

# Protecting Rights, Promoting Positive Outcomes Post-Disposition Access to Counsel

## ISSUE

After the disposition (sentencing) phase in juvenile court, a case moves into what may be the longest and most critical phase of the delinquency process—post-disposition. Post-disposition advocacy is vital to safeguard the constitutional rights of adjudicated youth and aid in community reintegration, and it encompasses a broad array of issues that affect adjudicated youth; yet, an overwhelming majority of youth in the delinquency system lack access to quality representation during this phase. Such advocacy may entail engaging in appellate work; monitoring and engaging in direct advocacy related to safety, conditions of confinement, and parole; monitoring the implementation of disposition plans and actively participating in review hearings to ensure that the court is accurately informed about the youth's progress; advising the youth and engaging in direct advocacy related to disciplinary and other administrative matters; facilitating access to family and social workers; ensuring the provision of appropriate services; and assisting with juvenile expungement and sex offender deregistration; among other things. The complex issues facing youth during post-disposition require the guiding hand of counsel to protect due process rights and promote positive outcomes.

## NATIONAL SNAPSHOT

A child's right to counsel post-disposition has been addressed in both federal and state jurisprudence. The United States Court of Appeals for the First and Sixth Circuits have affirmatively established a child's right of access to the courts in *Germany v. Vance*<sup>1</sup> and *John L. v. Adams*.<sup>2</sup> Both circuits held that the constitutional right of meaningful access to the courts for adult prisoners articulated by the United States Supreme Court in *Bounds v. Smith*<sup>3</sup> extends to adjudicated youth in the delinquency context.<sup>4</sup> In *John L.*, the court further held that, "in order to make this right meaningful[,] the State must provide the

juveniles with access to an attorney."<sup>5</sup> When assessing a youth's statutory right to counsel post-disposition, the breadth of this right—and what it entails—varies widely across jurisdictions.<sup>6</sup> While a few jurisdictions have model statutory language that embodies a comprehensive scope of post-disposition representation, statutes in the majority of jurisdictions afford youth a limited right to counsel or no right to counsel at all during the post-disposition stage. Despite state and federal laws that support post-disposition protections, the stark reality is that few jurisdictions have implemented this practice. Without the aid of competent counsel to represent youths' rights and provide oversight throughout the juvenile delinquency process, youth have great difficulty advocating for court-ordered services and bringing gaps in services to the court's attention. This is true whether the child is securely detained or living in the community. As a result, adjudicated youth are often denied access to meaningful education, mental health, and social services they desperately need and are often required as part of their court-ordered rehabilitation plan. In addition to collaborating with stakeholders to craft an effective treatment plan, juvenile defenders are necessary to help youth gain access to services in the community and aid with administrative and legal processes that may hinder successful reentry.

## WORKING INNOVATIONS

Given the breadth of post-disposition advocacy, juvenile defenders have employed a number of strategies to advance this work in their jurisdictions, including implementing practice standards, establishing specialized units, launching specialized law school clinical programs, fostering creative community partnerships, creating practical resources, and developing cutting-edge innovative tools. While every jurisdiction may not have significant financial support to implement post-disposition innovations, this brief includes a number of cost-effective ideas that can be adapted and implemented in a targeted way on a much smaller scale.<sup>7</sup>

## **Practice Standards**

### *The Legal Aid Society of New York City: Post-Disposition Practice Standards*

The Legal Aid Society of New York City formed a Delinquency Post-Dispositional Practice Committee consisting of managers and staff from all five boroughs to develop practice standards for post-disposition representation. The Committee made a series of recommendations, which have now been adopted by the Juvenile Rights Division's senior management team as Post-Dispositional Practice Expectations.

