

# MARYLAND



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

**American Bar Association Juvenile Justice Center**

*and*

**Mid-Atlantic Juvenile Defender Center**

*in partnership with*

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*This report is dedicated to the children and youth in Maryland's Juvenile and Criminal Justice Systems.*

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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 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 received by children in the State of Maryland is part of a nationwide effort to address deficiencies and identify strengths in juvenile indigent defense practices. More than 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 few exceptions, juvenile indigent defense practices have gone unchecked. The purpose of this assessment is to take a closer look at juvenile defense practices in Maryland, identify the systemic and institutional obstacles that impede the development of an improved legal service delivery system, highlight innovative practices and offer recommendations for change.

Using various modes of data collection, a team of national and state-based experts conducted extensive interviews with judges, prosecutors, defense attorneys, intake officers, probation officers, court clerks, detention center staff, police officers, children and families, and policymakers across the state. In addition, the teams observed juvenile court proceedings in selected counties, visited every juvenile detention center in Maryland and conducted extensive legal and literature reviews.

The juvenile defense delivery system in Maryland is a centralized, statewide system. While a laudable and efficient defense delivery model, this assessment noted various systemic barriers or obstacles built into the overall delivery system—some which could be addressed within the administrative authority of the public defender system and some which would require changes in the very culture of juvenile court and the justice system.

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This assessment is not intended as a critique of the overall internal management of the public defender delivery system; given the statewide nature of the administration, however, any recommended changes in the system could be interpreted as criticism of the leadership of The Office of the Public Defender for the State of Maryland. Not only would this interpretation be incorrect—as the vast majority of findings in this assessment touch upon issues not controlled by the Office of the Public Defender and mandated by legislative or judicial authority—but also unfair. Given the level of resources provided and the responsibilities of the Office of the Public Defender, its administration is professional, efficient and responsive. We would be remiss if we did not recognize that the administration has been cooperative, understanding and readily available during this assessment and is truly invested in the sometimes difficult process of thinking anew about how better to serve its clients, professionally fill its role within the larger justice process, and achieve the aims of the juvenile justice system.

This assessment reveals that, despite a centralized indigent defense delivery system, there is no consistent internal oversight of indigent juvenile defense practices. Uneven policies and practices throughout individual public defender offices create significant gaps in juvenile defense representation. Numerous systemic barriers and the lack of consistent oversight result in the absence of counsel at critical stages of the process, eligibility requirements for public defender services that deny poor children access to counsel, and inadequate preparation of cases from detention hearings and arraignments to post-disposition proceedings. Poor and minority children are most affected by unchecked policies and practices that allow for uneven access to counsel and insufficient representation.

*Significant Findings Include:*

**Maryland’s poor children do not have equal access to counsel.**

In one-third of the counties visited, forty to fifty-eight percent of children routinely waived their right to counsel. There are multiple factors contributing to high rates of waiver of counsel, including poor advisement of the right to counsel and the unavailability of counsel through the Office of the Public Defender, an inability to consult with counsel prior to waiving counsel, parental unwillingness, and eligibility requirements for public defender services that prevent children and youth from accessing counsel. Additionally, poor children who can only access defense counsel through the public defender’s office are not guaranteed by law the right to an attorney until adjudication. Moreover not all local public defender offices are present at subsequent review hearings or violation of probation hearings even when the office represented the child at the underlying adjudication.

**The majority of youth in detention are incarcerated without effective representation.**

The absence of attorneys at initial detention hearings, review hearings and violations of probation, coupled with substandard detention advocacy, allows

the overuse and misuse of detention in Maryland. Youth who do not meet the statutory criteria for detention filter into facilities because of psychological evaluations, judges' subjective standards and technical probation violations. It is routine, also, for children and youth to be detained in secure facilities as a method of punishment. Public defenders have little to no contact with detained youth prior to court hearings, leaving youth in detention isolated and uninformed about their cases. Children and youth adjudicated and awaiting placement in a rehabilitative program—commonly referred to as “pending placement”—languish in locked detention facilities with little to no access to their public defenders. Exacerbating the issue is the fact that these children are often unrepresented at subsequent status hearings.

### **Many defenders are ill prepared in transfer and waiver cases.**

There is no readily available data to evaluate whether Maryland's transfer and waiver provisions are applied uniformly and exercised with reasoned discretion or even whether these provisions are having the intended affect of reducing crime. In the majority of counties visited, stakeholders reported that youth entering the criminal courts through automatic transfer were often first-time offenders with no or only incidental prior contacts with the juvenile justice system. Unfortunately juvenile defenders are ill prepared to prevent youth who are best served in the juvenile system from being prosecuted as adults. The majority of defenders rely exclusively on the recommendations of the Department of Juvenile Services. Few choose to litigate cases where the Department's recommendation involved the adult court. The handful of public defenders routinely conducting independent investigations and presenting zealous defenses through independent experts and social workers were overwhelmingly successful in protecting young clients from the adult system.

### **Many defenders are unprepared for adjudication and disposition hearings.**

Very few defenders are fulfilling the active role of defense counsel at adjudication or disposition. Most defenders do not interview their client before the adjudication, investigate the underlying facts of the case, or engage in an active motions practice. In fact, most public defenders do not meet their client until the adjudication hearing. The result is that up to ninety-five percent of cases result in admissions of “involved.” Additionally, most cases go straight to disposition following the adjudication hearing. Defenders routinely submit to the recommendation of the Department of Juvenile Services without independent investigation and alternative treatment plans.

### **Numerous systemic barriers hamper the effective representation of children.**

Systemic barriers, including high caseloads, lack of resources, lack of required training, insufficient numbers of attorneys, and an overall non-specialization of juvenile defense representation hamper the ability of Maryland's juvenile defenders to effectively represent young clients. A startling

number of juvenile defenders did not prepare cases for court and had minimal client contact. Lack of ancillary resources—such as support staff, investigators, social workers, proper legal libraries and private places to meet with clients—also severely restrict defenders’ ability to provide quality representation.

### **The lack of financial support leads to the undervaluation of juvenile defense services.**

An overwhelming majority of people interviewed for this assessment agreed that the Office of the Public Defender is not well funded, resulting in less than sufficient support staff and limited time in which to prepare juvenile cases. According to the Office of the Public Defender’s annual report, pay for Public Defender attorneys is significantly lower than the salaries of employees in other state agencies in comparable positions. After a year-long study, the Personnel and Benefits Section of the Department of Budget and Management suggested that the salaries be “adjusted by two grades to maintain current internal salary relationships.” However, such an adjustment would cost \$3.8 million, and those funds would not be available, if at all, until FY 2005.

### **The culture of Maryland’s juvenile courts denies children the realization of due process.**

The culture of Maryland’s juvenile courts further minimizes the important role of defense counsel in delinquency proceedings. Juvenile defenders daily confront a juvenile court system driven by case-processing statistics, ignorant of the harm of waiver of counsel, the importance of defense counsel presence, participation early on in the process and zealous advocacy. Defenders who zealously advocate for their clients are seen as interfering with the “best interest” model of juvenile court. The refusal to acknowledge the importance of adhering to due process and the role of defense counsel results in a culture that relegates defense counsel to little more than a decorative ornament in a process that often results in unfair outcomes. The “best interest” model in which the juvenile court operates leads to violations of due process aside from the denial of effective counsel. Too often the juvenile courts rely on the extended role of probation officers to protect the legitimate interests of children despite the natural conflict arising between their role as investigator and adversary against the child. The additional absence of data within the juvenile court system prevents any examination of the overall fairness of juvenile court.

### **The justice system is a dumping ground for our mental health systems and schools.**

The overwhelming numbers of children in the juvenile justice system with mental health problems, special education needs, or referred from schools for relatively minor infractions suggest that the juvenile justice system has become a dumping ground for children who have been failed by the lack of community and school resources. Many stakeholders across the state expressed grave concerns about the rising numbers of school referrals and children with special education needs in the juvenile justice system, as it indicated to them a trend of

giving up on students who struggle academically or socially. Stakeholders likewise struggled with the high numbers of children with mental health problems in the juvenile justice system, the lack of overall services available for children with mental health diagnosis, and the inability of the juvenile justice system adequately to address these needs.

### **Minorities are overrepresented in the juvenile justice system.**

Overrepresentation is a complex issue with no easy solutions; however it is not a new issue for Maryland. In every county visited, disproportionate representation of minority youth in the juvenile justice system is an ongoing problem. No data tracking the race of children and youth in the system is kept by the individual counties, which leads to under-estimation of the extent and significance of the problem. Data available through the Department of Juvenile Services shows that African-American youth are overrepresented at intake in each county and that disproportionality cannot be explained by differences in the types of offenses or offense histories. Factors contributing to overrepresentation include programs targeted at poor, minority neighborhoods and stakeholders' refusals to recognize that some policies disproportionately impact minority youth. Public defenders represented nearly two-thirds of the African-American youth observed in court and have a critical role to play in ensuring that intake policies, decisions to detain, and risk assessment instruments used by agencies avoid subjectivity that may result in African-American youth receiving harsher treatment than white youth in the juvenile justice system.

### **Girls in the justice system present unique issues to juvenile courts.**

The most common charges levied against girls in the juvenile justice system are non-violent offenses, status offenses and parole violations—and there are very few services in Maryland that deal effectively with the causes of these offenses. Many girls in the juvenile justice system have had previous encounters with the Department of Social Services, but the programs and placements often proved ineffective. Girls also reported gender bias on a regular basis from juvenile justice professionals. Pregnant girls and girls with STD's do not receive adequate care and are also stigmatized by detention center staff; and girls without special health needs do not receive gender-appropriate health care or mental health counseling.



# INTRODUCTION

This report is a qualitative assessment of the access to counsel and quality of representation in Maryland 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. This study is designed to provide a broad range of information about the role of defense counsel in the delinquency system, to identify structural or systemic barriers to more effective representation of youth, to identify and highlight promising practices within the system, and to make viable recommendations to improve the delivery of defender services for youth in the justice system.

Despite considerable attention to issues related to at-risk youth in Maryland, the question of access to counsel and quality of representation in delinquency proceedings has never been addressed. Prior to the undertaking of this report, parents, advocates and public defenders expressed their concern about children and youth who waive the right to counsel navigating the complexities of the system alone, an overall lack of uniformity in juvenile representation throughout the state, and concern over the lack resources available to public defenders to represent children and youth in the juvenile and criminal justice systems.

The presence of well-trained, well-resourced defense counsel is vital to a realization of due process and necessary to ensure accountability of the justice system. Lawyers working with young clients constantly balance the responsibilities of the defense attorney and the mitigation specialist. Representing children and 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

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alternatives are limited requires monitoring. For all these reasons, and more, it is imperative that the juvenile indigent defense system be assessed in order to ensure that children are receiving the constitutional protections to which they are entitled.

### **Due Process and Delinquency Proceedings**

The United States Supreme Court in a series of cases recognized the bedrock elements of due process as essential to delinquency proceedings.<sup>1</sup> 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.<sup>2</sup> *Gault* found that juveniles facing "the awesome prospect of incarceration" need counsel for the same reasons that adults facing criminal charges need counsel.<sup>3</sup> 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.<sup>4</sup> 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 were constitutionally entitled to proof "beyond a reasonable doubt" during proceedings that could result in a delinquency adjudication.<sup>5</sup>

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."<sup>6</sup> 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 court 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. Evinced 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.<sup>7</sup>

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.<sup>8</sup> 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 supervised 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*<sup>9</sup> 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, juvenile defender assessments have been published covering the states of Texas, Louisiana, Georgia, Virginia, Kentucky and Ohio, with assessments ongoing and reports being prepared in an additional six states.

## Methodology

The American Bar Association Juvenile Justice Center, the National Juvenile Defender Center and the Mid-Atlantic Juvenile Defender Center, along with state and regional partners, joined forces to produce this study. A team of regional and national experts convened to take part in the assessment, including private practitioners, academics, former public defenders, defender organization administrators and juvenile advocates. Data collection for the study included: conducting on-site observations; interviewing key personnel; gathering statistical data on crime, arrest, detention, and confinement rates; verifying caseload statistics, census information and community profiles; and reviewing all relevant research and reports on the defender system. In the final analysis, a cross-section of fifteen counties out of twenty-four was selected for intensive study. Together the populations of the counties comprise approximately eighty percent of Maryland's population, a representative sample of the state's total population. The sites represent urban, suburban and rural areas and reflect the geographical diversity of the state.

Statistics on population, racial composition, and income were obtained for each county using United States Census 2000 data.<sup>10</sup> Statewide data on juvenile commitment intake, delinquency and undisciplined complaints and admissions to detention, for each county, were obtained from the Maryland Department of Juvenile Services and the U.S. Office of Juvenile Justice and Delinquency Prevention. These data were compiled and analyzed to determine

a representative sampling of counties for site visits and to uncover statistical anomalies warranting further investigation.

An assessment team visited each site, conducted interviews (pursuant to standardized protocols), observed judicial proceedings and gathered 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 spoke with judges, juvenile public defenders, panel counsel, prosecutors, court personnel and administrators, probation personnel and administrators, 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, in addition to observing court proceedings, toured facilities, and—to the extent possible—collected statistical and documentary evidence in particular jurisdictions. When necessary, investigators conducted follow up phone calls to collect additional or clarifying information.

# CHAPTER ONE

## Maryland's Children and Its Juvenile Justice System

As early as 1899, reformers have understood the importance of distinguishing proceedings involving juveniles from those in adult criminal court. As evidenced by everyday experience and also by scientific research, children and adolescents have a different capacity than adults for abstract thought, linking of cause and effect, and culpability. Given these fundamental differences in the developing mind, it is essential that the law recognizes and accommodates these differences. Children face a variety of problems that put them at risk of having contact with the juvenile justice system. It is crucial to understand these risk factors to understand the importance of a juvenile court that can operate outside a punitive model of justice and focus on rehabilitative programs that address the causes of delinquency.

### A. Pathways to Delinquency

Environmental factors have become reliable indicators of involvement in the kinds of behavior that lead to entanglement in the juvenile justice system. Increasingly, it is not as much the criminality of 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 that bring them into the juvenile justice system.

Census data provides an important context in which to view the environmental factors that affect the rates of children brought into the juvenile justice system. According to the 2000 Census data, there are 5,171,634 children under the age of eighteen in Maryland, representing 25.5% of the state's population. Maryland's juvenile population is slightly more diverse than the nation's.<sup>11</sup> According to the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the national juvenile population was 79% white, while Maryland's

*Environmental factors have become reliable indicators of involvement in the kinds of behavior that lead to entanglement in the juvenile justice system.*

juvenile population is 68.5% white and 15% African-American. The diversity of the juvenile population is reflective of the population at large.<sup>12</sup>

*Child Poverty* — Living in poverty can affect a child's physical and mental health and academic success, which potentially contribute to delinquency. According to the 2000 Census, nearly 15% of Maryland children lived in poverty, which is better than the national rate of close to 20%.<sup>13</sup> Of those children, 3% lived in extreme poverty, i.e., in a family that earned less than fifty percent of the poverty level. This rate is better than the national average of 7%.<sup>14</sup>

There is a large disparity in poverty rates among Maryland's regions and different minority and ethnic groups. The counties with the highest rates of child poverty are the western and the lower eastern shore counties with percentages as high as 29%. Two central Maryland counties have the lowest percentages with 8.5% and approximately 9% of children living in poverty.<sup>15</sup> According to the Maryland Department of Planning and Development, in 1999, nearly 15% of African-Americans lived in poverty, while 12.5% of Hispanics lived in poverty, and only 5.5% of whites lived in poverty.<sup>16</sup> The poverty rates for African-Americans and whites have gone down 1.7% and a 0.1%, respectively, since 1989.<sup>17</sup>

Overall, Maryland is a fairly wealthy state. The state has a higher median income for families with children than the national median, a lower percentage of children with parents who do not work year round than the national average, and a lower percentage of children living in neighborhoods with high poverty rates than the national average.<sup>18</sup>

*Children's Physical Health* — Physical health is an important indicator of the well being of Maryland's children. Despite a higher rate of prenatal care than the national average, Maryland has a higher incidence of infant mortality and low birth weight babies (less than five and a half pounds) than most states.<sup>19</sup> The state ranks thirty-third in infant mortality with seven and a half deaths per 1,000 live births compared to nearly seven deaths per 1,000 live births nationally. Maryland ranks forty-first in the nation for low birth weight babies, with 8.7% of infants born with a low weight compared to 7.5% of infants nationally.<sup>20</sup> Studies have traced many physical and neuro-developmental problems to low birth weight<sup>21</sup> including a tendency to score lower on intelligence tests and a higher risk of having behavioral problems and difficulty acquiring social skills.<sup>22</sup>

However, as children age, indicators suggest increased well-being. Child and teen death rates are even with the national rates. Twenty-one children (ages one to fourteen) per 1,000 died in Maryland, slightly lower than the national rate of twenty-two deaths per 1,000. The teen (ages fifteen to seventeen) violent death rate was the same for Maryland and the nation, fifty-one deaths per 1,000 teens. Maryland also has fewer uninsured children—9% of children are uninsured—which is lower than the national rate of 12%.<sup>23</sup>

*Children's Mental Health* — As resources for children's mental health services continue to shrink, the numbers of children in need of help is increasing. A recent White House Conference on Mental Health estimated that one in ten children and adolescents suffer from mental illness severe enough to cause

impairment.<sup>24</sup> However, 70% of these children do not receive the treatment they need, with minority children most likely to suffer without treatment. Part of the reason for such dramatic under-treatment of childhood mental illness can be attributed to the difficulty in diagnosing mental health problems in children when families often lack the requisite knowledge and ability to identify symptoms.<sup>25</sup>

Many children may go without treatment because private insurance companies offer very limited services for the treatment of mental illnesses and those services are declining. In a survey by the Maryland Mental Health Coalition, 76% of those surveyed reported increased difficulty in obtaining services for the treatment of mental illness and substance abuse over the last five years.<sup>26</sup> Not only are services difficult to access, but also the services provided by private insurance companies are not adequate for children with reoccurring problems. Often insurance companies will only provide for appointments with a psychiatrist or counselor, but offer no intensive outpatient solutions short of residential treatment. This treatment is often not sufficient for the treatment of serious cases.<sup>27</sup>

The decrease in access to services is not limited to children with private insurance. Though children with Medicaid often have access to more services on paper, access to those services are limited due to lack of funding and an overburdened health care system. As awareness of childhood mental illness has increased, so have the number of diagnosed cases. Now, 40% of individuals receiving treatment for mental disorders and substance abuse problems through public health systems are children. The Governor has offered an additional sixty-six million dollars in funding to public mental health systems, which has alleviated the problem somewhat, but this is perhaps a case of too little too late. The public mental health system needs more housing and more clinicians to keep pace with the explosion in users, both juvenile and adult.<sup>28</sup> The problem of under-funding for Medicaid recipients and a lack of a continuum of care for those with private insurance is exacerbated by the shortage of mental health professionals who specialize in children and teenagers.<sup>29</sup>

While there are many nominal services available to children with mental health problems in the community, there is not a continuum of care necessary to ensure children are not being funneled into the juvenile justice system for mental health treatment. Few programs are skilled at preventing at-risk children with mental health problems from becoming involved with the juvenile justice system. Due in part to a lack of funding, there are very few wrap-around programs to help youth with mental health problems.<sup>30</sup> The shortage of mental health treatment has resulted in the reliance on the juvenile justice system to care for those whose behavior has become unmanageable in the home or in the community.

**Education** — Educational attainment is one of the strongest indicators of success for youth; young people who are academically successful are more likely to avoid the juvenile justice system, go on to higher education, and attain gainful employment. Maryland's test scores are on par with the national averages; in 1998, 32% of Maryland fourth graders scored at or above the proficient level in reading, which is the same as the national average. The state and national rates of reading proficiency were also the same for eighth graders at

*As resources for children's mental health services continue to shrink, the numbers of children in need of help is increasing.*

35%. Maryland's students scored lower than the national average in eighth grade writing in 1998, and in 2000 in fourth grade math and eighth grade science.<sup>31</sup>

The disparity between the test results of African-American and white students presents one of the problems facing Maryland's education system. In 1998, only 11% of African-American fourth graders and eighth graders read at or above the proficiency level as opposed to 40% of white fourth graders and 42% of white eighth graders in the same year. There was an even larger disparity in the test results of the 1998 writing test given to eighth graders. Only 7% of African-American students tested at the proficient level, while 32% of white students demonstrated proficiency in writing. The 1996 math test issued to fourth graders showed 70.2% of African-American tested below the basic level of proficiency, which was significantly higher than the nearly 23% of white students who tested below the basic level. The mean SAT scores of students show a similar disparity between the races. In 2002, the mean scores for African-American were 428 on the verbal section of the test and 420 on the math for a combined score of 848. In the same year, the mean score for white students was 542 on the verbal and 550 on the math for a combined score of 1092.<sup>32</sup>

The disparity between minority students and white students is also reflected in graduation rates. Maryland ranks nineteenth in the nation in high school completion with a 75% graduation rate. For white students the graduation rate is 80%, but for African-American students it is only 66%.<sup>33</sup> The lower graduation rate among African-American students could be related to the high suspension rate for African-Americans. During the 2000–2001 school year, African-Americans made up only 37% of students enrolled in public schools, but they accounted for 58% of those suspended.<sup>34</sup> Arrests for school related offenses are also higher for African-American students, however one urban district is making efforts to reduce the numbers of in-school arrests. Arrests generated from school related offenses have fallen from over 2,000 in 1999 to 845 in 2001 in the district.<sup>35</sup>

The inequity of resources for public education is another serious challenge faced by the education system in Maryland. In a study conducted by Education Week in 1999, Maryland scored a D- for state equalization efforts in school funding. Though Maryland does target funds to property-poor regions, wealthier regions still have more funding per pupil. Part of the reason for this continued disparity lies in a 1983 decision from the Maryland Court of Appeals. The court found in *Hornbeck v. Somerset County Bd. Of Education* that, although the Maryland Constitution does guarantee "a thorough and efficient System of Free Public Schools," the state is not required to ensure that each district has mathematically equal expenditures for each student.<sup>36</sup> Based on this ruling, districts are allowed to supplement state funds with local taxes, which may vary according to the economic prosperity of the region. However, Maryland is making attempts at directing teachers and resources to lower performing districts.<sup>37</sup> Teacher salaries are slightly higher than the national average, but every county in Maryland has reported a teacher shortage in several subjects.<sup>38</sup>

**Substance Abuse** — Drug abuse violations accounted for 203,900 juvenile arrests in the United States in 2000. Alcohol-related offenses, including driving under the influence, liquor law violations and public drunkenness, amounted to more than 200,000. Without factoring in the influence of drugs or alcohol in arrests

*Educational attainment is one of the strongest indicators of success for youth; young people who are academically successful are more likely to avoid the juvenile justice system, go on to higher education, and attain gainful employment.*



on other charges, arrests for substance abuse constituted 16% of all juvenile arrests.<sup>39</sup> In Maryland, 6,799 juveniles were arrested for drug abuse violations—1,360 for liquor law violations and 301 for driving under the influence in 2001.<sup>40</sup>

