



MISSOURI: JUSTICE RATIONED

An Assessment of Access to Counsel and
Quality of Juvenile Defense Representation
in Delinquency Proceedings

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National Juvenile Defender Center
Central Juvenile Defender Center



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EXECUTIVE SUMMARY

While Missouri stands out for its innovation in providing small, regionalized juvenile corrections programs, an effective juvenile justice system is not built solely upon the corrections options available to youth after they have navigated their way through a complex legal process. An effective juvenile justice system must encompass the foundational elements of fundamental fairness and due process. **The system must include legal advocacy and zealous representation by competent and well-trained attorneys who uphold the rights of children at all critical stages.** The 1967 United States Supreme Court decision *In re Gault* extended the principles of due process to delinquency proceedings.¹ It held that accused youth facing the awesome prospect of incarceration have the right to counsel.² Due process is violated when children’s legal interests are not protected.

This assessment is designed to provide policy makers and juvenile defense leaders with relevant baseline information about whether youth have timely and meaningful access to qualified counsel in delinquency proceedings, identify systemic barriers to quality representation, highlight best practices, and provide recommendations and implementation strategies for improving Missouri’s juvenile indigent defense delivery system.

The report begins with a summary of the evolution of due process and the right to counsel for youth in delinquency proceedings. It then provides an overview of this right as it pertains to youth in Missouri, and gives a snapshot of the state’s judicial system, the juvenile justice system, and the indigent defense system. A synopsis of Missouri juvenile law and the various stages of delinquency proceedings are then described to facilitate an understanding of how youth navigate through the system.

Findings made in the report are based upon the results of survey data from judges and attorneys across the state, interviews with other key stakeholders, youth and families, and information obtained from extensive site visits to local juvenile courts in a sampling of jurisdictions. Three overarching concerns were identified by the investigative team as endemic in the system, and reached across many areas of practice:

1. Missouri’s indigent defense system is in crisis and has endured at least two decades of crushing caseloads and inadequate resources to provide its mandated services. In spite of numerous reports, attempts, legislative fixes, and litigation, the system remains broken and forced to ration services. With the exception of a few counties that rigorously defend the right to counsel for juveniles, youth are discouraged from and systematically denied counsel throughout the state.
2. While Missouri is recognized for innovative facilities and an effective service delivery system for youth in the delinquency system, this does not negate the need for adequate due process protections to be put into place. There is an imbalance between acknowledging and protecting the basic rights established in *In re Gault* and adjudicating youth delinquent in order to obtain services or otherwise intervene in the lives of children and families.
3. The structure of Missouri’s juvenile court, by its very nature, creates conflicting roles. The role of the deputy juvenile officer (Missouri’s equivalent of probation officer) and legal officer (Missouri’s equivalent of prosecutor), as designed and implemented, presents challenges to the judiciary regarding the fair implementation of due process, supervision, and the requirement of impartiality. The role of the deputy juvenile officers may also contribute to high rates of youth waiving their right to counsel.

It is against this backdrop that the juvenile defense delivery system must be put into context. Ensuring due process for youth in delinquency proceedings takes low priority in the system. This denial of due process is well

¹ *In re Gault*, 387 U.S. 1 (1967).

² *Id.* at 36-37.

known, and it is deeply entrenched in the culture of many juvenile courts, as evidenced by the many interviews, reports, and other sources of information reviewed as part of this assessment.

Findings also include descriptions of barriers to accessing counsel, and barriers to effective practice among attorneys defending youth at each critical stage of court proceedings. However, the investigative team also found several promising practices and programs that promote the representation of indigent youth, including some run by Missouri law schools.

The Recommendations are directed at all three branches of government and other stakeholders that impact juvenile defense practices. These Recommendations should be used as the basis for various reform initiatives to improve access to and quality of representation for children who come before the juvenile courts in Missouri. Included in the final chapter are both Core Recommendations and Implementation Strategies. The Core Recommendations, also provided directly below, focus on the principal areas in which work is needed to improve both access to counsel and quality of representation for youth in the delinquency system. The Implementation Strategies derive from these Core Recommendations and provide more detailed suggestions for achieving reform in specific areas.

THE CORE RECOMMENDATIONS

1. **Ensure Timely Appointment of Counsel:** Youth must be appointed counsel and have access to counsel early in their case.
2. **Reduce Waiver of Counsel:** Missouri should establish a presumption against waiver of counsel; whereby, a youth must first consult with counsel before any waiver is permitted. No child should be denied counsel because of lack of resources.
3. **Afford Representation at All Critical Stages:** Missouri youth should be afforded counsel at all critical stages of the proceedings.
4. **Allocate Sufficient Resources:** Missouri must commit adequate funding to juvenile representation that allows for reasonable caseloads and effective advocacy. Juvenile defenders must also have access to ancillary services such as investigators, experts, and social workers.
5. **Strengthen Monitoring and Oversight:** The indigent defense delivery system should include a separate juvenile division to centralize leadership, innovation, and responsibility around juvenile defense. The division would strengthen positive practices and policies and would provide ongoing statewide oversight and monitoring.
6. **Establish Data Collection:** A system of data collection should be established, which can track appointment of counsel at early stages, and other pertinent data regarding juvenile representation to aid management in decision making. Best practices and innovations should be identified and promoted through data collection.
7. **Recognize Juvenile Defense as a Specialized Area of Practice:** Juvenile defense should be recognized and appreciated as a highly specialized practice. A system with ongoing training, support, and networking among defenders should be established. Attorneys should participate in comprehensive training before working in juvenile court, and they should have the opportunity for ongoing training to enhance their practice skills and knowledge of the field.
8. **Reduce Youth in the Adult System:** The age for adult criminal court jurisdiction in Missouri should be raised from 17 to 18.

9. **Adopt Standards of Practice:** Juvenile defense practice standards should be adopted and implemented statewide. Expectations regarding ethical obligations and performance of attorneys providing representation at all critical stages should be included.
10. **Address the Role of the Deputy Juvenile Officer:** The expansive role of the deputy juvenile officer should be addressed to ensure that it does not influence, directly or indirectly, the ability of youth to be appointed counsel early in the process, and to prevent statements made to these individuals from being admissible in court.



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