

Florida

An Assessment of
Access to Counsel
& Quality of
Representation in
Delinquency
Proceedings

NATIONAL JUVENILE DEFENDER CENTER

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An Assessment of Access to Counsel & Quality of Representation in Delinquency Proceedings

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PREFACE

Florida is uniquely poised to transform its juvenile indigent defense system. Ahead of other states, Floridians have expressed an abiding interest in, and concern about, these issues for several years. The Supreme Court has long been outspoken on issues related to juvenile representation and a leader in upgrading the juvenile courts. The state legislature has been engaged in efforts to improve access to counsel for youth, including considering a bill to ensure that youth consult with an attorney before waiving the right to legal representation. The executive branch also presents numerous opportunities for collaboration and reform. The elected public defenders, bar associations, law school clinical programs and others with whom we spoke for this assessment all expressed the desire to do more to improve the juvenile indigent defense system.

Obtaining better information about the state of juvenile indigent defense is a critical first step. Florida is fortunate to have had many concerned individuals, organizations, state agencies and courts that have previously examined issues related to the legal representation of children generally. However, until now, defense representation has been considered only briefly as an aspect of Florida's broader juvenile justice system. This assessment brings juvenile defense issues squarely into focus and places them in the foreground of the juvenile justice system.

While exemplary and model juvenile defense practices occur across Florida, the practitioners who spoke with our assessment team uniformly agreed that there is ample room for improvements to the juvenile indigent defense system. Observers were often troubled by Florida's high rates of waiver of counsel, lack of zealous defense advocacy, hectic courtrooms, and inadequate defense resources. Judges, defenders, policy makers, Department of Juvenile Justice staff, and many others expressed concerns about a child's *meaningful* access to defense counsel and questioned the quality of legal representation that children in some parts of the state receive.

The delinquency system, like a braided cord, depends on the strength of each of its strands. Florida's juvenile courts cannot guarantee due process and accountability for youth without the participation of well-trained, well-resourced defense counsel. This assessment is intended to stimulate discussion of the strengths and deficiencies in the juvenile indigent defense system, and we hope it will serve as a tool for change in the hands of Florida's many dedicated professionals.

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EXECUTIVE SUMMARY

In 1967, the United States Supreme Court extended the right to counsel to youth under the age of 18, stating that youth need “the guiding hand of counsel” to respond to the charges leveled against them and to navigate the complicated justice system. Since that pronouncement, each state has had the responsibility to implement the due process rights of youth at the state, county or local level. Unfortunately, little information has been systematically gathered to evaluate how that implementation has occurred and whether it has been effective. Accordingly, this assessment of access to counsel and quality of representation for youth in Florida is part of a nationwide effort to address deficiencies and identify strengths in juvenile indigent defense practices. Our goal is to arm policymakers, judges, defender managers and others with the knowledge to improve the management and implementation of juvenile indigent defense services.

The information in this report was collected by a team of experts from across the country and Florida, with the guidance of a dedicated advisory board of Florida stakeholders and the support of the Florida Supreme Court, Florida Bar Association, Florida Public Defender’s Association and the elected Public Defenders. Observers traveled to 10 of Florida’s 20 judicial circuits to observe courtroom proceedings and to interview judges, prosecutors, probation staff, public defenders, other appointed counsel, detention personnel, youth, and other stakeholders.

Comprehensive national juvenile justice standards developed by the American Bar Association and delinquency court guidelines promulgated by the National Council of Juvenile and Family Court Judges provided a foundation for the assessment and set forth a road map for best practices. State laws, court rules, advisory and ethical opinions, Florida Public Defender Association caseload standards, and scholarly writings provided additional guidance about the role and responsibility of defense counsel in delinquency proceedings.

I. Significant Findings

While observers saw examples of best practices and effective defense across the state, there was uniform agreement that ample room exists for upgrades and improvements to the juvenile indigent defense system. Judges, defenders, policy makers, Department of Juvenile Justice staff, and many others expressed concerns about children’s meaningful access to defense counsel and questioned the quality of legal services that children often receive.

In addition to the short-term consequences of a juvenile adjudication, we note that inadequate representation is aggravated in Florida by the long-term, high stakes collateral consequences of a conviction in juvenile court. In addition to effects such as a loss or delay in obtaining a driver’s license, inability to join the military, applying for student loans or other entitlements, juveniles are eligible for automatic transfer into the adult system in Florida if they have three felony convictions in juvenile court and pick up a new charge. What transpires in juvenile court can have a lifelong impact on a child and family and the meaningful role and involvement of juvenile defense counsel is imperative.

Excessive Waiver of Counsel

Youth in Florida’s courts, even very young children, were observed routinely waiving the constitutional right to counsel. This often occurs with a wink and a nod – or even encouragement – from judges. Judges were sometimes observed implying that waiving counsel and making an admission was a way to resolve the case quickly, get out of the courtroom, and not have to set another date so the child’s parent or guardian would not need to miss work and return to court again. Other players in the delinquency system would echo this approach. All this was done without counsel being present or any meaningful discussion of the potential long-term disadvantages of waiving counsel taking place while the advantages were dangled in front of the children like candy.

Judges generally comply with the procedural rule requiring that a waiver be in writing, but seem to regard the written form as a substitute for a meaningful inquiry into the youth’s understanding. The written form(s) are complex and rarely explained. Despite a consistent body of appellate decisions on the need for judges to ensure that a waiver of counsel is knowing and intelligent, several judges we observed accepted waivers from youth after cursory, superficial colloquies.

The procedural rule mandating that youth consult with an adult about the waiver decision is helpful, but routinely flouted. Consultation with a parent may also be an inadequate safeguard. Florida has created incentives, some subtle and some not so subtle, that encourage parents to pressure youth into waiving counsel. Indigence and application fees, other surcharges, complex application forms, and inadequate oversight of indigence determinations by judges also discourage youth and families from exercising the right to counsel.

Untimely Appointment of Counsel

Defenders in Florida are regularly appointed on the day, and even at the moment, of youths’ initial appearances in court. This pattern of belated or rushed appointments compromises

the attorney-client relationship from the outset when defenders must discuss cases with youth and families in crowded hallways and courtrooms. Effective representation is severely impeded when defenders have no chance to learn about arguments against and alternatives to secure detention for each youth, let alone assess the prospects for his or her case.

Lack of Zealous Advocacy

Although observers saw many instances of juvenile defenders providing excellent and innovative representation for their young clients, this level of practice was not the norm in most counties. In general, representation fell far short of professional standards and national guidelines. Especially given the timing of the appointment of counsel, few attorneys were able to provide meaningful representation at detention hearings, and in a number of jurisdictions, no assistant public defenders were present at detention hearings altogether. Preparation for adjudication hearings was weak, with minimal investigation. Defender offices were inadequately staffed, and defenders did not fulfill their ethical responsibility to maintain regular communication with youth. Detained youth complained that their attorneys did not visit them or were unreachable, and for those not detained, defenders seemed to believe that it was the client's duty to initiate contact. Defenders generally did not file pre-trial motions, due in part to the active discouragement of judges. Post-disposition advocacy was virtually nonexistent, so youth lacked representation to challenge conditions of confinement, obtain services promised in disposition orders, or defend themselves in hearings on alleged probation or parole violations.

Excessive Guilty Pleas

Observers found, and participants estimated, that only a small fraction of Florida's delinquency cases actually proceed to an adjudicatory hearing. Several factors contribute to this outcome. In part, defenders are working under staggering caseloads and have little capacity to handle adjudication hearings. Under Florida laws that grant prosecutors the discretion to file certain cases in adult court, prosecutors also wield tremendous power to extract guilty pleas from youth who face the prospect of transfer to adult court. It was troubling to observe that some courts did not provide adequate procedural safeguards for obtaining guilty pleas from children. Although Florida procedural rules specify the advisements that judges must provide to youth before accepting a guilty plea, observers witnessed that judges repeatedly failed to give some or all of these advisements. When the advisements were provided, many judges did not explain the meaning of the rights or fully test the youths' understanding.

Use of Juvenile Court as a Training Ground for Defenders and Judges

Throughout Florida, most public defender offices use juvenile court as a training ground for new attorneys, rather than recognizing delinquency practice as a specialty. In most offices, little training is provided in the distinct elements of practice with youth. In many jurisdictions, defenders are transferred out of the juvenile division when they begin to gain experience, and cannot stay in the division without suffering salary limitations compared to their colleagues in adult court. This shortcoming is exacerbated in some places when inexperienced juvenile defenders are pitted against more experienced adversaries. Youth bear the consequences of this imbalance.

Judges also frequently begin their terms in the Florida juvenile courts. Some judges admitted a lack of expertise in adolescent development and in the complex and interdisciplinary field of juvenile law. Too many courtrooms were chaotic and indecorous.

Inadequate Resources and Excessive Caseloads

Deprived of adequate resources, training, and experience, it is no wonder that many of Florida's overwhelmed juvenile defenders are unable to fulfill their responsibilities to clients. Caseloads were estimated to be extremely high, in excess of American Bar Association standards and Florida Public Defender Association standards. Few defenders reported having access to the services of investigators or social workers. Some large offices provided training on juvenile defense, but most small - and mid-sized offices lacked the capacity to do so. The utilization of independent experts was nearly nonexistent. For youth no less than for adults, these resources are indispensable for the provision of comprehensive and effective defense advocacy.

While the workload requirement to provide adequate juvenile defense representation is great, the resources available to accomplish this important work are severely limited.

II. Conclusions and Core Recommendations

Although the juvenile indigent defense system has never been given the full array of resources it critically needs to meet its complex mandate, many improvements to Florida's juvenile indigent defense system are further limited by the lack of political will of leaders and policymakers. It's important to recognize that the short and long term consequences of an arrest or conviction in juvenile court can be severe. Youthful indiscretion or misbehavior can be a lifetime sentence to a lower socio-economic status and can place future limitations on housing, education, employment and other opportunities. The core recommendations set forth below are elucidated in Chapter 5 and followed by a series of implementation strategies designed to engage all juvenile justice system stakeholders and policymakers in juvenile indigent defense reform efforts. Core recommendations include:

1. State legislators and local policymakers should increase the resources that are available to improve delinquency representation in juvenile court. Those resources should include support for attorneys and non-lawyers with special expertise in case planning and representation and other necessary support staff.
2. The elected Public Defenders should ensure that youth are competently represented by defense counsel at all court hearings and throughout the entire delinquency process.
3. Further restrictions on waiver of counsel must be established consistent with national standards. Youth should not be permitted to waive counsel without prior consultation with such counsel. Counsel should assist the client in making an informed, knowing and voluntary choice and stand-by counsel should be available in the event of waiver. It is imperative that youth understand the long-term consequences of a juvenile adjudication.

4. Judicial colloquies and admonitions administered to youth must be thorough, comprehensive and easily understood. Judges should take the time to fully test a youth's understanding.
5. A comprehensive review of indigence determinations and other fees and surcharges assessed in juvenile court should be undertaken. The lack of consistency and uniformity is glaring. These costs and fees are punitive in nature and place an undue burden on youth.
6. State legislators, local policymakers, and juvenile court judges should end the practice of shackling youth by hand, foot and belly chain for court appearances unless an extenuating individual situation warrants such restraint. Under any circumstance, the practice of shackling youth to each other in a group or to fixed objects in the courtroom should be strictly prohibited.
7. The quality of representation in juvenile court should be improved through early appointment of counsel, reduced defender caseloads, additional lawyer training and adequate supervision and monitoring of cases in juvenile court. The Florida Public Defender Association should develop the capacity to monitor and improve the delivery of juvenile defense services to comply with national standards and these recommendations.
8. Florida should establish a minimum age for juvenile court jurisdiction and children under twelve should be diverted from juvenile court. Young children under twelve should never be handcuffed or booked in the same manner as older youth.
9. Local courts, law schools, bar associations or the Florida Public Defender Association should routinely collect comprehensive data on defense representation in juvenile court to identify and address systemic weaknesses.
10. In accordance with national standards, attorneys should seldom recommend that a child accept plea to a petition at arraignment or first appearance. Defense counsel must have a meaningful opportunity to consult with the youth, explain the potential short and long term consequences of a conviction, and review the sufficiency of the case with the child prior to the court's acceptance of a plea.

INTRODUCTION

This assessment of access to counsel and quality of representation in Florida delinquency proceedings is part of a nationwide undertaking to review indigent defense delivery systems and to determine whether attorneys in juvenile court are able to effectively represent their youth clients. Policymakers, defenders, judges and other personnel can turn to this assessment for information about the role of defense counsel in the delinquency system, structural or systemic barriers that impede the representation of youth, promising defender practices, and viable recommendations to improve delinquency defense services for youth.

Juvenile delinquency defense is a complex legal specialization that requires interdisciplinary knowledge and extraordinary sensitivity. Working with youth in delinquency courts requires a strong understanding of the principles of child and adolescent development. Ensuring that youth and their families fully understand and participate in the court process requires a patient and dignified approach. Addressing the mental health and special education needs that are present in a high proportion of delinquent youth mandates distinct training and skills development. Evaluating a child's level of maturity and competency, and its relevance to a delinquency case, may require the input of experts. Maintaining a system where youth are not inappropriately locked up due to a lack of community-based alternatives requires aggressive monitoring. For all these reasons and more, it is imperative that juvenile indigent defense systems be comprehensively assessed in order to ensure that resources are being spent wisely and that children are receiving the legal protections to which they are constitutionally entitled.

I. Due Process and Delinquency Proceedings

In 1963, the United States Supreme Court held in *Gideon v. Wainwright* that the Sixth Amendment requires that an attorney be appointed at public expense to represent an indigent person charged with a felony offense.¹ Justice Hugo Black wrote for a unanimous Court that “lawyers in criminal court are necessities, not luxuries.”² Soon thereafter, the Court recognized in a series of landmark cases that youth in delinquency proceedings must be accorded due process guarantees comparable to those provided to adult criminal defendants.³ Arguably the most foundational of these cases, *In re Gault*, held that youth in delinquency court have a right to counsel under the Due Process Clause of the United States Constitution, applied to the states through the Fourteenth Amendment.⁴ The Court in *Gault* unequivocally stated that juveniles facing “the awesome prospect of incarceration” need counsel for the same reasons that adults facing criminal charges need counsel.⁵

The introduction of advocates to the juvenile court system was intended to alter the tenor of delinquency cases. Noting that the “absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment,” the Court determined that a child’s interests in delinquency proceedings are not adequately protected without adherence to due process principles.⁶ In addition to the right to counsel, *Gault* also extended to youth the right to notice of the charges against them, the privilege against self-incrimination, and the right to confront and cross-examine adverse witnesses. In other cases, the Supreme Court held that a youth cannot be adjudicated delinquent unless his guilt is proven beyond a reasonable doubt,⁷ that a delinquency proceeding constitutes being placed “in jeopardy” and bars further prosecution,⁸ and that youth have the right to a hearing and an attorney before being transferred to adult court.⁹ In sum, the Court made clear that “civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile court[.]”¹⁰

Through *Gault* and other juvenile due process cases, youth accused of delinquent acts were to become participants rather than spectators in court proceedings. Perhaps even more than adults, youth need defenders’ assistance to “cope with problems of law, to make skilled inquiry into the facts, to insist upon the regularity of the proceedings, and to ascertain whether [the client] has a defense and to prepare and submit it.”¹¹ Although *Gault* did not expressly discuss the role of counsel in delinquency cases, by the early 1980s there was professional consensus that defense attorneys owe their child clients the same duty of loyalty as adult clients.¹² The adversarial nature of delinquency court demands that defenders represent the legitimate “expressed interests” voiced by child clients, not their abstracted “best interests” as chosen by the attorney.¹³

Through its decisions in *Gault* and other cases, the Supreme Court drew national attention to the treatment of youth in the juvenile justice system. With varying degrees of enthusiasm, states began to address the requirements imposed by the Court’s decisions. Evincing concerns about the rights of children, Congress passed the Juvenile Justice and Delinquency Prevention Act (JJDP Act) in 1974.¹⁴ The JJDP Act created a National Advisory Committee for Juvenile Justice and Delinquency Prevention, charged with developing national juvenile justice standards and guidelines. The National Advisory Committee standards, issued in 1980, require that children be represented by counsel at all stages of delinquency proceedings.¹⁵

At the same time, leading non-governmental organizations also acknowledged the importance and necessity of protections for youth in delinquency courts. Beginning in 1971, and continuing over a ten-year period, the Institute for Judicial Administration (IJA) and the American

Bar Association (ABA) collaborated to produce 23 volumes of comprehensive juvenile justice standards.¹⁶ The structure of the project was as intricate as the standards it produced, and relied on the work of approximately 300 dedicated professionals across the country with expertise in the many disciplines relevant to juvenile justice practice. Draft standards were circulated widely to individuals and organizations throughout the country for comments and suggestions. The final standards, adopted in full by the ABA by 1982, were designed to establish a juvenile justice system of lasting excellence, one that would not fluctuate in response to transitory headlines or controversies. They specifically state that “[c]ounsel for the respondent in a delinquency or in need of supervision proceeding should ordinarily be bound by the client’s definition of his or her interests with respect to admission or denial of the facts or conditions alleged” and by the client’s decision about how to plead.¹⁷

Upon reauthorizing the JJDP Act in 1992, Congress again re-emphasized the importance of lawyers in juvenile delinquency proceedings, specifically noting the inadequacies of the prosecutorial offices and defense delivery systems tasked with providing individualized justice. Congress recognized the need for more information about the functioning of delinquency courts across the country, and called upon the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) to take note of the issue.

In 1993, the ABA Juvenile Justice Center, together with the Youth Law Center and Juvenile Law Center, received funding from OJJDP to initiate the Due Process Advocacy Project. The purpose of the project was to build the capacity and effectiveness of the juvenile defense bar to ensure that children have access to qualified counsel in delinquency proceedings. One result of this collaborative project was the 1995 release of *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* – the first national examination of access to counsel, quality of legal services, and the training and resource needs of juvenile defenders.¹⁸ The report documented the inconsistencies and gaps in legal representation for our country’s poor children. While some attorneys represent youth with the utmost vigor and skill, the report reached the disturbing conclusion that quality advocacy is not common and is impeded by pernicious systemic barriers.

The widespread shortcomings revealed in *A Call for Justice* led to the founding, in 1998, of the National Juvenile Defender Center to provide a permanent capacity to support juvenile defenders on the front lines across the country. Since 2005, the National Juvenile Defender Center has been an independent and non-partisan organization devoted to ensuring excellence in juvenile defense and promoting justice for all children.

Almost four decades after the *Gault* decision, despite widespread agreement on the importance of the right to counsel for youth, the promise of effective delinquency representation remains hollow for most indigent youth. While judges and lawyers across the country received *A Call for Justice* with great enthusiasm and interest, they also voiced a need for state-specific assessments to guide legislative and legal reform. In response to this outpouring of concern, a methodology was developed to conduct comprehensive assessments of access to counsel and quality of representation in individual states.

Since 1995, state-specific juvenile defense assessments have been conducted in 13 states: Georgia, Indiana, Kentucky, Louisiana, Maine, Maryland, Montana, North Carolina, Ohio, Pennsylvania, Texas, Virginia and Washington. Re-assessments have been conducted in Kentucky and Louisiana. County-based assessments were released in Cook County, Illinois and Marion County, Indiana; another is forthcoming in Caddo Parish, Louisiana. New assessments

are currently underway in Mississippi and Illinois, and the National Juvenile Defender Center is continuously working with leaders in other states who are interested in pursuing indigent defense assessments. Completed assessments are available from the National Juvenile Defender Center website at <http://www.njdc.info/assessments.php>.

Professional organizations agree that skilled juvenile defense advocacy is essential to securing fairness and accountability for delinquent youth. In January 2005, the National Juvenile Defender Center and the American Council of Chief Defenders jointly released *Ten Core Principles for Providing Quality Delinquency Representation through Indigent Defense Delivery Systems* (see Appendix B). In addition to explaining the nature of excellence in juvenile defense, these *Principles* state that defense systems should “ensure that children do not waive appointment of counsel ... [and] that defense counsel are assigned at the earliest possible stage of the delinquency proceedings.”¹⁹ The *Juvenile Delinquency Guidelines*, released in 2005 by the National Council of Juvenile and Family Court Judges, similarly advise that “youth charged in the formal juvenile delinquency court must have qualified and adequately compensated legal representation ... [and] court judges and judicial officers should be extremely reluctant to allow a youth to waive the right to counsel.”²⁰

II. This Assessment and Its Methodology

Assessments furnish policy makers and leaders with accurate baseline data so they can make informed decisions regarding the nature and structure of the juvenile indigent defense system. The Assessment thoroughly examines the systemic and institutional barriers that may impede lawyers’ ability to provide adequate legal services to indigent children. The study also reviews the timing and appointment of counsel and analyzes the quality of legal representation for children. In addition, the Assessment highlights promising approaches and model practices within the state, and offers comprehensive, targeted recommendations in areas where improvements would be valuable.

The National Juvenile Defender Center was invited to conduct this comprehensive juvenile indigent defense assessment with the support of the Supreme Court of Florida, the Florida Bar Association, the Florida Public Defender Association and many other organizations and individuals. Guided by a state advisory board, an expert team of national and state-based investigators was convened to take part in the assessment. The assessment team included private practitioners, academics, current and former public defenders, defender managers, and juvenile justice advocates. Data and statistics were collected on crime trends, arrest rates, detention and confinement rates, caseloads, demographics, and community profiles. The National Juvenile Defender Center and its partners also reviewed relevant research and reports that pertained to the Florida defender system.

These data were compiled and analyzed to select a representative sample of Florida’s 67 counties for site visits. Fifteen counties, cutting across ten of the state’s 20 judicial circuits, were chosen for in-depth study and analysis. Counties were selected based on variety of factors including population, geography, demographics, juvenile arrest data, disposition rates, and the locations of the public defender offices, juvenile courts, assessment and detention centers and training schools. The sample includes urban, suburban and rural areas, and reflects the geographic and cultural diversity of the state.

The methodology included site visits across the state, court observations, and confidential meetings and interviews with key justice system personnel. Teams of observers visited each site to conduct interviews using standard protocols, observe judicial proceedings, and gather documentary evidence. The visits focused on the role and performance of defense counsel, but interviews were conducted with all professionals in the justice system including judges, public defenders, court appointed counsel, prosecutors, court personnel and administrators, court counselors, case managers, mental health experts, school resource officers, detention center personnel and administrators, service providers, key state stakeholders, policy advocates, children and parents. The teams of observers also toured assessment and detention centers and, to the extent possible, collected statistical and documentary materials. When necessary, follow-up phone calls were conducted to obtain additional or clarifying information. All field notes and protocols remain on file with the National Juvenile Defender Center.

CHAPTER ONE:

Background for the Legal Representation of Youth

I. Delinquency, Justice Statistics and Trends

In a 2004 report, the National Council on Crime and Delinquency (NCCD) found that the rate of juvenile crime in Florida had declined steadily over the previous decade, falling by a total of nearly 30%.²¹ This corresponds with a declining rate of delinquency referrals among youth aged 10-17 over the past five years, from 91 of every 1,000 youth in the year 2000-01 to 82 of every 1,000 youth in the year 2004-05.²² However, the total number of youth commitments per year has not changed appreciably in the past five years. Records also show that the percentage of referrals disposed of through commitments has held more or less steady.²³ The stable number of commitments over this five-year period might reflect, in part, the concurrent increase in Florida's youth population²⁴ and the approximately 10% increase in the percentage of dispositions that were residential commitments.²⁵

Florida has also been experiencing a decline in the seriousness of youth offending; felony referrals fell by 17% and misdemeanor referrals fell by 15% over the seven years leading up to the publication of the NCCD report.²⁶ The NCCD report reveals, however, that "other offenses" such as violations of probation were on the rise during the same time period.²⁷ Strikingly, technical violations increased by 50% between FY 2001-02 and FY 2002-03.²⁸ The number of youth committed to Florida facilities for non-law violations of probation increased by more than 25% between 2000-01 and 2004-05.²⁹ In 2005, the year this assessment was conducted, over 2,500 youth were put behind bars for technical violations.³⁰

During the time period from 1999 to 2003, Florida admitted over 50,000 youth each year into secure detention.³¹ In 2003, Florida detained youth at a rate of 94 per 100,000.³² This is about 13% above the national average of 83 per 100,000 youth, placing Florida among the top 20 states for imposition of secure detention.³³

In 2003, Florida incarcerated 352 out of every 100,000 of its children – the second highest rate of any state.³⁶

The budget for the Florida Department of Juvenile Justice has more than doubled since its inception in 1994 despite the declining juvenile crime rate over the same period. Although crime rates have declined, juvenile justice spending on detention, commitment and incarceration has increased. NCCD concluded that Florida was not making the best use of its fiscal resources in responding to juvenile crime.³⁴ As NCCD pointed out, “[t]he increased use of confinement is an expensive way to lower crime rates.”³⁵ In 2003, Florida incarcerated 352 out of every 100,000 of its children – the second highest rate of any state.³⁶ That rate represents a total of 8,200 Florida youth held in custody, similarly the second highest number in the nation.

Florida’s high incarceration rate is not necessarily in tune with the preferences of voters. According to a statewide poll of frequent voters conducted by the Children’s Campaign in 2001, Floridians across the state are in favor of early prevention and treatment to reduce juvenile crime in the future. At a time when politicians were proposing cuts to these programs, a large majority (85%) opposed funding cuts.³⁷ In fact, 75% of those surveyed said they would rather have more of these programs than pay lower taxes.³⁸

II. Structure of the Juvenile Indigent Defense System in Florida

Indigent defense systems in the United States are typically organized either at the state level or at the county/regional level. While Florida resembles a statewide system at first glance, upon closer inspection the state does not fit neatly into either category.

Florida has 67 counties that are distributed into 20 judicial circuits. In each judicial circuit, an elected public defender provides trial-level representation for indigent adults and youth. The attorneys are supposed to be supported by investigators, witness interviewers and secretaries. Third-year law students and law school graduates not yet admitted to The Florida Bar can work with the Public Defender’s Office and are called certified legal interns (CLIs). Five of these offices also handle appellate cases in their regions. Conflict cases are generally handled by private counsel appointed by the court. The rates paid to appointed counsel vary from circuit to circuit.

Most of Florida’s indigent defense funding is supplied by the state (e.g., 80% in FY 2002).³⁹ State funds are distributed to the circuit public defender offices according to a standard formula developed by the Florida Public Defender Association. However, the actual funds available for indigent defense are uneven because counties may and do provide additional funds for salaries. Until 2005 and during the observation visits for this assessment, the state was responsible for public defender salaries and the “necessary expenses of the office,” while counties paid for office and overhead expenses and court appointed counsel fees.⁴⁰ At the time of this writing, under a constitutional revision, the state has assumed the additional responsibility of paying for court appointed counsel and due process costs.⁴¹ Each judicial circuit has established a committee to manage the appointment and compensation of court appointed counsel within that circuit.⁴²

Each circuit Public Defender has broad discretion to organize his or her office, including allocating staff among the different practices of juvenile delinquency, adult felony and adult misdemeanors. As a result, the resources provided for juvenile indigent defense can and do vary greatly from one judicial circuit to another. This can have a significant impact on youth's access to competent counsel throughout the duration of the juvenile court process.

It is important to note that, although the state pays the direct costs of representation for indigent youth, fees can legally be assessed against the youth or family to pay for attorneys' indirect costs, restitution, fines, institutional care, and other court costs and services. Some of these costs can be quite substantial.

III. Juvenile Assessment Centers

Florida is known for having pioneered the use of Juvenile Assessment Centers (JACs) in the early 1990s. According to the Florida Department of Juvenile Justice, JACs are now used throughout much of the state. JACs are central intake units for screening youth as they enter the juvenile justice system. Although the JACs are creatures of state statute, the legislature established them as community-based initiatives run by the Department of Juvenile Justice along with local prosecutors, defenders, and service providers.⁴³ Most JACs are administered by a consortium of agencies. Each agency is responsible for the services within its purview, and the whole enterprise is governed by an advisory committee and a set of interagency agreements.⁴⁴ The quality of JACs therefore depends heavily on local initiatives and collaboration, and JAC programs reflect the availability of services in the surrounding community.

Referring in part to the JACs, the National Council on Crime and Delinquency concluded in 2004 that the Florida juvenile justice system "could do a lot to improve its processes of assessment and placement."⁴⁷

JACs centralize and expedite the booking and screening processes for youth who are arrested. Most JACs are open 24 hours a day so that police can bring in youth at any time. Some JACs only accept alleged felony offenders or detention-eligible youth, while others will accept any youth who is arrested. These centers are also "authorized and encouraged" to establish truancy programs.⁴⁵ The JACs were not a focus of this assessment, but it appeared to observers that the JACs do not provide systematic or official access to legal counsel. Some centers indicated that they would welcome an onsite attorney.

In theory, JACs provide a single point of entry, immediate needs assessment, integrated case management and a comprehensive management information system for youth accused of delinquency. Unfortunately, the quality of these services varies widely across the state. There have been serious concerns raised about the JACs, including problematic labeling of youth, breaches of confidentiality, unnecessary widening of the juvenile justice net, lack of meaningful interagency coordination, and insensitivity to due process that may compromise the eventual defense of the case.⁴⁶ Moreover, although JACs are primarily designed to handle the pre-detention

or pre-adjudication screening functions entrusted to police or probation in other states, the role of the JACs in some counties has expanded to include post-adjudication assessments that form the basis for disposition decisions. Referring in part to the JACs, the National Council on Crime and Delinquency concluded in 2004 that the Florida juvenile justice system “could do a lot to improve its processes of assessment and placement.”⁴⁷

IV. Unified Family Courts

A unified family court is one with broad jurisdiction over all matters involving a single family, from abuse to delinquency and truancy. For over a decade, Florida’s judicial and legislative leaders have actively promoted the development of model family courts across the state. In 1991, a legislatively-mandated Commission on Family Courts set this process in motion with its report setting forth guidelines for establishing family law divisions, including resource needs and criteria for the assignment of family court judges.⁴⁸ Later that same year, the Florida Supreme Court issued an opinion approving the Commission’s recommendations.⁴⁹ In 1994, the Court issued a further opinion to “refine and implement” the movement toward unified family courts.⁵⁰ This opinion created a Family Court Steering Committee to handle the ongoing task of “identifying the guiding principles and recommendations for a model family court in Florida.”⁵¹

In 2001, the Florida Supreme Court unanimously adopted the recommendations of the Steering Committee in the opinion *In re Report of Steering Committee*, 794 So.2d 518 (Fla. 2001). This decision enumerates twelve guiding principles for family courts, reiterates the importance of case management and coordination by courts, and calls for the creation of a Family Law Advisory Group in each judicial circuit. Although the Florida Supreme Court continues to provide encouragement and leadership to foster unified courts, it is left up to each circuit and ultimately each courtroom to implement the vision articulated by the Court.