A survey of sixth, eighth, tenth and twelfth graders conducted in April 2001 indicated that 46.5% of children had tried marijuana at least once in their lifetimes. Marijuana was by far the most common drug among one-time users, experimental, and frequent users in eighth grade and high school. The second most common drug among all three types of users in eighth grade and the most common among sixth graders was inhalants; among high school students the second most common drug of choice was MDMA, commonly called Ecstasy. This statistic fits with a statewide trend of increased use of the drug, particularly among school-aged children.<sup>41</sup>

#### Students Reporting Past Year Drug Use, Maryland 2001<sup>42</sup>

Drug	6th Grade	8th Grade	10th Grade	12th Grade
Marijuana	2.0%	15.2%	28.8%	37.9%
Inhalants	3.5%	4.7%	4.1%	2.9%
LSD	.8%	3.2%	6.4%	8.8%
Cocaine	.7%	1.7%	3.2%	4.1%
Hallucinogens	.6%	3.1%	5.3%	7.0%
MDMA (Ecstasy)	.7%	3.9%	8.0%	10.9%
Amphetamines	1.0%	4.0%	7.7%	9.3%
Barbiturates/Tranquilizers	.5%	1.3%	3.7%	5.1%
Narcotics	.6%	1.8%	5.0%	6.4%
Methamphetamine	.8%	2.7%	3.5%	3.1%

**Child Abuse and Neglect** — A child is abused or neglected every thirty-two minutes in Maryland.<sup>43</sup> During 2001, children's protective services in Maryland investigated 31,548 cases of alleged maltreatment. Neglect cases comprised 42%, physical abuse cases accounted for 37%, and sexual abuse cases made up 12% of the investigations. The investigations yielded 7,874 victims.<sup>44</sup> In 1998, nine children died due to abuse and fifteen due to neglect.<sup>45</sup> There was no readily available data on the percentage victims who were girls and the percentage who were boys.<sup>46</sup>

Child abuse strongly correlates with juvenile delinquency, especially among girls. About 40 to 73% of girls in the juvenile justice system are believed to have been sexually and/or physically abused, compared to approximately 24% of girls in the general population. Girls who are abused or neglected are twice as likely to be arrested than girls who are not abused and have a continuing risk of arrest for violence as adults.<sup>47</sup> According to a report conducted in the spring of 2001, 24% of the youth pending placement in Maryland have suffered some sort of abuse, physical or sexual.<sup>48</sup> According to the Department of Human Resources (DHR), which is the umbrella organization for the Department of Social Services, the average time between contact with DHR services and contact with Department of Juvenile Services (DJS) is 1.6 years. Between 2000 and 2002, 6,036 of the children involved with DJS had previous contact with DHR.<sup>49</sup>

*A child is abused or neglected every thirty-two minutes in Maryland.*

**Violence** — A child or teen in the United States is killed by gunfire every three hours; in Maryland gunfire takes the life of a child or teen once every four days.<sup>50</sup> Children are at a much greater risk of being the victims than the perpetrators of violent crimes. One out of every nineteen victims of violent crime, and one of every three victims of sexual assault is under age twelve. The arrest rates for juveniles in Maryland reflect less violence among youth than the national average. According to an OJJDP report based on FBI statistics in 1999, the violent crime index rate for Maryland was 304 arrests per 100,000 juveniles. The national average was 366 arrests for violent crimes per 100,000 juveniles.<sup>51</sup>

Gang membership has been shown to be a factor in delinquency. OJJDP published an extensive report finding that gang members account for a disproportionate share of delinquent acts, especially violent offenses.<sup>52</sup> The report also found that gang presence had increased in Maryland. In the 1980's, Maryland had only two cities with visible gang activity, but by 1998 the state had ten.<sup>53</sup>

*A child or teen in the United States is killed by gunfire every three hours; in Maryland gunfire takes the life of a child or teen once every four days.*

**Girls at Risk** — Many of the risk factors faced by Maryland's boys have an even more negative impact on girls in the state. 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.<sup>54</sup>

Mental illness is also more common among girls in the juvenile justice system than boys.<sup>55</sup> In the first study of post-traumatic stress disorders (PTSD) in female juvenile offenders, as reported in the *Journal of the American Academy of Child and Adolescent Psychiatry* in 1998, nearly 49% were experiencing symptoms at the time of the study. Female offenders were 50% more likely to suffer from PTSD than male offenders. This fact is linked to the fact that girls in the juvenile justice system are more likely to be victims of violence and boys were more likely to be witnesses.<sup>56</sup>

Teen pregnancy is another significant risk factor leading to involvement by girls in the juvenile justice system. The teen birth rate in Maryland in 2000 was twenty-three per 1,000 in girls ages fifteen to nineteen, which marks a decrease from thirty-three per 1,000 in 1990 and is better than the national rate of twenty-seven per 1,000.<sup>57</sup>

## **B. Due Process in the Juvenile Justice System**

### *Evolution of Juvenile Court*

The complexities involved in addressing the special needs of children at risk of delinquency underscores the importance of a specialized juvenile court system. The history of juvenile delinquency proceedings as separate and distinct from adult criminal proceedings dates to 1899 when the first children's court was established in Cook County (Chicago), Illinois.<sup>58</sup> As similar courts around the country developed, so did the law pertaining to these specialized proceedings.

The evolution of Maryland's juvenile courts began in Baltimore City in 1902.<sup>59</sup> In 1916, the General Assembly passed a new law<sup>60</sup> extending the separation of juvenile and adult courts beyond Baltimore City and into the counties. The law also defined delinquency and prohibited children under the age of



fourteen from being sentenced to prison. Even though a distinction between juvenile and adult courts existed by law in Maryland, it was not a reality in the majority of Maryland's counties; in 1922, only seven counties had juvenile courts.<sup>61</sup> From 1931 to 1945 the Maryland General Assembly passed a series of laws creating a statewide juvenile court system that closely resembles the current system.<sup>62</sup>

The juvenile court in Maryland varies in its composition throughout the state. In some jurisdictions, only judges preside over juvenile cases; in other jurisdictions there is a combination of judges and masters; and in some jurisdictions, masters have very limited roles, such as presiding over arraignments only.<sup>63</sup> Masters have the authority to order detention or shelter care, subject to immediate review by a judge if requested by any party, and can hear any case or matter assigned to them by the court except a waiver petition.<sup>64</sup> With a few legislative exceptions, the court has jurisdiction over children under the age of eighteen.

### *The Purpose of Juvenile Court*

The Maryland Code enumerates several purposes of the juvenile court that provide for the protection of the community and the child and ensure accountability.<sup>65</sup> In determining the consequences of delinquent behavior, the juvenile justice system must weigh a variety of factors including the threat the child holds to his or her own safety or the public's, the child's accountability for the acts he or she has committed, and how the system can assist the child in becoming a productive and responsible citizen. Whenever possible, the system must hold the parents responsible for the acts committed by the child and bear the responsibility for rectifying the problem or problems that led to the act. To assist in the child's rehabilitation, the juvenile justice system must provide for therapeutic programs that are consistent with the child's best interest without jeopardizing public safety. A child can only be separated from his parents in the most extreme cases. If the juvenile justice system deems a separation necessary, it must provide an out-of-home placement that is a safe and caring environment that approximates as nearly as possible the role of a parent. The Maryland Department of Juvenile Services has the primary responsibility for providing children in the juvenile justice system with appropriate services from probation to residential treatment.

### *Historical Role of Probation in Juvenile Court*

Traditionally the probation officer's role in juvenile court was central to the rehabilitation of young defendants. Probation began as an experiment, and some of its early successes were with juveniles. In 1847, a Boston shoe cobbler named John Augustus convinced a court to bail nineteen boys into his custody, while the children's cases were continued. After six months, Augustus returned to court with his boys, impressing the judge with his effective reforms of the children.<sup>66</sup> From this early start, the juvenile probation function gradually expanded, becoming common across the nation by 1925.<sup>67</sup>

Juvenile probation was established in Maryland in 1916.<sup>68</sup> Maryland's law provided for the appointment of a paid probation officer who could investigate

*The role of defense counsel in juvenile court and the right to counsel for poor children and youth did not evolve until well after the creation of the original juvenile courts and the establishment of the probation function.*

cases, represent the child, and who would have custody over the child. The role of the probation officer was further expanded in 1931 when the General Assembly passed a law establishing professional standards for probation officers, such as requirements that the probation officer have a year of experience in social work.<sup>69</sup> Before the 1960s, each county handled juvenile cases without any accountability to a central authority. Children's needs were often lost in the crush of local financial concerns and beliefs about punishment.<sup>70</sup> In 1966, the Department of Juvenile Services was formed in response to studies finding a lack of uniformity in Maryland's adjudication and sentencing process.<sup>71</sup> To remedy this problem, the department was given the power to ensure there was a "central coordinating agency for juvenile investigation, probation and aftercare services."<sup>72</sup> In 1967, the department took on administrative responsibilities previously held by the Department of Public Welfare, including probation services, aftercare, training schools and forestry camps. Today, the Department of Juvenile Services maintains many of the same functions that it had by the end of the 1960s.<sup>73</sup>

### ***Development of the Right to Counsel and Maryland's Indigent Defense System***

The role of defense counsel in juvenile court and the right to counsel for poor children and youth did not evolve until well after the creation of the original juvenile courts and the establishment of the probation function. In a series of cases during the 1960s, the United States Supreme Court, concerned about the protection of due process for the poor and for children and youth, clarified the constitutional guarantees of counsel provided by the Sixth and Fourteenth Amendments to the U.S. Constitution. In 1963, the United States Supreme Court held in *Gideon v. Wainwright* that the federal constitutional right to counsel requires the appointment of an attorney to represent a poor person accused of a felony offense.<sup>74</sup> The Court emphasized: "[I]n our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him."<sup>75</sup> In 1966, the Court began to extend the right to counsel to juveniles, ruling that in cases involving waiver of juvenile court jurisdiction the court must provide the child with counsel.<sup>76</sup> One year later, the Court extended the right to counsel to children and youth in delinquency proceedings.<sup>77</sup> Children and youth in Maryland who cannot afford a lawyer to protect their interests are provided with a lawyer from the Office of the Public Defender.

Maryland is one of sixteen states with a statewide Public Defender System.<sup>78</sup> The Maryland General Assembly created the Office of the Public Defender in 1971 to "provide for the realization of the constitutional guarantees of counsel in the representation of indigents." The Office of the Public Defender represents adults and juveniles who cannot afford a lawyer without undue financial hardship.<sup>79</sup> The public defender system is responsible for ensuring that effective counsel represents indigents at every stage of the process.<sup>80</sup>

The statewide Office of the Public Defender is governed by a Board of Trustees. The Board is comprised of three individuals appointed by the governor for three-year terms. Two of the members must be practicing attorneys. The Board of Trustees is responsible for appointing the Public Defender, who must be admitted to practice law in Maryland by the Court of Appeals and have at

*Maryland is one of sixteen states with a statewide Public Defender System.*

least five years of legal experience. The Public Defender, with the approval of the Board, appoints Deputy Public Defenders and a District Public Defender for each district. Each District has its own Advisory Board consisting of five members, one of whom must be a judge from either the circuit or district courts in the region. The remaining four members must be practicing attorneys and the Governor appoints all five members for three-year terms.<sup>81</sup>

To carry out the enormous responsibilities involved in representing the poor, Maryland's Office of the Public Defender has five formal divisions to handle the variety of cases that fall within its authority. The Appellate Division handles appeals and provides research for staff and panel attorneys in every Public Defender District. The Capital Defense Division handles cases that could result in the death penalty for an indigent defendant. The Children in Need of Assistance (CINA) Division represents parents in CINA proceedings. The Collateral Review Division represents indigent inmates with legal concerns dealing with their incarceration. The Mental Health Division represents individuals who have been involuntarily committed to a psychiatric hospital and criminals with possible mental health problems.<sup>82</sup>

Those in need of the services of the Office of the Public Defender must apply and be assessed for eligibility. Each local public defender office is responsible for investigating the financial status of the client.<sup>83</sup> Any child client must be qualified for counsel through her parent and the parent's financial resource until the child reaches the age of eighteen. Parents are required to bring verification of income to process the eligibility form. There is a \$25.00 administrative fee billed to the parent to determine eligibility. Additional court costs can be assessed against parents by the Court.

### C. The Role of Defense Counsel in Delinquency Proceedings

The presence of well-trained, well-resourced defense counsel is vital to a practical realization of due process and accountability of the juvenile justice system. It is expected that juvenile defense counsel is able 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.<sup>84</sup> 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. Juvenile defense counsel plays a critical role at every stage of the juvenile court process.

Maryland law recognizes the critical role of defense counsel and states that children and youth have a right to counsel at every stage of the juvenile delinquency proceeding. The law is anomalous in that children who cannot afford an attorney do not have the right to be represented by the Office of the Public Defender until a waiver or adjudication hearing. The right to public defender representation continues through post-disposition.<sup>85</sup> There are many opportunities for advocacy throughout Maryland's juvenile court process which are unfortunately unavailable for children and youth reliant on the public defender system.

*The public defender system is responsible for ensuring that effective counsel represents indigents at every stage of the process.*

### *The Assistance of Counsel Early-On*

**Arrest** — There are opportunities for advocacy by juvenile defense counsel in Maryland as early on in the process as arrest and intake. National standards recommended that police inform juveniles that they have a right to have an attorney present, and that the intake officer of a juvenile facility promptly call a public defender to represent the child if he is detained.<sup>86</sup> At arrest defense counsel has an opportunity to advocate for the release of a child from police custody by addressing the cause of the arrest, such as violation of a court order, the legal grounds of arrest, and concern for the child’s safety or runaway status.<sup>87</sup>

**Detention** — If defense counsel cannot secure release of the child from a police officer she has an opportunity to advocate for the child’s release to a Department of Juvenile Services intake officer. National standards recommend that when an intake department has initial responsibility for authorizing detention, the lawyer should promptly seek to discover the grounds for removal and present facts and arguments for release at the intake hearing or earlier.<sup>88</sup> The Maryland Code gives the Department of Juvenile Services intake officer the initial responsibility for authorizing detention but only if the child or others must be protected or the child is likely to leave the jurisdiction of the court.<sup>89</sup>

**Emergency Arraignment** — If the Department of Juvenile Services seeks continued detention, an emergency arraignment or detention hearing will be held before the court no later than the next court date. Early intervention by defense counsel allows her to prepare for the detention hearing to argue against the use of detention under the law and present an alternative plan to the court which ensures the child will return to the next court hearing and will not pose a danger to himself or the community. While there is no right to a public defender at an emergency arraignment, some local public defender offices recognize the enormous loss of liberty at stake and represent the child for purposes of detention regardless of income.

**Detention Review** — Maryland law provides a special opportunity for defense counsel to revisit the issue of detention by providing a mechanism for review.<sup>90</sup> National standards require defense counsel to immediately consider all steps that may in good faith be taken to secure the child’s release.<sup>91</sup>

**Intake** — For children who are not detained, defense counsel can play an active role at the intake process. National standards call for the participation of defense counsel at intake.<sup>92</sup> The Department of Juvenile Services intake office reviews all citations and complaints. The intake officer must ultimately consider whether judicial action is in the best interest of the public or the child. Defense counsel can take an active role in preparing the client for the intake interview and advocating for resolution short of the formal juvenile court process. The intake officer has discretion to close the matter at intake, propose an informal adjustment, or authorize the filing of a petition and forward the complaint to the State’s Attorney’s Office. Intake must forward all felonies to the State’s Attorney’s Office but can recommend the case be returned to intake. Defender counsel can provide information about the child, his family, school

and other social involvement which may prevent the matter from going to the juvenile court. Should the intake officer recommend the petition to the State's Attorney's Office, defense counsel can advocate that the Assistant State's Attorney defer prosecution or refer the felony to intake for diversion.

*The Attorney Client Relationship* — Ultimately, the presence of counsel early on in the process helps to foster the most important component of representation, the establishment of a meaningful attorney-client relationship. The attorney-client relationship does not develop in the few minutes before a court hearing in a public hallway or through telephone conversations from a detention center. Juvenile defenders must be able to elicit information from young clients that is deeply personal and at times painful but necessary to protect the client's rights and ensure successful outcomes. Juvenile defense counsel further has a duty to ensure that young clients know what is happening in their cases and can participate in the decision-making process at every stage.<sup>93</sup>

### **The Assistance of Counsel in Juvenile Court**

*Arraignment* — Once the child's petition has been filed in juvenile court, he must appear before the court for an arraignment. At an arraignment hearing the child is given notice of the charges alleged in the petition. The child must decide whether he will enter a denial or admission to the petition. Defense counsel is fundamental in assisting the child in making such an important decision because only counsel can begin to assess the merits of the case, review the petition for probable cause and make other preliminary objections. Counsel can also advise the child of his rights and the potential consequences of an admission.

*Waiver of Jurisdiction* — At arraignment the State's Attorney's Office has an opportunity to file a petition for waiver of juvenile court jurisdiction. In any case in which the state is seeking waiver of jurisdiction, Maryland law provides the opportunity for a full waiver hearing before a judge. At the waiver hearing the State must prove by a preponderance of the evidence that the child is an unfit subject for juvenile rehabilitative measures. The Court must consider: the age of the child; mental and physical condition of the child; the child's amenability to treatment in any institution, facility, or program available to delinquents; the nature of the offense and the child's alleged participation in it; and public safety.<sup>94</sup> In any case in which waiver is likely, counsel should promptly investigate all circumstances of the case bearing on the appropriateness of waiver, secure the disclosure of all reports and other evidence to be submitted for the hearing and file all motions necessary to assist in the preparation of the hearing, including appointment of an investigator or expert.<sup>95</sup>

*Pre-Trial Advocacy and Preparation* — When a child decides to exercise his right to an adjudication or trial it is imperative that counsel be prepared for all hearings. To protect rights of the client early on, the lawyer has a duty to conduct prompt investigation of the circumstances of the case and of all facts that provide information regarding the offense and responsibility for the acts alleged. The investigation should always include efforts to secure information



from the police, the prosecutor and all information related to education, probation and social welfare authorities. Defense counsel has a duty to investigate even if the client admits to the charge or made statements to the police.<sup>96</sup>

*Adjudication and Plea Negotiation* — At adjudication the State must prove the allegations in the petition beyond a reasonable doubt.<sup>97</sup> Only after thorough investigation is defense counsel in a position to advise the child about his right to a full adjudication hearing on the merits, possible plea negotiations and whether the child should enter an admission to the allegations. If the client chooses to exercise his right to a hearing on the merits, counsel must be prepared to present evidence, examine witnesses, and prepare the client to testify or remain silent and make all relevant arguments.<sup>98</sup> Counsel has an obligation to protect her client's rights through an active motions practice, including motions to dismiss, motions to suppress, motions for the appointment of an investigator, motions for appointment of necessary experts, and other pertinent motions.<sup>99</sup>

*Disposition* — If a child is found involved with the allegations of the petition beyond a reasonable doubt, the court shall hold a separate disposition hearing unless all parties agree to proceed to disposition the same day as the adjudication. Because the court will make an important decision regarding the need for treatment, guidance and rehabilitation, which could ultimately result in separating the child from his family, counsel's obligation to thoroughly investigate continues throughout disposition. Defense counsel, with the assistance of a social worker or other investigator must interview the child and family and gather all evidence that may be presented to the court, such as social investigations, psychological, psychiatric or other reports, even though such reports may not be readily available.<sup>100</sup> To be sure that any ordered treatment will result in a successful outcome, counsel should be familiar with the dispositional alternatives available to the court and with community services that might be useful in fashioning the client's dispositional plan.<sup>101</sup>

*Post-Disposition* — The child has a right to appeal decisions made by the juvenile court at adjudication and disposition.<sup>102</sup> Consistent with national standards, Maryland provides the right to a public defender post-disposition for appeals and other hearings including reviews and modifications of court orders.<sup>103</sup>

## Critical Stages of the Maryland's Juvenile Justice Process

**Right to Counsel:** any child represented by appointed or retained counsel is entitled to the assistance of counsel at every stage of any proceeding. If indigent, she has the right to be represented by the Office of the Public Defender at any stage in a waiver, adjudication, disposition, modification or vacation of court order.

**Arrest:** a law enforcement officer may take a child into custody pursuant to a court order or pursuant to the law of arrest. A law enforcement officer or authorized person may also take a child in to custody if he believes the child is in danger or believes the child has run away from home. After notifying the child's parent, the officer must release the child, bring the child to the court or a place of detention or shelter care designated by the court.

**Complaint:** a written statement made by any person or agency to an intake officer, which, if true, would support the allegations of a juvenile petition. An Intake Officer from the Department of Juvenile Services (DJS) has twenty-five days to review the complaint, determine jurisdiction and upon consideration of what is in the best interest of the child either refuse authorization to file a petition, propose an informal adjustment, or authorize the filing of a petition and forward the complaint to the State's Attorney's Office. If the complaint alleges a felony, the intake officer must forward it to the State's Attorneys Office for processing.

**Detention:** a police officer or other authorized person can take a child into custody and bring the child to the court or a place of detention or shelter care designated by the court. Only the court or an intake officer can authorize detention, community detention or shelter care for a child who may be in need of supervision or delinquent.

**Emergency Arraignment:** any child placed in detention has the right to a hearing on the petition for continued detention no later than the next court date.

**Emergency Review of Detention:** any party may request an emergency review of detention which must be heard immediately.

**Filing of the Petition:** an Assistant State's Attorney (ASA) is responsible for preparing and filing a petition alleging delinquency. Upon receipt of the complaint from intake, the ASA has thirty days to review the complaint, file a petition, refer the complaint to the DJS for informal disposition or dismiss the complaint.

**Arraignment:** the court notifies the child of the allegations in the petition. The child must enter a denial or admission to the petition. A detained child is so notified at the emergency arraignment hearing. A non-detained child appears for arraignment following the filing of the petition.

**Waiver Hearing:** after a full hearing the juvenile court can waive its jurisdiction for any child fifteen or older or a child not yet fifteen who is charged with an act that if committed by an adult would be punishable by death or life imprisonment.

**Transfer Hearing:** the juvenile court does not have jurisdiction over a child, fourteen or older, charged with an act that if committed by an adult would be punishable by death or life imprisonment or a child, sixteen or older, who is alleged to have committed an excludable offense.

**Reverse Waiver:** if a child is charged with an excludable offense in adult court, defense counsel may file a motion to transfer jurisdiction to the juvenile court.

**Adjudication:** the State must prove the allegations in the petition beyond a reasonable doubt.

**Disposition:** if a child is adjudicated delinquent, the court shall hold a separate disposition hearing. A disposition hearing can be held on the same day as the adjudication if all parties agree to waive their right to five days' notice.

**Post-Disposition Proceedings:** the child has a right to file an exception to a master's findings at adjudication or disposition. The appeal is heard before the judge *de novo* or on the record. The court may set periodic reviews of probation or commitment. The DJS can seek a hearing to show cause to revoke probation and commit the child to DJS. The court can modify or vacate its order at any time upon the petition of any party, DJS or on its own motion.





