

NATIONAL JUVENILE JUSTICE NETWORK

SIX POLICY PRIORITIES FOR JUVENILE DEFENSE

WHY JUVENILE DEFENSE DOESN'T END IN THE COURTROOM

POLICY UPDATE | MAY 2013

The National Juvenile Defender Center (NJDC) recently released comprehensive new best practice standards for juvenile defense attorneys, which seek to strengthen and clarify juvenile defense practice and policy, elevate the practice of juvenile law, and improve the delivery of legal services to all indigent youth. The standards were developed over a five-year period under the rubric of the John D. and Catherine T. MacArthur Foundation's Juvenile Indigent Defense Action Network.¹

The new standards acknowledge the vital role that juvenile defenders can and should play in policy and justice system reform, calling on defenders to address a number of system deficiencies. This policy update highlights the areas in which NJDC calls defenders to take action toward broad systemic reform, and encourages advocates to collaborate in these areas.² Please review the full *National Juvenile Defense Standards* for a greater understanding of the

¹ The Juvenile Indigent Defense Action Network (JIDAN) is part of the John D. and Catherine T. MacArthur Foundation's Models for Change initiative. It was launched in 2008 to develop targeted strategies to improve juvenile indigent defense policy and practice. For more information about JIDAN and Models for Change, visit <http://www.modelsforchange.net/about/Action-networks/Juvenile-indigent-defense.html>.

² The information in this fact sheet is drawn from the *National Juvenile Defense Standards*, National Juvenile Defender Center (2012), <http://bit.ly/12s2Kds>, developed with support from the John D. & Catherine T. MacArthur Foundation's Models for Change initiative.

unique and critical role of specialized juvenile defense counsel and how the best practice standards seek to guide and inform the performance of defenders.

Six Areas for Collaborative Advocacy with Juvenile Defenders

NJJN encourages policy advocates to partner with juvenile defense attorneys and defender organizations on juvenile justice system reform. Juvenile defenders bring their first-hand experience with challenges related to due process and fair treatment of youth and can be vital partners in policy advocacy. The *National Juvenile Defense Standards* specifically call on defenders to advocate for the following system reforms.

1. Ensure Early Access to Counsel

Early appointment of counsel for youth—meaning prior to the first hearing—is vital to ensuring that their rights are protected. In many jurisdictions, defense counsel is not appointed until after the initial hearing, which is when decisions are made on whether to detain youth. It is essential for youth to have counsel at this hearing to protect their liberty interests. The standards urge defenders to advocate for reforming system deficiencies that prevent the early appointment of counsel. This type of change can be accomplished best through legislative reform but can also be done through policy changes with local court systems and defender offices.³ **Standards 3.1 and 10.2.**

2. Establish a Presumption of Indigence for All Youth

Youth should not be denied counsel because of their parents' or relatives' income or assets. Youth generally lack control over these finances and parents or relatives may be unable or unwilling to expend their resources on defender services. Additionally, youth may waive counsel based on fear of investigation into their families' financial welfare. The standards urge counsel to address financial impediments to the appointment of counsel. This can be accomplished through legislation, court rules, or policy changes that establish a presumption of indigence for all youth in the justice system for the purposes of the appointment of counsel.⁴ **Standard 10.3.**

³For example, in 2005, in response to concerns raised in the report, "Virginia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings," National Juvenile Defender Center (October 2002), Virginia passed a law requiring that counsel be appointed for youth prior to detention hearings in delinquency proceedings. VA. CODE ANN. §16.1-266 (B) (2005).

⁴The Pennsylvania Rules of Juvenile Court Procedure for Delinquency Matters provide that "[a]ll juveniles are presumed indigent." Courts are directed to appoint counsel for any youth that appears at a hearing without counsel. Pa.R.J.C.P. 151. Virginia law presumes indigence for the purposes of appointment of counsel for youth at the detention hearing. VA. CODE ANN. §16.1-266 (B) (2005).