CHAPTER TWO:

Role of Counsel in Delinquency Proceedings

I. Introduction

Representing juveniles is a complex and specialized practice. Counsel plays a critical role throughout the juvenile court process, from arrest through post-disposition and at all points in between. It is also important for attorneys experienced in juvenile matters to be involved when a child is facing transfer to the adult system.

In Florida, juvenile proceedings are distinct from adult criminal proceedings. Chapter 985 of the Florida Statutes was enacted to assure that the proceedings in the juvenile justice system are conducted “with appropriate discretion” and that the courts consider the facts of each case and apply “constitutional standards of fundamental fairness and due process.”⁵² The statute calls for the juvenile justice system to provide a “comprehensive standardized assessment of child’s needs” to ensure proper “control, discipline, punishment, and treatment” of the child so as to promote public safety.⁵³ It should be noted that “[i]t is the policy of the state with respect to juvenile justice and delinquency prevention to first protect the public from acts of delinquency.”⁵⁴

II. Jurisdiction and Venue

The circuit courts have “exclusive original jurisdiction” over proceedings for a child accused of delinquency or another violation of the law.⁵⁵ However, the legislature retains power to decide if a child is entitled to be tried under the benefits of the juvenile court.⁵⁶ As described below, Florida lawmakers have exercised this power by setting rules permitting the transfer of youth charged with delinquent acts into adult criminal court.

Jurisdiction over the child attaches when the child is taken into custody or when the child and his parent or guardian is served with a summons.⁵⁷ The circuit court for the county in which the child was taken into custody initially has jurisdiction.⁵⁸

Under the Florida Statutes, a “child” is defined as a person, married or unmarried, who is charged with a violation of law that occurred prior to his or her 18th birthday.⁵⁹ Once jurisdiction has attached, the court shall retain jurisdiction over the child until child reaches age 19 or in some types of cases age 21, unless the court relinquishes its jurisdiction.⁶⁰

III. Transfer of Jurisdiction for Trial as Adult

A child may be transferred for trial as an adult by waiver, filing of an information, or grand jury indictment.⁶¹ Whether a child is treated as an adult or a juvenile for a particular crime is initially at the discretion of the legislature.⁶² In certain cases, the Florida legislature has directed prosecutors to exercise discretion over transfer.

If the child was at least 14 years old at the time of the alleged violation of law, the state may request that the child be transferred to adult court for criminal prosecution.⁶³ The state also has the discretion to “direct file” an information in adult criminal court for any child who allegedly committed a felony when aged 16 or older.⁶⁴ Direct filing is allowed, as well, for any child who was 14 or 15 years old at the time certain specified offenses were committed (such as robbery, sexual battery, aggravated battery, and grand theft auto).⁶⁵

In some instances, Florida law requires the prosecutor to file a youth’s case in adult court. Filing a waiver motion is mandatory if the child is accused of a violent crime, was at least 14 years old when he allegedly committed the violation, and had previously been found delinquent for an act classified as a violent felony.⁶⁶ A waiver motion is also mandatory if the child, aged 14 or older, has previously been judged delinquent for at least three acts classified as felonies, one of the previous offenses involved violence or a firearm, and the current act is also classified as a felony.⁶⁷ However, the prosecutor may decline to file a “mandatory” waiver motion as long as she submits written explanations to the court.⁶⁸

When the court convicts and sentences a child as an adult, jurisdiction over the child for subsequent offenses will be in the adult criminal court.⁶⁹ This is known as the “once an adult, always an adult” rule. If a child is found guilty in the adult criminal court but *sentenced as a juvenile*, all subsequent offenses will be initiated in juvenile court.⁷⁰

IV. Right to Counsel

All juveniles involved in delinquency cases have a right to counsel.⁷¹ This right attaches any time after arrest, including while the child is held in secure detention pending a detention hearing.⁷² At the detention hearing, the court has a specific duty to inform the child of the right to counsel.⁷³ The right to counsel also must be explained at the time of any plea, and the offer of counsel must be renewed at every stage of the proceedings if the child previously has waived his right and appears without counsel.⁷⁴ Furthermore, the right to counsel in juvenile proceedings is not limited to cases in which imprisonment or commitment is a possible penalty.⁷⁵

If the child and the parents are indigent, the public defender shall be appointed if the child exercises the right to counsel.⁷⁶ There is no statutory presumption of indigence for youth. Currently, there also is no provision under Florida law for the mandatory and provisional appointment of counsel prior to any waiver of counsel.

V. Waiver of Counsel

A youth cannot waive his right to counsel or trial unless the waiver is made knowingly and intelligently.⁷⁷ Pursuant to Florida Rules of Juvenile Procedure and case law, the court must conduct a “thorough inquiry” of whether the child understands the offer of counsel and can “intelligently and understandingly” make a decision regarding the offer.⁷⁸ The requirement that the court conduct a thorough inquiry is not satisfied by merely asking a youth if he understands that if he cannot afford an attorney, one will be appointed.⁷⁹ This requirement “recognizes that it is extremely doubtful that any child of limited experience can possibly comprehend the importance of counsel.”⁸⁰ In addition, the court is required to inform the youth of the benefits that he will be relinquishing by waiving counsel, as well as the danger and disadvantages of self-representation.⁸¹ The court cannot accept a waiver of counsel if “because of mental condition, age, education, experience, the nature and complexity of the case, or other factors,” the child is unable to make a decision that is both intelligent and voluntary.⁸²

The court has similar obligations when a youth pleads guilty, regardless of whether he is represented by counsel. Before a court may accept a plea of guilty or no contest, it must ensure that the child is pleading knowingly and voluntarily.⁸³ In making this determination, the court is required to ask for a factual basis for the charge and determine that the youth understands the following:

1. The nature of the charge and the possible dispositions;
2. That the youth has the right to be represented by an attorney at every stage of the proceedings and that, if necessary, one will be appointed;
3. That the child has the right to plead not guilty and the right to an adjudicatory hearing and at that hearing has the right to the assistance of counsel, the right to compel the attendance of witnesses on his or her behalf, the right to confront and cross-examine witnesses against him or her, and the right not to be compelled to incriminate him or herself;
4. That, if the child pleads guilty or no contest, without express reservation of the right to appeal, the right to appeal all matters relating to the judgment is lost but the right to collateral attack is not;
5. That, if the child pleads guilty or no contest, the right to an adjudicatory hearing is waived;
6. That, if the child pleads guilty or no contest, the court may ask the child questions about the offense to which the child has pleaded, and, if those questions are answered under oath, on the record, the answers may later be

used against the child in a prosecution for perjury; and

7. The complete terms of any plea agreement including specifically all obligations the child will incur as a result.⁸⁴

In 2005, the Florida Supreme Court adopted a requirement that if a child is entering a plea or being tried on an allegation of a delinquent act, the youth must sign a written waiver of counsel in the presence of a parent legal custodian, responsible adult, relative or attorney assigned to assist the child.⁸⁵ Further, the adult must verify that he discussed waiver with the child and the child is making a knowing and voluntary waiver.⁸⁶ The written waiver is not, however, intended to serve as a substitute for the requirement that the judge fully inform the child of his rights prior to accepting waiver of counsel and a plea, nor does it eliminate the court's obligation to conduct its own inquiry into whether the waiver is made knowingly and intelligently by a youth who is competent to waive these rights.⁸⁷

VI. Custody

A youth may be taken into custody under the following circumstances:

1. By court order based on sworn testimony;⁸⁸
2. Under a lawful arrest;⁸⁹
3. For failure to appear at a court hearing after properly noticed;⁹⁰ or
4. By a law enforcement officer who has probable cause to believe that child has violated conditions of community control, or home detention, or has left a commitment program.⁹¹

Under Chapter 985 of the Florida Statute, a child taken into custody must be released "as soon as is reasonably possible."⁹² Unless court-ordered detention or another need to hold the child exists, the child should be released to a parent, guardian, or another responsible adult who has been screened for prior criminal convictions.⁹³ Further considerations for releasing a child from custody (such as physical conditions, mental illness and intoxication) can be found in section 985.211(2)(b) of the Florida Statutes.⁹⁴

VII. Detention

"Detention care" is defined as the "temporary care of a child in a secure, non-secure, or home detention, pending a court adjudication or disposition or execution of court order."⁹⁵ The legislature intended that detention be used only in severe cases when other alternatives are not suitable to meet the child's needs or to protect the public.⁹⁶ Detention generally must be in a juvenile facility.⁹⁷ A child may be detained in an adult facility by court order, when transferred, or

when indicted for adult prosecution, but in all cases must be kept separate in such a way that the child cannot see or hear the adults.⁹⁸ If the child is charged only with a misdemeanor, however, adult facilities may not be used for detention.⁹⁹ Some uses of detention care are impermissible. Detention should not be used to allow parents to avoid legal responsibility for the child, to allow convenient access to the child by the Department of Juvenile Justice or law enforcement, to facilitate interrogation of a child, or to house the child when more appropriate facilities are not available.¹⁰⁰

The court must conduct a detention hearing to decide whether a youth can be held, prior to adjudication, beyond an initial 24-hour period.¹⁰¹ At the detention hearing, the court determines whether probable cause that the child committed the delinquent act exists.¹⁰² If probable cause is not established, the court must release the child from detention.¹⁰³ If there is probable cause to believe the child committed the violation, the decision to place the child in detention should be based on a detailed set of factors set forth by statute, including the information in a standardized risk assessment.¹⁰⁴ The detention order must contain specific instructions for release of the child at the conclusion of the detention period.¹⁰⁵ Furthermore, a youth may not be held in detention for longer than 21 days unless an adjudicatory hearing is commenced.¹⁰⁶ Detention can be extended for “good cause” for an extra nine days if the charged offense is classified as a felony.¹⁰⁷

VIII. Intake Role of the Department of Juvenile Justice

The Department of Juvenile Justice (DJJ) is responsible for developing “innovative” programs for the juvenile justice system, including comprehensive intake and case management programs.¹⁰⁸ Responsibilities of the juvenile probation officer assigned under the intake and case management system include: completing a risk assessment instrument to measure eligibility for detention; determining whether the child understands his rights to counsel and against self-incrimination; screening and referring for comprehensive assessments for drug abuse, mental health and educational services; and recommending and facilitating the delivery of services to the child.¹⁰⁹ DJJ must also conduct a standardized assessment. The assessment serves to identify the child’s needs related to treatment and rehabilitation and to reveal pressing needs of the child’s parents or guardians so as to identify services that can enhance the parents’ ability to care for the child.¹¹⁰ The juvenile probation officer completing the intake report may recommend to the prosecutor what action should or should not be taken on the complaint, but any recommendations are only advisory in nature.¹¹¹

IX. Petition and Answer

Only the prosecutor may file a petition requesting a finding that a child has committed a delinquent act.¹¹² Under Florida law, no written response to a petition is required.¹¹³ At an arraignment, the court must inquire if the child will plead guilty, no contest, or not guilty.¹¹⁴ If the child replies evasively or not at all, the court must enter a not guilty plea.¹¹⁵ If the child enters a plea of guilty or no contest, the court must determine whether the plea is being made knowingly and voluntarily and must verify that there is factual evidence to support the plea.¹¹⁶

X. Competence to Stand Trial

Incompetence of the child in delinquent proceedings is governed by Florida Statutes section 985.223 and Florida Rule of Juvenile Procedure 8.095. The defender may independently retain experts to assist in case preparation and may also file a motion for an examination of the child to determine if the child is competent to stand trial.¹¹⁷ The defender must certify that the request is made in good faith and on reasonable grounds, and, to the extent permitted by attorney-client privilege, must provide the details and observations that led to the filing of a motion.¹¹⁸ Determination of competency must be made at a hearing and must be based on the findings of two or three court-appointed experts.¹¹⁹

If the child is found incompetent to proceed, the Department of Children of Family Services shall be notified.¹²⁰ The Department shall place the child in “the appropriate setting” and present a “treatment plan for the child’s restoration of competency” within 30 days.¹²¹ Additional statutory provisions regarding placement pending “restoration,” mental illness, mental retardation, reports and timelines can be found at Florida Statutes section 985.223.

XI. Adjudication

Adjudication hearings in Florida’s delinquency cases are generally open to the public.¹²² Only when justice would be best served and upon special order of the court may persons be excluded from the hearing.¹²³ The victim and the victim’s parents, guardian or legal representative have the right to be notified and present at all stages of the juvenile proceedings, so long as their presence does not interfere with the child’s constitutional rights.¹²⁴ The child must be present for the adjudicatory hearing unless it is not in his or her best interests, due to extenuating circumstances.¹²⁵

The adjudication hearing is conducted in a manner similar to a criminal trial, with opening statements, presentation of evidence, and closing arguments. Hearings proceed before the court and without a jury, use the same rules of evidence as for criminal cases, and should be conducted, as much as possible, in language that the child can understand.¹²⁶ The alleged violation must be proved beyond a reasonable doubt, and the child must be allowed to introduce evidence and cross-examine adverse witnesses.¹²⁷ Lastly, the child has full rights against self-incrimination, and illegally obtained evidence cannot be introduced at trial.¹²⁸

At the close of the hearing, the court must enter an order which either:

1. Finds that the child has not committed a delinquent act and dismisses the case,
2. Finds that the child has committed a delinquent act and states the facts on which this finding is based,
3. Withholds adjudication and places child on community control under DJJ supervision, or
4. Adjudicates the child delinquent and proceeds to disposition.¹²⁹

XII. Disposition

If the child is adjudicated delinquent, the court can order a predispositional report which assesses the child's needs and recommends conditions of probation or commitment.¹³⁰ Because the report is started by the Department of Juvenile Justice at the initial intake, it is important that defenders for youth begin considering disposition options from the first contact with the child and throughout trial preparation.

Disposition hearings in juvenile court are governed by Florida Statutes section 985.23 and Florida Rules of Juvenile Procedure 8.100 and 8.115. As with all hearings, if the child is not represented, he must be advised of the right to counsel even if the right was previously waived.¹³¹ All parties must be given an opportunity to speak at the hearing.¹³² Parties include the child's parent(s) or guardian(s), the child's attorney, the prosecutor, Department of Juvenile Justice representatives, the victim(s) or his representative, school system representatives and any involved law enforcement officers.¹³³

XIII. Dispositional Alternatives

The juvenile court can choose from a variety of dispositional alternatives. It is good practice for defense counsel to argue for the least restrictive alternative and to offer the court other options consistent with the client's wishes.¹³⁴

Some dispositions available to Florida delinquency judges are:

1. Committing the child to the Department of Juvenile Justice for placement at a specified restrictiveness level;¹³⁵
2. Committing the child to a licensed child-caring agency, but not a jail or detention center;¹³⁶
3. Placing the child on probation (with possible further consequences if the child violates the terms of probation);¹³⁷
4. Revoking or suspending the child's driver's license;¹³⁸
5. Requiring the child and/or his parents to perform community service;¹³⁹
6. Ordering the child to make restitution in money or in kind;¹⁴⁰
7. Ordering the child, possibly with his parents, to participate in community work project;¹⁴¹
8. Committing the child to the Department of Juvenile Justice for placement in a serious or habitual juvenile offender program or facility;¹⁴² or

9. Committing the child, if adjudicated delinquent for a sexual offense, for placement in a juvenile sexual offender program or facility.¹⁴³

The length of probation or commitment to DJJ is indeterminate and based on performance-based treatment plans, but shall not exceed the statutory maximum for the crime for which the juvenile was adjudicated.¹⁴⁴ If the child is found at a hearing to have violated the terms of probation, the court can commit the child to a “consequence unit” (a secure facility for probation violators), prescribe home detention, modify the probation conditions, or revoke probation entirely and commit the child to the Department of Juvenile Justice.¹⁴⁵

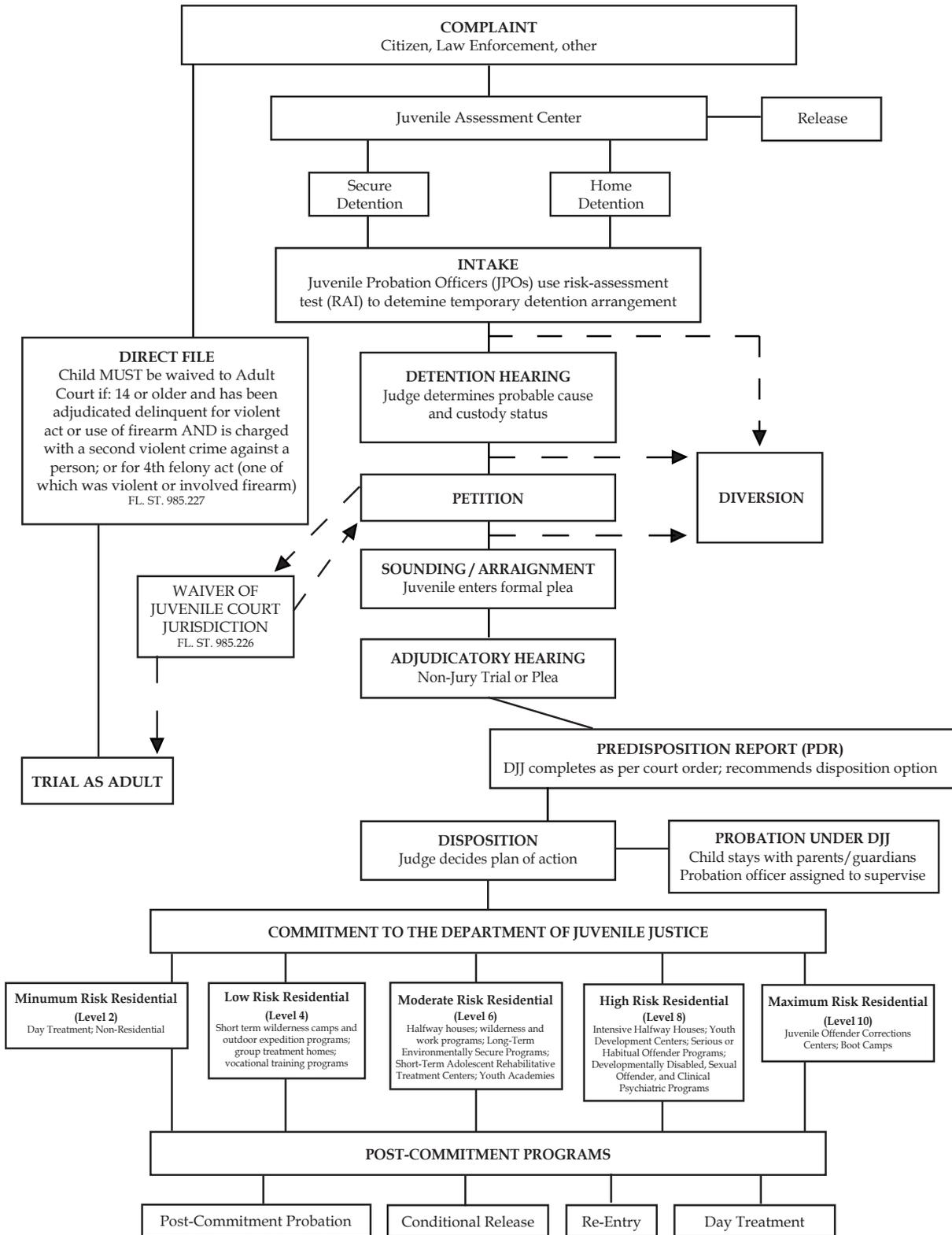
XIV. Modification of Orders

At any time, the court may modify an order, including an order changing the restrictiveness level of a youth’s commitment.¹⁴⁶ Also, the court may “at any time enter an order ending its jurisdiction over any child.”¹⁴⁷

XV. Appeals

The child, parent, legal guardian, or custodian has the right to a timely appeal of an order of the court.¹⁴⁸ The state may also appeal certain outcomes.¹⁴⁹ Notice of intent to appeal must be filed within 30 days of entry of a final order.¹⁵⁰ All references to the child in any appeal must be made solely by initials, not by name.¹⁵¹

Florida Juvenile Justice Process



CHAPTER THREE:

Assessment Findings

In Florida, there are wide variations in access to counsel and quality of representation for youth who face delinquency proceedings across the state. While many juvenile defenders share a genuine concern for the children they serve and provide excellent legal representation, zealous legal advocacy on behalf of children in delinquency proceedings is not common or widespread. It is not our intention to blame the many dedicated juvenile defenders in Florida. Even the most skilled defender sometimes finds the institutional and systemic barriers to quality representation insurmountable. Instead, this assessment seeks to understand and explain those barriers in order to support juvenile defenders in their quest to provide excellent legal services and protect the due process rights of children.

I. Access to Counsel

Under both the federal Constitution and the Florida code, a child is entitled to legal counsel at all stages of delinquency proceedings.¹⁵² The need for counsel in delinquency proceedings is critical, as youth are subject to penalties that have both short- and long-term consequences. Despite the universal recognition of the need for counsel at all stages of the delinquency proceedings, children in Florida frequently appear in court without lawyers. Within certain circuits, it is routine for defenders to be entirely absent from a child's detention hearing. In some instances, particularly at the initial detention hearings, children are not informed of their right to counsel in a meaningful way. In others, judges and even non-lawyers apply subjective standards to determine when they think a youth "needs" counsel and will use that determination to guide whether and how they explain this right to the youth.

A. Incentives to Waive the Right to Counsel

Outside of a few Florida courts that routinely appoint public defenders for youth, a significant percentage of children across Florida waive their right to counsel. Rates of attorney waiver varied across the counties visited for this assessment. In one county, it was consistently

“This is not a day
to get fancy. We
just need to get
the job done.”

– Juvenile Court Judge to
the Public Defender

reported, and our observers confirmed, that waiver was extremely rare. The rarity of waiver in this court is wholly due to the active engagement of the local Public Defender. The judge told our interviewers that he used to ask for and receive waivers routinely but stopped when the Public Defender threatened to sue. In two other counties, judges independently took the position that all youth should be represented by counsel. However, these jurisdictions appear to be unusual in always providing attorneys. In many other counties, half or more of the youth who appear in delinquency court waive the fundamental right to counsel. In early 2005, the Florida Supreme Court reported that half of the youth in the Sixth Circuit waive their right to a lawyer and three out of four youth in the Twelfth Circuit do so.¹⁵³

Observers also concluded that judges and parents in Florida courts engage in practices and procedures that pressure youth, directly or indirectly, to waive the right to counsel. This pressure comes in many forms. Adolescents tend to focus on short-term consequences more than adults, and a youth may be swayed by a judge’s statement that the case will be over if he pleads guilty today, but that he will have to return to court another day if he wants a lawyer. Parents also have an interest in not returning to court. One juvenile court judge opined, “I think it is a lack of maturity and parental pressures [that contribute to waiver of counsel]; an awful lot of parents don’t want to come back to court.” Avoiding public defender application fees and processes, which can be timely and costly, provides another incentive for parents to pressure a child to plead guilty at the first court appearance. These practices, even if not undertaken with the goal of obtaining a waiver of counsel, effectively discourage youth from exercising their right to counsel. Unfortunately, a child’s unadvised decision to accept a plea agreement often results in serious repercussions, including school suspension or expulsion, and may have a long-lasting negative impact on a child’s education, housing, and future employability.

Assessment observers found that it was common across many counties for judges and other practitioners to engage in a subjective analysis of whether each youth “needs” a lawyer. This informal analysis then determined whether and when the court informed the youth of his right to counsel. In some counties, the appointment of counsel is dependent upon the perceived seriousness of the offense or on the nature of the charges. As one judge explained, “If it is a serious charge, he will get an attorney.” As a result of these discretionary determinations, youth in many counties rarely have an attorney appointed on a misdemeanor. Some judges simply do not see the need for a lawyer in such cases. With respect to felonies, one judge refuses to allow a youth to waive counsel on the first appearance but will accept a waiver at the next one. (Unless the attorney is appointed and consults with the youth in between the first and second court appearance, this delay seems largely meaningless.) Other judges factor in the type of felony when deciding whether a young person “needs” a lawyer. On rare occasions, this practice works in the accused youth’s favor; one judge reported that there are times when he will “override” a youth’s request to plead guilty without an attorney if the judge thinks that the charges are serious enough.

“Kids often plead guilty to
charges without knowing
if it’s a good case or not.”

– Juvenile Probation Officer

Evaluations of a youth's need for an attorney are also made by non-legal practitioners with influence over the process. In one county visited, the prosecutor explained that the Department of Juvenile Justice will inform her when a youth should not proceed without counsel, and she will then inform the public defender or the judge. Probation officers

“I think every kid should be represented because really no parent, no kid truly understands the system. They need someone who can walk them through and represent their interests.”

– Probation Officer

also frequently advise youth on whether they need an attorney or not. Some probation officers reported that while they usually tell detained youth to get an attorney, they will tell a youth not to bother if he says that he does not intend to contest the charges. As noted throughout this report, the lawyer's role is much more expansive and critical than that. Consultation with an attorney helps the youth prepare for plea negotiations by assessing the strength of the case against him, the potential for valid defenses, and the possibility of reducing collateral consequences of any plea. Moreover, youth are frequently unaware of the consequences to pleading guilty and the critical importance of the dispositional hearing. Youth may trust the advice of a probation officer and waive the right to counsel without ever understanding the role of defense counsel or knowing that the probation officer has interests not aligned with those of the youth.

These findings suggest that a youth's ability to access counsel in Florida often depends not on what his own informed decision is, but upon what various actors within the system *perceive his need* for counsel to be. This contravenes the letter and the spirit of the law. Florida court rules require courts to advise children, without exception, of the right to counsel.¹⁵⁴ The assistance of counsel is arguably the most fundamental of all due process rights because a lawyer's advice helps an uninformed layperson to vindicate other rights. Moreover, the delinquency system is not a “best interests” system that permits adults to make choices for a youth based on what they think is best for him. The decision of whether to exercise or waive this right is an individual decision reserved to the youth.¹⁵⁵ The practices described here, even when done with the purest of intentions, serve to strip the youth of his meaningful access to counsel.

B. Poor Understanding of the Waiver Decision

As discussed in the previous chapter, Florida has a well-developed body of appellate case law that explains and reinforces the requirement that a child's waiver of counsel be knowing, voluntary and intelligent.¹⁵⁶ Yet based on the court observations and interviews conducted for this assessment, it was clear that many of the young people who waive their right to counsel do not fully understand the nature or implications of their decision. Judicial admonitions regarding the right to counsel were delivered inconsistently. In one large county, judges routinely failed to apprise youth of their right to counsel and many times the word “lawyer” or “attorney” was not even uttered.

Florida requires that any waiver of counsel be in writing, and the written waiver must be verified by an attorney, parent, or other adult who has discussed the waiver with the child

“At least have kids talk to someone about their rights and the ramifications of pleading guilty before they plead. They aren’t told that a petty theft includes a \$200 fine or that domestic violence is \$400. Every kid needs basic advice before they can waive their rights.”

– Juvenile Defender

and concludes that the decision was knowing and voluntary.¹⁵⁷ Assessment observers found that the mandatory rule about consultation with an adult is only observed in some courts. In those courts where the consultation rule is followed, the “consult” is often cursory and inadequate to ensure that the youth fully understands what the right to counsel means. Many court practitioners, including judges, expressed to our observers the belief that children and parents, even after signing required forms, do not fully understand the rights they are waiving or the long-term consequences of such waivers.

This assessment found that most courts do follow the written waiver rule and have standardized forms that they present to each youth and his or her parents. Unfortunately, in practice this rule does little to ensure that families and youth comprehend the waiver decision or process. Observers visited courts in which the bailiff merely distributes the waiver of counsel form to all parents before court. One bailiff follows a

practice of simply telling the parents to read the form and telling them that there is no need for an attorney if the child pleads guilty. In that county, no one explains how to read or fill out the form. Moreover, parents and children have no way to understand the many advantages of obtaining legal representation even in cases resolved by plea bargain, especially since they are not provided with information explaining all of the potential direct and collateral consequences of accepting a plea. There is little reason to question the conclusion of a prosecutor in that county that many parents and youth do not really understand the waiver forms that they sign. The prosecutor added that the forms are confusing and that subsequently the “judge flies through the waiver.”

Even more troubling, many judges clearly view the written waiver form as a substitute for individually advising a youth of his right to counsel and inquiring into his understanding of that right. In several counties, either before or after the bailiff hands out the form, a judge gives a group admonition at the beginning of the court call. One judge prefaced his comments by explaining that the remarks were for anyone that wanted to plead guilty that day. He did not review these admonitions individually with youth when they stood before the court to plea; indeed, he never repeated the admonitions at all. It is disappointing that a rule designed to protect youth from uninformed waiver decisions is instead used as a fig leaf to hide a pattern of inadequate admonitions.

The negative effect of group admonitions is evident from the stark contrast with other counties in which the consultation rule is observed and youth have some contact with defense attorneys before entering their waiver decisions. Observers visited one county in which a public defender announces the availability of counsel at the beginning of the arraignment call and offers to consult with anyone who wishes. This county has only about a 10% waiver of counsel rate. In another county, some, but not all, public defenders make it a practice to speak to youth as a group before arraignment to explain the importance of having an attorney; this also led to lower waiver rates. Yet other counties have a practice of public defenders consulting individually with youth prior to waiving counsel. The Florida Supreme Court has expressed approval of this practice and encouraged counties to continue it.¹⁵⁸ Unfortunately, the consultation usually appears to be

limited to discussing the consequences of waiver as it affects the child's trial and appellate rights rather than the merits of the child's case or the risks of pleading guilty.

