

NORTH CAROLINA



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

American Bar Association Juvenile Justice Center

and the

Southern Juvenile Defender Center

in collaboration with

National Juvenile Defender Center

North Carolina Office of Indigent Defense Services

American Bar Association Juvenile Justice Center

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EXECUTIVE SUMMARY

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, in collaboration with the Youth Law Center and Juvenile Law Center. The findings were published in *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*. The findings and recommendations embodied in *A Call for Justice* laid the foundation for closer examination of the juvenile indigent defense systems in the individual states. These examinations are required to ensure that state indigent defense systems adequately protect poor children in light of their particular vulnerabilities.

This assessment of access to counsel and quality of representation that children receive in delinquency proceedings in the State of North Carolina is part of a nationwide effort to address deficiencies and identify strengths in juvenile indigent defense practices. Over thirty-five years after the United States Supreme Court decided that children have a constitutional right to counsel, the spirit and promise of the *Gault* decision has been largely unfulfilled. With little exception, juvenile indigent defense practices have gone unchecked. The purpose of this assessment is to take a closer look at juvenile defense practices in North Carolina, 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.

Investigative team members encountered many devoted and talented lawyers for children throughout the North Carolina assessment. Despite the odds, these advocates provide remarkable legal services to children; their professionalism, commitment, and dedication were obvious. However, these instances of vigorous representation are the exception rather than the rule across the state. This assessment reveals gaps in juvenile indigent defense practices that should be addressed. The system as it is presently structured is, at best, uneven, and clearly has had a disproportionate impact on poor and minority children.

Using a variety of modes of data collection, a team of national and state-based experts was assembled to conduct extensive interviews and meetings

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with judges, prosecutors, defense attorneys, court counselors, detention center staff and administrators, children and families, policymakers, and bar association leaders across North Carolina. In addition, the teams observed juvenile court proceedings in 11 selected counties and conducted an extensive literature review. Finally, surveys were mailed to all district court judges and chief court counselors throughout the state, as well as more than 200 public defenders and private attorneys who represent children in juvenile delinquency proceedings.

All the information and data was synthesized into this report and some of the key findings include:

Unequal Representation. The picture of juvenile defense representation in North Carolina is one of extremes and contradictions. Zealous, well-prepared advocacy exists side-by-side, sometimes in the same courtroom, with seriously deficient, *pro forma*, representation. The outcome for a child appears dependent upon the county in which she resides and the individual appointed to represent her. In some counties, juvenile defense attorneys have become so marginalized in the process they seemed to have no role at all. In contrast, many appointed attorneys and public defenders were observed providing competent, well-prepared representation. In general, the use of full-time, well-trained and resourced juvenile public defenders supplemented by qualified appointments from the private bar appears to be the most effective and efficient juvenile indigent defense delivery system.

The delivery of indigent defense services without a system of accountability or practice standards can have a devastating impact on the quality of representation. The uneven state of defense representation observed in North Carolina appears also attributable to a lack of uniform standards, inadequate training and—to some extent—a misapprehension of the role of defense counsel in juvenile proceedings. Judges, defense attorneys and court counselors expressed, almost universally, the need and desire for more frequent and specialized training for all key participants in the juvenile court process.

Lack of Investigative Services & Access to Materials. Forty-four percent of attorneys surveyed reported that they “rarely” or “never” see the police report or other investigative material prior to their first meeting with a client. The same percentage, 44% (not necessarily the same respondents), reported that they had “no” or “inadequate” access to investigators. While it should be recognized that plea agreements are often the most successful resolution that can be achieved, without investigation into the allegations, juvenile defense counsel is in no position to negotiate a plea agreement.

Lack of Client Contact. Eighty-nine percent of attorneys surveyed reported meeting their clients for the first time at the courthouse on the day of a hearing. Defenders must have early and regular contact with their juvenile clients, and must take the time to build a relationship that enables open communication and trust. It is not possible to develop such a relationship when counsel meets her client for the first time on the steps of the courthouse. Systems and policies need to be put into place to facilitate prompt and regular attorney-client contact and communication.

Lack of Motions Practice. Fifty-nine percent of attorneys and judges surveyed reported that defense attorneys “do not” or “only rarely” file pre-adjudication motions. Many cited the open file policy and/or the informality of the process as negating the need for such motions. However, motions regarding competency of juveniles—even where mental illness is a factor in the charges—are equally rare. Site visits confirmed that motions practice is the exception rather than the rule and that when motions are used, they are usually made orally without supporting briefs or other legal analysis. While in keeping with the informal atmosphere of the juvenile system, a lack of formal discovery and motions practice undermines the right of appeal and precludes effective challenges to and development of the law.

Lack of Detention Advocacy. North Carolina uses its juvenile detention facilities for much more than pre-adjudication confinement, including punishment for offenses and post-adjudication violations of probation or court-ordered conditions. Some counties regularly use detention—up to two weeks in one county—as punishment. There was also some indication that youth spend additional time in detention to accommodate court schedules. Despite the state’s liberal use of secure detention, motions for expedited review or other methods of review were seldom used by defense counsel, leaving youth stranded in detention facilities without judicial oversight. Site visits also confirmed that many juvenile defense attorneys failed to make a record in detention hearings based on the statutory justifications for detention, essentially insulating those detention decisions from review.

It also became clear during the study that detention was commonly used for children alleged to have committed non-violent property offenses and for the vast majority of alleged probation violations. While the court has the authority to order five periods of 24-hour detention regardless of charges or prior offenses, there was insufficient data to determine the number of children being placed into secure detention through this mechanism. Moreover, youth also appeared to be held in secure detention for extended periods of time awaiting placement in a treatment program. In one detention facility visited, 25% of the children in the population that day were detained awaiting placement.

Lack of Advocacy at Adjudication. Overall in North Carolina, juvenile defenders reported that 59% of cases result in plea bargains; 20% go to a contested adjudication and 19% are informally adjusted. However, these statewide averages do not reveal the vast differences in case disposal in individual jurisdictions. In several counties, the rate of plea bargains is as high as 90%, with very few cases going to a contested adjudication. Such a high rate of pleas raises concern about whether these cases are being adequately investigated and evaluated.

In addition, there did not seem to be any recognition of the need to challenge the admission of out-of-court statements by juveniles. For the vast majority of cases, judicial colloquies were directed to admissions made in the context of pleas and did not address the circumstances surrounding the interrogation of the juvenile. The North Carolina Juvenile Code is clear in providing that statements made by a juvenile to the court counselor during the preliminary inquiry and evaluation process are not admissible prior to the dispositional hearing.

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The informality of the juvenile process in some courtrooms, however, blurs the line between adjudication and disposition, often merging the two into one proceeding. As a result, there was at times no clear distinction between testimony offered for adjudication of the charges and statements offered as relevant to disposition.

Lack of Disposition Advocacy. There appears to be great reliance by North Carolina defense attorneys—to the point of dependence—on court counselors to plan and recommend disposition treatment plans. It was observed that judges, prosecutors and defense attorneys routinely accept court counselor recommendations. In some counties, most cases (up to 70%) go to disposition immediately following adjudication, allowing no time for attorneys to develop alternative disposition treatment plans if they have not been completed prior to the court hearing. Even given a delay between adjudication and disposition, attorneys overwhelmingly failed to adequately review or question disposition recommendations made by court counselors or present alternative plans. There were isolated incidents where defense counsel did argue strongly against the recommended disposition plan, but this was the rare exception.

National standards provide that counsel should be familiar with the dispositional alternatives available and should independently assist in the formulation of a dispositional plan appropriate to the child's circumstances. In this regard, juvenile defense counsel 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. Observations in North Carolina found that requests for such access to specialized assistance were rarely filed.

North Carolina General Statutes set forth a complicated point allocated, graduated sentencing scheme. Site team investigators noted, however, that the statutory scheme is not well understood or used by many juvenile defense attorneys; even some judges confessed confusion about its application.

Few Notices of Appeal Entered. While appellate representation is available through the Office of the Appellate Defender, public defenders and appointed counsel in delinquency cases enter notice of appeal relatively infrequently, in part because of trial counsel's perception that the time frames involved often render appeals moot. There appears to be no expedited appellate process for juvenile cases. The informal nature of the proceedings clearly mitigate against an active appellate practice: little effort is made to create a record for appeal; a high percentage of cases result in pleas; local rules often end representation upon the entering of an order of disposition; and there is no consistent practice of judges or attorneys advising juveniles of a right to appeal. Appellate advocacy in North Carolina is negligible; during fiscal year 2001–02, there were fewer than 20 appeals to the North Carolina Court of Appeals from delinquency adjudications throughout the entire state.

National standards, recognizing the nature of juvenile case processing timeframes, note that a "system for expediting and granting preferences to appeals from the juvenile court should be provided" and it "should be the duty of the juvenile court judge to inform the parties immediately after judgment and disposition orally and in writing of the right to appeal." It would also appear that

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the Office of Indigent Defense Services and the Office of the Appellate Defender could more actively provide information and training to juvenile defense counsel on ways to enhance the justice system through an active appellate practice.

Lack of Post-Dispositional Advocacy. While court proceedings in North Carolina are usually recorded and transcription is available, there is very little post-dispositional advocacy in the state. Records show that the majority of post-disposition motions filed originate with court counselors, not juvenile defense counsel. Advocacy following disposition appears to be hindered by, among other factors, a lack of written motions practice, attorney passivity, a systemic court culture distortion of “best interests,” and limitations on representation after disposition either by local rules or established policy. In the majority of counties in North Carolina, juvenile defense representation effectively ends at disposition. Court counselors are relied upon to ensure disposition orders are carried out. Children awaiting placement after disposition linger in detention without ongoing representation.

Lack of Training and Standards. Without exception, survey participants and those interviewed expressed the need for ongoing training in their respective positions. Defense counsel exhibited a need for continued training, particularly in the areas of adolescent development and dispositional treatment planning.

Some districts have established practice rules and policies for juvenile delinquency representation. In one district visited, the District Court Rules—which allow for involuntary removal of an attorney from the appointment list—also mandate that attorneys sign an acknowledgement of understanding and agreement to abide by Juvenile Court policies and procedures, which include making reasonable attempts to notify a child client and her family of counsel’s representation and arranging to confer with clients as soon as possible prior to the court date. However, while local rules in some jurisdictions impose minimum experience requirements for representation of juveniles charged with felonies, there are no statewide standards for juvenile representation.

Lack of Collateral Representation. Attorneys in North Carolina appeared to provide very little collateral representation, despite their recognition that juveniles often proceed from the “school house to the jail house.” Attorneys either did not recognize or did not consider it within their purview to address issues relating to the Individuals with Disabilities and Education Act, Individual Educational Plans, or matters such as manifestation hearings. Special education advocacy does indeed seem to be a missed opportunity in juvenile court in North Carolina. School discipline, disability issues, and juvenile petitions may overlap in a variety of ways that require special education advocacy on behalf of an eligible juvenile.

Clients with Limited English Proficiency. Respondents from 17 different judicial districts reported that a foreign language, usually Spanish, is frequently spoken by clients; four districts also reported Vietnamese as frequently spoken; and one district reported Hmong as a foreign language frequently encountered. Out of 71 survey respondents, 40% indicated that cultural barriers impede

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defense attorneys' ability to adequately represent clients. Judges in particular believed this to be the case, with 59% reporting that such barriers existed to the detriment of defense representation. Eighty-five percent of attorneys reported that their offices did not offer training in cultural diversity; 63% of judges indicated that such training should be provided to attorneys.

Juvenile defense attorneys appeared ill-prepared to deal with mental health issues facing their clients.

Clients with Mental Health Issues. Overall, 57% of survey respondents reported that mental health issues related to the charges against juveniles “very often” or “often”; 42% indicated that defense attorneys’ training in mental health issues was lacking, inadequate, or very inadequate. Fifty percent of responding attorneys themselves indicated they received inadequate, very inadequate, or no training in mental health issues. In addition, inadequate community-based resources for mental health treatment was frequently cited as a problem during this assessment. In some cases, it appeared that commitment to a youth development center was viewed as necessary because of the lack of mental health treatment alternatives. Despite the prevalence of mental health issues in juvenile cases in North Carolina—relating both to competency to proceed and culpability—the mental health of a child is an issue that typically is not addressed until or after disposition; juvenile defense attorneys appeared ill-prepared to deal with mental health issues facing their clients.

To insure due process in delinquency proceedings, it is important for defense counsel to understand her role

Disproportionate Minority Representation. In some counties, disproportionate minority court processing and confinement rates are alarming. Despite demographic differences, there was agreement in almost every jurisdiction that youth of color are overrepresented in North Carolina’s juvenile justice system. Across disciplines, there was an overarching sentiment and perception that youth of color are disparately treated—*i.e.*, that race matters. While no one in this assessment was able to speak with certainty on the reasons behind these large disparities, some proffered such things as institutional bias in processing, lack of parental empowerment, and lack of access to resources. It is also clear from the data that disproportionate minority representation is very often related to school issues and referrals from school districts to the juvenile court.

School Referrals. Throughout this assessment, it was apparent that North Carolina school systems refer large numbers of juveniles to the juvenile court system, frequently in situations that could and should have been addressed by the school system itself. This situation is particularly acute in several counties visited, and it was reported in one county that 2/3 of delinquency case complaints come from the public school system. Children as young as 6 and 7 are referred to court for issues that seem clearly to relate to special education status.

Confusion About Role of Counsel. To insure due process in delinquency proceedings, it is important for defense counsel to understand her role as an “expressed interest” attorney advocating for the rights of the client, not a “best interest” attorney advocating for what she believes is best for her client. Appointed counsel frequently expressed their belief, however, that the problems of juvenile court rested with the parents and children, citing a lack of discipline and responsibility as the main reasons for juveniles being in court and the major obstacle to effective representation. Some attorneys expressed reluc-

tance to go to a contested adjudication in juvenile cases because it would adversely impact their credibility in other cases in the same court. Attorneys providing the highest level of representation were more likely to see the need for improvements while, conversely, attorneys who saw their role as a “facilitator” indicated that existing representation was adequate.

Inadequate System Resources. Other issues identified by surveyed juvenile defense attorneys and assessment team members included the following: the lack of space in some county courthouses for confidential communication with clients; the absence of residential treatment facilities, particularly for substance abuse; confusion among youth concerning the roles played by those in the justice system and those present during court; and inadequate access to tools and resources for representation (*i.e.*, training, investigators, brief banks, and support services).

Parental/Family Participation. There is a universal and statutory recognition of the importance of parent participation in the juvenile court process. All parties readily acknowledge the significant impact parent and other family involvement can have on dispositions and outcomes for children. North Carolina’s Juvenile Code subjects parents to the jurisdiction of juvenile court and holds them liable for contempt for failure to comply in the child’s disposition orders. Not all defense attorneys, however, appeared to view the involvement of parents in a positive light. While adherence to the principle of the child as the sole client is ethically proper, the reluctance or even disdain for involving parents that was expressed by some attorneys can be seriously detrimental to outcomes for the child client. Juvenile defense attorneys must be willing and able to keep parents appropriately involved in cases as part of their representation of young clients; parents, more often than not, will increase a child’s likelihood of success.

