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Report criticizes handling of juvenile cases

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CHARLESTON, W.Va. -- Juveniles in West Virginia who require legal representation face "pervasive problems" in the way their cases are handled, [according to a new report](#).

The assessment, issued by the [National Juvenile Defender Center](#), praises West Virginia's laws dealing with juveniles as among "the most progressive in the country." But what actually happens in courtrooms, characterized by a "general malaise," falls short, according to the study.

"Pervasive problems, like a profound lack of resources, customary discouragement of diligent advocacy, excessive reliance on improvement periods and guilty pleas, and long periods of detention for relatively minor offenses, keep West Virginia's juvenile indigent defense system from being as effective as it could be in protecting the rights of children facing delinquency charges," the report concludes.

In a prepared statement, state Supreme Court Chief Justice Robin Davis said the court would review the report.

"Providing counsel to children accused of crimes or delinquency is an important due process right that the West Virginia judiciary strives to protect," Davis said. "As the report indicates, our statutes protecting those rights are among the best in the nation. Other issues noted in the report may need to be addressed."

The study lists 10 core recommendations, some of which point to issues that have already drawn scrutiny and criticism from other quarters, including lack of sufficient funding for the West Virginia Public Defender Service and no requirement for magistrates to have law degrees.

"[I]f magistrates are going to be tasked with presiding over legal hearings, including juvenile detention hearings, they should be required to be licensed attorneys," the report states.

The juvenile defense system needs ongoing, statewide oversight and monitoring, including regular data collection and promotion of best practices and innovations, the report concludes.

There are several significant shortcomings in the way these cases are handled now, according to the report, including the courthouse culture surrounding juvenile cases.

"The informality of delinquency proceedings encourages lax observance of juveniles' due process rights," the report states.

Some appointed defense attorneys described an unwritten rule that they should not be "too adversarial or too aggressive" when they handle juvenile cases, according to the report.

"[O]ften, providing even minimal or basic legal assistance, such as filing motions or taking cases to trial, was considered adversarial or aggressive," the study states.

In addition, some defense lawyers lobbied in favor of what they felt was best for the child, instead of advocating in favor of their legal interests.

"[M]any lawyers emphasize serving the child's best interests over serving the child's stated legal interests, demonstrating a fundamental lack of understanding as to the role of defense counsel in delinquency court," the report states.

Kanawha County Public Defender George Castelle, whose office includes two lawyers who are staffed fulltime to juvenile cases, praised the report for highlighting a difficult aspect of defending

children.

For example, he said, if a lawyer didn't argue in a juvenile case that his or her client should be released from custody, believing the client was better off away from a problematic home environment, no one would complain.

But that would never happen in an adult case, he said.

"There's a belief that the same principals don't apply in a juvenile case, and they do," he said.

Overall, Castelle said the report's findings rang true with him, but it's hard to generalize about circumstances.

"This is a diverse state. It's difficult to compare practices in a densely populated county like Kanawha with practices in more rural counties," he said.

In the summer of 2008, an investigative team of 19 experts visited 12 counties picked to get a representative sample of demographics, crime trends and counties with and without Public Defenders offices.

Too often, few matters in juvenile cases were contested, resulting in overuse of guilty pleas and improvement periods, which can be a double-edged sword for a young defendant. If he or she stays out of trouble for the entire period, the charges can be dropped, but if the defendant violates what is essentially pre-trial probation, then he or she might be less likely to receive it as a sentence once the case is resolved.

"Many children are initially caught up in the system through pre-petition diversion programs or improvement periods and end up deep in the system because of technical violations while under supervision, either as part of an improvement period agreement, or probation," the report states. "[The] overreliance on these programs seemed to merely widen the net at the front end."

The report includes implementation strategies for the state Legislature, the judiciary, defense attorneys and prosecutors and other courthouse personnel involved in juvenile cases, and even urges West Virginia University's law school to offer more opportunities to specialize and focus on juvenile justice.

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