However, in most of the counties visited for this assessment, youth are not afforded the opportunity to consult with a lawyer prior to waiver. In some counties and courtrooms, youth are not informed of the right to an attorney or asked whether they want an attorney until after the court has asked whether the youth will plead guilty, no contest, or not guilty. The judge will then question the youth about the offense before mentioning the right to counsel. The youth and parents are asked to review and sign a written plea form that contains a paragraph regarding waiver of counsel. This explanation of the role of counsel would be understandable to an attorney but is likely incomprehensible for the average layperson in juvenile court.

“Sometimes we say to a parent that this will remain on a child's record, that's when they say, ‘I guess maybe I need an attorney’. Most people think that because it is a juvenile charge, it will disappear off of a child's record when he or she becomes an adult. That's just not true.”

– Probation Officer

In these counties, no one explains the waiver form or its meaning to the family. It is only after the family signs the form that there is any oral discussion of the waiver by the judge. This discussion may be limited to asking the child a single question, clearly inadequate to gauge the youth's substantive understanding: “did you read and understand the paragraph regarding waiver of counsel?” An exchange of this type would likely be deemed insufficient by an appellate court, given that the Second District recently found that a judge's single question affirming a youth's waiver decision violated Florida's procedural rules.¹⁵⁹

We do not contend that the practices described above are universal. There are some judges who do make an effort to ensure that each youth that appears before them is aware of and understands the right to counsel. In one county, the judge asks each youth at every appearance if he wants a lawyer, in accordance with court rules.¹⁶⁰ If a youth declines a lawyer, the judge then asks a series of “yes or no” questions regarding the consequences of waiving the right to an attorney. While the better practice is to ask the youth open-ended questions rather than ones that merely require a “yes” or “no” answer, this judge goes far beyond the superficial inquiry conducted by many of his colleagues.

C. Plea Colloquies

In an overwhelming majority of the counties visited, those interviewed estimated that over 90% of youth accused of delinquency decide to waive their right to an adjudication hearing and plead guilty. If a youth has waived counsel, defenders have no role in the plea colloquy. Observers reported that the plea colloquies witnessed in most Florida courtrooms were not sufficient to apprise a youth of his rights and the consequences of pleading guilty. Ideally, a judge should take the time to explain to each youth, in child-friendly language, the various rights that are being waived and then ask open-ended questions to test the youth's understanding. Too often in Florida, juvenile court judges failed to provide required information to youth and then conducted only the most perfunctory inquiry into youths' understanding of the important rights they were relinquishing.

Prior to accepting a plea, judges are required to tell each youth certain information regarding the consequences of pleading guilty and to make sure that the youth understands this information.¹⁶¹ Many judges fail to meet these basic requirements. Over the course of this assessment, observers witnessed instances in which judges omitted each of the required admonitions set forth in Florida's Rules of Juvenile Procedure. Some judges failed to ask for a factual basis for the plea.¹⁶² Other judges did not mention the core rights of the adjudication phase, such as the right to compel the appearance of witnesses, the right to cross examine adverse witnesses, and the privilege against self-incrimination.¹⁶³ It was extremely uncommon for judges to inform youth that they were giving up the rights to an appeal and to an adjudication hearing and that their responses on the record could be used in a later perjury prosecution.¹⁶⁴ Very few judges mentioned the right to a dispositional hearing or the range of possible dispositions.¹⁶⁵ Judges did uniformly state the terms of the plea agreement, but the extent to which they specified "all the obligations the child will incur as a result" of the plea was varied.¹⁶⁶ At times, all of these problems coincided; observers saw many instances of judges who accepted pleas at arraignment after mentioning only the

right to an attorney, without offering any of the other required admonitions. It was extremely troubling that one judge gave minimal plea admonitions to youth represented by public defenders and much fuller admonitions when accepting a plea from a youth represented by private counsel.

In an overwhelming majority of the counties visited, those interviewed estimated that over 90% of youth accused of delinquency decide to waive their right to an adjudication hearing and plead guilty.

Compounding the problem, judges rarely made any effort to ascertain whether youth actually understood the rights that the judges were discussing. Judges generally did not explain the

meaning of legal terms used in forms and discussions. Court observers reported that some judges limited their plea colloquy to three questions: "Did you read the form? Did you sign it? Did you understand it?" Another judge limited his inquiry to a single question, "Do you think you have had enough education to understand what is going on here?" Youth in delinquency proceedings do not have the tools or expertise to assess their own understanding of complex legal concepts and difficult terminology. Verifying their understanding must be the role of the educated adults who administer the process. Moreover, the fact that a youth is represented by an attorney does not excuse the judge from ensuring that the youth understands the rights waived in a plea agreement. Court observations suggested that even youth represented by counsel did not understand the rights that they were waiving, and conversations with youth confirmed this lack of understanding. Indeed, in some cases, observers who spoke with youth following court proceedings concluded that the youth did not even realize that they had admitted guilt on a delinquency charge. The National Council of Juvenile and Family Court Judges recommends that, when a plea agreement is proposed, the judge should communicate with the youth directly to explain rights, discuss the plea, and ask open-ended questions to test the youth's understanding.¹⁶⁷

Although case law on this topic is somewhat limited because of the rarity of appeals in delinquency cases, Florida appellate courts that have considered this issue have consistently ruled that a youth's guilty plea is invalid when the court fails to provide the information required in the statute.¹⁶⁸ Appeals courts have also routinely found that asking limited questions, as in the cases described in this assessment, are insufficient to establish that a youth understands the rights that he is waiving when he proceeds without a lawyer.¹⁶⁹ In adult criminal cases, the courts have

held that due process requires that the record demonstrate an “affirmative showing” that the plea was intelligent and voluntary.¹⁷⁰ The rule governing plea colloquies in criminal cases is similar to the rule regulating juvenile plea colloquies, suggesting that courts might likewise require an affirmative showing in juvenile cases if further challenges were brought.¹⁷¹

D. Indigence Determinations and Legal Fees

Indigence determinations and legal fees are influential in limiting access to counsel in Florida. The cost and difficulty of being ruled indigent in Florida is a serious issue. By statute, there is a \$40 fee associated with applying for indigent defense services.¹⁷² Impoverished parents simply may not be able to supply this fee on demand. The indigence determination also requires a searching inquiry into the family’s financial circumstances.¹⁷³ In some counties visited for this assessment, parents are required to fill out forms on the first day in court and then return for a “determination hearing” on the issue of indigence. Courts may temporarily appoint the public defender until the determination hearing, and some courts in this assessment did so.¹⁷⁴ However, facing the cost and administrative burden of the determination, parents will often pressure their children to waive counsel and enter a guilty plea immediately.

Even if a youth does apply for public defense services, the outcome is far from certain. The Florida statute states that a person is considered indigent and qualifies for public defense if he or she has an income that is equal to or less than 200% of the current federal poverty level or is unable to pay for an attorney without substantial hardship.¹⁷⁵ This determination is investigated and made by the clerk of the circuit court and can be appealed to the court.¹⁷⁶ Observers found that the adherence to and administration of these indigence rules vary significantly across counties. In at least two counties visited, it was reported that the clerk applied a rule amounting to “if the parent has \$5.00 in his bank account, he is not indigent.” In one courtroom, a judge routinely overturned the clerk’s denials of indigent status after hearing testimony from parents. In another courtroom, after conducting his own inquiry into families’ financial status, the judge granted all requests for public defenders, including four cases that the clerk had previously determined not indigent. In most courtrooms observed, the judges did not depart from the clerks’ indigence determinations.¹⁷⁷

It was commonly reported that the costs associated with a lawyer are the strongest deterrent to a youth’s exercise of his right to counsel. In Florida, a non-indigent parent or guardian is required to provide legal services for a child facing delinquency charges.¹⁷⁸ If the parent refuses to employ counsel, the court should appoint a lawyer at the detention hearing and “until counsel is provided” but not thereafter.¹⁷⁹ If the parent is held in civil contempt and still refuses to hire a lawyer, only then should the court appoint counsel for the child at government expense.¹⁸⁰ As a result, if a child exercises the right to counsel and a parent is determined not to be indigent, the court can appoint counsel and then assess legal fees against the parent and place a lien on the parent’s property.¹⁸¹ Statutory provisions requiring parents to pay fees to apply for and then access lawyers deter youth from exercising the right to counsel. On the basis of frequently slipshod indigence determinations, families are forced to choose between incurring costs that they cannot afford and acquiring representation for their children.

The fees charged to parents can vary widely, both by county and by case. The attorney fees in court proceedings observed for this assessment ranged from \$50 to \$500. Some judges charge one price for a public defender and a higher price for private appointed counsel, as a result of contracts negotiated for legal services in conflict cases. Parents who have no control

over which type of attorney is appointed for their child, bear the burden of contracts that allow for these higher rates.

Attorney fees may also affect a youth's decisions about how to proceed through the justice system. It is not uncommon for a judge to assess a lower rate for a plea of guilty, compared to a rate that can be hundreds of dollars higher if the youth proceeds to adjudication. Although there may admittedly be more legal work involved in preparing for a trial, the fee discrepancy is another disincentive for youth to exercise their right to an adjudication hearing. This system of fees distorts the choices of youth and families about how much due process to request. It is contrary to the U.S. Constitution's promise that indigence should not prevent any person before the delinquency court from receiving legal services.

In addition to public defender fees, youth are often assessed a variety of other fees at disposition, including daily fees for detention or commitment or for probation supervision. Especially when unrepresented by counsel, youth and parents may not have anticipated incurring these fees as a consequence of a delinquency adjudication. These added fees are a heavy weight on families already struggling with the emotional strains of a child's delinquent behavior.

II. Quality of Representation

A. Preparation and Client Contact

The attorney-client relationship is the foundation of effective defense representation. In order to protect children's due process rights, defenders "should seek from the outset to establish a relationship of trust and confidence with the client."¹⁸² A defense attorney is ethically obliged to preserve a young client's confidences and secrets, even from parents.¹⁸³ As for an adult client, the attorney "has a duty to keep the client informed of the developments in the case, and of the lawyer's efforts and progress with respect to all phases of representation."¹⁸⁴

Consultation to Prepare for Court

A recurring problem observed throughout the majority of counties is the failure of attorneys to engage in meaningful consultation with their clients at detention, before accepting a plea, or even before a hearing or adjudication. While this failure was at times attributable to individual attorneys, more often than not, the culprit was the overall operation of the court. The National Council of Juvenile and Family Court Judges has explained that "[i]n a juvenile delinquency court of excellence, counsel is appointed prior to the detention or initial hearing, and has time to prepare for the hearing."¹⁸⁵ Only as a second choice should the court appoint counsel on the day of a detention hearing, and only if there is time and space for the youth and counsel to consult before entering the courtroom.¹⁸⁶ Early appointment of counsel benefits all participants because "[d]elays in the appointment of counsel create less effective juvenile delinquency court systems."¹⁸⁷

Contrary to these recommendations, this assessment found that juvenile defenders in Florida often meet their clients for the first and only time in the hallways of the courthouse or in the courtroom itself. One frustrated public defender explained, "it may be our responsibility

to represent these kids, but we don't get the risk assessment until ... the same time that the kids are brought up." Many times, a youth's first conversation with his or her attorney is rushed and does not take place in private, but rather in the hallways or even in the courtroom. These abbreviated and public discussions do not allow an opportunity for the attorney to collect relevant information to present to the court, formulate any arguments for alternatives to detention or explain the process to the child. In the midst of noisy

and busy waiting areas and courtrooms, it is impossible to engage in a meaningful discussion with a client. Most courthouses do not provide interview rooms, contrary to the recommendation of the National Council of Juvenile and Family Court Judges that courthouses provide private areas for families to meet with counsel. Providing such space is part of the court's mission to "create an atmosphere of respect, dignity, courtesy, and cultural understanding."¹⁸⁸

These practices compromise attorney-client confidentiality and impede the formation of a trusting relationship. Attorneys themselves frequently appeared insensitive to families' privacy and to the need for confidential discussions of legal strategy. In one packed courtroom, observers watched and overheard as a public defender discussed a plea offer with the client at his arraignment. The public defender concluded the conversation by saying, "either way, the results are the same." Elsewhere, attorneys were observed consulting with clients in the witness box while court was in session. In another county, public defenders obtained some privacy by going to the waiting room to talk with non-detained youth and their families, but had no privacy to speak with detained youth who were seated in a row in the courtroom. The public defenders discussed the cases and the plea offers in front of the other youth and the other people in the courtroom. In another, the attorneys engaged in consultations with their clients and their families in the gallery section of the courtroom. During one conversation, the public defender reviewed the facts of the case, the child's options, and the weakness of any defense - all within earshot of the prosecutor and several other people in the courtroom. As one public defender noted, this practice is even more problematic in courtrooms that have audio taping equipment activated when court is in session. In some counties, defenders made no effort to speak with parents or youth prior to court; some did not even bother to introduce themselves after they had been appointed.

The lack of time and space for consultation also results in attorneys talking to clients and their parents together, which makes it impossible for youth to seek independent advice or for attorneys to build trust by demonstrating their loyalty to youth. In more than one courtroom, attorneys were observed conveying plea offers to the parents rather than the youth. Given the financial pressures faced by parents of children in delinquency court, this inappropriate substitution may make youth more likely to enter a plea without having the opportunity to explore their options.

Observers noted some promising practices that allow attorney-client consultations before the hearing begins. Some courthouses have interview rooms for the attorney to meet with client and family. One judge starts his court call an hour later than scheduled, so as to give the public defenders in his courtroom an opportunity to meet with their clients. Another judge has

"I could take my client to my office to talk, but then I would get behind on court call – the court does not wait."

– Juvenile Probation Officer

instructed his public defender to take as much time as she needs to counsel her clients before they take a plea, and routinely delays court for this purpose. Although this practice is not streamlined and therefore discouraged by the National Council for Juvenile and Family Court Judges, it is an improvement over courts that do not make concessions for any consultation.

Observers also identified rare practices that allowed attorneys to collect information before the day of the court appearance. In one county, the public defender instituted a practice of going to the detention center before the detention hearing to conduct interviews with youth. After the interview, the public defender turns over his notes to a courtroom attorney who argues the cases. While it may be better practice for the interview to be conducted by the attorney who appears in court on behalf of the youth (for the development of the attorney-client relationship), this procedure at least ensures that the attorney has relevant information to present to the court in favor of release. Another public defender sends a social worker to interview the client before court. An alternative suggestion proposed by defenders is for courts to hold all detention hearings during the afternoon to allow defenders the opportunity to use their mornings to consult with their clients and their clients' family members.

Consultation Following Court Appearances

Attorneys need time to speak with their clients after court appearances, to ensure that the client is aware of what has happened, what he can expect in the future, and what is expected of him. Site observers for this assessment concluded that it is uncommon for Florida defenders to

“Some kids have a complete
meltdown when they get
back to detention.”

– Detention Center Director

speaking with their clients immediately after a court appearance. This may be due to the fact that they are handling numerous cases, which are called in succession, so they cannot follow their clients out of the courtroom. The cases are typically handled very quickly (in several courtrooms, the average case took less than five minutes.) In many courtrooms, there is a lot of activity while the case is being heard by the judge. Sometimes, the lawyers or court personnel were observed asking a youth to sign documents or giving instructions while the judge or the lawyers spoke. It is not surprising, therefore, that youth are confused about what has

happened during court and what to expect in their cases. One detention director said that most of the youth in his custody “do not seem to understand what is going on in the legal process. They are angry at the staff. Some kids know exactly what is going on, but others have a complete meltdown when they get back to detention.”

Interviews with youth in detention centers after they had been to court confirmed that defenders need to do a better job to make sure that their clients are aware of what has happened in the court proceedings and what they can expect to happen. For example, we spoke with one youth who said he understood his charges when in fact he had not been charged with an offense but was being held pending investigation and a charging decision. He had met with a lawyer once in the detention center and another one in court. Another youth who had spoken to two different public defenders was unable to explain what she was charged with, but was able to state that she had court in six days.

Contact with Detained Youth

“Lawyers should talk to us and tell us what is going on. They should do more than just show up for court.”

– Youth in Detention

Youth in Florida’s secure detention centers have almost no access to their attorneys. The prevailing norm is that public defenders do not visit their clients in the detention center. Some attorneys attributed this to heavy caseloads. Others cited the distance of the detention center – in some counties, the detention center is at least 45 minutes away from court. Another serious concern in some detention centers was the lack of a place for attorneys to

speak privately with their clients. Interviews were often held in kitchens, hallways, classrooms or someone else’s office. Guards were sometimes present during the interviews. Staff at one detention center that serves multiple counties reported that they try to get the youth to court a half an hour early, so as to allow them the opportunity to speak to their lawyers before court.

Even telephone contact between attorneys and clients was often limited. Some detention centers do not give youth any phone privileges. Although several other detention centers reported that children were permitted to use the phone to call their lawyers, most of the youth interviewed in these centers were not aware of this fact. Youth stated that they did not know how to get in touch with their lawyers or that they did not know that there was a phone from which they could make a call. In one detention center, youth reported that the staff let them call their attorneys, but that their attorneys were never in their offices and did not return their calls. Youth in another detention center, however, reported that they frequently spoke to their attorneys on the phone.

Staff and children at detention centers stated that youth frequently turn to their probation officers for information. Many of the children interviewed in detention said that when they wanted to know what was happening with their cases or when they were going to court, they would call their probation officer or speak with him during a visit. A fourteen year old said, “I would call my probation officer before my public defender if I needed help. The probation officer explains to me what is happening and tries to help.” Another

youth similarly explained that he would call his probation officer for help because “he tells us when we are doing good and explains what is going on.” Another fourteen year old in detention had never met his attorney, but had been visited by his probation officer; he explained that “we only see the lawyers in court.” Many of the youth agreed that the probation officers were much more willing than attorneys to give them information. While probation officers are to be commended for providing support and information to youth under their supervision, a probation officer is not a substitute for a defense attorney. Only defenders are obliged to represent the client’s interests, and only with defenders are youths’ communications privileged.

“I give them the number and tell them to call, but they don’t bother.”

– Youth in Detention

Contact with Non-Detained Clients

With some exceptions, it is even less common for attorneys to have contact with their non-detained clients outside of the courthouse. Some attorneys blame their clients for the lack of communication. One defender stated that “I give them my number and tell them to call, but they don’t bother.” By placing the responsibility for communication on the client, this attorney is violating the duty to keep the client informed of case developments and the lawyer’s activities.¹⁸⁹ Other defenders claim that, except for very serious cases, there is no need to meet with the client in between court. One judge identified two factors limiting attorney-client communication: attorneys do not meet with the clients outside of court and inexperienced lawyers do not know how to interact with clients. It was this judge’s impression that defense attorneys in his court did not meet with clients between pre-trial appearances and the adjudicatory hearing.

Some defenders do routinely maintain contact with clients. In one county, a public defender who hands out her phone number to every client reported that she has regular contact with them. In that same county, it was reported that the other juvenile public defenders accept and return calls from clients. Observers also reported a very promising practice in which a public defender has 24-hour emergency phone service for clients, and juvenile public defenders rotate weekly to cover the emergency line outside of business hours.

B. Detention Advocacy

The role of counsel at the detention stage is critical. Juvenile defenders should seek out and argue for the least restrictive form of supervision possible for each client pending the outcome of a case.¹⁹⁰ When a Florida youth is taken into custody, the court is required to hold a detention hearing within 24 hours to determine whether to continue custody, release the youth with conditions, or simply release the youth.¹⁹¹ Judges, defenders and others interviewed for this assessment stated that in the past, communities had more alternatives to secure detention that enabled the court to monitor youth on pre-adjudication release. These alternatives included electronic monitoring and home confinement. However, it was reported by Florida practitioners that budget cuts have limited or virtually eviscerated these programs, leaving the courts with few detention alternatives. This lack of community-based options has raised the stakes for youth who are determined to require intense supervision until adjudication.

Prior to the detention hearing, DJJ personnel use a Detention Risk Assessment Instrument (“DRAI”) to make an immediate assessment of whether youth should be held in locked detention.¹⁹² A youth who receives a numerical score within a defined range is presumed to warrant detention. The use of objective screening instruments has been promoted by some juvenile justice reformers, such as the Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative. However, Florida’s system is flawed. Across the counties visited, judges and lawyers complained that the DRAI has never been scientifically validated and is in serious need of revision. The DRAI’s flaws are particularly evident in one county where over half of the children who are securely detained wind up being released at the detention hearing.

Another common complaint was that the scores are frequently miscalculated. In one county, the prosecutor estimated that scores were incorrectly calculated in three out of five children’s cases. Judges have the power to amend risk scores to be factually correct if there is a material error,¹⁹³ but it is essential for defenders and judges to be attentive in order for this system

to function. When youth are zealously represented at detention hearings, defense attorneys successfully challenge the scores. In a few instances, vigilant judges reviewed the scores carefully and corrected calculation errors that resulted in a lower score. It appeared to assessment observers that in the majority of the cases where a calculation error was found, the youth were released from detention. This suggests that children are being inappropriately detained in cases when errors are not identified.

In most counties, there is an express or implied belief that the court cannot or should not diverge from the recommendations of DJJ regarding detention. Some judges erroneously believe that they are statutorily required to follow the recommendations of the DJJ. In fact, judges are directed to “use the results of the risk assessment performed by the juvenile probation officer and, based on the criteria in [Fla. Stat. Ann. 985.213] shall determine the need for continued detention.”¹⁹⁴ Judges may rely on other evidence as well when making the detention determination.¹⁹⁵ Even in counties where the judges understand that they can depart from the DRAI, observers concluded that a high level of reliance on the DJJ workers typically makes defense or prosecution arguments irrelevant.

As in discussions of waiver of counsel, Florida juvenile courts are widely failing to provide youth with required information at detention hearings. Florida Rule of Juvenile Procedure 8.010 requires the court to advise the youth of the following at a detention hearing: the purpose of hearing, the right to counsel, the right to remain silent and the fact that any statements can be used against him, the reason

that continued detention is requested, and the right to communicate with his or her parent or guardian if that person is not present. Few judges that were observed inform youth of all these rights at the detention hearing. Even fewer take the time to explain what these important rights actually mean or to ensure that the youth understands them. This failure is consistent with the prevailing attitude that the judge’s decision at a detention hearing is a foregone conclusion that will simply follow the DRAI.

Defense advocacy in detention hearings in Florida often falls far short of what is necessary to protect the rights of youth. In some counties, the court routinely appoints the public defender to represent youth at detention hearings. But in other counties, youth often face weekend or phone detention hearings alone. In one small county, many detention hearings occur over the phone and DJJ appeared to be the only participant. The prosecutor does not participate “because if the risk assessment shows that they should be held the judge will go along.” The public defender does not participate in these detention hearings because he rarely gets sufficient notice. In fact, the public defender in this county is usually not appointed until after the detention hearing, in flagrant disregard of court rules. One public defender stated that if she is in court, she will argue the client’s position even though she has not been appointed. In another county, the public defender does not attend weekend detention hearings, leaving the prosecutor’s arguments uncontested. In one large county, weekend detention hearings are held in bond court before an adult judge. It is not clear whether a youth receives access to counsel at these adult proceedings or whether the judges presiding over these hearings are trained in juvenile issues.

“Detention hearings are in
essence a conversation
between the DJJ and the judge.”

– Juvenile Defender

Even when public defenders were appointed, many did not take an active role in the detention hearing. Observers witnessed zealous advocacy during detention hearings in a handful of counties visited, but this was not routine. It was more common for the public defender to remain completely silent during the detention hearing, and many people who were interviewed confirmed that detention hearings are generally “not strongly contested.” This pattern of non-participation fosters misconceptions about the need for zealous advocacy. When asked about the role of the public defender in detention hearings, one judge replied that the public defender is only there “in case something occurs.” Although many other system participants recognized the need for counsel at detention hearings, youth in Florida routinely appear without counsel or with an attorney who fails to participate meaningfully in the proceedings.

Participants interviewed for this report identified several possible reasons for the lack of detention advocacy in Florida. Three factors were mentioned frequently:

1. Excessive deference by the court to the DRAI scores and the DJJ recommendation, which discourages defense participation;
2. The fact that, as explained in the preceding section, public defenders who are appointed do not have a chance to speak with the youth or family prior to the detention hearing; and
3. A belief that detention is better for the youth because he is less likely to get into trouble or that detention will “help” him.

Practitioners who believe that detention will benefit youth are mistaken. In fact, there are stark consequences of a court culture that discourages effective detention advocacy. Youth who face pre-trial detention face much more than the immediate risk of losing their liberty prior to adjudication. Studies demonstrate that a youth who is detained pre-adjudication is more likely to be committed after adjudication.¹⁹⁶ While this may in part be due to the severity of the charges for which the youth is adjudicated, it is often also due to the fact that the youth has not had a chance to demonstrate pre-trial that he can conform his behavior, follow rules imposed by the court, and avail himself of rehabilitative services offered within his community. Thus, a youth who faces pre-trial detention needs an effective advocate to present facts and legal arguments to the court to counter those presented by DJJ and the State.

Effective detention advocacy also ensures that scarce resources are reserved for cases in which public safety demands that youth receive the highest level of supervision. Secure detention is usually an expensive option for pre-adjudication supervision of youth, as compared to less restrictive supervision methods. The National Council of Juvenile and Family Court Judges therefore explains that “[i]t is not a good use of resources to use a more restrictive option than is necessary to maximize community safety and maximize the probability that the youth will appear at the initial detention hearing.”¹⁹⁷

C. Investigation and Discovery

Conducting a prompt and independent investigation into each client’s case, regardless of the client’s prior admissions or stated desire to plead guilty, is one of the most important duties an attorney can perform.¹⁹⁸ Sadly, it appears that there is not a lot of investigation and discovery occurring in Florida’s juvenile courts. Since many of the cases result in pleas on the first court

date, pre-trial discovery and investigations are not performed in many cases. In some courts, it was reported that defenders engage in discovery on cases only after there is a formal trial date set. This is unfortunate given that information obtained through defense investigation can be extremely helpful in plea negotiations and can help to determine an appropriate sentence.

“[Investigation] really gives
[defenders] insight
into a case.”

– Supervising Attorney
Juvenile Division

Some public defender offices have investigators on their staff that conduct or assist in conducting investigations. In these offices, defenders can participate in investigations as needed without becoming overburdened. For example, one supervisor from such an office encourages lawyers to assist with investigations or at least visit the crime scene “because it really gives them insight into the case.” However, many defenders are forced by lack of resources to do all investigation themselves. Unsurprisingly, these overburdened defenders do not routinely engage in pre-trial investigation for adjudication or disposition. Defenders explained that their high caseloads prevent them from conducting investigations into their cases and that they often have to rely on the discovery tendered by the state and depend on their clients to bring witnesses to court. Some public defenders admitted that they do not even speak to witnesses until they appear in court. Although many defenders complained about this state of affairs, the prevailing belief in some courtrooms is that “a lot of cases just don’t need it.”

In one county visited, public defenders make an effort to conduct investigations for the purposes of detention and disposition. The defenders regularly access the school records on attendance, grades, and other information. They reported that this access was extremely helpful when attempting to obtain the release of a client or to prepare for disposition.

Florida law permits defenders to take depositions in delinquency cases,¹⁹⁹ but this was the norm in only a few of the counties visited. Observers for this assessment routinely heard that it was not typical for parties to take depositions in juvenile cases, even felonies.

D. Motions Practice

This assessment found that the intensity of pre-trial motions practice varied widely across counties visited, ranging from frequent to non-existent. One prosecutor who had been in juvenile court for a few years reported that he could not remember the last time a Motion to Suppress Evidence had been filed in his court. A private attorney in another county reported that there was no motions practice there at all, which he attributed to a belief that the judge would penalize a youth whose attorney filed pre-trial motions. The attorney explained that he had filed pre-trial motions when he first began practicing, but that he had stopped doing so because the judge dismissed them without consideration. The judge confirmed this explanation and said that motions are filed infrequently because they are “a waste of judicial

“[Motions] are a waste
of judicial and
attorney resources.”

– Juvenile Court Judge

and attorney resources.” Not surprisingly, the judge and prosecutors in that courtroom agreed that defense attorneys rarely filed motions – perhaps once a month at most. In another county, the public defender reported that she files pre-trial motions only “a couple of times a year.” She attributed the fact that they did not have much of a motions practice mostly to the good judgment of the prosecutor, stating that the prosecutor often calls her for advice on suppression and will not file a case if a suppression issue may arise. However, she also stated that “defense motions are never granted.”

One judge reported that she used to set pre-trial hearings in order to encourage resolutions of motions and pleas, “but it was a disaster since the public defenders never talked to their clients ahead of time and the state would not offer any pleas without talking to their victim, who would only show up for trial. So I stopped setting pre-trials.” In that and many other courtrooms, any pre-trial motions are handled on the day of trial and are frequently oral. Observers for this assessment who witnessed motion hearings in a few different courtrooms were impressed by the level of advocacy. In two cases, the motions were granted leading to the dismissal of the charges. It was also reported in one county that public defenders frequently file motions to withdraw pleas that were entered by children who were unrepresented at the time and may not have appreciated the significance of the plea.

E. Competency Determinations

There appears to be a high level of awareness about competency issues in Florida juvenile courts. Some courts routinely appoint two experts to conduct competency evaluations and if both experts agree, the court accepts their findings. In one county, the judge reported that if the two evaluators disagree with one another, the court appoints a third evaluator to “break the deadlock.” One judge estimated that he ordered competency evaluations in 15-20% of his cases. In another county, it was estimated that at least one child per week is found incompetent. Participants reported to our observers that the public defender in that county regularly raises the issue of competency and requests evaluations. Even in counties where motions practice is almost non-existent for other issues, defenders are active regarding competency. In one such county, the public defender has contractual relationship with local psychologists. A juvenile court judge commented, “The defenders are very aggressive about competency issues. Before my eyebrow even begins to go up on a case, the defense attorney is all over it, they’re already asking for a competency evaluation.”