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INTRODUCTION

This report is based on a qualitative assessment of the access to counsel and quality of representation in North Carolina delinquency proceedings; as such, this project is part of a national undertaking to review indigent defense delivery systems, evaluate the effectiveness of legal advocacy in juvenile courts, and assess the adequacy of constitutional and statutory protections for children in the justice system. The study was designed to provide a broad range of 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 recommendation for ways to improve the delivery of defender services for youth in the justice system.

This examination is especially important in light of the particular challenges and vulnerabilities that children present to the justice system in North Carolina and nationally. North Carolina is the only state that begins original juvenile court jurisdiction in delinquency matters at age six, and is among only three states that end original juvenile court jurisdiction after 15 years of age.¹ North Carolina law does provide, however, for continued juvenile jurisdiction of a child until she reaches the age of 18—and older in some instances—if that jurisdiction attached prior to the child’s 16th birthday.² North Carolina additionally allows for commitment to the Department of Juvenile Justice for placement in a youth development center for children as young as 10 years old,³ and allows for the transfer to adult court of children as young as 13 years old.⁴

Working with adolescents requires a special understanding of the principles of child and adolescent development. Ensuring that youth and their families fully understand and participate in the justice system process requires a patient and dignified system. Dealing with the extraordinarily high number of children in the justice system with mental health and/or learning problems mandates specialized training and skill development. Understanding a child’s level of maturity and competency can require access to specialized experts. The system’s tendency to rely on institutional placements when community-based alternatives are limited requires monitoring. For all these reasons and more, it is

“My advice to attorneys representing children in this system is: be more efficient with your time; learn about adolescent development; learn and apply the balanced and restorative justice model; consult and meet with court counselors early on to get information on your client; after disposition, focus on the programming that will actually rehabilitate your client; get involved in your communities in a volunteer capacity; and take advantage of every training opportunity that comes your way.”

— Juvenile Court
Counselor

imperative that juvenile indigent defense systems be assessed in order to ensure that children are receiving the constitutional protections to which they are entitled.

A. Due Process and Delinquency Proceedings

In a series of cases, the United States Supreme Court recognized the bedrock elements of due process as essential to delinquency proceedings.⁵ In 1967, the Court recognized the constitutional nature of the juvenile court's delinquency process in *In re Gault*, when it specifically stated that juveniles facing delinquency proceedings have the right to counsel under the Due Process Clause of the United States Constitution.⁶ *Gault* found that juveniles facing "the awesome prospect of incarceration" need counsel for the same reasons that adults facing criminal charges need counsel.⁷ Noting that the "absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment," the Court determined that a child's interests in delinquency proceedings are not adequately protected without adherence to due process principles.⁸ These principles were reaffirmed a few years later when the Supreme Court declared, "[w]e made it clear in [*Gault*] that civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile court," and held that juveniles are constitutionally entitled to proof "beyond a reasonable doubt" during proceedings that could result in a delinquency adjudication.⁹

The introduction of advocates theoretically altered the tenor of delinquency cases. Juveniles accused of delinquent acts were to become participants in the proceedings, rather than spectators. Thus, attorneys representing juveniles charged with delinquency 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."¹⁰ Over the course of a few years, the delinquency system was transformed from a "best interest" system to one of "express interest," where a child's constitutional rights became of paramount importance in the proceedings.

Through cases such as these, the Court focused attention on the treatment of youth in the juvenile justice system, spurring the states in varying degrees to begin addressing the concerns noted in the Court's decisions. Evincing concerns over safeguarding the rights of children, Congress enacted the Juvenile Justice and Delinquency Prevention Act in 1974. This Act created the National Advisory Committee for Juvenile Justice and Delinquency Prevention. The National Advisory Committee was charged with developing national juvenile justice standards and guidelines. Published in 1974, these standards require that children be represented by counsel in all proceedings arising from a delinquency action from the earliest stage of the process.¹¹

Beginning in 1971, and ensuing over a ten-year period, the Institute for Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards promulgated twenty-three volumes of comprehensive juvenile justice standards.¹² The structure of the project was as intricate as the volumes of standards it produced: the Joint Commission consisted of twenty-nine members and four drafting committees supervising the work of thirty scholars

who were assigned as reporters to draft individual volumes. The draft standards were circulated widely to individuals and organizations throughout the country for comments and suggestions before final revision and submission to the ABA House of Delegates. Adopted in full by 1981, these standards were designed to establish the best possible juvenile justice system for our society, not to fluctuate in response to transitory headlines or controversies.

Upon reauthorizing the Juvenile Justice and Delinquency Prevention Act in 1992, Congress re-emphasized the importance of lawyers in juvenile delinquency proceedings, specifically noting the inadequacies of prosecutorial and public defender offices to provide individualized justice. 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 the Juvenile Law Center, received funding from the federal Office of Juvenile Justice and Delinquency Prevention to initiate the Due Process Advocacy Project. The purpose 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*¹³ in 1995, 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, state-based juvenile defender assessments have been conducted in Georgia, Kentucky, Louisiana, Maine, Maryland, Montana, Ohio, Pennsylvania, Texas, Virginia and Washington.

B. Methodology for Assessment

The American Bar Association Juvenile Justice Center and the Southern Juvenile Defender Center, along with national, state and regional partners, joined forces to produce this study. A team of regional and national experts was convened to take part in the assessment, including private practitioners, academics, current and former public defenders, defender organization administrators, and juvenile advocates. Data collection for the study included: on-site observations; interviews with key personnel; mail surveys; gathering statistical data on crime, arrest, detention, and confinement rates; verifying caseload statistics, census information and community profiles; and a review of all relevant research and reports on the North Carolina defender system. In the final analysis, a cross-section of 11 North Carolina counties was selected for intensive study. Together the sites comprise a representative sample of the state's total population, representing urban and rural areas and counties and cities with a variety of defense delivery systems, and reflecting the geographical diversity of the state.

Statistics on population, racial composition, and income were obtained for each county in the state using United States Census 2000.¹⁴ For each county, data on juvenile corrections intake, as well as delinquency and undisciplined complaints and admissions to detention were obtained from the North Carolina Department of Juvenile Justice and Delinquency Prevention (DJJDP) and the United States Office of Juvenile Justice and Delinquency Prevention (OJJDP).

Juvenile arrest data were obtained from the North Carolina State Bureau of Investigations. The data was compiled and analyzed to determine a representative sampling of counties for site visits and to uncover statistical anomalies warranting further investigation.

Survey questionnaires were sent to 246 district court judges, chief court counselors for every district (39 in total), all public defender offices handling juvenile cases, and more than 200 private juvenile defense attorneys throughout the state. Completed questionnaires were received from 30 judges, a response rate of 12%, and from 16 chief court counselors, a response rate of 41%. A total of 26 attorney questionnaires were returned from public defenders and private counsel, a response rate of 12%. In terms of district coverage, judges from 18 of 39 districts responded (representing 46% of judicial districts); court counselors from 13 districts responded (representing 33% of judicial districts); and defense attorneys from 9 different counties responded (representing 23% of judicial districts). In all, survey responses were received from 25 different districts, representing 64% of the state's judicial districts.

A team of investigators visited each site to conduct the interviews (pursuant to standardized protocols), observe judicial proceedings, and gather documentary evidence. The focus of these investigations centered on the role of defense counsel; it was necessary, however, to interview various people involved in the process to flesh out a complete picture of the system and its effectiveness. Investigators interviewed and talked with judges, juvenile public defenders, court appointed counsel, prosecutors, court personnel and administrators, court counselors, case managers, mental health experts, school resource officers, detention center personnel and administrators, service providers, key state stakeholders, policy advocates, children and parents. The investigative teams also observed court proceedings, toured facilities, and—to the extent possible—collected statistical and documentary evidence. When necessary, follow-up phone calls were conducted to collect additional or clarifying information.

CHAPTER ONE

North Carolina's Children and Its Juvenile Justice System

A. Pathways to Delinquency

Environmental factors have become reliable indicators of involvement in the kind of behavior which leads to entanglement with the juvenile justice system. Increasingly, it is not as much the criminality of the behavior but the lack of alternatives for children with severe emotional and behavioral problems, children who have been expelled from school, and children whose families cannot provide adequate care which brings them into the juvenile justice system.

Basic census data provides some context to a consideration of the condition of children in North Carolina. According to the 2000 census, North Carolina had 1,964,047 children under the age of 18 which constituted over 24% of the state's population.¹⁵ However, because juvenile jurisdiction in North Carolina ends at age 16, perhaps a more relevant number is 1,758,131—the number of children covered by the juvenile system—which represented 22% of the population. North Carolina expects a 4% increase in their juvenile population between 1995 and 2015.¹⁶

The racial demographics for North Carolina are more diverse than the national population. According to a 1999 report of the OJJDP, the national juvenile population was 79% white. North Carolina's juvenile population was 70% white, 27% African American, 4% of Hispanic origin, and 0.2% Asian.¹⁷ Juveniles were slightly more diverse than the at-large population in North Carolina. Of 8,049,313 North Carolinians, 72% of the total populous was white, 22% was African American, 5% was of Hispanic origin, and 1.4% was Asian.¹⁸

Child Poverty

In 1999, 17% of North Carolina's children lived in poverty, equivalent to the national rate.¹⁹ Nearly 7.5% of North Carolina's children live in extreme poverty

in a family with income at less than 50% of the poverty level, which is slightly worse than the 7% national rate.²⁰ Younger children are somewhat more likely to live in poverty, with 23% of children under age 5 in North Carolina living in poverty.²¹

The percentage of children living in poverty ranges between 8.7% and 33.3% for counties in North Carolina. Twenty-four percent of children live with parents who do not have full-time, year-round employment. North Carolina ties the national figure of 24% for this indicator, and is ranked 25th among the states. Yet only 7 of North Carolina's 100 counties surpass the national median income of families with children (\$50,000).²² In a majority of North Carolina's counties (54 out of 100), the child poverty rate exceeds the national average.

Lower median incomes and higher child poverty rates correlate with race in North Carolina. In the 10 counties where blacks constitute more than 50% of the population, the family poverty rate ranges from 24–37.7%, and the median family income does not exceed \$35,212. These counties are concentrated in the eastern and southern regions of the state. Another depressed area exists in the western tip of North Carolina where race does not appear to be a factor; however, this area is not nearly as impoverished.

Children's Physical Health

Health concerns are another indicator of the well-being of North Carolina's children. Beginning at birth, North Carolina's infant mortality rate is the 7th highest in the country at 8.6%.²³ North Carolina also does poorly on rankings for low birth weight. In 1998, 8.8% of births in North Carolina were low birth weight (less than 5.5 lbs.), an increase from 8% in 1990. Forty-four states ranked better than North Carolina for this indicator.²⁴ Babies born at low birth weight face a higher risk of premature death and other physical and learning disabilities. As North Carolina's children grow, they continue to do poorly compared to children in other states. The child and teen death rates are both above the national average.²⁵

Health insurance for children is better than the national average. According to statistics from 1999, 11.3% of children in North Carolina are without coverage while the national average is 14%.²⁶ Additionally, the overall shortage of primary health care professionals in North Carolina does not seem to be as pressing a problem as it is in other states. Of 100 counties, only 22 have been designated as Health Professional Shortage Areas by the U.S. Department of Health and Human Services and 6 of those counties are in the process of having this designation withdrawn.²⁷ However, some organizations, such as the North Carolina Committee to Defend Health Care, have called attention to the decline in availability of health care insurance.²⁸ A sufficient number of medical professionals in an area will not guarantee that children receive appropriate medical care if they cannot afford these services.

Children's Mental Health

North Carolina estimates that 10–12% of children suffer from a serious emotional disturbance.²⁹ The recent White House Conference on Mental Health estimated that one in ten children and adolescents suffer from mental illness severe

North Carolina estimates that 10–12% of children suffer from a serious emotional disturbance.

enough to cause impairment. In many states, increasing budget constraints have drained the resources available to treat these children.

North Carolina, however, appears to have adequate resources that are inappropriately allocated. In 2002, North Carolina spent \$243,585,116 on Medicaid for children's mental health services, but this largely went towards secure-care expenses. Despite efforts to increase access to community mental health services and diagnostic visits in 2000, North Carolina has not made many improvements and children are often placed in secure residential facilities without receiving a proper evaluation.³⁰ Efforts to provide children with quality mental health services are further frustrated by the fact that 44 of 100 counties face a shortage of mental health professionals.³¹ Additionally, a 1999 Needs Assessment of Mental Health Programs found that 51% of Area Mental Health Programs needed additional child psychologists.³² Plans are in the works to curb a reliance on restrictive Psychiatric Residential Treatment Facilities for children and encourage use of community-based services instead.

The North Carolina Department of Juvenile Justice and Delinquency Prevention (DJJDP) operates Assessment and Treatment Planning Centers, where adjudicated delinquents are given a brief screening before assignment to a youth development or detention center. The North Carolina development centers estimate that as of December 2001, 17% of their juvenile population was taking psychotropic medication. Twenty percent were behaviorally or emotionally disabled.³³ This is inconsistent with a 1994 OJJDP study which found that, nationally, 73% of juveniles screened at admission to a juvenile correctional facility had mental health problems and 57% reported having prior mental health treatment or hospitalization. According to the National Mental Health Association, girls in the juvenile justice system exhibit even higher rates of mental problems than their male counterparts.

Substance Abuse

Drug abuse violations accounted for 203,900 juvenile arrests in the United States in 2000.³⁴ Alcohol related offenses, including driving under the influence, liquor law violations, and public drunkenness, amounted to more than 200,000 arrests. Without factoring in the influence of drugs or alcohol in arrests on other charges, arrests for substance abuse constituted 16% of all juvenile arrests.³⁵ In North Carolina, arrests of juveniles for drug and alcohol related violations in 2002 numbered 2,250, and constituted 5% of complaints against juveniles.³⁶

A 2001 survey of North Carolinian high school students indicated a slight decrease in active drug use among 9th–12th graders since 1997, but overall drug use remained high.³⁷

Percent of 9th–12th Graders Who Used Drugs in the Past 30 Days, 200³⁸

Drug Type	Percent
Marijuana	20.8%
Cocaine	2.7%
Alcohol	38.2%
Cigarettes	27.8%
Smokeless Tobacco	8.9%

Overall lifetime experimentation with drugs among high school students in North Carolina is not as bad as in other states:

Percent of High School Students Using Selected Drugs, North Carolina, 2001³⁹

Drug Type and Lifetime Use	Female	Male	Total
Marijuana	38.2%	42.3%	40.7%
Cocaine	6.2%	7.1%	6.7%
Inhalant	13.5%	13.8%	13.7%
Heroin	1.4%	3.1%	2.3%
Methamphetamine	7.3%	8.3%	7.8%
Illegal steroids	3.5%	6.5%	5.0%
Injected Illegal Drugs	1.2%	2.6%	1.9%

Popular club drugs in North Carolina include MDMA (commonly referred to as Ecstasy) and LSD. The more than 50 four-year colleges and universities in North Carolina create a large potential market for club drugs.⁴⁰ The availability and, consequently, use of these dangerous drugs among high school students is also on the rise.

