

Appeals

A Critical Check on the Juvenile Delinquency System

ISSUE

A robust and expeditious juvenile appellate practice ensures that youth are fully accorded their due process rights and is essential to developing a strong and cohesive body of juvenile jurisprudence. All children have a right to appeal their juvenile adjudications.¹ Juvenile defenders are constitutionally mandated to confer with their young clients about their right to appeal, and the decision about whether to exercise this right belongs to the client.² It is the job of the defender to understand the steps necessary to pursue an appeal in his or her jurisdiction and to advise clients about the process and the potential consequences of pursuing an appeal.³ If a client decides to appeal, counsel should try to seek independent appellate counsel to handle the appeal⁴ and should fully cooperate with appellate counsel by, among other things, providing all records and making themselves available to answer questions and assist with the case.⁵

NATIONAL SNAPSHOT

Although no comprehensive analysis of juvenile appeals is available, existing data points to an alarming absence of rigorous appellate advocacy in most jurisdictions.⁶ A range of factors is thought to contribute to the low rate of appeals in juvenile delinquency cases, including waiver of the right to counsel; excessive number of plea agreements; lack of resources; lack of awareness of the right to appeal; a sense that appeal would be fruitless because decisions would be rendered after completion of a commitment; the perception that juvenile court is not as important as adult court; the small window of time to file appeals; monetary charges that families may incur if they appeal; and high caseloads for juvenile defenders.⁷

WORKING INNOVATIONS

At the state level, there have been numerous and varied innovations to try and bolster the number and quality of appeals filed in juvenile delinquency cases—from newly created positions and sections in public defender offices to court rule changes, including the following:

- **California:** The Pacific Juvenile Defender Center (PJDC) created an appellate committee that coordinates juvenile appellate work across the state, a statewide juvenile appellate listserv, and a set of FAQs on juvenile delinquency appeals for defenders as a means to increase coordination between appellate counsel and juvenile defense front-line defenders. The appellate committee has delivered trainings across the state on a variety of juvenile appellate matters and disseminated sample motions and forms as part of those trainings.
- **Illinois:** MacArthur Models for Change⁸ partners and the Illinois Bar Association developed and supported the passage of a new rule to expedite the appeals of juvenile delinquency cases. On March 13, 2013, the Illinois Supreme Court adopted Illinois Supreme Court Rule 660A—Expedited Appeals in Delinquent Minor Cases. The rule ensures that juvenile cases are no longer placed on a “first in/first out” queue with adult criminal cases—a practice that often resulted in individual issues being moot before their juvenile appeals were resolved. The new rule, which took effect on May 1, 2013, provides a new requirement that appeals be served on the trial judge, who must help expedite preparations for records on appeal. The rule also requires that oral argument determinations be made within seven days of the request and that the appellate court file a decision within 150 days after the notice of appeal is

filed. It is hoped that this rule will lead to a more complete and thorough body of case law, which will in turn ensure consistency and fairness in the juvenile delinquency system.

- **Louisiana:** The Louisiana Appellate Project (LAP) was formed in 1996 as the first program established by the Louisiana Indigent Defender Board (now Louisiana Public Defender Board). The LAP provides appellate counsel for indigent clients in all non-capital felony appeals, including felony-grade adjudications for juveniles, in all Louisiana districts. Each Public Defender office in Louisiana contracts with the LAP to provide these services at no extra cost to the district, and the LAP currently employs two attorneys specializing in juvenile appeals who have honed their expertise in this area. In addition, the Louisiana Center for Children's Rights (LCCR)—which operates as a stand-alone juvenile defense law office with cases throughout the state—has a robust appellate practice, particularly with interlocutory appeals, where in 2013 alone the office took 54 interlocutory appeals to the Circuit Court.
- **Missouri:** In the wake of NJDC's 2013 Missouri Assessment,⁹ the Missouri State Public Defender created a position for a juvenile/capital appellate attorney to specialize in both capital and juvenile appellate issues. This appellate attorney is responsible for handling juvenile appeals, advising juvenile attorneys about issues related to juvenile clients, and serving as a resource/training counsel for juvenile defenders in the trial division.
- **Ohio:** The Juvenile Division of the Office of the Ohio Public Defender, which consists of a division chief and seven attorneys, represents youth who have been committed to the Ohio Department of Youth Services on appeal, post-conviction matters, detention credit issues, sex offender registration issues, and early release. The Juvenile Division has a rigorous appellate practice that includes one supervising appellate attorney and three appellate lawyers who handle all the appeals for youth in the Ohio Department of Youth Services, along with referrals from county public defender offices, or other local counsel. The appellate staff has been successful at getting the Ohio Supreme Court to take cases and deliver favorable decisions on cases involving sex offender registration, right to counsel, and transfer. The Juvenile Division recently added one attorney who will handle their cases on remand, as well as two attorneys who handle conditions of confinement issues for youth in the Ohio Department of Youth Services.