However, although competency is being raised, some counties are having difficulties in understanding and using the findings. One judge expressed his concern that, once he finds a youth incompetent, the judge is presented with few options. For misdemeanor cases, he simply has the youth return to court every six months to review competency. On the more serious cases, courts struggle with where to send the youth. In one county, assessment observers watched a competency review hearing involving a young girl who was first found incompetent at least a year and half earlier. The child had been found incompetent again in at least two previous reviews and was still coming back to court for periodic evaluations and reviews. Although the evaluator reported yet again that the child was incompetent, the judge was not satisfied that the child was being asked the right questions. She was also upset that “no services were being offered to help the child regain competency.” In another county, investigators saw several competency hearings where the second evaluator had not completed a report, leaving the children in limbo. In two of these cases, the children were detained awaiting the report. In another case, the youth was under

ten at the time of the offense and the case had not progressed at all during the preceding year. This youth was not detained but appeared completely detached from activities in courtroom and in his case.

F. Adjudication

Observers noticed an apparent lack of trial advocacy in Florida juvenile courtrooms. Court personnel, asked to estimate the proportion of delinquency cases resolved through plea agreements before adjudication, overwhelmingly suggested 90% or higher. Observers in many counties also found that an alarming proportion of cases result in pleas on the first appearance, although such early resolution gives the defender no opportunity to explore the facts of the case or obtain discovery.

One judge explained the low trial rate in his county as a result of the “high level of experience among attorneys. The prosecutors are not going forward on cases that they cannot prove and the defenders know when they should take a deal.” A defender similarly commented that there are “never” trials in his courtroom because “if everyone is reasonable, the case can be dropped or the charges reduced.” The person missing from this arrangement is the youth client whose wishes are made secondary to the bargaining process between attorneys.

“There is not a lot of serious litigation in the courtroom.”

– Juvenile Court Judge

Moreover, not every prosecutor is willing to enter into such negotiations. The prosecutor in one large county explained that he never engages in plea negotiations, but instead requires that the youth plead guilty without an agreed disposition. The prosecutor explained that “99% of the pleas are direct pleas to the judge with DJJ making disposition recommendations. Negotiating pleas like we do in adult court sends the ‘wrong messages’ to the juveniles. Thus, our office doesn’t negotiate with the defense much. Besides, plea negotiations are not important in juvenile court because the disposition will be the same.” Despite the absence of any apparent incentive for youth to take this “blind plea,” personnel in this county estimated that as many as nine out of ten youth charged decide to plead guilty.

The estimated number of trials varied depending on the respondent, but there was agreement that the number was low. For example, although one public defender reported that there were approximately two trials a month in his courtroom, the prosecutor could only recall four or five trials in the preceding nine months. In several counties visited, participants interviewed estimated that fewer than one in 100 juvenile cases proceed to trial. In another county, the prosecutor estimated that one or two juvenile cases go to trial in a week, but said that there had been “none lately.” The juvenile court judge reported that, in the preceding three months (his entire tenure), there had only been two trials and both were conducted by private attorneys. This judge said, “There is not a lot of serious litigation in the courtroom.”

The frequency of trials may also vary by courtroom within a county. In one county with two courthouses, one public defender rarely went to trial while another tried one or two cases a week. The defender who tried cases less frequently explained, “I will occasionally encourage

“This is how it works: I will call a youth’s name and the youth just stands up and the attorney will say if it will be a plea, a trial or something else.... About 97-98% of you will plead and of those that go to trial, there’s about a 90% conviction rate at trial. These are just the statistics.”

– Juvenile Court Judge

a child to go to trial in cases with serious consequences, so the kid can keep his record clean, but for the most part, trials are unnecessary...[t]he focus of the juvenile case is more about the child’s problems than the offense or charge.” As in many other counties, the trial rates seem to be a function of the individual attorney’s preferences and view of his or her own role, rather than the merits of the case or the youth’s preferences.

Judges may also contribute to the low trial rate. As noted above, practices related to indigence determinations and attorney fees create pressure for youth to plead guilty. In one county where plea

rates were estimated at 99%, the amount assessed for attorneys’ fees increases if the case goes beyond one or two hearings. The judge laughed as he rightly described this as “an incentive to plead guilty.” Another judge sometimes refuses to accept a youth’s denial of a petition at arraignment if he believes that the petition is strong. He stated, “I override some children’s request to deny a petition if the facts seem overwhelming against the child. I explain to the child that he may be legally guilty even if another child may have committed the major components of the crime.” In another county, observers saw a judge explain to a full courtroom at arraignment, “This is how it works: I will call a youth’s name and the youth just stands up and the attorney will say if it will be a plea, a trial or something else.... About 97-98% of you will plead and of those that go to trial, there’s about a 90% conviction rate at trial. These are just the statistics.” Statistics or not, practices such as these are likely to intimidate a youth and dampen his willingness to exercise the right to an adjudication hearing.

When cases do go to trial, the proceedings were often described as “less formal.” This meant that there was no opening statement and the rules of evidence were “relaxed,” but there was cross examination and a brief closing argument. Many new public defenders are assigned to juvenile court for training purposes and have not yet developed trial skills. Judges in counties with high public defender turnover frequently commented on the poor performance of defenders at trial. Some judges complained that defenders lacked preparation and trial skills. On the other hand, assessment observers at several trials in one large county were impressed with the public defenders’ trial skills, mastery of the rules of evidence, and ability to argue the law.

A few judges commented that private attorneys were typically better prepared and more skilled than public defenders. One judge speculated that retained attorneys may have better relationships with their clients and thus a stronger grasp of relevant facts. However, it is not the case that retained attorneys were universally better in court. As with public defenders, effective advocacy is dependent upon a mastery of juvenile law, good interviewing and trial skills, and thorough case preparation. Retained attorneys who had rarely appeared in juvenile court or were inadequately prepared were observed to perform poorly.

G. Disposition

In every county visited, observers commented on the weakness of dispositional advocacy for youth in Florida. Many public defenders and private counsel also admitted that this was an area of concern. Disposition is a critical part of the court process and “the heart of the juvenile justice system.”²⁰⁰ The disposition a child receives will impact his or her daily life for months or even years to come. Defenders have an obligation to supply high-quality dispositional advocacy, even in the incredibly high number of cases in which youth plead guilty. Yet observers for this assessment found dispositional advocacy in Florida to be routinely weak and inadequate. In one instance, a defender was observed taking a position at disposition that was contrary to what the child expressed and asked for conditions that were so onerous that the judge refused to impose them.

One major barrier to effective advocacy is the courts’ over-reliance on the recommendations made by DJJ in its predisposition reports (PDRs). In at least one case, this deference was rooted in an outright legal error. One judge told observers that he could only depart from the recommendations of DJJ if, after a hearing, he found by a preponderance of the evidence that the PDR recommendation should not be followed. He explained that this gave the court and attorneys little discretion. The judge expressed some frustration over this, but believed that there was nothing that he could do to remedy the situation. As a matter of fact, Florida Statutes merely state that a judge should consider the predisposition report before ordering a disposition.²⁰¹ In this courtroom, due to the judge’s demonstrably incorrect understanding of the law, the probation officer has almost complete influence over youths’ fates. Another public defender reported that she does not create a disposition treatment plan, does not discuss the disposition with the client, and does not use a social worker. She rests solely on the recommendations of the DJJ worker.

Observers found in some instances that judges or attorneys granted parents an inappropriate level of influence over the disposition stage of the hearing, rather than expecting defenders to be guided by the child’s preferences. In one county, a relatively new public defender was repeatedly asked by the court if he had reviewed the predisposition report with the youth’s parent. On each occasion, the attorney reported that he had not, and the judge instructed him to do so. In another county, the public defender stated that while he typically goes over the predisposition report with the parent to see if they agree or oppose the DJJ recommendation, he does not discuss the recommendation with the child. His defeatist attitude was based on the notion that the judge was simply going to accept the DJJ recommendation, so why waste time trying to persuade him otherwise. While it may sometimes benefit the child for defense counsel to talk with a client’s family, the National Council of Juvenile and Family Court Judges has explicitly recognized that, at the disposition hearing, “counsel for the youth is not obligated to represent the view of the parent, if this view is in opposition to the view of counsel’s client.”²⁰²

Defenders have “an obligation to consult with clients and, independent from court or probation staff, to actively seek out and advocate for treatment and placement alternatives that best serve the unique needs and dispositional requests of each child.”²⁰³

Disposition is a critical part of the court process and “the heart of the juvenile justice system.”²⁰⁰

Even in one county with a well-staffed office that includes social workers, a public defender admitted, “We do not handle disposition well. There is a tendency once a case is over to let DJJ take over. Someone will get involved if there is a commitment conference, but no one knows the child better than us, so we really should get involved [in every case].” The failure of defense attorneys to advocate at disposition is not limited to public defenders; conflict and private attorneys

also appear to view the dispositional hearing as “rote procedures.” However, in some counties, it was noted (and observed) that private attorneys do occasionally participate in the dispositional hearings, sometimes with favorable results.

Defenders have “an obligation to consult with clients and, independent from court or probation staff, to actively seek out and advocate for treatment and placement alternatives that best serve the unique needs and dispositional requests of each child.”²⁰³ When this happens, dispositional advocacy can make a difference in outcomes. It was reported in one county that defenders are “active players” at disposition and frequently come up with alternative plans. In this county the judge reported that he often changes his mind about what a disposition should be, based on the public defender’s arguments.

Another prevalent shortcoming is defenders’ lack of participation in the DJJ staffing meetings that precede dispositional hearings. Before commitment to any DJJ program, there is a pre-commitment staffing at which DJJ hears from stakeholders about whether, and to what program, a child should be committed. DJJ’s recommendation to the court is based in part on this staffing meeting. Across Florida, defenders have the opportunity to attend the DJJ staffings prior to commitment, but rarely do. Juvenile defenders are losing a golden opportunity to influence or learn about commitment decisions that are of critical importance to their young clients.

One public defender reported that she routinely attends these weekly staffings and regularly argues for a less restrictive recommendation for her clients. Although the DJJ rarely changes its recommendations, her presence is nevertheless helpful because she learns what to expect in court and can prepare evidence and arguments for a more favorable disposition. DJJ reported that this public defender is the first who has ever attended their staffing meetings.

In another county, the public defender routinely sends a social worker to the DJJ staffing. While the social worker does not play an active role, she gathers critical information for the attorneys. However, defenders should take care when sending a non-lawyer to represent the office. In another county, a mental health counselor attends staffings on behalf of the public defender. She stated that she never meets the children beforehand, but reviews their files and talks with the attorneys about their clients. She related that she often disagrees with the attorneys about the appropriate disposition for a youth because attorneys tend to argue for the least restrictive setting while she prefers more therapeutic (and restrictive) programs. At the staffings, the counselor puts forth her own position rather than that of the attorney or client and then emails the attorney with the result. This example illustrates the importance of ensuring that professionals who provide ancillary services are in tune with the goals of a client-directed defense practice.

H. Post Disposition

Following disposition, youth who return to court do so in one of two ways: either they are charged with a new delinquent act or they are charged with violating a technical condition of their probation or parole. In either case, it was reported that little attention is generally paid to post-disposition advocacy. That which does occur is not organized or systematic. Rarely do attorneys monitor conditions of confinement or compliance with court orders that state that specific services must be provided. Most attorneys and public defender offices end their representation at the disposition hearing, although many attorneys expressed the desire to have the capacity to follow through on these cases.

Many defenders stated to observers that high attorney turnover rates generally result in a youth having a different attorney every time he comes back to court after the resolution of an initial case. This is extremely frustrating for youth who must become acquainted with a series of new adults, each of whom lacks familiarity with their cases. Even in those counties where public defenders remain in the courtroom for extended periods of time, there may not be continuity of representation. Some public defenders complained that courts do not reappoint the same attorney on violations of probation or contempt of court citations, thus impeding their ability to provide comprehensive quality representation. This practice contravenes the specific recommendation of the National Council of Juvenile and Family Court Judges that the “same attorney who represented the youth on the petition that resulted in the court order of probation or parole should represent the youth on a probation or parole violation.”²⁰⁴

Some judges do not appoint attorneys at all during contempt proceedings for violations of probation or parole. This has troubling consequences because youth appear without counsel at hearings that may result in them spending a number of days in detention as punishment. One judge explained, “Technical violations, such as curfew violations and truancy, should result in immediate sanctions – otherwise how do you tell a kid that I’m going to discipline you today for something that you did three weeks ago?” While it is true that timeliness is important in juvenile court,²⁰⁵ a need for prompt action should not be used as an excuse to deprive youth of due process. Significant liberty interests are at stake in contempt proceedings, and observers for this assessment noted that youth routinely plead guilty to these violations and are sentenced to terms in detention or to longer commitments.

Contempt proceedings essentially consist of the judge reading the alleged violation and asking the youth to admit or deny the accusation. In all cases observed for this assessment, youth admitted to the technical violation. Observers noted a problematic pattern in which some youth or parents wished to present an explanation to the court that mitigated the violation, but the judges declined to listen. In one case that was observed, the judge began reading the charges behind a curfew violation. The youth’s mother asked the court if she could say something, to which the judge simply responded, “no.” The judge then accepted the unrepresented youth’s admission to the violation and adjudicated him delinquent. After the finding, the mother was permitted to explain to the court that her son had been with her because she told him it was acceptable. Despite

The youth’s mother asked the court if she could say something, to which the judge simply responded, “no.”

this relevant evidence, the court did not change its finding or sentence. In another courtroom, a youth was alleged to have violated “juvenile arbitration” similar to a treatment plan. The youth began explaining to the judge that he had in fact completed his community service hours. The judge responded, “People tell me all the time they do stuff and don’t, so where is your proof?” The adversarial atmosphere observed in Florida’s post-disposition proceedings makes the lack of access to defense counsel extremely troubling.

I. Writs and Appeals

Appeals and writs are handled differently in each jurisdiction in Florida. Some offices have a separate unit or person to handle all appeals and petitions for writs. In other counties with vertical representation models, the courtroom attorney (whether a public defender or private appointed counsel) handles subsequent writs or appeals.

There does not appear to be a strong juvenile appellate practice in Florida, but public defenders in a few counties reported that they are becoming more active in the area of appeals. In a county that has a separate appeals unit, it was reported that 80 appeals had been filed in six months. In another county in which appeals had been “rare and usually taken by the State,” the public defenders reported that their office filed as many as eight appeals in the preceding few months. A smaller county reported that its office routinely files four to five appeals a month. These estimates, while they may represent a small fraction of the petitions filed in those counties, are evidence that defenders across the state recognize the importance of appellate representation.

According to anecdotal evidence, petitions for extraordinary writs also appeared to be on the rise in a few counties. In four different counties, public defenders reported that they frequently filed writs of *habeas corpus* on behalf of youth who were illegally detained. The challenges were based primarily on errors in the Detention Risk Assessment Instrument, and many public defenders reported success. This is an excellent example of how coordinated challenges can help to raise awareness about common problems in a jurisdiction.

J. Ancillary Services

Social Workers

The availability of social workers as part of the defense team in juvenile cases is inconsistent across the state. Many counties have at least one social worker on staff at the public defender’s office. However, in some counties where the adult and juvenile defenders share social workers, the social worker is more typically called upon to assist in the adult cases or cases where the youth is sent to adult court through a direct file. Some offices have social workers that are specially trained in juvenile issues. Again, due to heavy caseloads and staff shortages, most of these social workers are also limited to working on direct file or other high stakes cases. As a result of these limitations, defenders reported that they would benefit from having greater access to social workers on the more “routine” juvenile cases. Other appointed or conflicts counsel reported that they have no access to social workers at all.

In jurisdictions where defenders use social workers, it was reported that social workers typically perform the following functions:

- Gather information about the youth and family, such as psychosocial, education, medical and mental health histories;
- Assist attorneys in preparing for DJJ pre-commitment staffings or attend staffings on behalf of the defense team;
- Visit youth in detention; and
- Identify appropriate programs for clients.

Attorneys generally agreed that social work support significantly enhances their ability to effectively represent their clients and obtain positive outcomes for them. In general, defenders rely appropriately on the social workers to supplement, but not substitute for, their work as attorneys. However, as noted above in the discussion of DJJ pre-commitment staffings, it is critical for social workers and other professionals on the team to be educated about the defense obligation to represent clients' expressed interests. Attorneys who collaborate with social workers need to make sure that they firmly clarify roles and ethics, so that their agent is not acting as an adversary.

Investigators

Access to investigative services is uneven for defenders in Florida. As with social workers, many public defender offices have one or more investigators who are assigned to both adult and juvenile cases. Many juvenile public defenders stated that they simply do not have access to those investigators. Other defenders said that since most juvenile cases are resolved at the first court appearance, there is no need or time to investigate. Yet another public defender thought that the time limits on a juvenile case preclude any real investigation. Investigators may also have limited duties, as in one office where the investigator's sole function is to serve subpoenas. A minority of public defender offices visited have investigators dedicated exclusively to juvenile cases. In one large county, defenders reported that they rely heavily on their investigators in both felony and misdemeanor cases. Appointed or conflict counsel reported having access to investigators, but using them rarely in order to curtail costs.

Experts

Some juvenile courts have internal behavioral health units that conduct evaluations, while other courts have contracts with various mental health professionals who assess youth for competence, psychological or behavioral disorders, and other matters. While the regular use of experts can provide courts with crucial information, this must be balanced with the need to protect youth. In Florida, there appears to be little opportunity for defenders to participate in deciding when assessments should be administered or reviewing reports prior to their release to the court. For example, in one county that was visited, the court has a program where youth are routinely subject to "behavioral assessments." The public defenders do not have the chance to review these reports before they are submitted to judges. This may be problematic because prejudicial, private, irrelevant, incriminating or erroneous information may be brought to the court's attention. Defenders' inability to review these reports, or to take any active role in framing their scope, prevents them from protecting youths' rights.

Defenders' lack of involvement with court-ordered assessments is especially problematic because this assessment found that defenders have little ability to obtain the opinion of

independent experts. In the county described above, public defenders are discouraged from obtaining independent assessments because the costs would have to be borne by the office. It was reported that the cost of obtaining and utilizing defense experts is a great impediment to advocacy. Other than court-appointed psychologists who perform competency evaluations, it was observed that experts do not typically appear in most Florida juvenile courts. For example, one judge who had been on the bench for over 15 years said that he could not remember a single case in which the defender had retained an independent expert. In several counties, it was reported that the public defender rarely, if ever, called an expert witness to testify. In fact, although juvenile public defenders are allotted a separate budget specifically designated for expert costs, it is reported that in FY 2004-2005, in one circuit, juvenile defender offices spent only 35% of their allocated expert expenditures.

Access to expert witnesses makes a difference for youth. In two counties where it was reported that public defenders and private counsel could and did use expert witnesses, experts testified on a range of subjects including mental health, ballistics, drug analysis and fingerprints. Public defenders who have called experts in disposition hearings reported great success. One defender enthused, "We recently hired a doctor to testify at disposition – I can't even begin to tell you the difference he made. The judge looked at this child in a completely different light."

K. Training

One of the *Ten Core Principles* for juvenile indigent defense, promulgated by the American Council of Chief Defenders and the National Juvenile Defender Center, is that "the indigent defense system provides and supports comprehensive, ongoing training and education for all attorneys and support staff involved in the representation of children."²⁰⁶ For attorneys, this training should include legal skills such as detention, trial, and appellate advocacy; dispositional planning; educational advocacy; and representation at administrative hearings and post-disposition reviews. It is also necessary for defenders to be educated about related issues such as adolescent development, competency, juvenile court process, entitlements, substance abuse, and mental health.

As discussed below, many public defender offices use the juvenile court as a training ground for new attorneys and then reassign defenders as soon as they gain experience and skills. Even when entirely new attorneys are sent to the juvenile division, some offices – especially mid-sized and small offices – do not conduct any formal training at all. The effect of this gap is evident. Some judges remarked to observers that the public defenders need additional trial skills training. Lack of training contributes to uneven quality of representation. In one county, two judges had different views of the lawyers assigned to their courtrooms. While one judge described her public defender as "committed and aggressive" the other judge complained that the two defenders in his courtroom were "passive" and "mechanical." He stated "I invite opening statements, but they are not given very often." He further stated that the defenders "need more training in evidence; they fail to object to hearsay and at trial do not present much of a theory."

Observers did identify some promising practices in the area of training. A select number of defender offices have fairly comprehensive and on-going training opportunities for juvenile defenders. The public defender office in one large county has two designated training attorneys who are responsible for providing weekly substantive trainings to their colleagues. While these sessions are not mandatory, attendance is reportedly high. Areas of instruction have included

competence, trial skills, motion practice, depositions, evidence rules, and emerging legal issues. The training attorneys also supervise new defenders and give them feedback on their performance in court, which has proven to be invaluable. A public defender office in another large county holds monthly trainings in its downtown office for all public defenders, at which juvenile topics are sometimes covered. In this same office, juvenile attorneys meet twice a month for professional development meetings and presentations.

One office compensates for a lack of formal training opportunities by holding a weekly brainstorming session about cases at which a senior attorney presents a topic to juvenile and misdemeanor attorneys. One public defender office also reported that new attorneys shadow senior attorneys prior to beginning cases and that senior attorneys continue to “second chair” their cases for a few weeks after new attorneys assume their caseloads. Defenders may also be able to access outside training; one attorney reported that she was able to attend juvenile drug court conferences and has obtained juvenile mental health training. While public defenders were often willing to seek out training opportunities wherever offered, there was no indication that other appointed or conflicts attorneys did the same.

III. Barriers to Just and Balanced Outcomes

A. Ethical and Role Confusion

Longstanding professional consensus and standards dictate that the juvenile defender’s ethical duty is to represent the legitimate expressed interests of each young client, rather than substituting their personal judgment about their client’s best interests. Although juvenile court retains a rehabilitative purpose long since abandoned in adult courts, delinquency proceedings are adversarial and due process requires that the defender act as a zealous advocate. Most defenders interviewed in Florida stated that they believe their role is to advocate the legal position articulated by the client. Many acknowledged that there can be a tension between their view of a youth’s best interests and the course that the youth wants to take. Several offered views similar to one attorney who explained that he perceives his role as being to advise the client to do what he believes is best, but ultimately, he will follow the client’s wishes.

“I don’t have a real lawyer.
I have a public defender.”

– Juvenile Client

Unfortunately, defenders’ statements about their roles cannot necessarily be taken at face value. In some counties, lawyers purporting to follow the expressed interest model were behaving in accordance with a best interest or hybrid model. In one case where a lawyer thought that commitment was appropriate for the client but the client wanted a different disposition, the defender signaled her position to the judge by saying, “My client wants to go into this program against my advice.” By doing so, the attorney undermined both the client’s legal position and the attorney-client relationship.

In a few jurisdictions, defenders blatantly employ a best interest model of representation. For example, one public defender stated in a sidebar that she was going to argue the youth's best interest, not expressed interests, since the client did not agree with what she was advocating. The client refused to shake the public defender's hand at the conclusion of the hearing. Observers saw another attorney argue for a more severe penalty and additional conditions beyond what was recommended in her client's predisposition report because she thought it would "help the kid." Another defender was similarly operating under the misconception that "the focus of the juvenile case is more about the child's problems than the offense or charge."

Other juvenile court professionals also have varying and conflicting ideas about the role of defense counsel. Some probation officers expressed the mistaken view that the defender's role is to represent the best interests of the client and "not what the kid wants done." A prosecutor told observers that he would like to see defenders "take a less defense-oriented role." These problems can become exacerbated when a probation officer, who is advising a child on whether to obtain counsel, is giving that child erroneous information about the lawyer's role and ethical duties. It was observed that judges contribute to this confusion as well. Many prosecutors, some judges

"Juvie is not the place to train lawyers. I'd compare it to death penalty work – juvie may seem insignificant, but the fact is that what happens here will affect the rest of a kid's life. In death penalty work, you don't just want someone representing you who has lots of experience as an attorney – you want that person to have death penalty experience. Well, the same is true in juvenile work. We need experienced attorneys who have specialized experience in juvenile work."

– Juvenile Court Judge

and a handful of defense attorneys expressed a belief that everyone in the system, defense counsel included, is charged with representing the best interests of the youth. Some prosecutors and judges complained that those interests typically were not being served when defense attorneys set matters for trial. The pervasive confusion about defenders' role and responsibilities creates less support for defenders in juvenile court, aggravated by a general lack of courtroom decorum.

Many defenders reported feeling trapped between parents and children. Resolving these awkward tensions can be difficult, especially if the defender does not have the backing of the court. On some occasions, it appeared that the lawyers were responding to the parents rather than the child. However, in several other instances, defenders stated that although the parents often wanted harsher penalties or a quick plea, they explained to them that the child, and not the parent, was their client. While disagreements between parent and child always make the defender's position tricky, site observers thought many attorneys appeared to handle this tension well.

Illustrating the confusion surrounding the ethics of juvenile defense, one judge commented: "With adults, your job is to represent your client, but here that must be tempered with the best interests of the child. Some can handle the balancing act, some can't. If a kid wants a 'take no prisoners' type of defense, well, that's the defender's job to do that. But they should be helping a kid to think through what is best for him." While adolescents do differ from adults in many respects, a defender owes the same duty of loyalty to any client regardless of age. A

competent lawyer performs this counseling function by fully presenting facts and options to his client in developmentally appropriate language. Once the client, with full knowledge and advice, makes a decision about the direction in which he wants the case to proceed, the lawyer has a duty to advocate zealously for the client's desired outcome.²⁰⁷ The role confusion in Florida courts, while similar to that in other states, is inexcusable in an era of broad professional consensus that the juvenile defender's primary responsibility is to the child client.²⁰⁸

B. Juvenile Court as a Training Ground

Attorneys

An effective juvenile defender is knowledgeable in the areas of juvenile law, constitutional law, special education and disabilities, mental health, and adolescent development. A defender should also have competent skills in trial advocacy, interviewing and counseling, and research and writing. This knowledge base and skills set is developed through training and experience.

A recurring problem in Florida is the tendency to use juvenile court as a training ground for new attorneys. Juvenile court is typically a defender's first or second assignment, and attorneys are transferred out of the division soon after they acquire legal and advocacy skills. Even the senior staff and managers of some public defender offices harbor thoughts that juvenile defenders are less than "real lawyers" and view delinquency cases as "kiddie court."

Defenders that want to remain in juvenile court are discouraged from doing so by a lack of pay parity both within defender offices and in comparison to prosecutors of equal experience. In several counties visited, juvenile public defenders are paid less than the felony defenders and pay increases are tied directly to moving out of juvenile court to another division. For example, in one county, public defenders get a \$5,000 raise in annual salary when they leave juvenile court. In many jurisdictions, experienced defenders who want to return to juvenile court can only do so if they accept pay cuts despite their level of experience. Prosecutors in some of these same counties reported that they were not penalized for remaining in juvenile and in fact had pay and status parity with prosecutors in adult court. Defenders stated that they would like to see juvenile defense as a career path and would remain in the juvenile division if given the opportunity or pay parity. Many defenders reported that this pay structure created a system of needless transferring. Judges complained that these endless transfers made the overall functioning of juvenile court much more difficult. Professional standards discourage this type of system: "While rotation of defender staff from one duty to another is an appropriate training device, there should be opportunity for staff to specialize in juvenile court representation[.]"²⁰⁹

In the majority of the counties visited, defenders were expected or required to move to a different division after working with youth for less than a year. Many jurisdictions visited averaged a three- to six-month juvenile rotation. This is not sufficient time in which to develop familiarity

"The problem with the representation of delinquents is the conveyor belt in the public defender's office. Just as a new public defender is trained in juvenile court, he is moved out....Juvenile court is viewed as a way station by the public defenders – not a destination."

– Juvenile Court Judge

with juvenile law, much less develop other basic skills needed for competent representation. As discussed above, the problem of inexperience is heightened by the fact that many jurisdictions provide little or no formal juvenile-specific training for new juvenile defenders. The prevailing norm seems to be that the representation of youth is itself sufficient training.

In a few counties, public defenders have begun to recognize the importance of having experienced attorneys in juvenile court and have instituted policies to mitigate the adverse effects of using juvenile court as a training ground by having the lesser experienced attorneys team up with more senior ones. For example, one county reported that each courtroom is staffed by three junior defenders and one senior defender. In another county, it was reported that the Chief Public Defender always makes sure that there are at least two experienced attorneys assigned to juvenile court along with a group of newer lawyers. In a third county, the public defender recently instituted a new policy of assigning experienced attorneys to the juvenile division. While having experienced attorneys in a unit is preferable, the benefit of experience is diminished when attorneys are assigned to juvenile court for a limited time only.

Some of Florida's juvenile defenders have been permitted to represent youth for several years or have returned to juvenile court after spending time in private practice or adult felony courtrooms. Observers and system participants commented on the superior quality of representation these attorneys provided to their clients. These defenders provided a strong contrast to the poor or nonexistent advocacy supplied by inexperienced and untrained juvenile defenders in the same and many other courtrooms. Many young attorneys simply have not yet developed the necessary level of comfort or familiarity to serve as strong or effective advocates. Probation officers, who tend to remain in their positions for significantly longer periods of time, often remarked that it was not uncommon for them to "explain the law" to a newer attorney.

The problem of using juvenile court as training ground for defenders is exacerbated when the prosecutor's office does not have the same policy. In one such county it was noted that while defenders typically rotate in and out of juvenile court every three to five months, the prosecutors remain for an average of five to ten years. The prosecutor there enjoyed an advantage over his less experienced adversaries.

Judges

There are Florida courts in which judges are permanently assigned to hear juvenile cases. Judges in these courtrooms tend to have a solid grasp on the law and, for the most part, have positive attitudes about the juvenile court. These judges typically exercise strong control in their courtrooms.