Education

Recent test scores reveal that North Carolina's education system is doing well overall. Achievement test scores in 2000 improved significantly from 1996 among all age groups tested in mathematics. North Carolina's children beat the national average and were among the top performers on the math exams.⁴¹ Although scores for 4th and 8th graders in science were slightly below the national scores, 3% more 8th graders were proficient in 2000 than in 1996.⁴²

The gap between scores for white and minority children, as in most states, remains high; however, the overall achievement of minorities is higher in North Carolina. For example, although 38% of white 4th graders and only 9% of black 4th graders were proficient on math tests, these numbers were better than the national averages — 33% and 5%, respectively.⁴³

Graduation rates in North Carolina have been increasing steadily; however, at 63%, North Carolina is still below the national average of 69%.⁴⁴ Eleven percent of 16–19 year-olds in North Carolina are high school drop outs, which is the 9th highest rate among the states.⁴⁵

Education in North Carolina has also become more rigorous. Ninety-three percent of public schools offered Advanced Placement courses in 2002, and enrollment in such courses increased nearly 42% between 1998 and 2000.⁴⁶ In 2002, North Carolina's 67% participation rate for the SAT test was the 13th highest in the nation.

Like most states, North Carolina's education system also faces an impending teacher shortage crisis. With the 8th largest percentage of children enrolled in rural districts, North Carolina finds it difficult to attract new teachers to shortage areas.⁴⁷ In response, the state has tried to publicize career security and benefits in order to bring more people into the profession; however, the effectiveness of this approach remains to be seen.⁴⁸

The inequity of resources for public education is another challenge faced by the education system in North Carolina and nationwide. In a study conducted by Education Week in 1999, North Carolina scored a B for state equalization efforts in school funding; however, the state's score fell to a C+ in 2002.⁴⁹ Although North Carolina's ranking fell, it still ranked 12th among the states for this indicator. Furthermore, a seminal decision from the North Carolina Supreme Court in 1997 may have encouraged increased inequality among school districts. Unlike many states that have found that a state constitutional guarantee of "equality of education" restricts the permissible spending gap among school districts in the state, North Carolina decided otherwise. The Court found in *Leandro v. State* that the North Carolina Constitution guarantees "a right to the privilege of education"⁵⁰ and ensures that "equal opportunities shall be provided for all students [by the General Assembly]."⁵¹ However, this protection only ensures that students will receive a "sound and basic education" and "does not require that equal educational opportunities be afforded students in all of the school districts of the state."⁵² The Court relied on language from the North Carolina Constitution, which provides that the "governing boards of units of local government with financial responsibility for public education may use local revenues to add or supplement any public school or post-secondary school program."⁵³ In North Carolina, local supplements to state-provided school funding that lead to inequality of opportunity across school districts do not violate the state Constitution "[b]ecause...local governments with financial responsibility for public education may provide additional funding to supplement the educational programs provided by the state."⁵⁴

Zero Tolerance in Schools

During their interviews, investigators met with a significant number of youth who were involved in the juvenile justice system because of school-related offenses. School suspension data from the North Carolina Department of Public Instruction confirms the investigators' suspicions "that a new approach to dealing with behavioral issues in school is needed throughout the state."

Long term suspensions increased by 22% between the 1999–2000 and the 2000–2001 school years. Ninth graders received about one-third of all long-term suspensions. Over half of the long term suspensions were given to black/multi-racial students. Approximately 4% of the overall student population received multiple short-term suspensions of any length. In all out-of-school suspensions in 2000–2001 resulted in over 650,000 lost instructional days for North Carolina public school students. Students who received one or more out-of-school suspensions were less likely to score at or above grade level on End-of-Grade and End-of-Course achievement tests across subject areas. Black/Multi-racial students are greatly over represented in multiple short term suspensions, long term suspensions and expulsions.⁵⁵

Although recent reforms have included statutory requirements that the state use educational alternatives rather than punishment in response to school-related offenses,⁵⁶ the impact of these changes has yet to be studied.

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Child Abuse and Neglect

A child is abused or neglected every 15 minutes in North Carolina.

A child is abused or neglected every 15 minutes in North Carolina.⁵⁷ During the year 2000, children's agencies in North Carolina investigated nearly 123,043 cases of maltreatment.⁵⁸ The investigations yielded 36,186 substantiated and indicated victims.⁵⁹ Of these children, 90% were neglected, 4% suffered physical abuse, 3.5% experienced sexual abuse, 2% were medically neglected, and 0.3% were subject to psychological/emotional abuse or neglect.⁶⁰ Victims included almost the same number of females (49.9%) as males (50.1%).⁶¹ With 47 reported deaths due to child maltreatment, North Carolina's rate of child fatalities resulting from abuse was well above the national average. A study reported by the U.S. Department of Health and Human Services Children's Bureau in 2000 found that North Carolina's rate of child fatalities from maltreatment was 2.39 deaths per every 100,000 children age 0–18. The national average of child deaths due to maltreatment was 1.71.⁶²

Child abuse strongly correlates with juvenile delinquency, especially among girls. About 40–73% of girls in the juvenile justice system are believed to have been sexually and/or physically abused as compared to 23–24% of girls in the general population. Girls who are abused or neglected are twice as likely to be arrested as girls who are not abused (20% vs. 11.4%), and have a continuing risk of arrest for violence as adults.⁶³

Violence

A child or teen in the United States is killed by gunfire every three hours; in North Carolina gunfire takes the life of a child or teen once every four days.⁶⁴ Children are at a much greater risk of being the victims than the perpetrators of violent crime. Juveniles make up 12% of all crime victims reported to the police, including 71% of all sex crimes. One out of every 19 victims of violent crime, and one of every three victims of sexual assault, is under age 12. Despite recent declines, the teen homicide rate is about 10% higher than the average homicide rate for all Americans.⁶⁵ The arrest rate for juveniles in North Carolina reflects even less violence perpetrated by youth than the national average. According to an OJJDP report based upon FBI statistics in 1999, North Carolina's violent crime index rate was 334 arrests per 100,000 juveniles. The national average was 366 arrests for violent crimes per 100,000 juveniles.⁶⁶

Children are at a much greater risk of being the victims than the perpetrators of violent crime.

Gang membership has recently been shown to be a factor in delinquency. The OJJDP published an extensive report based upon several studies which found that gang members account for a disproportionate share of delinquent acts, especially violent offenses.⁶⁷ The report also found that although North Carolina had only 3 gang cities through the 1980s, by 1998 41 cities were designated as such.⁶⁸ The Governor's Crime Commission published a report in 2000 that discovered North Carolina is home to 322 gangs and 5,143 gang members.⁶⁹ Eight hundred fifty-one (roughly 21%) of gang members in North Carolina are young enough to fall under the jurisdiction of the juvenile courts.⁷⁰ School resource officers estimate that 1,183 gang members (23% of gang members statewide) are still in schools, where gangs tend to be more organized and violent.⁷¹

Girls in North Carolina's Juvenile Justice System

In a nutshell, at risk girls are different from at risk boys. Their behaviors are more intense, their psychology is more complex, and society treats them differently. Treatment providers should be aware of these differences and plan their interventions accordingly.

— North Carolina DJJDP Gender Specific Resource Manual

In North Carolina, between 1995 and 2000, “the admission rate for girls to detention increased by 74% compared to a 40% increase for boys.”⁷² In 2002, girls represented 12% of the population in youth development centers and 28% of the population in juvenile detention centers. Almost one third of girls’ offenses in 2002 fell under the “undisciplined” heading and, although girls committed a minority of all other offenses, they were responsible for nearly 58% of undisciplined acts.⁷³

The risk factors for North Carolina’s girls include many of those faced by North Carolina’s boys but they seem to affect girls more negatively. School failure is the single most significant indicator of a girl’s involvement in the juvenile justice system.⁷⁴ The risk of becoming an offender is increased three times for a girl with poor grades or expulsion from school.⁷⁵

Mental illness is also more common in girls in the juvenile justice system than boys.⁷⁶ In the first study of post-traumatic stress disorders (PTSD) in female juvenile offenders which was reported, in the *Journal of the American Academy of Child and Adolescent Psychiatry* in 1998, 48.9% of offending girls were experiencing symptoms at the time of the study.⁷⁷ Female offenders were 50% more likely to suffer from PTSD than male offenders, which was linked to the fact that girls are more likely to be victims of violence and boys are more likely to be witnesses.⁷⁸

Teen pregnancy is another significant risk factor leading to involvement by girls in the juvenile justice system. In 1999, the teen birth rate in North Carolina was 34 per 1,000 girls ages 15–17.⁷⁹ This marks a decrease from 45 per 1,000 in 1990, but North Carolina is still above the national average of 27 births per 1,000 girls.⁸⁰

B. The Court System

North Carolina’s court system, called the General Court of Justice, is a unified statewide and state-operated system consisting of three divisions: the Appellate Division, the Superior Court Division, and the District Court Division. The Appellate Division is located in Raleigh, North Carolina; each of the District Court Divisions and Superior Court Divisions—referred to as the trial courts—are located in judicial districts throughout the state.

The Appellate Division of the General Court of Justice is composed of the Supreme Court and the Court of Appeals. Each level of these courts considers errors in legal procedures or in judicial interpretation of the law, and hears arguments on the written record in cases appealed from the trial courts below. The Supreme Court is the state’s highest court. This court consists of the Chief Justice and six associate justices, who sit as a body in Raleigh. The Court of

School failure is the single most significant indicator of a girl’s involvement in the juvenile justice system.

The risk of becoming an offender is increased three times for a girl with poor grades or expulsion from school.

Appeals is an intermediate appellate court. It is composed of fifteen judges, who sit in panels of three. It hears and decides cases appealed as a matter of right or by writ of *certiorari* from the Superior Courts, District Courts, and various commissions throughout the state.

The Superior Court is a court of general jurisdiction. The criminal jurisdiction of the Superior Court provides for exclusive jurisdiction over the disposition of all felonies and jurisdiction over misdemeanors appealed from a conviction in District Court. The Superior Court division is the only level of court in the structure of the North Carolina system where the defendant has a right to trial by jury.

The District Court is also a court of general jurisdiction. The criminal jurisdiction of the District Court extends to preliminary hearings in felony cases, as well as misdemeanor and infraction cases. The District Court thus has exclusive original jurisdiction for the disposition of all actions tried without a jury, including juvenile delinquency proceedings.

Juvenile jurisdiction is both civil and criminal. Juvenile cases are initiated by petition and a judge conducts the hearings, with appointed attorneys to represent the juvenile. Civil cases involve children under the age of eighteen who are "abused," "neglected," or "dependent," as well as proceedings to terminate parental rights. Criminal cases involve children under age sixteen who are "delinquent" or "undisciplined." A delinquent or undisciplined juvenile is placed under the supervision of the North Carolina Department of Juvenile Justice and Delinquency Prevention (DJJDP). In some criminal actions the court may find reasonable grounds to bind the case over to the criminal Superior Court where the juvenile would be tried as an adult.

Magistrate jurisdiction is also both civil and criminal. A magistrate's authority in criminal matters is limited to (1) accepting guilty pleas to minor misdemeanors and pleas of responsibility to infractions; (2) accepting waivers of trial and guilty pleas to certain traffic, littering, wildlife, boating, marine fisheries, state park recreation and alcoholic beverage violations; and (3) accepting waivers of trial and guilty pleas in worthless check cases in which the check is for \$2,000 or less. Magistrates may also issue arrest and search warrants and set bail.

C. Juvenile Justice and Legislative Reform

The North Carolina Juvenile Code, prior to major reform efforts in 1998, sought to "rehabilitate juveniles and to transform them into productive, law-abiding members of society."⁸¹ In response to a perceived increase in the amount of violent juvenile crime, then-Governor Jim Hunt encouraged an overhaul of the juvenile system, including a subtle change in the purpose of the laws. The changes made to the Juvenile Code through the Juvenile Justice Reform Act of 1998 included a new focus on (1) protecting the public from acts of delinquency and (2) deterring delinquency through swift dispositions emphasizing juvenile accountability and appropriate rehabilitative services.⁸² Major components of the Act included tougher punishment, fingerprinting of violent juvenile offenders, and parental accountability. Additionally, jurisdiction over truants and runaways was extended to age 18 while the limit for other offenses remained at age 16. A desire to "protect children before it's too late" motivated many of these reforms.⁸³

Despite these efforts to take juvenile crime and rehabilitation more seriously, some of the intended beneficiaries of the reforms have called its methods into question.

The bill also made provisions to support community prevention efforts. "The Act requires the board of commissioners of each county, as a prerequisite for receiving funding for juvenile court services and delinquency prevention programs, to appoint a Juvenile Crime Prevention Council to act as a local juvenile justice planning body."⁸⁴ Council membership should include a variety of community leaders and members that "reflect the racial and socioeconomic diversity of the community."⁸⁵ Guidelines require that a person under the age of 21 sit on each local council.

Further reforms impacted the bureaucracy of North Carolina's juvenile justice system. In 2000, responsibility for juvenile justice administration transferred from the Division of Youth Services of the Department of Health and Human Services (DHHS) and the Juvenile Services Division of the Administrative Office of the Courts (AOC) to the newly created Department of Juvenile Justice and Delinquency Prevention (DJJDP). House Bill 1084, which created the DJJDP, also established the first cabinet-level agency to focus exclusively on children.⁸⁶ The DJJDP now provides screening, intake, probation and aftercare services, and oversees juvenile detention facilities, youth development centers and community-based alternatives.⁸⁷

Despite these efforts to take juvenile crime and rehabilitation more seriously, some of the intended beneficiaries of the reforms have called its methods into question. Responding to a continuous decline in annual allocations for juvenile justice programs and the State Advisory Council on Juvenile Justice and Delinquency Prevention's failure to meet as regularly as required by statute, several guardian ad litem in North Carolina filed a writ of mandamus in May 2003, asking the court to require these officials, including Governor Mike Easley, to recommit themselves to the ideals formed during the reform efforts in the late 1990s.⁸⁸ Although the Council came together to discuss reforms a few months later, substantive changes as a result of these efforts remain to be seen.

*Department of Juvenile Justice and Delinquency Prevention*⁸⁹

As noted above, the DJJDP was created in the 2000 legislative session as a part of the overall reform of the juvenile justice system begun in October 1998 when Governor Hunt signed into law the Juvenile Justice Reform Act. In January of the following year, the Governor established the Office of Juvenile Justice by combining the Division of Youth Services and AOC's Juvenile Services Division, bringing together 2,046 employees under one administration. On July 20, 2000, the Office was elevated to a cabinet-level department.

