

Juvenile Defense Attorneys and Family Engagement

Same Team, Different Roles

When a child gets arrested, the entire family is implicated and some family members are even brought into the juvenile court process along with that child.

For families, this can be a difficult and confusing experience that leaves them unsure where to turn for answers and guidance. For defenders, there is often a tension between upholding the legal and ethical obligations they owe to their child-client and responding to the needs of their clients' families. This can result in an adversarial relationship between defenders and families that is often unnecessary and which can be damaging to the defense case and the child.

The reality is, however, that in the vast majority of cases when families adequately understand the role and responsibilities of the defense attorney and defenders are sensitive to the family's needs, the two can work together as a team to create the best outcomes for youth accused of crimes. It is important to recognize that there may be times when it may be ethically inappropriate for defenders to engage certain family members, such as when a parent is the alleged victim or family members are insistent that the child be incarcerated. When this is not the case, however, teamwork between families and defenders can benefit a child's case at each stage of the delinquency proceedings, from arrest and intake, to detention, trial preparation, disposition, and into post-disposition.* Families and defenders each have a role to play, and when both understand those respective roles and learn to work together, they can be a formidable force for protecting children.

*For more detailed information on the delinquency process, and juvenile defenders' obligations throughout this process, see the *National Juvenile Defense Standards*, available at: <http://www.njdc.info/pdf/NationalJuvenileDefenseStandards2013.pdf>



ROLES IN THE DEFENSE OF THE CHILD

Juvenile Defenders

- To understand what the child wants with regard to outcomes
- To be the child's voice in the system, advocating and negotiating on the child's behalf
- To protect the child's legal and stated interests
- To advise the child on how to best achieve the outcomes he or she wants

Defenders are ethically bound to represent their client's stated interests – *i.e.* what the child says he or she wants. But this does not mean that the lawyer will set aside legal training and common sense at the whim of the child. Instead, the defender has an ethical obligation to advise the child on what the best approaches to achieving his or her ultimate goal may be, and helping the child to make educated decisions about the case. This includes advising the child, not just on the law, but on how particular choices will be supported or challenged by others, such as judges or the child's family.

Defenders are bound by ethical, legal, and professional obligations that affect what they can and cannot share with family members. There will be many things that attorneys will be able to share with families (such as details about the court process, next steps, how to navigate the system, and insight into the other stakeholders), but there will be some things that defenders may not be able to share (such as the substance of private legal consultations with the child, some facts of the case, or details of legal strategy). This will likely be a new experience for many families, and defenders should be sensitive to this while also maintaining their legal and ethical responsibilities of loyalty and confidentiality to their child-client.

Parents, Guardians, or Extended Family

- To provide insight and advice regarding the needs, strengths, and challenges of the child
- To provide support and assistance to the child throughout the court process, and if necessary, after disposition

Family members are often the best source of information regarding a child's social history, and can provide valuable insight into a youth's strengths and challenges. Families can provide critical information about a child's home life, school attendance, academic performance, extracurricular activities, physical and emotional development, and other details that can strengthen a defender's advocacy at multiple stages of the delinquency court process.

Families are also critical in helping the child succeed in any court-ordered program or release plan. Families can not only help the child to keep track of his or her court responsibilities, they can advocate for their child with probation officers or program staff to make sure the child's successes (and not just their challenges) are made clear.

UNDERSTANDING EACH OTHER'S ROLES

Juvenile Defenders

Defenders should try to understand that family members often find the delinquency system to be intimidating, frustrating, and/or confusing. While the family is not the defender's client, helping relatives understand the process and feel comfortable will often benefit the client.

Parents and guardians are used to being the one to make decisions in their child's lives. As such, defenders should do their best to explain to their clients and their clients' families the defender's role, the roles of other court players, the court process, and what to expect next. Defenders should also understand that unilaterally shutting families out of a child's case can be a disservice to the case. Instead of emphasizing what cannot be shared due to the rules of confidentiality, defenders should focus on what information they can share to help parents feel more included in and educated about the legal process.

Parents, Guardians, or Extended Family

Families should try to understand that juvenile defenders are bound by the ethical duty of confidentiality, and the professional obligation to represent and advocate for a child's stated interest (*i.e.* the outcomes the child wants or hopes for).

