

# WASHINGTON

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

### Statutory Provision for Counsel

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- Washington law grants juveniles the right to be represented by counsel at all “critical stages” of juvenile court proceedings regardless of a juvenile’s or his family’s financial ability to secure an attorney
- The law states that the presence of counsel must be provided “in any proceeding where the juvenile may be subject to transfer for criminal prosecution or in any proceeding where the juvenile may be in danger of confinement” (RCW 13.40.140)

### Structure of Juvenile Indigent Defense System

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- Counties fund public defense systems and independently choose their methods of providing counsel for indigent defendants
- Methods of appointment include: county-based public defenders, non-profit corporations, individual private defenders/private firms, and appointed attorneys (assigned counsel panels)

### Key Findings

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#### *The Attorney/Client Relationship*

- Attorneys do not have a clear understanding of their role in the attorney/child-client relationship, often advocating for the system rather than for their clients
- Defenders do not ensure that their juvenile clients understand or are informed about their cases

#### *Participation of Counsel in Juvenile Court Proceedings*

- Juveniles often appear without counsel, especially at hearings
- Cases often proceed without attorneys, sometimes even when the judge has not informed a juvenile of his rights and he has not officially waived his right to counsel

#### *Ineffective Assistance of Counsel*

- Defenders often do not meet with juveniles before their first appearance at court, so they have no chance to learn about their cases or clients
- Attorneys do not zealously advocate for their clients, often failing to conduct investigations or file motions, recognize competency issues and so insist on capacity hearings, and argue for alternatives to detention at disposition hearings
- Defense counsel assume no post-dispositional role or responsibility, and defenders rarely file appeals

#### *Caseloads and Assignment*

- Defenders working full-time reported an average of close to 400 cases annually, roughly 62% more cases than the advised standard of practice
- Because caseloads are too high, defenders report strongly encouraging their clients to plead guilty in order to make workloads more manageable

#### *Insufficient standards and oversight for defenders*

- Most counties have little or no juvenile defender training for court procedure or dealing with troubled youth
- Many counties have no system of review, resulting in inconsistent quality of counsel
- Attorneys must temporarily rotate out of the juvenile system, so they cannot truly specialize

#### *Racial Disproportionality*

- A 1998 study in Washington found that probation officers treated African-American juveniles more harshly than white youths who had committed the same crimes
- Social workers receive a disproportionate number of referrals for white youth from defense attorneys, reflecting a bias that might also affect the quality of representation in other ways, including dedication to cases or perception of acceptable resolutions to them

#### *The Juvenile System as a Dumping Ground*

- Children with mental health problems, learning disabilities, behavioral problems, and addiction issues are not getting the help they need in their communities, so they often end up in the juvenile court system
- Juveniles with mental health problems often receive punishment instead of treatment