



SOUTH CAROLINA

**JUVENILE INDIGENT DEFENSE:
A REPORT ON ACCESS TO COUNSEL
AND QUALITY OF REPRESENTATION IN
DELINQUENCY PROCEEDINGS**

**National Juvenile Defender Center
Winter 2010**

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A REPORT ON ACCESS TO COUNSEL
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WRITTEN BY

**Mary Ann Scali
Ji Seon Song**

with
Patricia Puritz

ON BEHALF OF

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It is our sincere hope that this assessment will stimulate discussion of the strengths and weaknesses of the South Carolina juvenile indigent defense system, and that it will serve as a tool for change in the hands of South Carolina's many dedicated professionals.

EXECUTIVE SUMMARY

Children have a clearly established constitutional right to the effective assistance of counsel in delinquency cases and juvenile defenders are vital to protect and enforce that right. In addition, skilled juvenile defenders can play an important role in opening doors to positive opportunities and helping children become productive and contributing members of society. As stated in the Federal Advisory Committee on Juvenile Justice 2009 Annual Report, “Effective legal representation protects public safety by helping ensure that a juvenile offender receives the treatment or services necessary to prevent further offending.”¹

The purpose of this assessment is to provide comprehensive information about access to and quality of defense counsel in delinquency proceedings in South Carolina; to identify structural and systemic barriers that impede effective representation of children; to highlight best practices where found; and, to make recommendations that will serve as a guide for improving juvenile defender services for indigent children in the state.

Juvenile defense is a complex specialty, and is significantly different from and broader than the concept of traditional criminal defense of adults. A juvenile defender must understand child and adolescent development, be able to evaluate a client’s maturity and competency, and be able to communicate effectively with a parent or guardian without compromising the defender’s ethical duties to the child. Like the adult criminal defense attorney, the juvenile defender is the sole person responsible for providing the client with a meaningful voice in the proceedings and asserting his stated legal interests throughout the duration of the case. In addition, the juvenile defender must become versed in the specialized arguments critical for advocacy in proceedings unique to juvenile court, like detention, transfer and disposition hearings; complexities that arise in mental health and special education law, and how they might impact the course of a delinquency case; collateral consequences of a delinquency adjudication, including barriers to obtaining college acceptance, student loan awards, and entrance into the military; and, ability to maintain contacts at, and knowledge of, community-based programs for juveniles. Because of these complexities, comprehensive assessments of juvenile indigent defense systems are critical for ensuring that limited resources are deployed wisely and that every child’s constitutional right to due process is protected.

CORE FINDINGS

This assessment revealed grave facts about the provision of juvenile defense services across South Carolina. Many of South Carolina’s own judges, defense attorneys, prosecutors, probation officers, and others expressed concerns about the quality of defense representation that children receive. Assessment team members encountered overworked and underfunded juvenile defenders who did not have time or resources to provide an adequate defense to juveniles facing delinquency charges. While model practice was sometimes observed, these instances of vigorous representation were the exception rather than the rule.

The deep-rooted *systemic barriers* that impede the delivery of the fair administration of justice need to be addressed to ensure that children in South Carolina are afforded their constitutional right to due process and a greater opportunity for a successful future.

The core findings of the assessment include:

Inadequate Resources

South Carolina's juvenile indigent defense system operates with insufficient resources to provide meaningful access to counsel and diligent legal representation. The recent overhaul of the indigent defense system has not resolved this deficiency as there continues to be limited funding from state and county government and discretionary sources. Limited funding has created extreme disparities between defender offices which result in disparities in the quality of representation children receive. The lack of resources, high caseloads, insufficient access to investigators and support staff, and limited client contact have made meaningful investigation and trial practice an anomaly in most of South Carolina's family courts.

Insufficient Access to Specialized Training

One hundred percent of the defenders interviewed stated that they received little or no training prior to handling their first juvenile case. None of the counties assessed have a formal training program in place for juvenile defenders prior to their first juvenile case. Across the state, stakeholders cited a need for training on the full range of practice issues, such as initial motions, detention and disposition advocacy, trials, appeals, and the collateral consequences of a juvenile adjudication. In 40% of the counties visited, the juvenile court stakeholders noted that defenders were not aware of the available disposition options for their clients and thought that defenders would benefit from training on disposition alternatives. Thirteen percent of judges interviewed cited the need for defenders to receive training on how to handle a waiver hearing.