Unfortunately, the juvenile court serves as a training ground for judges in several Florida counties. One approach is for judges to be placed in juvenile court before settling into a longer term docket. In one county visited that uses this approach, both of the judges that were assigned to the juvenile court had only been there for a few months. Neither judge had any juvenile experience and neither expected to stay in the juvenile court longer than two years. In this, and other counties that use juvenile court as a training ground, judges had not been extensively trained in juvenile issues. Many attorneys recognized that using juvenile court as a training ground or short-term rotation for judges is problematic: "They have no idea what they are doing; they don't even know the rules of juvenile procedure. They just try to scare the kids without understanding the purpose of the court." Another approach is for judges to rotate more than once into juvenile

court. In one such county, the judges spend two years at a time in juvenile court and return after going to other courts. In this system, returning judges have some familiarity with the court.

Using juvenile court as a training experience or brief rotation for judges can impact the balance of power in the courtroom. One judge commented that “the weakness of the system is the imbalance of power. The prosecutor has too much power... he has so much power because judges rotate in and out of system.” The likelihood of a power imbalance is even greater when the public defender also uses the juvenile court as a training ground, so that new defenders are often handling cases before new judges. The result can be an over-reliance on, and deference to, the more experienced professionals from the prosecution and probation offices.

Judges’ lack of expertise and training can manifest itself in unfamiliarity with issues that are specific to juvenile court, such as how developmental differences and special education impacts a child’s behavior. One judge thought that “using special education needs to excuse kids’ behavior robs kids of the dignity they deserve as human beings. We need to hold them to the same standards – he has the same responsibilities just like everyone else.”

Newer judges may also hold distorted views of the delinquency court system and the youth who appear in it. For example, it was reported that one newer judge frequently calls children “stupid, dumb, and retarded.” In an interview, this judge explained his belief that the youth he sends to commitment are “truly horrible, mean people, they have no conscience, they don’t care.” He estimated that over 21% of the youth in his courtroom were committed, and apparently fit this extreme description. Another new judge found it “outrageous that the rules prohibit me from keeping a kid locked up for more than 21 days.” He stated, “I don’t care. I have to use common sense even if it means overriding the law sometimes.”

C. Impact of High Caseloads

Despite the high waiver rates in numerous counties, many public defenders are laboring under excessive caseloads. On average, defenders interviewed for this assessment estimated that they have 100 active cases at any point in time. The lowest estimate was 40-60 cases, and the highest was 150 cases.

The *Juvenile Justice Standards* adopted by the American Bar Association state that a public defender office “should not accept more assignments than its staff can adequately discharge.”²¹⁰ Standards promulgated by the Florida Public Defender Association state that juvenile caseloads should be capped at 250 cases per year and juvenile defenders should spend on average 6.5 hours per case.

In Florida, defenders widely believe that high caseloads limit their ability to provide competent counsel for youth. One attorney described his office as “swamped.” Staggering caseloads contribute to the shortcomings in representation described above, such as lack of investigation, lack of client contact, and failure to provide post-dispositional representation. Caseload burdens may also help to account for high plea rates. Excessive caseloads lead not only to high plea rates, but also to bad pleas. An attorney with 100 cases and no investigative support cannot prepare to represent each client effectively in plea negotiations or at a subsequent disposition. Caseloads help to explain why the overwhelming majority of pleas occur at arraignment and disposition advocacy is not creative or comprehensive.

D. The Culture of the Juvenile Court

The National Council of Juvenile and Family Court Judges has stated that every delinquency judge “must explain and maintain strict courtroom decorum and behavioral expectations for all participants ... [and] ensure that the juvenile delinquency court is a place where all ... participants are treated with respect, dignity, and courtesy.”²¹¹ This assessment found that Florida delinquency courts fall far short of this ideal. Almost every court observer for this assessment described courtrooms as “packed” and hectic. Observers also noted that some courtrooms lacked decorum. One defender felt that “the best way to describe the juvenile system is triage – we are the emergency room of the law.”

The physical appearance of a delinquency court sends youth, families, and participants a message about the gravity of the proceedings.²¹² Observers described some Florida courts in positive terms, remarking that they were “orderly and clean” or “large and well-lit.” Others were not so attractive. One county’s courthouse was damaged in hurricanes over a year ago, and delinquency cases are still being heard in the local civic center. The room was set up like

“In at least two arraignments, the judge started the hearing by asking the child and his parents ‘How do you want to take care of this?’ The family stood there. After repeating her question and after a pregnant pause, the judge finally said ‘Well you have three options here – you can plead guilty, plead no contest or plead not guilty and have a trial.’ The family did not know what to do.”

– Site Visitor

a hotel conference, and all youth waited and heard advisements of rights in one large group. Another court was held in a long and narrow space shaped like a hallway. Youth were kept at one end of the room near the cellblock, for the convenience of security officers, while the judge sat at the other end of the room. Youth were so far away from the judge that a television screen had to be provided for them to discern the judge’s face.

Confidentiality and sensitivity were also an issue in Florida. In some cases, courtroom participants did not appear sensitive to the fact that very private information was being shared about youths and their families in a room full of strangers and also members of these youths’ schools and communities. For example, in one case of a 16-year-old who had pled guilty to a sexual battery charge, the court read excerpts in open court from a doctor’s report detailing the youth’s own history of being abused.

As the National Council of Juvenile and Family Court Judges recognizes, delinquency judges set the tone for the entire court process and significantly influence participants’ perceptions of the system’s fairness.²¹³ Some judges observed in Florida were respectful, professional and careful. Others were rushed, showed inappropriate levity about serious matters, or were condescending toward parents and youth. One judge was heard saying “Your parents didn’t bargain for this, they are sick of being here, they should take out this payment on your hide, and cut the crap. I live with people like you and I know how you are and what I know, I don’t like you.” Remarks such as this do immense damage. Conversely, “[w]hen parents perceive that they and their child have been treated with respect, dignity and courtesy at the trial or adjudication hearing, they are more likely to support and participate in the court’s disposition orders.”²¹⁴

E. Use of Mechanical Restraints in the Courtroom

During the assessment observations, the frequent and liberal use of restraints on youth in Florida courtrooms was disconcerting. Observers found that wrist and leg shackles with belly chains appear to be the norm in many juvenile courtrooms across the state. Without exception, every courtroom visited had youth, including very young children, fully shackled when they were brought from detention into the courthouse. These shackles remained on when the youth were brought into the courtroom itself.

While there may be legitimate reasons for securing a specific youth in this extreme fashion, observers heard no justification for this practice of shackling every single detained youth for court. As explained above, many youth detained in Florida are being held based on technical violations of probation or parole, such as failing to meet curfew. As one public defender pointed out, “When these same children are charged in adult court, they appear in adult court without shackles.” However, nowhere in the state did observers see juvenile defenders openly challenging this dehumanizing practice. It was reported that in counties where this practice has been challenged, the judges have refused to establish the more reasonable practice of shackling the individual child only when there is a specific reason to do so.

Appellate cases considering the use of shackles on pre-trial detainees have primarily addressed the permissibility of shackling defendants in jury trials. In this context, the use of shackles and other restraints is seen as an “inherently prejudicial practice” that is only permissible when it is “justified by an essential state interest specific to each trial.”²¹⁵ According to the Florida Supreme Court, a trial judge has the discretion to permit the use of shackles when warranted for the “security and safety of the proceeding”²¹⁶ and based on factors such as a history of escape and propensity for violence.²¹⁷ It is not a decision to be taken lightly, and the defendant who timely objects is entitled to a hearing on the issue.²¹⁸

“If [disrupting a school function] had been a crime when I was a kid, I’d be shackled to the wall today.”

– Juvenile Court Judge

The question of when shackling is permitted in proceedings before a judge is a closer one. Over a decade ago, several Florida youth filed interlocutory appeals challenging delinquency judges’ practice of keeping all youth coming from detention shackled during court appearances.²¹⁹ At that time, the First District Court of Appeals found reason to “question the propriety of the issuance of a blanket order” requiring all youth to be shackled but declined to issue a writ of certiorari because the shackling did not rise to the level of a “miscarriage of justice.”²²⁰ The Court stated in a two-page opinion that “the right to appear unshackled before a jury is not an issue applicable to juvenile proceedings in Florida” which “obviously must be governed by different criteria” than the cases on adults in jury trials raised by the youths.²²¹ However, the Ninth Circuit has recently held that a blanket policy of shackling defendants for initial appearances before magistrate judges, without adequate justification by the government beyond generalized safety concerns, violates due process.²²² In general, staffing issues or financial constraints are not permissible reasons for the government to create or perpetuate unconstitutional conditions.²²³

Youth in Florida’s courts were also typically shackled together in a group. Some defenders expressed concerns about how shackling youth together in groups infringes upon a child’s privacy and right to counsel and severely impacts their decision making process. One

“I feel like I’ve become the
de facto Dean of Discipline
for schools here.”

– Juvenile Court Judge

defender stated that he thinks “all pleas taken by shackled children are coerced pleas, exacerbated by the lack of investigation and consultation.” In several courtrooms, observers saw youth who were brought into courtrooms in wrist and leg shackles and then were further chained to furniture, doors or other fixed structures in the courtroom to keep them in place. The practices of chaining youth together and to stationary objects represent a serious hazard in case of fire, are contrary to good correctional practice, and are arguably unconstitutional.

For the purpose of comparison, federal regulations for Bureau of Prisons facilities prohibit the use of shackles to secure convicted adult prisoners to any fixed object, except in limited circumstances when necessary to control a particular inmate.²²⁴ It is startling that Florida courts have chosen to use this practice with young people who, under the Fourteenth Amendment, are entitled to fundamental fairness and may not be subjected to any treatment that constitutes punishment.

F. School Discipline and Mental Health

Professionals across juvenile justice system roles complained that there are too many school referrals to delinquency court, often for minor offenses, and frequently identified this as a major problem. The Florida Department of Juvenile Justice reports that in FY 2004-2005, 19% of its referrals were “school-related.” This includes offenses that occurred on school grounds, in a school bus, or at the school bus stop.²²⁵ Court personnel interviewed for this assessment consistently estimated that the proportion of school referrals was higher, reflecting their sense of being overwhelmed by such cases. Juvenile court personnel suggested that school referrals may account for half of all cases in court, and perceived that a rising number of youth are entering the delinquency system as a result of school disciplinary violations. As one judge expressed a sentiment shared by many others: “The court system has become the dumping ground of the school system.” Another judge complained that “so many of the garbage [school] cases are sending the wrong message to these children.” A common offense is “disruption of a school function” (a misdemeanor) which can encompass anything from talking in class to failing to follow the dress code. One judge has taken steps to resolve the issue in his jurisdiction by calling the sheriff and the school superintendent together for a meeting to address excessive school referrals. They developed a plan to create school diversion programs and to reduce the number of court referrals of special education students.

Of particular concern in Florida is the use of police “sweeps” at schools. This assessment found that police departments in at least four counties conduct sweeps on campuses at the beginning of the school year to arrest all youth with outstanding warrants. This practice is problematic for a number of reasons. First, it contributes to overcrowding in local detention centers. In one county visited for this assessment, the detention center was over its bed capacity as a result of a school sweeps. Detention staff complained that the sheriff’s office had not given them advance notice of its intent to conduct these sweeps, and so the center was unprepared for the increased population. Another detention supervisor explained that, while his large facility was generally under-capacity, he expected to be over-capacity after the first day of school due to officers’ execution of warrants.

In addition, the practice of conducting police sweeps at school – while perhaps an easy route for officers – sends undesirable messages. For youth who have missed a court appearance, but are otherwise behaving responsibly, it is a disincentive to take the productive step of beginning a new school year with a clean slate. This is especially problematic because many at-risk youth already have a weak attachment to the school environment. Defenders reported that this is even more troubling when you consider that many of the students who failed to appear in court were actually present in school at the time. The presence of officers arresting youth in the first days of school disrupts to the educational process and mars the school atmosphere.

A similar complaint was that schools and parents in Florida view the delinquency court system as a way to access mental health services for youth. Florida court personnel interviewed for this assessment perceive that the numbers of youth in juvenile court with serious mental health needs are increasing sharply. While documenting this phenomenon is beyond the scope of this assessment, it is safe to say that court and justice system personnel feel themselves to be ill-equipped to handle an influx of these usually more complex mental health cases.

G. Young Children in Juvenile Court

Youth can come under the jurisdiction of Florida’s juvenile courts for offenses committed at any time before they turn 18; there is no minimum age for delinquency adjudication.²²⁶ Across jurisdictions in Florida, judges, defenders and other practitioners reported concern about the numbers of young children in juvenile court. In many sites, observers saw large numbers of ten- to twelve-year-olds in court. Observers were also surprised to see seven- and eight-year-olds in several jurisdictions’ courts. The Department of Juvenile Justice reports that over 1,000 youth aged nine and younger, and over 10,300 youth aged 10-12, were referred to the delinquency system in FY 2004-05.²²⁷

Defenders reported several concerns in dealing with young children in court, most notably their ability to understand and follow delinquency proceedings. Young clients are fortunate to have counsel appointed at all; one seven-year-old was observed waiving the right to counsel. Many judges voiced a need for diversion services and other options for younger children, aside from holding them in state custody. It was evident to assessment observers that delinquency courts are seriously challenged by the presence of young children in court. Even older adolescents differ from adults in many respects, and the developmental gap between older adolescents and pre-pubescent children is large. Florida’s defenders and courts are suffering from a lack of resources and information to address the needs of these children.

H. Race, Class and Gender

The disproportionate confinement of youth who are members of racial and ethnic minorities is a disturbing nationwide phenomenon.²²⁸ Disproportionality exists at striking levels despite the fact that the offense profiles of youth in the juvenile justice system do not vary substantially by race and ethnicity.²²⁹ Nationwide, African American youth are more likely than white youth to be formally charged in juvenile court, even when referred to court for the same type of delinquent act.²³⁰ Detention rates for African American youth exceed the rates for white youth within every offense category.²³¹ Florida is no exception to this stark picture. African American youth are 45% of the detainees in Florida’s secure facilities, although they are only 22% of the youth population.²³² The 2003 Census of Juveniles in Residential Placement found that

African American youth were incarcerated in Florida juvenile facilities at nearly three times the rate of white youth.²³³ In contrast, Hispanic, American Indian, and Asian American youth were incarcerated at lower rates than white youth.²³⁴

Participants in Florida's juvenile justice system widely perceive that race and class affect youths' experiences or outcomes in delinquency court. Some defenders interviewed opined that race had an impact, whereas others believed that class was a bigger issue. In a county where African American youth were overrepresented in the detention facility, one judge commented that "the racial disparity in the courtroom is embarrassing." In that same community, many people talked with observers about the racial tensions and perceived inequities that permeate the juvenile justice system. In particular, there was a sense that law enforcement contributed to racial tensions by targeting and escalating minor incidents involving African-American children. In another county, the director of an after school program remarked that "a lot of white kids get non-judicial [dispositions]; today, 13 white kids got non-judicial compared to only three black kids." Although these numbers are only anecdotal, this remark illustrates perceptions that youth in Florida's delinquency courts are treated differently based on race.

More positively, delinquency courts do seem responsive to the needs of youth and families who are English language learners. Interpreters appear to be available in most courts. Participants in one county recounted that following an increase in the Hispanic population, the county made more interpreters available to assist the parents. Unfortunately, none of the defenders in that county spoke Spanish, which could present a barrier in developing a relationship with youth and families. In some courtrooms, the judges speak Spanish from the bench. It is important for delinquency court staff to be culturally aware and competent.²³⁵ This need is critical in Florida, where most counties have youth populations that are at least 3% Hispanic, and most southern counties have a youth population that is over 10% Hispanic.²³⁶

In 2001, girls in Florida were detained at a rate higher than the national average.²³⁷ Studies show that girls in Florida detention facilities have serious needs that must be addressed. A 2005 study of 90 girls in Florida juvenile residential facilities, conducted by the Office of Program Policy Analysis & Government Accountability (OPPAGA), revealed that 94% of the girls had a diagnosed mental health problem.²³⁸ Sixty-eight percent of the girls reported that they had suffered past neglect or physical or sexual abuse.²³⁹ More than 60% of the girls in moderate- to high-risk residential treatment in Florida have witnessed domestic violence in their homes.²⁴⁰ It is not surprising that the Department of Juvenile Justice reports that 75% of the girls in these treatment centers have run away from home at least once.²⁴¹

I. Transfer to Adult Court

Florida is known as a pioneer in transferring youth for trial in adult criminal court.²⁴² During the heyday of Florida's transfer statute, prosecutors sent over 7,000 youth to adult court in 1995 - nearly as many as were transferred in all other states combined.²⁴³ However, transfers have been declining due to growing awareness that transfer is linked to higher recidivism and a greater availability of intensive commitment facilities for serious youth offenders.²⁴⁴ By 2001, transfers to adult court had decreased sharply to their lowest level in 15 years.²⁴⁵

In Florida, the prosecutor can seek a youth's transfer to adult criminal court from juvenile court by filing a motion.²⁴⁶ The court subsequently conducts a hearing on the issue of transfer.

Florida also has a “prosecutorial discretion” or direct file statute providing that certain cases can be heard in either juvenile or adult court at the prosecutor’s sole election. Direct file is permitted if a youth is accused of any of a number of enumerated offenses; it is also mandatory in some cases.²⁴⁷ The prosecutor simply files an information directly in adult criminal court.²⁴⁸ Anecdotal evidence from this assessment indicates that prosecutors usually opt for direct file; it was reported that transfer petitions are rare. A Department of Juvenile Justice report confirms that, in the year 2000, 95% of transferred cases were directly filed.²⁴⁹ For offenses eligible for life imprisonment, youth are transferred into adult court upon indictment by a grand jury.²⁵⁰

The prosecutor typically announces that a case is under review for direct file at the detention hearing. The State then has 21 days (with the possibility of one nine-day extension) in which to make its decision before the child must be released from detention.²⁵¹ During this time, counsel for the youth can be critical, as some prosecutors are willing to negotiate to allow the youth to avoid direct file.²⁵² In one large county, the public defender’s office has social workers who immediately begin investigating the youth’s history to gather relevant information to present to the prosecutor in an effort to avoid direct file or to use in plea negotiations. However, this is not a common practice among public defenders, most of who do not have full time social workers on their staff.

A prosecutor in a smaller county stated that he is willing to negotiate with counsel regarding direct files, but private attorneys are the only ones who take advantage of this. The prosecutor speculates that the public defenders do not routinely engage in such negotiations because their caseloads preclude them from having sufficient contact with their clients to discuss ways to avoid direct file. Private attorneys generally have more contact with their clients and with him. One public defender stated that her ability to “work up” a potential direct file case was compromised by the fact that she had to wait until she was appointed by the judge.

Public defenders in a number of counties complained that the State uses discretionary direct file (instead of involuntary transfer petitions) – and the threat of adult prosecution – in order to force a youth to accept a plea to a high-level placement. Some public defenders complained that the state forces them to enter into negotiation before giving them discovery, which compromises their ability to advise the client on the likelihood of the prosecution prevailing on the merits. One public defender described the negotiation process as follows: “Prosecutors put a gun to your head: accept a plea or we will direct file into adult court.” A judge in a different county came to the same conclusion, stating that “the prosecutor has a gun in hand: plea or direct file.”

J. Role of Victims

Florida law grants certain rights to victims of delinquent acts. The victim, his parents or guardian, his legal representative, or his next of kin (for homicides) has “the right to be informed of, to be present during, and to be heard when relevant” at crucial stages of the proceedings “to the extent that [the victim’s] rights do not interfere with the constitutional rights of the juvenile offender.”²⁵³

Victims in Florida are especially influential in cases where youth are seeking to enter into a so-called “Walker plan.” This is a pre-adjudication “plan of proposed treatment, training, or conduct” that can be submitted for the allegedly delinquent child instead of a plea, in accordance with procedures laid out in Fla. R. Juv. P. 8.075(b). This type of plan is an appealing option for youth because submitting a plan is not an admission to the allegations in the delinquency petition.²⁵⁴

However, to comply with Florida law, the victim must agree before the judge can sign off on a plan.²⁵⁵ Victims therefore have the effective power to determine whether a youth can avoid the delinquency system or not. This is problematic because the victims are generally not aware of or concerned with the balanced and restorative justice philosophy of the juvenile system. It is also problematic that these intervention plans typically require youth to write a letter of apology to the victim and accept responsibility for the act,²⁵⁶ endangering the privilege against self-incrimination and clashing with the statutory provision that the plan is not an admission of guilt.

IV. Conclusion

Overall, the assessment reveals large scale, systemic problems and deficiencies in Florida's juvenile indigent defense system. It demonstrates the serious under funding of the defense function in juvenile court and the lack of sufficient quality control measures.

Because most defense offices are woefully under funded in general, the elected officials have been forced to make conscious and difficult decisions to assign most of their resources to the cases where the clients are facing the death penalty or long-term incarceration. All branches of government must consider the long-term impact of not providing sufficient resources and support for the effective and efficient operations of juvenile defender offices.

CHAPTER FOUR:

Guiding Principles for Effective Delinquency Representation

This assessment documents substantial deficiencies in access to counsel and the quality of representation children receive in juvenile courts across Florida. However, it would be incorrect to conclude that effective representation of juveniles does not exist. To the contrary, the assessment team observed public defender offices and individual attorneys committed to high-quality representation. In many different parts of the state, juvenile defenders were vigorously and enthusiastically representing their young clients. In terms of personal qualities, these defenders were articulate and well-prepared, worked successfully with clients and families, and displayed a comprehensive and holistic approach to their representation. From a legal standpoint, they were familiar with community programs and services in the community, presented compelling alternatives to the court, and properly held the prosecution to its burden of proof. These defenders are to be commended for persevering on behalf of their young clients, despite the many systematic and institutional barriers that hinder them.

The National Juvenile Defender Center and other professional organizations have been able to identify important overarching elements that help juvenile defense offices implement excellence in juvenile proceedings. Those elements include: strong leadership that recognizes juvenile defense as a specialty; a commitment to zealous advocacy and ethical principles; implementation of best practices; holistic representation; and the effective utilization of technology.

Juvenile defense offices need concrete strategies to attain these five elements of excellence. In 2005, the American Council of Chief Defenders (of the National Legal Aid and Defenders Association) and the National Juvenile Defender Center articulated a set of strategies in the *Ten Core Principles for Providing Quality Delinquency Representation through Indigent Defense Delivery Systems*.²⁵⁷ The *Principles*, included as Appendix B in this assessment, recognize that children and adolescents are at crucial stages of development and that their legal representation requires specialized defense skills and knowledge.

The *Principles* can be an important touchstone in the development of comprehensive and effective juvenile indigent defense delivery systems and should serve as a guide in Florida. They are:

1. **Zealous Representation:** The indigent defense delivery system upholds juveniles' right to counsel throughout the delinquency process and recognizes the need for zealous representation to protect children.
2. **Specialized Skill:** The indigent defense delivery system recognizes that legal representation of children is a specialized area of the law.
3. **Personnel and Resource Parity:** The indigent defense delivery system supports quality juvenile delinquency representation through personnel and resource parity.
4. **Expert and Ancillary Services:** The indigent defense delivery system utilizes expert and ancillary services to provide quality juvenile defense services.
5. **Supervision and Workload:** The indigent defense delivery system supervises attorneys and staff and monitors work and caseloads.
6. **Professional Accountability:** The indigent defense delivery system supervises and systematically reviews juvenile defense staff for quality according to national, state and/or local performance guidelines or standards.
7. **Continuous Training:** The indigent defense delivery system provides and supports comprehensive, ongoing training and education for all attorneys and support staff involved in the representation of children.
8. **Dispositional Advocacy:** The indigent defense delivery system has an obligation to present independent treatment and disposition alternatives to the court.
9. **Educational Advocacy:** The indigent defense delivery system advocates for the educational needs of clients.
10. **Systemic Advocacy:** The indigent defense delivery system must promote fairness and equality for children.

CHAPTER FIVE:

Conclusion and Recommendations

There are many dedicated and committed juvenile justice professionals across the state of Florida. Although they may have different views on what reforms and changes should be made, they share a common desire to have a stronger and more effective juvenile indigent defense system. During this assessment, there was uniform agreement that changes are warranted in order to ensure the fair and effective representation of youth charged with delinquency. This is consistent with Florida's long tradition of taking pride in its juvenile justice system

The presence of defense counsel is critically important. Yet youths' due process rights cannot be truly vindicated unless defense attorneys are not merely present, but also well trained and well resourced. Effective defense counsel holds the juvenile justice system accountable to the child and the community. While exemplary defender practices were observed across Florida, the level of defense advocacy observed was generally uneven, and in many cases fell well below acceptable standards of practice. Frequently, the reasons for the inadequate level of defense were beyond the control of the individual lawyer.

The time is right to evaluate and improve the juvenile indigent defense system in Florida. There is interest in reform throughout the state, as indigent defense issues gain renewed prominence across the United States. The National Council of Juvenile and Family Court Judges have promulgated *Juvenile Delinquency Guidelines* to help improve court practice in all juvenile delinquency cases.²⁵⁸ These *Guidelines* recognize that one of the key principles for a delinquency court of excellence is that "youth charged in the formal delinquency court must have qualified and adequately compensated legal representation."²⁵⁹ More precisely, "[a]lleged and adjudicated youth must be represented by well trained attorneys with cultural understanding and manageable caseloads. Juvenile delinquency court administrative judges are responsible to ensure that counsel is available to every youth at every hearing, including post-disposition reviews and reentry hearings."

Although the juvenile indigent defense system has never been given the full array of resources it critically needs to meet its complex mandate, many improvements to Florida's juvenile indigent defense system are further limited by the lack of political will of leaders and policymakers. It's important to recognize that the short and long term consequences of an arrest or conviction in juvenile court can be severe. Youthful indiscretion or misbehavior can be a

lifetime sentence to a lower socio-economic status and can place future limitations on housing, education, employment and other opportunities. The core recommendations set forth below are followed by a series of implementation strategies designed to engage all juvenile justice system stakeholders and policymakers in juvenile indigent defense reform efforts.

I. Core Recommendations

1. State legislators and local policymakers should increase the resources that are available to improve delinquency representation in juvenile court. Those resources should include support for attorneys and non-lawyers with special expertise in case planning and representation and other necessary support staff.
2. The elected Public Defenders should ensure that youth are competently represented by defense counsel at all court hearings and throughout the entire delinquency process.
3. Further restrictions on waiver of counsel must be established consistent with national standards. Youth should not be permitted to waive counsel without prior consultation with such counsel. Counsel should assist the client in making an informed, knowing and voluntary choice and stand-by counsel should be available in the event of waiver. It is imperative that youth understand the long term consequences of a juvenile adjudication.
4. Judicial colloquies and admonitions administered to youth must be thorough, comprehensive and easily understood. Judges should take the time to fully test a youth's understanding.
5. A comprehensive review of indigence determinations and other fees assessed in juvenile court should be undertaken. The lack of consistency and uniformity is glaring. These costs and fees are punitive in nature and place an undue burden on youth.
6. State legislators, local policymakers, and juvenile court judges should end the practice of shackling youth by hand, foot and belly chain for court appearances unless an extenuating individual situation warrants such restraint. Under any circumstance, the practice of shackling youth to each other in a group or to fixed objects in the courtroom should be strictly prohibited.
7. The quality of representation in juvenile court should be improved through early appointment of counsel, reduced defender caseloads, additional lawyer training and adequate supervision and monitoring of cases in juvenile court. The Florida Public Defender Association should develop the capacity to monitor and improve the delivery of juvenile defense services to comply with these recommendations.
8. Florida should establish a minimum age for juvenile court jurisdiction and children under twelve should be diverted from juvenile court. Young children under twelve should never be handcuffed or booked in the same manner as older youth.

9. Local courts, law schools or bar associations should routinely collect data on defense representation in juvenile court to identify and address systemic weaknesses.
10. Plea agreements should never be taken at arraignment in juvenile court. Defense counsel must have a meaningful opportunity to consult with the youth, explain potential short- and long-term consequences of a conviction, and review the sufficiency of the case prior to the court accepting a plea agreement.

II. Implementation Strategies

Putting these recommendations into action in Florida will require simultaneous involvement by many different groups. Governmental and non-governmental agencies in Florida must work together to increase resources for juvenile defenders, improve the quality of representation, and monitor defense services in juvenile court. The following implementation strategies address specific challenges that face Florida's indigent defense system, and provide ideas for stakeholders' consideration. In order to make the core recommendations set forth above a reality,

The Florida State Legislature should:

- Establish limitations on waiver of counsel by youth in delinquency proceedings, either by prohibiting waiver of counsel altogether or by adding the requirements that the youth must consult with a defense attorney (as recommended by the National Council of Juvenile and Family Court Judges, and the Florida Bar Association,²⁶⁰ and that stand-by counsel must be appointed before the court can accept a waiver.²⁶¹
- Eliminate the statutory application fee for indigent defense for youth in delinquency or adult court, and consider enacting a presumption of indigence for youth.
- Eliminate unauthorized costs that are currently imposed in juvenile cases in order to comply with the recent Florida Supreme Court ruling in *V.K.E. v. State*, 31 FLW S305 (July 6, 2006.) These costs and fees are punitive in nature and likely to distort decisions about core legal rights, to heighten conflict between parents and youth, and to impose further burdens on youth.
- Recognize the developmental differences between youth and adults by requiring that any interrogation of youth must be conducted with a defense attorney present and must be electronically recorded.
- Review the role and influence of victims on delinquency case processing to determine whether current practices are infringing upon youths' due process rights and impeding the system's efficiency.

- Reconsider Florida’s statutory provisions for transferring youth to adult court, in light of recognition by the Department of Juvenile Justice that transfer is linked to increased recidivism. More specifically, the Florida legislature should consider any or all of the following alternatives to current law:
 - o Eliminating the practice of direct filing by prosecutors;
 - o Establishing new and enforceable criteria to guide prosecutors’ discretion in deciding whether to file a youth’s case in adult court;
 - o Expanding the discretion of judges over whether a youth is tried in adult court;
 - o Allowing blended sentencing and/or juvenile sentencing for youth in adult court;
 - o Prohibit the later transfer of any youth who has once been found incompetent to proceed to trial;
 - o Establish a “fitness hearing” whereby youth in adult court may request a hearing to determine whether the youth is “fit” to be tried and sentenced in adult court; and
 - o Give judges discretion to waive minimum mandatory sentences, in prescribed circumstances, for juveniles transferred to adult court.

