counsel and the quality of representation in juvenile court, effective representation of young people can and does exist. In several parts of the state investigators observed individual defenders who were articulate and well prepared in delinquency court, representing children and youth who were engaged in the process and demonstrated an understanding of the system. These attorneys developed creative strategies for trial and disposition. Several, but not all, practices are described below to suggest possibilities for excellent defense work.

### **Defender Association of Philadelphia (Organization, Resources & Post-Disposition)**

*Philadelphia County has the single largest volume of juvenile court cases in the Commonwealth. It provides an excellent example of strong advocacy at each stage of juvenile court involvement.*

At the outset, the Defender Association is structured differently from public defender offices elsewhere in the Commonwealth, all of which are county agencies overseen by county commissioners. The Defender Association is an independent non-profit corporation whose services are purchased by Philadelphia. Therefore, the Defender Association has much greater control over its budget than other public defender offices. Moreover, the chief defender is appointed and retained by a board of directors, rather than by county commissioners. This governing structure insulates the office from political pressures. The board is composed of representatives from city government, the organized bar and the community.

Philadelphia County has the single largest volume of juvenile court cases in the Commonwealth. It provides an excellent example of strong advocacy at each stage of juvenile court involvement. The Juvenile Unit, directed by Robert Listenbee and Sandra Simkins, is a team of 19 full-time and two part-time defense attorneys. They handle a docket of 6,000–6,500 cases per year. The Juvenile Unit also employs three full-time and two part-time investigators (used exclusively for juvenile matters), and nine full-time administrative staff (e.g., paralegals, secretaries, clerks).

The Defender Association stands out among defender offices for its juvenile social services—a division within the Juvenile Unit, directed by Christina Bradley, employing nine social workers to assist juveniles with significant mental or physical health needs, drug and alcohol addictions, and education barriers. Social workers manage 1,000–1,200 cases per year, providing support to both attorneys and juvenile clients. Social workers team with attorneys to review the individual needs of their clients, services that would meet those needs, and whether those needs can be met by the disposition proposed by juvenile probation. When necessary, social workers prepare reports that challenge the recommendations of juvenile probation and testify about more appropriate, and less restrictive, treatment options.

The Defender Association also stands out among defender offices by providing a far higher level of attorney training and practice resources. A separate training unit provides new attorneys with a year-long training program, including an intensive three-week session on advocacy. Only attorneys who have practiced at the Defender Association for at least six months are assigned to the Juvenile Unit. There, they receive an additional week of training. New attorneys also receive in-court supervision and partner with juvenile social service workers to prepare for disposition hearings for clients with significant treatment needs.

Motions practice in the Juvenile Unit is routine and thoughtfully aggressive and generates significant appellate work, although appeals are not typically handled by the Juvenile Unit.

Also impressive is the Defender Association's post-disposition advocacy for youth in placement. Despite vast geographical separation from their clients, the Defender Association investigates and monitors the treatment of clients placed in out-of-home facilities. The Philadelphia Department of Human Services, the county's children and youth agency, pays the Defender Association \$50,000 per year for Juvenile Unit attorneys and social workers to visit and counsel clients

in secure private and public placements four to six times a year throughout Pennsylvania—and in Virginia and Texas. Defenders use disposition review hearings as opportunities to bring numerous matters to the attention of juvenile court, including: grounds for release from confinement; evidence that clients are not receiving services such as drug treatment or special education; information that clients are in jeopardy due to lack of security or other dangerous conditions in placements; changes in home conditions; and, openings in community-based programs.

On several occasions the Defender Association has successfully filed *habeas* petitions challenging dangerous conditions on behalf of classes of juvenile clients in placements inside and outside of Pennsylvania.

Another high priority, post-disposition project for the Juvenile Unit involves the expungement of juvenile records. Many juveniles and their parents erroneously believe that juvenile records are automatically sealed or destroyed once they reach the age of 18 or 21. This is not true in Pennsylvania.<sup>133</sup> Unfortunately, juvenile records prevent children from obtaining jobs in law enforcement organizations, such as police and sheriff departments, the FBI and correctional institutions. Children also are prevented from entering the military, obtaining certain types for financial assistance for college and working in certain health care organizations, such as nursing homes for the elderly. The law of Pennsylvania gives children the option of having their records expunged under certain circumstances.<sup>134</sup> For the last four years, the Juvenile Unit has filed hundreds of motions each year. Many clients whose records have been expunged have since entered the military or obtained jobs that would not have otherwise been available to them.

### **Allegheny County Office of the Public Defender (Increasing Its Commitment of Resources for Delinquency Representation)**

The Allegheny County Office of the Public Defender (OPD) is the second largest indigent defense law firm in the Commonwealth and is situated in a county, which includes the city of Pittsburgh, with the second largest volume of juvenile court cases in the Commonwealth (3,000–4,000 cases per year). Under the leadership of M. Susan Ruffner, OPD has made a significant investment in its representation of children in the delinquency system over the past three years. OPD assigns one Supervisor, eleven Assistant Public Defenders (eight full-time/three part-time), three clerical workers and an Ombudsperson (social worker) to its Juvenile Unit.

The OPD stands out among Juvenile Units at defender offices by providing a high level of training and practice resources. Only attorneys who have practiced at the OPD for at least six months are assigned to the Juvenile Unit, and once there they receive an additional two weeks of training about policy and practice before representing clients. In addition, less-experienced attorneys are partnered with more experienced staff in individual courtrooms in order to enhance the training and effectiveness of less experienced attorneys.

Under the leadership of Supervisor Mark Waitlevertch, the Juvenile Unit has developed and implemented practice standards for effective juvenile representation and provided juvenile defenders access to paralegal and investigative services. OPD has also been active on various Allegheny County committees

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concerning juvenile court to address systemic issues with court administration and the juvenile probation office.

On a monthly basis the Juvenile Unit holds staff meetings to discuss administrative issues. The staff also gathers monthly to meet with various providers about treatment and rehabilitation programs. In addition, each attorney meets individually with the Division Supervisor for a file/case review meeting, to monitor attorney development and compliance with the practice standards as well as a scheduled opportunity for each attorney to discuss complex cases, resource needs, training needs, and case issues with their Supervisor.

Two programs in the Allegheny County Office of the Public Defender should be recognized for effective representation of juveniles. These programs, both commenced as grant programs, are the Juvenile Ombudsman Program and the Shuman Detention Hearing Project. The Juvenile Ombudsman Program—which began in April of 2000—supports an Ombudsperson (with a Masters degree in Social work) to assist attorneys in the preparation and presentation of cases involving both dependency and delinquency issues. The Shuman Detention Hearing Project permits the assignment of an attorney to represent all children detained at Allegheny County’s Shuman Detention Center (Shuman) for all detention hearings (in a limited capacity until potential conflict of interest with co-defendants is resolved). Additionally, the presence of this attorney at the detention center permits OPD to monitor admissions for possible illegal detentions, timely interview all clients detained at Shuman, and receive and transmit discovery and interviews to the office on a daily basis.

### **Full-Time Counsel Who Exclusively Represent Juveniles**

*Several counties make their juvenile defenders practice full-time in order to more effectively serve the needs of their juvenile clients.*

Despite the negative consequences of high caseloads and conflicts that arise from part-time defense practices, most rural and suburban counties—especially the 50 counties in Classes 4 through 8—do not have full-time juvenile public defenders. Nevertheless, several counties make their juvenile defenders practice full-time in order to more effectively serve the needs of their juvenile clients. The counties that promoted this practice received partial funding from grants awarded by the Pennsylvania Commission on Crime and Delinquency (PCCD). PCCD’s Juvenile Defense Capacity Building Program supports counties that demonstrate the need for new or expanded juvenile defense delivery. The grant is for three years and demands an increasing county match. Through the spring of 2003, seventeen counties had received grants for juvenile defense.

Several of the chief public defenders and juvenile court judges in the counties visited, including Monroe, Cambria, Lackawanna and Montgomery, have arranged for county dollars to fund full-time juvenile defense work when PCCD grants lapse. Assessment investigators who visited these counties noted that, while challenges still exist, these counties had an especially active juvenile practice and the defenders expressed a high level of commitment to representing youth.

### **Counties that Presume Indigence and Prohibit Waiver of Counsel**

Several counties presume that accused children are indigent. These counties view the child as the client. They have adopted a policy that the juvenile court

shall assign counsel for juveniles who are not represented by private counsel. These counties recognize that forcing parents of any socio-economic class to retain counsel for their children in a delinquency matter forces a conflict in the representation. Financial pressures may lead parents to encourage their children to ignore their right to counsel in an effort to seek a low cost resolution.

Some counties do not permit children and youth to waive their right to counsel. Others make waiver difficult. For example, Cambria County does not permit waiver of counsel as a matter of course and, at a minimum, requires that a juvenile defender consult with the youth prior to accepting any waiver. The juvenile court judge regularly advises youth of their right to counsel and makes a concerted effort, on the record, to ascertain whether children actually understand the consequences of waiving counsel. Several judges and masters in other counties reported similar practices because of concerns they have with children not being represented. These courts avoid many the problems that accompany waiver.

### **Professional Association & State Leadership**

The Pennsylvania Association of Criminal Defense Lawyers (PACDL) established a Juvenile Justice Committee in 2002. While resources to develop and enhance professional association should be enhanced, the efforts and leadership of PACDL are a positive first step to ensuring that juvenile defenders exchange information about juvenile justice issues and trends. PACDL has developed a list-serve to increase information flow to juvenile defenders and provide a mechanism for problem solving, access to resources, and discussion on a variety of juvenile topics.

*Several counties presume that accused children are indigent. These counties view the child as the client.*



# CHAPTER FIVE

## Conclusions and Recommendations

To guarantee fair and effective representation to all juveniles through all phases of the delinquency process, the Commonwealth, including its judicial districts and counties, must increase resources for juvenile defenders and improve quality of representation at detention, trial, disposition and post-disposition. Moreover, juvenile defenders must become more proactive in addressing systemic juvenile justice issues across the Commonwealth of Pennsylvania. The conclusions below are followed by specific recommendations to the relevant entities charged with the responsibility of providing just and fair treatment to Pennsylvania's youth.

- *The Commonwealth, judicial districts and counties should ensure that sufficient resources are available to increase the number of attorneys representing juveniles in delinquency proceedings and increase the availability of non-lawyer support—including, paralegals, social workers, investigators and experts.*
- *The juvenile defense system should receive sufficient funds to adequately compensate court-appointed counsel. It is in children's interests that their attorneys be paid enough to do their jobs.*
- *Attorneys representing youth in delinquency proceedings should receive training in trial advocacy skills, as well as comprehensive and on-going training on: adolescent development; communicating with adolescent clients, witnesses and victims; elements of effective treatment programs, especially for youth with special needs; evaluating youth competence; and representation in collateral legal matters including child welfare, education and mental health.*
- *Caseloads should be low enough to permit every attorney to offer prompt, full and effective counseling and representation to each client. Caseloads must be fixed at levels which will not compel lawyers to*

*forgo investigations required in both contested and uncontested cases, to be less than diligent in preparation for trial, or to cease representation at disposition.*

- *Courts and state/county bar associations should use their authority to adopt, or urge the adoption of the IJA/ABA Juvenile Justice Standards for representation of delinquent youth in juvenile court.*
- *Juvenile defenders should increase their communication with their counterparts across the state about juvenile court practice.*

## **Commonwealth**

### ***The Executive Branch Should:***

- a) Adopt the recommendation in the 2003 Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System to establish an independent, state-level Indigent Defense Commission to oversee the delivery of defense services, including juvenile defense, and promulgate uniform, effective minimum standards.
- b) Through the Pennsylvania Department of Public Welfare (DPW), clarify that counties can seek state reimbursement through the needs-based budgeting process for the cost of court-appointed counsel for delinquent youth. DPW should also develop guidelines for county juvenile courts to work with their county Children and Youth Service agency administrators to include court-appointed counsel fees and related services in the annual county needs-based budget. DPW should clarify that there are circumstances which IV-E administrative costs would be available for eligible delinquent youth.
- c) Through DPW, regularly communicate with juvenile defenders about the performance of public and private provider services to delinquent youth. DPW should notify juvenile defenders of public and private delinquency programs operating under provisional licenses.
- d) Through the Pennsylvania Commission on Crime and Delinquency, continue and expand the availability of juvenile defense capacity building grants.
- e) Through the Juvenile Court Judges' Commission (JCJC), continue to encourage juvenile court judges to provide community leadership by participating in the county budget process to advocate for sufficient funding for indigent juvenile defense.
- f) Through JCJC's Center for Juvenile Justice Training and Research, include juvenile defenders in training programs for juvenile court judges and probation officers.

***The Supreme Court of Pennsylvania Should:***

- a) Adopt standards for defense attorneys representing children in delinquency proceedings that establish guidelines for maximum caseloads and minimum compensation levels, allowing counsel to perform in a competent manner.
- b) Direct the Administrative Office of Pennsylvania Courts to track and publish the scope and frequency of delinquency appeals, separate from the appellate docket for adult criminal matters.
- c) Adopt the recommendations of the Juvenile Court Procedural Rules Committee for statewide rules of practice and procedure for juvenile court practice to the extent that they are consistent with the findings of this report.

**Counties*****Juvenile Courts Should:***

- a) Ensure that no juvenile goes unrepresented at any stage of the juvenile court process, and presume the indigence of children for the purposes of appointment of counsel.
- b) Take leadership to ensure that counsel representing juveniles are appropriately trained and adequately compensated and that minimum standards are met. Judges should raise the overall quality of representation of the attorneys who appear before them by demanding that they meet the *IJA/ABA Juvenile Justice Standards*.
- c) Sponsor cross-discipline trainings for the county's juvenile justice professionals—including judges, prosecutors, defenders and probation staff—that apply the findings of adolescent development research to practice issues confronted by these juvenile court practitioners.

***Juvenile Probation Officers Should:***

Be responsive to the inquiries of juvenile defenders and engage juvenile defenders in regular, on-going communication throughout the delinquency process—from intake to post-disposition review.