These duties and obligations impact what the attorneys can and cannot share with relatives, and what arguments the attorney will make on behalf of the young client. However, these rules do not require attorneys to shut family members out, nor do they grant attorneys the power to replace a parent or guardian's role in his or her child's life. To the contrary, family assistance is often crucial in crafting release or disposition (sentencing) plans, and family support will dramatically increase the court's receptivity to the plan and the likelihood that a child will have sufficient support to be able to meet the plan's conditions.

BENEFITS OF COLLABORATION

Juvenile Defenders

To improve the quality of defense services, defenders should try to establish collaborative alliances with the family members of their young clients, where appropriate. Such collaborations can result in more informed and client-centered representation. Studies have shown that youth are less likely to re-enter the justice system when they are able to maintain connections with their community. Appropriately engaging families in a child's defense can help maintain those connections. Additionally, when families appear to be active allies, the likelihood of the court accepting the defender's proposed disposition or probation plan for the client increases.

Defenders should keep in mind that families with a court-involved child are often out of their element and may be frightened or stressed. Defenders should be sensitive to this and patient with families, rather than take things personally. Finding ways to empower families or helping them understand the system can alleviate this stress and anxiety. See the section on Opportunities for Collaboration that follows for ways to engage families.

Parents, Guardians, or Extended Family

Family participation in the delinquency court process creates an inclusive environment where all parties are vested in ensuring better outcomes for the child. Family members can provide valuable insight – that would otherwise be unavailable – into a youth's strength and challenges. With an understanding and acceptance of the defender's duties of confidentiality and obligation to advocate for what the child wants, families can collaborate with defenders – who are equally understanding of and sensitive to the families' needs – to increase the likelihood of achieving a positive outcome in their child's case.

Families should understand that every defense attorney is different. Like all people, some will be easier to talk to than others and some will have a better "bed-side manner." When the family is finding it difficult to work with the defender, look for ways to show that you are an ally. See the section on Opportunities for Collaboration that follows for ways families can engage defenders and get the some of the information the families may want.

OPPORTUNITIES FOR COLLABORATION

Juvenile Defenders

At Arrest: Often, defenders are not appointed to a case as early as arrest or intake. However, if appointed, defenders should keep in mind that families with a child who has just been arrested are often frightened and stressed. Defenders should be sensitive to this and patient with families, while also making clear how family involvement can help the child's case at this early stage. Defenders should explain to the family that the likelihood of the child's release after arrest increases when a family member is available and willing to take the child home. If no family member is present at the station house, defenders should make every effort to locate and involve the family in the negotiations for the child's release as early as possible, assuming doing so is in the child's stated interest.

In addition to achieving a child's release, the goal of station house advocacy is to help the child and family understand the child's rights and to prevent the client and family from making statements or engaging in behavior that is against the child's interest. This will often play out as a defender insisting on being present at the interrogation, or asserting a child's right to remain silent. The defender should explain this goal, and the respective rights, to the family and child in a patient and sensitive way, recognizing what an emotional situation this can be for both family and child.

At Intake: Family members are often included in the intake process (whether conducted at the police station or at the courthouse), whereas defenders are not. As such, defenders should empower family members by preparing them for the meeting. Even though intake officers may present themselves as wanting to "help" a child, this is not necessarily the case. It is entirely possible that a parent who wants to see the child return home may unknowingly say things to an intake worker that could trigger a request that the child be detained. Conversely, there is information families can share that can increase the chances of release. Defenders who take the time to prepare parents and explain the goals and concerns associated with an intake interview may be able to get better results for their clients at the detention hearing.

Parents, Guardians, or Extended Family

At Arrest: To increase the likelihood of their child's release following arrest, families should make every effort to be available and present at the stationhouse and prepared to take the child home as soon as they learn of the arrest. If a defender has been appointed to the child's case at this point, family members should engage the defender by explaining their willingness to help, and by heeding any warnings the defender gives regarding conduct and statements made to the police or probation. Families should understand that any warnings defenders give about conduct or statements made to the police or probation are only meant to protect the child's legal interests.