- Amend Florida’s school discipline statute, Fla. Stat. Ann. § 1006.07 and 1006.13, to remove mandatory “zero tolerance” provisions and provide greater authority to local education and juvenile justice officials.

- Provide greater confidentiality for delinquency court proceedings and law enforcement records.

- Establish a bicameral legislative committee on juvenile justice reform to help coordinate improvements across the relevant systems of services for families and youth.

- Establish student loan repayment programs in Juvenile Public Defender Offices, and provide other incentives to assist with recruiting and retaining talented attorneys who might not otherwise be able to enter delinquency practice.

The Department of Juvenile Justice should:

- Seek the input of stakeholders and conduct a comprehensive and scientific study of the Detention Risk Assessment Instrument (DRAI.) This study should evaluate a range of issues including self-incrimination, confidentiality, and the need for proper training on the administration of the DRAI, among other issues.

- Establish oversight and management procedures to prevent factual errors and miscalculations on Detention Risk Assessment Instruments, to provide increased training on use of the instrument, and to impose consequences for personnel who repeatedly fail to perform adequately.

- Ensure that youth have telephone access to defenders, at no cost and in a fashion that protects attorney-client confidences, at any time that youth are in custody in detention and correctional facilities, including private facilities that enter into contracts with the state to provide residential placement for youth.
- Ensure that private space is available in all public and private facilities for youth to meet with their attorneys.
- Post signage and provide written information to youth in all assessment and detention centers with contact information for the Public Defender Office and a description of services they provide.

State and local bar associations should:

- Take a leadership role and convene a high level working group to develop and promote policies that will support and improve juvenile indigent defense reform efforts in Florida.
- Recognize juvenile delinquency defense as a specialized area of practice.
- Create qualification and training standards for private attorneys appointed to represent youth in delinquency proceedings.
- Continue to work with the elected public defenders and other stakeholders to promulgate a package of juvenile indigent reform legislation.

The Judiciary should:

- Ensure that youth, without exception, fully understand their rights before waiving counsel and pleading guilty, in accordance with applicable case law, rules of procedure, and statutes.
- Ensure that counsel is appointed early, prior to initial or detention hearings, and that such counsel has a meaningful opportunity to meet with the client and prepare for the detention hearing.
- Prohibit the generalized policy of allowing youth to appear in juvenile court in shackles or handcuffs unless extenuating circumstances warrant such restraint in individual cases. The National Council of Juvenile and Family Court Judges promote several ways to conserve judicial resources in order to achieve this important reform.²⁶²
- End, without exception, the practice of shackling youth to fixed objects or structures during transportation and in court.
- Provide meaningful oversight of indigence determinations and the application of other more onerous court costs and fees.

- Decline to accept any guilty or *nolo contendere* pleas until each youth has had the meaningful opportunity to consult with defense counsel.
- Provide leadership in working with school officials and mental health providers to ensure that the juvenile court is not the dumping ground for those systems.
- Continue to provide practical tools to improve family court practice in Florida and seek additional funding for dedicated juvenile staff in public defender offices who work in a Unified Family Court system whereby special skills and training might be warranted.
- Discourage the use of delinquency courts as training grounds for judges. Judges, like defenders and prosecutors, should be permitted to elect to remain in juvenile court in order to develop a specialized expertise in delinquency law and related topics.
- Provide adequate training to and supervision of judges who are not assigned to the juvenile court who conduct first appearance or detention hearings on weekends and holidays.
- Encourage the establishment of evening or weekend courts to address detention backlog, manage court dockets more efficiently and reduce pressure on youth to resolve cases quickly.
- Conduct detention hearings on the afternoon court docket so that defenders will have time to interview and prepare properly for detention hearings.

Juvenile defenders should:

- Be clear about the ethical obligation to represent the expressed legitimate interests, not the “best interests,” of their clients in juvenile court.
- Actively represent youth at initial and detention hearings.
- Hire independent experts when needed to evaluate clients instead of relying upon the reports of court appointed experts or behavioral unit staff.
- Attend or send a designee to pre-disposition staffing meetings with the Department of Juvenile Justice whenever possible in order to advocate for the youth’s preferences and better prepare for the disposition hearing.
- Represent the legal and other interests of youth more aggressively at disposition and post-disposition proceedings. Specifically, in accordance with the National Council of Juvenile and Family Court Judges *Guidelines*, legal representation should be continuous and include any post-disposition, contempt or review proceedings.²⁶³
- Preserve the record for appeal and think strategically about appellate strategies to clarify questions of law or to vindicate clients’ rights.
- Seek opportunities for training to enhance best practices.

The elected public defenders should:

- Provide leadership and support for dedicated attorneys in juvenile court and recognize the unique skills needed for the effective representation of youth.
- At a minimum, ensure that assistant public defenders are assigned to juvenile court for a period of not less than 12-18 months to ensure continuity and quality of representation.
- Ensure that an assistant public defender is present and prepared at all first appearances or detention hearings.
- Reduce rotation and ensure that defenders are able to remain in juvenile court at a salary that is comparable to attorneys of similar skill and experience who are assigned to represent adults.
- Ensure that juvenile defenders have adequate access to investigators and other support services that, at a minimum, are equal to adult defenders in the same office.
- Assign a defender or certified legal intern to the local Juvenile Assessment Center to provide initial representation to youth at intake.
- Make an effort to hire or create alliances with attorneys who specialize in special education, mental health, and school discipline cases in order to address collateral issues and provide holistic representation.
- Provide leadership in the creation of “bridge units” that provide a specialized approach to representing youth who are facing adult criminal charges.

The Florida Public Defender Association should:

- Continue to take a leadership role in juvenile indigent defense reform efforts and the implementation of the core recommendations set forth in this assessment.
- Convene a working group to develop performance standards for all defense attorneys who represent youth in delinquency proceedings, and to provide ongoing centralized leadership on issues relevant to juvenile defense.
- Develop and promote strategies to reduce the numbers of very young children in Florida’s delinquency courts.
- Develop and promote strategies to eliminate or reduce the high number of pleas that are taken at arraignment in juvenile court without prior consultation with counsel.
- Provide monthly or quarterly training to juvenile defenders on topics specifically related to juvenile defense, adolescent development, competency or other juvenile-specific subjects.

Law Enforcement should:

- Eliminate the practice of conducting police sweeps to arrest all youth with outstanding warrants on the first day of school.
- Establish practices of allowing access to counsel and requiring electronic recording for any interrogations of youth under the age of 18.
- Mandate training on developmental differences between youth and adults as a way to help officers understand adolescents' decision-making capacity and to enhance the safety of officers and the public.
- Create alternatives to arrest and use existing options, such as civil citations, more assertively.

Citizens' groups, parents, and youth advocates should:

- Encourage adoption of the recommendations set forth in this assessment.
- Insist that youth in delinquency court are entitled to the effective assistance of defense counsel, and defenders are entitled to the supports and training necessary to meet that standard.
- Engage in campaigns to educate youth and parents about due process rights, the benefits of public defense, the consequences of waiver, and the advisability of exercising the right to counsel in delinquency courts.
- Devise strategies and work with other stakeholders to ensure accountability for school discipline problems, while reducing campus arrests and handling discipline issues outside the delinquency system whenever possible.

Law schools and universities should:

- Collaborate with public defender offices to provide cross-disciplinary support to lawyers in juvenile court and increase the opportunities for internships, externships, clinics and paid fellowships.
- Encourage greater interest in juvenile justice issues through academic course offerings and clinical programs.
- Offer continuing legal education seminars and other professional opportunities to improve the quality of representation in juvenile court.
- Conduct needed research on a range of issues related to juvenile court practices.

Letters of Support



The Florida Bar



Kelly Overstreet Johnson
President

John F. Harkness, Jr.
Executive Director

Alan B. Bookman
President-elect

June 8, 2005

Ms. Patricia Puritz
Executive Director
National Juvenile Defender Center
1350 Connecticut Avenue NW
Suite 304
Washington, DC 20036

Dear Ms. Puritz:

On behalf of the Florida Bar, I am writing you this letter in support of the Florida Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings. The Florida Bar is honored to support a nationwide effort that seeks to improve the access to counsel and quality of legal representation that children receive in the juvenile justice system.

This Assessment is extremely exciting to me. It provides a comprehensive examination of the systematic issues and institutional barriers that prevent lawyers from providing effective legal services to indigent children and reviews the access to counsel and quality of representation these children receive. It will also look at the structure of the juvenile and indigent defense system. I greatly hope that your final report and recommendations will provide us with the information we need to ensure that children's rights are adequately protected.

Please let me know if the Florida Bar can be of any further assistance.

Thank you,

A handwritten signature in cursive script that reads "Kelly Overstreet Johnson".

Kelly Overstreet Johnson

Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

BARBARA J. PARIENTE
CHIEF JUSTICE
CHARLES T. WELLS
HARRY LEE ANSTEAD
R. FRED LEWIS
PEGGY A. QUINCE
RAOUL G. CANTERO, III
KENNETH B. BELL
JUSTICES

THOMAS D. HALL
CLERK OF COURT

WILSON E. BARNES
MARSHAL

MEMORANDUM

TO: Chief Judges of the Circuit Courts
FROM: Chief Justice Barbara J. Pariente 
DATE: May 17, 2005
RE: Assessment of Access to Counsel and Quality of Representation in
Juvenile Delinquency Proceedings

I have been advised that the National Juvenile Defender Center, formerly part of the American Bar Association (ABA) Juvenile Justice Center, has been engaged in the process of conducting state-based assessments regarding access to counsel and quality of juvenile indigent defense services to children in the justice system. The Center intends to conduct these assessments in every state and the District of Columbia to ensure that accurate, baseline data are available to decision and policy makers. To date work has been completed in Georgia, Kentucky, Maine, Maryland, Montana, North Carolina, Ohio, Pennsylvania, Texas, Virginia and Washington and several more assessments are underway. These assessments build on the national work conducted by the ABA in the early 1990's that resulted in the publication entitled *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Juvenile Delinquency Proceedings*.

Plans are now under way to study delinquency proceedings in fifteen counties in our state. If a county in your judicial circuit is selected, your participation and approval to be included in this study will be sought out by

Chief Judges of the Circuit Courts

May 17, 2005

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Patricia Puritz, Executive Director of the National Juvenile Defender Center. It is my understanding that the final report will not identify the counties that comprise the study and I hope that you will be agreeable to participate in this important work.

As you may recall, the OSCA Office of Court Improvement conducted a delinquency assessment of its own in 2001. That assessment was the first to analyze delinquency case processing on a statewide level. The OSCA report contained preliminary findings on the representation issue and acknowledged that further research was necessary. It is anticipated that the Center's assessment will build on those preliminary findings and provide an in-depth look at this particular issue.

During the course of the assessment, there will be meetings with the various stakeholders in the justice system - judges, defense attorneys, prosecutors, probation officers, court administrators, mental health advocates, detention and corrections administrators - to gain a comprehensive view of the system in the selected counties. A team of national experts will work closely with local colleagues to conduct confidential interviews and courtroom observations. All the data will be collected and compiled into a final report with recommendations.

The Center advises that the purpose of these assessments is to provide a thorough examination of the systemic and institutional barriers that prevent lawyers from providing adequate legal services to children within a particular state's legal system. They also highlight promising approaches and innovative practices within the state and offer recommendations to improve weak areas. In addition to gathering general data and information about the structure of the juvenile indigent defense delivery system, assessments examine issues related to the timing of appointment of counsel, the frequency with which children waive their right to counsel and under what conditions they do so, resource allocation, attorney compensation, supervision and training, and access to investigators, experts, social workers, and support staff.

Chief Judges of the Circuit Courts

May 17, 2005

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It is hoped that by issuing these reports we will be able to stimulate discussions about the ways in which counsel is provided to indigent children and the systemic barriers that impede effective representation. The Center hopes that the Florida Assessment will ensure that juvenile and criminal justice planners have a comprehensive picture of the juvenile defense system embodied in a report with recommendations.

If you have any questions, please feel free to contact Patricia Puritz, Executive Director of the National Juvenile Defender Center, at 202.452.0010 ext. 101 or at ppuritz@njdc.info.

BJP/mb

cc: Trial Court Administrators

APPENDIX B

American Council of Chief Defenders
National Juvenile Defender Center

TEN CORE PRINCIPLES FOR PROVIDING QUALITY DELINQUENCY REPRESENTATION THROUGH INDIGENT DEFENSE DELIVERY SYSTEMS

January 2005

Preamble¹

A. Goal of These Principles

The Ten Core Principles for Providing Quality Delinquency Representation through Indigent Defense Delivery Systems are developed to provide criteria by which an indigent defense system may fully implement the holding of *In Re: Gault*.² Counsel's paramount responsibilities to children charged with delinquency offenses are to zealously defend them from the charges leveled against them and to protect their due process rights. The Principles also serve to offer greater guidance to the leadership of indigent defense providers as to the role of public defenders, contract attorneys or assigned counsel in delivering zealous, comprehensive and quality legal representation on behalf of children in delinquency proceedings as well as those prosecuted in adult court.³

While the goal of the juvenile court has shifted in the past decade toward a more punitive model of client accountability and public safety, juvenile defender organizations should reaffirm the fundamental purposes of juvenile court: (1) to provide a fair and reliable forum for adjudication; and (2) to provide appropriate support, resources, opportunities and treatment to assure the rehabilitation and development of competencies of children found delinquent. Delinquency cases are complex, and their consequences have significant implications for children and their families. Therefore, it is of paramount importance that children have ready access to highly qualified, well-resourced defense counsel.

Defender organizations should further reject attempts by courts or by state legislatures to criminalize juvenile behavior in order to obtain necessary services for children. Indigent defense counsel should play a strong role in determining this and other juvenile justice related policies.

In 1995, the American Bar Association's Juvenile Justice Center published *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, a national study that revealed major failings in juvenile defense across the nation. The report spurred the creation of the National Juvenile Defender Center and nine regional defender centers around the country. The National Juvenile Defender Center conducts state and county assessments of juvenile indigent defense systems that focus on access to counsel and measure the quality of representation.⁴

B. The Representation of Children and Adolescents is a Specialty

The Indigent Defense Delivery System must recognize that children and adolescents are at a crucial stage of development and that skilled juvenile delinquency defense advocacy will positively impact the course of clients' lives through holistic and zealous representation.

The Indigent Defense Delivery System must provide training regarding the stages of child and adolescent development and the advances in brain research that confirm that children and young adults do not possess the same cognitive, emotional, decision-making or behavioral capacities as adults. Expectations, at any stage of the court process, of children accused of crimes must be individually defined according to scientific, evidence-based practice.

The Indigent Defense Delivery System must emphasize that it is the obligation of juvenile defense counsel to maximize each client's participation in his or her own case in order to ensure that the client understands the court process and to facilitate the most informed decision making by the client. The client's minority status does not negate counsel's obligation to appropriately litigate factual and legal issues that require judicial determination and to obtain the necessary trial skills to present these issues in the courtroom.

The **American Council of Chief Defenders** (ACCD), a section of the National Legal Aid & Defender Association, is dedicated to promoting fair justice systems by advocating sound public policies and ensuring quality legal representation to people who are facing a loss of liberty or accused of a crime who cannot afford an attorney. For more information, see www.nlada.org or call (202) 452-0620.

The **National Juvenile Defender Center** (NJDC) is committed to ensuring excellence in juvenile defense and promoting justice for all children. For more information, see www.njdc.info or call (202) 452-0010.

C. Indigent Defense Delivery Systems Must Pay Particular Attention to the Most Vulnerable and Over-Represented Groups of Children in the Delinquency System

Nationally, children of color are severely over-represented at every stage of the juvenile justice process. Research has demonstrated that involvement in the juvenile court system increases the likelihood that a child will subsequently be convicted and incarcerated as an adult. Defenders must work to increase awareness of issues such as disparities in race and class, and they must zealously advocate for the elimination of the disproportionate representation of minority youth in juvenile courts and detention facilities.

Children with mental health and developmental disabilities are also over-represented in the juvenile justice system. Defenders must recognize mental illness and developmental impairments, legally address these needs and secure appropriate assistance for these clients as an essential component of quality legal representation.

Drug- and alcohol-dependent juveniles and those dually diagnosed with addiction and mental health disorders are more likely to become involved with the juvenile justice system. Defenders must recognize, understand and advocate for appropriate treatment services for these clients.

Research shows that the population of girls in the delinquency system is increasing, and juvenile justice system personnel are now beginning to acknowledge that girls' issues are distinct from boys'. Gender-based interventions and the programmatic needs of girls, who have frequently suffered from abuse and neglect, must be assessed and appropriate gender-based services developed and funded.

In addition, awareness and unique advocacy are needed for the special issues presented by lesbian, gay, bisexual and transgender youth.

Ten Principles

1 The Indigent Defense Delivery System Upholds Juveniles' Right to Counsel Throughout the Delinquency Process and Recognizes The Need For Zealous Representation to Protect Children

A. The indigent defense delivery system should ensure that children do not waive appointment of counsel. The indigent defense delivery system should ensure that defense counsel are assigned at the earliest possible stage of the delinquency proceedings.⁵

B. The indigent defense delivery system recognizes that the delinquency process is adversarial and should provide children with continuous legal representation throughout the delinquency process including, but not limited to, detention, pre-trial motions or hearings, adjudication, disposition, post-disposition, probation, appeal, expungement and sealing of records.

C. The indigent defense delivery system should include the active participation of the private bar or conflict office whenever a conflict of interest arises for the primary defender service provider.⁶

2 The Indigent Defense Delivery System Recognizes that Legal Representation of Children is a Specialized Area of the Law

A. The indigent defense delivery system recognizes that representing children in delinquency proceedings is a complex specialty in the law and that it is different from, but equally as important as, the legal representation of adults. The indigent defense delivery system further acknowledges the specialized nature of representing juveniles processed as adults in transfer/waiver proceedings.⁷

B. The indigent defense delivery system leadership demonstrates that it respects its juvenile defense team members and that it values the provision of quality, zealous and comprehensive delinquency representation services.

C. The indigent defense delivery system leadership recognizes that delinquency representation is not a training assignment for new attorneys or future adult court advocates, and it encourages experienced attorneys to provide delinquency representation.

3 The Indigent Defense Delivery System Supports Quality Juvenile Delinquency Representation Through Personnel and

A. The indigent defense delivery system encourages juvenile representation specialization without limiting attorney and support staff's access to promotional progression, financial advancement or personnel benefits.

B. The indigent defense delivery system provides a professional work environment and adequate operational resources such as office space, furnishings, technology, confidential client interview areas⁸ and current legal research tools. The system includes juvenile representation resources in budgetary planning to ensure parity in the allocation of equipment and resources.

4 The Indigent Defense Delivery System Utilizes Expert and Ancillary Services to Provide Quality Juvenile Defense Services

A. The indigent defense delivery system supports requests for essential expert services throughout the delinquency process and whenever individual juvenile case representation requires these services for effective and quality representation. These services include, but are not limited to, evaluation by and testimony of mental health professionals, education specialists, forensic evidence examiners, DNA experts, ballistics analysis and accident reconstruction experts.

B. The indigent defense delivery system ensures the provision of all litigation support services necessary for the delivery of quality services, including, but not limited to, interpreters, court reporters, social workers, investigators, paralegals and other support staff.

5 The Indigent Defense Delivery System Supervises Attorneys and Staff and Monitors Work and Caseloads

A. The leadership of the indigent defense delivery system monitors defense counsel’s caseload to permit the rendering of quality representation. The workload of indigent defenders, including appointed and other work, should never be so large as to interfere with the rendering of zealous advocacy or continuing client contact nor should it lead to the breach of ethical obligations.¹⁰ The concept of workload may be adjusted by factors such as case complexity and available support services.

B. Whenever it is deemed appropriate, the leadership of the indigent defense delivery system, in consultation with staff, may adjust attorney case assignments and resources to guarantee the continued delivery of quality juvenile defense services.

6 The Indigent Defense Delivery System Supervises and Systematically Reviews Juvenile Defense Team Staff for Quality According to National, State and/or Local Performance Guidelines or Standards

A. The indigent defense delivery system provides supervision and management direction for attorneys and all team members who provide defense representation services to children.¹¹

B. The leadership of the indigent defense delivery system adopts guidelines and clearly defines the organization’s vision as well as expectations for the delivery of quality legal representation. These guidelines should be consistent with national, state and/or local performance standards, measures or rules.¹²

C. The indigent defense delivery system provides administrative monitoring, coaching and systematic reviews for all attorneys and staff representing juveniles, whether contract defenders, assigned counsel or employees of defender offices.

7 The Indigent Defense System Provides and Supports Comprehensive, Ongoing Training and Education for All Attorneys and Support Staff Involved in the Representation of Children

A. The indigent defense delivery system supports and encourages juvenile defense team members through internal and external comprehensive training¹³ on topics including, but not limited to, detention advocacy, litigation and trial skills, dispositional planning, post-dispositional practice, educational rights, appellate advocacy and administrative hearing representation.

B. The indigent defense delivery system recognizes juvenile delinquency defense as a specialty that requires continuous training in unique areas of the law.¹⁴ In addition to understanding the juvenile court process and systems,

juvenile team members should be competent in juvenile law, the collateral consequences of adjudication and conviction, and other disciplines that uniquely impact juvenile cases, such as, but not limited to:

1. Administrative appeals
2. Child welfare and entitlements
3. Child and adolescent development
4. Communicating and building attorney-client relationships with children and adolescents
5. Community-based treatment resources and programs
6. Competency and capacity
7. Counsel’s role in treatment and problem solving courts¹⁵
8. Dependency court/abuse and neglect court process
9. Diversionary programs
10. Drug addiction and substance abuse
11. Ethical issues and considerations
12. Gender-specific programming
13. Immigration
14. Mental health, physical health and treatment
15. Racial, ethnic and cultural understanding
16. Role of parents/guardians
17. Sexual orientation and gender identity awareness
18. Special education
19. Transfer to adult court and waiver hearings
20. Zero tolerance, school suspension and expulsion policies

8 The Indigent Defense Delivery System Has an Obligation to Present Independent Treatment and Disposition Alternatives to the Court

A. Indigent defense delivery system counsel have an obligation to consult with clients and, independent from court or probation staff, to actively seek out and advocate for treatment and placement alternatives that best serve the unique needs and dispositional requests of each child.

B. The leadership and staff of the indigent defense delivery system work in partnership with other juvenile justice agencies and community leaders to minimize custodial detention and the incarceration of children and to support the creation of a continuum of community-based, culturally sensitive and gender-specific treatment alternatives.

C. The indigent defense delivery system provides independent post-conviction monitoring of each child’s treatment, placement or program to ensure that rehabilitative needs are met. If clients’ expressed needs are not effectively addressed, attorneys are responsible for intervention and advocacy before the appropriate authority.

9 The Indigent Defense Delivery System Advocates for the Educational Needs of Clients

A. The indigent defense delivery system recognizes that access to education and to an appropriate educational curriculum is of paramount importance to juveniles facing delinquency adjudication and disposition.

B. The indigent defense delivery system advocates, either through direct representation or through collaborations with community-based partners, for the appropriate provision of the individualized educational needs of clients.

C. The leadership and staff of the indigent defense delivery system work with community leaders and relevant agencies to advocate for and support an educational system that recognizes the behavioral manifestations and unique needs of special education students.

D. The leadership and staff of the indigent defense delivery system work with juvenile court personnel, school officials and others to find alternatives to prosecutions based on zero tolerance or school-related incidents.

10 The Indigent Defense Delivery System Must Promote Fairness and Equity For Children

A. The indigent defense delivery system should demonstrate strong support for the right to counsel and due process in delinquency courts to safeguard a juvenile justice system that is fair, non-discriminatory and rehabilitative.

B. The leadership of the indigent defense delivery system should advocate for positive change through legal advocacy, legislative improvements and systems reform on behalf of the children whom they serve.

C. The leadership and staff of the indigent defense delivery system are active participants in the community to improve school, mental health and other treatment services and opportunities available to children and families involved in the juvenile justice system.

Notes

¹ These principles were developed over a one-year period through a joint collaboration between the National Juvenile Defender Center and the American Council of Chief Defenders, a section of the National Legal Aid and Defender Association (NLADA), which officially adopted them on December 4, 2004.

² 387 U.S. 1 (1967). According to the IJA/ABA Juvenile Justice Standard Relating to Counsel for Private Parties 3.1 (1996), “the lawyer’s principal duty is the representation of the client’s legitimate interests” as distinct and different from the best interest standard applied in neglect and abuse cases. The Commentary goes on to state that “counsel’s principal responsibility lies in full and conscientious representation” and that “no lesser obligation exists when youthful clients or juvenile court proceedings are involved.”

³ For purposes of these Principles, the term “delinquency proceeding” denotes all proceedings in juvenile court as well as any proceeding lodged against an alleged status offender, such as for truancy, running away, incorrigibility, etc.

⁴ Common findings among these assessments include, among other barriers to adequate representation, a lack of access to competent counsel, inadequate time and resources for defenders to prepare for hearings or trials, a juvenile court culture that encourages pleas to move cases quickly, a lack of pretrial and dispositional advocacy and an over-reliance on probation. For more information, see *Selling Justice Short: Juvenile Indigent Defense in Texas* (2000); *The Children Left Behind: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Louisiana* (2001); *Georgia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2001); *Virginia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2002); *An Assessment of Counsel and Quality of Representation in Delinquency Proceedings in Ohio* (2003); *Maine: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *Maryland: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *Montana: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *North Carolina: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *Pennsylvania: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *Washington: An Assessment of Access to Counsel and Quality of Representation in Juvenile Offender Matters* (2003).

⁵ *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 3.

⁶ A conflict of interest includes both codefendants and intra-family conflicts, among other potential conflicts that may arise. See also *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 2.

⁷ For purposes of this Principle, the term “transfer/waiver proceedings” refers to any proceedings related to prosecuting youth in adult court, including those known in some jurisdictions as certification, bind-over, decline, remand, direct file, or youthful offenders.

⁸ *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 8.

⁹ *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 4.

¹⁰ See National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976), 5.1, 5.3; American Bar Association, *Standards for Criminal Justice, Providing Defense Services* (3rd ed., 1992), 5-5.3; American Bar Association, *Standards for Criminal Justice: Prosecution Function and Defense Function* (3rd ed., 1993), 4-1.3(e); National Advisory Commission on Criminal Justice Standards and Goals, *Report of the Task Force on Courts, Chapter 13, “The Defense”* (1973), 13.12; National Legal Aid and Defender Association and American Bar Association, *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services* (NLADA, 1984; ABA, 1985), III-6, III-12; National Legal Aid and Defender Association, *Standards for the Administration of Assigned Counsel Systems* (1989), 4.1.4.1.2; *ABA Model Code of Professional Responsibility* DR 6-101; *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 5.

¹¹ *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principles 6 and 10.

¹² For example, Institute of Judicial Administration-American Bar Association, *Juvenile Justice Standards* (1979); National Advisory Commission on Criminal Justice Standards and Goals, *Report of the Task Force on Courts, Chapter 13, “The Defense”* (1973); National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976); American Bar Association, *Standards for Criminal Justice, Providing Defense Services* (3rd ed., 1992); American Bar Association, *Standards for Criminal Justice: Prosecution Function and Defense Function* (3rd ed., 1993); *Standards and Evaluation Design for Appellate Defender Offices* (NLADA, 1980); *Performance Guidelines for Criminal Defense Representation* (NLADA, 1995).

¹³ *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 9; National Legal Aid and Defender Association, *Training and Development Standards* (1997), Standards 1 to 9.

¹⁴ National Legal Aid and Defender Association, *Training and Development Standards* (1997), Standard 7.2, footnote 2.

¹⁵ American Council of Chief Defenders, *Ten Tenets of Fair and Effective Problem Solving Courts* (2002).

APPENDIX C

IJA-ABA Juvenile Justice Standards Relating to Counsel for Private Parties

PART I. GENERAL STANDARDS

Standard 1.1. Counsel in Juvenile Proceedings, Generally.

The participation of counsel on behalf of all parties subject to juvenile and family court proceedings is essential to the administration of justice and to the fair and accurate resolution of issues at all stages of those proceedings.

Standard 1.2. Standards in Juvenile Proceedings, Generally.

- (a) As a member of the bar, a lawyer involved in juvenile court matters is bound to know and is subject to standards of professional conduct set forth in statutes, rules, decisions of courts, and codes, canons or other standards of professional conduct. Counsel has no duty to exercise any directive of the client that is inconsistent with law or these standards. Counsel may, however, challenge standards that he or she believes limit unconstitutionally or otherwise improperly representation of clients subject to juvenile court proceedings.
- (b) As used in these standards, the term “unprofessional conduct” denotes conduct which is now or should be subject to disciplinary sanction. Where other terms are used, the standard is intended as a guide to honorable and competent professional conduct or as a model for institutional organization.

Standard 1.3. Misrepresentation of Factual Propositions or Legal Authority.

It is unprofessional conduct for counsel intentionally to misrepresent factual propositions or legal authority to the court or to opposing counsel and probation personnel in the course of discussions concerning entrance of a plea, early disposition or any other matter related to the juvenile court proceeding. Entrance of a plea concerning the client’s responsibility in law for alleged misconduct or concerning the existence in law of an alleged status offense is a statement of the party’s posture with respect to the proceeding and is not a representation of fact or of legal authority.

Standard 1.4. Relations with Probation and Social Work Personnel.

A lawyer engaged in juvenile court practice typically deals with social work and probation department personnel throughout the course of handling a case. In general, the lawyer should cooperate with these agencies and should instruct the client to do so, except to the extent such

cooperation is or will likely become inconsistent with protection of the client's legitimate interests in the proceeding or of any other rights of the client under the law.

Standard 1.5. Punctuality.

A lawyer should be prompt in all dealings with the court, including attendance, submissions of motions, briefs and other papers, and in dealings with clients and other interested persons. It is unprofessional conduct for counsel intentionally to use procedural devices for which there is no legitimate basis, to misrepresent facts to the court or to accept conflicting responsibilities for the purpose of delaying court proceedings. The lawyer should also emphasize the importance of punctuality in attendance in court to the client and to witnesses to be called, and, to the extent feasible, facilitate their prompt attendance.