- **Pennsylvania:** In the wake of the judicial scandal in Luzerne County, Pennsylvania, the Pennsylvania Supreme Court created a mechanism to review a juvenile court judge's opinion—short of formal appellate review—after an adjudication of delinquency removing a child from his or her home.¹⁰ The Pennsylvania Rules of Appellate Procedure now provide a mechanism for the expedited review of an order of out-of-home placement and require the judge setting the disposition of an out-of-home placement to state those reasons on the record at the time of disposition.¹¹ The rule should significantly decrease how long it takes to review out-of-home placements.
- **Wisconsin:** In an effort to increase appellate advocacy in juvenile delinquency cases, the Wisconsin State Public Defender's Office supports three appellate attorneys who specialize in juvenile appeals (in addition to their regular appellate caseload); trains juvenile trial attorneys on preserving a record for appeal; and allows appellate attorneys to second chair in juvenile delinquency proceedings¹² to foster cross-training on trial and appellate issues and to brainstorm approaches for difficult cases.

RECOMMENDATIONS FOR REFORM

A robust and expeditious juvenile appellate practice is a fundamental component of a fair and effective juvenile delinquency system. Not only do juveniles have a right to an appeal, but appeals in juvenile delinquency cases also provide opportunities to correct trial errors and to flesh out law and policy on juvenile defense issues. In order to foster appellate work as a critical check on the juvenile delinquency system, NJDC recommends that:

- Court administrators and other policy makers promote data collection by state judicial branches on the quantity and basis of appeals in juvenile delinquency cases and assess the institutional structure in place for juvenile delinquency appeals within a jurisdiction;
- Defenders and non-profit, advocacy, and community groups educate juveniles about their right to appeal;
- Defenders work together with other stakeholders to sign on as *amicus curiae* to appellate actions impacting youth involved in the juvenile delinquency system;
- In states where there are specialized appellate attorneys, state and local public defender offices and defender associations work to increase coordination between trial attorneys and appellate attorneys;

- State and local bar associations and non-profit, advocacy, and community groups advocate for legislation and/or court rules that expedite appeals in juvenile delinquency cases;
- State and local defender offices, law schools, and advocacy groups train defenders on preserving issues for appeal and conducting appeals;
- State and local defender offices target issues to appeal within an office and have more experienced appellate lawyers available for consultation;
- State and local defender offices and regional and national defender advocacy organizations create a centralized research bank that includes appellate briefs, legal memoranda, and appellate decisions;
- State and local defender offices develop collaborations with law school clinics, bar associations, and law firms to provide

defenders with the additional personnel and resources needed to support juvenile appeals; and

- With the support of non-profit, advocacy, and community groups, state and local governments pilot state-based models of appellate advocacy.

CONCLUSION

Implementing these recommendations will help youth involved in the delinquency system make informed decisions and exercise their right to file appeals with the assistance of competent counsel, leading to a more rigorous juvenile appellate practice. An active juvenile appellate practice not only protects youths' due process rights but also ensures critical checks on the juvenile court system and the development of law and policy on unique and emerging juvenile issues.

¹ Megan Annitto, *Juvenile Justice on Appeal*, 66 U. MIAMI L. REV. 671, 683 (2012).

² NAT'L JUVENILE DEFENDER CTR., NATIONAL JUVENILE DEFENSE STANDARDS § 7.2 DISCLOSE THE RIGHT TO AN APPEAL (2012) [hereinafter NAT'L JUV. DEF. STDS].

³ *Id.*

⁴ *Id.* § 7.3 TRIAL COUNSEL'S OBLIGATIONS REGARDING APPEALS ("[Appeals are] a highly specialized area of law, and because appellate issues may arise from trial counsel's ineffectiveness, a fresh look is preferable. . . . When no appellate counsel is available, trial counsel should proceed with the appeal.").

⁵ *Id.* § 7.3 TRIAL COUNSEL'S OBLIGATIONS REGARDING APPEALS, §7.4 OBLIGATIONS OF TRIAL COUNSEL TO APPELLATE ATTORNEY.

⁶ See generally Annitto, *supra* note 1, at 683.

⁷ See generally NJDC Assessments; Annitto, *supra* note 1, at 671.

⁸ Models for Change is an initiative of the John D. and Catherine T. MacArthur Foundation that supports a network of government and court officials, legal advocates, educators, community leaders, and families working together to ensure that kids who make mistakes are held accountable and treated fairly throughout the juvenile justice process.

⁹ NAT'L JUVENILE DEFENDER CTR. & CENT. JUVENILE DEFENDER CTR., MISSOURI: JUSTICE RATIONED: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS (2013).

¹⁰ INTERBRANCH COMM'N ON JUVENILE JUSTICE, INTERBRANCH COMMISSION ON JUVENILE JUSTICE REPORT 56 (2010), available at <http://www.pacourts.us/news-and-statistics/archived-resources/interbranch-commission-on-juvenile-justice>.

¹¹ The Juvenile Law Center and the Defender Association of Philadelphia were instrumental in promoting and ultimately achieving this rule change, and many others, in the wake of the Luzerne County scandal.

¹² In these situations, the appeal (if there is one) is handled by a private bar attorney in order to avoid conflicts.



National Juvenile Defender Center

1350 Connecticut Avenue NW, Suite 304

Washington, DC 20036

202.452.0010 (phone)

202.452.1205 (fax)

www.njdc.info

The National Juvenile Defender Center (NJDC) is a non-profit, non-partisan organization 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 coordination. To learn more about NJDC, please visit www.njdc.info. If there is a topic you would like NJDC to explore in an issue brief, please contact us by sending ideas to inquiries@njdc.info.