## **Specialized Units**

### *The Public Defender Service for the District of Columbia: Juvenile Services Program*

The Public Defender Service for the District of Columbia established the Juvenile Services Program (JSP) to provide advocacy and oversight for the District's incarcerated youth. Housed in both of the District's secure youth facilities, this program is staffed by two full-time attorneys and a group of law clerks who work to ensure that the due process rights of detained and incarcerated youth are protected at disciplinary hearings and other administrative proceedings; help youth understand and navigate the juvenile delinquency process and the internal workings of the facilities; and facilitate communication between youth and their families, case workers, and attorneys. JSP staff plays an integral role in assisting with reintegration planning by making sure the child's voice is heard at youth family team meetings and diligently working with the case worker to secure appropriate services, employment, and education enrollment.

### *Louisiana Center for Children's Rights: Reentry Project and Second Chances Project*

The Louisiana Center for Children's Rights (LCCR) established two specialized post-disposition projects—the Reentry Project and the Second Chances Project—to encourage juvenile defenders throughout the state to actively engage in post-disposition advocacy and embrace best practices. These projects are intensely focused on using a cross-disciplinary team approach to integrate holistic advocacy throughout the life of a case to help a child achieve his or her goals in addition to meeting specific case objectives. In both projects, an LCCR social worker performs a comprehensive psychosocial assessment prior to the youth's release that enables the advocacy team to craft a detailed, individualized reintegration plan addressing the following domains: housing, family, and benefits; educational and vocational opportunity; mental and physical health; supportive adults; and civic engagement and structured activities.

### *Maryland Office of the Public Defender: Juvenile Protection Division*

The Maryland Office of the Public Defender established the Juvenile Protection Division (JPD) to serve as a specialized statewide division that monitors the conditions of confinement of all juvenile clients committed to the care and custody of the Department of Juvenile

Services (DJS). JPD is also responsible for protecting the individual rights of juveniles who are committed to DJS facilities, ensuring the safety and appropriateness of their placements, and assuring the timely implementation of and full compliance with juvenile court orders. JPD is comprised of three attorneys, one social worker, and one paralegal, who work collaboratively with the trial attorneys to represent individual youth and act as an ongoing resource for attorneys struggling with system barriers to post-disposition advocacy.

### *Office of the Ohio Public Defender: Juvenile Division*

The Juvenile Division in the Office of the Ohio Public Defender<sup>8</sup> represents youth who have been committed to the Ohio Department of Youth Services (ODYS) on appeal and in post-conviction matters, including those related to administrative functions (*e.g.*, disciplinary hearings and release review), detention credit issues, sex offender registration issues, and early release. The attorneys in the Juvenile Division also collaborate with local counsel and county public defender offices and accept cases for appeal on emerging legal issues. Following the release of NJDC's Ohio Juvenile Indigent Defense Assessment<sup>9</sup> in 2003, which documented the impact of the division's severe staffing limitations on the quality of post-disposition representation for Ohio's confined youth and the overall lack of quality of post-disposition advocacy outside this context, the legislature reinstated support for the division and codified a youth's right to post-disposition representation, which provided for the state public defender to have reasonable access to youth committed to ODYS.<sup>10</sup>

## **Specialized Law School Clinical Programs**

### *Rutgers School of Law: Post-Disposition Advocacy Project*

The Criminal and Youth Justice Clinic in Newark and the Children's Justice Clinic in Camden partnered with the New Jersey Office of the Public Defender (NJ OPD) to launch the Post-Disposition Advocacy Project. Since New Jersey does not statutorily require juvenile courts to hold post-disposition review hearings and a child's right to counsel ends with the filing of the first direct appeal, the Project addressed an immense gap in post-disposition advocacy. For the first time, it brought lawyers, law students, and social work students into New Jersey's juvenile facilities to visit the youth several times per week. The teams monitored conditions of confinement and the delivery of education, health, and mental health services; educated and advised youth on matters pertaining to their incarceration, including the institutional grievance procedure and parole classification; advocated on the youths' behalf at parole hearings; assisted youth in bringing administrative appeals to disciplinary and other agency decisions; worked with youth and their families to engage in reentry planning; and instituted court actions on youths' behalf when necessary.