# CHAPTER TWO

## Assessment Findings

### Part I

#### Unequal Access to Counsel

*“The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child ‘requires the guiding hand of counsel’ at every step in the proceedings against him.”<sup>110</sup>*

*The United States Supreme Court*

The active participation of counsel “on behalf of all parties subject to juvenile...proceedings is essential to the administration of justice and to the fair and accurate resolution of issues at all stages of those proceedings.”<sup>104</sup> This basic tenet of our juvenile justice system appears more a hope than a reality for children and youth in Maryland. This study found unacceptably high rates of waiver of counsel by children and youth, a process for determining eligibility for defender services that worked to restrict representation, and the absence of counsel during many of the most important stages of the justice process.

#### A. Waiver of Counsel

One of the most significant and detrimental symptoms of the undervaluation of counsel is the consistently high numbers of children who waive counsel. In four of the jurisdictions visited, at least 40 to 58% of the youth routinely waived the right to counsel. Most of the jurisdictions that reported that they had “no idea,” estimated 40 to 50%. In one jurisdiction, where “not sure” was the common answer among stakeholders, site visits revealed that 58% of the

*“Counsel needs to be made available to talk to youth before they make a decision about waiving their right to counsel.”*

*Chief Juvenile Division,  
State’s Attorney’s Office*

youth on the docket waived the right to counsel at arraignment and adjudication. One DJS worker confirmed that the docket observed was normal for purpose of waiver. In six of the jurisdictions, it was reported that “some” youth waived counsel. One judge said: *“It happens on minor cases, not much but it does. I don’t normally allow it to happen in serious cases.”* Court observations showed 33% of children and youth waived counsel.

Not one juvenile court tracks the number of children and youth waiving counsel. When asked about waiver, many judges and masters had no idea how many youth appeared without counsel and seemed relatively unconcerned. In only two jurisdictions, stakeholders reported and team members observed no waiver of counsel. One assessment team member wrote:

*“Failure to appoint counsel is a non-issue in this county. There is a strong philosophical bias, and equally strong policies and practices, which recognize the right to counsel and ensure diligence in compliance. The culture established by the indigent juvenile defense bar is pervasive on a day to day basis here.”*

*“When we do arraignments or detention and kids are not represented — that’s not right.”*  
Assistant Area Director,  
Department of  
Juvenile Services

While some judges persist in their ignorance of the import of high rates of waiver of counsel, other stakeholders recognize the dramatic effect counsel, or the lack of it, can have on a child. A supervisor for the Department of Juvenile Services gave this example: *“There were two kids this year who waived counsel. If they had lawyers they would not have been placed in detention.”*

IJA/ABA Juvenile Justice Standards prohibit waiver of counsel: *“A juvenile’s right to counsel may not be waived.”*<sup>105</sup> In Maryland, however, a child may waive the right to counsel after a full advisement by the court.<sup>106</sup>

*“Every child should be represented. I will not allow a child to waive the right to counsel. I always talk to parents about the importance of lawyers for children.”*  
Juvenile Court Judge

In most jurisdictions in Maryland, children and youth are advised of their right to counsel at their first appearance. In three jurisdictions visited, separate initial hearings are scheduled to address the issue of counsel alone. The advice given by masters and judges to children and youth about the right to counsel varied from county to county. Assessment team members observed masters and judges who thoroughly addressed the issue of counsel and explained the entire process to youth and their families. Some masters seemed to be imploring youth to get counsel. This advice, however, was the exception rather than the norm. Many simply informed youth that they had a right to counsel without any further inquiry, while others never addressed the issue with children who appeared without counsel and simply proceeded with the case. Some asked parents after the proceedings ended why they did not get counsel.

## **B. Eligibility for Public Defender Services**

Local public defender offices handle the qualification process differently across the state. Each process is based on the philosophy of the district public defender, resulting in unequal access to counsel. One district public defender has a policy that every child shall be represented. In another jurisdiction that has this policy, the public defender collects a \$75.00 fee if the parent would not have otherwise qualified for services. In one county, the Court routinely imposes a fee of \$150.00 against the parents without having assessed income

### Case Study: No Counsel No Justice

*“Two young boys appeared in court today without counsel. They are both very slight, one is eleven, the other is fourteen. They are standing next to each other at defense counsel table and their parents are standing behind them. The judge addresses them both at the same time. The courtroom is very formal and the judge is looking at them from a raised bench. They are in court for adjudication, two of four co-respondents involved in an assault that took place after school. They are both going to enter admissions. The following exchange takes place:*

*Judge: ‘Do you understand what you are charged with?’*

*Boys: Silent. Nodding ‘yes.’*

*Judge: ‘Do you know what your rights are?’*

*Boys: Silent.*

*Judge: ‘Well, do you?’*

*Boys: Nods ‘yes.’ Both look very scared.*

*The Assistant State’s Attorney reads the statement of facts. The judge accepts their admission without further inquiry and sets the matter in for disposition in two weeks. As the boys are about to leave counsel table, he asks the parents why they did not hire counsel. One parent explained that she made too much money, the other said she had not considered going to the Public Defender’s Office. The judge says nothing more.*

*The Assistant State’s Attorney proceeds with the remaining co-respondents’ cases. One of the co-respondents, also appearing without counsel, exercises his right to have a trial on the merits. The Assistant State’s Attorney calls the two boys who just pleaded guilty without counsel to the stand to testify against the third co-respondent. She asks them both, ‘I haven’t promised you anything to make you testify, did I?’ Both boys respond, ‘No,’ yet they are both pending disposition before the same judge with the same Assistant State’s Attorney who will make a recommendation about their disposition in two weeks.”*

level. Some offices strictly enforce the ten-day rule, which disqualifies many applicants who do not apply for services in time. Others completely waive the ten-day rule as a courtesy to the court, provided the parents show up to be qualified prior to the hearing. Every public defender office had two exceptions to the qualification process. The local public defender’s office will assess the child’s income, not the parent’s, in cases where the parent is the victim or when the parent “refuses” to get counsel for the child. Only one-third of the offices surveyed made an exception to qualification requirements for children who are detained.

Unequal access to counsel is also caused by misperceptions of judicial authority. More often than not, judges and masters reported that they cannot appoint the Office of the Public Defender. Some said they could appoint a public defender and charge a fee if the parent did not qualify for OPD services, but they rarely exercised this option. In one jurisdiction, where an estimated 60 to 70% of the parents never make it to public defender intake, the judge appoints the Office of the Public to avoid waiver of counsel.

Further complicating unequal access to counsel is the end run or “quasi-appointment” of counsel. In several jurisdictions, the Court advises parents to

*“The question is whether or not the Office of the Public Defender is ‘user friendly.’ Very few kids understand what is going on. Most parents do not understand.”*  
*Supervisor, Department of Juvenile Services*

*“No parent should be charged a fee for public defender services. It’s unfair.”*  
Assistant Public Defender

tell the public defender intake that they would not hire defense counsel if the parent did not qualify for services. Many judges told parents that if they refuse to hire counsel the public defender’s office must take the case. The circumvention to get defender services strains the public defender intake resources. One public defender intake staff thinks the “game” creates unfair system:

*“The system is backwards. There are people who qualify who never come to our office and then others who do not qualify who say they are not going to get a lawyer and get out of it. The intake process needs to be made fair. All juveniles should be given an equal chance to know what a lawyer can do and have access to a lawyer.”*

The amount of staff available for public defender intake varies from jurisdiction to jurisdiction. In urban areas, there is a public defender intake division that contacts and locates parents if a child is in detention, assesses eligibility, interviews the child about the case, explains the child’s rights, encourages the child to contact his public defender, and prepares a file for the attorney. In one rural jurisdiction, one person is responsible for all clerical tasks of the office and assesses eligibility for services. In another rural area, the public defender’s part-time investigator qualifies every adult and juvenile applicant. He assesses so many people, the district public defender noted, that he has no time to investigate cases. It was also clear to the assessment team members that there is little to no supervision of intake services.

*“We used to operate under the presumption of indigence for children. The presumption worked better than the qualification system.”*  
Chief Juvenile Division,  
State’s Attorneys Office

Almost every stakeholder asked about the qualification process commented that it is the responsibility of parents to go to the local public defender office. Intake staff for the Office of the Public Defender said that parents are surprised and unprepared at the intake meeting because no one tells them in advance that there is a \$25.00 fee and that they must bring verification of income. The assessment fee appeared to generate immediate discontent between parents and public defender offices. National standards strictly prohibit the payment of a fee to access the services of juvenile counsel regardless of the parent’s or juvenile’s financial resources.<sup>107</sup> Public defender intake reported that they cannot waive the fee and that many parents owe money from prior cases. The office of the public defender sends parents a bill for unpaid fees. The time spent filling out paperwork, tracking unpaid fees and billing parents does not directly benefit the Office of the Public Defender; the \$25.00 fee is paid into the state’s general fund.

Time limitations imposed in case processing are a further barrier to accessing the public defender’s office. In jurisdictions where adjudication is scheduled within two weeks of the arraignment, parents have precious little time to get to the public defender’s office with the necessary paperwork ten days prior to the next hearing. The emphasis to process cases expeditiously is also preventing the majority of judges and masters from granting continuances if the child appears without counsel. Many judges and masters did not ask parents whether the parent went to the office for qualification.

Interviewees made several recommendations about improving access to public defender services. Many stakeholders believed that public defender intake should be present at arraignment to qualify parents. In one urban jurisdiction, intake is located in the courthouse and in that jurisdiction there are almost no waivers of counsel. Moreover, many judges, masters, DJS workers

*"A lot of the parents are waiving [the right to counsel] for them."*

*Juvenile Court Judge*

*"If I had my druthers, the PD's Office would represent every kid at an arraignment hearing and every kid at a detention hearing."*

*DJS Assistant  
Area Director*

and others wholeheartedly supported the proposition that every child should qualify for defender services regardless of his or her parent's income.

### **C. Public Defender Presence**

In some of the jurisdictions visited, the Office of the Public Defender reported that it represented anywhere from 40 to 99% of youth in the delinquency system. In 93% of the jurisdictions visited, even if the parent qualifies for public defender services, an assistant public defender will not be present until the adjudication hearing. Only one urban jurisdiction visited provided representation at arraignment. If a child is detained, the Office of the Public Defender provides counsel for purposes of the detention hearing, in 40% of the jurisdictions visited. Following the detention hearing the parent must apply to the public defenders office for representation.

National standards are clear that defense counsel's role does not end at disposition.<sup>108</sup> The Maryland Code grants the right to a public defender at any stage of a modification or vacation of a court order.<sup>109</sup> However, public defender representation does not routinely continue post-disposition. Most Assistant Public Defenders close cases after disposition, leaving children with review hearings and violations of probation to navigate the system alone. Many offices consider a violation of probation to be a new charge and require re-application to the public defender office. Some offices waived the qualification if the office represented the child during adjudication and disposition.

The absence of counsel is tantamount to an automatic waiver of counsel. Many children and families are not informed about the right to a public defender at a probation revocation hearing and are often confused by the process. While many defenders are not even notified that a client's case is scheduled for review or a violation of probation hearing, some are well aware of scheduled violations and simply do not appear in court.

## **Part II**

### **The Inadequate Assistance of Counsel**

There are many dedicated and well-intentioned public defenders representing juveniles in delinquency proceedings in Maryland. There are a handful of amazing and respected lawyers who go above and beyond what is expected of the juvenile defense attorney by working long hours and weekends to prepare clients' cases. They are respected by their peers and admired by colleagues. However, interviews with defenders, detained youth and court observations left many assessors discouraged and unimpressed with the obvious lack of preparation and advocacy that is provided to so many children in the juvenile justice system and the effect it has on them. One assessment team member noted, *"I just feel like we are throwing away these kids."*

More often than not, public defenders appear in court unprepared, unformed and ill equipped to advocate on behalf of their clients. The absence of preparation through client contact and investigation was palpable. And there are numerous barriers that limit the assistant public defender's ability to pre-



pare cases, including geography, caseloads, and lack of support staff like investigators and social workers. Public defender offices that provided support to their juvenile defense attorneys were able to provide quality representation that was recognized by all who observed.

## A. Pre-Trial Preparation

### *Client Contact*

*“Defenders need to improve their communication with their clients and speak to them in advance.”*  
Intake Officer, Department of Juvenile Services

It is routine for public defenders to meet their clients for the first time at adjudication in either the hallways of the courthouse or the lock-up. Public defender intake informs young clients that they must contact their attorney, not that the child’s lawyer will contact them. Children and youth in detention reported that they are rarely given business cards, phone numbers and other information needed to contact their attorneys. At least 90% of detained youth did not even know their public defender’s name. Despite national standards, there is no public defender policy or standard in place requiring client contact prior to adjudication.

Detention center log books showed that with the exception of a handful of public defenders and regular visits from members of the Detention Response Unit, an overwhelming majority of public defenders do not visit their clients. Detention center staff knew by name the handful of attorneys who did visit clients. Public defenders who are a mere fifteen minutes away from one detention facility admitted that they do not visit clients in detention even on out-of-court days. One public defender office, located in close proximity to a detention center, makes its investigator available to other counties so that face-to-face contact can be made with the client. Defenders who can access this service stated that they only send the investigator for *“those cases that warrant a face-to-face contact.”*

Detained youth reported that their public defenders do not call them and do not return calls from them or their parents. As a result, young clients often rely on what their juvenile counselor, detention center staff or parents say to guess what is going to happen with their case. Youth were often overheard agonizing over their cases, asking detention center staff, *“what do you think is going to happen?”* Assessment team members, public defenders, juvenile counselors and youth reported that defenders spend very little time with clients when they do meet in the hallway or lockup. One defender stated: *“In the large majority of my cases, I get to talk to the client right before court. We are always crunched for time, and I don’t have an investigator to help out on these cases.”*

Ultimately, the absence of contact from public defenders left children and youth feeling as though public defenders do not care about them, do not understand the facts of their case, do not know anything about what they need to be successful, and do not allow the client to make decisions concerning the case. One detained youth said:

*“My lawyer did not spend more than five minutes with me to explain the deal. It made me feel like he made a decision right then and there. He did not ask me once, ‘What do you think about this?’”*

It was also very obvious to assessment team members that when a local public defender office provided the support and resources to contact a client and prepare a case, public defenders were capable of achieving a gold standard of representation.

*“The public defender was present at least fifteen minutes prior to the hearing and actively engaged in talking with her client, and then with the parents through the interpreter. She counseled the child in very ‘kid-friendly’ manner and explained terms, what would be happening during the hearing, and what questions she would ask. She reviewed again with him the rights he was waiving. She spoke with the parents separately. The attorney had a separate report with recommendations. Very impressive work by the public defender.”*

### **Investigation**

The majority of public defenders do not investigate the underlying facts of cases or the educational, mental health and other social history information required to represent young clients. Most of the defenders do not have access to a trained and experienced investigator for one reason or another, nor do they have readily available social worker staff to collect social history information. Many offices have one investigator who handles all of the cases in the office, death penalty, adult felony, adult misdemeanor and juvenile. One District public defender said, *“if an Assistant Public Defender asked me to authorize the investigator’s time for a juvenile case, I would deny the request. We have one investigator for the District who is working on a death penalty case and five first degree murder cases.”*

The only social workers available to assist public defenders with juvenile cases are in Baltimore with the Client Services Unit and the Detention Response Unit. Both units are available statewide but caseloads prevent them from servicing all districts. Many stakeholders believed that social workers were critical to assisting counsel in preparing for waiver, reverse waiver and disposition. One assistant public defender said, *“we are in desperate need for social workers to assist on cases.”* A social worker with the Department of Juvenile Services agreed that social workers could be of enormous value to the public defender offices: *“I think the public defenders need to be paired with social workers who can help with the cases. They may not be lawyers but social workers know how to collect information and make the arguments for treatment.”*

*“The public defenders are not prepared at trial because they have done no investigation because there is no investigator. The Assistant State’s Attorney has the police to assist with investigation. The state definitely has an advantage because here is a tiny [public defender] office with massive caseloads and they have to do it all themselves. No one is there to help them.”*

*Probation Officer,  
Department of  
Juvenile Services*

## **B. Adjudication, Disposition and Post-Disposition Advocacy**

### **Adjudication**

Many individuals interviewed believed that the public defenders’ failure to prepare cases results in higher rates of admissions and gives the appearance that the role of defense counsel in delinquency proceedings is to process cases. Defenders and others estimated that a mere one to five percent of their cases go to trial. Most of the cases appeared to be negotiated in the hallways of juvenile court. In only one jurisdiction, an assessment team member concluded that, *“while most cases end in plea bargains, there is an active trial practice and motions*

*"There are a lot of cases that should go to trial. Sometimes it just seems easier to plead."*  
 Probation Officer,  
 Department of  
 Juvenile Services

*practice, including competency issues, suppression and discovery. Disposition hearings include the use of experts at least in some cases where there are problem areas."*

Many public defenders did not appear to understand the critical role of defense counsel in providing zealous advocacy through an express interest model of representation. One assessment team member wrote: *"The Assistant Public Defender seems somewhat resigned to a 'best interest' model of representation. In other words, since the youth need help and are not likely to be harmed by the system, why fight the adjudication."*

One defender felt constricted by the "culture of juvenile court" and believed that going to trial can be worse for the client than negotiating a good deal with the prosecutor. Out of concern for fairness and the administration of justice, the U.S. Supreme Court extended the Constitutional safeguard of proof beyond a reasonable doubt to juvenile delinquency cases.<sup>111</sup> There is a strong sentiment, however, that judges are not applying this standard in Maryland. One defender said, *"judges are not using beyond a reasonable doubt; they are here to help them get services and get them involved."* An Assistant State's Attorney in another jurisdiction agreed: *"Defense counsel knows with [our] master there is a lower standard of proof than beyond a reasonable doubt, so they work it out."* In other jurisdictions, where defenders reported that the judge or master *"always convicts,"* there is an active and aggressive appellate practice. One defender reported that he was successful with his appellate practice. *"The judge is always going to convict. I have won five out of the last six appeals I took to the Court of Special Appeals. In one year I handled about seven to eight juvenile appeals."* Assessment team members were often struck by the "old school" ways of judges in their approach to delinquency cases. Many in the system are just waiting to "get services" in place for juveniles.

Several cases observed in court were hearings on the merits or trials. In one trial an assessment member noted: *"The assistant public defender is struggling with what appears to be a lack of basic trial practice skills. It is apparent that she understands her client's case well but is having trouble with evidence and witness examination."* Another team member observed: *"During a trial on the merits the public defender looked bored. His body language was terrible. He was leaning back in his chair and leafing through papers. He put his client on the stand. His client was clearly not prepared."* A public defender admitted that there is a lack of preparation. He said, *"I meet my client for the first time at adjudication with nothing but a petition."*

### **Case Study: Private Counsel Means Individualized Sentencing**

*Nine children are on the girls' unit at one juvenile detention facility. One girl has private counsel, and the rest have public defenders or have waived counsel. The girls have a group discussion about their lawyers, which ends up being a comparison between the private counsel and public defenders. The girl with privately retained counsel is pending adjudication. She has already had several long meetings with her attorney. He has her school records and is developing information about her mental health. "I like my lawyer," she says. "He's on my side."*

*The attention she has received from her lawyer stands in stark contrast to other girls' experiences. "I didn't have a lawyer. I had a public defender," one girl mentions with unintended irony. "My P.D. didn't even know my name," complains another girl. "How can you fight for me if you don't know who I am?"*



## Disposition

The court makes significant findings at disposition that ultimately affect a child's liberty interest. Most public defenders are unfamiliar with resources available to and used by the Department of Juvenile Services. It is rare for an assistant public defender to present witnesses and proffer alternative treatment plans to the court. Public defenders rarely access educational records, mental health records or information from available community resources.

Seventy-three percent of the jurisdictions visited engage in the practice of proceeding directly to the disposition hearing following an admission or finding of facts sustained. Only four counties reported automatically setting disposition fourteen days after the adjudication hearing. A juvenile counselor reported, "most cases are admissions where we go to disposition on the same day. We are happy to get it all over with in one day." In some counties, the juvenile counselor provides a report, in others the court rules at disposition based solely on information from children and their parents.

In one county, however, the prosecutors, defenders and juvenile counselors described the judge as a "social worker in a robe." The judge in this county reported that he wants to be well informed and spends at least twenty-five to forty-five minutes on 95% of the disposition hearings. "I order a pre-disposition social history in every case. I want the kids to be either in school or working a job. I want to know about friends. I want to know about the child's needs in order to tailor the disposition for that child. I am a big believer in rehabilitation." The same judge discussed a former public defender who he admired greatly. "She had been to every facility and understood every program. She protected the rights of her client in every case."

It is routine at disposition for a juvenile counselor to be the sole source of information for the court. In some counties, a court liaison, who has no direct contact with or relationship to the child, presents the Department of Juvenile Services' recommendations. Defenders rely on the Department to give them information about their client's school and other activities. It is estimated that judges and masters follow the recommendations of the Department in almost every case. In every county the juvenile counselor provides its report and recommendations for disposition one to two days before the hearing or in court at the hearing. In court, it was often the case that public defenders, judges and masters and assistant state's attorneys read the counselor's recommendations for the first time at the disposition hearing. One intake officer admitted, "we are supposed to give them our report one week in advance of the hearing, but we do not." The sole source of advocacy in most cases is accomplished through cross-examination of the juvenile counselor. Cross-examination was an effective tool for well prepared counsel, but in most cases observed in court resulted in a "counselor says/child says" situation.

The lack of alternative treatment plans and the minimal information provided to the court left some judges feeling frustrated by their options and indicated a desire to have more information at disposition, especially regarding placement. One judge said, "[we] can only give custody to the Department of Juvenile Services. We cannot specify the placement. I do not want to commit youth [to the Department]. It's a waste. I feel like I am doing more harm than good." Many masters and judges believed that children and youth could be treated in the community

*"The judge follows our recommendation ninety-eight percent of the time."*

*Juvenile Counselor,  
Department of  
Juvenile Services*

*“if we had the ability to wrap-around intense services.” As another master stated, “we are trying desperately to do rehabilitation. The tension in the County, however, between punishment and rehabilitation is palpable.”*

Some interviewed believed that there was little public defenders could do to effect change. An Assistant State’s Attorney said, *“good defense counsel knows the drill at disposition. The defense attorney does not have much to say at disposition. The judge will do what the judge wants.”*

Many stakeholders believed that preparation and zealous advocacy were the keys to a successful outcome at disposition. One juvenile counselor said, *“the best public defender I knew, summonsed the head of the Cheltenham Youth Facility to appear in court and all the doctors who wrote reports about her client. She got high marks for representation.”* Other juvenile counselors appreciated informed advocates who could speak to them before they wrote their reports for the court. *“We spend a lot of time discussing cases before I make my recommendation.”*

### ***Post-Disposition***

The right to effective representation does not end at disposition. Counsel is required by Maryland law to represent children and youth through the appellate process and at any subsequent review or violation of probation. This assessment revealed that in an overwhelming majority of the counties visited, public defenders are not present at review hearings or violations of probation, leaving children and youth unprotected at a stage in the process where the risk of incarceration is heightened.