***Public Defender Offices Should:***

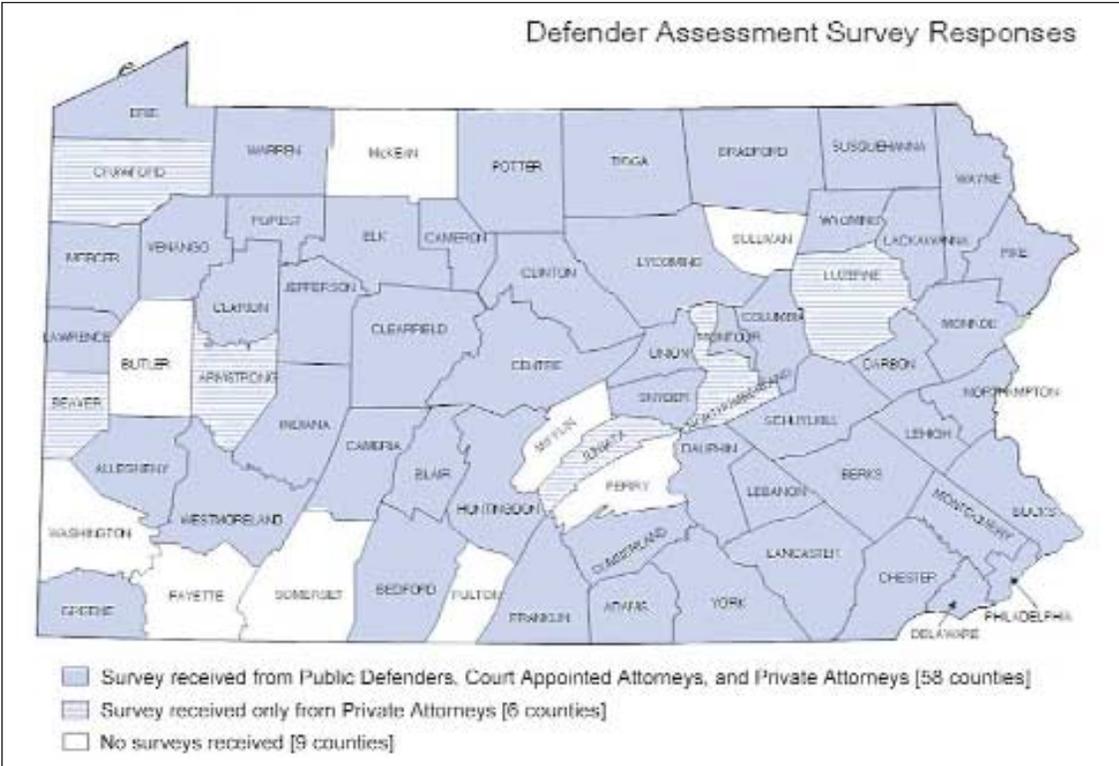
- a) Negotiate contracts with county commissioners and/or judicial districts that permit them to refuse to accept cases that rise above their capacity to provide prompt, full and effective counseling to each client.
- b) Ensure that juvenile defenders have the resources available to investigate and prepare cases properly from commencement

- through appeal, including access to needed social workers, investigators, experts and interpreters.
- c) Ensure that all juvenile defenders receive regular, on-going and comprehensive training and supervision.
  - d) Encourage attorneys to specialize in juvenile defender work and eliminate any promotional or other office policies that act as barriers to remaining in such work.
  - e) Develop a strong post-disposition practice by: remaining actively involved after disposition to ensure that juveniles receive appropriate treatment services; take steps to improve unacceptable and unlawful conditions in facilities where clients are confined; and counsel juveniles on the full extent of their post-trial rights and responsibilities.
  - f) Maintain accurate data on caseloads, outcomes and other juvenile justice information essential to effective planning and evaluation of services.
  - g) Participate in national and statewide associations such as the Northeast Regional Defender Center (of the National Juvenile Defender Center) or the Pennsylvania Association of Criminal Defense Lawyers (PACDL) to exchange information about a variety of juvenile topics, including other defender assessments and the performance of various public and private treatment programs for delinquent youth.

***The Pennsylvania and Local Bar Associations Should:***

Become advocates for indigent defenders representing accused and adjudicated youth by supporting the above recommendations and by adopting policies that will promote their implementation.