Lack of Zealous Legal Advocacy

Due to high caseloads and compounded by limited resources, approximately 60% of defenders who were interviewed stated that they do not meet with most of their clients until just before the first court hearing. Investigators reported that most of the attorneys observed appeared to have met with their clients just prior to the first court hearing. In nearly every county visited, at least 95% of the juvenile cases resulted in guilty pleas, the vast majority of which took place at the first hearing. A wholesale lack of case preparation quickly leads to other serious deficiencies and outcomes observed across the state including:

-Overwhelming Number of Pleas at First Appearance

Juvenile defense must include analyzing all available evidence, abiding by the client's statement of the facts, and taking appropriate cases to trial.

-Lack of Probable Cause Hearings

In addition to holding the state to its burden, contesting probable cause at a hearing can provide defenders with more information about the solicitor's case and possibly witness testimony. The assessment findings indicate, however, that probable cause hearings were held regularly in only 20% of the counties visited.

-Lack of Motions Practice

Pre-adjudicatory motions practice in juvenile court is necessary to preserve the client's rights, gather information, and advocate for the client's interests. In 80% of the counties visited, defense attorneys rarely file written motions, such as discovery, dismissal, suppression, and recusal motions.

-Lack of Dispositional Advocacy

In 75% of the counties visited, juvenile defenders did *not* make any independent recommendations or arguments at disposition hearings. In most of these counties, it appeared that attorneys conduct little or no preparation for disposition hearings, and many of the defenders simply relied on the reports and information submitted by DJJ and/or the solicitor.

-Lack of Post-Dispositional Advocacy

Juvenile defenders should file for review hearings to ensure that court orders are implemented, services are rendered, and children have a formal opportunity to challenge violations of court-ordered services, ill treatment or harsh conditions within facilities. However, with the exception of a handful of review hearings in only a few counties, defenders across South Carolina rarely provide their clients with post-disposition advocacy.

Lack of Meaningful Contact with Clients in Pre-Trial Detention

Securing the release of detained juvenile clients requires information and preparation. Contact with detained clients prior to the initial detention hearing is essential to learning about the case, exploring options for release, and gathering background information to aid in arguments before the court. In those counties that have detention facilities nearby, few of the attorneys interviewed said that they visited clients at the detention facilities. Another 10% stated that they sometimes utilize the video-conferencing capability provided by the South Carolina Department of Juvenile Justice (DJJ) to talk to detained clients between hearings.

Lack of Confidential Spaces for Attorney-Client Conferences

Confidentiality is at the core of the attorney-client relationship. It is critical for a child to be able to discuss the circumstances of the alleged offense as well as sensitive family and personal issues without strangers listening. In 20% of the counties visited, attorneys had private conference rooms to consult with their clients; these courthouses were recently renovated or constructed. The remaining 80% of the counties provided no

such private meeting space for attorney-client conferences in the courthouse. In some courthouses, a part of the hallway is designated as an area for attorneys to meet with clients and dividers are set up around desks; in still other courthouses, attorneys must meet with their clients in waiting areas outside the courtroom, or in other available space, such as stairwells.

Ethical and Role Confusion about Juvenile Defense Counsel

Juvenile defenders have an ethical obligation to represent the stated interest, not the best interest, of their clients. Investigators observed many instances in which defenders explicitly stated that their request of the court was based on what they perceived as being in their clients' best interests. Defenders are not the only ones in the court system who lack a clear understanding of the appropriate role of counsel in delinquency cases. In fact, 39% of stakeholders interviewed thought that defenders should always employ best interests as the standard for representation, 36% believed defenders should balance best and expressed interest in their advocacy, and only 20% of stakeholders understood the defender must represent the expressed interest of the child.

Lack of Advocacy to Combat Unjust Practices

In 100% of the counties visited, investigators observed that some juveniles were shackled during court proceedings without any objection from their attorney whatsoever. Juveniles were restrained with belly chains, leg irons, and/or handcuffs throughout their entire hearing. In addition, it appeared attorneys missed critical opportunities over and over again to raise awareness or challenge systemic injustices that impact the quality of justice delivered to vulnerable children.