More often, however, defenders will not yet have been appointed to represent the child upon arrest or intake. If this is the case, families can help their child and the defender (when he or she is appointed), by insisting on being present at the child's interrogation, requesting that a defense attorney be appointed for the child, and reminding the child to invoke his or her right to remain silent.

Many parents trust the police and the system to do right by their children, but sadly this is not always the case. Parents should understand that the legal system and its consequences are far different from the discipline that they may hand out at home. Even denials and innocent explanations may be used against a child. Therefore, it is generally better to wait to make any statements until the child's attorney is appointed and can provide advice on the legal consequences that could result.

At Intake: Regardless of whether a defender has been appointed prior to intake, families always have an important role at this stage. Family members will be asked a series of questions about a child's social and academic history and home life. Even though probation officers may present themselves as just wanting to "help" a child, this may not necessarily be the case. It is their job to determine, through the intake process, whether or not to recommend that a child be detained further. Parents – especially those who are angry with their child in the moment – should be aware of the function and objective of intake and understand that if the interview has a negative focus, the child may be detained. Parents who focus on positive aspects of their child, while also appreciating the gravity of the situation and not appearing too lenient, may be able to show an intake officer that the child is well supervised and not a danger to the community, despite the charges he or she is facing.

OPPORTUNITIES FOR COLLABORATION (CONT.)

Juvenile Defenders

At Detention: If release from detention is consistent with a child's stated interests, the defender should explain to the child's family – in plain language – that their support and presence in court at the initial hearing will substantially increase the likelihood of a child's release.

Defenders should empower family members by explaining this critical role they can play and by helping them to prepare what they may say to the judge.

At Investigation: To better advocate for a young client's stated interest, defenders can engage parents to help them obtain information about the child's background that is necessary for the defense case, such as:

- academic performance records;
- school discipline records;
- school attendance records;
- special education needs (including any IEP);
- extracurricular activities;
- mental health evaluations or records;
- medical records;
- prior victimization;
- receipt of community services;
- employment history; and
- general information about family dynamics.

Defenders should empower family members by letting them know that they are the best source for this type of information. In addition, parent or guardian consent may be required before defenders can obtain certain documents like medical or school records without a court order. In these instances, parent or guardian engagement is critical.

Parents, Guardians, or Extended Family

At Detention: To better ensure the release of their child, families should demonstrate their support of the child by being present at the initial hearing and by providing the defender with information about the youth's strengths and documented accomplishments. If the defender is stand-offish, families can best engage the defender through offers of help or to provide information. This will show the defender that the family is an ally and may increase a frantic or uncommunicative defender's chances of sharing some information.

At Investigation: To achieve better outcomes in court for their child, families should demonstrate their willingness to cooperate with defenders by providing any information or consent to obtain records that the defender thinks would be helpful in the case. Often, family members are the best sources of information on a child's background, and they are necessary allies for defenders in the process of obtaining such information through investigation.

Some examples of this type of information include:

- academic performance records;
- school discipline records;
- school attendance records;
- special education needs (including any IEP);
- extracurricular activities;
- mental health evaluations or records;
- medical records;
- prior victimization;
- receipt of community services;
- employment history; and
- general information about family dynamics.

It is important to understand that, even if you give consent for the attorney to retrieve certain records, the rule of legal ethics may require that the lawyer not share everything he or she learns with you; this is not the defender's fault. This does not prevent you from going to get your own copies of the same records, however. It just means the defender may not be able to give them to you.

OPPORTUNITIES FOR COLLABORATION (CONT.)

Juvenile Defenders

At Disposition: Counsel should confer with the client's family to explain the disposition process and inquire about the family's willingness to support the proposed plan. At this phase, defenders should make sure to engage the child and the family in a positive way in order to create an individualized disposition plan that is based on the child's unique interests and needs. The defender must do all she or he can to ensure the family understands the importance of assisting the child in meeting the conditions set forth by the court in the final disposition plan.

After Disposition: After the court issues a final disposition order, the defender should engage the family by explaining the requirements of each obligation or program in the disposition plan. This includes what the child and family need to do in order to be deemed "in compliance" with every order. Further, the defender should explain to the family how valuable they can be in assisting the child with meeting the court-ordered obligations contained within the final disposition plan.

Depending on the court system, some attorneys may be able to continue to represent the child after disposition, some may not. The attorney should explain this to both the child and the family and should provide advice on where they can turn if problems come up.