# APPENDIX A

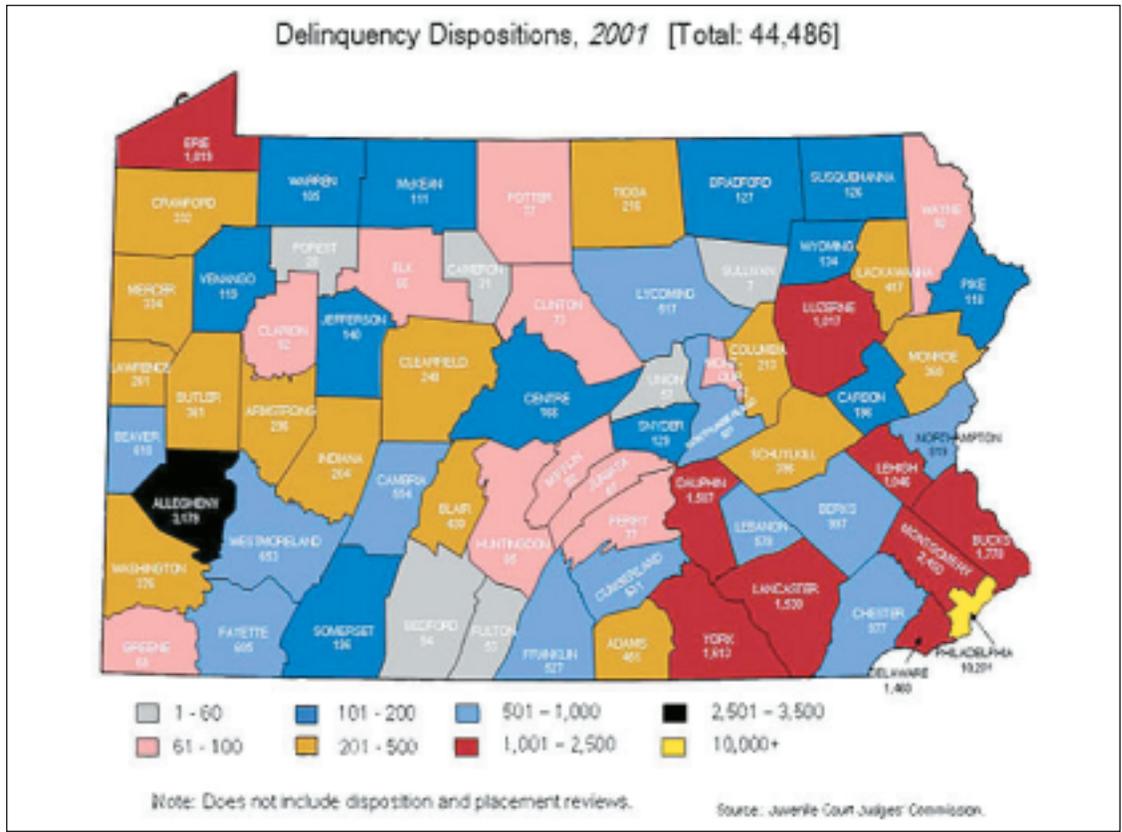


State Chart 1

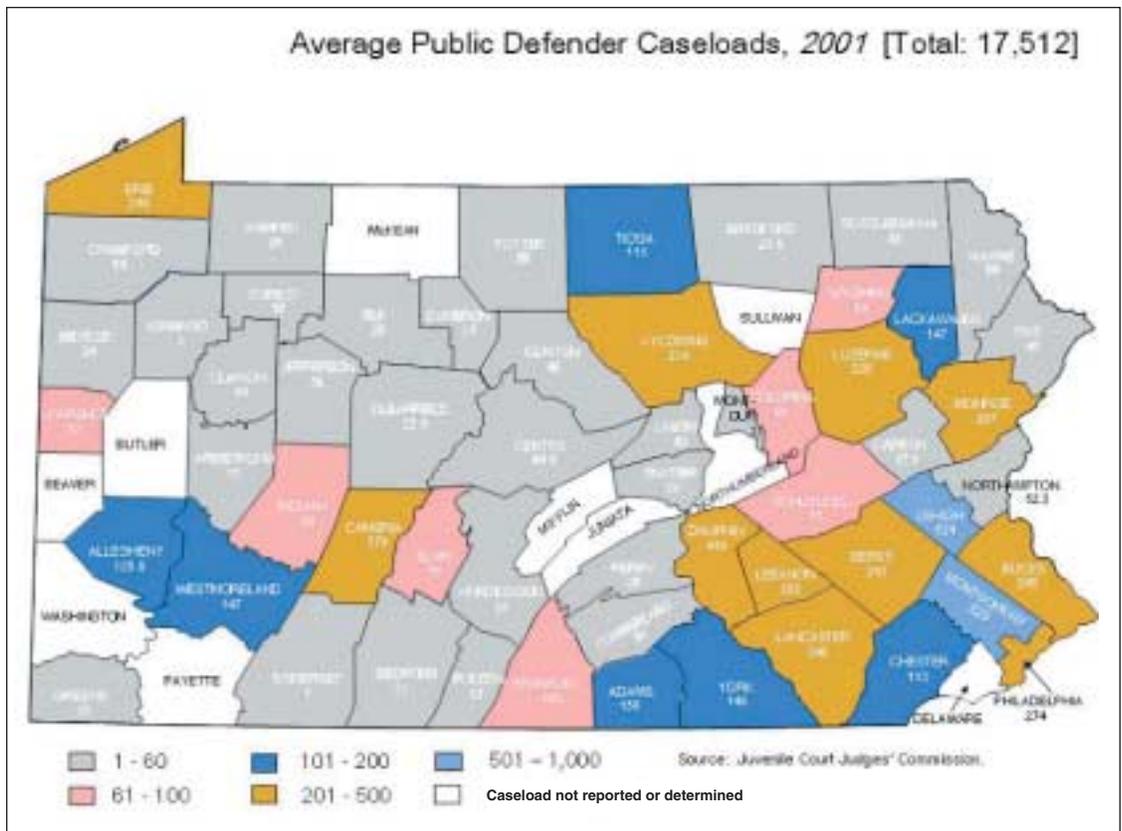


State Chart 2

State Chart 3



State Chart 4



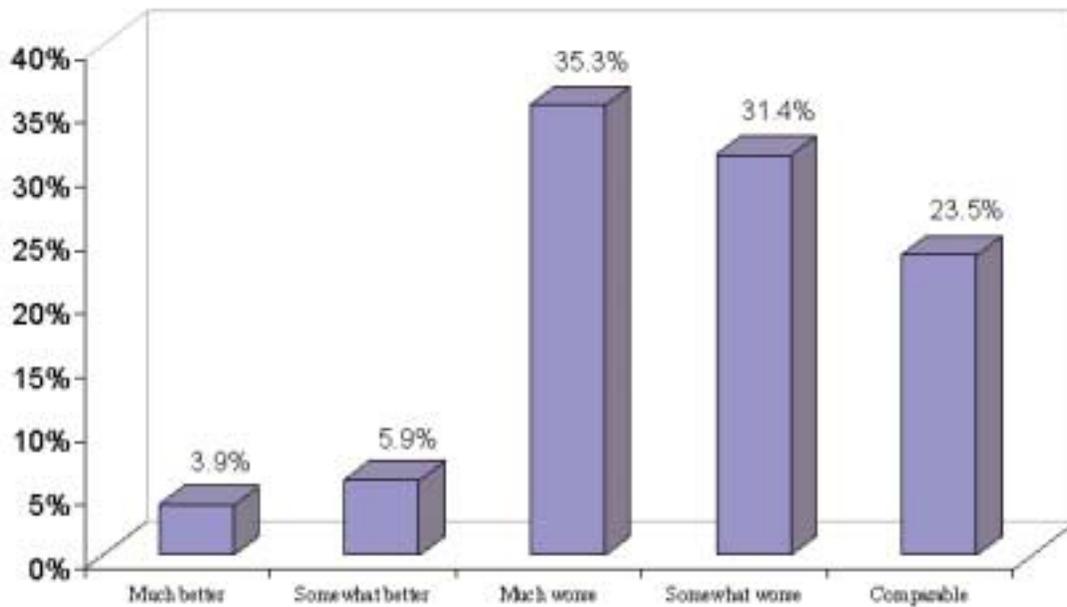




# APPENDIX B

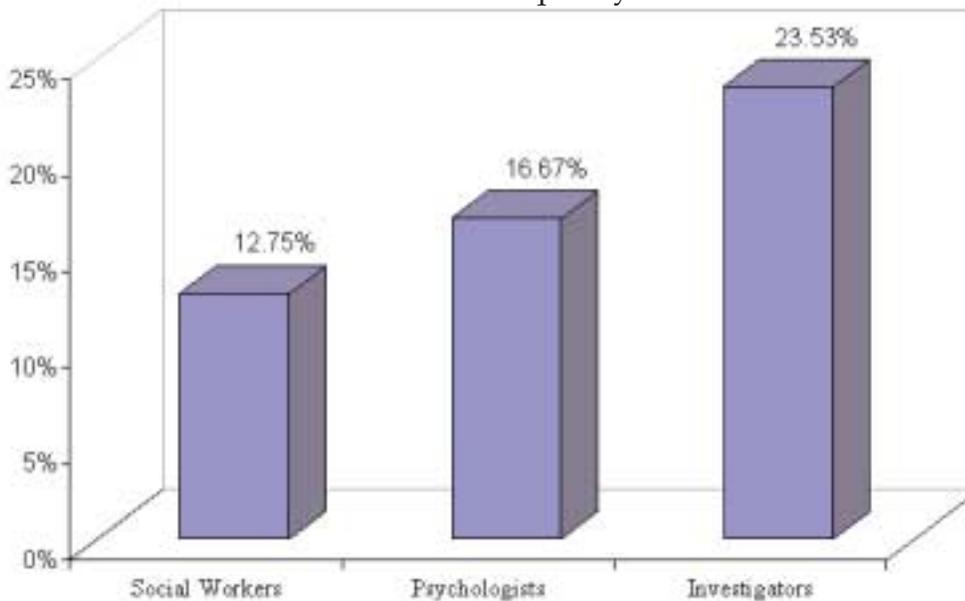
**Data Chart 1**

Juvenile Defender Resources Compared to Local Prosecutors' Offices

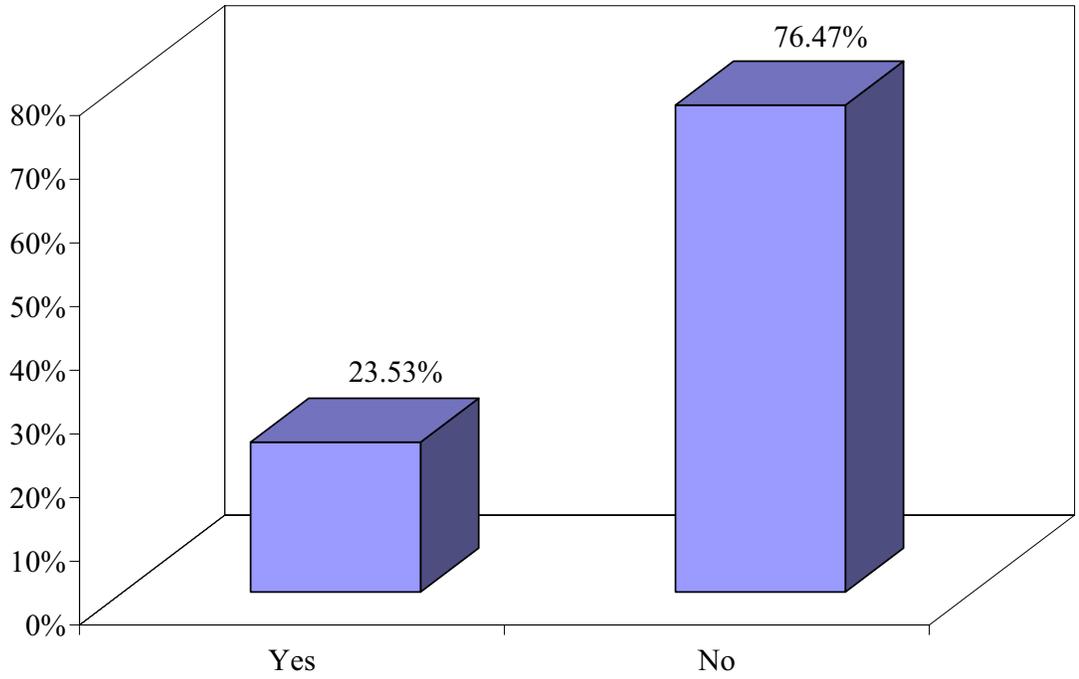


**Data Chart 2**

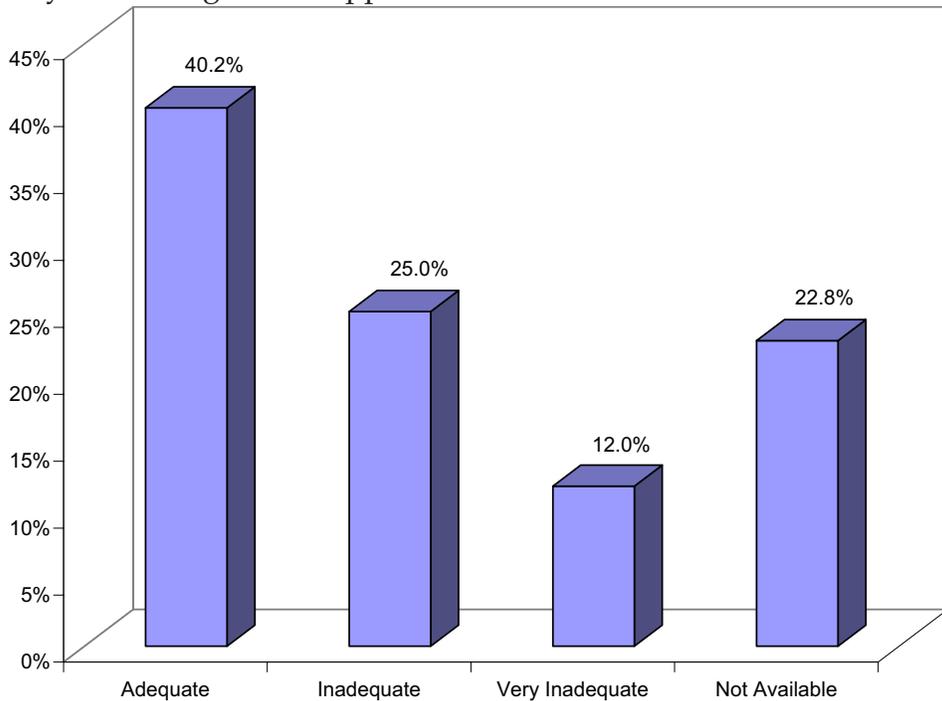
Percent of Juvenile Defender's Offices Employing Other Professionals to Work on Delinquency Matters