*The right to effective representation does not end at disposition.*

Additionally, most public defenders admitted that they rarely or never file an appeal on behalf of a juvenile client. Between 1996 and 2002, thirty-two juvenile appeals—filed by both the defense and prosecution—were pending in the court of appeals. During the same period, 540 criminal and 747 civil appeals were pending.<sup>112</sup> Recently, the number of juvenile appeals has increased, but not in all jurisdictions. One assistant public defender recalled appealing three cases in the last five years, another could only recall one case in seven years, a third brought three appeals during her seventeen years at the office. The few public defenders routinely filing appeals reported filing as many as seven per year.

### **C. Overloaded, Unequipped and Under-Funded**

Several significant problems face Maryland Juvenile Public Defenders in their efforts to effectively represent indigent juveniles.

#### ***Caseloads***

Using national standards as a touchstone, public defender attorneys in Maryland are overworked. The American Bar Association (ABA) standards recommend that attorneys not handle more than one hundred and fifty felonies a year, or 300 misdemeanors a year, or two hundred juvenile cases a year, or twenty-five appeals in a year.<sup>113</sup> In many jurisdictions, juvenile caseloads do not necessarily exceed two hundred in a year, but attorneys often must handle cases in district court and circuit court, as well as their juvenile cases, pushing their caseloads well above ABA standards.<sup>114</sup> Thus in most mixed jurisdictions the

problem of excessive caseloads is present despite the apparently low numbers of juvenile cases. For example, in one rural jurisdiction there is only one public defender attorney who must handle all cases, so even though there were only fifty-eight juvenile cases in FY 2002, the assistant public defender handled a total of 987 cases, far exceeding the ABA standards.<sup>115</sup> All but three jurisdictions require the attorneys who handle juvenile caseloads to also handle other types of cases. The problem of excessive caseloads extends to those jurisdictions with a specific unit for juvenile defenders. According to the Office of the Public Defender's annual report, in one such jurisdiction caseloads can be as high as 361 cases in a year, but other sources estimate even higher caseloads for that jurisdiction.<sup>116</sup>

In interviews with judges, DJS employees and public defenders, concern about the effects of such high caseloads was voiced repeatedly. Interviewees stated that although the defenders were usually outstanding in their efforts, the huge number of clients made it difficult if not impossible for them to advocate effectively for every client. Most of the stakeholders in the system believed that if public defenders had fewer cases they would be better able to prepare cases. Despite the concerns about high caseloads, some district public defenders do not see a need for a juvenile division or even a juvenile attorney, either because of difficulty in organizing it or because they do not regard the number of cases as a hindrance to effective representation.

Partly causing the huge numbers of cases juvenile attorneys must handle is the rapid increase in cases. From FY 1997 to FY 2002, the Office of the Public Defender took 26,428 more cases.<sup>117</sup> Each jurisdiction experienced an increase in juvenile cases; one jurisdiction experienced a jump as high as 54%,<sup>118</sup> and another an increase of 18%.<sup>119</sup> Two jurisdictions experienced a decline in juvenile cases of approximately 23% each.<sup>120</sup> But despite these localized declines, there was a general increase in juvenile cases throughout the state. As the number of juvenile cases rises, the number of attorneys has not kept up. Many of those interviewed believed that hiring more attorneys was absolutely essential to providing effective representation for indigent clients.

### **Training**

With the increase in juvenile cases and the excessive caseloads public defenders must handle, good training in juvenile issues has become even more important. In this regard, the Office of the Public Defender offers a program entitled Juvenile Court Attorney Training (JCAT),<sup>121</sup> a one-week program dealing primarily with the particular challenges and skills necessary to providing an effective defense for juveniles. Social workers and attorneys are used as instructors in the training program. In FY 2002, nineteen attorneys took the course, which was offered twice.<sup>122</sup> The Office of the Public Defender has also held two training sessions as specialized follow up sessions to JCAT; the sessions covered issues surrounding mental health and education advocacy. These sessions were focused on attorneys who took JCAT training or are veteran juvenile practitioners. The Office of the Public Defender plans to continue offering similar training sessions on specific issues related to juvenile defense. All attorneys in Maryland, including public defenders, must complete twelve hours of Continuing Legal Education (CLE).<sup>123</sup> The Office of the Public Defender offers

*In interviews with judges, DJS employees and public defenders, concern about the effects of such high caseloads was voiced repeatedly.*

*"The work is learned on the job."  
Assistant Public Defender*

*"The [defense] attorneys have such a limited knowledge of the juvenile statute — it's horrendous."*

*Assistant Area Director,  
Department of  
Juvenile Services*

several conferences which satisfy the CLE requirement, each of which offers some training related to juvenile defense.<sup>124</sup> Despite the CLE requirement, there is no mandatory training required for juvenile defenders, although many expressed a desire for additional training.

### **Resources**

In addition to the lack of investigators and social workers, the quality of space, materials, computers and support staff varied among defender offices. Some assistant public defenders had their own offices, some worked out of cubicles. One assessment team member wrote, *"the library is awful. The books are outdated; there are no updates for the Maryland reports and statutes. Attorneys rely on Westlaw exclusively. The Assistant Public Defender even pays for his own business cards!"* The space in which defenders meet clients is often inadequate and public. One assessment team member wrote: *"I viewed the lock-up — confidential conversations cannot occur. In the boys' area there is a separate table, but attorneys use this. Even if attorneys speak with children at the table, there is no sound separation — just a cage separates the two areas. There are lots of boys and the general noise might distract the guards or make it difficult for them to hear conversations. In the girls' lock-up the space is so small the interviewer is standing next to the guard table and private conversations are impossible. In the girls' unit there are so few girls and the location is such that everyone — including the other girls — must hear the interviews."* Another wrote, *"there is no private space for attorneys to talk to children and parents in the intake office. There is a small room upstairs with filing cabinets and a refrigerator that is sometimes used by attorneys to talk to clients. The intake workers have cubicles with no confidentiality."* In one rural defender office, the District Public Defender and the investigator took turns answering the phone between court dockets and other work.

### **Funding**

An overwhelming majority of people interviewed for this report agreed that the Office of the Public Defender is under-funded. An elected Clerk of Court said, *"there is not enough money for public defenders. There is a budget crunch in Maryland and there is no way to fund indigent defense."* One judge remarked, *"[the Office of the Public Defender is] the black sheep for funding from the legislature. The legislature does not want to give money to lawyers representing people charged with committing a crime."* A juvenile counselor agreed: *"In general the barrier is a lack of funding for the public defender."*

### **Pay**

According to the Office of the Public Defender's annual report, pay for public defender attorneys is significantly lower than the salaries of employees in other state agencies in comparable positions.<sup>125</sup> After a year-long study, the Personnel and Benefits Section of the Department of Budget and Management suggested that the salaries be "adjusted by two grades to maintain current internal salary relationships." However, such an adjustment would cost \$3.8 million, and those funds would not be available until FY 2005.<sup>126</sup> The low fees offered by

*"We desperately need more resources in the area of investigators and support staff for the front-line attorneys. It would help tremendously if we had some private space to interview our clients and witnesses."*

*Assistant Public Defender*



the office public defender contribute to the high turnover rate among public defenders and discourage panel counsel from taking conflict cases.

### *Structure and Supervision*

There are two public defender offices that provide representation to juvenile clients as part of a juvenile division. Some offices have a small cadre of lawyers who do mostly juvenile cases but also handle small amounts of adult work. In rural areas, defenders are handling a variety of cases along with juvenile cases. The lack of uniformity in juvenile representation and the inability of juvenile defenders to specialize in juvenile delinquency representation led one district public defender to comment, *“we need to restructure juvenile representation so that one attorney can specialize in juvenile court.”* The structure of juvenile defender offices also allows for juvenile practice to be a stepping stone on the way to what is perceived as more important adult criminal system cases. In one jurisdiction that provides support to the juvenile division, the chief of the division remarked that *“juvenile has grown into a real court. The attorneys just aren’t itching to get out of it like they used to.”*

Almost every supervisor or district public defender carries a caseload. As a result, the lawyers assigned to handle juvenile cases are largely unsupervised. Supervisors from the public defender offices said they rarely watch other attorneys handle cases in court because they have their own caseloads. District public defenders are responsible for handling cases in multiple jurisdictions and have little time to check in with each office. Additionally, issues frontline attorneys confront on a daily basis vary significantly from county to county, making office policy difficult to standardize within a public defender district.

Assistant Public Defenders and some District Public Defenders were very disconnected from decisions and policies handed down that are important to the administration of the Office of the Public Defender. There is no one centralized person who can be reached to assist with juvenile delinquency policy, procedures and practice.

### *Rural Defender Issues*

The practice of law, overall, is vastly different in rural areas compared to urban areas, and Maryland is no exception to this reality. Rural juvenile public defenders must work within a much reduced community of professionals, often having only one judge who hears all cases, dealing daily with powerful and better-resourced prosecutors, burdened with mixed caseloads in Juvenile Court, Circuit Court and District Court (some in multiple counties), and the inaccessibility of service providers. Geographical challenges also present barriers to better representation, limiting visits with detained clients held many miles away or in programs hours from the local jurisdiction. Rural defenders in Maryland exhibited strong community ties and a keen understanding of the environment, which could be translated into better, more humane treatment for many juvenile clients. Against this backdrop, however, rural defenders were almost universal in their statements concerning the lack of panel counsel, confidentiality in a small town, lack of alternatives to disposition and secure placement, and a lack of some basic collateral support services available in more urban jurisdictions.

*The low fees offered by the office public defender contribute to the high turnover rate among public defenders and discourage panel counsel from taking conflict cases.*

*“Confidentiality is a myth in a small town.”*  
Assistant Public Defender

*“We laugh about the cases conflicted out in Baltimore. At some point in time we have represented the victims, the parents, everyone in this town.”*  
District Public Defender

*The refusal to acknowledge the importance of adhering to due process and the role of defense counsel results in a culture that relegates defense counsel to little more than a decorative ornament in a process that often results in unfair outcomes.*

## **D. Due Process Denied — The Culture of Juvenile Court**

Maryland's juvenile justice system routinely ignores Gault's guarantees of fundamental fairness by denying the constitutional rights of the children that come before them. Defenders who zealously advocate for their clients are seen as interfering with the "best interest" model of juvenile court. The refusal to acknowledge the importance of adhering to due process and the role of defense counsel results in a culture that relegates defense counsel to little more than a decorative ornament in a process that often results in unfair outcomes. The "best interest" model in which the juvenile court operates leads to violations of due process aside from the denial of effective counsel. Probation officers play a hyper-role in the process that combines the roles of adversary and defender; courts push forward cases with little regard to due process to meet processing deadlines; and no data is collected which prevents any examination of the fairness of juvenile court.

### *Expansive Role of Probation*

The United States Supreme Court sought to minimize the expansive role of the probation officer when it held that children and youth in delinquency proceedings have a right to counsel.<sup>127</sup> The Court, particularly troubled by the conflicting roles of probation officers found that juvenile court procedures, which rely exclusively on the probation officer, violated due process. The Court rejected the notion that "the probation officer may be relied upon to protect the infant's interest."<sup>128</sup> The Court's response was succinct:

*Probation officers, in the Arizona scheme, are also arresting officers. They initiate proceedings and file petitions which they verify, as here, alleging the delinquency of the child....The probation officer cannot act as counsel for the child. His role in the adjudicatory hearing, by statute and in fact, is as arresting officer and witness against the child.<sup>129</sup>*

*"The probation officer was the prosecutor."  
Detained Youth*

In Maryland, the late appointment of counsel forces DJS officers to perform the function of defense counsel unchecked. Maryland's juvenile justice system appears to function on the assumption that probation officers can be relied upon to protect children's rights.

Probation officers act as both advocates for and adversaries against children. Their involvement in delinquency cases often starts before a child is charged, and may extend through aftercare. Their duties throughout this process range from investigator, social worker, prosecutor, witness, and sometimes to judge. They also perform aspects of the defense function, sometimes explaining to children about their rights or counseling them regarding acceptance of a plea agreement. In practice, the hyper-role of probation results in proceedings that vary little from the unconstitutional procedures rejected by *In re Gault*.

**Dependent Defenders** — Children are not the only the parties in the juvenile system who rely on probation officers. Public defenders readily admit that they know very little about placement options and nothing about the placement process beyond what is told to them by their local juvenile counselors. At least

80% of public defenders interviewed admitted that they are at a complete loss in understanding placement options. Many reported that they need a placement manual, time to visit programs and training about the process. One public defender said, “I am fortunate that I have a good caseworker. But I am always thinking that if that person were to leave, I would not know anything about programs.” In another jurisdiction, one assessment team member noted, “it was apparent that there is no formal strategy to help notify attorneys about newly available resources that might prevent detention in some cases.”

In addition to lacking probation officers’ knowledge base, public defenders often must rely on probation officers’ access to children’s background information. Little time and few resources to conduct independent investigations into school and familial problems, leave public defenders with no option but to rely on probation officers’ reports. This reliance magnifies the role and influence of probation officers in juvenile proceedings, moving them into a sphere that assumes they will protect children’s best interests.

### *Efficiency over Justice*

*“The judge does not want poor statistics, so she will only grant a postponement for one day.”*

*Chief of Juvenile Division, State’s Attorney’s Office*

Juvenile defenders in Maryland daily confront a juvenile court system driven by case-processing statistics and ignorant of the harm of waiver of counsel, the importance of defense counsel presence, participation early on in the process, and zealous advocacy. The motivation to process cases efficiently is laudable and supported by studies showing that unnecessary delay in the time it takes to process a case from arrest to disposition compromises the integrity and reliability of the criminal justice system.<sup>130</sup> In juvenile cases, unnecessary delay detrimentally impacts the length of stay in detention, rates of failure to appear, accountability on the part of the juvenile, and alternative programming.<sup>131</sup> However, studies caution against simply accelerating processing as an end in itself rather than examining the system as a whole.<sup>132</sup> Maryland’s initiative to improve cases processing in delinquency cases appeared to assessment team members to be implemented devoid of the goal of improving justice; rather, the limitations appear to pose a significant barrier to effective representation. The need to be efficient overlooks the obvious need to ensure the early participation of counsel and adequate time to prepare a case.

In Maryland, the Administrative Office of the Courts (AOC) monitors case processing. Consistent with national standards, the AOC imposed a ninety-day standard for processing delinquency cases from the time the petition is filed in juvenile court to the disposition of the case.<sup>133</sup> Every year the AOC ranks each county’s compliance with the time limits. All juvenile clerks interviewed remarked on their jurisdictions’ compliance or reiterated that the clerk’s job is to ensure efficiency in case processing. The scheduling of individual hearings varied from county to county, often leaving a mere two weeks to prepare for adjudication and no time to prepare for disposition. The rapid scheduling of juvenile court hearings also does not take into consideration the point at which the public defender becomes involved in the process.

*“The state’s attorney is there to defend your probation officer.”*

*Detained Youth*

*“I don’t really understand [the court process]. I just go in and listen to what they say. I call my probation officer a lot. He tells me what is going on.”*

*Detained Youth*

*“The judge does not want poor statistics, so she will only grant a postponement for one day.”*  
Chief of Juvenile Division,  
State’s Attorney’s Office

Judges and masters reported that they adhere strictly to the time limitations; some even set their own case processing time lines at forty-five and sixty days. Judges also admitted that they rarely grant continuances in cases to either the prosecutor or the child’s attorney. Some judges and masters recognized that efficiency reigns supreme over justice; many did not believe it was an issue to be concerned about. A few judges understood the significance of a case processing system that did not allow for the participation of counsel until the adjudication hearing. One judge said, *“moving the docket along concerns me the least. We need to try to get it right.”*

The case processing initiative provides little assurance that the juvenile justice system is accountable to the laws that govern it. Because the AOC’s ninety-day time requirement does not begin until the filing of the petition, little is known about the process within the system prior to that point—including rates of failure to appear, the lengths of stay in detention or the accountability of the system as a whole. Several DJS intake staff estimated that a case involving a youth who is not detained can take upwards of six months to process from arrest to disposition, contrasting the goal of holding young clients accountable for their behavior quickly. In one county, it was estimated that the Department of Juvenile Services intake officer does not make a decision regarding the complaint for at least sixty days. In another jurisdiction, the State’s Attorney’s Office has thirty days from the date of the emergency detention hearing to file the petition—even where continued detention is authorized by the Court—leaving young respondents detained without formal charges pending. One clerk said, *“we have no idea how long it takes the State’s Attorney’s Office to file a petition if the child is detained. We would only be concerned if the State’s Attorney’s Office did not file the petition within the thirty days.”*

### **Total Absence of Data**

Most juvenile courts track the number of cases processed each year and annual increases or decreases in caseload.<sup>134</sup> Studies show that the ability to identify opportunities for systemic change involves data collection and the comparison of data to decision points within the juvenile justice system from intake to disposition, including important areas such as detention screening and waiver of jurisdiction.<sup>135</sup> Data provide the ability to discern the outcome of those decisions, how the decisions may impact a particular group, and what outcomes can be changed.<sup>136</sup>

Maryland, like most other states, tracks data regarding caseloads and the amount of time it takes to process a case. There are no readily available local or statewide data on waiver of counsel or participation and presence of the office of the public defender, children detained, the numbers of transfers and waivers filed, outcome of adjudication, outcome of disposition, number of cases judicially reviewed, violations of probation filed, and race or ethnicity of children in the justice system. As noted by one assessment team member:

*“Given the advances in providing good representation for juveniles in this county, it is somewhat surprising that there is not a better system for data collection available to defenders, as well as to the courts. Not a single person had readily available to them information regarding caseloads, demograph-*



*ics, or other information about the flow of cases through the juvenile court and the public defender program.”*

The inability to review data regarding the decision points in Maryland’s juvenile justice system left most interviewees unable to identify trends within a particular county or whether or not important decisions such as waiver of counsel, the use of detention, or waiver and transfer of jurisdiction were uniform or applied without disparate treatment. The total absence of data did not concern most stakeholders interviewed.

### **Part III**

#### **Detention in Maryland**

Placement in secure detention dramatically impacts the lives of children and youth, severing ties with community and family and impeding access to services to address substance abuse, mental health, medical and educational needs. Children and youth 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.<sup>137</sup>

One of the persistent themes in our discussions with children was their sense of isolation. They feel stupid when they go to court because they do not understand what is going on; sometimes, they cannot even hear the judge. They are ashamed of the shackles they have to wear in front of their families. They are angered when their lawyers say “bad things” about their parents, and feel betrayed by the parents who ask that their children be locked up. The children are taken to detention facilities far from home, where family members are rarely able to visit them. They often do not know how long they will be there or their next court date. In most jurisdictions, they do not get credit toward their sentence for the months spent in detention. In many cases, their calls to their lawyers or probation officers go unreturned. These youth feel profoundly abandoned and in danger. They are constantly watching their backs for fear of assaults from other youth.

Almost every aspect of juvenile detention—including dangerous conditions and detention polices—have been scrutinized in Maryland.<sup>138</sup> 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.

#### **A. The Limited Role of Detention**

To prevent abuse and misuse of detention, it is imperative that states identify the goals that constitute the essential framework for detention policy.<sup>139</sup> 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.<sup>140</sup> The Court also stated clearly that pretrial detention cannot be used as punishment.

*“I would be very concerned if my child were at Cheltenham or Waxter. They’re horrible.”*  
Supervisor, Department  
of Juvenile Services

*“The process of going to court with shackles on the ankles and shackles on the wrists tied around the waist is demeaning and humiliating to these kids.”*  
Detention Center Staff

*[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.<sup>141</sup>*

The Maryland Code sets forth the legal justifications for the use of detention, mandates who is authorized to use detention, and delineates time lines for lengths of stay in detention. After a child's arrest, an intake officer may authorize detention only if the child or others must be protected, or if the child is likely to leave the jurisdiction.<sup>142</sup> If the intake officer decides to detain the child, the court must conduct an emergency arraignment on the next day that court is in session; however, the arraignment can be postponed for up to eight days for good cause.<sup>143</sup> Following the detention hearing, the law provides special case processing time limitations for detained youth, limiting the length of time between hearings.<sup>144</sup>

In 2000, the Secretary of the Department of Juvenile Services issued a policy that mirrors the statutory criteria for the use of secure detention.<sup>145</sup> The Department's policy indicates that only those youths "who pose a clear risk to public safety" should be detained.<sup>146</sup> Not one other agency interviewed had a policy in place to guide detention practice.

Recent studies and the findings of the assessment team members indicate that the Department's policy efforts alone have not been successful in ensuring that secure detention is limited to children and youth who pose a clear risk to public safety.<sup>147</sup> The limited data available suggests that only one-third of detained youth are charged with violent offenses, while another third are charged largely with drug offenses or other non-violent crimes. The remaining third of detained youth are admitted for probation violations or warrants.<sup>148</sup> Additionally, assessment team members found that, despite clear policy, subjectivity remained. One assessment team member wrote: "I was troubled by the intake workers and their detention decisions. Their decisions are totally subjective. Each intake worker considers different factors. I asked one intake worker if a new worker came aboard was there a list they could use to help them and the intake worker said, 'No, they would just make up their own process.' This type of subjectivity can lead to the inconsistent treatment of youth."

## **B. Role of Defense Counsel**

In Maryland, the overuse of detention stems from many causes. This assessment reveals that two of the key factors contributing to the overuse of detention are the total absence of defense counsel at detention hearings and substandard detention advocacy. One of the most important roles juvenile defense counsel has is to guard against illegal use of detention by protecting the liberty interest of the young client. The IJA/ABA *Juvenile Justice Standards* are clear:

*It should be the duty of counsel for an accused juvenile to explore promptly the least restrictive form of release, the alternatives to detention and the opportunities for detention review, at every stage of the proceedings where such an inquiry would be relevant.<sup>149</sup>*

*"The court just tries to keep you locked up. People who have homes whose parents want them should go home. Facilities should be for people who have had a lot of chances — not dumb stuff. People are in here for skipping school and arguing with their mom. They are keeping kids in detention for two months for a violation of probation and they leave them here."  
Detained Youth*

In arguing for the least restrictive alternative, defense counsel must be prepared to challenge the legal purpose of detention, present the court with information that would favor release, be knowledgeable about alternatives to detention, and prepared to submit a plan for release. However, in Maryland, caseloads are high, resources are minimal, information is scarce, and time is short.

**No Defense Counsel** — Children’s inability to access counsel may be one of the largest contributing factors to Maryland’s overuse of detention. Despite the knowledge that defense counsel can play a vital role in reducing the overuse of detention, the Office of the Public Defender does not have a statewide policy that all children and youth in need of public defender services shall be represented at emergency arraignment or detention hearings. Policies implemented by local district public defenders in six counties provide defenders at detention hearings. In one county, counsel’s routine presence at emergency arraignments improved outcomes significantly. One assistant public defender observed, “the vast majority of kids initially detained are released at the first hearing.” In jurisdictions without clear and consistently-applied public defender policy, the presence of counsel at emergency arraignments and detention hearings depends on *ad hoc* notification by the Department of Juvenile Services.