*Juvenile Crime Prevention Councils*⁹⁰

DJJDP partners with Juvenile Crime Prevention Councils (JCPCs) in each county to galvanize community leaders, locally and statewide, to reduce and prevent juvenile crime. JCPC board members are appointed by the county Board of Commissioners and meet monthly in each county. The meetings are open to the public, and all business is considered public information. DJJDP allocates approximately \$23 million to these councils annually, which is used to subsidize local programs and services. Some of the responsibilities of the JCPCs

are to review the needs of juveniles in the county who are at risk of delinquency or have been adjudicated undisciplined or delinquent, review the resources available to address those needs, develop needed services, evaluate programs, and provide funds for treatment, counseling and rehabilitation services.

*Court Counseling Services*⁹¹

Court counseling services are provided through district court counselor offices with staff serving juveniles in each county.⁹² The Chief Court Counselor supervises court counselor staff and is responsible to a DJJDP Area Administrator. At intake, court counselors receive and evaluate all delinquent and undisciplined complaints which law enforcement or citizens refer for possible court action. The purpose of intake is to determine from available evidence whether there are reasonable grounds to believe the facts alleged in the complaint are true, to determine whether the facts alleged are sufficiently serious to warrant court action, and to obtain assistance from community resources when court referral is not necessary. In the evaluation process, intake counselors interview the complainant and/or the victim, the juvenile and the juvenile's parents or guardians, and persons who are known to have relevant information about the juvenile or the juvenile's family.

Within 15 days, with a possible extension of 15 days, the counselor must decide whether to approve the complaint for court action or handle the complaint without court action. In cases involving serious felonies such as murder, rape, first and second degree sex offenses, arson, felony drug offenses, burglary, crime against nature, and any felony which involves the willful infliction of serious injury, the complaint must be approved for court action.

If the intake counselor determines there is no need for court action or referral to a resource, the court counselor may close the case. If there is no need for court action but the juvenile may benefit from a referral to a community resource, the counselor may retain the case and divert the case from court by making a diversion plan or entering into a diversion contract with the juvenile and the juvenile's parent(s). If a juvenile who is involved in a diversion plan or contract does not follow through as expected, the court counselor may approve the complaint for hearing in court.

Court counselors prepare reports for the court regarding juveniles who are adjudicated delinquent to assist the court in crafting dispositions for juveniles; the counselors also work with undisciplined juveniles who are placed under protective supervision and with delinquent juveniles who are placed on probation. Juveniles committed to the DJJDP for placement in a youth development center continue to have contact with local court counselors during commitment, who also provide transitional post-release services when the juvenile returns to the community.

More specialized services such as Alternative to Detention Counselors and the Transportation programs augment the primary work of court counselors. Alternative to Detention Counselors provide daily contact, supervision, and monitoring of an extremely small caseload of individuals who would otherwise need to be in secure detention. Transportation officers provide for the secure transfer of individuals between court, detention, and youth development centers.

D. Structure of Indigent Defense System

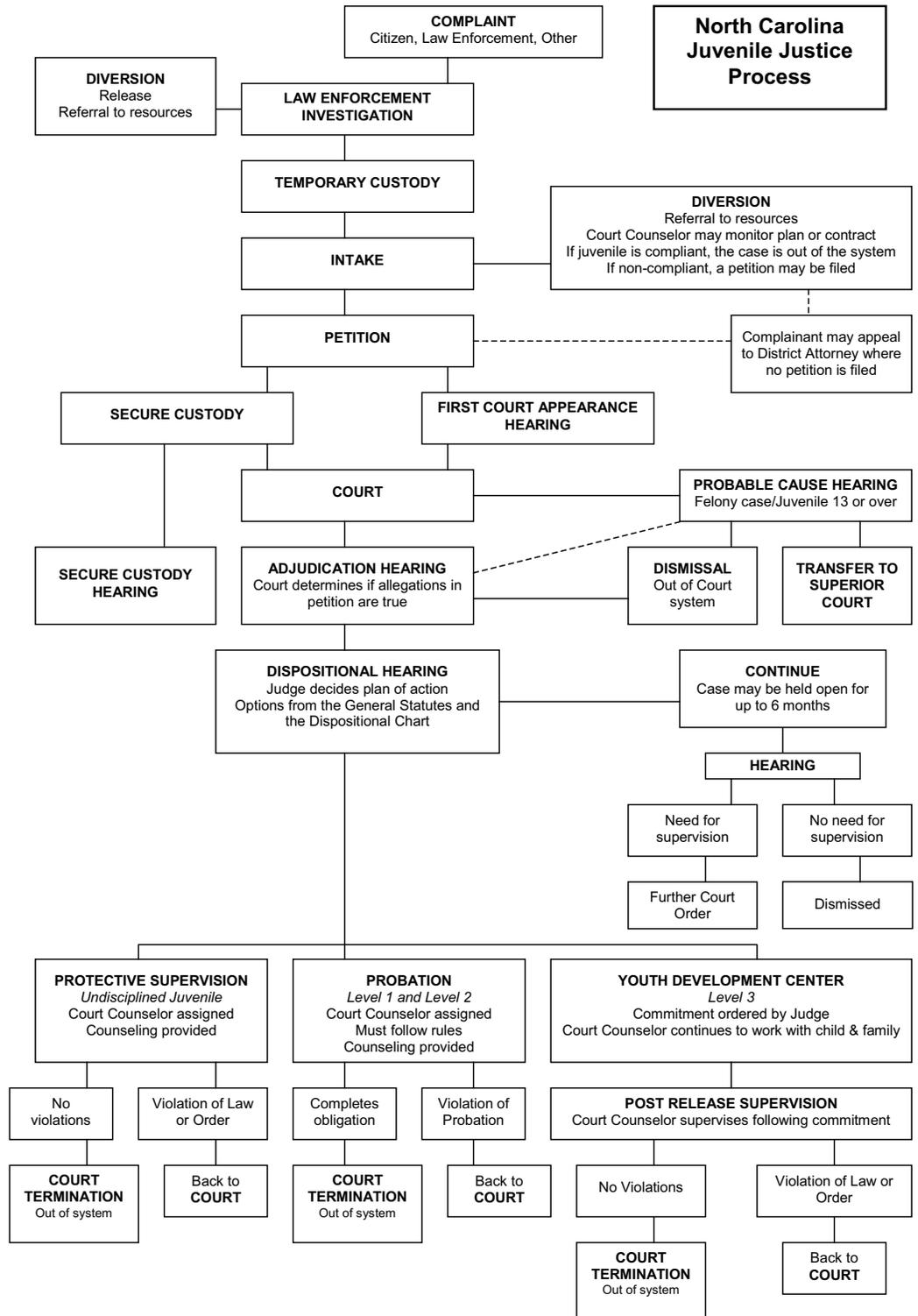
Indigent defense services are provided in North Carolina through a variety of arrangements. Public defender offices in some counties/districts handle juvenile cases directly while other public defender offices oversee a list of appointed counsel. Some counties/districts rely exclusively on appointed attorneys from lists established by the district court judge and/or a local committee on indigent defense. Contractual arrangements for the provision of juvenile defense services are also used. Whatever the mechanism for service delivery, all districts must now submit their appointment plans to the Office of Indigent Defense Services for review and certification.

In August 2000, the North Carolina General Assembly passed the Indigent Defense Services Act of 2000 ("IDS Act"), which created the Office of Indigent Defense Services and its 13-member governing body, the Commission on Indigent Defense Services. Beginning July 1, 2001, the IDS Act charged the IDS Commission and IDS Office with a number of responsibilities, including: (1) overseeing the provision of legal representation to indigent defendants and others entitled to counsel under North Carolina law; (2) developing training, qualification, and performance standards to govern the provision of legal services to indigent persons; and (3) determining the most appropriate methods of delivering legal services to indigent persons in each judicial district.

The IDS Commission's and IDS Office's goals are to recruit attorneys to represent indigent defendants; to ensure that every attorney representing indigent defendants has the qualifications, training, support, resources, and consultation services they need to be effective advocates; to create a system that will eliminate the many problems and conflicts caused by judges appointing and compensating defense attorneys; and to manage the state's indigent defense fund in an efficient and equitable manner. To accomplish these goals, the IDS Commission and IDS Office have developed rules to govern the delivery of services in applicable cases. In addition, the IDS Office regularly works with the Office of the Capital Defender and Office of the Appellate Defender to monitor and assist in capital cases and appeals.

The IDS Commission and IDS Office have also taken some steps to improve the quality, efficiency, and cost-effectiveness of the state's indigent defense system. They have established qualification standards for attorneys seeking appointment to capital cases and appeals, worked with the public defenders in the existing public defender districts to develop new plans for the appointment of counsel in non-capital cases in those districts, and implemented uniform rates of compensation in all indigent cases. The IDS Office has also taken steps to increase the communication among the private bar through list-serves and other electronic means, and to begin providing educational and training opportunities for areas of representation that traditionally have not had adequate continuing legal education. The IDS Office is engaged in a preliminary review of the methods of providing legal representation in various parts of the state.

Indigent defense services are provided in North Carolina through a variety of arrangements.



CHAPTER TWO

Assessment Findings

A. Access to Counsel

Juvenile defense counsel is essential to the administration of justice and to the fair and accurate resolution of issues at all stages of juvenile proceedings.⁹³ Juvenile defense counsel should be well resourced to represent the client's legitimate interests through full investigation and preparation of the merits of the case and all issues related to the delinquency matter. Young clients depend on defense counsel to prepare not only for the underlying allegations of delinquency but to go beyond basic criminal trial practice to prepare mitigation materials that reflect the client's educational status, familial strengths and weaknesses, community resources, and needs. Counsel must understand and apply principles of adolescent growth and development in all facets of representation including client counseling.⁹⁴ The most important component of representation, therefore, is the establishment of a meaningful attorney-client relationship.⁹⁵ The attorney-client relationship will not develop in the few minutes before a court hearing in a public hallway or through telephone conversations from a detention center alone. Juvenile defenders must understand that young clients need to be able to share information that is deeply personal and at times painful, but necessary to protect the client's rights and ensure successful outcomes. Juvenile defense counsel need further to understand that, at many times, what is most important to young clients is to know what is happening in their case.

The North Carolina Juvenile Code provides that a "juvenile alleged to be within the jurisdiction of the [juvenile] court has the right to be represented by counsel in all proceedings. Counsel for the juvenile *shall* be appointed...in any proceeding in which the juvenile is alleged to be (i) delinquent or (ii) in contempt of court when alleged or adjudicated to be undisciplined."⁹⁶ In addition, the Code provides that all juveniles "shall be conclusively presumed to be

"None of the really good criminal defense lawyers are in the appointed juvenile system. They have much more lucrative practices."
— Juvenile Court Judge

Juvenile defense counsel is essential to the administration of justice and to the fair and accurate resolution of issues at all stages of juvenile proceedings.

indigent and it shall not be necessary for the court to receive from any juvenile an affidavit of indigency."⁹⁷ These sections require the appointment of and prohibit the waiver of counsel by juveniles unless private counsel is retained. This mandate for representation meets national standards of best practice⁹⁸ and appears to be applied consistently throughout the state.

The right to counsel and Fifth Amendment protections are also affirmatively recognized in the Juvenile Code. Section 7B-2101 extends *Miranda* rights to juveniles in custody and includes the right to have a parent, guardian, or custodian present during questioning. The juvenile must be advised of these rights prior to questioning and "before admitting into evidence any statement resulting from custodial interrogation, the court shall find that the juvenile knowingly, willingly and understandingly waived the juvenile's rights."⁹⁹ However, in actual practice, North Carolina defense attorneys are most often appointed upon filing of the petition and there does not appear to be any mechanism in place for fulfilling the requirements of § 7B-2101. Indeed, no attorneys interviewed or surveyed for this report indicated that they had ever been present during the initial interrogation of their clients; this absence of counsel at interrogations may have significant ramifications.

Moreover, while court counselors have 15 days after a complaint is made to decide whether to file a petition or divert the case, there appears to be no formal mechanism for notifying the court or counsel of a pending decision. Where a child is not in custody, the implications of this failure are perhaps limited; where a child is in custody, the absence of counsel during this time period may have significant ramifications. This is a time period when attorneys could and should be in contact with the child.

North Carolina law provides for the appointment of counsel at all stages of the proceedings, including that part of the process which may include custodial interrogation and formal intake proceedings.¹⁰⁰ It is not clear, however, that there are any mechanisms in place for the provision of counsel prior to the formal filing of a petition.

The presumption of indigence provided in North Carolina General Statute § 7B-2000 does not necessarily mean that a child's parents are not responsible for the cost of defense services.¹⁰¹ By statute, North Carolina courts "may" require a parent or guardian to repay the state for legal services provided to the juvenile, after considering a number of factors including the "financial situation" of the responsible person.¹⁰² However, this statutory provision is not uniformly applied throughout the state. In some counties, attorney's fees did not appear to be assessed against a juvenile's parents with any regularity. In other counties, attorney's fees appeared to be routinely assessed against a juvenile's parents without regard to the parents' ability to pay; in those counties, observers did not witness any inquiry into the financial resources of the parents. Observers were told that parents could request a waiver based upon the parents' indigence, but there was general confusion concerning the procedures used to inform parents of this waiver or the process for requesting a waiver. When fees are assessed, various mechanisms are used to ensure collection, including entry of a civil judgment against the parent(s) that can result in the interception of state income tax refunds. Given the presumption of indigence, however, this practice does not appear to limit a juvenile's access to counsel.

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B. Assistance of Counsel

Juvenile defense attorneys bear enormous responsibility in representing their youthful clients. In addition to the responsibilities of preparing and presenting the criminal case, defenders must understand and apply principles of adolescent growth and development, including at least a general familiarity with issues of adolescent mental health, to ascertain their young clients' abilities and needs. Juvenile defenders must be particularly sensitive to the developmental needs and limitations of children, as well as the socio-economic factors impacting their clients' lives. Preparation of a case, and the defense in particular, must be informed by an understanding of child development and current research profiling the unique sensibilities of youth. Defenders also must prepare social history backgrounds in order to advocate in the more complicated cases. They must be familiar with the strengths and needs of youths' families and assess what interventions are likely to be supported or undermined by their clients' families. Defenders must be aware of each child's educational status and keep abreast of the ever-changing availability of community resources. The fact that most juvenile defendants come from poor families—and thus have very limited resources to assist the defender—significantly increases the burden placed on the defender to provide adequate representation.

Children who come into the juvenile justice system are often mistrustful of adults, and often for good reasons. An attorney must have regular contact with her client, and must take the time to build a relationship which will allow the client to share deeply personal and sometimes painful information. An attorney must instill in the client a sense that at least this one adult is entirely committed to his well-being, both in and out of the courtroom. Only through the development of that relationship will the child be willing to share the type of information which will allow the lawyer to fully represent the client's interests. In addition, the potential for rehabilitation of the client is increased significantly if the client feels that the system has treated him fairly.