**Data Chart 3**  
Access to Independent Investigators

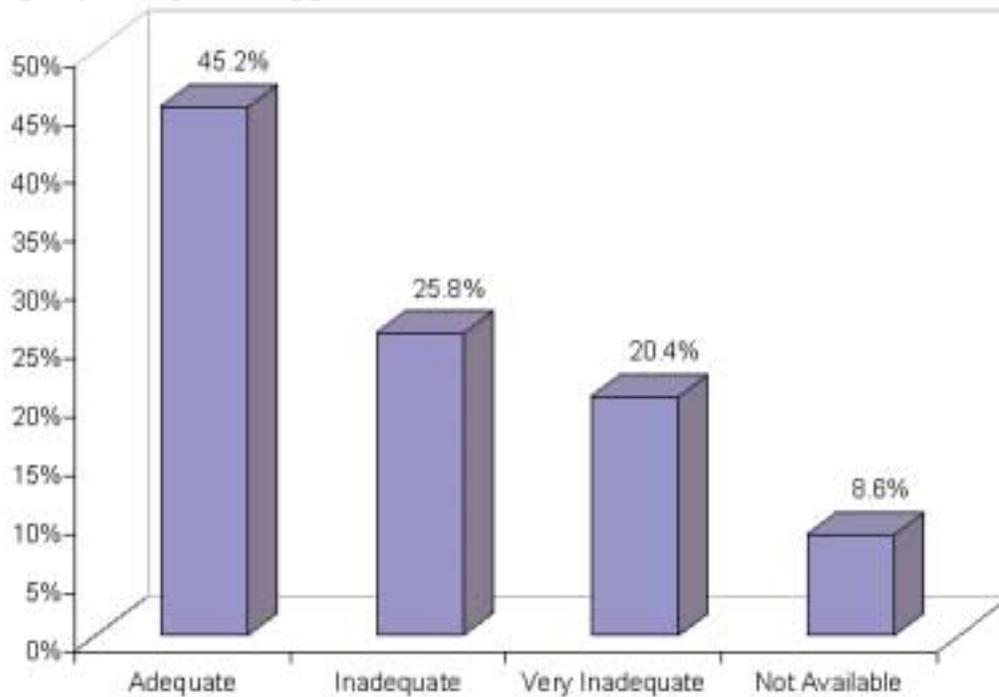


**Data Chart 4**  
Adequacy of Investigator's Support



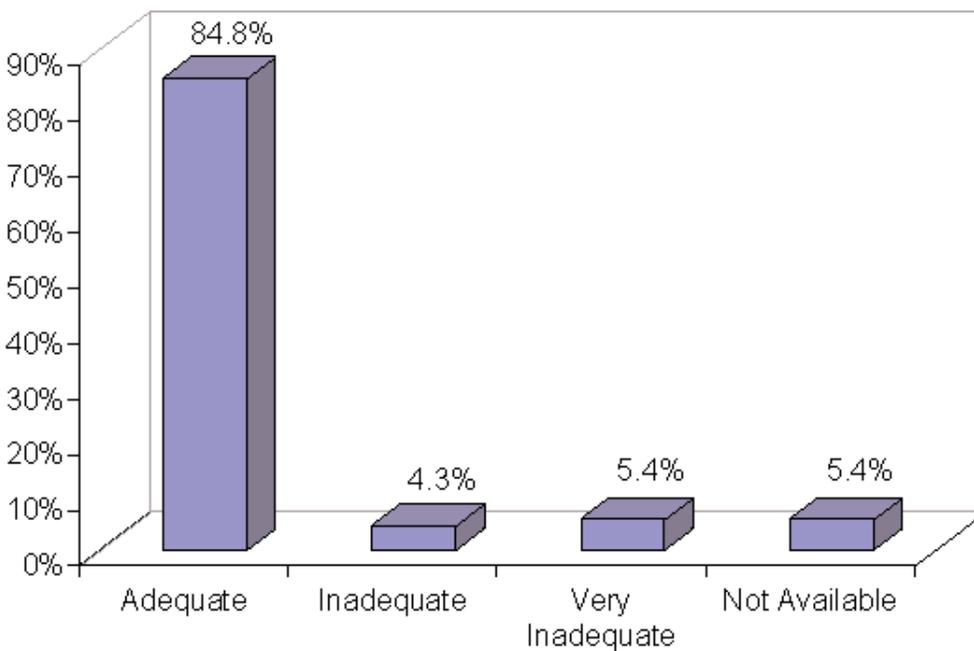
**Data Chart 5**

Adequacy of expert's support

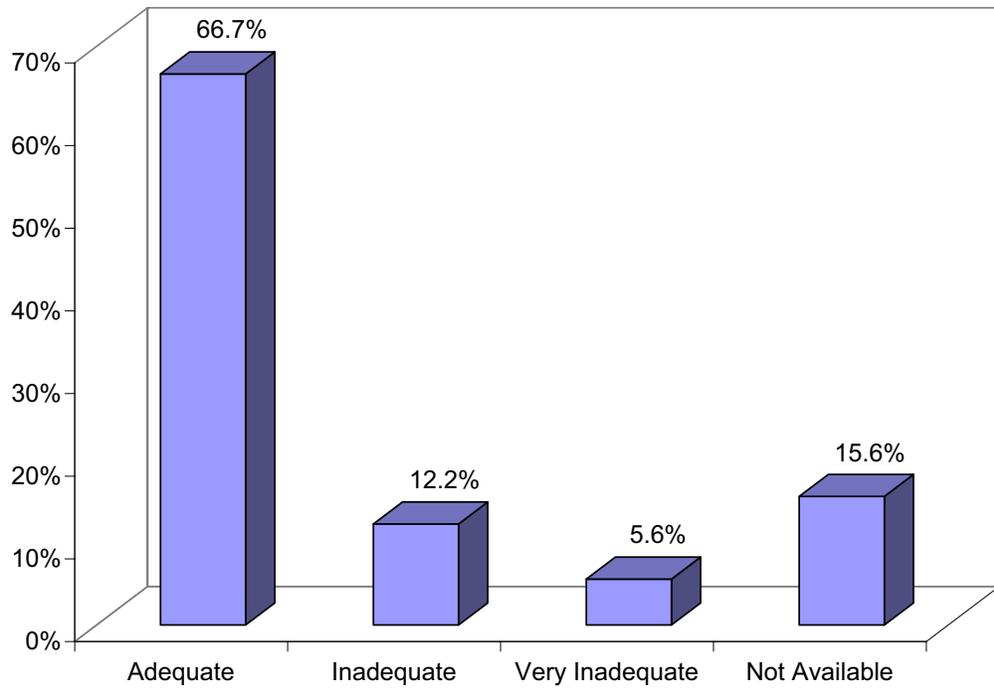


**Data Chart 6**

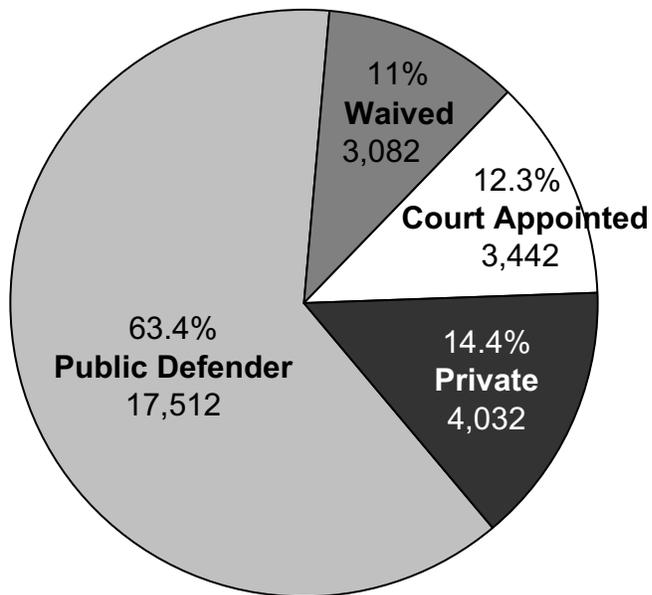
Adequacy of telephone support services



**Data Chart 7**  
Adequacy of internet support

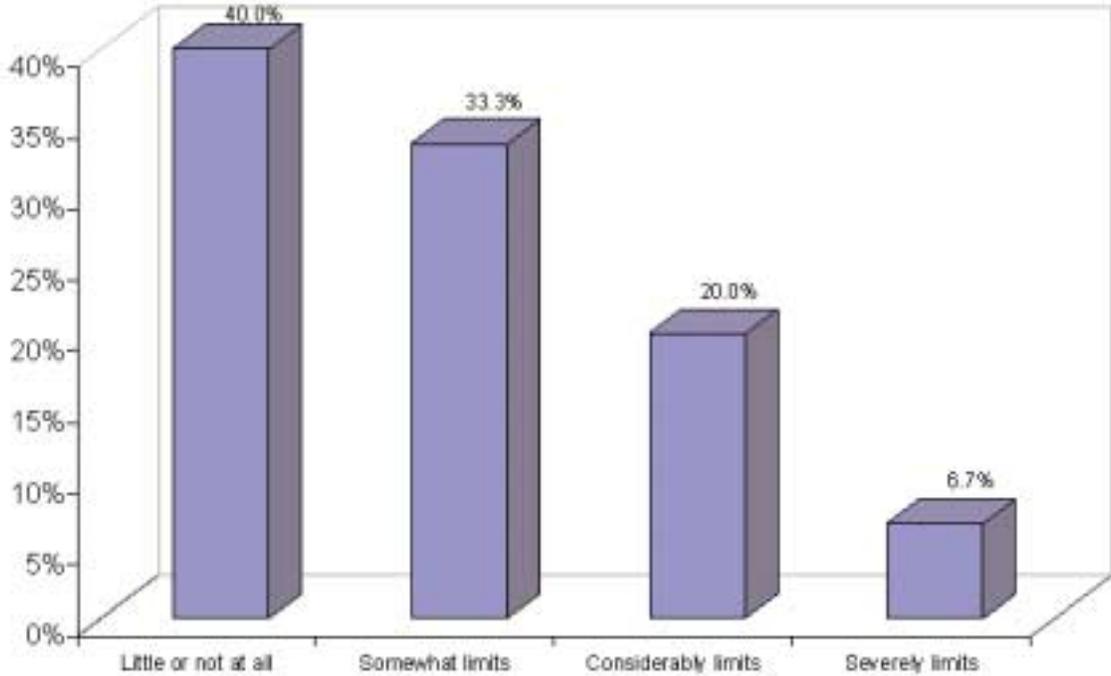


**Data Chart 8**  
Attorney Representation Delinquency Dispositions [Total: 28,069]



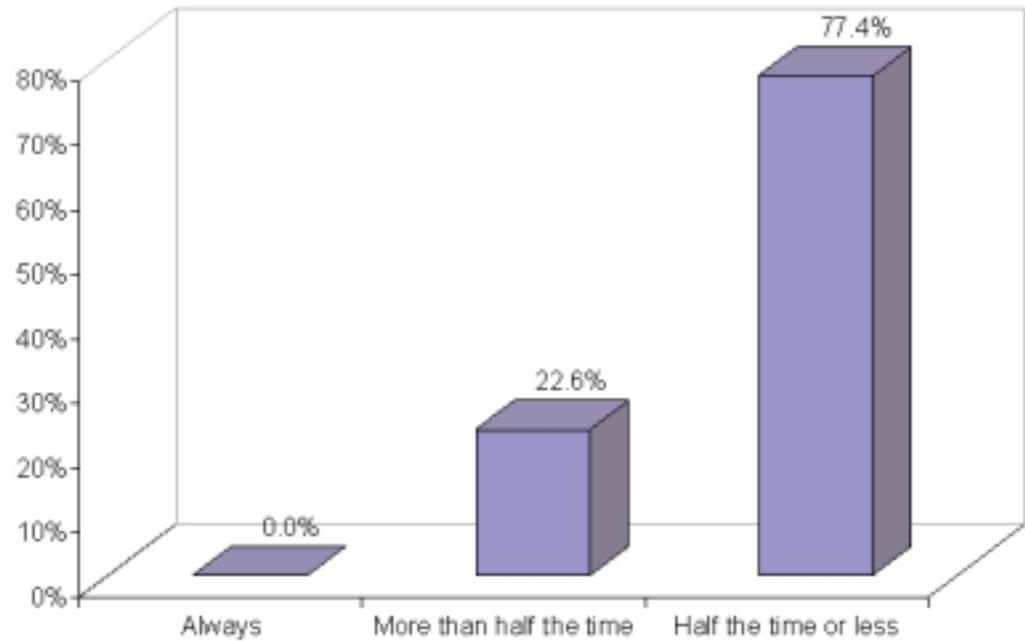
**Data Chart 9**

Effect of Caseload Size on Representation in counties of Class 3 and above



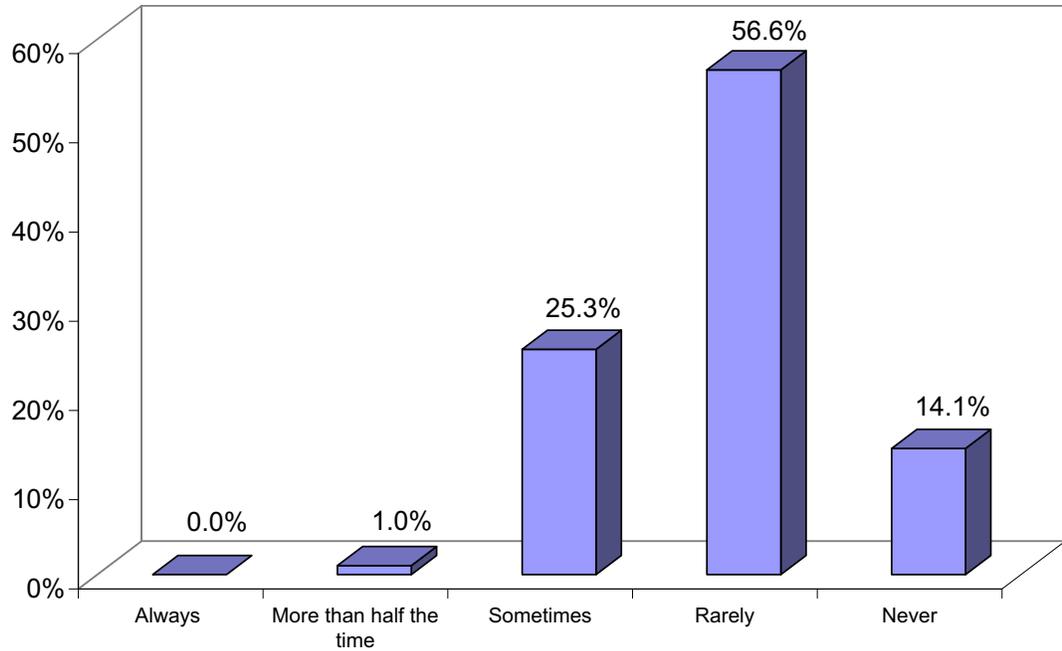
**Data Chart 10**

How often is juvenile released at detention hearing?



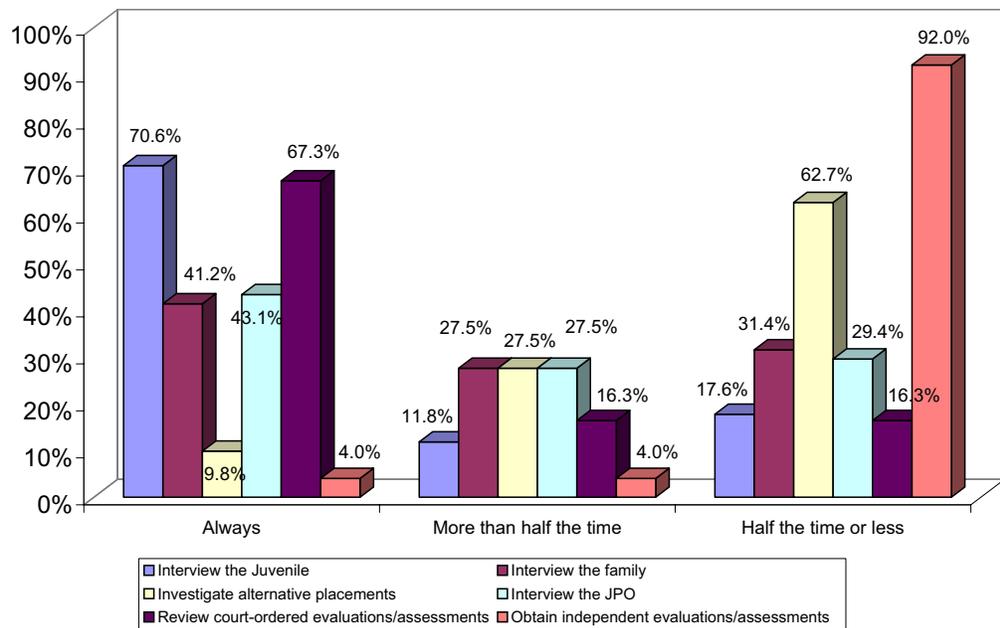
**Data Chart 11**

Frequency of juvenile defenders filing pre-trial motions



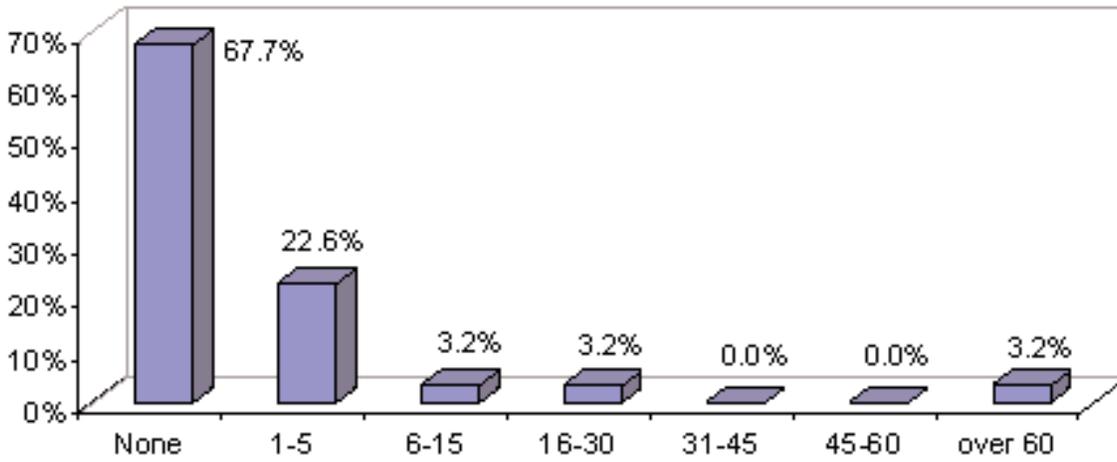
**Data Chart 12**

Actions taken in preparation for disposition hearing for juvenile at risk of out of home placement



**Data Chart 13**

Appeals in the last calendar year (2001)  
Public Defenders with caseloads over 20





# APPENDIX C

## IJA/ABA Juvenile Justice Standards Standards Relating to Counsel for Private Parties

### PART I. GENERAL STANDARDS

**Standard 1.1. Counsel in Juvenile Proceedings, Generally.** The participation of counsel on behalf of all parties subject to juvenile and family court proceedings is essential to the administration of justice and to the fair and accurate resolution of issues at all stages of those proceedings.

**Standard 1.2. Standards in Juvenile Proceedings, Generally.**

- (a) As a member of the bar, a lawyer involved in juvenile court matters is bound to know and is subject to standards of professional conduct set forth in statutes, rules, decisions of courts, and codes, canons or other standards of professional conduct. Counsel has no duty to exercise any directive of the client that is inconsistent with law or these standards. Counsel may, however, challenge standards that he or she believes limit unconstitutionally or otherwise improperly representation of clients subject to juvenile court proceedings.
- (b) As used in these standards, the term “unprofessional conduct” denotes conduct which is now or should be subject to disciplinary sanction. Where other terms are used, the standard is intended as a guide to honorable and competent professional conduct or as a model for institutional organization.

**Standard 1.3. Misrepresentation of Factual Propositions or Legal Authority.** It is unprofessional conduct for counsel intentionally to misrepresent factual propositions or legal authority to the court or to opposing counsel and probation personnel in the course of discussions concerning entrance of a plea, early disposition or any other matter related to the juvenile court proceeding. Entrance of a plea concerning the client’s responsibility in law for alleged misconduct or concerning the existence in law of an alleged status offense is a statement of the party’s posture with respect to the proceeding and is not a representation of fact or of legal authority.

**Standard 1.4. Relations with Probation and Social Work Personnel.** A lawyer engaged in juvenile court practice typically deals with social work and probation department personnel throughout the course of handling a case. In general, the lawyer should cooperate with these agencies and should instruct the client to do so, except to the extent such cooperation is or will likely become inconsistent with protection of the client’s legitimate interests in the proceeding or of any other rights of the client under the law.

**Standard 1.5. Punctuality.** A lawyer should be prompt in all dealings with the court, including attendance, submissions of motions, briefs and other papers, and in dealings with clients and other interested persons. It is unprofessional conduct for counsel intentionally to use procedural devices for which there is no legitimate basis, to misrepresent facts to the court or to accept conflicting responsibilities for the purpose of delaying court proceedings. The lawyer should also emphasize the importance of punctuality in attendance in court to the client and to witnesses to be called, and, to the extent feasible, facilitate their prompt attendance.

**Standard 1.6. Public Statements.**

- (a) The lawyer representing a client before the juvenile court should avoid personal publicity connected with the case, both during trial and thereafter.
- (b) Counsel should comply with statutory and court rules governing dissemination of information concerning juvenile and family court matters and, to the extent consistent with those rules, with the ABA Standards Relating to Fair Trial and Free Press.

**Standard 1.7. Improvement in The Juvenile Justice System.** In each jurisdiction, lawyers practicing before the juvenile court should actively seek improvement in the administration of juvenile justice and the provision of resources for the treatment of persons subject to the jurisdiction of the juvenile court.