*“When we do arraignments or detention and kids are not represented — that’s not right. If I had my druthers, the public defenders would represent every kid at an arraignment hearing and every kid at a detention hearing”*

*Assistant Area Director,  
Department of Juvenile  
Services*

### Case Study: No Alternative Presented

*“Ben” stole a pair of Nike shoes from a store. It’s his first offense. He wants to plead guilty so he “can go home and get this over with.” He’s been detained for nine days. He knows what his public defender looks like, but he doesn’t know his name or phone number and doesn’t have a card. His mother wasn’t able to make it to his detention hearing because she was at work, but his grandparents were with him. The judge told him that he would have been released if his mother had been there, but nobody knew that his grandparents were present, and nobody sought to postpone the hearing to enable his mother to be present.*

*Ben is in a panic. His next hearing is tomorrow, and he wants to make sure that his mother knows about it. His unit at the detention facility was late getting out of breakfast, so he missed the deadline to sign up for phone calls today. The juvenile counselor says he can’t make a call until tomorrow — but tomorrow is too late for Ben. Another staff person at the facility brings Ben to the assessors. “This happens all the time,” she says. “The counselor jerks the kids around.” She will allow him to call home from her office later.*

**Substandard Detention Advocacy** — Detention should not be used to punish, treat, or rehabilitate the juvenile; to allow parents to avoid their legal responsibilities; or due to a lack of a more appropriate facility or status alternative.<sup>150</sup> In an overwhelming majority of the jurisdictions where public defenders were present at the detention hearing, assessment team members observed a total absence of advocacy. Too often public defenders simply submitted on the issue of detention, making no argument at all. When asked by a judge about the issue of detention, one public defender said, “I believe it’s what the parents’ want; so I cannot really argue against it.” Not one public defender questioned the intake officer’s decision to detain or addressed the statutory justification for detention. The inability of defense counsel to challenge the initial decision to detain was disconcerting to many assessment team members.

*“The message I got from my public defender is, ‘Do you want to sit in detention or get this over with?’”*

*Detained Youth*

**Limited Client Contact** — The majority of detained children we interviewed indicated that they spoke with their lawyers prior to the detention hearing in the “bullpen” of the courthouse or in the courtroom during the detention hearing. During these conversations, public defenders must explain the charges, the purpose of the detention hearing, the child’s rights, and collect background information necessary to argue against detention. Time constraints certainly limit these conversations. With few exceptions, children recalled these conversations as lasting less than ten minutes. As a result, children often felt they were not able to share vital information with their attorneys. For example, one youth told an interviewer:

*“There are some things I think are important — like about my daughter and stuff — and I want to say [to my public defender], but I haven’t had a chance to tell him everything yet. I hope I get a chance before court tomorrow.”*

Some children and youth were so overwhelmed by the court process that they could not have a meaningful conversation with their public defenders. Some were so nervous about their imminent court appearance that they forgot their questions. Many found it difficult to follow what the lawyer was telling them. *“It’s confusing,”* said one child. *“I don’t understand nothing they be talking about.”* Often, the conversations were so short and packed with information that youth were not able to adequately process information. One youth inquired, *“I want twenty minutes with my lawyer, not five. Is that so much?”*

In addition to nervousness about court, hunger and fatigue may further limit the child’s ability to provide information to his lawyer. Most attorneys appeared to be unaware of conditions of confinement that may affect their client’s ability to participate in the court process. Most children and youth transported from detention centers are awakened at 5 a.m. on the day of their court appearances. They can be taken to court without having breakfast beforehand and sometimes are not served lunch in the “bullpen.” The lack of sleep and food are factors that may limit a child’s ability to concentrate.

**Incomplete Information** — In most jurisdictions where the public defender is present at the emergency arraignment hearing, the lawyer has nothing but a “dummy file”—as the parent has not yet qualified for public defender services. The fact that the public defender has not yet taken the case has important consequences. For example, discovery is not required to be furnished to defense counsel until five days after their appointment, meaning that, during the emergency arraignment, counsel must argue for release with little information at their disposal. Generally, the only available sources of information are the children and their parents, if present. Counsel routinely does not have access to police reports, school records, mental history evaluations, or social history information. One Assistant Public Defender noted, *“if we had a social worker who could prepare a file for us before the detention hearing, we could beat DJS to the punch.”*

**Barriers** — In some jurisdictions, public defender caseloads are so high there is simply not enough time to prepare for detention hearings. One youth informed the assessment team that his probation officer had agreed to allow him to be released into the custody of a non-parent. He provided the woman’s

*“Defense counsel do not file motions to review detention status. If a [DJS] worker wants a detention review, we schedule it.”*  
Juvenile Supervisor,  
Court Clerk’s Office

contact information to his public defender, then sat in court throughout the afternoon and watched his public defender get two other youths released on probation. His public defender ran out of time to follow up with his contact, and the child was returned to the detention center.

**Attorney Contact Following the Detention Hearing** — The IJA/ABA *Juvenile Justice Standards* recommend that attorneys visit detained youth at least every seven days.<sup>151</sup> On a practical level, visits build the trust and facilitate the communication necessary for a productive attorney-client relationship. Face-to-face visits are also vital to a child's sense of well-being and value. Most importantly, regular attorney visits shine a light onto the operation of juvenile detention facilities.

Log books at the detention centers revealed that very few attorneys do meet the detained client in person. The number of attorney visits to facilities over a six months period varied widely: only one attorney visited the Carter Center, which holds about thirty youth at any given time; attorneys paid eighty visits to the two hundred youth at Cheltenham (most visits were largely made by lawyers with the Detention Response Unit); attorneys visited both Hickey and Noyes approximately thirty times.

Assessment team members found children who were denied phone calls to parents or who had to wait two days before being issued a toothbrush. A simple, well-placed word from an attorney could easily resolve such issues and instill in children the confidence and respect the justice system deserves.

**No Review Hearings** — Maryland provides a mechanism for a review of the court's initial decision to continue detention. If defense counsel files a motion for review of detention, the court must schedule the review immediately.<sup>152</sup> Despite this opportunity for advocacy, there is no statewide policy regarding motions to review detention. Likewise, there is no supervision in the individual public defender offices of cases where youth are continued in detention by the courts. In most of the jurisdictions we visited, attorneys rarely, if ever, filed motions to challenge initial detention decisions.

In the counties where the Detention Response Units are active, motions challenging continued detention were more common. The Public Defender's Office and the Department of Juvenile Services collaborated in the creation of Detention Response Unit (DRU) to reduce the overrepresentation of minority youth in detention. DRU is comprised of attorney/social worker teams. Although intended to be statewide, the office has been forced to limit its reach and is active in less than half the counties in the state. The Unit is an important resource for front line attorneys struggling with caseloads and geographic barriers to representation, although many attorneys were not aware that the units exist or saw no reason to refer cases to it. In some areas, referrals to the Detention Response Unit come from public defenders that need the assistance of social workers only, not the attorneys. The DRU social workers are stretched thin with a demanding caseload.

**Inappropriate Use of Detention Alternatives** — Every assistant public defender was aware of alternatives to detention in their local jurisdiction including house arrest, community detention, electronic monitoring and shelter

*"I have never filed a motion for review of detention. The Court uses the 30 days in detention to give kids a 'taste,' and then gives a favorable outcome at disposition."*

*Assistant Public Defender*



*“Kids are detained for evaluation. Unfortunately, it’s much more convenient to have the kids evaluated in detention rather than have a parent make appointments.”*  
*Juvenile Court Judge*

care. Not one defender argued for the least restrictive alternative or a simple conditional release. Assistant public defenders routinely submitted to any recommended alternative to detention. Few understood that misusing alternatives widens the net, ultimately causing children and youth who would otherwise not be detained to face potential incarceration for technical violations. Assessment team members met countless numbers of youth in detention for violating the electronic monitoring system. Youth were placed on the electronic monitor pre-adjudication and pre-disposition, as a condition of probation and as a condition of release from a court ordered program. More disturbing was the system-wide acceptance that in fact the youth had violated the monitoring system. Not one defender challenged the electronic monitor’s report or cross-examined the worker in court. Children and youth are confused about the use of the electronic monitor and the long-term consequences a violation can bring. Overall children and youth believed the system was unfair. One youth said, *“They lock people up for nothing. I should not have caught 10 months for violating [community detention].”*

### C. Inappropriate and Arbitrary Detention

In Maryland *“when families, neighborhoods, schools, and other programs no longer wish to deal with troubled children, the detention center is the one resource that cannot turn them away.”*<sup>153</sup> Assessment team members interviewed so many incarcerated children and youth who simply did not belong in secure detention. A significant portion of the population interviewed was incarcerated for evaluation and punishment. More disturbing was the acknowledgement among stakeholders that detention is used in direct violation of the law and professional standards.

*“If a child refuses and misses appointments then we will detain for [psychological] evaluation.”*  
*Juvenile Court Master*

***Detained for Evaluation*** — Secure detention is commonly used as a dumping ground for children who have been failed by an overburdened mental health system.<sup>154</sup> In Maryland, secure detention is used to compensate for shortages and budget cuts in psychological services throughout the state, particularly in rural jurisdictions. Psychological screening early in the juvenile justice process can identify children who should not be detained and/or ensure appropriate treatment. National standards state that juveniles may not be placed in detention to permit more convenient administrative access to a child;<sup>155</sup> yet, in as much as 40% of the jurisdictions surveyed, stakeholders admitted that they routinely detain children for the purposes of conducting psychological evaluations. Children can wait in detention for over a month for an evaluation.

***Detention as Punishment*** — Research indicates that detention used for punishment is not effective and has negative consequences for incarcerated youth, especially when a facility is overcrowded.<sup>156</sup> For years child advocates and others have been raising public awareness of overcrowding, dangerous conditions, staff abuse and ineffective supervision of facilities owned, operated and contracted by Maryland’s Department of Juvenile Services. The tragedies related to youth in detention are numerous, including suicide and escapes from facilities that land juveniles in the adult system. One reporter wrote: *“Overcrowding at detention centers and beatings at boot camps have been so persistently exposed over the past few years that they are almost old news.”*

Despite the knowledge that facilities in Maryland are dangerous for children and youth, judges and masters routinely use detention as punishment. The United State's Supreme Court, Maryland law and national standards on detention policy are clear that detention used as punishment is illegal and unconstitutional: detention simply should not be used as punishment.<sup>157</sup>

Judges and masters readily admit they use detention as punishment. One judge said, "I send kids to detention for one week or a weekend, Friday to Monday. Usually it's because of a real attitude problem. When they come back I ask them, 'Where is it nicer, home or Cheltenham?'" Another remarked, "detention is good for an attitude adjustment. The kids are out of control. It's for their own protection." In some instances stakeholders reported arbitrary decisions. One detention center staff person commented, "one judge does not believe in house arrest or electronic monitoring. One time he did not like the way a girl was dressed so he sent her here for the Christmas holiday. She was pending adjudication for phone misuse.... Another time, he sent thirteen kids to detention in one day."

**Delays** — Despite Maryland's clear statutory requirement for prompt arraignments for detained youth, investigators found several cases where arraignments were inexplicably delayed. One child was detained for three days because the court's docket was "too full" to hear his case, even though case law clearly states that docket over-crowding does not excuse non-compliance with time limits.<sup>158</sup>

#### **D. Special Detention Cases: Violations of Probation & Pending Placement**

One of the most common results of delinquency adjudication is probation. Children and youth under court-ordered probation are required to follow standard conditions, such as going to school, obtaining employment, maintaining a curfew, community service, restitution and remaining in contact with an assigned probation officer. In some cases the child may be required to attend family, mental health or substance abuse counseling. Terms and conditions of probation are easily broken—resulting in the "recycling" of technical probation violators into detention.<sup>159</sup>

##### **Violations of Probation**

*"I'm tired of being locked up. The only thing I did was violate probation. Here I don't go to groups, no meetings, no counselors. Why do they send you to lock-up when you have a drug problem? People shouldn't be sent to places like this unless they've done something wrong."*

*Detained Youth*

Consistent with national trends, probation revocation has evolved into one of the largest contributors to Maryland's pervasive overuse of detention.<sup>160</sup> The Department of Juvenile Services does not regularly collect data on the issue, but it can be documented through on-site interviews and on-site reviews of facility population sheets. A review of the stakeholder interviews and the status of detained youth interviewed provided anecdotal information to support the notion that children in Maryland are increasingly detained for technical violations of probation.

*"I'm tired of being locked up. The only thing I did was violate probation. Here I don't go to groups, no meetings, no counselors. Why do they send you to lock-up when you have a drug problem? People shouldn't be sent to places like this unless they've done something wrong."*

*Detained Youth*

*“No kids are detained pre-adjudication; they are being detained at the back end for violating probation.”*

*Assistant State’s Attorney*

DJS has set policies regarding revocation of probation.<sup>161</sup> These policies call for graduated sanctions and envision probation officers’ involvement with the family to work out compliance. The policy also stresses that violations should be addressed without revocation.<sup>162</sup> Unfortunately, probation officers and judges do not always adhere to the guidelines for probation revocation. Instead, children are sent to detention for probation violations like “being disruptive in school.” One child’s probation was revoked after two missed appointments with a juvenile counselor. In that case, the child did not have the ability to call his probation officer and tell him that his mother was sick because the family did not own a telephone.

### Case Study: Frustration in a Vacuum

*“Michael” is a seventeen year old, African-American youth who was adjudicated on an assault charge, his first offense. He has been detained at Cheltenham for five months, waiting for a placement at the Pines in Virginia. Cheltenham staff have told him on four occasions that his placement position has opened up, but he never gets sent out. At his last review hearing, the judge wondered aloud why he wasn’t in a placement yet. Michael doesn’t know either.*

*A staff person at the detention facility told him that the court is going to review his case again on Monday, but that Michael can’t be there. He’s puzzled and angry, but he doesn’t have anyone to ask about his case. He doesn’t have any contact with his public defender and doesn’t know how to reach her. He said, “If she had done a better job, I wouldn’t be sitting here still.” Michael identified the lack of information-sharing as his biggest complaint about his public defender.*

*The long wait for placement and the lack of information about his case have made Michael frustrated and bitter. “People shouldn’t make promises they can’t keep,” he said. Michael seems intelligent and articulate, but he remains aloof from the other detained youth. He walks with his head hanging and shoulders slumped.*

### Pending Placement

If the court revokes probation and commits a child to the Maryland Department of Juvenile Services for placement, chances are that she will be placed in detention “pending placement,” sometimes waiting extensive periods of time in detention before going to a program. Pending placement cases present challenging issues involving multiple systems, budgetary constraints and lack of existing alternatives and require special knowledge of the placement process, potential pitfalls and available programs.<sup>163</sup>

Virtually everyone reported that the population in detention pending placement is comprised of sex offenders, arsonists and youth with mental health issues. One intake officer explained that, “programs will not accept juveniles with mental health issues or aggressive behavior.” In this instance, popular perception is not supported by the data. According to a study of Maryland’s pending placement population, 60% of youth detained pending an out-of-home placement were there as a result of a violation of probation (VOP), AWOL or failure from a previous placement.<sup>164</sup> Only a quarter of the youth violated probation by re-offending, the remaining violations were technical—such as failure to attend school or counseling.<sup>165</sup> The majority of the offenses committed involved drug offenses, auto offenses and property offenses. Nearly half of the youth pending placement had one or no prior offenses. Only 16% of youth pending placement committed violent offenses, including sexual assault, robbery or arson.<sup>166</sup>

*“Pending placement makes judges feel ineffective.”*  
*Juvenile Court Judge*



### Case Study: No Counsel at Review Hearing

*“Adam” is an eighteen year old serving twelve years in the State of Maryland Correctional System. When “Adam” was fourteen, he entered an admission to armed robbery in juvenile court. The court committed “Adam” to the Department of Juvenile Services, and the Department sent “Adam” to the Victor Cullen Academy. He successfully completed the program. Upon release the Department provided “Adam” with aftercare supervision.*

*Two years later, his mother reported to the Department of Juvenile Services that she suspected “Adam” was selling drugs. The juvenile counselor contacted the court, and the court scheduled a review hearing to address the counselor’s concerns. “Adam” was not represented at the review hearing. The police had not arrested Adam. The State’s Attorney’s Office had not filed a petition alleging distribution of drugs or alleging that “Adam” violated his conditions of an existing court order.*

*The Court, concerned that “Adam” was abusing drugs, ordered an evaluation. The evaluation recommended outpatient counseling for “Adam” to deal with substance abuse and strained relations with his mother. Knowing that “Adam” and his mother were not getting along, the Court modified “Adam’s” aftercare supervision to include electronic monitoring “plus” at “Adam’s” mother’s house and outpatient counseling. The Court reset “Adam’s” case in for further review one month later.*

*“Adam” did not understand that the juvenile court could review his commitment and order new conditions of aftercare. He believed that he “did his time” and that his “probation” was over. “Adam’s” monitor alleged that “Adam” violated his electronic monitoring, and the Department sent “Adam” to the Cheltenham Youth Facility pending a further review hearing.*

*At the review hearing the judge remanded “Adam” to the custody of the Department of Juvenile Services under the existing commitment order with a recommendation that “Adam” be sent to the forestry camps in western Maryland for eighteen months. There was no counsel at the review hearing.*

### Presence of Defense Counsel at Violations of Probation and Reviews

While it is recommended that avoiding detention for youth accused of violating probation is best done as a “front end” strategy, defenders are not consistently present at violation of probation hearings or reviews of commitment.<sup>167</sup> In two jurisdictions visited, public defenders reported that they are not present at review hearings or violation of probation hearings. In eleven counties, public defenders are present at reviews or violations if the Department of Juvenile Services notifies them or if the parent re-applies and qualifies for services, even when the office represented the youth previously. In one jurisdiction, the public defender is present automatically if they represented the child before. In another jurisdiction, public defenders reported that they appeared at a review or violation hearing *“if the case involved a serious crime.”* In a jurisdiction where the public defender is present if notified, DJS statistics for the day of the site visit revealed that over 62% of the youth detained from that county are pending placement. Some of the youth pending placement from that county had been awaiting placement for five to six months.

*“Seldom do we see defense counsel at hearings involving a violation of probation.”*  
Clerk of Court

**Consequence Beds** — In several counties the “zero tolerance” policies regarding probation violations resulted in the use of detention purely as punishment for technical violations of probation. One assistant state’s attorney remarked, *“the judge detains kids for violating conditions of probation. Three kids got ‘popped’ in one day for dirty urine.”* At least five counties reported that they use detention as a “consequence bed” when children misbehave. In two counties

children receive one day in detention for every day of school they miss as a result of suspension. Specialty Drug Courts in Maryland also use consequence beds in detention as one of its graduated sanctions.

Most team members believed that the absence of counsel allowed for indiscriminate use of “*consequence beds*.” In a county where there is no public defender at reviews or violations of probation, assessment team members observed four review hearings. Not one juvenile was represented by counsel, all were African-American males. In three of the four cases, the judge ordered consequence beds for technical violations of probations. Two of the violations involved poor attendance in school. One of the youth not attending school was a level V special education student. Another violation involved school and restitution; the juvenile had only paid \$25.00 of the \$5,500 ordered. When interviewed, the local public defenders believed that their absence did not have significant consequences for the children because they spend “*only a few days at Boys Village*.”

***Inaccurate Information*** — Public defenders who remain involved with their clients after disposition—and certainly the Detention Response Unit—try to monitor children and youth pending placement. Detention center staff highlighted a significant barrier to monitoring youth pending placement. Children’s lengths of stay are recorded on the daily population sheets and Detention Response Units staff relies on these population sheets. The number of days logged into the population sheets is not always an accurate description of the number of consecutive days a child has been held; detention staff will sometimes zero out the “length of stay” column after a child’s court appearances or movement from one facility to another. Additionally, detention center staff reported that youth are frequently sent from one facility to another without contacting or informing the child’s attorney.

## **Part IV**

### **Systemic Injustice**

The role of the juvenile defender and effective advocacy in the courtroom can significantly improve social justice. Juvenile defenders are uniquely positioned within the justice system to challenge systemic injustice arising from uneven or disparate treatment of certain youth populations. Maryland’s juvenile justice system disparately impacts children of color, girls and children with mental health and educational needs.

#### **A. Overrepresentation of Minority Youth**

The issue of the overrepresentation of minority youth in the juvenile justice system—or disproportionate minority representation, as it is often termed—has received increased national attention over the past decade. Disproportionate representation occurs when a group’s overall numbers at any stage of the justice system (for example, arrest, intake cases, detention, adjudication) exceeds the proportion of their presence in the general population. A national study commissioned by the Building Blocks for Youth Initiative, *And Justice for Some*,

recently found that African-American youth were overrepresented at nearly every stage of the juvenile justice process. The study revealed that although African-American youth represented 15% of the nation's overall youth population, they represented 26% of youth arrested, 31% of youth referred to juvenile court and 44% of detained youth.<sup>168</sup> Such "sharp racial disparities in the nation's juvenile justice system"<sup>169</sup> are disturbing, particularly because overrepresentation increased while youth crime *decreased* throughout the nation.

In Maryland, the overrepresentation of youth of color in the juvenile justice system is not a new issue. In 1990, the Juvenile Justice Advisory Council conducted an initial statewide assessment that examined various points of the juvenile justice system. The study revealed that minority youth, particularly African-American youth, were overrepresented in the system. In 1995, the Department of Juvenile Justice followed this assessment with a statewide study that also found that "African-American male youth overrepresentation was pronounced at intake, detention, and secure commitment points."<sup>170</sup>

Available Department of Juvenile Services (DJS) data indicate that overrepresentation continues to exist in many counties throughout Maryland. African-American youth were overrepresented at the intake stage in each of the fifteen counties included in this assessment, while white youth were underrepresented. In one Eastern Shore jurisdiction, African-American youth in the county represented 36% of the population and 63% of the intake cases. Yet, white youth in the same county represented 63% of the youth population and only 36% of the intake cases. These statistics demonstrate that African-American youth are pushed deeper into the system while white youth are weeded out of the system.

The available DJS offense data indicate that disproportionate minority representation cannot be explained by differences in the types of offenses committed by youth. In fourteen of the fifteen jurisdictions surveyed, alcohol violations, simple assault, and theft/shoplifting accounted for the most commonly committed offenses by both white and African-American youth. The data demonstrate that although youth of all races are committing similar types of offenses, minority youth—particularly African-American youth—are being carried further along in the system than their white counterparts.

The largest identifiable challenges confronting defenders and other juvenile justice stakeholders in dealing with racial disparities are the lack of available local data and the failure of decision-makers to recognize the importance of capturing this information. Site investigators did not find one court clerk, judge, master, public defender, state's attorney or DJS representative who collected race-based data. One court clerk explained, "[w]e are not tracking statistics on race. I would be concerned if [the juvenile clerk] did track that information. Our job is the efficient administration of the courts. It is the master's, judge's, Public Defender's or Juvenile Justice's responsibility to be concerned about [disproportionate representation]."

