

Raising the Bar with Comprehensive Juvenile Indigent Defense Contracts

ISSUE

Quality legal representation informed by social science research and best practices is integral to ensuring the fair administration of justice in the juvenile delinquency system.¹ The importance of a youth's access to knowledgeable, well-resourced juvenile indigent defense counsel cannot be overstated.² The prevalence of low-bid,³ flat-fee⁴ contracting schemes for court-appointed and contract juvenile indigent defense counsel undermines the provision of quality representation by encouraging contract attorneys to provide minimal time, effort, and resources to their juvenile cases to maximize profits.⁵ The development and implementation of comprehensive juvenile indigent defense contracts is crucial to regulating and ensuring the provision of quality representation for youth in the juvenile delinquency system.

Juvenile defenders have an ethical obligation to provide competent, diligent, and zealous advocacy to protect the young client's procedural and substantive rights throughout the entire scope of representation—starting at the earliest stage possible and continuing until the client is discharged from the system.⁶ Aside from knowledge of criminal and juvenile law, the legal representation of youth in the delinquency context requires a complex set of specialized skills, including familiarity with juvenile court procedure, practice standards, and case law; the ability to communicate complex legal principles to young clients; familiarity with a wide range of appropriate rehabilitative services and programs; an understanding of the growing body of research in adolescent development; and the ability to monitor progress after disposition. Given the landscape of juvenile indigent defense delivery systems and the overall lack of access to quality representation in the juvenile delinquency context, there is an overwhelming need to develop comprehensive juvenile indigent defense contracts that recognize juvenile defense as a specialized practice, reinforce the *Ten Core*

*Principles for Providing Quality Delinquency Representation through Public Defense Delivery Systems (Ten Core Principles)*⁷ and the ethical responsibilities underlying the *Role of Counsel in Delinquency Court (Role of Counsel)*,⁸ incorporate critical social science research, and embody the *National Juvenile Defense Standards*.⁹

NATIONAL SNAPSHOT

Every state in the nation utilizes contract counsel to some extent to deliver juvenile defense services to indigent youth. Although some states have a statewide public defense/juvenile indigent defense delivery system, a majority of states use hybrid systems funded by counties and/or localities that independently choose their methods of providing counsel for indigent respondents. These methods often include contracting with individuals or independent entities to provide representation. Even those jurisdictions with statewide systems rely on appointed or contract counsel to handle conflict cases and/or to represent the overflow of cases that the state public defender offices otherwise do not have the capacity to handle. An evolving body of research, beginning with *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*¹⁰ and NJDC's subsequent assessments of 21 state indigent defense systems, calls attention to the systemic deficiencies that create inadequacies in the representation of youth by appointed counsel.¹¹

WORKING INNOVATIONS

There is no "one size fits all" approach to raising the bar for juvenile indigent defense contract counsel to ensure quality representation. The sampling of working innovations included below illustrates a multitude of ways that juvenile defenders have approached and addressed this issue via contracts, with hopes to ignite and enable juvenile defenders across the country to advance reform in their respective jurisdictions.

Washington State

Under the MacArthur Models for Change Juvenile Indigent Defense Action Network (JIDAN), TeamChild in Washington State led a working group comprised of representatives from the juvenile defense bar and law school faculty who worked with the State Office of Public Defense to develop a model juvenile indigent defense contract that could be tailored to suit the varying needs of the more than 30 Washington county defense services systems. This model contract sought to enhance the quality of juvenile defense representation and expand the scope of representation to include legal needs of youth reintegrating into their communities. This work came about in response to the Washington Supreme Court ruling on an ineffective assistance of counsel claim in *State v. A.N.J.*¹² that, along with other recent cases raising ineffective assistance of counsel, led the court to adopt mandatory *Standards for Indigent Defense*¹³ and promulgate new court rules requiring counsel to certify compliance with the *Standards* before appointment.¹⁴ The model contract incorporated the *Ten Core Principles* and included provisions establishing juvenile-specific training requirements for attorneys accepting appointments in juvenile court; mandate a caseload cap of 250 cases yearly; provide for adequate supervision; and allow for post-disposition representation. Currently, TeamChild is updating the existing model contract to reflect the recent implementation of the *Standards* by the Washington Supreme Court and the publication of NJDC's *National Juvenile Defense Standards*. TeamChild will continue to encourage counties to utilize the new contract to enhance the quality and scope of representation and plans to distribute the model contract nationally with the intention that it will be adapted and implemented in other jurisdictions across the country.