## PART II. PROVISIONS AND ORGANIZATION OF LEGAL SERVICES

### Standard 2.1. General Principles.

- (a) *Responsibility for provision of legal services.* Provision of satisfactory legal representation in juvenile and family court cases is the proper concern of all segments of the legal community. It is, accordingly, the responsibility of courts, defender agencies, legal professional groups, individual practitioners and educational institutions to ensure that competent counsel and adequate supporting services are available for representation of all persons with business before juvenile and family courts.
  - (i) Lawyers active in practice should be encouraged to qualify themselves for participation in juvenile and family court cases through formal training, association with experienced juvenile counsel or by other means. To this end, law firms should encourage members to represent parties involved in such matters.
  - (ii) Suitable undergraduate and postgraduate educational curricula concerning legal and nonlegal subjects relevant to representation in juvenile and family courts should regularly be available.
  - (iii) Careful and candid evaluation of representation in cases involving children should be undertaken by judicial and professional groups, including the organized bar, particularly but not solely where assigned counsel—whether public or private—appears.
- (b) *Compensation for services.*
  - (i) Lawyers participating in juvenile court matters, whether retained or appointed, are entitled to reasonable compensation for time and services performed according to prevailing professional standards. In determining fees for their services, lawyers should take into account the time and labor actually required, the skill required to perform the legal service properly, the likelihood that acceptance of the case will preclude other employment for the lawyer, the fee customarily charged in the locality for similar legal services, the possible consequences of the proceedings, and the experience, reputation and ability of the lawyer or lawyers performing the services. In setting fees lawyers should also consider the performance of services incident to full representation in cases involving juveniles, including counseling and activities related to locating or evaluating appropriate community services for a client or a client's family.
  - (ii) Lawyers should also take into account in determining fees the capacity of a client to pay the fee. The resources of parents who agree to pay for representation of their children in juvenile court proceedings may be considered if there is no adversity of interest as defined in Standard 3.2, *infra*, and if the parents understand that a lawyer's entire loyalty is to the child and that the parents have no control over the case. Where adversity of interests or desires between parent and child becomes apparent during the course of representation, a lawyer should be ready to reconsider the fee taking into account the child's resources alone.
  - (iii) As in all other cases of representation, it is unprofessional conduct for a lawyer to overreach the client or the client's parents in setting a fee, to imply that compensation is for anything other than professional services rendered by the lawyer or by others for him or her, to divide the fee with a layman, or to undertake representation in cases where no financial award may result on the understanding that payment of the fee is contingent in any way on the outcome of the case.
  - (iv) Lawyers employed in a legal aid or public defender office should be compensated on a basis equivalent to that paid other government attorneys of similar qualification, experience and responsibility.

- (c) *Supporting services.* Competent representation cannot be assured unless adequate supporting services are available. Representation in cases involving juveniles typically requires investigatory, expert and other nonlegal services. These should be available to lawyers and to their clients at all stages of juvenile and family court proceedings.
  - (i) Where lawyers are assigned, they should have regular access to all reasonably necessary supporting services.
  - (ii) Where a defender system is involved, adequate supporting services should be available within the organization itself.
- (d) *Independence.* Any plan for providing counsel to private parties in juvenile court proceedings must be designed to guarantee the professional independence of counsel and the integrity of the lawyer-client relationship.

#### **Standard 2.2. Organization of Services.**

- (a) *In general.* Counsel should be provided in a systematic manner and in accordance with a widely publicized plan. Where possible, a coordinated plan for representation which combines defender and assigned counsel systems should be adopted.
- (b) *Defender systems.*
  - (i) Application of general defender standards. A defender system responsible for representation in some or all juvenile court proceedings generally should apply to staff and offices engaged in juvenile court matters its usual standards for selection, supervision, assignment and tenure of lawyers, restrictions on private practice, provision of facilities and other organizational procedures.
  - (ii) Facilities. If local circumstances require, the defender system should maintain a separate office for juvenile court legal and supporting staff, located in a place convenient to the courts and equipped with adequate library, interviewing and other facilities. A supervising attorney experienced in juvenile court representation should be assigned to and responsible for the operation of that office.
  - (iii) Specialization. While rotation of defender staff from one duty to another is an appropriate training device, there should be opportunity for staff to specialize in juvenile court representation to the extent local circumstances permit.
  - (iv) Caseload. It is the responsibility of every defender office to ensure that its personnel can offer prompt, full and effective counseling and representation to each client. A defender office should not accept more assignments than its staff can adequately discharge.
- (c) *Assigned counsel systems.*
  - (i) An assigned counsel plan should have available to it an adequate pool of competent attorneys experienced in juvenile court matters and an adequate plan for all necessary legal and supporting services.
  - (ii) Appointments through an assigned counsel system should be made, as nearly as possible, according to some rational and systematic sequence. Where the nature of the action or other circumstances require, a lawyer may be selected because of his or her special qualifications to serve in the case, without regard to the established sequence.

#### **Standard 2.3. Types of Proceedings.**

- (a) *Delinquency and in need of supervision proceedings.*
  - (i) Counsel should be provided for any juvenile subject to delinquency or in need of supervision proceedings.
  - (ii) Legal representation should also be provided the juvenile in all proceedings arising from or related to a delinquency or in need of supervision action, including mental competency, transfer, postdisposition, probation revocation, and classification, institu-

tional transfer, disciplinary or other administrative proceedings related to the treatment process which may substantially affect the juvenile's custody, status or course of treatment. The nature of the forum and the formal classification of the proceeding is irrelevant for this purpose.

- (b) *Child protective, custody and adoption proceedings.* Counsel should be available to the respondent parents, including the father of an illegitimate child, or other guardian or legal custodian in a neglect or dependency proceeding. Independent counsel should also be provided for the juvenile who is the subject of proceedings affecting his or her status or custody. Counsel should be available at all stages of such proceedings and in all proceedings collateral to neglect and dependency matters, except where temporary emergency action is involved and immediate participation of counsel is not practicable.

#### **Standard 2.4. Stages Of Proceedings.**

- (a) *Initial provision of counsel.*
  - (i) When a juvenile is taken into custody, placed in detention or made subject to an intake process, the authorities taking such action have the responsibility promptly to notify the juvenile's lawyer, if there is one, or advise the juvenile with respect to the availability of legal counsel.
  - (ii) In administrative or judicial postdispositional proceedings which may affect the juvenile's custody, status or course of treatment, counsel should be available at the earliest stage of the decisional process, whether the respondent is present or not. Notification of counsel and, where necessary, provision of counsel in such proceedings is the responsibility of the judicial or administrative agency.
- (b) *Duration of representation and withdrawal of counsel.*
  - (i) Lawyers initially retained or appointed should continue their representation through all stages of the proceeding, unless geographical or other compelling factors make continued participation impracticable.
  - (ii) Once appointed or retained, counsel should not request leave to withdraw unless compelled by serious illness or other incapacity, or unless contemporaneous or announced future conduct of the client is such as seriously to compromise the lawyer's professional integrity. Counsel should not seek to withdraw on the belief that the contentions of the client lack merit, but should present for consideration such points as the client desires to be raised provided counsel can do so without violating standards of professional ethics.
  - (iii) If leave to withdraw is granted, or if the client justifiably asks that counsel be replaced, successor counsel should be available.

### **PART III. THE LAWYER-CLIENT RELATIONSHIP**

#### **Standard 3.1. The Nature Of The Relationship.**

- (a) *Client's interests paramount.* However engaged, the lawyer's principal duty is the representation of the client's legitimate interests. Considerations of personal and professional advantage or convenience should not influence counsel's advice or performance.
- (b) *Determination of client's interests.*
  - (i) Generally. In general, determination of the client's interests in the proceedings, and hence the plea to be entered, is ultimately the responsibility of the client after full consultation with the attorney.
  - (ii) Counsel for the juvenile.
    - [a] Counsel for the respondent in a delinquency or in need of supervision proceeding should ordinarily be bound by the client's definition of his or her interests with

respect to admission or denial of the facts or conditions alleged. It is appropriate and desirable for counsel to advise the client concerning the probable success and consequences of adopting any posture with respect to those proceedings.

[b] Where counsel is appointed to represent a juvenile subject to child protective proceedings, and the juvenile is capable of considered judgment on his or her own behalf, determination of the client's interest in the proceeding should ultimately remain the client's responsibility, after full consultation with counsel.

[c] In delinquency and in need of supervision proceedings, where it is locally permissible to so adjudicate very young persons, and in child protective proceedings, the respondent may be incapable of considered judgment in his or her own behalf.

[1] Where a guardian *ad litem* has been appointed, primary responsibility for determination of the posture of the case rests with the guardian and the juvenile.

[2] Where a guardian *ad litem* has not been appointed, the attorney should ask that one be appointed.

[3] Where a guardian *ad litem* has not been appointed and, for some reason, it appears that independent advice to the juvenile will not otherwise be available, counsel should inquire thoroughly into all circumstances that a careful and competent person in the juvenile's position should consider in determining the juvenile's interests with respect to the proceeding. After consultation with the juvenile, the parents (where their interests do not appear to conflict with the juvenile's), and any other family members or interested persons, the attorney may remain neutral concerning the proceeding, limiting participation to presentation and examination of material evidence or, if necessary, the attorney may adopt the position requiring the least intrusive intervention justified by the juvenile's circumstances.

(iii) Counsel for the parent. It is appropriate and desirable for an attorney to consider all circumstances, including the apparent interests of the juvenile, when counseling and advising a parent who is charged in a child protective proceeding or who is seeking representation during a delinquency or in need of supervision proceeding. The posture to be adopted with respect to the facts and conditions alleged in the proceeding, however, remains ultimately the responsibility of the client.

### Standard 3.2 Adversity of Interests.

(a) *Adversity of interests defined.* For purposes of these standards, adversity of interests exists when a lawyer or lawyers associated in practice:

(i) Formally represent more than one client in a proceeding and have a duty to contend in behalf of one client that which their duty to another requires them to oppose.

(ii) Formally represent more than one client and it is their duty to contend in behalf of one client that which [sic] may prejudice the other client's interests at any point in the proceeding.

(iii) Formally represent one client but are required by some third person or institution, including their employer, to accommodate their representation of that client to factors unrelated to the client's legitimate interests.

(b) *Resolution of adversity.* At the earliest feasible opportunity, counsel should disclose to the client any interest in or connection with the case or any other matter that might be relevant to the client's selection of a lawyer. Counsel should at the same time seek to determine whether adversity of interests potentially exists and, if so, should immediately seek to withdraw from representation of the client who will be least prejudiced by such withdrawal.

**Standard 3.3. Confidentiality.**

- (a) *Establishment of confidential relationship.* Counsel should seek from the outset to establish a relationship of trust and confidence with the client. The lawyer should explain that full disclosure to counsel of all facts known to the client is necessary for effective representation, and at the same time explain that the lawyer's obligation of confidentiality makes privileged the client's disclosures relating to the case.
- (b) *Preservation of client's confidences and secrets.*
  - (i) Except as permitted by 3.3(d), below, an attorney should not knowingly reveal a confidence or secret of a client to another, including the parent of a juvenile client.
  - (ii) Except as permitted by 3.3(d), below, an attorney should not knowingly use a confidence or secret of a client to the disadvantage of the client or, unless the attorney has secured the consent of the client after full disclosure, for the attorney's own advantage or that of a third person.
- (c) *Preservation of secrets of a juvenile client's parent or guardian.* The attorney should not reveal information gained from or concerning the parent or guardian of a juvenile client in the course of representation with respect to a delinquency or in need of supervision proceeding against the client, where (1) the parent or guardian has requested the information be held inviolate, or (2) disclosure of the information would likely be embarrassing or detrimental to the parent or guardian and (3) preservation would not conflict with the attorney's primary responsibility to the interests of the client.
  - (i) The attorney should not encourage secret communications when it is apparent that the parent or guardian believes those communications to be confidential or privileged and disclosure may become necessary to full and effective representation of the client.
  - (ii) Except as permitted by 3.3(d), below, an attorney should not knowingly reveal the parent's secret communication to others or use a secret communication to the parent's disadvantage or to the advantage of the attorney or of a third person, unless (1) the parent competently consents to such revelation or use after full disclosure or (2) such disclosure or use is necessary to the discharge of the attorney's primary responsibility to the client.
- (d) *Disclosure of confidential communications.* In addition to circumstances specifically mentioned above, a lawyer may reveal:
  - (i) Confidences or secrets with the informed and competent consent of the client or clients affected, but only after full disclosure of all relevant circumstances to them. If the client is a juvenile incapable of considered judgment with respect to disclosure of a secret or confidence, a lawyer may reveal such communications if such disclosure (1) will not disadvantage the juvenile and (2) will further rendition of counseling, advice or other service to the client.
  - (ii) Confidences or secrets when permitted under disciplinary rules of the ABA Code of Professional Responsibility or as required by law or court order.
  - (iii) The intention of a client to commit a crime or an act which if done by an adult would constitute a crime, or acts that constitute neglect or abuse of a child, together with any information necessary to prevent such conduct. A lawyer must reveal such intention if the conduct would seriously endanger the life or safety of any person or corrupt the processes of the courts and the lawyer believes disclosure is necessary to prevent the harm. If feasible, the lawyer should first inform the client of the duty to make such revelation and seek to persuade the client to abandon the plan.
  - (iv) Confidences or secrets material to an action to collect a fee or to defend himself or herself or any employees or associates against an accusation of wrongful conduct.

**Standard 3.4. Advice and Service with Respect to Anticipated Unlawful Conduct.** It is unprofessional conduct for a lawyer to assist a client to engage in conduct the lawyer believes to be ille-

gal or fraudulent, except as part of a bona fide effort to determine the validity, scope, meaning or application of a law.

**Standard 3.5. Duty to Keep Client Informed.** The lawyer has a duty to keep the client informed of the developments in the case, and of the lawyer's efforts and progress with respect to all phases of representation. This duty may extend, in the case of a juvenile client, to a parent or guardian whose interests are not adverse to the juvenile's, subject to the requirements of confidentiality set forth in 3.3, above.

#### **PART IV. INITIAL STAGES OF REPRESENTATION**

**Standard 4.1. Prompt Action to Protect the Client.** Many important rights of clients involved in juvenile court proceedings can be protected only by prompt advice and action. The lawyers should immediately inform clients of their rights and pursue any investigatory or procedural steps necessary to protection of their clients' interests.