In Maryland, the lack of accurate local data creates an environment in which juvenile justice professionals and public defenders cannot identify the level of disproportionate representation in their jurisdictions because their knowledge of the issue is based solely on individual and limited perceptions. These perceptions are often inconsistent and typically underestimate the problem. When asked about differential treatment of youth based on race, a judge from a rural county stated that "[i]t seems even." However, the available DJS data indicate

*Maryland's juvenile justice system disparately impacts children of color, girls and children with mental health and educational needs.*

*The lack of accurate local data creates an environment in which juvenile justice professionals and public defenders cannot identify the level of disproportionate representation in their jurisdictions because their knowledge of the issue is based solely on individual and limited perceptions.*

that African-American youth were about 7% of the population and 23% of the intake cases; when interviewed by assessment members, other judges from the same county estimated that African-American youth represented about 11% of the county's youth population but 50% of the youth in court. In another rural county, an assistant public defender stated: *"There are more African-American youth in the juvenile court in [this] county than there are in the youth population in this county. There is a definitely a disproportionate number in the court system."* However, a site investigator noted the comments of another juvenile justice professional from that county who indicated that the *"racial stuff"* has decreased from three years ago. It is evident that the lack of accurate, verifiable data allows for wide ranging opinions about the levels of overrepresentation in many of Maryland's counties. Such a dearth of data and a variety of opinions make it extremely difficult for individual counties or the state to develop a coherent, collaborative approach to reducing disproportionate representation.

Another major challenge is that many decision-makers and others in authority in the juvenile justice system, from intake workers to judges, do not fully understand the concept of disproportionate minority representation and the ways in which the process itself can exacerbate the problem. While the complexity of overrepresentation is well recognized, the system professionals interviewed by team members appeared unwilling to acknowledge that their policies and practices may, inadvertently, worsen the problem. Many of the justice professionals who were interviewed from rural, suburban, and urban counties across the State, believed that the juvenile system was balanced and fair because socio-economic factors, not racially biased decision-making, caused overrepresentation. However, by identifying external factors as the *only* basis of overrepresentation in the system, professionals downplay the impact their own work may have on the problem of overrepresentation. Investigators identified several programs and practices that have the potential to exacerbate the problem of minority overrepresentation.

Key stakeholders in several counties expressed concern about the impact of the "Hot Spots" programs on African-American youth. "Hot Spots" programs are, essentially, a strategy to vastly increase law enforcement presence in a particular area—many times in neighborhoods that are predominantly African-American. A District public defender from an eastern county explained:

*Hot Spots are placed in the poor areas. Police concentrate in poor black areas. The original grant was to reduce crime in the neighborhoods. It was meant to build communities. The program is now stigmatizing and police are citing kids for every kind of status offense like tobacco. I guess they need to increase the number of arrests to keep the Hot Spot's money. This town counts on the funding.*

An assistant public defender in another eastern shore county indicated that African-American youth get charged with numerous drug related offenses because of the Hot Spots program. Observations on the disparate impact of Hot Spots programs were not limited to public defenders. An assistant state's attorney in one county observed that the county's Hot Spots program was sending a large number of African-American youth to court for drug related offenses. Evidence gathered through this assessment supports the conclusion that juve-

nile justice professionals need to analyze data from the Hot Spots program to determine whether it is serving its purpose or simply “widening the net” for particular populations of youth.

Public defenders were counsel of record for approximately two-thirds of the African-American children and youth who assessment members observed in court. Given the widespread nature of their representation, juvenile public defenders are advantageously placed in a position to lead collaborative efforts to identify disproportionate impact on the local level, collect valuable data on the levels of minority representation in the system, and spearhead strategic solutions to specifically address overrepresentation.

Probation violations are a major source of the large numbers of African-Americans youth in the system. In interviews with youth at several facilities around the state almost fifty percent of the youth had been detained for probation violations, violating electronic monitoring or for outstanding warrants. Defenders are in a position to take an active leadership role in tracking the nature of violations involved in probation violation hearings. System professionals should be able to determine whether particular populations of youth are routinely failing particular types of placements or violating certain probation conditions ordered by the courts. This type of analysis can move local systems closer to identifying root causes of overrepresentation and devising strategies for addressing disproportionate minority representation.

Disproportionate minority representation is, admittedly, a complex and sometimes confusing issue with no easy solutions. However, public defenders are well placed to collaborate with families, child advocates, judges, DJS representatives, community activists and others to develop effective strategies to reduce racial disparities throughout the state.

*Probation violations are a major source of the large numbers of African-Americans youth in the system.*

## B. Girls in Maryland’s Juvenile Justice System

The history and fate of girls in Maryland’s juvenile justice system is similar to that of the rest of the country. Typically these girls are poor, have been abused, have run away from home and have nowhere to go. These girls face a plethora of challenges both within the system and in their lives. They have little connection to their schooling, they know little about health and sexuality, and they often do not completely understand why they are in the justice system or being detained. Many have been previously involved with programs run by the

### Case Study — Lost Youth

*“Julie” started her court involvement in DSS after her mother had been prostituting her for drugs for several years. After a year of DSS involvement, but no services, “Julie” picked up a delinquency charge and DSS promptly closed her abuse and neglect case.*

*“Julie” has been in secure care for almost a year. After five months of drug treatment, she was supposed to be released, but was transferred to another detention center for inappropriate behavior involving her juvenile counselor. Her next review hearing was postponed and no new court date was ever set.*

*DJS will not release her to anyone. She cannot get into a group home because of her “behavior” at the last detention facility. She has given up. When asked about her future, all she can say is, “It doesn’t matter, it’s not like I’m going to be released.”*



*“Being here is driving me crazy. I’ve never been away from my mother.”*  
Detained Youth

Department of Social Services, which may not have addressed their needs; and their experiences with Department of Juvenile Service programs continue this history of failure. It is not unusual to observe girls that have become disillusioned by the system.

### *Girls in the System*

**Gender Bias** — Girls are often discriminated against by judges, probation and detention workers simply because they are girls. An assessment team member observed a judge telling a girl, *“the next time you come to my courtroom, you need to wear a skirt or a dress.”* Girls complained that detention staff yelled at them for being “sluts,” “whores” and “drug dealers.” Additionally, male guards restrain them in ways that cause bruises.

**Probation** — The vast majority of girls detained in Maryland are there for violation of probation or status offenses. Status offenders make up 12% of the girls cases, which is double the 6% of boys who are status offenders. When girls are detained for delinquency offenses, they are often there as a result of family disputes or running away. Sixty-eight percent of runaways are girls and it is the only offense that girls commit more often than boys. In a 2002 study, not one girl was detained due to a new violent offense or new sex offense. Almost every girl had run away from home and had ended up in detention for offenses associated with running away from home. Running away is more complicated than girls simply not abiding by probationary conditions. In one case reviewed, a girl left home because her aunt refused to let her in the house. She was told that if she ran away again, she would be committed.

**DSS vs. DJS** — Interviews with detained girls revealed that at least half had been involved with DSS before their involvement with DJS. For some, as soon as they pick up a delinquency charge, DSS will drop their cases. This problem complicates placement for those that cannot return home. They remain as pending placement because DJS will not release them until they have somewhere to go. These girls are housed in locked facilities because there is no available placement and they are too young to qualify for independent living. For girls who had been involved in DSS, it rarely appeared to have been a positive experience. One girl spoke of having lived in a foster home the year before but, the “lady’s boyfriend molested me” so she did not remain there.

**Resources** — It is abundantly clear that there are not enough resources for girls in the juvenile justice system. From detention workers to court personnel to girls, those involved in the Maryland juvenile justice system universally acknowledge that girls are not receiving appropriate services or treatment. Many girls go without gender-appropriate counseling or anger management programs. Overall, those interviewed were unable to mention positive things about detention or their counseling, and instead focused on abuse by guards, having personal belongings stolen by other girls, and missing their families.

*“The Department of Social Services will not intervene in cases where they should because they do not want to pay for services. One girl got committed to the Department of Juvenile Justice on her first offense for possession because she had no home and the Department of Social Services would not take her case.”*  
Assistant Public Defender

## ***Education, Health and Sexuality***

**Education** — Because school failure is a strong predictor of delinquency, especially among girls, it is not surprising that most of the girls were not in school immediately before being placed in secure confinement. Although they were required to attend school while in detention, they admitted that the education they received was inadequate. Surprisingly, not all girls disliked school; some actually seemed to miss it. One girl said she wanted her public defender to tell the judge about school: the *“judge made me fail summer school. I’m probably fired from my job. Me and my dad should have let him know.”* While some girls spoke of wanting to attend college one day, it was clear that the longer they remained in the system, the less likely they were to even graduate from high school.

**Health and Sexuality** — Some of the most pressing issues for girls in detention and corrections are health and sexuality. Because many delinquent girls have a history of sexual abuse, they often engage in risky sexual behavior and many enter detention and corrections pregnant or with sexually transmitted diseases.

Being pregnant is rarely a positive experience for girls who are in secure confinement. Facilities seldom have adequate resources for pregnant girls and they are often stigmatized for their sexual activity. Although the Female Population Task Force, created in 1992, helped establish training on working with pregnant youth and a ten-week parenting skills curriculum in Maryland, the needs of these girls are clearly not being fully met.

Finally, many of the girls in detention spoke with confusion or anger about the lesbian relationships in detention. Girls spoke of forcible rapes of other girls and their strategies for avoiding unwanted sexual advances.

Self-mutilation is one of the most pressing tragedies of detention. Detention is particularly difficult on girls because of seclusion, staff insensitivity and loss of privacy. Girls often react to this loss of control with suicide attempts and self-mutilation. Detention staff deal with the girls’ bewilderment by taking away sharp objects and punishing any girls caught cutting themselves.

As the number of girls in the juvenile justice system increases, stakeholders are beginning to acknowledge the unique challenges and issues girls present to the juvenile justice system. However, the system still has a long way to go before it can be said to be dealing adequately with gender specific problems and care. Stakeholders in the system, particularly public defenders, need training to make them sensitive to the unique needs of girls and ultimately better advocates for their female clients.

## **C. Criminalization of Mental Illness**

In 1994, an OJJDP study found that 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.<sup>171</sup> The National Mental Health Alliance estimates one quarter to one third of youth have Anxiety or Mood Disorders and approximately 19% of youth involved with the juvenile justice system are suicidal.<sup>172</sup>

Maryland has similar rates of mental disorders in its juvenile justice popu-

*“I was crying because I want to go to school. . . . I love school.”*

*Detained Youth*



### Case Study: Children with Mental Health Needs

*“Martin” is a fifteen year old, African-American male detained at Hickey. He’s been in detention there for two months. He is full of nervous energy, constantly fidgeting and shifting in his chair. He has difficulty articulating sentences. Every time I pose a question, I have to repeat it two or three times before he understands what I’m asking. He’s inclined to give me the answer he thinks I want to hear.*

*“Martin” doesn’t remember when he was arrested. He can’t recreate a chronology of what happened to him after his arrest. Nor does he remember his public defender’s name. When I asked what his P.D. looked like he replied, “He has a tie and a haircut.” “My P.D. was nice,” he says. “What made you think he was nice?” I ask. “Martin” replies, “people said he was.” He has the same thing to say about his judge: “He was nice. My P.D. said so.”*

*“Martin” is agitated because, at his last court appearance, the judge told him that he would be picked up and taken to a placement. He was expecting to be picked up the day after court. Today, almost two weeks have gone by, and “Martin” doesn’t understand why he’s still at Hickey. He gave his probation officer’s name to a case manager, so the case manager could contact him and get more information. Apparently “Martin” didn’t remember the name correctly; the case manager came back and said that the named person was not his probation officer. “Martin” has had no further word on his status. “I’m not supposed to be here,” he tells me earnestly. He worries that he’s been forgotten, overlooked by an anonymous system.*

*“The only way for families to get mental health services in our county is for us to authorize the filing of a petition and send the case formally to juvenile court.”  
Intake Officer, Department of Juvenile Services*

lation. Many of the interviewees reported that children with mental illness or illnesses were massively overrepresented in the juvenile justice system. According to a 1998 report, at least 53% of a sample population of detained and committed youth in the juvenile justice system had mental health problems; 26% of the detained and committed population was in need of immediate services; and of those children who were diagnosed with one or more mental disorders, 46% had “great difficulty in daily functioning.”<sup>173</sup> In a 2001 survey of families with children in the juvenile justice system, over half the families reported that their child had been hospitalized two or more times for psychiatric disorders and 10% had attempted suicide.<sup>174</sup> At one detention center on the eastern shore, 461 (94%) of the youth admitted were screened for mental health disorders and 141 (28%) of those screened were referred for psychiatric services, 61 youth received psychiatric evaluations, 70 youth began taking medication, and 29 youth continued the psychotropic medications they had been on prior to admission. A total of 107 youth had been receiving some sort of treatment at the time of their admission.<sup>175</sup>

The reasons for the high rates of mental illness among detained and committed children are varied and complex. It is clear, however, that the lack of appropriate treatment can lead to the use of the juvenile justice system to provide treatment for a child, particularly if the illness manifests itself in anti-social behaviors. In interviews, a constant concern voiced by many mental health specialists, judges, public defenders, DJS employees and others was the general lack of services for children before they were admitted to DJS and more specifically the lack of a continuum of care, which makes it difficult for youth to get necessary treatment in the community. In many jurisdictions, there were no inpatient services available in the community, and very few outpatient services that were intensive enough to be effective. The problem is particularly acute for children without insurance, who are required to access services that are unavailable to them outside of commitment to DJS. In several interviews, peo-

ple mentioned that kids were committed to the department in order to get psych-evaluations because it was so difficult to get them done outside of DJS. Those interviewed voiced the need for more and varied mental health services as well as help in accessing those services now available.

According to interviews conducted with mental health professionals, DJS out-sources much of the care of children with mental disorders and the levels of care vary dramatically around the state. However, the culture of DJS is beginning to change to allow for more treatment of mentally ill committed children. The department has begun hiring its own clinicians and is making attempts to standardize care across the state, but funding for mental health programs has been a continuous problem. After-care for children with mental illness is yet another long-standing problem. Often, even if a child gets treatment while incarcerated or in a DJS program, the treatment is difficult to continue after release. To ease this problem, DJS has established a position for a Family Intervention Specialist, who can assist the child in filing Medicaid paper work and work out the logistics of continuing the child's care in the community.

#### D. Zero Tolerance in Schools

Across the country, school districts are continuing the trend in "zero tolerance" policies and the criminalization of school-based conduct that began in the late 1980s and early 90s amid fears of a juvenile crime wave. As concerns about student and staff safety in schools led to heightened security and disciplinary measures, children now face arrest for a variety of misdemeanors that would never have warranted involvement with the juvenile justice system before the implementation of these policies.<sup>176</sup> Federal requirements attached to federal education funds are part of the reason for the continued existence for zero tolerance policies. In 1994, Congress passed laws that required the expulsion of any student carrying a firearm on school property and the achievement of drug free, firearm free, violence free schools that provided a disciplined and safe learning environment by the year 2000. In attempts to meet these new requirements, states began passing school safety laws, which included harsher punishments for offenses.<sup>177</sup>

Maryland is no exception to this national trend. While there is not an explicit statewide "zero tolerance" policy, in 1996, the Maryland General Assembly ordered the Maryland Board of Education to create a set of "guidelines" to help local school districts bring their disciplinary policies up to date.

Several local school systems also have School Resource Officers (SROs). SROs are law enforcement officials from the local police department or sheriff's office who patrol school grounds and occasionally teach classes to students or staff on subjects concerning school safety. The primary mission of school resource officers is "to patrol, to investigate, to apprehend, and to process criminals."<sup>178</sup> The resource officer may also be called upon to investigate criminal activities off campus that may involve students of the school. There was little consensus on the effect of the school resource officers in the counties in which it was employed. In one county, DJS credited the decrease in school related cases to the presence of school resource officers. In another county, the increase in drug cases is credited to SROs. A judge in another county said resource officers only accounted for 20% of arrests and most of those arrests did not come before

*"Neither the mental health system nor the school system in Maryland is providing the services that kids needs. They all say, 'that kid is a delinquent, he's not mine anymore.'"*  
Intake Officer, Department  
of Juvenile Services

*"The schools are really quick to call the juvenile courts. There are video cameras on the bus now."*  
Juvenile Supervisor,  
Clerk's Office

*"The State's Attorney charges things that shouldn't come to court. Like nine year olds who fight at school."*  
 Chief of Juvenile Division,  
 Office of the Public Defender

the court. Yet, in interviews, many law enforcement officials across several counties reported a spike in juvenile arrests during the school year due to the presence of school resource officers. Given the mixture of perceptions among stakeholders in the juvenile justice systems across the state, the effects of the SRO program vary from decreasing the number of school cases to increasing them depending on the county.

The Spotlight on Schools program is another program instituted in Maryland as part of the safe schools initiative. One probation officer explained: *"The idea of school probation officers is frequent contact with the juveniles and presenting a positive role model who is there to help them."* The program has 37 probation officers in over 80 schools across Maryland. The role of the probation officer is to supervise those children on probation and provide intervention services to children referred to him or her. While the program gives the PO more contact with the children, the PO becomes responsible for dealing with behavior problems and in some schools is encouraged to deal with all discipline problems. Several interviewees suggested that this program results in higher numbers of school incidents being reported to the court. One probation officer told interviewers, *"the school system is adversarial because the school wants to get rid of the kids who are driving them crazy."*

Many interviewees, including judges, probation officers and public defenders, mentioned the increase in school-related cases over the last four to five years. Many feel the school system is dumping cases onto the juvenile justice system that do not merit being handled by a court of law or cases that would be better handled in the community or school. There is a perception that the school board is shifting the responsibility of disciplining students to the juvenile court. One jurisdiction estimated that one third of its cases were school related, and the Chief of the Juvenile Division of the Office of the Public Defender in another jurisdiction stated, *"everything that happens in schools comes to court."*

In several jurisdictions, interviewees mentioned the ridiculous nature of some school referrals and said many of the referrals were for behavior related problems or "interrupting school activities." Interviewees also expressed concern that such referrals were an attempt by the school system to push kids out and into the juvenile justice system, particularly those children with Special Education needs. The majority of those interviewed stated that there has been an increase in the number of children coming before the court and DJS with special education needs or development problems. In one county all of the judges agreed that approximately 20 to 50% of the children that appear before them have special education needs and one judge estimated that the number was much closer to 50%. Another Juvenile Court Judge described what was happening to special education children: *"Learning disabled kids are being dumped into the juvenile justice system because the Board of Education is not doing what they need to do. Children are not identified as Special Education, they do not receive the services they need, they cannot read and the schools just pass them along. As soon as they act out they are kicked out."*

Another frequently echoed concern among those interviewed, particularly public defenders was the lack of access to school records. Obtaining records from schools can be a crucial part of effective advocacy, however in several jurisdiction attorneys reported great difficulty in obtaining records from the child's school. Another significant problem is the lack of legal resources for parents dealing with

local school systems. According to one Intake Officer for the Department of Juvenile Services, *“there are no legal services available to assist parents with the education system and the juvenile’s lawyer cannot represent him before the Board of Education.”* Several counties reported similar problems with the lack legal services parents who were trying to fight an expulsion, suspension or a truancy charge.

The increase in school referrals is acknowledged across the state as a serious problem for the juvenile justice system. Not only do the increased referrals clog court, increase public defender caseloads and divert resources away from more serious problems, they also disproportionately impact minority youth.<sup>179</sup>

## Part V

### Children and Youth in the Adult System

#### Case Study: Big Boy Population

*“Jerome” is a sixteen year old African American male pending placement in detention. He was originally charged in the adult system and recently reverse waived to the juvenile court. He spent six weeks in an adult detention center waiting for the reverse waiver hearing. He was supposed to be placed in “the bubble” or protective custody due to his age and slight build. He was separated from the adult population for one hour before the warden took him out and placed him in the general population. The warden told him, “If you gonna do a big boy charge, you gonna be in a big boy population.” He tells me it was scary and that there were a lot of fights; once he was maced during a riot.*

*“Jerome’s” options were to go to trial in adult court and face “Juvenile Life,” (incarceration in the adult system until he turned twenty-one) or plead guilty to get reverse waived to the juvenile court and complete a long-term residential treatment program. He had several different public defenders in the adult system. He does not remember their names. He only spoke with them in the hallway in court, never at the adult jail or by telephone. “Jerome” believes that his juvenile counselor is responsible for the reverse waiver because she obtained a placement for him in a residential treatment center. He remarks, “my PO worked out the deal. She has done a lot for me.” When he leaves the interview, the detention center staff person informs me that “Jerome” has severe mental health problems.*

#### A. Maryland’s Waiver and Transfer Provisions

Nationally, the number of juveniles held in adult jails pending trial rose 366% between 1983 and 1998.<sup>180</sup> Although the law allows the criminal court to place a juvenile charged in adult court in a juvenile detention center pending the transfer decision,<sup>181</sup> in Maryland, most youth are incarcerated at the local adult jails and placed in the general population. Every youth interviewed, except one, who was reverse waived from the adult court, had been placed in general population in a local detention center. Stakeholders around the state confirmed that placing children in general population is routine. One assistant public defender said, *“there are fourteen, fifteen, and sixteen year olds in general population in the adult detention center.”* In three counties alone, there are at least 140 juveniles in local jails awaiting reverse waiver, trial or sentencing.<sup>182</sup>

Children and youth in adult jails and prisons are eight times more likely to commit suicide, five times more likely to be sexually assaulted, and almost twice as likely to be attacked with a weapon by inmates or beaten by staff.<sup>183</sup> Many stakeholders recognized that youth in adult population face dangerous

*Children and youth in adult jails and prisons are eight times more likely to commit suicide, five times more likely to be sexually assaulted, and almost twice as likely to be attacked with a weapon by inmates or beaten by staff.*



prospects. One DJS social worker noted: *“There was one kid who was in the adult detention center who had to be put in isolation because he was causing fights. You could argue that he lacked the maturity necessary to handle being incarcerated with men and that is why he got into fights.”*

One Maryland study revealed that the population of youth at risk of being sent to the adult system and already charged as adults is of low socio-economic status, disproportionately African-American and has been identified with mental health issues and educational difficulties. The study also found that youth automatically charged as adults are charged with serious offenses but have few prior contacts in the system.<sup>184</sup>

For nearly a decade Maryland has been sending children to the adult system to deter juvenile crime. During the 1990s, forty-nine states and the District of Columbia responded to public concern over juvenile crime by revising waiver and transfer laws to enhance the state’s ability to prosecute juveniles as adults.<sup>185</sup> Between 1994 and 1996 Maryland followed the national trend, expanding the breadth of its waiver and automatic transfer provisions.<sup>186</sup>

Maryland is among 29 states which provide for legislative waiver (often called automatic waiver). Youth legislatively waived must be charged in the adult system.<sup>187</sup> With a few exceptions,<sup>188</sup> the law provides two mechanisms that allow a juvenile to return his case to juvenile court. A juvenile automatically charged as an adult may petition the Court to transfer or “reverse waive” jurisdiction back to the juvenile court.<sup>189</sup> At a reverse waiver hearing, the burden is on the child’s defense attorney to address five factors through the presentation of evidence that reverse waiver is “in the child’s interests or the interests of society.”<sup>190</sup> Additionally if the child is found not guilty of the charge that automatically sent him to the adult system, the criminal court may hold a reverse waiver hearing to send the sentencing hearing back to the juvenile court.<sup>191</sup>

Judicial waiver to the adult court is considered to be the single most serious act the juvenile court can perform.<sup>192</sup> Maryland is one of 47 states that provide for judicial waiver. Any child fifteen or older can be waived to the adult court.<sup>193</sup> At a waiver hearing the State has the burden to prove that the child is an unfit subject for juvenile rehabilitative measures by addressing the five factor criteria.<sup>194</sup> Maryland also has a “once waived, always waived” provision.<sup>195</sup>

## **B. The Practical Reality of Waiver and Transfer**

Over the past 20 years the number of juveniles being transferred nationally has increased substantially.<sup>196</sup> Reports indicate that as many as a thousand children and youth a year are being prosecuted as adults in Maryland.<sup>197</sup> Assessment team members noted apparent disinterest in understanding whether the effects of waiver and transfer provided any deterrent value or whether it was being applied uniformly throughout the state. National experts are struggling to answer the question, *“Do transfer laws deter serious juvenile crime?”*<sup>198</sup> One recent large scale study shows that juveniles tried in the adult system have higher recidivism rates after release than juveniles tried in the juvenile system.<sup>199</sup> When asked about the number of waiver petitions filed in a particular county, one judge remarked, *“why would we want to keep statistics about waiver [of jurisdiction]?”* Many judges dismissed requests to discuss waiver and simply told assessors to *“go see the clerk.”*

*Assessment team members noted apparent disinterest in understanding whether the effects of waiver and transfer provided any deterrent value or whether it was being applied uniformly throughout the state.*

**No Data** — Not one jurisdiction visited could produce statistics or data regarding cases judicially waived, legislatively waived or reverse waived. Most court clerks reported that they input data on waiver and reverse but are unable to retrieve it from the computer system. Many never enter it into the computer because no one has asked for the data. The Department of Juvenile Services collects data, although the accuracy of such data is dependent upon the person entering the information and not easily retrievable. One juvenile counselor who prepares all waiver summaries for the county said: *“By the time the reverse waiver process ends, going from criminal court to juvenile court, I forget to mark in the file that the case originated in adult court.”* Others stated that they would have to go through each and every file by hand to figure out how many waiver summaries were prepared.