California

The California JIDAN team researched contracts for appointed counsel in the state and provided recommendations for improving them. To initiate this endeavor, the JIDAN team first identified critical elements of delinquency representation derived from the *Ten Core Principles*, statutory requirements, constitutional case law, rules of professional conduct, and practice standards. Then, the Youth Law Center (part of the California JIDAN team) sent requests under the Public Records Act¹⁵ to the county administrative officers and juvenile court judges in the state's 58 counties seeking contracts and other documents describing the terms of employment and compensation for appointed counsel in delinquency cases. Once the team received the contracts, members assessed whether and how the contracts handled ethical obligations specific to delinquency cases; how the contracts defined the scope of representation, including whether the contracts contained specific provisions recognizing the right to representation prior to the initial court hearing (early stage representation) and post-dispositional (post-sentencing) representation as required by California law; whether the contracts required prior experience, training, or both as a condition of appointment; whether the method of compensation adequately

covered the elements of competent representation or otherwise discouraged counsel from obtaining investigators, experts, and consultants to aid representation; and whether the contracts included meaningful provisions establishing oversight and quality assurance.¹⁶ The team summarized and published its findings with recommendations in a law review article.¹⁷ Ultimately, the work of JIDAN team members on this issue sparked an intense discussion and review of panel attorney contracts in California.¹⁸

Massachusetts

In Massachusetts, the Youth Advocacy Division (YAD) of the Committee for Public Counsel Services (CPCS), in addition to regular public defender appointments, provides support and supervision to private panel attorneys handling delinquency and youthful offender cases in each of the state's twelve counties. To contract with the state, private attorneys must comply with rigorous CPCS Performance Standards, annual caseload limits, continuing legal education requirements, supervision, and oversight, among other requirements. All private counsel seeking to serve on the juvenile panel must be selected by a county-wide bar advocate program and obtain an initial juvenile delinquency certification, which requires at least one year of high-quality district court or comparable trial experience and eight hours of juvenile-specific training within twelve months of applying to serve on the panel. To maintain certification, juvenile delinquency panel attorneys are required to complete eight hours of juvenile-specific CLEs per year. New panel attorneys are assigned a local "resource attorney," who serves as a mentor to less experienced attorneys through the county bar advocate program, during their probation period. In addition to facilitating this mentorship program, CPCS contracts with private attorneys to serve as Juvenile Supervising Attorneys (JSAs) in each county. These JSAs supervise all of the private juvenile delinquency and youthful offender attorneys in their county while providing leadership, technical assistance, coaching, and support. In this supervisory role, the JSAs are responsible for reviewing cases, monitoring court appearances, and handling complaints from the judiciary, clients, etc., regarding the representation of private counsel. JSAs also serve as liaisons between appointed counsel, courts, judges, CPCS, the Department of Youth Services, and other agencies.

Colorado

In the wake of NJDC's Colorado Juvenile Indigent Defense Assessment,¹⁹ the state's Office of Alternate Defense Counsel (ADC) recognized the need to make changes to its juvenile indigent defense contracting system to embrace the practice as a specialty and ensure the provision of quality representation by juvenile delinquency contract counsel. To revamp its approach, ADC created a Contract Juvenile Defense Coordinator position staffed by an experienced attorney who oversees and coordinates all of the contract attorneys that handle juvenile delinquency cases, serves as a resource attorney by providing training