### *Northwestern University School of Law: Parole Revocation Representation Project and Project Off the Record*

Northwestern University School of Law's Children and Family Justice

Center (CFJC) established two post-disposition advocacy projects focused on juvenile parole revocation and juvenile sex offender deregistration. In the Parole Revocation Representation Project, attorneys and students represent incarcerated youth at their parole revocation hearings. In the second project, Project Off the Record, attorneys and students represent youth seeking to terminate their requirement to register as a juvenile sex offender. In addition to providing direct representation, CFJC developed a comprehensive manual and sample pleadings to help other *pro bono* advocates facilitate juvenile sex offender deregistration.

### **Innovative Tools, Resources, and Community Partnerships**

#### *Internet-Based Expungement Applications*

Twenty-five Chicago high school students from the Mikva Challenge Juvenile Justice Council teamed up with a developer to create and launch a new Internet-based application—Expunge.io<sup>11</sup>—that educates users about juvenile expungement in Illinois and connects them with legal counsel to assist with the expungement process. Given the application's success, low cost, and simple user interface, it has been adapted in other states, including Maryland and Louisiana.<sup>12</sup> These internet-based applications help users determine whether they are eligible for expungement, locate and retrieve arrest information and applicable paperwork, and connect to free legal resources in the community.

#### *National Resources on Confidentiality, Sealing, and Expungement*

The Juvenile Law Center (JLC) produced a 50-state report card, an interactive website, and a national review on confidentiality, sealing, and expungement laws that will be published on JLC's website.<sup>13</sup>

#### *San Francisco Juvenile Reentry Court*

The San Francisco Juvenile Reentry Court is a collaborative effort between the juvenile court, the public defender's office, the juvenile probation department, and the Center on Juvenile and Criminal Justice to provide coordinated and comprehensive reentry case planning and aftercare services for youth reentering the community from out-of-home placement. This court program is largely administered by the Juvenile Collaborative Reentry Team (JCRT), which is comprised of a public defender, social worker, probation officer, youth advocate, and community case manager. The youth and his or her family are also integral members of the team and are actively involved in the case planning and decision making process. The JCRT makes its initial contact with the youth at disposition and meets regularly outside of court to develop and finalize the youth's plan three months before release. Since its inception, the JCRT has developed community partnerships with the school district, the city college, independent living skills programs, community-based and school-based support programs, various employment agencies, and others to advance community reintegration and ensure a real chance for success.

#### *Coordinated Community Referrals in Birmingham, Alabama*

Recognizing the importance of holistic defense, the Legal Aid Society in Birmingham, Alabama, worked to identify partner organizations in the community to provide special education advocacy to their juvenile clients. These community referrals occur informally on a case-by-case basis with the juvenile defenders following up with the partner organization and the young client to ensure that the client has been connected to services.

## **RECOMMENDATIONS FOR REFORM**

Access to post-disposition representation is vital to promote due process and positive youth outcomes, yet it is lacking in far too many jurisdictions. In addition to a host of legal issues, juvenile defenders play a critical role in helping clients access key services, including those related to reentry. To advance post-disposition advocacy, NJDC recommends that interested stakeholders:

- Organize a working group to evaluate post-disposition policy and practice;
- Develop legislative strategies to amend the right-to-counsel provisions of state statutes to embrace post-disposition representation;
- Develop practical mechanisms for providing post-disposition representation;
- Train juvenile defenders on how to provide effective post-disposition advocacy that is consistent with the National Juvenile Defense Standards;
- Develop community partnerships to enhance the provision of post-disposition representation and increase the capacity of juvenile defenders; and
- Engage in community outreach to educate youth and their families about the protections and advantages of post-disposition representation.

## **CONCLUSION**

Post-disposition representation is a critical part of juvenile client advocacy. Juvenile justice system stakeholders should ensure the provision of post-disposition representation. Defenders are uniquely skilled and ethically bound to ensure youth access to post-disposition representation, to protect youths' due process rights, and to promote positive youth outcomes in each case.