**Estimations of Waiver and Reverse Waiver** — Despite the lack of available data, interviewees provided estimations on the number of waiver petitions filed by the local State’s Attorneys Office in juvenile court and the number of reverse waiver motions filed by the defense attorneys. No one knew how many children and youth are automatically charged as adults. Estimates on the number of waiver petitions filed by the state ranged from *“few and far between,”* to several hundred per year. Stakeholders estimated that the number of waiver petitions granted by the courts varied from 30 to 90%. Most interviewees saw either no reverse waiver at all or reported a significant increase in the number of youth reverse waived. An intake worker at the public defenders office said, *“there used to be about a dozen a year, now I see that many in a two-week period.”* In another jurisdiction, a juvenile counselor reported that all defense attorneys, public defenders and private counsel, are filing reverse waiver motions in every case and that the increased motions practice has resulted in more kids being returned to the juvenile system.

**The Philosophy of Waiver** — Most stakeholders attributed an increase or decline in the number of children tried as adults to the philosophy of one or another juvenile system stakeholder. Many juvenile stakeholders attributed the increase or decrease in the number of waiver petitions filed by the State’s Attorneys Office to the philosophy of the locally elected State’s Attorney. One judge said, *“when I was an Assistant State’s Attorney we used to say, ‘If you do not like the juvenile system we’ll see what we can arrange for you in the adult system’.”* A DJS court liaison reported, *“typically every [youth] that the Assistant State’s Attorneys can charge as an adult they will.”* In many jurisdictions the Assistant State’s Attorneys reported that they rely solely on the philosophy of DJS to seek waiver of jurisdiction. One DJS social worker shared her philosophy: *“there are some offenses for which you need to get away from the case because there are not enough years left in the child’s life to rehabilitate.”* She drew the line at 16 years old.

**Lack of Resources** — Consistent with national reports, some judges base their decision to waive on the paucity of resources available in the juvenile justice system rather than a philosophy of trying children as adults.<sup>200</sup> One judge noted, *“I would waive a kid who has been to Hickey Impact. There really is nothing more we can do.”* It appeared that the Department of Juvenile Services also looks to available services in considering waiver. Many assistant state’s attorneys

*“The number of waivers is dependent on the philosophy of the elected State’s Attorney’s Office.”*  
Juvenile Court Judge

*“Trends in waiver are always court related. It depends on the composition of the bench.”*  
Intake Officer, Department of Juvenile Justice

reported that they rely exclusively on DJS to recommend waiver in cases where the Department believes it has no more available resources.

**Overcharging** — Stakeholders reported over and over that local prosecutors coordinate with police departments to ensure that youth are sent to the adult system regardless of whether the facts support such a charge. One intake worker reported that *“the police call the State’s Attorney’s Office to make sure that they have the charges listed correctly so the juvenile is charged as an adult.”* Several public defenders reported that the state overcharges cases and ultimately youth are found not guilty of the offense that brought them under criminal court jurisdiction. Others reported that cases that originate in adult court that are transferred back to the juvenile court are not infrequently dismissed in juvenile court. Other public defenders felt that Assistant State’s Attorneys often used the threat of waiver to force a plea. One defender noted: *“At arraignment the Assistant State’s Attorney says, ‘You can plead now and I won’t waive him’.”*

**First Time Offenders** — Research findings suggest that an important policy goal for decision makers is to reduce the number of juvenile cases originally charged in adult criminal court that involve first-time offenders.<sup>201</sup> Several DJS workers reported that youth who are sixteen are automatically charged as adults regardless of their prior history with the Department. Consistent with the finding by the Jurisdiction Commission that *“legislatively waived youth are serious offenders with few prior criminal justice system contacts,”* many DJS workers reported that there are youth in the adult system who had no contacts, not even an intake, with DJS. One DJS Supervisor said, *“there are kids in the adult system that we have never seen. They have never been arrested before and all of a sudden they are in serious situation and serving time in the adult system.”* One Assistant Public Defender remarked that the local prosecutor showed no discretion in charging, even in cases where there are several co-defendants. *“One set of circumstances sent four kids into the adult system without considering level of involvement or prior history with DJS.”* In another jurisdiction, a master reported that any youth aged sixteen who is charged in criminal court stays in criminal court, even if it is the youth’s first offense.

### C. Quality of Defense Counsel at Waiver and Transfer

*“There is no place in our system of law for reaching a result of such tremendous consequences ... without effective assistance of counsel.”*

*The United States Supreme Court*<sup>202</sup>

Given the extreme consequence of divesting the juvenile court of jurisdiction over children and youth, the role of defense counsel is of critical importance. The United State’s Supreme Court believed that the decision to waive juvenile court jurisdiction *“is potentially as important to [the child] as the difference between a five years’ confinement and a death sentence.”*<sup>203</sup> The Court also stated that defense counsel have the *“legitimate interest in the protection of the child”* and must *“examine, criticize and refute material submitted to the court.”*<sup>204</sup> National standards state that in any case where transfer is likely, coun-



sel should promptly investigate all circumstances of the case bearing on the appropriateness of transfer, must secure the disclosure of all reports and other evidence to be submitted for the hearing and file all motions necessary to assist in the preparation of the hearing including appointment of an investigator or necessary expert.<sup>205</sup>

**Substandard Waiver Representation** — The assessment found that an overwhelming majority of public defenders do not investigate the circumstances of waiver and reverse waiver cases and often lack the preparation necessary to obtain information critical to the determination of the statutorily-imposed five factors. Defenders who viewed waiver and reverse waiver as a “triage process” either did not prepare beyond reading the DJS waiver summary or worked with the DJS worker prior to the waiver hearing to try to achieve retention in the juvenile system. A mere handful of defenders from the jurisdictions visited consistently prepared for waiver or reverse waiver hearings. Judges and juvenile counselors confirmed that this was the case. One assessment team member wrote:

*“My impression generally with respect to waiver hearings is they figure out which cases are winners and litigate those cases. In cases where DJS does not support the outcome, they appear to believe there is no reason to litigate — in other words my impression is that they move along the process to the inevitable solution as agreed to (either explicitly or implicitly) by all parties — DJS and state’s attorney included—instead of being zealous defenders in every case.”*

**Independent Experts** — Typically, a representative from the Department of Juvenile Services is the only expert and often the only witness and sole provider of information available to assist the court in addressing the five factors of waiver and reverse waiver. Private Counsel were more likely to use experts at waiver or reverse waiver hearings than public defenders. An overwhelming majority of assistant public defenders reported that they can get an expert for a waiver or reverse hearing but that they rarely ask for them.

**Giving Up** — The common theme running through conversations with assistant public defenders was that most believed there was nothing they could do to at waiver or reverse waiver to counter the impenetrable weight of the recommendation of the Department of Juvenile Services. One defender said, “I have no ability to influence our judge. Once it gets to the point where DJS is recommending waiver it’s a done deal. It would not matter if I presented a million witnesses.” In fact, the only advocacy many defenders believed was useful was advocacy with the juvenile counselor prior to the waiver hearing. Juvenile counselors also remarked on the practice: “When our public defenders know that I am recommending retention in the adult system they kind of give up. I see a lot of private counsel bring in an expert when they disagree with my recommendation. All the big battles in court are with private counsel.”

**No Information** — An overall lack of available information strongly influenced the decision to be an aggressive advocate with DJS rather than formally

*The assessment found that an overwhelming majority of public defenders do not investigate the circumstances of waiver and reverse waiver cases and often lack the preparation necessary to obtain information critical to the determination of the statutorily-imposed five factors.*

in court. The vast majority of public defenders do not have the support staff to collect school records, mental health evaluations and other necessary information unless the juvenile counselor provides it. One juvenile counselor believed that information was of the utmost importance for defenders to prepare for waiver:

*“Sometimes public defenders are involved with the waiver summary preparation. The problem is they call me and say, ‘He is a really good kid and should not go to the adult system,’ after meeting the client one time. The client may present very well but I have the youth’s entire file. I know how he responded to every intake. I know what his parents have said about him over the years. Public defenders do not have information or records.”*

**Unreliable Waiver Summaries** — The Supreme Court was concerned about the reliability of information presented at waiver hearings when it held that only through examination and critique would a court be able to make its findings regarding waiver because “[t]here is no irrebuttable presumption of accuracy attached to staff reports.” The over reliance of the courts and assistant public defenders on DJS waiver summaries to determine juvenile jurisdiction in Maryland surprised many assessment team members, especially since stakeholders reported that the quality of waiver summaries varied from one DJS worker to another.

In several jurisdictions, DJS assigns one person to prepare waiver summaries. Often, the one person responsible for preparing waiver summaries has other tasks as well. One DJS counselor prepared all the waiver summaries for the county, is assigned to the Spotlight on Schools program and assists with intakes. In other jurisdictions, no one person is assigned to prepare the waiver summaries; in these jurisdictions it is the responsibility of the juvenile counselor supervising the youth on probation.

Some counselors take very seriously their responsibility to assist the court in making what is a critical decision; others view waiver summaries as just another part of their job. Some reviewed every educational and mental health assessment and even sought additional assessments when needed to thoroughly prepare the summary. Those counselors took pride in their work and believed that it took experience and skill to prepare the report. One social worker noted, “DJS thinks anyone can prepare a waiver summary. When the caseload is high DJS allows someone with little court experience and only a Bachelor’s Degree to write the summary. Those people are not trained to testify in court either.” Other DJS workers simply did not prepare adequately. One assistant public defender observed, “the Department frequently drops the ball on waiver summaries. In one case the worker requested waiver and prepared a summary without addressing his special education issues. The Department had no school records in its file and did not know about the special education issues. We got all of his school records and the Department withdrew its request [for waiver].” Additionally, not all DJS workers meet with a supervisor to review the waiver summary prior to submitting it to the court. The result is that there is no uniformity in the quality of waiver summaries.

**Successful Outcomes** — The few public defenders that routinely challenged waiver and filed reverse waiver motions, for the most part, were successful in

ultimately getting the case before the juvenile court. These lawyers prepared for waiver by securing experts—either mental health experts or social workers—from the Office of the Public Defender to assist in the preparation of the case. One defender noted, *“every time I use an independent expert, I win the reverse waiver.”* Another defender who typically gets a social worker involved, requests a psychological/social history and uses the social worker to testify in court. She reported, *“I have had 10 waiver cases and have not lost one yet.”* A detained youth who was reverse waived to the juvenile court had nothing but praise for his public defender who thoroughly prepared for the case. *“My public defender does everything she can for me. She came to see me three times already. She calls me and returns my calls as soon as she can.”*



# CHAPTER THREE

## Promising Approaches

**Montgomery County Office of the Public Defender** — While individual offices are rarely identified in these state assessments, it sometimes becomes necessary to identify an office that must be recognized for its capacity to act as a model for the state and other offices around the nation. Such a model does exist in the Montgomery County Office of the Public Defender, which ensures excellence in juvenile defense for all children and youth it serves. While the reasons for model offices are multiple, some of the elements cited by national experts assessing the office include: an experienced Chief of the Juvenile Division, high quality and closely monitored supervision, an Investigator Intern Program, and routine use of experts for difficult cases, including waiver and reverse waiver hearings.

As noted by one national expert: “I spent two days of interviews and court observation in Montgomery County and have generally found this to be an efficient and well run defender system with strong and zealous leadership, adequate caseloads and good resources overall. The philosophy and practices reflect a ‘kid friendly’ environment, from both the public defenders and the judiciary. There exists a strong level of advocacy and sophistication in this system.”

**Juvenile Steering Committee** — Approximately two years ago, juvenile practitioners from local public defender offices began approaching the statewide Office of the Public Defender with a variety of concerns and issues particular to their work as defense counsel for children in juvenile court. Six months ago a Committee—comprised of volunteers from several public defender districts, the Chief of the Juvenile Division and the Director of Training—began meeting on a regular basis to advise policymakers and law makers on a variety of issues facing juvenile practitioners. The Committee has been working on updating training requirements and training programs for juvenile defenders, including day-long training sessions on topics such as the role of

education and mental health in juvenile defense. The Committee's most notable accomplishment, however, has been its involvement with the Maryland General Assembly at an unprecedented level of organization. The Committee found a cohesive voice for juvenile defenders in the last legislative session and has become more pro-active in pushing for reform of Maryland's juvenile justice system. The Committee's goals for continued improvement include: recruiting more defenders to increase the geographic diversity of the Committee so concerns from rural, suburban, and urban jurisdictions can be addressed; creating an organized model for reform; and continuing the dialogue on how best to improve the indigent defense delivery system for children and youth in the state.

**Youthful Defendant Unit** — The Youthful Defendant Unit (YDU) was created by the Juvenile Court Division of the Office of the Public Defender in Baltimore City, in 1995, to represent children charged as adults. These cases comprise a specialized field of practice that requires familiarity with the processes and resources of the juvenile justice system, in addition to regular criminal practice and an understanding of programs, which would be available to clients if they were to be adjudicated as delinquents, and an ability to convey the appropriateness of these programs to the court. Currently staffed with two attorneys, two support staff and one intern, YDU represents a majority of all transfer-eligible defendants in Baltimore City. The Office of the Public Defender is in the process of expanding YDU to address the needs of youth automatically charged as adults. The new unit will include a social worker and two additional defense attorneys.<sup>206</sup>

**Detention Response Unit** — This statewide unit consists of social workers and attorneys. These teams work with youth primarily in Baltimore City, Montgomery County and Prince George's County. The hope is that expansion of the unit will result in statewide standards of representation for children and youth either placed in a detention facility pending a court hearing or awaiting placement in a residential facility. Social workers locate family resources or placement alternatives to shorten the detention time and attorneys represent youth at both detention hearings and review hearings.<sup>207</sup>

**Juvenile Justice Center Baltimore City** — Baltimore City juvenile defenders are anxiously awaiting the opening of the Juvenile Justice Center. The Center is a multifaceted center that brings all aspects of the Juvenile Court in one building including judges and masters, the Juvenile Divisions of the Office of the Public Defender and State's Attorney's Office, the Department of Juvenile Services Intake Division and others. The building additionally includes courtrooms and a detention center. Public defenders view the Center as an excellent opportunity to improve defense advocacy at all stages of the process from intake through disposition.

There are also initiatives underway to develop workable policies and practices before the juvenile court moves into the new Baltimore City Juvenile Justice Center; also, the Annie E. Casey Foundation committed resources to Baltimore City Juvenile Court through its Juvenile Detention Alternatives Initiative. Parties entered into a Memorandum of Understanding for Collaboration

*"This will be an interesting jurisdiction to re-visit a year from now. The movement to a more modern environment will change many patterns and practices, hopefully for the better."*  
Juvenile Court Master



(MOU) on December 21, 2000. The MOU requires the Juvenile Court, DJS, State's Attorneys Office, Public Defenders Office, Baltimore City Police Department, Baltimore City Department of Social Services (DSS) and the Baltimore City Board of School Commissioners "to work in a collaborative manner in developing, piloting, implementing and evaluating policies, procedures, and 'best practices' in the utilization of the Justice Center."



# CHAPTER FOUR

## Conclusion and Recommendations

No one can doubt the laudable purpose of the juvenile court system and the good intentions of those working within the system. In many ways, the juvenile courts in Maryland are operating under an outdated model of juvenile court that neither protects the interests of children nor ensures rehabilitative treatment. Countless numbers of children are waiving the right to counsel and navigating the court system alone, never fully understanding the potential consequences of the decisions they make. Poor children in need of the assistance of the Office of the Public Defender confront significant hurdles to obtain counsel yet, are not guaranteed their presence at all critical stages of the process—even when incarceration in a secure facility is imminent. Understandably, children are frustrated and confused by the entire juvenile court system.

The role of defense counsel is critically important. Without well-trained, well-resourced defense counsel there is no practical realization of due process and no accountability of the juvenile justice system. The assistant public defenders charged with the enormous responsibility of protecting children from the slings and arrows of the justice system are struggling within a system that is burdensome and does not provide sufficient support, training or compensation. Some defenders remain zealous advocates despite the odds that they may not be successful in their efforts; others, however, have succumbed to the notion that the defense attorney plays an insignificant role in juvenile court.

This assessment left many feeling that children are not protected and that the system as a whole is unreliable. Too many children are sent to the adult system and placed in adult jails on insufficient inquiry. Too many children are incarcerated in unsafe secure detention centers without the benefit of counsel. Too many children are shuffled through an expeditious system of admissions and dispositions that do not necessarily reflect the circumstances that bring them to court or the skills they need to become successful. Too many poor children, children of color and children with special needs are flooding into the system because no one else wants to deal with them.

Maryland has an obligation to treat children and youth in the justice system with dignity, respect and fairness. The citizens of Maryland 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 following recommendations are made with respect to the provision of juvenile indigent defense services. Consistent with national standards, the State of Maryland should:

1. Allocate adequate funding to the Office of the Public Defender to support the meaningful representation of juveniles in delinquency proceedings;
2. Provide a presumption of indigence for children in delinquency proceedings;
3. Ensure that no child in Maryland waives the right to counsel in a delinquency proceeding without consulting counsel at a pre-adjudicatory hearing on counsel;
4. Reduce the unnecessary number of children and youth in the adult system and prevent the co-mingling of young offenders with the general population of adults;
5. Provide the right to public defender assistance early on in the process to ensure that children are not detained in secure care or other facilities without the benefit of counsel;
6. Provide well-resourced, well-trained attorneys specializing in juvenile representation at every stage of the delinquency process;
7. Expand ancillary defender services to ensure every child is represented by a specialized defender team;
8. Establish a statewide resource network to provide support and technical assistance to local juvenile public defenders;
9. Establish oversight and monitoring mechanisms of juvenile court practice to ensure that decisions made at every point in the juvenile justice process do not have a disparate impact on children of color, girls and children with mental health and educational needs; and
10. Evaluate detention policies and practices to stop the misuse and abuse of secure detention at all stages in the delinquency process.

## ENDNOTES

- <sup>1</sup> 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); and, *Schall v. Martin*, 467 U.S. 253 (1984) (preventive detention of children charged with delinquent acts is constitutional).
- <sup>2</sup> *In re Gault*, 387 U.S. 1, 20 (1967).
- <sup>3</sup> *Id.* at 36.
- <sup>4</sup> *Id.* at 18.
- <sup>5</sup> *In re Winship*, 397 U.S. 358, 365–366 (1970).
- <sup>6</sup> Hertz, et al., *Trial Manual for Defense Attorneys in Juvenile Court*, American Law Institute/American Bar Association, Committee on Continuing Professional Education (1991), 36. 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 Association (1996), herein after cited as “*IJA/ABA Standards*.”
- <sup>7</sup> National Advisory Committee for Juvenile Justice and Delinquency Prevention, July 1980, “3.312 Representation by Counsel — For the Juvenile,” *Standards for the Administration of Juvenile Justice* (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, U.S. Dept. of Justice).
- <sup>8</sup> *IJA/ABA Standards*, Introduction, p. xv (1996).
- <sup>9</sup> Puritz, Burrell, Schwartz, Soler, Warboys. *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*: American Bar Association Juvenile Justice Center (1995).
- <sup>10</sup> U.S. Census Bureau. State and County QuickFacts, retrieved at <http://quickfacts.census.gov/qfd/states/24000.html>.
- <sup>11</sup> *Id.*
- <sup>12</sup> Office of Juvenile Justice and Delinquency Prevention, *Statistical Briefing Book* retrieved at <http://ojjdp.ncjrs.org/ojstatbb/ezapop/asp?rdoYear=99&specificState=24 &specificCount=0>.
- <sup>13</sup> U.S. Census Bureau. State and County QuickFacts. <http://quickfacts.census.gov/qfd/states/24000.html>.
- <sup>14</sup> The Annie E. Casey Foundation, *Kids Count 2003*, retrieved at <http://www.aecf.org>.
- <sup>15</sup> U.S. Census Bureau. State and County QuickFacts. <http://quickfacts.census.gov/qfd/states/24000.html>
- <sup>16</sup> Poverty Rates in Maryland by Race and Hispanic Origin — 1999. See, <http://www.mpd.state.md.us/MSDC/census/cen2000/sf3/highlight/chart1.pdf>.
- <sup>17</sup> Percentage Point Change in Poverty Rates in Maryland by Race and Hispanic Origin 1989–1999. See [www.mpd.state.md.us/MSDC/census/cen2000/sf3/highlight/chart2.pdf](http://www.mpd.state.md.us/MSDC/census/cen2000/sf3/highlight/chart2.pdf).
- <sup>18</sup> The Annie E. Casey Foundation, *Kids Count 2003*, retrieved at <http://www.aecf.org>.
- <sup>19</sup> *Id.*
- <sup>20</sup> *Id.*

- <sup>21</sup> Hack, M., Klein, N. and Taylor, H.G., *Long Term Developmental Outcomes of Low Birth Weight Infants*, *The future of Children*, Vol. 5 No. 1, Spring 1995, p. 1.
- <sup>22</sup> *Id.* at p. 9–10.
- <sup>23</sup> The Annie E. Casey Foundation, *Kids Count 2003*, retrieved at <http://www.aecf.org>.
- <sup>24</sup> White House Conference on Mental Health, June 7, 1999, retrieved at <http://www.nimh.nih.gov/whitehouse/myths.asp>.
- <sup>25</sup> Deana Krizan, *Champions for Children 2002 Public Policy Book*, p. 65, Maryland Children’s Action Network.
- <sup>26</sup> *Id.* at p. 69.
- <sup>27</sup> Interview with Deana Krizan of The Mental Health Association of Maryland on July 30, 2003 & Interview with Jane Walker, Director of Maryland Coalition of Families for Children’s Mental Health.
- <sup>28</sup> Interview with Deana Krizan of Mental Health Association of Maryland on July 30, 2003.
- <sup>29</sup> Deana Krizan, *Champions for Children 2002 Public Policy Book*, p. 65, Maryland Children’s Action Network.
- <sup>30</sup> Interview with Jane Walker, Director of Maryland Coalition of Families for Children’s Mental Health
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- <sup>32</sup> Retrieved at <http://www.maec.org/mdstats.html>
- <sup>33</sup> Jay P. Green, retrieved at [http://www.manhattan-institute.org/html/cr\\_baeo\\_tl.htm](http://www.manhattan-institute.org/html/cr_baeo_tl.htm).
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- <sup>35</sup> Judith Browne, *Derailed: The Schoolhouse to Jailhouse Track* p. 15. The Advancement Project, Washington D.C. May 2003
- <sup>36</sup> *Hornbeck v. Somerset County Bd. Of Education*, 458 A.2d 758 (Md. 1983) citing the Maryland Constitution Art VIII § 1.
- <sup>37</sup> Education Week, retrieved at <http://www.edweek.org/sreports/qc03/reports/equity-t1.cfm>.
- <sup>38</sup> *Maryland Teacher Staffing Report 2002–04* p. 41 retrieved at <http://www.msde.state.md.us/paab/pdf/staffing2002-04.pdf>.
- <sup>39</sup> Office of Juvenile Justice and Delinquency Prevention, *Statistical Briefing Book*. See, <http://ojjdp.ncjrs.org/ojstaabb/html/qa250.html>.
- <sup>40</sup> Office of National Drug Control Policy, *State of Maryland Profile of Drug Indicators* p. 5, retrieved at <http://www.whitehousdrugpolicy.gov/statelocal/md/md.pdf> (February 2003).
- <sup>41</sup> *Id.* at 7.
- <sup>42</sup> *Id.*
- <sup>43</sup> Children’s Defense Fund, retrieved at <http://www.childrensdefense.org/state/md.pdf>.
- <sup>44</sup> Retrieved at <http://www.dhr.state.md.us/cps/pdf/cpsdata1.pdf>.
- <sup>45</sup> Retrieved at <http://www.dhr.state.md.us/cps/pdf/stat.pdf>.
- <sup>46</sup> Interview with Steve Berry, Director of Children and Family Services, August 5, 2003.
- <sup>47</sup> Cathy 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. Department of Justice, National Institute of Justice. 1999. Retrieved at <http://www.ncjrs.org/pdffiles1/nij/180973.pdf>.