##### **Standard 4.2. Interviewing the Client.**

- (a) The lawyer should confer with a client without delay and as often as necessary to ascertain all relevant facts and matters of defense known to the client.
- (b) In interviewing a client, it is proper for the lawyer to question the credibility of the client's statements or those of any other witness. The lawyer may not, however, suggest expressly or by implication that the client or any other witness prepare or give, on oath or to the lawyer, a version of the facts which is in any respect untruthful, nor may the lawyer intimate that the client should be less than candid in revealing material facts to the attorney.

##### **Standard 4.3. Investigation and Preparation.**

- (a) It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts concerning responsibility for the acts or conditions alleged and social or legal dispositional alternatives. The investigation should always include efforts to secure information in the possession of prosecution, law enforcement, education, probation and social welfare authorities. The duty to investigate exists regardless of the client's admissions or statements of facts establishing responsibility for the alleged facts and conditions or of any stated desire by the client to admit responsibility for those acts and conditions.
- (b) Where circumstances appear to warrant it, the lawyer should also investigate resources and services available in the community and, if appropriate, recommend them to the client and the client's family. The lawyer's responsibility in this regard is independent of the posture taken with respect to any proceeding in which the client is involved.
- (c) It is unprofessional conduct for a lawyer to use illegal means to obtain evidence or information or to employ, instruct or encourage others to do so.

##### **Standard 4.4. Relations with Prospective Witnesses.**

The ethical and legal rules concerning counsel's relations with lay and expert witnesses generally govern lawyers engaged in juvenile court representation.

#### **PART V. ADVISING AND COUNSELING THE CLIENT**

##### **Standard 5.1. Advising the Client Concerning the Case.**

- (a) After counsel is fully informed on the facts and the law, he or she should with complete candor advise the client involved in juvenile court proceedings concerning all aspects of the case, including counsel's frank estimate of the probable outcome. It is unprofessional conduct for a lawyer intentionally to understate or overstate the risks, hazards or prospects of the case in order unduly or improperly to influence the client's determination of his or her posture in the matter.

- (b) The lawyer should caution the client to avoid communication about the case with witnesses where such communication would constitute, apparently or in reality, improper activity. Where the right to jury trial exists and has been exercised, the lawyer should further caution the client with regard to communication with prospective or selected jurors.

**Standard 5.2. Control and Direction of the Case.**

- (a) Certain decisions relating to the conduct of the case are in most cases ultimately for the client and others are ultimately for the lawyer. The client, after full consultation with counsel, is ordinarily responsible for determining:
  - (i) the plea to be entered at adjudication;
  - (ii) whether to cooperate in consent judgment or early disposition plans;
  - (iii) whether to be tried as a juvenile or an adult, where the client has that choice;
  - (iv) whether to waive jury trial;
  - (v) whether to testify on his or her own behalf.
- (b) Decisions concerning what witnesses to call, whether and how to conduct cross-examination, what jurors to accept and strike, what trial motions should be made, and any other strategic and tactical decisions not inconsistent with determinations ultimately the responsibility of and made by the client, are the exclusive province of the lawyer after full consultation with the client.
- (c) If a disagreement on significant matters of tactics or strategy arises between the lawyer and the client, the lawyer should make a record of the circumstances, his or her advice and reasons, and the conclusion reached. This record should be made in a manner which protects the confidentiality of the lawyer-client relationship.

**Standard 5.3. Counseling.** A lawyer engaged in juvenile court representation often has occasion to counsel the client and, in some cases, the client's family with respect to nonlegal matters. This responsibility is generally appropriate to the lawyer's role and should be discharged, as any other, to the best of the lawyer's training and ability.

**PART VI. INTAKE, EARLY DISPOSITION AND DETENTION**

**Standard 6.1. Intake and Early Disposition Generally.** Whenever the nature and circumstances of the case permit, counsel should explore the possibility of early diversion from the formal juvenile court process through subjudicial agencies and other community resources. Participation in pre- or nonjudicial stages of the juvenile court process may be critical to such diversion, as well as to protection of the client's rights.

**Standard 6.2. Intake Hearings.**

- (a) In jurisdictions where intake hearings are held prior to reference of a juvenile court matter for judicial proceedings, the lawyer should be familiar with and explain to the client and, if the client is a minor, to the client's parents, the nature of the hearing, the procedures to be followed, the several dispositions available and their probable consequences. The lawyer should further advise the client of his or her rights at the intake hearing, including the privilege against self-incrimination where appropriate, and of the use that may be made of the client's statements.
- (b) The lawyer should be prepared to make to the intake hearing officer arguments concerning the jurisdictional sufficiency of the allegations made and to present facts and circumstances relating to the occurrence of and the client's responsibility for the acts or conditions charged or to the necessity for official treatment of the matter.

**Standard 6.3. Early Disposition.**

- (a) When the client admits the acts or conditions alleged in the juvenile court proceeding and, after investigation, the lawyer is satisfied that the admission is factually supported and

that the court would have jurisdiction to act, the lawyer should, with the client's consent, consider developing or cooperating in the development of a plan for informal or voluntary adjustment of the case.

- (b) A lawyer should not participate in an admission of responsibility by the client for purposes of securing informal or early disposition when the client denies responsibility for the acts or conditions alleged.

**Standard 6.4. Detention.**

- (a) If the client is detained or the client's child is held in shelter care, the lawyer should immediately consider all steps that may in good faith be taken to secure the child's release from custody.
- (b) Where the intake department has initial responsibility for custodial decisions, the lawyer should promptly seek to discover the grounds for removal from the home and may present facts and arguments for release at the intake hearing or earlier. If a judicial detention hearing will be held, the attorney should be prepared, where circumstances warrant, to present facts and arguments relating to the jurisdictional sufficiency of the allegations, the appropriateness of the place of and criteria used for detention, and any noncompliance with procedures for referral to court or for detention. The attorney should also be prepared to present evidence with regard to the necessity for detention and a plan for pretrial release of the juvenile.
- (c) The lawyer should not personally guarantee the attendance or behavior of the client or any other person, whether as surety on a bail bond or otherwise.

**PART VII. ADJUDICATION**

**Standard 7.1. Adjudication without Trial.**

- (a) Counsel may conclude, after full investigation and preparation, that under the evidence and the law the charges involving the client will probably be sustained. Counsel should so advise the client and, if negotiated pleas are allowed under prevailing law, may seek the client's consent to engage in plea discussions with the prosecuting agency. Where the client denies guilt, the lawyer cannot properly participate in submitting a plea of involvement when the prevailing law requires that such a plea be supported by an admission of responsibility in fact.
- (b) The lawyer should keep the client advised of all developments during plea discussions with the prosecuting agency and should communicate to the client all proposals made by the prosecuting agency. Where it appears that the client's participation in a psychiatric, medical, social or other diagnostic or treatment regime would be significant in obtaining a desired result, the lawyer should so advise the client and, when circumstances warrant, seek the client's consent to participation in such a program.

**Standard 7.2. Formality, In General.** While the traditional formality and procedure of criminal trials may not in every respect be necessary to the proper conduct of juvenile court proceedings, it is the lawyer's duty to make all motions, objections or requests necessary to protection of the client's rights in such form and at such time as will best serve the client's legitimate interests at trial or on appeal.

**Standard 7.3. Discovery and Motion Practice.**

- (a) *Discovery.*
  - (i) Counsel should promptly seek disclosure of any documents, exhibits or other information potentially material to representation of clients in juvenile court proceedings. If such disclosure is not readily available through informal processes, counsel should diligently pursue formal methods of discovery including, where appropriate, the filing of motions for bills of particulars, for discovery and inspection of exhibits, docu-

ments and photographs, for production of statements by and evidence favorable to the respondent, for production of a list of witnesses, and for the taking of depositions.

(ii) In seeking discovery, the lawyer may find that rules specifically applicable to juvenile court proceedings do not exist in a particular jurisdiction or that they improperly or unconstitutionally limit disclosure. In order to make possible adequate representation of the client, counsel should in such cases investigate the appropriateness and feasibility of employing discovery techniques available in criminal or civil proceedings in the jurisdiction.

(b) Other motions. Where the circumstances warrant, counsel should promptly make any motions material to the protection and vindication of the client's rights, such as motions to dismiss the petition, to suppress evidence, for mental examination, or appointment of an investigator or expert witness, for severance, or to disqualify a judge. Such motions should ordinarily be made in writing when that would be required for similar motions in civil or criminal proceedings in the jurisdiction. If a hearing on the motion is required, it should be scheduled at some time prior to the adjudication hearing if there is any likelihood that consolidation will work to the client's disadvantage.

#### **Standard 7.4. Compliance with Orders.**

(a) Control of proceedings is principally the responsibility of the court, and the lawyer should comply promptly with all rules, orders and decisions of the judge. Counsel has the right to make respectful requests for reconsideration of adverse rulings and has the duty to set forth on the record adverse rulings or judicial conduct which counsel considers prejudicial to the client's legitimate interests.

(b) The lawyer should be prepared to object to the introduction of any evidence damaging to the client's interest if counsel has any legitimate doubt concerning its admissibility under constitutional or local rules of evidence.

#### **Standard 7.5. Relations with Court and Participants.**

(a) The lawyer should at all times support the authority of the court by preserving professional decorum and by manifesting an attitude of professional respect toward the judge, opposing counsel, witnesses and jurors

(i) When court is in session, the lawyer should address the court and not the prosecutor directly on any matter relating to the case unless the person acting as prosecutor is giving evidence in the proceeding.

(ii) It is unprofessional conduct for a lawyer to engage in behavior or tactics purposely calculated to irritate or annoy the court, the prosecutor or probation department personnel.

(b) When in the company of clients or clients' parents, the attorney should maintain a professional demeanor in all associations with opposing counsel and with court or probation personnel.

#### **Standard 7.7. Presentation of Evidence.**

It is unprofessional conduct for a lawyer knowingly to offer false evidence or to bring inadmissible evidence to the attention of the trier of fact, to ask questions or display demonstrative evidence known to be improper or inadmissible, or intentionally to make impermissible comments or arguments in the presence of the trier of fact. When a jury is empaneled, if the lawyer has substantial doubt concerning the admissibility of evidence, he or she should tender it by an offer of proof and obtain a ruling on its admissibility prior to presentation.

#### **Standard 7.8. Examination of Witnesses.**

(a) The lawyer in juvenile court proceedings should be prepared to examine fully any witness whose testimony is damaging to the client's interests. It is unprofessional conduct for

counsel knowingly to forego or limit examination of a witness when it is obvious that failure to examine fully will prejudice the client's legitimate interests.

- (b) The lawyer's knowledge that a witness is telling the truth does not preclude cross-examination in all circumstances, but may affect the method and scope of cross-examination. Counsel should not misuse the power of cross-examination or impeachment by employing it to discredit the honesty or general character of a witness known to be testifying truthfully.
- (c) The examination of all witnesses should be conducted fairly and with due regard for the dignity and, to the extent allowed by the circumstances of the case, the privacy of the witness. In general, and particularly when a youthful witness is testifying, the lawyer should avoid unnecessary intimidation or humiliation of the witness.
- (d) A lawyer should not knowingly call as a witness one who will claim a valid privilege not to testify for the sole purpose of impressing that claim on the fact-finder. In some instances, as defined in the ABA Code of Professional Responsibility, doing so will constitute unprofessional conduct.
- (e) It is unprofessional conduct to ask a question that implies the existence of a factual predicate which the examiner knows cannot be supported by evidence.

#### **Standard 7.9. Testimony by the Respondent.**

- (a) It is the lawyer's duty to protect the client's privilege against self-incrimination in juvenile court proceedings. When the client has elected not to testify, the lawyer should be alert to invoke the privilege and should insist on its recognition unless the client competently decides that invocation should not be continued.
- (b) If the respondent has admitted to counsel facts which establish his or her responsibility for the acts or conditions alleged and if the lawyer, after independent investigation, is satisfied that those admissions are true, and the respondent insists on exercising the right to testify at the adjudication hearing, the lawyer must advise the client against taking the stand to testify falsely and, if necessary, take appropriate steps to avoid lending aid to perjury.
  - (i) If, before adjudication, the respondent insists on taking the stand to testify falsely, the lawyer must withdraw from the case if that is feasible and should seek the leave of the court to do so if necessary.
  - (ii) If withdrawal from the case is not feasible or is not permitted by the court, or if the situation arises during adjudication without notice, it is unprofessional conduct for the lawyer to lend aid to perjury or to use the perjured testimony. Before the respondent takes the stand in these circumstances the lawyer should, if possible, make a record of the fact that respondent is taking the stand against the advice of counsel without revealing that fact to the court. Counsel's examination should be confined to identifying the witness as the respondent and permitting the witness to make his or her statement to the trier of fact. Counsel may not engage in direct examination of the respondent in the conventional manner and may not recite or rely on the false testimony in argument.

**Standard 7.10. Argument.** The lawyer in juvenile court representation should comply with the rules generally governing argument in civil and criminal proceedings.

### **PART VIII. TRANSFER PROCEEDINGS**

**Standard 8.1. In General.** A proceeding to transfer a respondent from the jurisdiction of the juvenile court to a criminal court is a critical stage in both juvenile and criminal justice processes. Competent representation by counsel is essential to the protection of the juvenile's rights in such a proceeding.

**Standard 8.2. Investigation and Preparation.**

- (a) In any case where transfer is likely, counsel should seek to discover at the earliest opportunity whether transfer will be sought and, if so, the procedure and criteria according to which that determination will be made.
- (b) The lawyer should promptly investigate all circumstances of the case bearing on the appropriateness of transfer and should seek disclosure of any reports or other evidence that will be submitted to or may be considered by the court in the course of transfer proceedings. Where circumstances warrant, counsel should promptly move for appointment of an investigator or expert witness to aid in the preparation of the defense and for any other order necessary to protection of the client's rights.