Equally important, defenders must take the time to keep clients informed before and after court appearances and other important events relating to their cases. Children in detention centers constantly need to be told and reassured about the status of their case, when they can go home, the effect their behavior in the institution may have on the court process, and the range of alternatives which will be available to the court at the next hearing. Clients and families need to be told exactly how to get in touch with counsel and when the child's counsel will next contact them. A good defender uses comprehensible language in a timely way to advise clients and their families of the court process and the family's responsibilities between court appearances.

The picture of juvenile defense representation in North Carolina is one of extremes and contradictions. Zealous, well-prepared advocacy exists side-by-side, sometimes in the same courtroom, with seriously deficient, *pro forma*, representation. The outcome for a child appears dependent upon the county in which she resides and the individual appointed to represent her. In some counties, juvenile defense attorneys have become so marginalized in the process they seemed to have no role at all. In contrast, many appointed attorneys and public defenders were observed providing competent, well-prepared representation. Innovative and highly regarded programs such as "Project HEAL"—

"It's not 'kiddie court' anymore. Juvenile court needs to be taken seriously."

— Assistant District Attorney

"[D]efense attorneys occasionally file pre-trial motions; we...had one [such case] just last year."

— Court Counselor

“These kids have issues that social workers and schools should deal with, not the court.”
— Court Appointed Defender

which combines criminal defense resources with civil resources devoted to meeting a child’s educational, mental and medical health, and housing needs—is an example of exemplary practice and a holistic approach to juvenile defense. In general, the use of full-time, well-trained and resourced juvenile public defenders supplemented by qualified appointments from the private bar appears to be the most effective and efficient juvenile indigent defense delivery system.

The delivery of indigent defense services without a system of accountability or practice standards can have a devastating impact on the quality of representation. The uneven state of defense representation observed in North Carolina is also attributable to a lack of uniform standards, inadequate training and—to some extent—a misapprehension of the role of defense counsel in juvenile proceedings. Judges, defense attorneys and court counselors expressed, almost universally, the need and desire for more frequent and specialized training for all key participants in the juvenile court process. Other factors such as compensation, caseloads, defense resources, and the culture of juvenile court also play roles (with varying degrees of influence) in the quality of representation provided throughout the state.

Case Preparation

“Juveniles do not get to know their attorneys unless they are recidivists.”
— Juvenile Court Counselor

The pre-adjudication phase of the proceedings sets the stage for negotiations with the prosecution, and strategies at adjudication and disposition hearings.¹⁰⁴ During this critical period juvenile defenders must investigate the facts, obtain discovery from prosecutors, and acquire additional information about a client’s personal history through school authorities, juvenile community corrections officers, and any other person with pertinent personal information. At this juncture, pre-adjudication motions and any defenses to the charge should be submitted to the court. Juvenile defenders ideally should be able to identify any mental health issues or learning disabilities particular to a client, and determine whether or not those issues played a role in the alleged misconduct of the juvenile.

It is at this stage that the attorney needs to determine whether the child has developmental or mental health issues which would impact the *mens rea* elements of the case against the child. Counsel should gather school, counseling, mental health, and treatment records. Counsel should also obtain releases from parents so that she can review documents and speak to treatment providers and evaluators. Counsel needs to interview, at some length, the child and his family to assess roughly the strengths and weaknesses of the family system. Counsel must determine whether or not a mental health evaluation will be necessary and, if so, how to fund it. The ability to negotiate the resolution of the charge and to provide the most appropriate rehabilitation program will likely depend in large part on the investigative work done during this period.

Children eligible for or receiving special education are afforded the protections of federal statutes such as the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1415, Section 501 of the Vocational Rehabilitation Act, 29 U.S.C. 794, and the Americans with Disabilities Act, 42 U.S.C. §12132. These congressional statutes protect children from being subjected to school disciplinary actions without due process, as well as discriminatory actions by the

school, and often mandate that schools continue to educate even those students who have been expelled. In addition, acquiring an understanding of a client's educational needs may help the juvenile defender in raising issues of competence and requisite intent, negotiating with prosecutors, and developing appropriate dispositional plans and the funding to implement them. This is crucial in view of the frequency with which educational difficulties are harbingers or early symptoms of children's other adjustment and development issues.¹⁰⁵ Defenders, to fully represent young clients, must increasingly be aware of these educational rights under state and federal law.

Investigative Services & Access to Materials. Forty-four percent of attorneys surveyed reported that they "rarely" or "never" see the police report or other investigative material prior to their first meeting with a client. The same percentage, 44% (not necessarily the same respondents), reported that they had "no" or "inadequate" access to investigators. In addition, some counties that reported extremely high rates of pleas (90% or more) are served by private appointed attorneys who indicated they had "no" access to investigators. It should be recognized that plea agreements are often the most successful resolution that can be achieved and the skillful use of plea negotiations to obtain the best outcome for the child should not be discouraged. Without investigation into the allegations, however, juvenile defense counsel is in no position to negotiate a plea agreement. *IJA/ABA Standards* provide that if a child admits to the charge "and after investigation the lawyer is satisfied that the admission is factually supported," counsel can participate in the development of a plea agreement.¹⁰⁶

Client Contact. Eighty-nine percent of attorneys surveyed reported meeting their clients for the first time at the courthouse on the day of a hearing. Investigators found in one suburban county, however, an active practice by the Public Defender Office to have early and regular communication with all clients. As indicated above, defenders must have early and regular contact with their juvenile clients, and must take the time to build a relationship that enables open communication and trust. It is not possible to develop such a relationship when counsel meets her client for the first time on the steps of the courthouse. Systems and policies need to be put into place to facilitate prompt and regular attorney-client contact and communication.

While the North Carolina Juvenile Code allows for video detention hearings,¹⁰⁷ investigators found only a few jurisdictions which conduct detention hearings in such a manner. Equipment for such hearings was observed in some courts, although it was reported to be seldom used. In another county, video hearings were reported to be used often; however, there defense attorneys regularly visited clients in detention and video proceedings were not routinely used for the initial hearing. The use of video proceedings raises issues of access and observation—defense attorneys must be either beside their client or in the court room and what can be observed is only what is within the purview of the camera. Access to video equipment can facilitate contact between a client and her attorney, but it does not necessarily add to the confidence in the decision-making process. Given the critical nature of detention proceedings, the presence of all parties in the court should be the preferred procedure.

*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.*¹⁰³

— *IJA/ABA Juvenile Justice Standards*

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Fifty-nine percent of attorneys and judges surveyed reported that defense attorneys do not or only rarely file pre-adjudication motions.

Motions Practice. Fifty-nine percent of attorneys and judges surveyed reported that defense attorneys do not or only rarely file pre-adjudication motions. Many cited the open file policy and/or the informality of the process as negating the need for such motions. However, motions regarding competency of juveniles—even where mental illness is a factor in the charges—are equally rare. Site visits confirmed that motions practice is the exception rather than the rule and that when motions are used, they are usually made orally without supporting briefs or other legal analysis. While in keeping with the informal atmosphere of the juvenile system, a lack of formal discovery and motions practice undermines the right of appeal and precludes effective challenges to and development of the law.

The *IJA/ABA Standards* provide that defense counsel “should promptly seek disclosure of any documents, exhibits, or other information potentially material to representation of clients” and, “[w]here the circumstances warrant, counsel should promptly make any motions material to the protection and vindication of the client’s rights...Such motions should ordinarily be made in writing...”¹⁰⁸ In some urban and suburban North Carolina jurisdictions, competency issues are raised regularly as are motions to suppress involving issues related to *Miranda* rights. Attorneys most often rely, however, on competency evaluations obtained through court counselors and do not regularly request independent experts to conduct separate evaluations.

Detention Advocacy

Placement in secure detention dramatically impacts the lives of youth, severing ties with community and family and impeding access to services to address substance abuse, mental health, medical and educational needs. Children feel isolated, uninformed and frustrated. Research indicates that detention does not deter future offending, but it does increase the likelihood that children will be placed out of their homes in the future, even when controlling for offense, prior history and other factors.¹⁰⁹

Almost every aspect of juvenile detention—including dangerous conditions and detention policies—has been scrutinized in North Carolina.¹¹⁰ Assessment team members found that subjective screening at intake, inappropriate use of detention by the courts, absence of counsel, and substandard detention advocacy further contribute to the misuse and overuse of secure detention throughout the state.

To prevent abuse and misuse of detention, it is imperative that states identify the goals that constitute the essential framework for detention policy.¹¹¹ In *Schall v. Martin*, the United States Supreme Court recognized that pre-adjudicatory detention is legitimate to protect the child or society when the youth is determined to be a risk to himself or the community.¹¹² The Court also stated clearly that pre-adjudicatory detention cannot be used as punishment:

*[T]he mere invocation of a legitimate purpose will not justify particular restrictions and conditions of confinement amounting to punishment. It is axiomatic that due process requires that a pretrial detainee not be punished. Even given, therefore, that pretrial detention may serve legitimate regulatory purposes, it is still necessary to determine whether the terms and conditions of confinement... are in fact compatible with those purposes.*¹¹³

Motions regarding competency of juveniles—even where mental illness is a factor in the charges—are equally rare.

North Carolina uses its juvenile detention facilities, however, for much more than pre-adjudication confinement, including punishment for offenses as well as punishment for post-adjudication violations of probation or court-ordered conditions. Some counties regularly use detention—up to two weeks in one county—as punishment, commonly referred to as a “scare” tactic. There was also some indication that youth spend additional time in detention to accommodate court schedules.

Despite the state’s liberal use of secure detention, motions for expedited review or other methods of review were seldom utilized by defense counsel, leaving youth stranded in detention facilities without judicial oversight. Site visits also confirmed that many juvenile defense attorneys failed to make a record in detention hearings based on the statutory justifications for detention, essentially insulating those detention decisions from review. There was no available data, however, to track the frequency of defense challenges to pre-adjudication detention decisions.

It also became clear during the study that detention was commonly used for children alleged to have committed non-violent property offenses and for the vast majority of alleged probation violations. While the court has the authority to order five periods of 24-hour detention regardless of charges or prior offenses, there was insufficient data to determine the number of children being placed into secure detention through this mechanism. Moreover, youth also appeared to be held in secure detention for extended periods of time awaiting placement in a treatment program. In one detention facility visited, 25% of the children in the population that day were detained awaiting placement.

Finally, juveniles are routinely transported from detention to court in restraints, for safety reasons, but then remain in ankle shackles and handcuffs throughout the proceedings. No defense counsel were observed requesting permission from the court for removal of restraints.

Adjudication

Excellent juvenile defense practice in plea negotiations is critical. A plea negotiation is an opportunity for defense counsel to obtain positive outcomes for youth, and counsel risks squandering that opportunity by lack of preparation. Juvenile defenders must be prepared on the substance of the case. Plea negotiations need to be fully considered with a complete understanding of the short and long-term consequences of different scenarios. The juvenile defender must be proactive by, for example, submitting a proposal prior to the state’s offer and not simply reacting to the state’s offer.

A juvenile defender must also be fully informed about how a delinquency adjudication could affect the youth’s adult life. For example, a defender needs to be aware of which crimes may adversely affect a juvenile as an adult, and what those adverse consequences may be. A complete understanding of the collateral effects of an adjudication is necessary for juvenile defenders to effectively and accurately represent a youth in a plea negotiation and to properly advise their clients about the risks of contesting adjudication.

A juvenile’s guilt or innocence is determined at the adjudicatory hearing, or trial, where the state has the burden to prove beyond a reasonable doubt that the youth has committed a criminal offense. These adjudications are presided

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over by a judge, not a jury. Even when an adjudication ends in a delinquency finding, the mitigating evidence that counsel presents at the adjudication stage is critical to the judge in making an individualized, fair and reliable determination at disposition.

Overall in North Carolina, juvenile defenders reported that 59% of cases result in plea bargains; 20% go to a contested adjudication and 19% are informally adjusted. However, these statewide averages do not reveal the vast differences in case disposal in individual jurisdictions. In several counties, the rate of plea bargains is as high as 90%, with very few cases going to a contested adjudication. Such a high rate of pleas raises concern about whether these cases are being adequately investigated and evaluated.

In addition, there did not seem to be any recognition of the need to challenge the admission of out-of-court statements by juveniles. For the vast majority of cases, judicial colloquies were directed to admissions made in the context of pleas and did not address the circumstances surrounding the interrogation of the juvenile. The North Carolina Juvenile Code is clear in providing that statements made by a juvenile to the court counselor during the preliminary inquiry and evaluation process are not admissible prior to the dispositional hearing.¹¹⁴ The informality of the juvenile process in some courtrooms, however, blurs the line between adjudication and disposition, often merging the two into one proceeding. As a result, there is no clear distinction between testimony offered for adjudication of the charges and statements offered as relevant to disposition.

The *IJA/ABA Juvenile Justice Standards* articulate clearly the difference between pre-trial testimonial evidence relevant to the adjudicatory phase of the process and those statements relevant to disposition. The Standards also provide that juveniles “should not be permitted to waive constitutional rights on their own” during custodial interrogation.¹¹⁵ For any testimonial or physical evidence gathered during the processing of a child’s cases, the *Standards* are clear:¹¹⁶

Unless waived by counsel, the statements of a juvenile or other information or evidence derived directly or indirectly from such statements made to the intake officer or social service worker during the process of the case, including statements made during intake, a predisposition study, or consent decree, should not be admissible in evidence prior to a determination of the petition’s allegations in a delinquency case, or prior to conviction in a criminal proceeding.

Disposition Advocacy

*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.*¹¹⁷

— IJA/ABA Juvenile Justice Standards

Following an order of adjudication, the court considers evidence on the disposition that will best serve the interests of the juvenile and the public. There is

a broad range of dispositional alternatives, including fines, participation in treatment services, community service, restitution, commitment to the custody of social services and long-term or short-term commitment to the juvenile correctional facility.¹¹⁸ The most common disposition appears to be a suspended commitment to one of the youth development centers and a period of probation with a list of standard and special conditions. A disposition hearing may be continued to provide for the completion of reports or other evidence, to allow service to be completed on the parties, or to make a referral to place the child in an alternative work, restitution or drug treatment court program.¹¹⁹

In many regions, the disposition phase of the process is the most important part of that process. Skillful defenders can often obtain a better result in the negotiation of the adjudication portion if they can craft a disposition that meets the state's needs for accountability, rehabilitation, and protection of the public. The most effective defenders begin to address the issues of disposition as soon as they gather data on the child and the allegations. A practical and well-thought-out disposition plan can dramatically affect the negotiations with regard to the underlying offense. The disposition is an opportunity for defenders to address the child's needs in a creative fashion in accord with the Code's mandate that treatment and rehabilitation are the most important goals. When defenders have obtained sufficient information about the needs of the child, they are typically able (with the assistance of the youth, his parents, treatment providers, and evaluators) to develop a plan which will best meet the youth's needs, while assuring the prosecutor and the court that issues of deterrence and public safety are addressed. The prosecutor, and ultimately the court, may be willing to significantly reduce the nature of the charged offense if the disposition plan credibly reduces the likelihood of recidivism.

