

Ohio

**Justice Cut Short:
An Assessment of Access to
Counsel and Quality of
Representation in Delinquency
Proceedings in Ohio**

American Bar Association
Juvenile Justice Center
National Juvenile Defender Center

and

Central Juvenile Defender Center
Children's Law Center, Inc.

with the assistance of:

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PROCEEDINGS IN OHIO

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EXECUTIVE SUMMARY

INTRODUCTION

In 1995, a national assessment regarding access to counsel and the quality of representation in juvenile delinquency proceedings was conducted by the American Bar Association, Juvenile Justice Center, in collaboration with the Juvenile Law Center, Inc. in Philadelphia, and the Youth Law Center, Inc. in Washington, D.C. The findings were published in *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*. The study laid the foundation for closer examination of access and quality issues regarding representation of juveniles in this country, and recommended that each state assess its indigent defense system to ensure adequate protections for poor children in the justice system.

In 2002, the Central Juvenile Defender Center, through the Children's Law Center, Inc. in Covington, Kentucky, in conjunction with the ABA National Juvenile Defender Center and the Juvenile Justice Coalition, Inc. embarked upon a statewide study of Ohio's indigent juvenile defense system. The study included extensive surveying of judges, magistrates and defense attorneys, and detention center superintendents, and interviews with hundreds of youth incarcerated throughout Ohio in the adult prison system, Ohio Department of Youth Service facilities, and community corrections facilities. Even more importantly, the methodology utilized a team of highly trained and experienced attorneys recommended by the ABA Juvenile Justice Center to conduct site visits to juvenile courts throughout Ohio to observe proceedings, interview key participants and provide demonstrative and anecdotal data for the report.

The study, which utilizes the ABA protocol for assessing indigent juvenile defense services, was designed to assess three major areas: 1) whether indigent youth have access to counsel in Ohio juvenile courts, 2) the quality of representation being provided to youth throughout Ohio, and 3) structural and other systemic barriers that impact upon access and quality, including a number of substantive issues faced by juvenile courts in this state. The findings and recommendations of the study, as attached in draft form to this report, are compelling and indicative of a system plagued with poor policies and practices, lack of funding, and perhaps most important, lack of any real leadership to effect positive reforms on behalf of poor children and youth in our courts.

SIGNIFICANT FINDINGS

Among the most significant findings outlined in the report are:

- **Numerous obstacles exist for Ohio's poor children to obtain lawyers in the juvenile justice system.**

It has become a tolerated if not accepted practice that large numbers of poor youth waive their right to an attorney in Ohio, even during the most critical stages of proceedings, without proper colloquies from judges and magistrates. While many factors contribute to this high waiver rate, it is most commonly the result of the lack of any defense counsel visibility, the

failure of attorneys to understand their role as advocates, the lack of understanding on the part of youth and parents about the process, the prevalence of a culture that devalues the defense bar as an important part of the system, and funding constraints.

- **Zealous representation from well-trained attorneys in the juvenile justice system seems to be the exception rather than the rule for indigent youth in Ohio.**

The quality of representation for youth who are assigned counsel varied by jurisdiction, but overall there was a lack of meaningful representation at the arrest or detention hearing stage, little pre-trial or trial advocacy, and appellate and post-disposition work were extremely limited or non-existent in many jurisdictions. Of particular concern is that critical issues in Ohio's juvenile justice system such as mental health, special needs for female offenders, and lack of prevention and alternative programming are not being addressed adequately by defense counsel.

- **Numerous systemic barriers hamper effective representation to children.**

Effective representation is hampered by the state's appointment process, including the lack of qualifications of attorneys handling cases, lack of clarity in determining eligibility, and the timing of appointment. Many attorneys are unclear about the role they play in a delinquency proceedings, and often juvenile courts in Ohio function without the routine presence of prosecutors or defense attorneys. The Office of the Ohio Public Defender has limited administrative oversight or authority over local practices, thus resulting in substantial discrepancies how programs are structured and funded. Lack of compensation, lack of training, and inconsistency in technology and other support systems for attorneys is also pervasive.

- **Ohio lacks leadership on juvenile justice issues that can effectively ensure that the rights of children are protected.**

An overall void in leadership concerning the rights and needs of children in the juvenile justice system is pervasive in Ohio, and has resulted in a failure to address many of the substantive issues facing children in Ohio courts. In particular, the study's findings suggest the existence of a significant over-dependence upon probation services, overdependence upon detention and incarceration for treatment or punishment, criminalization of mentally ill children, high rates of disproportionate minority confinement, and a "schoolyard to jail yard" pipeline on school related conduct.

