

## Innovation Brief

# Early Appointment of Counsel

The timing of the appointment of counsel can have as much of an impact on the outcome of a case as whether an attorney is appointed at all. Having a qualified juvenile defender present, at the earliest stage possible, protects a youth's rights, ensures that youth will be informed as to the nature of any plea offer or collateral consequences that might attach to that offer, and will ensure the best possible legal outcome for that child. Juvenile defenders involved in the Juvenile Indigent Defense Action Network (JIDAN) sought to improve access to counsel by ensuring youth were appointed counsel at the earliest possible stage of juvenile court proceedings.

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### The Issue

Although youth have a statutory right to counsel, overwhelming evidence indicates that attorneys are rarely appointed early enough in the process to meet with their clients prior to the initial court hearing. In many jurisdictions, youth even appear at detention hearings without counsel. Any delay in appointing counsel will deny youth the chance for a meaningful opportunity to consult with their lawyer prior to critical decisions being made in their case—decisions that may have harmful consequences. Early appointment will provide counsel with the ability to influence filing decisions, seek diversion or dismissal, prevent or offer alternatives to secure confinement, and, in general, work toward positive life outcomes for that child.

### Strategic Innovations

With the support of the John D. and Catherine T. MacArthur Foundation's *Models for Change* Juvenile Indigent Defense Action Network, juvenile defenders from California, Florida, Illinois, Louisiana, Massachusetts, New Jersey, Pennsylvania and Washington collaborated on the development of strategic innovations to improve access to and quality of counsel and create

more developmentally appropriate policies and juvenile defense practices.

The resulting strategic innovations represent a collaborative effort to offer a variety of approaches tailored to meet specific areas ripe for reform.

### Innovations

This strategic innovation focused on strategies to ensure that youth receive early appointment of counsel and that time is allocated for meaningful communication between the lawyer and the child. A number of different mechanisms were employed to achieve this goal.

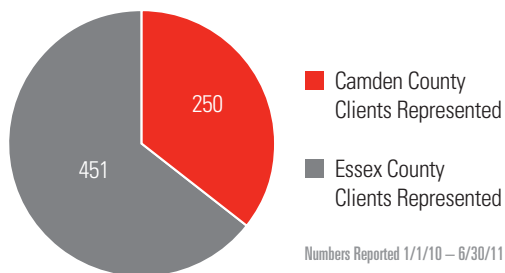
In Illinois, legislation was passed that guaranteed pre-detention hearing access to counsel for juvenile respondents. In the wake of the "early access law," a team of juvenile defenders developed the Right to Counsel Coalition (RCC) to track the new legislation and encourage new detention practices. In collaboration with other juvenile justice stakeholders, they identified counties where juvenile detention rates were especially high and developed a strategy to provide ongoing and on-the-ground assistance to those counties working to implement

the new law. The team also developed a weekend detention hearing pilot program in partnership with the public defender’s office. Illinois is one of the first states to statutorily require appointment of counsel at the time the petition is filed for all youth held in detention.

In New Jersey, juvenile defenders designed a strategic innovation to ensure that every youth charged with a delinquency offense was represented by counsel at his or her initial detention hearing. Working with the state’s office of the public defender, an early representation committee was formed to monitor implementation of the initial detention hearings and track results. The committee developed model protocols for providing representation at initial detention hearings, and to examine and develop strategies for overcoming barriers. They then conducted a statewide survey to gather information about current detention practices, which vary significantly from county to county. On the basis of what was learned from the survey, a pilot project was launched to implement appointment of counsel at the initial detention in two of the state’s largest counties.

In Miami, Florida, juvenile defenders worked with the bar association and other stakeholders to promulgate statewide rule changes to ensure the early appointment of counsel at arraignment and detention hearings. That was followed by a pilot project in Dade County to develop best practices to implement this new rule change.

### Number of Youth Represented at Initial Detention Hearings



## 10.2 Advocate for Early Access to Counsel

*Counsel should advocate for reform of systemic deficiencies that prevent the timely appointment of counsel. Counsel should file appropriate motions in court and make recommendations for reforms to the administrative, judicial, and legislative entities. The early and timely appointment of counsel is vital to ensuring that clients’ rights are protected.*

—National Juvenile Defense Standards

### Benefits and Outcomes

Illinois’ analysis of detention data led the team to expand the reach of the strategic innovation to encompass broader strategies for improving detention advocacy in the state. Since the legislation went into effect, juvenile defenders confirm that having earlier access to their clients has had a positive impact on detention outcomes. Preliminary data reveals a 14% decrease in detention rates statewide over three years.

As a result of the advocacy of juvenile defenders in New Jersey, the state’s Supreme Court held that the right to counsel in delinquency proceedings attaches at the filing of a complaint. The decision represents the perfect nexus of the team’s work to ensure appointment of counsel prior to detention. The defenders developed a model protocol for public defenders to provide representation for youth at initial detention hearings across the state. The state’s public defender office updated its case management system to capture outcome data and hired a specialist to implement the initial detention hearing protocol.

In addition, across the nation, juvenile defenders have taken up the challenge to ensure that youth not only receive early appointment of counsel but that youth do not waive counsel without a meaningful opportunity to consult. Many states have moved forward with new laws or court rules to address these related issues.

To learn more about the development and implementation of the collateral consequences strategic innovations, contact: National Juvenile Defender Center, 1350 Connecticut Avenue, NW, Suite 304, Washington, DC 20036, 202-452-0010, [inquiries@njdc.info](mailto:inquiries@njdc.info)

This brief is one in a series describing new knowledge and innovations emerging from *Models for Change*, a multi-state juvenile justice reform initiative. *Models for Change* is accelerating movement toward a more effective, fair, and developmentally sound juvenile justice system by creating replicable models that protect community safety, use resources wisely, and improve outcomes for youths. The briefs are intended to inform professionals in juvenile justice and related fields, and to contribute to a new national wave of juvenile justice reform.