If the case proceeds to a full dispositional hearing, that is a critical time for the juvenile defender to present all relevant evidence of the child's specific needs and limitations, and any other facts that would assist the court in making an individualized determination of disposition. The disposition is the last stage in the formal proceedings in which defense counsel can fight to ensure the rehabilitative purposes of the Code are met by advocating for a dispositional plan that meets the child's and the community's needs.

There appears to be great reliance by North Carolina defense attorneys—to the point of dependence—on court counselors to plan and recommend disposition treatment plans. It was observed that judges, prosecutors, and defense attorneys routinely accept court counselor recommendations. In some counties, most cases (up to 70%) go to disposition immediately following adjudication, allowing no time for attorneys to develop alternative disposition treatment plans if they have not been completed prior to the court hearing. Even given a delay between adjudication and disposition, attorneys overwhelmingly failed to adequately review or question disposition recommendations made by court counselors or present alternative plans. There were isolated incidents where defense counsel did argue strongly against the recommended disposition plan, but this was the rare exception.

The *IJA/ABA Standards* provide that counsel should be "familiar with the dispositional alternatives available to the court" and should independently assist in the "formulation of a dispositional plan appropriate to the client's circumstances."¹²⁰ In this regard, juvenile defense counsel should "seek to secure

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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."¹²¹ Observations in North Carolina found that requests for such access to specialized assistance were rarely filed.

Appellate Advocacy

According to national standards, the lawyer's responsibility to the juvenile client continues after the final disposition.¹²² The lawyer should represent the client at any modifications of adjudication or disposition.¹²³ While national standards provide that trial counsel should also conduct appeals unless substituted by the court,¹²⁴ appeals in all adult and juvenile indigent cases are assigned to the statewide Office of the Appellate Defender in North Carolina.

While appellate representation is available through the Office of the Appellate Defender, public defenders and appointed counsel in delinquency cases enter notice of appeal relatively infrequently, in part because of trial counsel's perception that the time frames involved often render appeals moot. There appears to be no expedited appellate process for juvenile cases. The informal nature of the proceedings clearly mitigate against an active appellate practice: little effort is made to create a record for appeal; a high percentage of cases result in pleas; local rules often end representation upon the entering of an order of disposition; and there is no consistent practice of judges or attorneys advising juveniles of a right to appeal.

The *IJA/ABA Standards* address several of the concerns and circumstances observed in the juvenile defense system of North Carolina. The *Standards*, recognizing the nature of juvenile case processing timeframes, note that a "system for expediting and granting preferences to appeals from the juvenile court should be provided"¹²⁵ and it "should be the duty of the juvenile court judge to inform the parties immediately after judgment and disposition orally and in writing of the right to appeal."¹²⁶ It would also appear that the Office of Indigent Defense Services and the Office of the Appellate Defender could more actively provide information and training to juvenile defense counsel on ways to enhance the justice system through an active appellate practice.

While court proceedings in North Carolina are usually recorded and transcription is available, there is very little post-dispositional advocacy in the state. Records show that the majority of post-disposition motions filed originate with court counselors, not juvenile defense counsel. Appellate advocacy in North Carolina is also negligible; indeed, during fiscal year 2001–02, there were fewer than 20 appeals to the North Carolina Court of Appeals from delinquency adjudications throughout the entire state. Advocacy following disposition appears to be hindered by, among other factors, a lack of written motions practice, attorney passivity, a systemic court culture distortion of "best interests," and limitations on representation after disposition either by local rules or established policy.

In the majority of counties in North Carolina, juvenile defense representation effectively ends at disposition. Court counselors are relied upon to ensure disposition orders are carried out. Children awaiting placement after disposition linger in detention without ongoing representation. In one county visited, it was estimated that approximately 25% of the children in detention were

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.
— *IJA/ABA Juvenile Justice Standards*

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awaiting placement. Although national standards and the North Carolina Juvenile Code recognize the inherent authority of a court to reduce or otherwise modify a disposition when services are not being provided,¹²⁷ the lack of advocacy on behalf of children and youth languishing in detention facilities makes such authority almost meaningless. While it was reported that judicial authorities have had occasion to order the release of juveniles in such situations—particularly where funding for the placement was an issue—it does not appear that these orders were entered in response to defense motions. Attorneys do not appear to play a role in this most important aspect of the child’s case, leaving client’s fundamental rights unprotected.

C. Systemic Issues Affecting Representation

Training and Standards

Without exception, survey participants and those interviewed expressed the need for ongoing training in their respective positions. Defense counsel exhibited a need for continued training, particularly in the areas of adolescent development and dispositional treatment planning. Court counselors strongly expressed a need for additional training in juvenile law and procedure, particularly in light of the relatively new Juvenile Code. Court counselors also identified a need for training in the area of interpersonal skills including interviewing techniques, conflict resolution, verbal de-escalation skills, and counseling.

Some districts have established practice rules and policies for juvenile delinquency representation. The 10th Judicial District,¹²⁸ for example, requires attorneys who wish to be appointed in delinquency matters to meet specific requirements, including: completion and certification in writing of observation of four full sessions (two full days) of delinquency court, and appearance as *pro bono* co-counsel in three delinquency cases where at least one matter is contested and at least one matter fits the criteria for possible transfer to Superior Court. The District Court Rules—which allow for involuntary removal of an attorney from the appointment list—also mandate that attorneys sign an acknowledgement of understanding and agreement to abide by Juvenile Court policies and procedures, which include making reasonable attempts to notify a child client and her family of counsel’s representation and arranging to confer with clients as soon as possible prior to the court date. However, while local rules in some jurisdictions impose minimum experience requirements for representation of juveniles charged with felonies, there are no statewide standards for juvenile representation.

Collateral Representation

Attorneys in North Carolina appeared to provide very little collateral representation, despite their recognition that juveniles often proceed from the “school house to the jail house.” Attorneys either did not recognize or did not consider it within their purview to address issues relating to the Individuals with Disabilities and Education Act, Individual Educational Plans, or matters such as manifestation hearings.

Special education advocacy does indeed seem to be a missed opportunity

“Attorneys show up here to represent children [and] have no idea how the court works or how the system handles these cases. We help them as much as we can, but we aren’t the attorneys representing clients.”

— Juvenile Court Clerk

“Special education advocacy is a missed opportunity in juvenile court.”

— *Assessment Team Investigator*

in juvenile court in North Carolina. School discipline, disability issues, and juvenile petitions may overlap in a variety of ways that require special education advocacy on behalf of an eligible juvenile.

Through a grant provided by the Governor’s Crime Commission in 2002, Carolina Legal Assistance has established a Special Education Juvenile Justice Project in five pilot counties in North Carolina (Edgecombe, Gaston, Nash, Wake, and Wilson).¹²⁹ The project’s objectives are to provide direct special education advocacy, offer training about the special education rights of juveniles with disabilities, provide technical assistance and consultation, and promote referrals and evaluations of juveniles with special education needs. While this project represents an exemplary practice, no special education advocacy efforts were reported or observed during this assessment.

Cultural Barriers to Representation

Respondents from 17 different judicial districts reported that a foreign language, usually Spanish, is frequently spoken by clients; four districts also reported Vietnamese as frequently spoken; and one district reported Hmong as a foreign language frequently encountered. Out of 71 survey respondents, 40% indicated that cultural barriers impede defense attorneys’ ability to adequately represent clients. Judges in particular believed this to be the case, with 59% reporting that such barriers existed to the detriment of defense representation. Even given the number of respondents aware of such cultural barriers, only one respondent proffered that he was aware of a case where cultural differences may have resulted in ineffective representation. Eighty-five percent of attorneys reported that their offices did not offer training in cultural diversity; 63% of judges indicated that such training should be provided to attorneys.

Caseloads

Using national standards as a touchstone, attorneys in some areas of North Carolina may be overworked. National standards recommend that attorneys should not handle more than 150 felonies, 300 misdemeanors, 200 juvenile cases, or 25 appeals per year.¹³⁰ In many jurisdictions, juvenile caseloads do not necessarily exceed 200 in a year, but some attorneys reported that they often handle additional non-juvenile cases as well as their juvenile cases, pushing their total caseloads above standards. In general, public defenders reported higher overall caseloads than private appointed attorneys.

Many survey respondents from jurisdictions across the state indicated that they did not believe attorney caseloads impaired representation. However, notable exceptions to this view were expressed in some of the counties having large urban centers, where it was reported that the size of attorney caseloads very much limited the ability of attorneys to represent juvenile clients.

The assessment teams were unable to obtain comprehensive and verifiable caseload data for public defenders and private attorneys in North Carolina. The state needs to compile accurate data, and then evaluate juvenile caseloads to ensure they do not exceed national standards or inhibit quality representation.

The state needs to compile accurate caseload data.

“Our social services system is about to break and a lot of what we are putting on the delinquency calendar shouldn’t be here.”

— Court Appointed
Juvenile Defender

“The only way to access mental health services is through Juvenile Court.”

— Court Appointed
Juvenile Defender

Despite the prevalence of mental health issues in juvenile cases in North Carolina—relating both to competency to proceed and culpability—the mental health of a child is an issue that typically is not addressed until or after disposition.

Compensation

The Office of Indigent Defense Services provides funding for public defender offices and approves raises and salaries. There is parity of pay between prosecutors and public defenders, and no disparity between private attorneys for adults and juveniles. Appointed counsel are paid \$65 an hour for in-court and out-of-court work; judges must review fee requests from appointed counsel before payment can be made. Private counsel’s average billing per case was approximately four hours. While this amount of time may be sufficient to resolve some cases, it is clearly insufficient for factually complex cases and/or those that proceed to a contested adjudication.

While appointed counsel did not indicate amounts of payment as a major concern, many judges cited low attorney compensation as affecting the overall level of advocacy in juvenile court. Some jurisdictions noted problems with the timeliness of payments. The Office of Indigent Defense Services confirmed that they have experienced shortfalls in appointed counsel funding, which has caused payment delays toward the end of the past two fiscal years.

Mental Health Issues

Overall, 57% of survey respondents reported that mental health issues related to the charges against juveniles “very often” or “often”; 42% indicated that defense attorneys’ training in mental health issues was lacking, inadequate, or very inadequate. Fifty percent of responding attorneys themselves indicated they received inadequate, very inadequate, or no training in mental health issues. In addition, inadequate community-based resources for mental health treatment was frequently cited as a problem during this assessment. In some cases, it appeared that commitment to a youth development center was viewed as necessary because of the lack of mental health treatment alternatives. Despite the prevalence of mental health issues in juvenile cases in North Carolina—relating both to competency to proceed and culpability—the mental health of a child is an issue that typically is not addressed until or after disposition; juvenile defense attorneys appeared ill-prepared to deal with mental health issues facing their clients.

Disproportionate Minority Representation

In some counties, disproportionate minority court processing and confinement rates are alarming. Despite demographic differences, there was agreement in almost every jurisdiction that youth of color are overrepresented in North Carolina’s juvenile justice system. Across disciplines, there was an overarching sentiment and perception that youth of color are disparately treated—*i.e.*, that race matters. While no one in this assessment was able to speak with certainty on the reasons behind these large disparities, some proffered such things as institutional bias in processing, lack of parental empowerment, and lack of access to resources.

It is also clear from the data that disproportionate minority representation is very often related to school issues and referrals from school districts to the juvenile court. As one North Carolina Juvenile Court Judge noted, “[school]

referrals constitute the most recent backlash against decades-long efforts to desegregate the public schools.”

School Referrals

Throughout this assessment, it was apparent that North Carolina school systems refer large numbers of juveniles to the juvenile court system, frequently in situations that could and should have been addressed by the school system itself. This situation is particularly acute in several counties visited, and it was reported in one county that 2/3 of delinquency case complaints come from the public school system. Children as young as 6 and 7 are referred to court for issues that seem clearly to relate to special education status. For example, one 7-year-old child in a class for the emotionally disturbed was referred to court for kicking a special education teacher. There were also reported to be numerous cases referred to court where an “affray” was alleged.

Sentencing Levels

North Carolina General Statutes set forth a complicated point allocated, graduated sentencing scheme. Site team investigators noted, however, that the statutory scheme is not well understood or used by many juvenile defense attorneys; even some judges confessed confusion about its application. It is clear that more training in this area of the law is needed.

The statutory scheme itself appears to remove from the court’s purview much of the individualized character of decision-making that should be part of cases involving children. Moreover, the manner in which adjudications are handled (*i.e.*, individually or consolidated) can affect the level of sentencing. Adjudication of multiple offenses in a single district court session results in the assignment of “points” only for the highest offense adjudicated.¹³¹ The failure of the juvenile defense attorney to request consolidation of offenses can lead to multiple points and higher sentencing levels. A juvenile that has committed even a minor offense can be committed to a youth detention center if she has four or more prior offenses.¹³²

While the Code requires that any conditions of probation be “related to the needs of the juvenile and . . . reasonably necessary to ensure that the juvenile will lead a law-abiding life,” it also affords judges a great deal of discretion to establish any type or amount of non-detention conditions that they deem appropriate.¹³³ During this assessment, judges in some courts were observed ordering long “laundry lists” of probation conditions which appeared to portend failure on the child’s part and could precipitate a downward spiral into the system. In very few instances were these onerous conditions seriously challenged by defense counsel.

Culture of Juvenile Court

Confusion About Role of Counsel. Appointed counsel frequently expressed their belief that the problems of juvenile court rested with the parents and children, citing a lack of discipline and responsibility as the main reasons for juveniles being in court and the major obstacle to effective representation. This, of

*Juvenile court has become
“the disciplinary wing of
the school system.”
— Court Counselor*

*The statutory scheme is
not well understood or
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application.*

course, presupposes the juvenile's guilt and serves to excuse a lack of zealous defense. Some attorneys expressed reluctance to go to a contested adjudication in juvenile cases because it would adversely impact their credibility in other cases in the same court. Attorneys providing the highest level of representation were more likely to see the need for improvements while, conversely, attorneys who saw their role as a "facilitator" indicated that existing representation was adequate.

As a result of this confusion about counsel's role, many juveniles did not appear to be clear about who was representing them or working "against" them. Some attorneys were observed taking a "best interests" approach by, for example, agreeing that detention might work as a "wake up call" for certain youth. Juveniles often seemed to view court counselors as their "attorney" or representative, and did not appear to understand that counselors can and do testify against the child's interests. Lack of contact between the attorney and client prior to hearings contributes significantly to this problem.

Inadequate System Resources. Other issues identified by surveyed juvenile defense attorneys and assessment team members included the following: the lack of space in some county courthouses for confidential communication with clients; the absence of residential treatment facilities, particularly for substance abuse; confusion among youth concerning the roles played by those in the justice system and those present during court; and inadequate access to tools and resources for representation (*i.e.*, training, investigators, brief banks, and support services).