and technical assistance, and actively participates in the contracting process. In addition to the Contract Juvenile Defense Coordinator, ADC designated specific contract attorneys to handle juvenile appeals. To uplift the practice, ADC established a separate process for contracting with juvenile delinquency counsel that requires applicants to have previous experience and show a demonstrated commitment to and genuine interest in juvenile defense practice. During the renewal period, each contract attorney is reevaluated to ensure that he or she is competent and committed to providing quality juvenile delinquency representation. All juvenile defense contract counsel are encouraged to obtain a copy of the juvenile defense practice manual that was developed by ADC and the Colorado Juvenile Defender Coalition (CJDC), to attend an annual juvenile defense conference hosted by ADC in partnership with CJDC, and to engage in regular juvenile-specific training. To keep contract counsel abreast of changes and emerging issues pertaining to juvenile law and juvenile defense practice, ADC hosts juvenile-specific roundtables and disseminates periodic juvenile law and practice updates. Currently, ADC is working to establish regional points of contact throughout the state to allow for greater oversight and quality assurance on the ground.

RECOMMENDATIONS

Regardless of how juvenile indigent defense services are delivered, every child should have access to knowledgeable, well-resourced defense counsel that will zealously advocate on his or her behalf. In an effort to ensure that appointed counsel and contract delivery systems are adequately serving young clients, NJDC recommends that interested stakeholders:

1. Organize a working group to evaluate juvenile indigent defense contracts;
2. Develop comprehensive juvenile indigent defense contracts that, at a minimum, include provisions addressing:
 - **Ethical Obligations and Role of Juvenile Defense Counsel:** Contracts should require counsel to demonstrate that they possess or are committed to obtaining the specialized skill set that juvenile indigent defense requires. Contracts should clearly distinguish delinquency practice from criminal, dependency, and any other legal practice by specifying that counsel must (1) zealously represent the juvenile client's expressed interests; (2) actively engage in the adversarial process by vigorously asserting the juvenile client's statutory and constitutional rights; and (3) provide representation that assures holistic treatment in consultation with experts and others, in accordance with the rehabilitative purpose of the juvenile delinquency system.²⁰

- **Scope of Representation:** Contracts should clearly define the scope of representation contemplated under the agreement on the front end and the back end of the case—providing for early stage and post-disposition representation—and clearly outline the duties of counsel with respect to the different stages of representation.²¹
- **Qualifications of Juvenile Defense Counsel:** Contracts should require relevant experience or a demonstrated interest in juvenile defense while remaining sufficiently flexible to allow promising attorneys who are otherwise capable of providing diligent and competent representation with additional training and supervision to do so. Contracts also should provide more stringent requirements for counsel to take on more serious and complex juvenile cases.²²
- **Training/Certification Requirements:** Contracts should implement training requirements specific to juvenile defense and modeled after the Juvenile Training Immersion Program (JTIP)²³ before counsel can be appointed. These requirements should insist on certification that mandates counsel to engage in ongoing training to keep pace with current developments in juvenile law and practice.²⁴
- **Appropriate Rate/Methodology of Compensation:** Contracts should establish an appropriate rate and methodology of compensation that adequately takes into account the time, amount of work, and complexity of work required to provide competent representation in each individual juvenile delinquency case.²⁵
- **Supervision/Quality Assurance:** Contracts should include mechanisms for quality assurance and oversight for both individual attorneys and the appointed counsel system itself that institute periodic evaluations and sufficiently describe the nature of these evaluations; establish a process for addressing deficient performance; regulate caseload and workload by setting limits; and establish a reporting mechanism for complaints or constructive feedback.²⁶

CONCLUSION

The development of comprehensive juvenile indigent defense contracts and the implementation of innovative strategies that appreciate these recommendations for such contracts will demonstrate a step in the right direction towards uniformity and raising the bar to ensure youth access to knowledgeable, well-resourced juvenile indigent defense counsel.

¹ See ROBIN WALKER STERLING ET AL., NAT'L JUVENILE DEFENDER CTR., *ROLE OF JUVENILE DEFENSE COUNSEL IN DELINQUENCY COURT* (2009), http://www.njdc.info/pdf/njdc_role_of_counsel_book.pdf [hereinafter *ROLE OF COUNSEL*].