If the child is placed in a secure facility, the defender should help the family understand visiting procedures and the critical role they play in maintaining contact with the child. Youth who remain connected with their families and feel supported have a greater chance of successfully re-entering the community upon release. Additionally, families are important monitors that can ensure children are being properly cared for while in secure facilities and are the first line of information for defenders if something is wrong.

Parents, Guardians, or Extended Family

At Disposition: If a child is adjudicated delinquent (found guilty), then the next phase of the legal proceedings is the disposition (sentencing) phase. Family support during disposition is critical. Defenders are generally supposed to provide the judge with a plan for disposition that can hopefully keep the child at home, or at a minimum, in the least restrictive environment as possible. These plans may include probation conditions or court-ordered programming.

Family members can assist defenders in assessing the relative strengths and weaknesses of a defender's proposed disposition plan, and identify any barriers to its success or alternatives that the attorney or child may not see. The family's view of the plan can significantly impact the judge's decision, and implementation of the plan often requires family involvement and support. Family members also play a major role in keeping the child on track to successfully fulfill the court's orders and not re-entering the system.

After Disposition: Once the disposition phase is over, the court will issue a final disposition order which typically features some combination of requirements, placements, programs, and/or services. Family support and understanding of each of the components of this plan is critical, as families can be enormously helpful in ensuring a child fulfills all obligations ordered by the court. Families may also have obligations under this order, such as participating in family therapy or meeting with probation officers or counselors. Families can engage the defender by explaining their desire to understand, and help their child comply with, the plan. Similarly, families can engage defenders by demonstrating and expressing their interest in learning more about a child's right to appeal the court's final order.

If the child is placed in a secure facility, then families can support their child by regularly visiting and communicating with him or her. Families can also assist defenders in their post-disposition representation by observing the child's environment and mood, and relaying any issues of concern or promise they detect to the defender.

OPPORTUNITIES FOR COLLABORATION (CONT.)

Juvenile Defenders

If the child is placed on probation or in some community-based program, the defender should ensure that the family understands its obligations with regard to this (such as participation in family therapy or home visits) and how support is necessary to keep the child's probation from being revoked.

Finally, the defender should engage families by explaining any applicable sealing and expungement laws, and the benefits that a clean record will have on a child's future employment and education. Because sealing and expungement proceedings are often years down the line, defenders should provide families with information outlining when their child might be eligible for this step and what role the family can have in initiating sealing or expungement proceedings, with or without the help of a lawyer.

Parents, Guardians, or Extended Family

Finally, because the consequences of juvenile court involvement can affect children for many years to come, getting that record sealed or expunged can be very important. A clean record will make it easier for a child when he or she seeks employment, higher education, or other future endeavors. Every state has different rules for sealing and expungement, but it is a process that typically cannot be started for several years. By then, most children and their families will have lost contact with the defense attorney, so understanding what to do, and when to do it, is important. Families should engage defenders by conveying their desire to help in the sealing or expungement process, and take an active role in learning more about the eligibility criteria and time requirements within their state. In some states, families can help their child file a motion for expungement on their own, or they can engage a defender for assistance in doing so.

The juvenile court system is a very complicated and confusing place for anyone who does not regularly work within it. Court involvement can be an extremely stressful process in which children and their families feel like they are being judged and imposed upon at every turn. For all the reasons outlined in this fact sheet, a good partnership with a child's juvenile defender can often help lead to the best outcomes for youth and families. At a minimum, good partnership should empower them.

Youth need effective counsel to help them navigate the many decisions they will be asked to make, with an understanding and appreciation of the risks and benefits of each decision. Parents too often need an ally who can help them understand the process and better aid their child at all phases of court involvement. When the goal is helping the child, parents and juvenile defenders are players on the same team, they simply have different roles.



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The National Juvenile Defender Center (NJDC) is a non-profit organization that is dedicated to promoting justice for all children by ensuring excellence in juvenile defense. NJDC provides support to public defenders, appointed counsel, law school clinical programs, and non-profit law centers to ensure quality representation in urban, suburban, rural, and tribal areas. NJDC also offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building, and co-ordination. To learn more about NJDC, please visit www.njdc.info.

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