Standard 1.6. Public Statements.

- (a) The lawyer representing a client before the juvenile court should avoid personal publicity connected with the case, both during trial and thereafter.
- (b) Counsel should comply with statutory and court rules governing dissemination of information concerning juvenile and family court matters and, to the extent consistent with those rules, with the ABA Standards Relating to Fair Trial and Free Press.

Standard 1.7. Improvement in The Juvenile Justice System.

In each jurisdiction, lawyers practicing before the juvenile court should actively seek improvement in the administration of juvenile justice and the provision of resources for the treatment of persons subject to the jurisdiction of the juvenile court.

PART II. PROVISIONS AND ORGANIZATION OF LEGAL SERVICES

Standard 2.1. General Principles.

- (a) Responsibility for provision of legal services.
Provision of satisfactory legal representation in juvenile and family court cases is the proper concern of all segments of the legal community. It is, accordingly, the responsibility of courts, defender agencies, legal professional groups, individual practitioners and educational institutions to ensure that competent counsel and adequate supporting services are available for representation of all persons with business before juvenile and family courts.
 - (i) Lawyers active in practice should be encouraged to qualify themselves for participation in juvenile and family court cases through formal training, association with experienced juvenile counsel or by other means. To this end, law firms should encourage members to represent parties involved in such matters.
 - (ii) Suitable undergraduate and postgraduate educational curricula concerning legal and nonlegal subjects relevant to representation in juvenile and family courts should regularly be available.

- (iii) Careful and candid evaluation of representation in cases involving children should be undertaken by judicial and professional groups, including the organized bar, particularly but not solely where assigned counsel-whether public or private-appears.

(b) Compensation for services.

- (i) Lawyers participating in juvenile court matters, whether retained or appointed, are entitled to reasonable compensation for time and services performed according to prevailing professional standards. In determining fees for their services, lawyers should take into account the time and labor actually required, the skill required to perform the legal service properly, the likelihood that acceptance of the case will preclude other employment for the lawyer, the fee customarily charged in the locality for similar legal services, the possible consequences of the proceedings, and the experience, reputation and ability of the lawyer or lawyers performing the services. In setting fees lawyers should also consider the performance of services incident to full representation in cases involving juveniles, including counseling and activities related to locating or evaluating appropriate community services for a client or a client's family.
- (ii) Lawyers should also take into account in determining fees the capacity of a client to pay the fee. The resources of parents who agree to pay for representation of their children in juvenile court proceedings may be considered if there is no adversity of interest as defined in Standard 3.2, *infra*, and if the parents understand that a lawyer's entire loyalty is to the child and that the parents have no control over the case. Where adversity of interests or desires between parent and child becomes apparent during the course of representation, a lawyer should be ready to reconsider the fee taking into account the child's resources alone.
- (iii) As in all other cases of representation, it is unprofessional conduct for a lawyer to overreach the client or the client's parents in setting a fee, to imply that compensation is for anything other than professional services rendered by the lawyer or by others for him or her, to divide the fee with a layman, or to undertake representation in cases where no financial award may result on the understanding that payment of the fee is contingent in any way on the outcome of the case.
- (iv) Lawyers employed in a legal aid or public defender office should be compensated on a basis equivalent to that paid other government attorneys of similar qualification, experience and responsibility.

(c) Supporting services.

Competent representation cannot be assured unless adequate supporting services are available. Representation in cases involving juveniles typically requires investigatory, expert and other nonlegal services. These should be available to lawyers and to their clients at all stages of juvenile and family court proceedings.

- (i) Where lawyers are assigned, they should have regular access to all reasonably necessary supporting services.
 - (ii) Where a defender system is involved, adequate supporting services should be available within the organization itself.
- (d) Independence.
Any plan for providing counsel to private parties in juvenile court proceedings must be designed to guarantee the professional independence of counsel and the integrity of the lawyer-client relationship.

Standard 2.2. Organization of Services.

- (a) In general.
Counsel should be provided in a systematic manner and in accordance with a widely publicized plan. Where possible, a coordinated plan for representation which combines defender and assigned counsel systems should be adopted.
- (b) Defender systems.
 - (i) Application of general defender standards.
A defender system responsible for representation in some or all juvenile court proceedings generally should apply to staff and offices engaged in juvenile court matters its usual standards for selection, supervision, assignment and tenure of lawyers, restrictions on private practice, provision of facilities and other organizational procedures.
 - (ii) Facilities.
If local circumstances require, the defender system should maintain a separate office for juvenile court legal and supporting staff, located in a place convenient to the courts and equipped with adequate library, interviewing and other facilities. A supervising attorney experienced in juvenile court representation should be assigned to and responsible for the operation of that office.
 - (iii) Specialization.
While rotation of defender staff from one duty to another is an appropriate training device, there should be opportunity for staff to specialize in juvenile court representation to the extent local circumstances permit.
 - (iv) Caseload.
It is the responsibility of every defender office to ensure that its personnel can offer prompt, full and effective counseling and representation to each client. A defender office should not accept more assignments than its staff can adequately discharge.

(c) Assigned counsel systems.

- (i) An assigned counsel plan should have available to it an adequate pool of competent attorneys experienced in juvenile court matters and an adequate plan for all necessary legal and supporting services.
- (ii) Appointments through an assigned counsel system should be made, as nearly as possible, according to some rational and systematic sequence. Where the nature of the action or other circumstances require, a lawyer may be selected because of his or her special qualifications to serve in the case, without regard to the established sequence.

Standard 2.3. Types of Proceedings.

(a) Delinquency and in need of supervision proceedings.

- (i) Counsel should be provided for any juvenile subject to delinquency or in need of supervision proceedings.
- (ii) Legal representation should also be provided the juvenile in all proceedings arising from or related to a delinquency or in need of supervision action, including mental competency, transfer, postdisposition, probation revocation, and classification, institutional transfer, disciplinary or other administrative proceedings related to the treatment process which may substantially affect the juvenile's custody, status or course of treatment. The nature of the forum and the formal classification of the proceeding is irrelevant for this purpose.

(b) Child protective, custody and adoption proceedings.

Counsel should be available to the respondent parents, including the father of an illegitimate child, or other guardian or legal custodian in a neglect or dependency proceeding. Independent counsel should also be provided for the juvenile who is the subject of proceedings affecting his or her status or custody. Counsel should be available at all stages of such proceedings and in all proceedings collateral to neglect and dependency matters, except where temporary emergency action is involved and immediate participation of counsel is not practicable.

Standard 2.4. Stages of Proceedings.

(a) Initial provision of counsel.

- (i) When a juvenile is taken into custody, placed in detention or made subject to an intake process, the authorities taking such action have the responsibility promptly to notify the juvenile's lawyer, if there is one, or advise the juvenile with respect to the availability of legal counsel.

- (ii) In administrative or judicial postdispositional proceedings which may affect the juvenile's custody, status or course of treatment, counsel should be available at the earliest stage of the decisional process, whether the respondent is present or not. Notification of counsel and, where necessary, provision of counsel in such proceedings is the responsibility of the judicial or administrative agency.
- (b) Duration of representation and withdrawal of counsel.
- (i) Lawyers initially retained or appointed should continue their representation through all stages of the proceeding, unless geographical or other compelling factors make continued participation impracticable.
 - (ii) Once appointed or retained, counsel should not request leave to withdraw unless compelled by serious illness or other incapacity, or unless contemporaneous or announced future conduct of the client is such as seriously to compromise the lawyer's professional integrity. Counsel should not seek to withdraw on the belief that the contentions of the client lack merit, but should present for consideration such points as the client desires to be raised provided counsel can do so without violating standards of professional ethics.
 - (iii) If leave to withdraw is granted, or if the client justifiably asks that counsel be replaced, successor counsel should be available.

PART III. THE LAWYER-CLIENT RELATIONSHIP

Standard 3.1. The Nature Of The Relationship.

- (a) Client's interests paramount.
However engaged, the lawyer's principal duty is the representation of the client's legitimate interests. Considerations of personal and professional advantage or convenience should not influence counsel's advice or performance.
- (b) Determination of client's interests.
 - (i) Generally.
In general, determination of the client's interests in the proceedings, and hence the plea to be entered, is ultimately the responsibility of the client after full consultation with the attorney.
 - (ii) Counsel for the juvenile.
 - [a] Counsel for the respondent in a delinquency or in need of supervision proceeding should ordinarily be bound by the client's definition of his or her interests with respect to admission or denial of the facts or conditions alleged. It is

appropriate and desirable for counsel to advise the client concerning the probable success and consequences of adopting any posture with respect to those proceedings.

[b] Where counsel is appointed to represent a juvenile subject to child protective proceedings, and the juvenile is capable of considered judgment on his or her own behalf, determination of the client's interest in the proceeding should ultimately remain the client's responsibility, after full consultation with counsel.

[c] In delinquency and in need of supervision proceedings, where it is locally permissible to so adjudicate very young persons, and in child protective proceedings, the respondent may be incapable of considered judgment in his or her own behalf.

[1] Where a guardian ad litem has been appointed, primary responsibility for determination of the posture of the case rests with the guardian and the juvenile.

[2] Where a guardian ad litem has not been appointed, the attorney should ask that one be appointed.

[3] Where a guardian ad litem has not been appointed and, for some reason, it appears that independent advice to the juvenile will not otherwise be available, counsel should inquire thoroughly into all circumstances that a careful and competent person in the juvenile's position should consider in determining the juvenile's interests with respect to the proceeding. After consultation with the juvenile, the parents (where their interests do not appear to conflict with the juvenile's), and any other family members or interested persons, the attorney may remain neutral concerning the proceeding, limiting participation to presentation and examination of material evidence or, if necessary, the attorney may adopt the position requiring the least intrusive intervention justified by the juvenile's circumstances.

(iii) Counsel for the parent.

It is appropriate and desirable for an attorney to consider all circumstances, including the apparent interests of the juvenile, when counseling and advising a parent who is charged in a child protective proceeding or who is seeking representation during a delinquency or in need of supervision proceeding. The posture to be adopted with respect to the facts and conditions alleged in the proceeding, however, remains ultimately the responsibility of the client.

Standard 3.2 Adversity of Interests.

(a) Adversity of interests defined.

For purposes of these standards, adversity of interests exists when a lawyer or lawyers associated in practice:

- (i) Formally represent more than one client in a proceeding and have a duty to contend in behalf of one client that which their duty to another requires them to oppose.
- (ii) Formally represent more than one client and it is their duty to contend in behalf of one client that which may prejudice the other client's interests at any point in the proceeding.
- (iii) Formally represent one client but are required by some third person or institution, including their employer, to accommodate their representation of that client to factors unrelated to the client's legitimate interests.

(b) Resolution of adversity.

At the earliest feasible opportunity, counsel should disclose to the client any interest in or connection with the case or any other matter that might be relevant to the client's selection of a lawyer. Counsel should at the same time seek to determine whether adversity of interests potentially exists and, if so, should immediately seek to withdraw from representation of the client who will be least prejudiced by such withdrawal.

Standard 3.3. Confidentiality.

(a) Establishment of confidential relationship.

Counsel should seek from the outset to establish a relationship of trust and confidence with the client. The lawyer should explain that full disclosure to counsel of all facts known to the client is necessary for effective representation, and at the same time explain that the lawyer's obligation of confidentiality makes privileged the client's disclosures relating to the case.

(b) Preservation of client's confidences and secrets.

- (i) Except as permitted by 3.3(d), below, an attorney should not knowingly reveal a confidence or secret of a client to another, including the parent of a juvenile client.
- (ii) Except as permitted by 3.3(d), below, an attorney should not knowingly use a confidence or secret of a client to the disadvantage of the client or, unless the attorney has secured the consent of the client after full disclosure, for the attorney's own advantage or that of a third person.

(c) Preservation of secrets of a juvenile client's parent or guardian.

The attorney should not reveal information gained from or concerning the parent

or guardian of a juvenile client in the course of representation with respect to a delinquency or in need of supervision proceeding against the client, where (1) the parent or guardian has requested the information be held inviolate, or (2) disclosure of the information would likely be embarrassing or detrimental to the parent or guardian and (3) preservation would not conflict with the attorney's primary responsibility to the interests of the client.

- (i) The attorney should not encourage secret communications when it is apparent that the parent or guardian believes those communications to be confidential or privileged and disclosure may become necessary to full and effective representation of the client.
- (ii) Except as permitted by 3.3(d), below, an attorney should not knowingly reveal the parent's secret communication to others or use a secret communication to the parent's disadvantage or to the advantage of the attorney or of a third person, unless (1) the parent competently consents to such revelation or use after full disclosure or (2) such disclosure or use is necessary to the discharge of the attorney's primary responsibility to the client.

(d) Disclosure of confidential communications.

In addition to circumstances specifically mentioned above, a lawyer may reveal:

- (i) Confidences or secrets with the informed and competent consent of the client or clients affected, but only after full disclosure of all relevant circumstances to them. If the client is a juvenile incapable of considered judgment with respect to disclosure of a secret or confidence, a lawyer may reveal such communications if such disclosure (1) will not disadvantage the juvenile and (2) will further rendition of counseling, advice or other service to the client.
- (ii) Confidences or secrets when permitted under disciplinary rules of the ABA Code of Professional Responsibility or as required by law or court order.
- (iii) The intention of a client to commit a crime or an act which if done by an adult would constitute a crime, or acts that constitute neglect or abuse of a child, together with any information necessary to prevent such conduct. A lawyer must reveal such intention if the conduct would seriously endanger the life or safety of any person or corrupt the processes of the courts and the lawyer believes disclosure is necessary to prevent the harm. If feasible, the lawyer should first inform the client of the duty to make such revelation and seek to persuade the client to abandon the plan.
- (iv) Confidences or secrets material to an action to collect a fee or to defend himself or herself or any employees or associates against an accusation of wrongful conduct.

Standard 3.4. Advice and Service with Respect to Anticipated Unlawful Conduct.

It is unprofessional conduct for a lawyer to assist a client to engage in conduct the lawyer believes to be illegal or fraudulent, except as part of a bona fide effort to determine the validity, scope, meaning or application of a law.

Standard 3.5. Duty to Keep Client Informed.

The lawyer has a duty to keep the client informed of the developments in the case, and of the lawyer's efforts and progress with respect to all phases of representation. This duty may extend, in the case of a juvenile client, to a parent or guardian whose interests are not adverse to the juvenile's, subject to the requirements of confidentiality set forth in 3.3, above.

PART IV. INITIAL STAGES OF REPRESENTATION

Standard 4.1. Prompt Action to Protect the Client.

Many important rights of clients involved in juvenile court proceedings can be protected only by prompt advice and action. The lawyers should immediately inform clients of their rights and pursue any investigatory or procedural steps necessary to protection of their clients' interests.

Standard 4.2. Interviewing the Client.

- (a) The lawyer should confer with a client without delay and as often as necessary to ascertain all relevant facts and matters of defense known to the client.
- (b) In interviewing a client, it is proper for the lawyer to question the credibility of the client's statements or those of any other witness. The lawyer may not, however, suggest expressly or by implication that the client or any other witness prepare or give, on oath or to the lawyer, a version of the facts which is in any respect untruthful, nor may the lawyer intimate that the client should be less than candid in revealing material facts to the attorney.

Standard 4.3. Investigation and Preparation.

- (a) It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts concerning responsibility for the acts or conditions alleged and social or legal dispositional alternatives. The investigation should always include efforts to secure information in the possession of prosecution, law enforcement, education, probation and social welfare authorities. The duty to investigate exists regardless of the client's admissions or statements of facts establishing responsibility for the alleged facts and conditions or of any stated desire by the client to admit responsibility for those acts and conditions.
- (b) Where circumstances appear to warrant it, the lawyer should also investigate resources and services available in the community and, if appropriate, recommend

them to the client and the client's family. The lawyer's responsibility in this regard is independent of the posture taken with respect to any proceeding in which the client is involved.

- (c) It is unprofessional conduct for a lawyer to use illegal means to obtain evidence or information or to employ, instruct or encourage others to do so.

Standard 4.4. Relations with Prospective Witnesses.

The ethical and legal rules concerning counsel's relations with lay and expert witnesses generally govern lawyers engaged in juvenile court representation.

PART V. ADVISING AND COUNSELING THE CLIENT

Standard 5.1. Advising the Client Concerning the Case.

- (a) After counsel is fully informed on the facts and the law, he or she should with complete candor advise the client involved in juvenile court proceedings concerning all aspects of the case, including counsel's frank estimate of the probable outcome. It is unprofessional conduct for a lawyer intentionally to understate or overstate the risks, hazards or prospects of the case in order unduly or improperly to influence the client's determination of his or her posture in the matter.
- (b) The lawyer should caution the client to avoid communication about the case with witnesses where such communication would constitute, apparently or in reality, improper activity. Where the right to jury trial exists and has been exercised, the lawyer should further caution the client with regard to communication with prospective or selected jurors.

Standard 5.2. Control and Direction of the Case.

- (a) Certain decisions relating to the conduct of the case are in most cases ultimately for the client and others are ultimately for the lawyer. The client, after full consultation with counsel, is ordinarily responsible for determining:
 - (i) the plea to be entered at adjudication;
 - (ii) whether to cooperate in consent judgment or early disposition plans;
 - (iii) whether to be tried as a juvenile or an adult, where the client has that choice;
 - (iv) whether to waive jury trial;
 - (v) whether to testify on his or her own behalf.

- (b) Decisions concerning what witnesses to call, whether and how to conduct cross-examination, what jurors to accept and strike, what trial motions should be made, and any other strategic and tactical decisions not inconsistent with determinations ultimately the responsibility of and made by the client, are the exclusive province of the lawyer after full consultation with the client.
- (c) If a disagreement on significant matters of tactics or strategy arises between the lawyer and the client, the lawyer should make a record of the circumstances, his or her advice and reasons, and the conclusion reached. This record should be made in a manner which protects the confidentiality of the lawyer-client relationship.

Standard 5.3. Counseling.

A lawyer engaged in juvenile court representation often has occasion to counsel the client and, in some cases, the client's family with respect to nonlegal matters. This responsibility is generally appropriate to the lawyer's role and should be discharged, as any other, to the best of the lawyer's training and ability.

PART VI. INTAKE, EARLY DISPOSITION AND DETENTION

Standard 6.1. Intake and Early Disposition Generally.

Whenever the nature and circumstances of the case permit, counsel should explore the possibility of early diversion from the formal juvenile court process through subjudicial agencies and other community resources. Participation in pre- or nonjudicial stages of the juvenile court process may be critical to such diversion, as well as to protection of the client's rights.

Standard 6.2. Intake Hearings.

- (a) In jurisdictions where intake hearings are held prior to reference of a juvenile court matter for judicial proceedings, the lawyer should be familiar with and explain to the client and, if the client is a minor, to the client's parents, the nature of the hearing, the procedures to be followed, the several dispositions available and their probable consequences. The lawyer should further advise the client of his or her rights at the intake hearing, including the privilege against self-incrimination where appropriate, and of the use that may be made of the client's statements.
- (b) The lawyer should be prepared to make to the intake hearing officer arguments concerning the jurisdictional sufficiency of the allegations made and to present facts and circumstances relating to the occurrence of and the client's responsibility for the acts or conditions charged or to the necessity for official treatment of the matter.

Standard 6.3. Early Disposition.

- (a) When the client admits the acts or conditions alleged in the juvenile court proceeding and, after investigation, the lawyer is satisfied that the admission is factually

supported and that the court would have jurisdiction to act, the lawyer should, with the client's consent, consider developing or cooperating in the development of a plan for informal or voluntary adjustment of the case.

- (b) A lawyer should not participate in an admission of responsibility by the client for purposes of securing informal or early disposition when the client denies responsibility for the acts or conditions alleged.

Standard 6.4. Detention.

- (a) If the client is detained or the client's child is held in shelter care, the lawyer should immediately consider all steps that may in good faith be taken to secure the child's release from custody.
- (b) Where the intake department has initial responsibility for custodial decisions, the lawyer should promptly seek to discover the grounds for removal from the home and may present facts and arguments for release at the intake hearing or earlier. If a judicial detention hearing will be held, the attorney should be prepared, where circumstances warrant, to present facts and arguments relating to the jurisdictional sufficiency of the allegations, the appropriateness of the place of and criteria used for detention, and any noncompliance with procedures for referral to court or for detention. The attorney should also be prepared to present evidence with regard to the necessity for detention and a plan for pretrial release of the juvenile.
- (c) The lawyer should not personally guarantee the attendance or behavior of the client or any other person, whether as surety on a bail bond or otherwise.

PART VII. ADJUDICATION

Standard 7.1. Adjudication without Trial.

- (a) Counsel may conclude, after full investigation and preparation, that under the evidence and the law the charges involving the client will probably be sustained. Counsel should so advise the client and, if negotiated pleas are allowed under prevailing law, may seek the client's consent to engage in plea discussions with the prosecuting agency. Where the client denies guilt, the lawyer cannot properly participate in submitting a plea of involvement when the prevailing law requires that such a plea be supported by an admission of responsibility in fact.
- (b) The lawyer should keep the client advised of all developments during plea discussions with the prosecuting agency and should communicate to the client all proposals made by the prosecuting agency. Where it appears that the client's participation in a psychiatric, medical, social or other diagnostic or treatment regime would be significant in obtaining a desired result, the lawyer should so advise the client and, when circumstances warrant, seek the client's consent to participation in such a program.

Standard 7.2. Formality, In General.

While the traditional formality and procedure of criminal trials may not in every respect be necessary to the proper conduct of juvenile court proceedings, it is the lawyer's duty to make all motions, objections or requests necessary to protection of the client's rights in such form and at such time as will best serve the client's legitimate interests at trial or on appeal.

Standard 7.3. Discovery and Motion Practice.

(a) Discovery.

- (i) Counsel should promptly seek disclosure of any documents, exhibits or other information potentially material to representation of clients in juvenile court proceedings. If such disclosure is not readily available through informal processes, counsel should diligently pursue formal methods of discovery including, where appropriate, the filing of motions for bills of particulars, for discovery and inspection of exhibits, documents and photographs, for production of statements by and evidence favorable to the respondent, for production of a list of witnesses, and for the taking of depositions.
- (ii) In seeking discovery, the lawyer may find that rules specifically applicable to juvenile court proceedings do not exist in a particular jurisdiction or that they improperly or unconstitutionally limit disclosure. In order to make possible adequate representation of the client, counsel should in such cases investigate the appropriateness and feasibility of employing discovery techniques available in criminal or civil proceedings in the jurisdiction.

(b) Other motions.

Where the circumstances warrant, counsel should promptly make any motions material to the protection and vindication of the client's rights, such as motions to dismiss the petition, to suppress evidence, for mental examination, or appointment of an investigator or expert witness, for severance, or to disqualify a judge. Such motions should ordinarily be made in writing when that would be required for similar motions in civil or criminal proceedings in the jurisdiction. If a hearing on the motion is required, it should be scheduled at some time prior to the adjudication hearing if there is any likelihood that consolidation will work to the client's disadvantage.

Standard 7.4. Compliance with Orders.

- (a) Control of proceedings is principally the responsibility of the court, and the lawyer should comply promptly with all rules, orders and decisions of the judge. Counsel has the right to make respectful requests for reconsideration of adverse rulings and has the duty to set forth on the record adverse rulings or judicial conduct which counsel considers prejudicial to the client's legitimate interests.

- (b) The lawyer should be prepared to object to the introduction of any evidence damaging to the client's interest if counsel has any legitimate doubt concerning its admissibility under constitutional or local rules of evidence.

Standard 7.5. Relations with Court and Participants.

- (a) The lawyer should at all times support the authority of the court by preserving professional decorum and by manifesting an attitude of professional respect toward the judge, opposing counsel, witnesses and jurors.
 - (i) When court is in session, the lawyer should address the court and not the prosecutor directly on any matter relating to the case unless the person acting as prosecutor is giving evidence in the proceeding.
 - (ii) It is unprofessional conduct for a lawyer to engage in behavior or tactics purposely calculated to irritate or annoy the court, the prosecutor or probation department personnel.
- (b) When in the company of clients or clients' parents, the attorney should maintain a professional demeanor in all associations with opposing counsel and with court or probation personnel.

Standard 7.7. Presentation of Evidence.

It is unprofessional conduct for a lawyer knowingly to offer false evidence or to bring inadmissible evidence to the attention of the trier of fact, to ask questions or display demonstrative evidence known to be improper or inadmissible, or intentionally to make impermissible comments or arguments in the presence of the trier of fact. When a jury is empaneled, if the lawyer has substantial doubt concerning the admissibility of evidence, he or she should tender it by an offer of proof and obtain a ruling on its admissibility prior to presentation.

Standard 7.8. Examination of Witnesses.

- (a) The lawyer in juvenile court proceedings should be prepared to examine fully any witness whose testimony is damaging to the client's interests. It is unprofessional conduct for counsel knowingly to forego or limit examination of a witness when it is obvious that failure to examine fully will prejudice the client's legitimate interests.
- (b) The lawyer's knowledge that a witness is telling the truth does not preclude cross-examination in all circumstances, but may affect the method and scope of cross-examination. Counsel should not misuse the power of cross-examination or impeachment by employing it to discredit the honesty or general character of a witness known to be testifying truthfully.

- (c) The examination of all witnesses should be conducted fairly and with due regard for the dignity and, to the extent allowed by the circumstances of the case, the privacy of the witness. In general, and particularly when a youthful witness is testifying, the lawyer should avoid unnecessary intimidation or humiliation of the witness.
- (d) A lawyer should not knowingly call as a witness one who will claim a valid privilege not to testify for the sole purpose of impressing that claim on the fact-finder. In some instances, as defined in the ABA Code of Professional Responsibility, doing so will constitute unprofessional conduct.
- (e) It is unprofessional conduct to ask a question that implies the existence of a factual predicate which the examiner knows cannot be supported by evidence.

Standard 7.9. Testimony by the Respondent.

- (a) It is the lawyer's duty to protect the client's privilege against self-incrimination in juvenile court proceedings. When the client has elected not to testify, the lawyer should be alert to invoke the privilege and should insist on its recognition unless the client competently decides that invocation should not be continued.
- (b) If the respondent has admitted to counsel facts which establish his or her responsibility for the acts or conditions alleged and if the lawyer, after independent investigation, is satisfied that those admissions are true, and the respondent insists on exercising the right to testify at the adjudication hearing, the lawyer must advise the client against taking the stand to testify falsely and, if necessary, take appropriate steps to avoid lending aid to perjury.
 - (i) If, before adjudication, the respondent insists on taking the stand to testify falsely, the lawyer must withdraw from the case if that is feasible and should seek the leave of the court to do so if necessary.
 - (ii) If withdrawal from the case is not feasible or is not permitted by the court, or if the situation arises during adjudication without notice, it is unprofessional conduct for the lawyer to lend aid to perjury or to use the perjured testimony. Before the respondent takes the stand in these circumstances the lawyer should, if possible, make a record of the fact that respondent is taking the stand against the advice of counsel without revealing that fact to the court. Counsel's examination should be confined to identifying the witness as the respondent and permitting the witness to make his or her statement to the trier of fact. Counsel may not engage in direct examination of the respondent in the conventional manner and may not recite or rely on the false testimony in argument.

Standard 7.10. Argument.

The lawyer in juvenile court representation should comply with the rules generally governing argument in civil and criminal proceedings.

Standard 8.1. In General.

A proceeding to transfer a respondent from the jurisdiction of the juvenile court to a criminal court is a critical stage in both juvenile and criminal justice processes. Competent representation by counsel is essential to the protection of the juvenile's rights in such a proceeding.

Standard 8.2. Investigation and Preparation.

- (a) In any case where transfer is likely, counsel should seek to discover at the earliest opportunity whether transfer will be sought and, if so, the procedure and criteria according to which that determination will be made.
- (b) The lawyer should promptly investigate all circumstances of the case bearing on the appropriateness of transfer and should seek disclosure of any reports or other evidence that will be submitted to or may be considered by the court in the course of transfer proceedings. Where circumstances warrant, counsel should promptly move for appointment of an investigator or expert witness to aid in the preparation of the defense and for any other order necessary to protection of the client's rights.

Standard 8.3. Advising and Counseling the Client Concerning Transfer.

Upon learning that transfer will be sought or may be elected, counsel should fully explain the nature of the proceeding and the consequences of transfer to the client and the client's parents. In so doing, counsel may further advise the client concerning participation in diagnostic and treatment programs which may provide information material to the transfer decision.

Standard 8.4. Transfer Hearings.

If a transfer hearing is held, the rules set forth in Part VII of these standards shall generally apply to counsel's conduct of that hearing.

Standard 8.5. Post-Hearing Remedies.

If transfer for criminal prosecution is ordered, the lawyer should act promptly to preserve an appeal from that order and should be prepared to make any appropriate motions for post-transfer relief.

Standard 9.1. In General.

The active participation of counsel at disposition is often essential to protection of clients' rights and to furtherance of their legitimate interests. In many cases the lawyer's most valuable service to clients will be rendered at this stage of the proceeding.

Standard 9.2. Investigation and Preparation.

- (a) Counsel should be familiar with the dispositional alternatives available to the court, with its procedures and practices at the disposition stage, and with community services that might be useful in the formation of a dispositional plan appropriate to the client's circumstances.
- (b) The lawyer should promptly investigate all sources of evidence including any reports or other information that will be brought to the court's attention and interview all witnesses material to the disposition decision.
 - (i) If access to social investigation, psychological, psychiatric or other reports or information is not provided voluntarily or promptly, counsel should be prepared to seek their disclosure and time to study them through formal measures.
 - (ii) Whether or not social and other reports are readily available, the lawyer has a duty independently to investigate the client's circumstances, including such factors as previous history, family relations, economic condition and any other information relevant to disposition.
- (c) The lawyer should seek to secure the assistance of psychiatric, psychological, medical or other expert personnel needed for purposes of evaluation, consultation or testimony with respect to formation of a dispositional plan.

Standard 9.3. Counseling Prior to Disposition.