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- <sup>49</sup> *Untitled*, Maryland Department of Human Resources.
- <sup>50</sup> Children's Defense Fund, retrieved at <http://www.childrensdefense.org/state/md.pdf>.
- <sup>51</sup> Retrieved at <http://www.ncjrs.org/pdffiles1/ojdp/191031.pdf>.
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- <sup>53</sup> *Id.*
- <sup>54</sup> Office of Juvenile Justice and Delinquency Prevention, *Guiding Principles for Promising Female Programming, An Inventory of Best Practices*, October 1998. Retrieved of at <http://ojdp.ncjrs.org/pubs/principles/contents.html>.
- <sup>55</sup> National Mental Health Association, *Mental Health and Adolescent Girls in the Justice System*, retrieved at <http://www.nmha.org/children/justjuv/girlsjj.cfm>.
- <sup>56</sup> E. Cuffman, et al, *PTSD Among Female Juvenile Offenders*, *Journal of American Academy of Child and Adolescent Psychiatry*, p. 37 (1998).
- <sup>57</sup> The Annie E. Casey Foundation, *Kids Count 2003*, retrieved at <http://www.aecf.org/cgi-bin/kc.cgi?action=profile&area=Maryland>.
- <sup>58</sup> The Court Information Office, *Juvenile Court*, retrieved at <http://www.courts.state.md.us>.
- <sup>59</sup> *Id.*
- <sup>60</sup> Chapter 326, Acts of 1916
- <sup>61</sup> Department of Juvenile Services Origin <http://www.mdarchives.state.md.us/msa/mdmanual/19DJS/html.DJSf.html>
- <sup>62</sup> The Court Information Office, *Juvenile Court*, retrieved at <http://www.courts.state.md.us>.
- <sup>63</sup> Maryland Rule 11-110, *Hearings Generally*.
- <sup>64</sup> Maryland Code, *Courts and Judicial Proceedings*, § 3-8A-13(f).
- <sup>65</sup> The Maryland Code and the Maryland Rules govern juvenile court proceedings. *See*: Maryland Code, *Courts and Judicial Proceedings Title 3. Courts of General Jurisdiction — Jurisdiction/ Special Causes of Action, Subtitle 8A. Juvenile Causes — Children Other than CINA (Child in Need of Assistance) and Adults and Maryland Rules, Title 11. Juvenile Causes*. The purposes of juvenile court are found at MD Code Courts and Judicial Proceeding Title 3. § 3-8A-02.
- <sup>66</sup> Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice: A Century of Change*, 2 (Dec. 1999).
- <sup>67</sup> *Id.*
- <sup>68</sup> Chapter 326, Acts of 1916.
- <sup>69</sup> Chapter 323, Acts of 1931.
- <sup>70</sup> Maryland Department of Juvenile Services — *Origin*, p. 5. retrieved at <http://www.mdarchives.state.md.us/msa/mdmanual/19djj/html/djff.html>.
- <sup>71</sup> *Id.*
- <sup>72</sup> Chapter 126, Acts of 1966
- <sup>73</sup> Maryland Department of Juvenile Services — *Origin* p. 5, retrieved at <http://www.mdarchives.state.md.us/msa/mdmanual/19djj/html/djff.html>
- <sup>74</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).

<sup>75</sup> *Id.* at 334.

<sup>76</sup> *Kent v. United States*, 383 U.S. 541 (1966).

<sup>77</sup> *In re Gault*, 387 U.S. (1967).

<sup>78</sup> Robert L. Spangenberg and Marea L. Beeman, *Indigent Defence Systems in the United States*, Law and Contemporary Problems, Volume 58, Number 1, School of Law Duke University (Winter 1995).

<sup>79</sup> Chapter 209, Acts of 1971; Maryland Code, Article 27A Public Defender, § 1 Declaration of policy and legislative intent.

<sup>80</sup> MD Archives Volume 175; Maryland Code, Article 27A Public Defender, § 1 Declaration of policy and legislative intent.

<sup>81</sup> Maryland State Archives, vol. 175, p. 237, The Public Defender System. Retrieved at <http://www.mdarchives.state.md.us/megafile/msa/speccol/sc2900/sc2908/000001/000175/html/am175—237.html>.

<sup>82</sup> *Id.*

<sup>83</sup> Maryland Code, Article 27A Public Defender § 7 Determination of eligibility for services; investigation of financial status of defendant; recovery of expenses.

<sup>84</sup> *IJA/ABA Standards*, Standard 1.1.

<sup>85</sup> MD Code, *Courts and Judicial Proceedings*, § 3-8A-20; MD Rule 11–106.

<sup>86</sup> *IJA/ABA Juvenile Justice Standards, Standards Relating to Interim Status*, Standard 5.3B and *Standards For The Juvenile Facility Intake Official*, Standard 6.5A (1996).

<sup>87</sup> MD Code, *Courts and Judicial Proceedings*, § 3-8A-14.

<sup>88</sup> *IJA/ABA Standards*, Standard 6.4(b).

<sup>89</sup> Maryland Code, *Courts and Judicial Proceedings*, §3-8A-15 (a)–(b).

<sup>90</sup> MD Rules 11–111 and 11–116.

<sup>91</sup> *IJA/ABA Standards*, Standard 6.4(a).

<sup>92</sup> *Id.* at Standard 6.2(a).

<sup>93</sup> *Id.* at Standard 3.5.

<sup>94</sup> MD Code, *Courts and Judicial Proceedings* §3-8A-06.

<sup>95</sup> *IJA/ABA Standards*, Standard 8.2(b).

<sup>96</sup> *Id.* at Standard 4.3(a).

<sup>97</sup> MD Code, *Courts and Judicial Proceedings* § 3-8A-18 (c); MD Rule 11–114(1).

<sup>98</sup> *IJA/ABA Standards*, Standards, 7.8 (a)–(e), 7.9 (a)–(b)(ii), & 7.10.

<sup>99</sup> *Id.* at, Standard 7.3(b)(1996).

<sup>100</sup> *Id.* at, Standard 9.2(b)(i)&(ii).

<sup>101</sup> *Id.* at, Standard 9.2(a).

<sup>102</sup> MD Rules 11–111 and 11–116.

<sup>103</sup> *IJA/ABA Standards*, Standard 10.1; MD Rule 11–106b.2(a).

<sup>104</sup> *IJA/ABA Standards*, at Standard 1.1.

<sup>105</sup> *IJA/ABA Juvenile Justice Standards, Standards Relating To Pre-Trial Court Proceedings*, Standard 6.1A (1996).

<sup>106</sup> MD Rule 11–106 (b). The Code requires that when a child indicates a desire to waive representation, the court shall determine in open court and on the record that the child understands: the nature of the allegations and the proceedings; the range of allowable dispositions; that counsel may be of assistance in determining and presenting any defenses to the allegations of the juvenile petition or other mitigating circumstances; that the right to counsel in a delinquency proceeding includes the right to the prompt assignment of counsel, without charge to the party if financially unable to obtain private counsel; and, that even if the party intends not to contest the charge or the proceeding, counsel may be of substantial assistance in developing and presenting material which could affect the disposition. The Court must also inform the child that among her rights at any hearing are: the right to call witnesses on her behalf; the right to confront and cross-examine witnesses; the right to obtain witnesses through compulsory process; the right to remain silent; and the right to require proof of the charges.

<sup>107</sup> *IJA/ABA Juvenile Justice Standards, Standards Relating To Pre-Trial Court Proceedings*, Standard 5.3 (A)(1996).

<sup>108</sup> *IJA/ABA Standards*, Standard 10.2(a).

<sup>109</sup> MD Code, *Courts and Judicial Proceedings*, § 3-8A-20; MD Rule 11–106

<sup>110</sup> *In re Gault*, 387 U.S. 1, 36 (1967) (quoting *Powell v. Alabama*, 287 U.S. 45 (1932)).

<sup>111</sup> *In re Winship*, 397 U.S. 358 (1970).

<sup>112</sup> Management Analysis and Research Administrative Office of the Courts, *The Annual Report of the Maryland Judiciary*, table CSA-8 (2002).

<sup>113</sup> Maryland Office of the Public Defender, *Annual Report FY 2002* p. 15

<sup>114</sup> *Id.* at 39.

<sup>115</sup> *Id.* at 69.

<sup>116</sup> *Id.* at 34.

<sup>117</sup> *Id.* at 5.

<sup>118</sup> *Id.* at 51.

<sup>119</sup> *Id.* at 63.

<sup>120</sup> *Id.* at pp. 43,61.

<sup>121</sup> *Id.* at 19.

<sup>122</sup> *Id.* at 20.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 20–22.

<sup>125</sup> *Id.* at 14.

<sup>126</sup> *Id.* at 15.

<sup>127</sup> *In re Gault*, 387 U.S. 1 (1967).

<sup>128</sup> *Id.* at 35.

<sup>129</sup> *Id.* at 35–36.

<sup>130</sup> Alan D. Henry, *Reducing Unnecessary Delay: Innovations in Case Processing*, Pathways to Juvenile Detention Reform, A Project of the Annie E. Casey Foundation, vol. 5, p. 10.

<sup>131</sup> *Id.* at 9–10.

<sup>132</sup> *Id.* at 14–18.

<sup>133</sup> *Id.* at 10.

<sup>134</sup> Deborah Busch, *By the Numbers: The Role of Data and Information in Detention Reform*, Pathways to Juvenile Detention Reform, A Project of the Annie E. Casey Foundation, vol. 7, p. 14.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> Bill Rust, *Juvenile Jailhouse Rocked: Reforming Detention in Chicago, Portland and Sacramento*, Advocasey, Fall/Winter 1999 Issue.

<sup>138</sup> Parents, advocates and community activists repeatedly call for the closure of facilities that are failing the children and youth who go through the system. As a result of their persistence, one committed program and one unit at a detention center have been closed. Above and beyond the conditions of confinement in these facilities, the public attention to these issues has stirred in Maryland efforts to reexamine the role detention plays in the juvenile justice system; advocates are calling for improvements in the facilities and the policies and practices that bring the children and youth to the facilities.

<sup>139</sup> 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.

<sup>140</sup> 467 U.S. 253 (1984).

<sup>141</sup> 467 U.S. at 269; internal citations and quotations omitted.

<sup>142</sup> MD Rule 11–112(a)(1).

<sup>143</sup> MD Rule 11–112(a)(3).

<sup>144</sup> If a child is detained after arraignment, a judge cannot continue detention for more than thirty days unless the child waives review or the court extends detention following a hearing. If an adjudicatory hearing is not held within thirty days, the juvenile must be released pending an adjudicatory hearing. Only an “extraordinary cause” can extend pre-adjudication detention, and an overcrowded docket is not an extraordinary cause. Between adjudication and disposition, detention cannot continue for more than fourteen days without court review. MD Code, Courts and Judicial Proceedings, §3-8A-152.(d).

<sup>145</sup> Maryland Department of Juvenile Justice, *Secretary’s Directive on Detention and Shelter Care Policy* (Oct. 15, 2001).

<sup>146</sup> *Id.*

<sup>147</sup> National Council on Crime and Delinquency, *Detention Utilization in the Maryland Department of Juvenile Justice*, at iii (Feb. 2002) (implementation of “violent only” policy did little to change the proportion of youths detained for violent offenses, which dropped from 26% to 22% of admissions. Policy did, however, reduce percentage of youth detained on drug offenses from 46% to 22%. The policy may have also contributed to significant jump in the percentage of youth detained from warrants and probation violations, which increased from 8% to 23% of admissions). The assessment team interviewed over eighty confined youth. Of those, at least 40% were detained on warrants or probation violations.

<sup>148</sup> *Id.*

<sup>149</sup> IJA-ABA *Juvenile Justice Standards, Standards Relating to Interim Status*, Standard 8.2 (1996).

<sup>150</sup> IJA/ABA *Juvenile Justice Standards, Standards Relating to Interim Status*, Standard 3.3 (1996). The Office of Juvenile Justice and Delinquency Prevention has also taken the position that an “effective juvenile justice system does not use detention as a sanction.” Shay Bilchik, *Objectives of an Effective Juvenile Justice System*, Office of Juvenile Justice and Delinquency Prevention *Bulletin* (1998).

<sup>151</sup> IJA/ABA, *Juvenile Justice Standards, Standards Relating to Interim Status*, Standard 8.3 (1996).

<sup>152</sup> MD Rules 11–111 and 11–116.

- <sup>153</sup> Bill Rust, *Juvenile Jailhouse Rocked: Reforming Detention in Chicago, Portland and Sacramento*, Advocasey, Fall/Winter 1999 Issue.
- <sup>154</sup> *Id.*
- <sup>155</sup> *IJA/ABA Juvenile Justice Standards, Standards Relating to Interim Status*, Standard 3.3 (1996).
- <sup>156</sup> Bill Rust, *Juvenile Jailhouse Rocked: Reforming Detention in Chicago, Portland and Sacramento*, Advocasey, Fall/Winter 1999 Issue.
- <sup>157</sup> *IJA/ABA Juvenile Justice Standards, Standards Relating to Interim Status*, Standard 3.3 (1996). The Office of Juvenile Justice and Delinquency Prevention has also taken the position that an “effective juvenile justice system does not use detention as a sanction.” Shay Bilchik, *Objectives of an Effective Juvenile Justice System*, Office of Juvenile Justice and Delinquency Prevention *Bulletin*, (1998).
- <sup>158</sup> *In re Ryan S.*, 774 A.2d 1193 (2001) (re: Rule 11–114, adjudications).
- <sup>159</sup> David Steinhart, *Pathways to Juvenile Detention Reform: Special Detention Cases*, vol. 9, Annie E. Casey Juvenile Detention Alternatives, p. 20.
- <sup>160</sup> *Id.*
- <sup>161</sup> Md. Dept. of Juvenile Services, *Release and Revocation, Policy No. 18.04F* (eff. date Oct. 1994).
- <sup>162</sup> *Id.* at § I.
- <sup>163</sup> David Steinhart, *Pathways to Juvenile Detention Reform: Special Detention Cases*, vol. 9, Annie E. Casey Juvenile Detention Alternatives, p. 36–38.
- <sup>164</sup> Barry Holman, *Building Blocks for Youth* at [www.buildingblocksforyouth.org](http://www.buildingblocksforyouth.org)
- <sup>165</sup> *Id.*
- <sup>166</sup> *Id.*
- <sup>167</sup> *Id.*
- <sup>168</sup> Eileen Poe-Yamagata & Michael A. Jones, *And Justice for Some: Differential Treatment of Minority Youth in the Justice System*, BUILDING BLOCKS FOR YOUTH (2000).
- <sup>169</sup> *Id.*
- <sup>170</sup> The Disproportionate Representation of African-American Youth at Various Decision Points in the State of Maryland, Summary Report, December 1995
- <sup>171</sup> Conditions of Confinement: Juvenile Detention and Correctional Facilities, OJJDP, August 1994
- <sup>172</sup> National Mental Health Association Fact Sheet: *Prevalence of Mental Disorders Among Children in the Juvenile Justice System*, retrieved at <http://www.nmha.org/children/justjuv/prevelance.cfm>.
- <sup>173</sup> Deborah Shelton, *Estimates of Emotional Disorder in Detained and Committed Youth in the Maryland Juvenile Justice System* pp. 23–27, University of Maryland (March 1998).
- <sup>174</sup> Deana Krizan, *Maryland Children’s Action Network Public Policy Book 2002* p. 69
- <sup>175</sup> Regional Mid-Short Mental Health Services, *Mental Health Project: July 1, 2001 – June 30, 2002*.
- <sup>176</sup> Judith Browne, *Derailed: The Schoolhouse to Jailhouse Track* p. 10 Advancement Project, Washington D.C. May 2003
- <sup>177</sup> *Id.*
- <sup>178</sup> *Who is responsible for placing police officers in our schools?*, Oct. 2, 2002, retrieved at [www.mpt.org](http://www.mpt.org).
- <sup>179</sup> Judith Browne, *Derailed: The Schoolhouse to Jailhouse Track* p. 9 Advancement Project, Washington D.C. May 2003

- <sup>180</sup> Richard E. Redding, *The Effects of Sentencing Juveniles As Adults: Research and Policy Implications*. Youth Violence and Juvenile Justice, Vol. 1 No.2 p. 129 (2003).
- <sup>181</sup> Maryland Code Article 27, § 594A(f).
- <sup>182</sup> *Id.*
- <sup>183</sup> Richard E. Redding, *The Effects of Sentencing Juveniles As Adults: Research and Policy Implications*. Youth Violence and Juvenile Justice, Vol. 1 No. 2 p. 145 (2003).
- <sup>184</sup> Dr. Cindy J. Smith, *Maryland Department of Juvenile Justice Partnership to Study Waiver Effects: A Final Report*, Commission on Juvenile Justice Jurisdiction, *Final Report to the Governor and General Assembly*, p. 3 (2001).
- <sup>185</sup> Commission on Juvenile Justice Jurisdiction, *Final Report to the Governor and General Assembly*, p. 21 (2001); Richard E. Redding, *The Effects of Sentencing Juveniles As Adults: Research and Policy Implications*. Youth Violence and Juvenile Justice, Vol. 1 No. 2 p. 128 (2003).
- <sup>186</sup> Commission on Juvenile Justice Jurisdiction, *Final Report to the Governor and General Assembly*, pps. 4–5(2001).
- <sup>187</sup> The juvenile court does not have jurisdiction over a child, fourteen or older, charged with an act that if committed by an adult would be punishable by death or life imprisonment. Virtually all states have set the minimum age for transfer at 14 or younger. Additionally, the juvenile court does not have jurisdiction over a child, sixteen or older, who is alleged to have committed an excludable offense. Maryland Code, *Courts and Judicial Proceedings* § 3-8A-03.
- <sup>188</sup> There are three instances where children and youth charged in the adult system are ineligible for reverse waiver juveniles previously reverse waived to the juvenile court and subsequently found delinquent; previously convicted of an offense in criminal court; and a 16 year old charged with first degree murder. Commission on Juvenile Justice Jurisdiction, *Final Report to the Governor and General Assembly*, (2001).
- <sup>189</sup> Commission on Juvenile Justice Jurisdiction, *Final Report to the Governor and General Assembly*, p. 24 (2001).
- <sup>190</sup> In considering reverse waiver and waiver, the court addresses five factors, including: the age of the child; mental and physical condition of the child; the child's amenability to treatment in any institution, facility, or program available to delinquents; the nature of the offense and the child's alleged participation in it; and the public safety. The standard of proof at reverse waiver is by a preponderance of the evidence., MD Rule 11–102; Maryland *Code of Criminal Procedure* Article § 4–202
- <sup>191</sup> Maryland Code, *Code of Criminal, Procedure* Article 27 section 594(A).
- <sup>192</sup> Richard E. Redding, *The Effects of Sentencing Juveniles As Adults: Research and Policy Implications*. Youth Violence and Juvenile Justice, Vol. 1 No. 2 p. 129 (2003) citing *State v. R.G.D*, 1987 p. 835.
- <sup>193</sup> *Id.* at 26.
- <sup>194</sup> The burden of proof at a waiver hearing is by a preponderance of the evidence. In considering reverse waiver and waiver, the court addresses five factors, including: the age of the child; mental and physical condition of the child; the child's amenability to treatment in any institution, facility, or program available to delinquents; the nature of the offense and the child's alleged participation in it; and the public safety. Maryland Code, *Courts and Judicial Proceedings* § 3-8A-06.
- <sup>195</sup> If the court waives juvenile all subsequent delinquency cases must be waived to the adult system. Commission on Juvenile Justice Jurisdiction, *Final Report to the Governor and General Assembly*, p. 23 (2001).
- <sup>196</sup> Redding, Richard E., *The Effects of Sentencing Juveniles As Adults: Research and Policy Implications*. Youth Violence and Juvenile Justice, Vol. 1 No. 2 p. 134 (2003).
- <sup>197</sup> *Right Facility for youthful offenders often elusive*, Jeff Barker, Baltimore Sun, July 11, 2003.



<sup>198</sup> Richard E. Redding, *The Effects of Sentencing Juveniles As Adults: Research and Policy Implications*. Youth Violence and Juvenile Justice, Vol. 1 No. 2 p. 130 (2003).

<sup>199</sup> *Id.* at 134.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.* at 144.

<sup>202</sup> *Kent v. United States*, 383 U.S., 541, 555 (1966).

<sup>203</sup> *Id.* at 557.

<sup>204</sup> *Id.* at 562.

<sup>205</sup> *IJA/ABA Standards*, Standard 8.2(b).

<sup>206</sup> Retrieved at: [www.opd.state.md.us/Locations/juvenile\\_dru.htm](http://www.opd.state.md.us/Locations/juvenile_dru.htm).

<sup>207</sup> *Id.*