Parental/Family Participation. There is a universal and statutory recognition of the importance of parent participation in the juvenile court process. All parties readily acknowledge the significant impact parent and other family involvement can have on dispositions and outcomes for children. North Carolina's Juvenile Code subjects parents to the jurisdiction of juvenile court and holds them liable for contempt for failure to comply in the child's disposition orders. Judges, attorneys, and court counselors invariably referred to "lack of parental involvement" as a significant obstacle to successful outcomes for children involved in the juvenile court system. Yet no efforts appear to be made to address this problem and encourage or facilitate the participation of parents in the process—*e.g.*, staggered court hours to accommodate working parents, designation/assignment of a parent coordinator, zealous efforts by attorneys to contact and inform parents of the importance of their involvement, and assistance with transportation difficulties.

More troubling, not all defense attorneys seemed to view the involvement of parents in a positive light. One attorney indicated that parents are viewed as a "big problem" because "they always want to know what's going on." While adherence to the principle of the child as the sole client is ethically proper, the reluctance or even disdain for involving parents that was expressed by some attorneys can be seriously detrimental to outcomes for the child client. A juvenile judge acknowledged, during court proceedings, that sentencing was more lenient because of the presence of supportive family members in court. When a parent is a victim or witness, their involvement can be problematic. However, in such cases, a "parent coordinator" could fill the gap. A lack of parental

"(The juvenile system) has always been the step-child."

— District Attorney

"I'm not going to spend time demanding trials if the juvenile is guilty."

— Appointed Juvenile Defense Attorney

involvement may, in some cases, be an insurmountable obstacle due to the unwillingness or unavailability of a suitable parental figure. However, juvenile defense attorneys must be willing and able to keep parents appropriately involved in cases as part of their representation of young clients; parents, more often than not, will increase a child's likelihood of success.

CHAPTER THREE

Promising 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:

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

While this report reveals substantial deficiencies in access to counsel and the quality of representation in juvenile court in North Carolina, 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 youth who were engaged in the process and demonstrated an understanding of the system.

In addition to the dedication and effectiveness of individual defenders, some aspects of North Carolina law and some programs around the state represent exemplary practices:

“The attorneys are here because they want to do this work. They truly have an interest in the kids and want to make a difference now rather than when kids get into the adult system.”
— Chief Court Counselor

Statutory Presumption of Indigency and the Prohibition Against Waiving Counsel

As indicated in the Assessment Findings above, the North Carolina Juvenile Code provides for a conclusive presumption that all juveniles are indigent and that counsel *shall* be appointed to represent juveniles facing delinquency proceedings. These statutory provisions require the appointment of and prohibit the waiver of counsel by juveniles unless private counsel is retained. Site visits confirmed that these mandates for representation are applied uniformly throughout the state. The existence and consistent application of these statutory guarantees meets national standards of best practice.

Project HEAL The Health, Education & Advocacy Link

The Health, Education & Advocacy Link (Project HEAL) is a children's advocacy project of the Advocates for Children's Services section of Legal Aid of North Carolina with offices in Raleigh and Winston-Salem.¹³⁴ Project HEAL is a unique partnership between Legal Aid and the juvenile court system. The staff of the Project work with juvenile court judges, juvenile defense attorneys, court counselors, schools, social workers, and others in the system to help youth get the support they need to succeed. By providing legal assistance and advocacy, Project HEAL insures that children receive their basic rights to education, health care, and other social services. This program will accept children referred by defense attorneys, particularly in the areas of education, health care, and housing.

Project HEAL services youth alleged to be delinquent or undisciplined and who have undiagnosed or inadequately treated mental health or behavioral issues. Servicing Wake and Forsyth Counties, Project HEAL links the expertise of a variety of competent professionals to specific children, secures needed health, education, placement and other social services for these children, and acts as an educational resource for legal professionals, children and their parents.

Law School Juvenile Clinics

Two of North Carolina's law schools operate clinics where law students represent youth in juvenile delinquency proceedings—the Criminal Law Clinic at the University of North Carolina School of Law¹³⁵ and the Juvenile Law Clinic at the North Carolina Central University School of Law.¹³⁶ Both programs provide emerging new lawyers with the opportunity to engage in direct client representation in Durham County delinquency proceedings, and teach students how to advocate for their clients' rights to supportive services. Students at the Central Juvenile Law Clinic also represent youth in suspension hearings in Durham County public schools. In addition, students at the Children's Education Law Clinic at Duke University School of Law¹³⁷ engage in special education advocacy, sometimes in the context of juvenile delinquency proceedings.

Office of Indigent Defense Services Commission on Indigent Defense Services

Beginning July 1, 2001, North Carolina shifted responsibility for indigent defense services to the Office of Indigent Defense Services and its 13-member governing body, the Commission on Indigent Defense Services (IDS). IDS is charged with a number of responsibilities, including: (1) overseeing the provision of legal representation to indigent defendants; (2) developing training, qualification, and performance standards to govern the provision of legal services to indigent persons; and (3) determining the most appropriate methods of delivering legal services to indigent persons in each judicial district.

Although relatively new, IDS appears to have made great strides in improving indigent defense services in North Carolina. IDS has sought to: retain professional, dedicated attorneys; provide support, resources, and consultation services to counsel representing indigent clients; eliminate inherent conflicts within the appointment system; and efficiently and equitably manage the state's indigent defense fund. In addition to the continued review and development of rules to govern the delivery of indigent defense services, IDS has established a statewide Capital Defender, expanded the existing Office of the Capital Defender, expanded the responsibilities and role of the Office of the Appellate Defender, and expanded the public defender system in two urban counties.

In addition, IDS has established qualification standards for attorneys seeking appointment to capital cases and appeals, worked with the public defenders to develop new plans for the appointment of counsel in public defender districts, and implemented uniform rates of compensation in all indigent cases. IDS has also taken steps to increase communication among members of the private bar through list-serves and other electronic means.

Because IDS oversees legal service delivery throughout the state and has the authority to make changes where needed, the agency is in an excellent position to evaluate the findings in this report and implement many of the suggested improvements.

Office of the Appellate Defender

In July of 2001, when IDS assumed its responsibility over indigent cases, it enacted a set of rules to govern the delivery of services in all cases within its oversight. Those rules provide that the Office of the Appellate Defender shall be appointed to represent any indigent person who enters a notice of appeal, including in delinquency cases.¹³⁸ In overflow or conflict cases, the Appellate Defender may appoint a private attorney who has applied for and been approved for the appellate roster.¹³⁹

This centralized system for appeals has allowed the Office of the Appellate Defender to improve and monitor the quality of representation in appeals through the roster and appointment process. For a variety of reasons, the number of appeals in certain types of cases seems to have increased under this new system. Since the Office's inception, for example, appeals from Department of Social Services cases have increased; in fiscal year 1999–2000, there were only five DSS appeals in the entire state and in fiscal year 2000–01, there were only 15 such appeals. In the first year under this new system (fiscal year 2001–02), the

Office of the Appellate Defender and the private attorneys appointed by that Office handled 85 DSS appeals. This type of increase in appeals has the potential to lead to developments in the law and an enhanced justice system.

A concomitant increase in delinquency appeals has not taken place, however, with those numbers holding steady. As indicated above, there were less than 20 appeals from delinquency adjudications throughout the entire state during FY 01–02. Juvenile trial counsel should be entering notices of appeal at much higher rates given the number of cases handled at the trial level. The Office of Appellate Defender is clearly an asset and should be put to greater use by juvenile defenders.

CHAPTER FOUR

Conclusions and Recommendations

The established structure underlying the juvenile justice system in North Carolina is well-intentioned and there are many dedicated, professional individuals working within this system. Despite the laudable policy of providing counsel to all children and youth in the delinquency system, the level of defense advocacy witnessed across the state was uneven and, in many instances, below acceptable standards of practice. The presence of defense counsel is critically important, but without well-trained, well-resourced defenders, there is no practical realization of due process and no accountability of the juvenile justice system. The juvenile defense attorneys charged with the enormous responsibility of representing children within the system appear to have little voice in the process. There are many juvenile defenders who remain zealous advocates within this system; there were many more, however, that appear to have accepted that they play an insignificant role in juvenile court.

North Carolina has an obligation to treat children and youth in the justice system with dignity, respect and fairness. And the citizens of this state have an abiding interest in supporting systemic reform of the juvenile justice system in ways that will ensure the success and safety of all its children. To this end, the State of North Carolina should:

1. Ensure that juveniles are advised of their rights and have the assistance of counsel at the earliest possible stage in the juvenile process.
2. Consistently allocate sufficient resources to support the meaningful representation of juveniles in delinquency proceedings, including funds for appropriate training as well as support and expert services.
3. Designate a statewide Juvenile Defender under the oversight of the Office of Indigent Defense Services—comparable to the existing statewide Capital and Appellate Defenders—to bring together resources and expertise from across the state, continue the process

- of evaluating the delivery of legal services to North Carolina's children, and implement specific policies and programs as needed.
4. Evaluate detention statutes, policies, and practices and work to stop the misuse and overuse of secure detention at all stages in the delinquency process.
 5. Engage in further examination of disproportionate minority representation in the state's juvenile justice system, and develop appropriate strategies and services to reduce those disparities.
 6. Develop specialized guidelines for juvenile representation that address, among other things, minimum attorney qualifications and expectations for attorney preparation, investigation and client contact. Such guidelines should also clarify the appropriate role of defense counsel in various stages of the juvenile proceedings, encourage continuity of representation to ensure meaningful attorney-client relationships, and extend defense counsel's representation through the termination of disposition orders.
 7. Consider developing a certification process for attorneys who have demonstrated their qualifications to represent juveniles in delinquency proceedings.
 8. Create and support activities and programs that would elevate the status of indigent juvenile defense practice in public defender and non-public defender districts. Ensure that opportunities exist for experienced public defenders to remain in juvenile court practice with the same potential for professional advancement as their counterparts in adult court.
 9. Conduct an examination of existing public defender and private attorney juvenile caseloads, and ensure that those caseloads are consistent with the expectations for quality representation that are established in any guidelines adopted.
 10. Develop and offer comprehensive training programs for public and private attorneys representing youth in delinquency proceedings. These training programs should emphasize a number of areas and skills that currently need improvement in North Carolina practice, including but not limited to:
 - a. child and adolescent development, including issues relating to mental health and learning disabilities;
 - b. how to prepare effective social history and mitigation materials;
 - c. the availability and appropriate use of community resources and diversion programs;
 - d. issues of cultural diversity;
 - e. the importance of appropriate parental involvement in delinquency proceedings and ways to encourage an appropriate role for parents;
 - f. the significance of protections under *Miranda* and North Carolina General Statute § 7B-2101, and the effect of those

- protections on the admissibility of evidence of out-of-court juvenile statements and confessions;
- g. effective motions practice;
 - h. effective representation at transfer hearings;
 - i. federal and state protections for children with special education needs;
 - j. North Carolina's statutory graduated sentencing scheme;
 - k. effective dispositional, post-dispositional, and appellate advocacy;
 - l. the possible use of extraordinary writs to challenge unnecessary and inappropriate uses of detention;
 - m. the potential collateral consequences of a delinquency adjudication; and
 - n. ethical considerations in delinquency cases.
11. Compile and make available information and data on caseloads, outcomes, and other juvenile justice issues—such as the prevalence of school-based complaints and the effects of zero tolerance policies in schools—that are essential to effective planning, resource allocation, and the evaluation of services.
 12. Work with the state's law schools to promote and encourage interest in juvenile justice issues through academic courses and clinical programs.
 13. Explore grant-based funding resources for juvenile court programs and support pilot projects in more counties to increase the availability of diversion opportunities and community-based treatment alternatives. Consider and implement other innovative practices, such as parent and transportation coordinators.
 14. Evaluate and make available the work of the current family court pilot sites in North Carolina.
 15. Develop procedures for expediting appeals to the North Carolina Court of Appeals in juvenile delinquency cases.

APPENDIX

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

- ¹ *Juvenile Offenders and Victims*, National Report Series Bulletin 5 (U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, June 2003). While no other state begins delinquency jurisdiction as low or lower than 6 years old, Connecticut and New York do join North Carolina in setting 15 years old as the last year in which delinquency jurisdiction attaches.
- ² N.C. Gen. Stat. § 7B-1601.
- ³ N.C. Gen. Stat. § 7B-2513.
- ⁴ N.C. Gen. Stat. § 7B-2200.
- ⁵ See *Kent v. United States*, 383 U.S. 541 (1966) (due process attaches to 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) (standard of proof in delinquency proceedings is beyond a reasonable doubt); *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971) (right to a jury trial is not a fundamental due process right in delinquency proceedings); *Breed v. Jones*, 421 U.S. 519 (1975) (double jeopardy protections are part of delinquency proceedings); *Schall v. Martin*, 467 U.S. 253 (1984) (preventive detention of children charged with delinquent acts is constitutional).
- ⁶ *In re Gault*, 387 U.S. at 20.
- ⁷ *Id.* at 36.
- ⁸ *Id.* at 18.
- ⁹ *In re Winship*, 397 U.S. at 365–66.
- ¹⁰ R. Herts *et al.*, *Trial Manual for Defense Attorneys in Juvenile Court* 36 (American Law Inst./American Bar Ass’n, Committee on Continuing Professional Education 1991). For detailed standards relating to representation of children in delinquency proceedings, see *IJA/ABA Juvenile Justice Standards*, “Standards Relating to Counsel for Private Parties” (American Bar Ass’n, Chicago, IL).
- ¹¹ National Advisory Committee for Juvenile Justice and Delinquency Prevention, “3.312 Representation by Counsel — For the Juvenile,” *Standards for the Administration of Juvenile Justice* (Office of Juvenile Justice and Delinquency Prevention, U.S. Dep’t of Justice, Washington, DC, July 1980).
- ¹² *IJA/ABA Juvenile Justice Standards Annotated, Standards Relating to Counsel for Private Parties* (1996).
- ¹³ Puritz, Burrell, Schwartz, Soler & Warboys, *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (American Bar Ass’n Juvenile Justice Center, Dec. 1995).
- ¹⁴ See www.census.gov.
- ¹⁵ <http://www.childrensdefense.org/census00/pop/NC.txt>.
- ¹⁶ OJJDP Statistical Briefing Book, available online at <http://ojjdp.ncjrs.org/ojstatbb/html/qa093.html> (20 Jan. 2002).
- ¹⁷ C. Puzanchera, W. Kang, R. Poole & Y. Wan, “Easy Access to Juvenile Populations” (2002), available online at <http://www.ojjdp.ncjrs.org/ojstatbb/ezapop>.
- ¹⁸ http://factfinder.census.gov/bf/_lang=en_vt_name=DEC_2000_PL_U_QTPL_geo_id=04000_US37.html.
- ¹⁹ <http://www.aecf.org/cgi-bin/kc.cgi?action=ranking&variable=cip&year=2000>.
- ²⁰ <http://www.aecf.org>, KidsCount 2003.