**Standard 8.3. Advising and Counseling the Client Concerning Transfer.** Upon learning that transfer will be sought or may be elected, counsel should fully explain the nature of the proceeding and the consequences of transfer to the client and the client's parents. In so doing, counsel may further advise the client concerning participation in diagnostic and treatment programs which may provide information material to the transfer decision.

**Standard 8.4. Transfer Hearings.** If a transfer hearing is held, the rules set forth in Part VII of these standards shall generally apply to counsel's conduct of that hearing.

**Standard 8.5. Post-Hearing Remedies.** If transfer for criminal prosecution is ordered, the lawyer should act promptly to preserve an appeal from that order and should be prepared to make any appropriate motions for post-transfer relief.

**PART IX. DISPOSITION**

**Standard 9.1. In General.** The active participation of counsel at disposition is often essential to protection of clients' rights and to furtherance of their legitimate interests. In many cases the lawyer's most valuable service to clients will be rendered at this stage of the proceeding.

**Standard 9.2. Investigation and Preparation.**

- (a) Counsel should be familiar with the dispositional alternatives available to the court, with its procedures and practices at the disposition stage, and with community services that might be useful in the formation of a dispositional plan appropriate to the client's circumstances.
- (b) The lawyer should promptly investigate all sources of evidence including any reports or other information that will be brought to the court's attention and interview all witnesses material to the disposition decision.
- (c) If access to social investigation, psychological, psychiatric or other reports or information is not provided voluntarily or promptly, counsel should be prepared to seek their disclosure and time to study them through formal measures.
- (d) Whether or not social and other reports are readily available, the lawyer has a duty independently to investigate the client's circumstances, including such factors as previous history, family relations, economic condition and any other information relevant to disposition.
- (e) The lawyer should seek to secure the assistance of psychiatric, psychological, medical or other expert personnel needed for purposes of evaluation, consultation or testimony with respect to formation of a dispositional plan.

**Standard 9.3. Counseling Prior to Disposition.**

- (a) The lawyer should explain to the client the nature of the disposition hearing, the issues involved and the alternatives open to the court. The lawyer should also explain fully and candidly the nature, obligations and consequences of any proposed dispositional plan, including the meaning of conditions of probation, the characteristics of any institution to which commitment is possible, and the probable duration of the client's responsibilities

under the proposed dispositional plan. Ordinarily, the lawyer should not make or agree to a specific dispositional recommendation without the client's consent.

- (b) When psychological or psychiatric evaluations are ordered by the court or arranged by counsel prior to disposition, the lawyer should explain the nature of the procedure to the client and encourage the client's cooperation with the person or persons administering the diagnostic procedure.
- (c) The lawyer must exercise discretion in revealing or discussing the contents of psychiatric, psychological, medical and social reports, tests or evaluations bearing on the client's history or condition or, if the client is a juvenile, the history or condition of the client's parents. In general, the lawyer should not disclose data or conclusions contained in such reports to the extent that, in the lawyer's judgment based on knowledge of the client and the client's family, revelation would be likely to affect adversely the client's well-being or relationships within the family and disclosure is not necessary to protect the client's interests in the proceeding.

#### **Standard 9.4. Disposition Hearing.**

- (a) It is the lawyer's duty to insist that proper procedure be followed throughout the disposition stage and that orders entered be based on adequate reliable evidence.
- (b) Where the dispositional hearing is not separate from adjudication or where the court does not have before it all evidence required by statute, rules of court or the circumstances of the case, the lawyer should seek a continuance until such evidence can be presented if to do so would serve the client's interests.
- (c) The lawyer at disposition should be free to examine fully and to impeach any witness whose evidence is damaging to the client's interests and to challenge the accuracy, credibility and weight of any reports, written statements or other evidence before the court. The lawyer should not knowingly limit or forego examination or contradiction by proof of any witness, including a social worker or probation department officer, when failure to examine fully will prejudice the client's interests. Counsel may seek to compel the presence of witnesses whose statements of fact or opinion are before the court or the production of other evidence on which conclusions of fact presented at disposition are based.
- (d) The lawyer may, during disposition, ask that the client be excused during presentation of evidence when, in counsel's judgment, exposure to a particular item of evidence would adversely affect the well-being of the client or the client's relationship with his or her family, and the client's presence is not necessary to protecting his or her interests in the proceeding.

#### **Standard 9.5. Counseling After Disposition.**

When a dispositional decision has been reached, it is the lawyer's duty to explain the nature, obligations and consequences of the disposition to the client and his or her family and to urge upon the client the need for accepting and cooperating with the dispositional order. If appeal from either the adjudicative or dispositional decree is contemplated, the client should be advised of that possibility, but the attorney must counsel compliance with the court's decision during the interim.

### **PART X. REPRESENTATION AFTER DISPOSITION**

#### **Standard 10.1. Relations with the Client After Disposition.**

- (a) The lawyer's responsibility to the client does not necessarily end with dismissal of the charges or entry of a final dispositional order. The attorney should be prepared to counsel and render or assist in securing appropriate legal services for the client in matters arising from the original proceeding.

- (b) If the client has been found to be within the juvenile court's jurisdiction, the lawyer should maintain contact with both the client and the agency or institution involved in the disposition plan in order to ensure that the client's rights are respected and, where necessary, to counsel the client and the client's family concerning the dispositional plan.
- (c) Whether or not the charges against the client have been dismissed, where the lawyer is aware that the client or the client's family needs and desires community or other medical, psychiatric, psychological, social or legal services, he or she should render all possible assistance in arranging for such services.
- (d) The decision to pursue an available claim for postdispositional relief from judicial and correctional or other administrative determinations related to juvenile court proceedings, including appeal, habeas corpus or an action to protect the client's right to treatment, is ordinarily the client's responsibility after full consultation with counsel.

**Standard 10.2. Post-Dispositional Hearings Before the Juvenile Court.**

- (a) The lawyer who represents a client during initial juvenile court proceedings should ordinarily be prepared to represent the client with respect to proceedings to review or modify adjudicative or dispositional orders made during earlier hearings or to pursue any affirmative remedies that may be available to the client under local juvenile court law.
- (b) The lawyer should advise the client of the pendency or availability of a postdispositional hearing or proceeding and of its nature, issues and potential consequences. Counsel should urge and, if necessary, seek to facilitate the prompt attendance at any such hearing of the client and of any material witnesses who may be called.

**Standard 10.3. Counsel on Appeal.**

- (a) Trial counsel, whether retained or appointed by the court, should conduct the appeal unless new counsel is substituted by the client or by the appropriate court. Where there exists an adequate pool of competent counsel available for assignment to appeals from juvenile court orders and substitution will not work substantial disadvantage to the client's interests, new counsel may be appointed in place of trial counsel.
- (b) Whether or not trial counsel expects to conduct the appeal, he or she should promptly inform the client, and where the client is a minor and the parents' interests are not adverse, the client's parents of the right to appeal and take all steps necessary to protect that right until appellate counsel is substituted or the client decides not to exercise this privilege.
- (c) Counsel on appeal, after reviewing the record below and undertaking any other appropriate investigation, should candidly inform the client as to whether there are meritorious grounds for appeal and the probable results of any such appeal, and should further explain the potential advantages and disadvantages associated with appeal. However, appellate counsel should not seek to withdraw from a case solely because his or her own analysis indicates that the appeal lacks merit.

**Standard 10.4. Conduct of the Appeal.**

The rules generally governing conduct of appeals in criminal and civil cases govern conduct of appeals in juvenile court matters.

**Standard 10.5. Post-Dispositional Remedies: Protection of the Client's Right to Treatment.**

- (a) A lawyer who has represented a client through trial and/or appellate proceedings should be prepared to continue representation when post-dispositional action, whether affirmative or defensive, is sought, unless new counsel is appointed at the request of the client or continued representation would, because of geographical considerations or other factors, work unreasonable hardship.

- (b) Counsel representing a client in post-dispositional matters should promptly undertake any factual or legal investigation in order to determine whether grounds exist for relief from juvenile court or administrative action. If there is reasonable prospect of a favorable result, the lawyer should advise the client and, if their interests are not adverse, the client's parents of the nature, consequences, probable outcome and advantages or disadvantages associated with such proceedings.
- (c) The lawyer engaged in post-dispositional representation should conduct those proceedings according to the principles generally governing representation in juvenile court matters.

**Standard 10.6. Probation Revocation; Parole Revocation.**

- (a) Trial counsel should be prepared to continue representation if revocation of the client's probation or parole is sought, unless new counsel is appointed or continued representation would, because of geographical or other factors, work unreasonable hardship.
- (b) Where proceedings to revoke conditional liberty are conducted in substantially the same manner as original petitions alleging delinquency or need for supervision, the standards governing representation in juvenile court generally apply. Where special procedures are used in such matters, counsel should advise the client concerning those procedures and be prepared to participate in the revocation proceedings at the earliest stage.

**Standard 10.7. Challenges to the Effectiveness of Counsel.**

- (a) A lawyer appointed or retained to represent a client previously represented by other counsel has a good faith duty to examine prior counsel's actions and strategy. If, after investigation, the new attorney is satisfied that prior counsel did not provide effective assistance, the client should be so advised and any appropriate relief for the client on that ground should be vigorously pursued.
- (b) A lawyer whose conduct of a juvenile court case is drawn into question may testify in judicial, administrative or investigatory proceedings concerning the matters charged, even though in so doing the lawyer must reveal information which was given by the client in confidence.



## ENDNOTES

- <sup>1</sup> America's Children Still at Risk, American Bar Association's Steering Committee on the Unmet Legal Needs of Children, Chapter 4, p.199 (2001).
- <sup>2</sup> See 24 Pa. C.S. § 21-2134 (Automatically barring students who have been adjudicated delinquent from attending regular schools of the Philadelphia School District).
- <sup>3</sup> *McKeiver v. Pennsylvania*, 403 U.S. 528, 562 (1971) (J. Douglas, dissenting) (citations omitted).
- <sup>4</sup> See *Kent v. United States*, 383 U.S. 541 (1966) (due process required in hearings on transfer from juvenile to adult jurisdiction); *In re Gault*, 387 U.S. 1 (1967) (due process attaches to delinquency hearings); *In re Winship*, 397 U.S. 358 (1970) (proof "beyond a reasonable doubt" is required in delinquency proceedings); *Breed v. Jones*, 421 U.S. 519 (1975) (double jeopardy applies to delinquency proceedings).
- <sup>5</sup> 387 U.S. 1 (1967).
- <sup>6</sup> *Id.* at 36.
- <sup>7</sup> *Id.* at 39 n.65 (quoting President's Commission on Law Enforcement and the Administration of Justice, *The Challenge of Crime in a Free Society* 86–87 (1967)).
- <sup>8</sup> Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93–415, 88 Stat. 1141 (codified in sections 5, 18, & 42 U.S.C.).
- <sup>9</sup> 42 U.S.C. § 5601(a)(2).
- <sup>10</sup> See National Advisory Committee for Juvenile and Delinquency Prevention, *Representation by Counsel — For the Juvenile*, Standards For The Administration of Juvenile Justice (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, U.S. Dept. Of Justice) July 1980.
- <sup>11</sup> Puritz, Burrell, Schwartz, Soler, Warboys. *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, ABA Juv. Just. Ctr. (Dec. 1995).
- <sup>12</sup> This assessment does not address the significant number of young people now being handled by adult criminal courts.
- <sup>13</sup> We do not identify counties based on our site visits, however, some negative county practices (i.e., waiver) are identified based on data reported by Pennsylvania's Juvenile Court Judges' Commission. We also reviewed juvenile crime and demographic information reported by the Pennsylvania State Police's Uniform Crime Report; the National Institute of Justice; and the Office of Juvenile Justice and Delinquency Prevention, the Bureau of Justice Statistics of the U.S. Department of Justice.
- <sup>14</sup> Pennsylvania Department of Public Welfare. Office of Children, Youth and Families Section Home. Online: <http://www.dpw.state.pa.us/ocyf/dpwocyf.asp>
- <sup>15</sup> U.S. Census Bureau. State and County Quick Facts. Online: <http://quickfacts.census.gov/qfd/states/42000.html>
- <sup>16</sup> 42 Pa. C.S. § 6301(b)(2) (amended 1995).
- <sup>17</sup> *Id.* at § 6336(e)(1)(2) (amended 1995).
- <sup>18</sup> *Id.* at § 6341(b.1) (amended 1995).
- <sup>19</sup> *Id.* at § 6302 (amended 1995).
- <sup>20</sup> Pennsylvania Juvenile Court Judges' Commission, *Pennsylvania Juvenile Court Dispositions, 2001*, at 15–16 (2002).
- <sup>21</sup> 42 Pa. C.S. § 6332.
- <sup>22</sup> *Id.* at § 6323.

<sup>23</sup> *Id.* at § 6340.

<sup>24</sup> *Id.* at §§ 6302, 6341(b).

<sup>25</sup> *Id.* at § 6353(a).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at § 6302 (stating a delinquent “child” cannot remain under juvenile court jurisdiction past the age of 21).

<sup>28</sup> However, in early 2004 the Supreme Court of Pennsylvania is expected to replace local rules with statewide Rules of Juvenile Court Procedure. The proposed rules will govern delinquency proceedings in all counties to promote uniformity and simplify procedure.

<sup>29</sup> 42 Pa. C.S. § 6337.

<sup>30</sup> Nationwide, three different models are used to provide representation to indigent defendants. These are: (1) the assigned counsel model, involving the assignment of cases to attorneys on a systemic or an *ad hoc* basis; (2) the contract model, involving a contract with a private attorney, a group of such attorneys, a bar association, or a private non-profit organization which provides representation in some or all of the indigent cases in the jurisdiction; and (3) the public defender model, involving a public or private non-profit organization with full or part-time staff attorneys and support personnel. Because public defender offices often have conflicts of interests (e.g., in cases involving co-defendants), many jurisdictions use at least two of these models.

<sup>31</sup> 323 PA Code § 1.4-424.

<sup>32</sup> Pennsylvania Juvenile Court Judges’ Commission, *Pennsylvania Juvenile Court Dispositions*, 2001, at 33–38 (2002).