- (a) The lawyer should explain to the client the nature of the disposition hearing, the issues involved and the alternatives open to the court. The lawyer should also explain fully and candidly the nature, obligations and consequences of any proposed dispositional plan, including the meaning of conditions of probation, the characteristics of any institution to which commitment is possible, and the probable duration of the client's responsibilities under the proposed dispositional plan. Ordinarily, the lawyer should not make or agree to a specific dispositional recommendation without the client's consent.
- (b) When psychological or psychiatric evaluations are ordered by the court or arranged by counsel prior to disposition, the lawyer should explain the nature of the procedure to the client and encourage the client's cooperation with the person or persons administering the diagnostic procedure.

- (c) The lawyer must exercise discretion in revealing or discussing the contents of psychiatric, psychological, medical and social reports, tests or evaluations bearing on the client's history or condition or, if the client is a juvenile, the history or condition of the client's parents. In general, the lawyer should not disclose data or conclusions contained in such reports to the extent that, in the lawyer's judgment based on knowledge of the client and the client's family, revelation would be likely to affect adversely the client's well-being or relationships within the family and disclosure is not necessary to protect the client's interests in the proceeding.

Standard 9.4. Disposition Hearing.

- (a) It is the lawyer's duty to insist that proper procedure be followed throughout the disposition stage and that orders entered be based on adequate reliable evidence.
 - (i) Where the dispositional hearing is not separate from adjudication or where the court does not have before it all evidence required by statute, rules of court or the circumstances of the case, the lawyer should seek a continuance until such evidence can be presented if to do so would serve the client's interests.
 - (ii) The lawyer at disposition should be free to examine fully and to impeach any witness whose evidence is damaging to the client's interests and to challenge the accuracy, credibility and weight of any reports, written statements or other evidence before the court. The lawyer should not knowingly limit or forego examination or contradiction by proof of any witness, including a social worker or probation department officer, when failure to examine fully will prejudice the client's interests. Counsel may seek to compel the presence of witnesses whose statements of fact or opinion are before the court or the production of other evidence on which conclusions of fact presented at disposition are based.
- (b) The lawyer may, during disposition, ask that the client be excused during presentation of evidence when, in counsel's judgment, exposure to a particular item of evidence would adversely affect the well-being of the client or the client's relationship with his or her family, and the client's presence is not necessary to protecting his or her interests in the proceeding.

Standard 9.5. Counseling After Disposition.

When a dispositional decision has been reached, it is the lawyer's duty to explain the nature, obligations and consequences of the disposition to the client and his or her family and to urge upon the client the need for accepting and cooperating with the dispositional order. If appeal from either the adjudicative or dispositional decree is contemplated, the client should be advised of that possibility, but the attorney must counsel compliance with the court's decision during the interim.

Standard 10.1. Relations with the Client After Disposition.

- (a) The lawyer's responsibility to the client does not necessarily end with dismissal of the charges or entry of a final dispositional order. The attorney should be prepared to counsel and render or assist in securing appropriate legal services for the client in matters arising from the original proceeding.
 - (i) If the client has been found to be within the juvenile court's jurisdiction, the lawyer should maintain contact with both the client and the agency or institution involved in the disposition plan in order to ensure that the client's rights are respected and, where necessary, to counsel the client and the client's family concerning the dispositional plan.
 - (ii) Whether or not the charges against the client have been dismissed, where the lawyer is aware that the client or the client's family needs and desires community or other medical, psychiatric, psychological, social or legal services, he or she should render all possible assistance in arranging for such services.
- (b) The decision to pursue an available claim for postdispositional relief from judicial and correctional or other administrative determinations related to juvenile court proceedings, including appeal, habeas corpus or an action to protect the client's right to treatment, is ordinarily the client's responsibility after full consultation with counsel.

Standard 10.2. Post-Dispositional Hearings Before the Juvenile Court.

- (a) The lawyer who represents a client during initial juvenile court proceedings should ordinarily be prepared to represent the client with respect to proceedings to review or modify adjudicative or dispositional orders made during earlier hearings or to pursue any affirmative remedies that may be available to the client under local juvenile court law.
- (b) The lawyer should advise the client of the pendency or availability of a postdispositional hearing or proceeding and of its nature, issues and potential consequences. Counsel should urge and, if necessary, seek to facilitate the prompt attendance at any such hearing of the client and of any material witnesses who may be called.

Standard 10.3. Counsel on Appeal.

- (a) Trial counsel, whether retained or appointed by the court, should conduct the appeal unless new counsel is substituted by the client or by the appropriate court. Where there exists an adequate pool of competent counsel available for assignment to appeals from juvenile court orders and substitution will not work substantial disadvantage to the client's interests, new counsel may be appointed in place of trial counsel.

- (b) Whether or not trial counsel expects to conduct the appeal, he or she should promptly inform the client, and where the client is a minor and the parents' interests are not adverse, the client's parents of the right to appeal and take all steps necessary to protect that right until appellate counsel is substituted or the client decides not to exercise this privilege.
- (c) Counsel on appeal, after reviewing the record below and undertaking any other appropriate investigation, should candidly inform the client as to whether there are meritorious grounds for appeal and the probable results of any such appeal, and should further explain the potential advantages and disadvantages associated with appeal. However, appellate counsel should not seek to withdraw from a case solely because his or her own analysis indicates that the appeal lacks merit.

Standard 10.4. Conduct of the Appeal.

The rules generally governing conduct of appeals in criminal and civil cases govern conduct of appeals in juvenile court matters.

Standard 10.5. Post-Dispositional Remedies: Protection of the Client's Right to Treatment.

- (a) A lawyer who has represented a client through trial and/or appellate proceedings should be prepared to continue representation when post-dispositional action, whether affirmative or defensive, is sought, unless new counsel is appointed at the request of the client or continued representation would, because of geographical considerations or other factors, work unreasonable hardship.
- (b) Counsel representing a client in post-dispositional matters should promptly undertake any factual or legal investigation in order to determine whether grounds exist for relief from juvenile court or administrative action. If there is reasonable prospect of a favorable result, the lawyer should advise the client and, if their interests are not adverse, the client's parents of the nature, consequences, probable outcome and advantages or disadvantages associated with such proceedings.
- (c) The lawyer engaged in post-dispositional representation should conduct those proceedings according to the principles generally governing representation in juvenile court matters.

Standard 10.6. Probation Revocation; Parole Revocation.

- (a) Trial counsel should be prepared to continue representation if revocation of the client's probation or parole is sought, unless new counsel is appointed or continued representation would, because of geographical or other factors, work unreasonable hardship.
- (b) Where proceedings to revoke conditional liberty are conducted in substantially the same manner as original petitions alleging delinquency or need for supervision, the standards governing representation in juvenile court generally

apply. Where special procedures are used in such matters, counsel should advise the client concerning those procedures and be prepared to participate in the revocation proceedings at the earliest stage.

Standard 10.7. Challenges to the Effectiveness of Counsel.

- (a) A lawyer appointed or retained to represent a client previously represented by other counsel has a good faith duty to examine prior counsel's actions and strategy. If, after investigation, the new attorney is satisfied that prior counsel did not provide effective assistance, the client should be so advised and any appropriate relief for the client on that ground should be vigorously pursued.
- (b) A lawyer whose conduct of a juvenile court case is drawn into question may testify in judicial, administrative or investigatory proceedings concerning the matters charged, even though in so doing the lawyer must reveal information which was given by the client in confidence.

ENDNOTES

- 1 *Gideon v. Wainwright*, 372 U.S. 335 (1963).
- 2 *Id.* at 343.
- 3 See *infra* notes 4-9 and accompanying text.
- 4 *In re Gault*, 387 U.S. 1, 20 (1967); codified at Fla. Stat. Ann. § 985.203.
- 5 *In re Gault*, 387 U.S. at 36.
- 6 *Id.* at 18.
- 7 *In re Winship*, 397 U.S. 358 (1970).
- 8 *Breed v. Jones*, 421 U.S. 519 (1975).
- 9 *Kent v. United States*, 383 U.S. 541 (1966).
- 10 *In re Winship*, 397 U.S. at 365-66.
- 11 *In re Gault*, 387 U.S. 1, 36 (1967); (Randy Hertz, Martin Guggenheim & Anthony Amsterdam, *Trial Manual for Defense Attorneys in Juvenile Court* 36 (1991); *IJA-ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*.
- 12 Kristin Henning, *Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of Child's Counsel in Delinquency Cases*, 81 *Notre Dame L. Rev.* 245, 255-56 (2005).
- 13 *Id.*
- 14 Pub. L. 93-415 (1974).
- 15 National Advisory Committee for Juvenile Justice and Delinquency Prevention, *Standards for the Administration of Juvenile Justice* § 3.132 Representation by Counsel - For the Juvenile (1980).
- 16 For a description of the project, see *IJA-ABA Juvenile Justice Standards Annotated: A Balanced Approach* xvi-xviii (Robert E. Shepherd, ed., 1996).
- 17 *IJA-ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 3.1(b).
- 18 ABA Juvenile Justice Center, Juvenile Law Center, & Youth Law Center, *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (1995), available at <http://www.njdc.info/pdf/cjfull.pdf>.
- 19 American Council of Chief Defenders & National Juvenile Defender Center, *Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems* (2005) [hereinafter *Ten Core Principles*], available at http://www.njdc.info/pdf/10_Principles.pdf.
- 20 National Council of Juvenile and Family Court Judges, *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases* 25 (2005) [hereinafter *NCJFCJ Guidelines*].
- 21 Barry Krisberg & Vanessa Patiño, National Council on Crime & Delinquency, *Juvenile Justice in Florida* 11 (2004).
- 22 Office of Research & Planning, Florida Department of Juvenile Justice, *2004-05 Profile of Delinquency Cases and Youths Referred* [hereinafter *2004-05 Profile*], electronic file downloadable from http://www.djj.state.fl.us/Research/Delinquency_Profile/0405_Profile.html (last visited June 28, 2006).
- 23 *Id.*
- 24 The youth population aged 10-17 has increased steadily from 1999 through 2004. C. Puzanchera, T. Finnegan, & W. Kang, *Easy Access to Juvenile Populations* (2006), <http://ojjdp.ncjrs.org/ojstatbb/ezapop/> (last visited June 28, 2006).
- 25 *2004-05 Profile*, *supra* note 22.
- 26 Krisberg & Patiño, *supra* note 21, at 14.

- 27 *Id.*
28 *Id.*
29 2004-05 Profile, *supra* note 22.
30 *Id.*
31 Krisberg & Patiño, *supra* note 21, at 14.
32 Howard N. Snyder & Melissa Sickmund, National Center for Juvenile Justice, *Juvenile Offenders and Victims: 2006 National Report* 201 (2006).
33 *Id.*
34 Krisberg & Patiño, *supra* note 21, at 22.
35 *Id.* at 24.
36 Snyder & Sickmund, *supra* note 34, at 201.
37 Krisberg & Patiño, *supra* note 21, at 26-27.
38 *Id.*
39 American Bar Association, *State & County Expenditures for Indigent Defense Services in Fiscal Year 2002* 34 (2003).
40 *Id.* at 8.
41 Fla. Stat. Ann. § 27.5304.
42 Fla. Stat. Ann. § 27.42.
43 Fla. Stat. Ann. § 985.209(2).
44 Fla. Stat. Ann. § 985.209(3).
45 Fla. Stat. Ann. § 985.209(5).
46 Shay Bilchik, *Community Assessment Centers: A Discussion of the Concept's Efficacy* (1995).
47 Krisberg & Patiño, *supra* note 21, at 8.
48 Hon. Barbara J. Pariente, *What, Where, Why and How: Unified Family Courts in Florida* 4 (2003), available at http://www.flcourts.org/gen_public/family/bin/UFCHistoricalnarrative.pdf.
49 *Family Court I*, 588 So. 2d 586 (Fla. 1991).
50 *Family Court II*, 633 So. 2d 14, 16 (Fla. 1994).
51 Pariente, *supra* note 50, at 6.
52 Fla. Stat. Ann. § 985.01(1)(e)(1).
53 Fla. Stat. Ann. § 985.01(1)c.
54 Fla. Stat. Ann. § 985.02 (3); *see also* Fla. Const. art. V, § 20(c)(3).
55 Fla. Stat. Ann. § 985.201(1).
56 *State v. G.D.M.*, 394 So. 2d 1017, 1018 (Fla. 1981).
57 Fla. Stat. Ann. § 985.219(8).
58 Fla. Stat. Ann. § 985.201(3)(b).
59 Fla. Stat. Ann. § 985.03(6).
60 Fla. Stat. Ann. § 985.201(4).
61 *See* Fla. Stat. Ann. § 985.226 (waiver); Fla. Stat. Ann. § 986.227 (direct file); Fla. Stat. Ann. § 985.225 (indictment).
62 *State v. G.D.M.*, 394 So. 2d 1017, 1018 (Fla. 1981).
63 Fla. Stat. Ann. § 985.226(2)(a).
64 Fla. Stat. Ann. § 985.227(1)(b).
65 Fla. Stat. Ann. § 985.227(1)(a).
66 Fla. Stat. Ann. § 985.226(2)(b)(1).
67 Fla. Stat. Ann. § 985.226(2)(b)(2).
68 Fla. Stat. Ann. § 985.226(2)(b).
69 Fla. Stat. Ann. §§ 985.225(4), 985.226(4), 985.227(3).
70 Fla. Stat. Ann. §§ 985.225(4), 985.226(4), 985.227(3)(a).
71 Fla. Stat. Ann. § 985.203(1).

72 *Id.*
73 Fla. R. Juv. P. R. 8.010(e)(2).
74 *See* Fla. R. Juv. P. R. 8.070; 8.080(b)(2), 8.165.
75 *J.M. v. State*, 533 So. 2d 778, 779 (Fla. Dist. Ct. App. 1988).
76 Fla. Stat. Ann. § 985.203(1).
77 *Id.*
78 Fla. R. Juv. P.R. 8.165(b)(2); *State v. T.G.*, 800 So. 2d 204, 210-11 (Fla. 2001).
79 *C.K. v. State*, 909 So. 2d 602, 604 (Fla. Dist. Ct. App. 2005); *T.M. v. State*, 811 So. 2d 837, 839
(Fla. Dist. Ct. App. 2002).
80 *State v. T.G.*, 800 So. 2d 204, 211 (Fla. 2001) (citations omitted).
81 *C.K. v. State*, 909 So. 2d 602, 604 (Fla. Dist. Ct. App. 2005).
82 Fla. R. Juv. P.R. 8.165 (b)(4).
83 Fla. R. Juv. P.R. 8.080(a).
84 Fla. R. Juv. P.R. 8.080(b).
85 Fla. R. Juv. P.R. 8.165(3). Citing budget concerns and a desire to work cooperatively with
the legislature, the Supreme Court reluctantly declined to impose a requirement that a
youth consult with an attorney prior to waiving his right to counsel, deferring the issue
and recommending that the legislature adopt such a rule. *Amend. to the Fla. R. Juv. P.*, 894
So.2d 875, 880-881 (Fla. 2005).
86 Fla. R. Juv. P.R. 8.165(3).
87 *Amend. to the Fla. R. Juv. P.*, 894 So.2d 875, 881 (Fla. 2005); *State v. T.G.*, 800 So. 2d 204, 211 (Fla.
2001) (discussing the written waiver and colloquy as separate judicial responsibilities).
88 Fla. Stat. Ann. § 985.207(1)(a).
89 Fla. Stat. Ann. § 985.207(1)(b).
90 Fla. Stat. Ann. § 985.207(1)(c).
91 Fla. Stat. Ann. § 985.207(1)(d).
92 Fla. Stat. Ann. § 985.211(1).
93 Fla. Stat. Ann. § 985.211(2)(a).
94 Fla. Stat. Ann. § 985.211(2)(b).
95 Fla. Stat. Ann. § 985.03(19).
96 Fla. Stat. Ann. § 985.01(1)(d).
97 Fla. Stat. Ann. § 985.215(1).
98 Fla. Stat. Ann. § 985.215(4).
99 Fla. Stat. Ann. § 985.215(4)(a).
100 Fla. Stat. Ann. § 985.214(1).
101 Fla. Stat. Ann. § 985.215(2).
102 *Id.*
103 Fla. R. Juv. P.R. 8.010(g).
104 Fla. Stat. Ann. § 985.213.
105 Fla. Stat. Ann. § 985.215(2), (5)(a).
106 Fla. Stat. Ann. § 985.215(5)(c).
107 Fla. Stat. Ann. § 985.215(5)(g).
108 Fla. Stat. Ann. §§ 985.404(3), 985.21(1)(a)(3).
109 Fla. Stat. Ann. § 985.21(1)(a)(4).
110 Fla. Stat. Ann. § 985.21(1)(b)(1).
111 Fla. Stat. Ann. § 985.21(4).
112 Fla. Stat. Ann. § 985.218(1).
113 Fla. Stat. Ann. § 985.222.
114 Fla. R. Juv. P.R. 8.070.
115 Fla. R. Juv. P.R. 8.075(d).

116 Fla. R. Juv. P.R. 8.080(a).
117 Fla. R. Juv. P.R. 8.095(a)(1)(A).
118 *Id.*
119 Fla. Stat. Ann. § 985.223(1)(b).
120 Fla. Stat. Ann. § 985.223(1)(g).
121 Fla. Stat. Ann. § 985.223(1)(h).
122 Fla. Stat. Ann. § 985.205(1).
123 *Id.*
124 Fla. Stat. Ann. § 985.206.
125 Fla. R. Juv. P.R. 8.100(a).
126 Fla. Stat. Ann. § 985.228(2).
127 Fla. Stat. Ann. § 985.228(2)(a)-(b).
128 Fla. Stat. Ann. § 985.288(2)(c).
129 Fla. Stat. Ann. § 985.228(3)-(5).
130 Fla. Stat. Ann. § 985.229(1).
131 Fla. R. Juv. P.R. § 8.165(b)(1), (5); Fla. Stat. Ann. § 985.203(1).
132 Fla. Stat. Ann. § 985.23(1)(d).
133 *Id.*
134 *Ten Core Principles, supra* note 19.
135 Fla. Stat. Ann. § 985.231(1)(a)(3); Fla. Stat. Ann. § 985.03(46) (defining five levels of restriction ranging from minimum-risk nonresidential to maximum-risk residential).
136 Fla. Stat. Ann. § 985.231(1)(a)(2).
137 Fla. Stat. Ann. § 985.231(1)(a)(1).
138 Fla. Stat. Ann. § 985.231(1)(a)(4).
139 Fla. Stat. Ann. § 985.231(1)(a)(5), (9).
140 Fla. Stat. Ann. § 985.231(1)(a)(6).
141 Fla. Stat. Ann. § 985.231(1)(a)(7).
142 Fla. Stat. Ann. §§ 985.231(1)(a)(8), 985.231(2).
143 Fla. Stat. Ann. §§ 985.231(1)(a)(10), 985.231(3).
144 Fla. Stat. Ann. §§ 985.231(1)(a)(1)(a), 985.231(1)(d).
145 Fla. Stat. Ann. § 985.231(1)(a)(1)(c).
146 Fla. Stat. Ann. § 985.231(1)(c).
147 Fla. Stat. Ann. § 985.231(1)(f).
148 Fla. Stat. Ann. § 985.234(1)(a); *see also* Fla. R. App. P. § 9.145.
149 Fla. Stat. Ann. § 985.234(1)(b).
150 Fla. R. App. P.R. 9.140(b)(3).
151 Fla. Stat. Ann. § 985.234(4); Fla. R. App. P. § 9.145(d).
152 *In re Gault*, 387 U.S. 1 (1967); Fla. Stat. Ann. § 985.203(1).
153 *Amend. to the Fla. R. Juv. P.*, 894 So.2d 875 (Fla. 2005).
154 Fla. R. Juv. P. R. 8.165.
155 *State v. T.G.*, 800 So. 2d 204 (Fla. 2001).
156 *See supra* notes 90-95 and accompanying text.
157 Fla. R. Juv. P.R. 8.165(b)(3).
158 *Amend. to the Fla. R. Juv. P.*, 894 So.2d 875 (Fla. 2005).
159 *C.K. v. State*, 909 So. 2d 602 (Fla. Dist. Ct. App. 2005).
160 Fla. R. Juv. P.R. 8.165(b) (even after accepting a child’s waiver, the court must renew the offer of the assistance of counsel at every subsequent court appearance).
161 Fla. R. Juv. P.R. 8.080(b).
162 Fla. R. Juv. P.R. 8.080(a).
163 Fla. R. Juv. P.R. 8.080(a), (b)(3).

- 164 Fla. R. Juv. P. R. 8.080(b)(4)-(6).
165 Fla. R. Juv. P. R. 8.080(b)(1).
166 Fla. R. Juv. P. R. 8.080 (b) (7).
167 NCJFCJ *Guidelines*, *supra* note 20, at 125.
168 *E.L. v. State*, 720 So. 2d 280 (Fla. Dist. Ct. App. 1998); *D.V.L. v. State*, 693 So. 2d 693 (Fla. Dist. Ct. App. 1997).
169 *See, e.g., C.K. v. State*, 909 So.2d 602 (Fla. Dist. Ct. App. 2005) (youth’s waiver of counsel was invalid when judge merely asked, “do you understand that if you could not afford an attorney, I would appoint one to represent you?”); *T.M. v. State*, 811 So.2d 837 (Fla. Dist. Ct. App. 2002) (youth’s waiver of counsel was invalid when court only informed youth that he had right to an attorney then asked if he wanted to waive the right, his age, and whether he was on medication); *M.Q. v. State*, 818 So.2d 615 (Fla. Dist. Ct. App. 2002) (youth’s waiver of counsel was invalid when judge asked only whether anyone offered inducements for the plea and whether youth understood that by entering the plea he was subjecting himself to the jurisdiction of the juvenile court, to which youth responded “yes”).
170 *Koenig v. State*, 597 So. 2d 256, 258 (Fla. 1992) (plea was reversed where judge merely asked defendant whether “he understood that he was waiving ‘certain rights’” but failed to explicitly explain each right and neglected to confirm that defendant understood the waiver of rights form); *accord Jones v. State*, 885 So. 2d 449 (Fla. Dist. Ct. App. 2004) (plea was invalid where record failed to indicate that defendant’s low reading level and mental capacity were considered in the court’s determination of the defendant’s intelligence and the plea’s voluntariness).
171 *Compare* Fla. R. Crim. P.R. 3.172 *with* Fla. R. Juv. P.R. 8.080.
172 Fla. Stat. Ann. § 27.52(1)(b).
173 Fla. Stat. Ann. § 27.52(1)(a).
174 Fla. Stat. Ann. § 27.52 (3).
175 Fla. Stat. Ann. § 27.52(4).
176 Fla. Stat. Ann. § 27.52(1).
177 Fla. Stat. Ann. § 27.52 (4).
178 Fla. Stat. Ann. § 27.52 (6).
179 Fla. Stat. Ann. §§ 27.52(4), 985.203(2).
180 Fla. Stat. Ann. § 985.203(3).
181 Fla. Stat. Ann. § 27.52 (6).
182 *IJA-ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 3.3(a).
183 *IJA-ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 3.3(b)(i).
184 *IJA-ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 3.5.
185 NCJFCJ *Guidelines*, *supra* note 20, at 90.
186 *Id.*
187 *Id.*
188 *Id.* at 91.
189 *IJA-ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 3.5.
190 Elizabeth Calvin, *Legal Strategies to Reduce the Unnecessary Detention of Children 21-24* (2004) (advice for how to argue in favor of alternatives to detention).
191 Fla. Stat. Ann. § 985.215(2), (5).
192 Fla. Stat. Ann. § 985.213; Florida Department of Juvenile Justice, “Juvenile Justice Detention” webpage, <http://www.djj.state.fl.us/Detention/index.html> (last visited June

- 27, 2006).
- 193 Fla. Stat. Ann. § 985.213(2).
- 194 Fla. Stat. Ann. § 985.215(2).
- 195 Fla. R. Juv. P.R. 8.010.
- 196 Calvin, *supra* note 208, at 56 (listing studies).
- 197 NCJFCJ *Guidelines*, *supra* note 20, at 81.
- 198 *IJA-ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 4.3.
- 199 Fla. R. Juv. P. R. 8.060(d).
- 200 NCJFCJ *Guidelines*, *supra* note 20, at 135.
- 201 Fla. Stat. Ann. § 985.23.
- 202 NCJFCJ *Guidelines*, *supra* note 20, at 137.
- 203 *Ten Core Principles*, *supra* note 19, at Principle 8A.
- 204 NCJFCJ *Guidelines*, *supra* note 20, at 196.
- 205 *Id.* at 43.
- 206 *Ten Core Principles*, *supra* note 19, at Principle 7.
- 207 Henning, *supra* note 12 (advocating collaborative model of counseling clients in delinquency proceedings).
- 208 NCJFCJ *Guidelines*, *supra* note 20, at 30, 122, 137, 161; *IJA-ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 3.1.
- 209 *IJA-ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 2.2(b)(iii).
- 210 *IJA-ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 2.2(b)(iv).
- 211 NCJFCJ *Guidelines*, *supra* note 20, at 123.
- 212 *Id.*
- 213 *Id.*
- 214 *Id.*
- 215 *Jackson v. State*, 698 So. 2d 1299, 1301-02 (Fla. Dist. Ct. App. 1997) (quoting *Holbrook v. Flynn*, 475 U.S. 560, 568-69 (1986)).
- 216 *Bryant v. State*, 785 So. 2d 422, 428 (Fla. 2001).
- 217 *Id.*; *Jackson*, 698 So. 2d at 1302.
- 218 *Bryant*, 785 So. 2d at 429.
- 219 *S.Y. v. McMillan*, 563 So. 2d 807 (Fla. Dist. Ct. App. 1990).
- 220 *Id.* at 808.
- 221 *Id.*
- 222 *United States v. Howard*, 429 F.3d 843 (2005).
- 223 *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 392 (1992); *United States v. Howard*, 429 F.3d 843, 852 (2005).
- 224 28 C.F.R. 552.22(h).
- 225 Office of Research and Planning, Florida Department of Juvenile Justice, *School-Related Referrals FY 2004-2005 1* (2006), available at http://www.djj.state.fl.us/Research/04-05_School_Referral.pdf.
- 226 Fla. Stat. Ann. § 39.013(2).
- 227 *2004-05 Profile*, *supra* note 22.
- 228 Snyder & Sickmund, *supra* note 34, at 213.
- 229 *Id.* at 212.
- 230 Eileen Poe-Yamagata & Michael A. Jones, *And Justice for Some: Differential Treatment of Minority Youth in the Justice System* (2000), available at <http://www.buildingblocksforyouth.org/justiceforsome/jfs.html> (select “Formal Processing” from table of contents).
- 231 Barry Krisberg & Vanessa Patiño, *Reforming Juvenile Detention in Florida 2* (2005), available

at http://www.nccd-crc.org/nccd/pubs/2005_fla_reform_JDet.pdf.
232 *Id.*
233 Snyder & Sickmund, *supra* note 34, at 213.
234 *Id.*
235 NCJFCJ *Guidelines*, *supra* note 20, at 25.
236 Snyder & Sickmund, *supra* note 34, at 6.
237 M. Sickmund, T.J. Sladky, & W. Kang, *Census of Juveniles in Residential Placement Databook*,
online at <http://www.ojjdp.ncjrs.org/ojstatbb/cjrp/> (last visited July 6, 2006).
238 Office of Program Policy Analysis and Government Accountability, *Gender-Specific Services
for Delinquent Girls Vary Across Programs, But Help Reduce Recidivism* (Report No. 05-13)
(2005).
239 *Id.*
240 Florida Department of Juvenile Justice, *Female Offenders Fact Sheet* (2004), available at
<http://www.djj.state.fl.us/Research/statsresearch/factsheets/femaleoffenders.html>
241 *Id.*
242 Florida Department of Juvenile Justice, *A DJJ Success Story: Trends in the Transfer of Juveniles
to Adult Criminal Court 1-2, 4* (2002) [hereinafter *DJJ Success Story*], available at http://www.pdmiami.com/DJJ_study_transfer_summary.pdf.
243 Jeffrey A. Butts & Adele V. Harrell, *Delinquents or Criminals: Policy Options for Young
Offenders* 6 (1998).
244 *DJJ Success Story*, *supra* note 262, at 7-8.
245 *Id.* at 8.
246 Fla. Stat. Ann. § 985.226.
247 Fla. Stat. Ann. § 985.227.
248 *Id.*
249 *DJJ Success Story*, *supra* note 262, at 5.
250 Fla. Stat. Ann. § 985.225.
251 Fla. Stat. Ann. § 985.215(5)(c), (g).
252 Of course, the prosecutor can only enter negotiations regarding cases eligible for
discretionary, as opposed to mandatory, direct file. *See* Fla. Stat. Ann. § 985.227.
253 Fla. Stat. Ann. § 985.206.
254 Fla. R. Juv. P.R. 8.075(b).
255 Fla. Stat. Ann. § 985.206 (victim has a right to be heard at crucial steps in the proceedings);
Chase Squires, *Student on Path to Make up for Prank*, St. Petersburg Times, Dec. 18, 2004, at
4 (quoting judge who refuses to approve plan without victim's assent).
256 *See, e.g.,* Chase Squires, *Student on Path to Make up for Prank*, St. Petersburg Times, Dec.
18, 2004, at 4; Kelly Ryan, *Juveniles in Rape Sent to Programs*, St. Petersburg Times, May 23,
1996, at 1.
257 The *Principles* and accompanying commentary are available at [http://www.njdc.info/
pdf/10_Principles.pdf](http://www.njdc.info/pdf/10_Principles.pdf).
258 NCJFCJ *Guidelines*, *supra* note 20.
259 *Id.* at 25.
260 *Id.*
261 Model statutes developed by the National Juvenile Defender Center and the Center for
Policy Alternatives to accomplish these goals are available at [http://www.njdc.info/pdf/
waiver_model_legislation.pdf](http://www.njdc.info/pdf/waiver_model_legislation.pdf).
262 NCJFCJ *Guidelines*, *supra* note 20, at 78-79.
263 *Id.* at 25, 187, 196.



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