- ²¹ <http://www.aecf.org>, KidsCount 2003.
- ²² <http://www.aecf.org>, KidsCount 2003.
- ²³ <http://www.aecf.org>, KidsCount 2003 North Carolina Profile.
- ²⁴ <http://www.aecf.org>, KidsCount 2003 North Carolina Profile.
- ²⁵ <http://www.aecf.org>, KidsCount 2003 North Carolina Profile.
- ²⁶ http://www.marchofdimmes.com/aboutus/680_2207.asp.
- ²⁷ <http://www.bphc.hrsa.gov>.
- ²⁸ <http://www.ncdefendhealthcare.org>.
- ²⁹ <http://www.dhhs.state.nc.us/mhddsas/Child-Plan-working-draft-7-14-03.pdf>, p. 2.
- ³⁰ http://www.futureofchildren.org/usr_doc/13-1h_box4.pdf.
- ³¹ <http://www.bphc.hrsa.gov>.
- ³² <http://www.dhhs.state.nc.us/mhddsas/Child-Plan-working-draft-7-14-03.pdf>, p. 7.
- ³³ http://www.juvjus.state.nc.us/youth_detention/clinical.htm.
- ³⁴ Statistical Briefing Book (OJJDP 2000), available online at <http://ojjdp.ncjrs.org/ojstatbb/html/qa250.html>.
- ³⁵ *Id.*
- ³⁶ <http://www.juvjus.state.nc.us/statistics/offense.html>.
- ³⁷ <http://www.whitehousedrugpolicy.gov/statelocal/nc/nc.pdf>.
- ³⁸ http://www.ncchild.org/2002report_card.pdf.
- ³⁹ <http://www.whitehousedrugpolicy.gov/statelocal/nc/nc.pdf>.
- ⁴⁰ <http://www.dea.gov/pubs/states/northcarolina.html>.
- ⁴¹ <http://www.edweek.org/sreports/qc99/states/grades/nc-rc.htm>, http://www.edweek.org/sreports/qc03/rc/rcard_frameset.htm.
- ⁴² <http://www.edweek.org/sreports/qc99/states/grades/nc-rc.htm>, http://www.edweek.org/sreports/qc03/rc/rcard_frameset.htm.
- ⁴³ <http://www.edweek.org/sreports/qc03/reports/achieve-t1.cfm>.
- ⁴⁴ <http://www.edweek.org/sreports/qc03/reports/achieve-t1c.cfm>.
- ⁴⁵ <http://www.aecf.org/cgi-bin/kc.cgi?action=ranking&variable=hsd&year=2000>.
- ⁴⁶ <http://www.edweek.org/sreports/qc03/reports/achieve-t1c.cfm>, <http://www.ncpublicschools.org/news/gnews.pdf>.
- ⁴⁷ http://ruraledu.org/streport/pdf/nc_2003.pdf.
- ⁴⁸ http://www.iedx.org/article_1.asp?ContentID=EN513t&SectionGroupID=TEACHERS.
- ⁴⁹ <http://www.edweek.org/sreports/qc99/states/grades/nc-rc.htm>, http://www.edweek.org/sreports/qc03/rc/rcard_frameset.htm.
- ⁵⁰ N.C. Const. Art. I § 15.
- ⁵¹ N.C. Const. Art. IX § 2(1).
- ⁵² *Leandro v. State*, 488 S.E.2d 249, 257 (N.C. 1997).
- ⁵³ N.C. Const. Art. IX § 2(2).
- ⁵⁴ *Id.* at 256.

- ⁵⁵ Suspension/Expulsion Report 2000–01, North Carolina State Bd. of Educ., available online at www.ncpublicschools.org/state_board.
- ⁵⁶ See *Policies and Procedures for Alternative Learning Programs and Schools, Grades K–12*, North Carolina Dep't of Public Instruction (July 2003); see also N.C. Gen. Stat. §§ 115C-47 and 115C-105.27 *et seq.*
- ⁵⁷ <http://www.childrensdefense.org/states/nc.pdf>.
- ⁵⁸ http://www.acf.hhs.gov/programs/cb/publications/cm00/table3_1.htm (numbers reported for this site include all juveniles below the age of 18).
- ⁵⁹ http://www.acf.hhs.gov/programs/cb/publications/cm00/table3_2.htm.
- ⁶⁰ http://www.acf.hhs.gov/programs/cb/publications/cm00/table3_4.htm.
- ⁶¹ http://www.acf.hhs.gov/programs/cb/publications/cm00/table3_6.htm.
- ⁶² http://www.acf.hhs.gov/programs/cb/publications/cm00/table5_2.htm.
- ⁶³ Cathy Spatz Widom, Ph.D., *Childhood Victimization and the Derailment of Girls and Women to the Criminal Justice System*, Research on Women and Girls in the Justice System (U.S. Dep't of Justice, Nat'l Inst. of Justice 1999), available online at <http://www.ncjrs.org/pdffiles1/nij/180973.pdf>.
- ⁶⁴ <http://www.childrensdefense.org/states/nc.pdf>.
- ⁶⁵ *Facts on Youth, Violence and Crime* (OJJSP Nat'l Report Series Bulletin, Dec. 2001), available online at http://www.childrensdefense.org/ss_ydfs_viocriime.php.
- ⁶⁶ <http://www.ncjrs.org/pdffiles1/ojdp/191031.pdf>.
- ⁶⁷ <http://www.ncjrs.org/pdffiles1/ojdp/181868-1.pdf>.
- ⁶⁸ <http://www.ncjrs.org/pdffiles1/ojdp/181868-1.pdf>.
- ⁶⁹ <http://www.gcc.state.nc.us/pubs/Gang%20Crime/ganglitcolor.PDF>, p. 37.
- ⁷⁰ <http://www.gcc.state.nc.us/pubs/Gang%20Crime/ganglitcolor.PDF>, p. 43.
- ⁷¹ <http://www.gcc.state.nc.us/pubs/Gang%20Crime/ganglitcolor.PDF>, p. 37, 46–47.
- ⁷² http://www.juvjus.state.nc.us/youth_detention/gsm/girls_why.pdf.
- ⁷³ http://www.juvjus.state.nc.us/statistics/fy_data/adjud_a_r_g.pdf.
- ⁷⁴ *Guiding Principles for Promising Female Programming, An Inventory of Best Practices* (OJJDP, Oct. 1998), available online at <http://ojdp.ncjrs.org/pubs/principles/contents.html>.
- ⁷⁵ *Guiding Principles for Promising Female Programming, An Inventory of Best Practices* (OJJDP, Oct. 1998), available online at <http://ojdp.ncjrs.org/pubs/principles/contents.html>.
- ⁷⁶ *Mental Health and Adolescent Girls in the Justice System* (National Mental Health Ass'n), available online at <http://www.nmha.org/children/justjuv/girlsji.cfm>.
- ⁷⁷ E. Cuffman *et al.*, *PTSD Among Female Juvenile Offenders*, *Journal of American Academy of Child and Adolescent Psychiatry* 37 (1998).
- ⁷⁸ *Id.*
- ⁷⁹ *KidsCount Databook* (2002), available online at <http://www.aecf.org/cgi-bin/kc.cgi?action=ranking&variable=tbr&year=2000>.
- ⁸⁰ <http://www.aecf.org/cgi-bin/kc.cgi?action=profile&area=North+Carolina>.
- ⁸¹ *State v. Green*, 502 S.E.2d 819, 825 (N.C. 1998).
- ⁸² N.C. Gen. Stat. § 7B-1500(1)-(2).
- ⁸³ <http://govhunt.gov.state.nc.us/news/releases/jjpass.pdf>.
- ⁸⁴ <http://www.juvjus.state.nc.us/about/reform2.htm>.

- ⁸⁵ <http://www.juvjus.state.nc.us/about/reform2.htm>.
- ⁸⁶ <http://goohunt.gov.state.nc.us/news/releases/SweatSwearing.htm>; <http://goohunt.gov.state.nc.us/news/releases/djjdp.htm>.
- ⁸⁷ <http://www.juvjus.state.nc.us/about/reform.htm>.
- ⁸⁸ <http://www.ncchild.org/mandamus.edited.doc>; see also C.D. Kirkpatrick, *Juvenile advocates, youth sue state over inactive panel Council created by 1999 law failed to meet for 2 years*, *The Herald-Sun* (Durham, N.C.), May 14, 2003, at C1.
- ⁸⁹ See <http://www.juvjus.state.nc.us/home/index.htm>.
- ⁹⁰ See http://www.juvjus.state.nc.us/Crime_Prevention/overview.htm.
- ⁹¹ See http://www.juvjus.state.nc.us/interprev_services/ccs_overview.htm.
- ⁹² Court counselors are required to have college degrees and live in the judicial district in which they work. All court counselors and other field staff are state employees who work for the Department of Juvenile Justice and Delinquency Prevention. The chief court counselors in each individual district hire court counselors and local staff.
- ⁹³ *IJA/ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 1.1 (1996).
- ⁹⁴ *IJA/ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 5.1 (1996).
- ⁹⁵ *IJA-ABA Juvenile Justice Standards Annotated, Standards Relating to Counsel for Private Parties*, Part III. The Lawyer-Client Relationship, p. 75–79.
- ⁹⁶ N.C. Gen. Stat. § 7B-2000(a) (emphasis provided).
- ⁹⁷ N.C. Gen. Stat. § 7B-2000(b).
- ⁹⁸ *IJA/ABA Juvenile Justice Standards, Standards Relating to Pretrial Court Proceedings*, Standards 5.1 and 5.2 (1996).
- ⁹⁹ N.C. Gen. Stat. § 7B-2101.
- ¹⁰⁰ N.C. Gen. Stat. §§ 7B-2000 and 7B-2101.
- ¹⁰¹ *IJA/ABA Juvenile Justice Standards, Standards Relating to Pretrial Court Proceedings* (1996). Standard 5.3 provides: “No reimbursement should be sought from the parent or the juvenile for the cost of court-appointed counsel for the juvenile, regardless of the parent’s or juvenile’s financial resources.”
- ¹⁰² N.C. Gen. Stat. §§ 7A-450.3 and 7B-603(c).
- ¹⁰³ *IJA/ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 4.3(a) (1996).
- ¹⁰⁴ Disposition is the term used to describe how a youth will be treated and where they will be placed by the court based on the court’s adjudication of the child.
- ¹⁰⁵ The best source of cites and information on the connection between juvenile justice and disabilities is located at <http://www.abanet.org/crimjust/juvjus/linkdevelopment.html>. For research establishing the connection between disabilities and involvement in the juvenile justice system, refer to Leone, Zaremba, Chapin, & Iseli, *Understanding the Overrepresentation of Youth with Disabilities in Juvenile Detention*. 3 D.C.L. Rev. 389–401 (1995); and Burrell & Warboys, *Special Education and the Juvenile Justice System* (OJJDP Bullet, July 2000). For a manual of representing youth with special needs and who may have disabilities, see Project of the Children’s Law Center, *The Special Needs of Youth in the Juvenile Justice System: Implications for Effective Practice* (Covington, KY, June 2001).
- ¹⁰⁶ *IJA/ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 6.3(a) (1996); see also *Standards Relating to Counsel for Private Parties*, Standard 4.3.

- ¹⁰⁷ N.C. Gen. Stat. § 7B-1906(h).
- ¹⁰⁸ *IJA/ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 7.3(a)(i) and (b) (1996).
- ¹⁰⁹ Bill Rust, *Juvenile Jailhouse Rocked: Reforming Detention in Chicago, Portland and Sacramento*, *Advocasey*, Fall/Winter 1999 Issue.
- ¹¹⁰ In May of 2003, State Auditor Ralph Campbell released a 160-page report critical of the state's detention centers and training schools. The report noted the antiquated and potentially dangerous conditions at the facilities and found that the educational and treatment programs failed to meet the needs of the children in the system.
- ¹¹¹ David Steinhart, *Planning for Juvenile Detention Reform: A Structured Approach*, *Pathways to Juvenile Detention Reform*, A Project of the Annie E. Casey Foundation, vol.1, p. 2.
- ¹¹² *Schall v. Martin*, 467 U.S. 253 (1984).
- ¹¹³ *Id.* at 269 (internal citations and quotations omitted).
- ¹¹⁴ N.C. Gen. Stat. § 7B-2408.
- ¹¹⁵ *IJA/ABA Juvenile Justice Standards, Standards Relating to Police Handling of Juvenile Problems*, Standard 3.2 (1996).
- ¹¹⁶ *IJA/ABA Juvenile Justice Standards, Standards Relating to Pretrial Court Proceedings*, Standard 5.1(C) (1996).
- ¹¹⁷ *IJA/ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 9.1 (1996).
- ¹¹⁸ N.C. Gen. Stat. § 7B-2506.
- ¹¹⁹ See N.C. Gen. Stat. § 7B-2501(d).
- ¹²⁰ *IJA/ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 9.2 (a) (1996).
- ¹²¹ *IJA/ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 9.2 (c) (1996).
- ¹²² *IJA/ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 10.1 (1996).
- ¹²³ *IJA/ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 10.2(a) (1996).
- ¹²⁴ *IJA/ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 10.3 (1996).
- ¹²⁵ *IJA/ABA Juvenile Justice Standards, Standards Relating to Appeals and Collateral Review*, Standard 4.1 (1996).
- ¹²⁶ *IJA/ABA Juvenile Justice Standards, Standards Relating to Appeals and Collateral Review*, Standard 4.2 (1996).
- ¹²⁷ *IJA/ABA Juvenile Justice Standards, Standards Relating to Dispositions*, Standard 5.2 (1996); N.C. Gen. Stat. §§ 7B-2600 and 7B-2601.
- ¹²⁸ Regulations for Appointment of Counsel in Indigent Cases in the Tenth Judicial District, amended July 1, 1998.
- ¹²⁹ See <http://www.cladisabilitylaw.org>.
- ¹³⁰ National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, *Courts* (Washington, D.C., 1973), p. 186.
- ¹³¹ N.C. Gen. Stat. § 7B-2507(d).

¹³² N.C. Gen. Stat. § 7B-2508(g).

¹³³ N.C. Gen. Stat. § 7B-2510(a).

¹³⁴ For more information on this program, contact Advocates for Children's Services, P.O. Box 26087, Raleigh, NC 27611 or call (919) 865-7200. Much of the information presented here was adapted from the program's website: www.legalaidnc.org.

¹³⁵ See <http://www.law.unc.edu/academics/clinical/criminal.html>.

¹³⁶ See <http://www.nccu.edu/law/academics/clinical.html>.

¹³⁷ See <http://www.childedlaw.org>.

¹³⁸ See Rules of the Commission on Indigent Defense Services, Rule 2B.2 (capital appeals) and Rule 3.2 (non-capital appeals), available online at www.ncids.org. The only appeals that are not assigned to the Office of the Appellate Defender involve involuntary commitment cases, where trial counsel is responsible for perfecting any appeal. See N.C. Gen. Stat. § 122C-270(a).

¹³⁹ Attorneys appointed as overflow or conflict counsel are compensated at an hourly rate of \$65.