<sup>33</sup> *Id.*

<sup>34</sup> Much of the following discussion is drawn from Pennsylvania Juvenile Court Judges’ Commission, *Pennsylvania Juvenile Delinquency Benchbook*, Chapter 3 25–28 (2003).

<sup>35</sup> 62 P.S. § 704.1.

<sup>36</sup> See generally, ABA Juvenile Justice Center, *A Call for Justice*, Chapter 2: The Role of Defense Counsel in Delinquency Proceedings, 29–40 (December 1995).

<sup>37</sup> For an excellent and exhaustive discussion of the role of counsel in delinquency proceedings, see Randy Hertz, *et al.*, American Law Institute/American Bar Association, *Trial Manual for Defense Attorneys in Juvenile Court*, vol 1–2 (1991).

<sup>38</sup> U.S. Const., Amend. VI.

<sup>39</sup> Pa. Const. Art. 1, § 9 (emphasis added).

<sup>40</sup> 372 U.S. 335 (1963).

<sup>41</sup> 387 U.S. 1, 20 (1967).

<sup>42</sup> 387 U.S. at 36.

<sup>43</sup> *In re Winship*, 397 U.S. 358, 365–366 (1970).

<sup>44</sup> 42 Pa. C.S. § 6337.

<sup>45</sup> *Id.*

<sup>46</sup> Pa. Rules of Professional Conduct, Rule 1.1.

<sup>47</sup> IJA/ABA *Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 3.3(a) (1996), cited below as *IJA/ABA Juvenile Justice Standards*.

<sup>48</sup> *IJA/ABA Juvenile Justice Standards*, Commentary to Standard 3.3(a) p.90 (1980).

<sup>49</sup> *Id.* at Standard 3.5.

- <sup>50</sup> 42 Pa. C.S. § 6323 (Informal Adjustment).
- <sup>51</sup> *Id.* at § 6332.
- <sup>52</sup> IJA/ABA *Juvenile Justice Standards*, Standard 4.1.
- <sup>53</sup> 42 Pa. C.S. § 6332(a).
- <sup>54</sup> IJA/ABA *Juvenile Justice Standards*, Standard 6.4(a).
- <sup>55</sup> *Id.* at Standard 6.4(b).
- <sup>56</sup> See Rochelle Stanfield, *Pathways to Juvenile Detention Reform, Overview: Building a Better Detention System*, A Project of the Annie E. Casey Foundation (2002).
- <sup>57</sup> IJA/ABA *Juvenile Justice Standards*, Standard 4.2(a).
- <sup>58</sup> *Id.* at Standard 7.3(b).
- <sup>59</sup> *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971); *In the Interest of J.F.*, 714 A.2d 467 (Pa. Super. 1998).
- <sup>60</sup> See Part VII of IJA/ABA *Juvenile Justice Standards*, Adjudication.
- <sup>61</sup> Pennsylvania Juvenile Court Judges' Commission, *Pennsylvania Juvenile Court Dispositions 2001*, at 12 (2002).
- <sup>62</sup> IJA/ABA *Juvenile Justice Standards*, Standard 6.3(b).
- <sup>63</sup> IJA/ABA *Juvenile Justice Standards, Standards Relating to Adjudication*, Standard 3.1(a) (1996).
- <sup>64</sup> 42 Pa. C.S. § 6352(a).
- <sup>65</sup> IJA/ABA *Juvenile Justice Standards*, Standard 9.1.
- <sup>66</sup> See, IJA/ABA *Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Commentary to Standard 9.1(a) p. 171.
- <sup>67</sup> 42 Pa. C.S. § 6352(a).
- <sup>68</sup> IJA/ABA *Juvenile Justice Standards*, Standard 10.1(a).
- <sup>69</sup> *Id.* at Standard 10.5. See also, Standard 2.3(a)(ii) (stating "Legal representation should also be provided the juvenile in all proceedings arising from or related to a [finding of] delinquency ... including ... other administrative proceedings related to the treatment process which may substantially affect the juvenile's custody status or course of treatment.")
- <sup>70</sup> *In the Interest of B.S.*, \_\_ A.2d \_\_, 2003 PA Super 297 at \* 5–6 (Aug. 14, 2003) (citing *Interest of A.P.*, 617 A.2d 764 (Pa. Super. 1992); See 42 Pa. C.S. § 6337.
- <sup>71</sup> IJA/ABA *Juvenile Standard*, Standard 10.3.
- <sup>72</sup> 42 Pa. C.S. § 6353(a). The same provision calls for the committing court to "review each commitments every six months," but a mere administrative review — not a formal hearing — will meet this requirement.
- <sup>73</sup> Martin Guggenheim, *The Right to be Represented But Not Heard: Reflections on Legal Representation of Children*, 59 N.Y.U.L.Rev. 76, 138 (1984) (citations omitted). Although Professor Guggenheim was addressing lawyers for dependent children, the principal applies equally in the delinquency context.
- <sup>74</sup> *In re Gault* at 36.
- <sup>75</sup> *Id.*
- <sup>76</sup> Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, *Final Report*, Chapter 5 (Indigent Defense) (2003) (hereinafter Bias Commission).
- <sup>77</sup> Bias Commission at 193.
- <sup>78</sup> The only exception among offices we visited was the indigent juvenile defender in Lackawanna County, who is affiliated with the legal service office, *not* the public defender.

- <sup>79</sup> Commission at 193.
- <sup>80</sup> *IJA/ABA Juvenile Justice Standards*, Standard 2.1; *see also*, Bias Commission at 184–187.
- <sup>81</sup> Bias Commission at 185.
- <sup>82</sup> *Id.* at 186.
- <sup>83</sup> By contrast Pennsylvania’s Juvenile Act imposes obligations on attorneys who represent children in dependency proceedings, including requirements regarding regularly meeting with clients and thorough preparations for hearings. 42 Pa. C.S. § 6311(b).
- <sup>84</sup> In addition to training gaps, among public defender offices, 46% lack specialized texts on juvenile law, and 28% do not have access to Westlaw or Lexis.
- <sup>85</sup> Bias Commission at 187.
- <sup>86</sup> *Id.* at 190.
- <sup>87</sup> *Id.*
- <sup>88</sup> *Id.*
- <sup>89</sup> Pennsylvania Juvenile Court Judges’ Commission, *Pennsylvania Juvenile Court Dispositions 2001*, at 13 (2002).
- <sup>90</sup> The survey results also reveal that 40% feel that the size of their caseload does not significantly limit their representation. To some extent, this may be the result of attorneys’ failure to appreciate what they could and should be doing on behalf of their clients. Because these attorneys do not know (or do not care) what it means to provide high quality representation to children in delinquency proceedings, they cannot correctly gauge the extent to which high caseloads negatively effect the quality of representation.
- <sup>91</sup> In 1973, the Supreme Court of Pennsylvania invalidated Rule 301 of Pa.R.Cr.P. 1 (c), which limited the number of cases that defense lawyers could accept. *See, Moore v. Jamieson*, 306 A.2d 283 (Pa. 1973). At the same time, however, the American Bar Association’s *Standards for Criminal Justice: Providing Defense Services* state that defense attorneys should not “accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations.”
- <sup>92</sup> *IJA/ABA Juvenile Justice Standards*, Standard 2.2(b)(iv) (caseload) (1996).
- <sup>93</sup> *See generally*, Thomas Grisso *et al.*, *Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants*, Law and Human Behavior 27 (4): 333–363, August 2003. Available on-line through <http://www.macfound.org/research/>
- <sup>94</sup> Pennsylvania Juvenile Court Judges’ Commission, *Pennsylvania Juvenile Court Dispositions 2001*, at 14 (2002).
- <sup>95</sup> *See* Rochelle Stanfield, *Pathways to Juvenile Detention Reform, Overview: Building a Better Detention System*, A Project of the Annie E. Casey Foundation (2002).
- <sup>96</sup> The inadequacies of qualifications and compensation for defenders of juveniles were addressed in Section I of this Chapter.
- <sup>97</sup> *Commonwealth v. Karash*, 518 A.2d 537m 541 (Pa. 1986); *Commonwealth v. DeHart*, 516 A.2d 656, 665–66 (Pa. 1986).
- <sup>98</sup> 42 Pa. C.S. § 6337.
- <sup>99</sup> *IJA/ABA Juvenile Justice Standards, Standards Relating to The Juvenile Probation Function*, Standard 2.13 (1996).
- <sup>100</sup> *IJA/ABA Juvenile Justice Standards*, Commentary pp. 95–96 (1980).
- <sup>101</sup> Conflicts occur, for example, when more than one youth is charged with the crime (this is quite common in juvenile court); or when there is an adult co-defendant.

- <sup>102</sup> See also Bias Commission (reporting same for adult criminal defendants).
- <sup>103</sup> Bias Commission at 20.
- <sup>104</sup> *Id.*
- <sup>105</sup> *Id.* at 18.
- <sup>106</sup> *Id.* at 31.
- <sup>107</sup> Francisco A. Villarruel, *et al.*, *Dónde Está La Justicia?*, Executive Summary, p.7 (July 2002). The report was commissioned by the *Building Blocks for Youth Initiative*, a national campaign to promote a fair and effective youth justice system, and is available on-line at [www.buildingblocks-foryouth.org](http://www.buildingblocks-foryouth.org).
- <sup>108</sup> 42 Pa. C.S. § 6332 (emphasis added).
- <sup>109</sup> Juvenile Court Judges' Commission of Pennsylvania. *Pennsylvania Juvenile Court Dispositions 2001* at 37 (2002).
- <sup>110</sup> Notably, 42% of juvenile defenders report having cases in which they raised competency to stand trial; when they raised the issue, courts in the vast majority of cases (83%) ordered a competency hearing.
- <sup>111</sup> In Pennsylvania, the purpose of the disposition hearing is to consider evidence regarding whether the juvenile is "in need of treatment, supervision or rehabilitation," and, if so, to determine what form it should take. 42 Pa. C.S. § 6341(b). Technically, it is the determination that the juvenile has committed a delinquent act and is in need of treatment, supervision or rehabilitation that qualifies him as a "delinquent child."
- <sup>112</sup> 42 Pa. C.S. § 6341(d).
- <sup>113</sup> *Id.*
- <sup>114</sup> As the IJA/ABA *Juvenile Justice Standards* make clear, however, attorneys who represent children must do more than simply review the juvenile probation officer's report. IJA/ABA, *Juvenile Justice Standards*, Standard 9.1.
- <sup>115</sup> As noted earlier, juveniles are entitled to counsel at all stages of juvenile court involvement. 42 Pa. C.S. § 6337. Courts are required to review disposition orders periodically.
- <sup>116</sup> McCarthy, *Pa. Juvenile Delinquency Prac. & Proc.* (4th Ed.), § 14-2, citing *Morrissey v. Brewer*, 408 U.S. 471 (1972) and *Gagnon v. Scarpelli*, 411 U.S. 778 (1973). See also Pennsylvania Rules of Criminal Procedure, Rule 708.
- <sup>117</sup> 42 Pa. C.S. § 6353(a).
- <sup>118</sup> Donald J. Harris, *Due Process v. Helping Kids in Trouble: Implementing the right to Appeal From Adjudications of Delinquency in Pennsylvania*, 98 Dickinson L.Rev. 209, 218 (1993). To examine comparable data, Harris reviewed appeals in cases involving placement of juveniles or incarceration of adults.
- <sup>119</sup> Pa.R.Crim.P. 1123 (stating "Upon the finding of guilt, the trial judge shall advise the defendant on the record ... of the right to file post-verdict motions and of the right to the assistance of counsel in the filing of such motions and on appeal of any issues raised therein.")
- <sup>120</sup> National Research Council, (Joan McCord, Cathy Spatz Widom, and Nancy A. Crowell, eds.), *Juvenile Crime, Juvenile Justice*, Chapter 5 the Juvenile Justice System at 5-20 (2001).
- <sup>121</sup> The training curriculum, which applies the findings of adolescent development and related research to practice issues confronted by juvenile justice practitioners, is available on-line through the ABA Juvenile Justice Center, [www.abanet.org/crimjust/juvjus](http://www.abanet.org/crimjust/juvjus).
- <sup>122</sup> To review, please visit: [www.jjc.state.pa.us](http://www.jjc.state.pa.us).
- <sup>123</sup> According to one estimate, at least one in five youth who comes in contact with the system has a serious mental health disorder that impairs his functioning and requires professional treat-

ment. Coccozza, J., and Skowya, K. (April 2000). "Youth with Mental Health Disorders: Issues and Emerging Responses." Juvenile Justice VII(1). Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention.

<sup>124</sup> See 42 Pa. C.S. § 6356 (Disposition of Mentally Ill or Mentally Retarded Children). Briefly, the Mental Health and Mental Retardation Act authorizes a court, following a hearing on a petition alleging that a person is "in need of care or treatment by reason of ... mental disability," to order commitment of a mentally retarded person for care and treatment. 50 P.S. § 4406. The Mental Health Procedures Act likewise authorizes court-ordered examination and treatment of mentally ill people for periods of various lengths, subject to strict due process safeguards. 50 P.S. § 7303-04.

<sup>125</sup> See, Pennsylvania Juvenile Delinquency Deskbook § 8-11 (stating, "the most important single fact that juvenile court judges should know about adolescent drug and alcohol treatment is this: it doesn't usually work. In fact, it usually backfires.")

<sup>126</sup> *In re Gault*, 387 U.S. 1 (1967).

<sup>127</sup> *Id.* at 20.

<sup>128</sup> *Id.* at 36.

<sup>129</sup> *Id.* at 18.

<sup>130</sup> *In re Winship*, 397 U.S. 358, 365-66 (1970).

<sup>131</sup> *Id.*

<sup>132</sup> 42 Pa. C.S. § 6324 (Privileged Statements).

<sup>133</sup> See 18 Pa. C.S. § 9123 (expungement of juvenile records).

<sup>134</sup> *Id.*