² See NAT'L JUVENILE DEFENDER CTR. & NAT'L LEGAL AID AND DEFENDER ASS'N, *TEN CORE PRINCIPLES FOR PROVIDING QUALITY DELINQUENCY REPRESENTATION THROUGH PUBLIC DEFENSE DELIVERY SYSTEMS* (2008), http://www.njdc.info/pdf/10_Core_Principles_2008.pdf [hereinafter *TEN CORE PRINCIPLES*].

³ In a low-bid system, individual attorneys or entities submit bids to handle a certain percentage (or all) of a jurisdiction's juvenile cases, and the individual/entity with the lowest bid wins.

⁴ In a flat-fee system, individual attorneys or entities receive a set nominal amount for assuming the representation for each case or client depending on the jurisdiction (*e.g.*, \$300 per case or per client).

⁵ See Cyn Yamashiro, Tarek Azzam, & Igor Himmelfarb, *Kids, Counsel and Costs: An Empirical Study of Indigent Defense Services in the Los Angeles Juvenile Delinquency Courts*, CRIM. L. BULL. (forthcoming) (Loyola-LA Legal Studies, Paper No. 2013-9), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2222376#; Sue Burrell, *Contracts for Appointed Counsel in Juvenile Delinquency Cases: Defining Expectations*, 16 U.C. DAVIS J. JUV. L. & POL'Y 314 (2012).

⁶ NAT'L JUVENILE DEFENDER CTR., NATIONAL JUVENILE DEFENSE STANDARDS R 1.1 (2012) [hereinafter NAT'L JUV. DEF. STDS.]

⁷ See *TEN CORE PRINCIPLES*, *supra* note 2.

⁸ See *ROLE OF COUNSEL*, *supra* note 1.

⁹ See NAT'L JUV. DEF. STDS., *supra* note 6.

¹⁰ See AM. BAR ASS'N JUVENILE JUSTICE CTR. ET AL., *A CALL FOR JUSTICE: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS* (1995).

¹¹ For detailed information about NJDC's assessment work, visit <http://www.njdc.info/assessments.php#>.

¹² *State v. A.N.J.*, 225 P.3d 956 (Wash. 2010) (en banc). In this case, a juvenile was prejudiced by ineffective assistance of counsel, where the contract attorney spent between 35 to 90 minutes total with the juvenile client before the plea hearing and did not adequately explain the consequences of the plea, including whether the client would have to register as a sex offender and whether the conviction could be sealed; did no independent investigation; did not carefully review the plea agreement; and did not consult with experts. The client argued that the contract in Grant County created an incentive for attorneys to refrain from expending resources to investigate their cases or consult with experts.

¹³ See *Public Defense Improvement Program*, WASH. STATE OFFICE OF PUB. DEF., <http://www.opd.wa.gov/index.php/standards> (last visited Oct. 6, 2014).

¹⁴ WASH. JUV. CT. R. 9.2 ("Before appointing a lawyer for an indigent person or at the first appearance of the lawyer in the case, the court shall require the lawyer to certify to the court that he or she complies with the applicable Standards for Indigent Defense Services to be approved by the Supreme Court.").

¹⁵ CAL. GOV'T CODE § 6250 *et seq.* (West 2011).

¹⁶ Burrell, *supra* note 6, at 326-27.

¹⁷ See Burrell, *supra* note 5.

¹⁸ See Yamashiro et al., *supra* note 5.

¹⁹ See NAT'L JUVENILE DEFENDER CTR., COLORADO: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN JUVENILE DELINQUENCY PROCEEDINGS (2012).

²⁰ Burrell, *supra* note 5, at 333-35; see NAT'L JUV. DEF. STDS., *supra* note 6; *ROLE OF COUNSEL*, *supra* note 1.

²¹ Burrell, *supra* note 5, at 336-39.

²² *Id.* at 344-46.

²³ JTIP is a dynamic 40-lesson trial advocacy and training program for juvenile defense attorneys that aims to elevate the practice of juvenile law and is structured to help defenders meet their obligations at every stage of the delinquency system.

²⁴ Burrell, *supra* note 5, at 333-35.

²⁵ *Id.* at 352-64.

²⁶ *Id.* at 364-66.



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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.