Youth interviewed for the study were quite vocal about their experiences with attorneys in the justice system. Those youth with private attorneys reported much better experiences than those with public defenders or appointed counsel. Youth were most concerned that attorneys spent little time with them or on their case, and often did not follow through on any preparation or defense for the young person. As one young girl noted, *"I always waive my right to an attorney because it's easier and quicker than waiting for somebody who won't care about my case anyhow."*

RECOMMENDATIONS

The report concludes with a series of recommendations for the Governor, Legislature, and judicial branch, as well as local counties and defender organizations, Executive Branch agencies, and Ohio law schools and bar associations. Among these recommendations are:

I. THE GOVERNOR AND LEGISLATURE:

Should enact and implement an unwaivable right to counsel for all children and youth for every stage of delinquency and unruly proceedings, including probation revocation hearings where loss of liberty is a possible outcome;

Should enact and implement due process protections for children and youth found incompetent or criminally insane in conformity with the recommendations made by the Ohio Sentencing Commission; and,

Should enact and implement a juvenile defense delivery system for the State of Ohio that ensures:

- Adequate funding and resources for salaries, contractual rates, expert services, case support, and ancillary services; and,
- Provides ready access to and quality representation by trained and competent defense counsel.

II. THE JUDICIARY:

Should ensure that all jurists handling juvenile matters receive ongoing training in juvenile matters;

Should encourage leadership among the judiciary on juvenile justice issues; and

Should require training and education of attorneys appointed to represent indigent youth that focused on the special needs of juveniles in the justice system.

III. LOCAL COURTS AND COUNTIES:

Should institute systems for the appointment of counsel to all children and youth at the earliest possible time in all delinquency and unruly cases where loss of liberty is a possible outcome;

Should ensure that Ohio's juvenile defender system is sufficiently and adequately funded, including costs for appointed counsel, expert services, investigative resources and ancillary services;

Should develop and implement standardized procedures for the eligibility and appointment of counsel for children and youth, including, but not limited to, minimum practice

requirements to be eligible for appointment, requirements of ongoing professional education in juvenile law and related issues, periodic review of attorney performance, and equitable distribution of appointments;

Should engage in a thorough and ongoing review of detention practices, including the role of defense counsel, to prevent the overuse and abuse of detention; and,

Should address the issues of disproportionate minority representation in the juvenile justice system in real and meaningful ways, including the collection and dissemination of data related to race in every aspect of the system.

IV. OFFICE OF THE OHIO PUBLIC DEFENDER:

Should provide increased opportunities for all juvenile defense attorneys to participate in meaningful and intensive training on relevant issues facing children and youth in the system, including child development issues, motion practice, dispositional advocacy, detention advocacy, trial skills, competency and capacity litigation, education advocacy, and post-disposition advocacy;

Should provide and promote leadership among the entire juvenile defense bar and take a leadership role on substantive juvenile law issues such as bindover and serious youthful offender trends, disproportionate minority confinement issues, mental health issues, girls issues and school-based referrals to juvenile court;

Should increase appellate and other post-dispositional advocacy initiatives;

Should provide strong legislative advocacy on right to counsel issues and other substantive issues involving children and youth in the justice system; and,

Should develop and implement a strategic plan, including staffing, support, resources, training, expert services and adequate funding, for the formation of state public defender offices and/or standardized appointment procedures in every county.

V. LOCAL PUBLIC DEFENDER OFFICES:

Should implement a system which ensures that every child and youth will consult with counsel at all critical stages of juvenile proceedings and that every child, youth, parent and guardian have all necessary information concerning the importance of representation prior to decisions of waiver being made;

Should directly address the overuse and abuse of detention within the juvenile justice system through increased detention advocacy, ensuring due process in all proceedings available to children and youth, and effective advocacy on behalf of alternatives to secure detention;

Should implement a system of representation:

- that provides juvenile defense practitioners with adequate and ongoing training in child development issues, motion practice, disposition advocacy, detention advocacy, basic and advanced trial skills, competency and capacity litigation, education advocacy and appellate work;
- that provides structured mentoring to all attorneys inexperienced in juvenile law practice and procedure;
- that provides ready and available access to client information, sample motions and pleadings, caseload data, and current level of resources;
- that allows adequate appellate advocacy on behalf of all children and youth in the system;
- that provides a fair and standardized policy to address conflicts of interest among clients within the system;
- that tracks and sets caseload and workload limits for all counsel handling juvenile matters.

Should provide leadership on juvenile justice issues in local communities to further educate the public on issues such as bindover and serious youthful offender trends, disproportionate minority representation, mental health issues, girls' issues and school-based referrals to juvenile court.

VI. BAR ASSOCIATIONS:

Should take a greater role in the further development and implementation of a fair and just juvenile justice system;

Should take an active role in ensuring that there are sufficient continuing legal education offerings for juvenile law practitioners; and

Should ensure that practice standards are met by practitioners and the juvenile justice system supported by adequate funding and resources.

VII. OHIO LAW SCHOOLS:

Should examine the nature and content of law school courses related to juvenile practice to ensure appropriate educational opportunities are provided to law students that can support high standards in juvenile court practice; and,

Should provide prestigious internships, externships and fellowship opportunities to public interest organizations such as juvenile defender units, juvenile law centers, and juvenile justice policy initiatives to attract quality students into the juvenile practice area.