<sup>1</sup> 868 F.2d 9 (1st Cir. 1989).

<sup>2</sup> 969 F.2d 228 (6th Cir. 1992).

<sup>3</sup> 430 U.S. 817, 828 (1977). The Supreme Court held “the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.” *Id.* Such access must be “adequate, effective, and meaningful,” in that it provides “a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts,” and that the state’s “affirmative obligation” extends to “all prisoners.” *Id.* at 822, 824-25.

<sup>4</sup> See *John L.*, 969 F.2d at 233 (“[W]e see no logical reason why the right of access should not be applied to incarcerated juveniles. We therefore hold that plaintiffs, as incarcerated juveniles, have a constitutional right of access to the courts.”); *Germany*, 868 F.2d at 16 (“[P]laintiff’s status as a juvenile offers no excuse . . . . We reject any implication that the constitutional right of access to the courts does not apply to juveniles in [Department of Youth Services] custody.”); see also *John L. v. Adams*, 750 F. Supp. 288, 292 (M.D. Tenn. 1990) (“A juvenile’s need for access to the courts may even be greater than an adult’s in that access to the courts assists the rehabilitative process.”), *aff’d in part, rev’d in part*, 969 F.2d 228 (6th Cir. 1992).

<sup>5</sup> *John L.*, 969 F.2d at 230; see also *John L.*, 750 F. Supp. at 295 (“The determination of whether or not an inmate is provided with meaningful access to the courts requires taking into account the experience and intelligence of the inmate. . . . [C]ourts recognize that an adequate law library does not provide meaningful access to the courts for inmates unable to comprehend legal materials.”).

<sup>6</sup> For more information, please visit [NJDC.info](http://NJDC.info) and click on the “Practice and Policy Resources” tab to view the State Profiles.

<sup>7</sup> This Issue Brief does not discuss innovations regarding juvenile appellate practice, which can be found in the Issue Brief entitled *Appeals: A Critical Check on the Juvenile Delinquency System*.

<sup>8</sup> The Office of the Ohio Public Defender created a Juvenile Section in cooperation with ODYS in 1993. The Section was incorporated into the settlement agreement from the class action lawsuit *J.P. v. Taft*, 439 F. Supp. 2d 793 (S.D. Ohio 2006), that was based upon the *John L.* litigation in Tennessee. The Kentucky Department of Public Advocacy similarly established a Juvenile Post Disposition Branch in response to the consent decree from the *M.K. v. Wallace* class action lawsuit, which was filed in the United States District Court for the Eastern District of Kentucky. Consent Decree, *M.K. v. Wallace*, No. 93-213 (E.D. Ky. consent decree filed Aug. 18, 1995). The Juvenile Post Disposition Branch represents children in the state’s residential treatment facilities and detention centers both on appeal and on fact, duration, and condition of confinement issues.

<sup>9</sup> See NAT’L JUVENILE DEFENDER CTR., OHIO: JUSTICE CUT SHORT: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN JUVENILE DELINQUENCY PROCEEDINGS (2003).

<sup>10</sup> See OHIO REV. CODE ANN. § 120.06(A)(5), 120.06(G)-(I) (West 2014).

<sup>11</sup> Expunge.io was coded by Cathy Deng for the Mivka Challenge Juvenile Justice Council. The code is open-source and is on the Expunge.io page on GitHub to allow interested organizations to adapt this application. To access the page, please visit <https://github.com/legalcodes/expunge.io#im-interested-in-adapting-expungeio-to-another-state-are-you-down>.

<sup>12</sup> See ExpungeMaryland.org, <http://www.expungemaryland.org/> (last visited Oct. 8, 2014); Expunge.la, <http://expunge-la.herokuapp.com/> (last visited Oct. 8, 2014).

<sup>13</sup> Please visit [www.jlc.org](http://www.jlc.org) for more information.



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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](http://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](mailto:inquiries@njdc.info).*