Lack of Awareness of Collateral Consequences and Collateral Issues

Juvenile defenders must effectively ensure that their clients understand all of the serious and long-term collateral consequences that can flow from a delinquency adjudication, such as barriers to obtaining college acceptance, student loan awards, housing, and entrance into the military. Furthermore, juvenile defenders must have a clear understanding of other ancillary areas of law that have a potential impact on a juvenile case, such as immigration, special education, and mental health laws. In the counties visited, many defenders themselves acknowledged they lacked full awareness of the range of collateral consequences and the related areas of law important for effective representation.

CORE RECOMMENDATIONS

The juvenile indigent defense system in South Carolina is sorely in need of attention and repair. Juvenile defenders alone cannot solve these problems. This Assessment calls for collaborative action to remedy systemic deficiencies at the state, regional and local levels. The core recommendations set forth below are followed in Chapter Five in greater detail with a series of implementation strategies that guide key stakeholders toward concrete, collaborative action.

1. *Require Specialized Juvenile Defense Training*
Juvenile defenders should be required to receive specialized, comprehensive, ongoing, affordable juvenile-specific skills training that covers all stages of the delinquency process (initial hearings through post-disposition) and incorporates other critically important topics such as adolescent and brain development, competency, immaturity, disabilities, and, other important issues that have a unique impact on children.
2. *Increase Resources for Juvenile Public Defenders*
The juvenile defense system is woefully under-resourced. It is imperative that the state legislators and local policy makers allocate adequate funds to ensure pay and resource parity. More juvenile public defenders need to be hired and policy makers need to ensure pay parity for juvenile public defenders with adult public defenders and solicitors. In addition, juvenile defense attorneys need access to support staff, investigators, experts, and social workers.
3. *Foster Diligent and Zealous Advocacy*
Juvenile public defenders should act with diligence and zeal in advocating for their clients. Zealous advocacy includes actively trying cases where facts or laws are in dispute; properly investigating cases; making meaningful recommendations at all phases of the court process; filing appropriate motions; challenging the use of secure evaluations and pre-trial detention when such is not necessary or appropriate; objecting to practices such as unnecessary shackling; and, insisting upon uniform, comprehensive, and age-appropriate colloquies. Juvenile public defenders should enter pleas at initial hearings only when appropriate, and they should consider the impact that court fees have on their indigent clientele and argue for waiver of fees when they are perceived to be punitive or unduly burdensome.
4. *Eliminate Unnecessary Shackling*
The indiscriminate and unnecessary shackling of children in courtroom proceedings should be terminated and shackling should only be used in cases in which an individualized determination has been made on the record that it is necessary.

5. *Ensure Timely Appointment of Counsel and Client Contact*
Juvenile defense counsel should be appointed in an early and timely manner and given every opportunity to adequately prepare for the case. Defense counsel must have a meaningful opportunity to confer with the child in a confidential meeting area. Counsel must have the chance to test the sufficiency of the case prior to accepting a plea agreement on behalf of the child, and to explain thoroughly the short and long term consequences of a juvenile court adjudication.

6. *Address Ethical and Role Confusion of Juvenile Defense Counsel*
The South Carolina Commission on Indigent Defense or other appropriate entity should issue an opinion clarifying the role of defense counsel in juvenile delinquency proceedings. The ethical and role confusion that often characterizes juvenile court practice leaves far too many children literally defenseless. All juvenile court professionals must understand that defense attorneys are ethically bound to act with diligence, competence, promptness, and zeal for the stated interests of their young clients. Circuit public defenders must play an important role in adhering to these mandates by providing meaningful supervision and assistance to juvenile public defenders to ensure competent and adequate representation for children.

7. *Establish Ongoing Oversight and Monitoring*
Establish a separate juvenile division within the South Carolina Commission on Indigent Defense or other appropriate entity to centralize leadership, innovation and responsibility around strengthening the practice and policy of juvenile defense. Such an entity could be tasked with ensuring the equitable and fair distribution of resources; collection of needed data; promulgation of standards and implementation of best practices; ensuring the availability of juvenile-specific training; and, identification, development, and implementation of specific policies and practices that will improve the juvenile defense system based on well informed decisions.

NATIONAL JUVENILE DEFENDER CENTER

1350 Connecticut Avenue, NW | Suite 304 | Washington, DC 20036

202.452.0010-phone | 202.452.1205-fax

www.njdc.info