3. Prevent Invalid Waiver of Counsel

It is common for youth throughout the country to waive their right to counsel, before they even have an initial consultation with an attorney.⁵ This is a problem for several reasons. Unrepresented youth often feel pressured to resolve their cases quickly—sometimes due to anxiety or overt pressure from judges, parents, or prosecutors. Additionally, youth often waive counsel without understanding the due process rights they are foregoing and the lifelong consequences of decisions such as pleading guilty. The standards urge defenders to “support or spearhead efforts to provide safeguards against waiver of counsel.”⁶ Some states have passed laws prohibiting youth from waiving counsel,⁷ while others require that youth must first consult with counsel and be fully advised of the consequences of waiver.⁸ **Standard 10.4.**

4. Challenge Disparate Treatment and Discrimination

Attorneys can be a good source of data and documentation on disparate treatment and discrimination for advocates. Recognizing that youth from a variety of populations—particularly youth of color—are overrepresented in the juvenile justice system and face discrimination at every stage in the system, the standards urge attorneys to “work in unison with other defenders and stakeholders to address system-wide discrimination and to participate in efforts to reform court rules, laws, and processes contributing to this problem of systemic injustice.”⁹ **Standard 10.5.**

5. Ensure Resources and Manageable Caseloads for Juvenile Defenders

Advocates can support efforts of defenders to ensure that counsel have sufficient resources in order to provide high-quality representation for youth, and can help educate policymakers on the negative impact of insufficient resources.¹⁰ Resources include financial compensation, as well as access to experts, investigators, office space, social workers, and support staff. Many juvenile

⁵ *National Juvenile Defense Standards*, National Juvenile Defender Center (2012), 157 n. 300, available at <http://bit.ly/12s2Kds>.

⁶ *National Juvenile Defense Standards*, 157.

⁷ *National Juvenile Defense Standards* (citing IOWA CODE ANN. § 232.11(2) (2006) (prohibiting waivers for youth under 16); TEX. FAM. CODE ANN. § 51.10(B) (Supp. 2006) (prohibiting waivers at specified hearings; WIS. STAT. ANN. § 938.23(1)(m)(a) (Supp. 2006) (prohibiting waivers for youth under 15); PA ST. JUV. CT. R. 152 (near absolute prohibition for all youth in juvenile court)).

⁸ *National Juvenile Defense Standards* (citing *State ex rel. J.M. v. Taylor*, 276 S.E.2d 199 (W. Va. 1981) (attorney must advise youth); *In re B.M.H.*, 339 S.E.2d 757 (Ga. Ct. app. 1986) (judge must advise youth); *In re Christopher T.*, 740 A.2d 69, 75-76 (1999) (judge must advise youth); N.Y. FAM. CT. ACT §249-a (1999) (by clear and convincing evidence, youth must prove he or she knowingly and intelligently waived the right to counsel and that the waiver is in the youth’s best interest).

⁹ *National Juvenile Defense Standards*, 158.

¹⁰ The Nevada Supreme Court adopted indigence defense standards in 2009 that included standards for delinquency cases covering the role of defense counsel and recommending that counsel ensure they have adequate time and resources for their juvenile representation; Virginia improved its notoriously low compensation for court-appointed juvenile defenders through legislative changes to the fee structure in 2007. “Examples in Juvenile Justice Reform: 2007-2008,” National Juvenile Justice Network (July 2008), 20-21, available at http://njjn.org/uploads/digital-library/NJJN-Advances_2007-2008.pdf.

defenders also have overwhelming caseloads; advocates can work with them to pursue strategies to limit excessive caseloads so that attorneys can properly fulfill their Sixth Amendment obligation to provide effective assistance of counsel to their young clients. **Standards 10.6 and 10.7.**

6. Identify and Eliminate Harmful Conditions of Confinement

There are numerous examples of abuses and unsafe conditions in juvenile facilities across the country, many of which have led to litigation to address the problems.¹¹ Defense counsel are uniquely situated to identify these problems and can be effective partners in reform. The standards state that attorneys have a duty to investigate, document, and act on claims of clients regarding unlawful conditions of confinement; must seek to stop the placement of youthful clients in unsafe facilities; and to the extent they are able, should “participate in any policy or reform efforts to reduce over-incarceration and eliminate harmful conditions of confinement.”¹² **Standard 10.8.**

How Does Your State Rate?

Not sure if your state has addressed some of the problems discussed above? The National Juvenile Defender Center (NJDC) has comparative state data on many of these issues on their website at http://www.njdc.info/state_data.php. NJDC has also done comprehensive state assessments on systemic and institutional barriers to the access to and quality of defense counsel in a large number of states. State assessments can be found at <http://www.njdc.info/assessments.php>.

¹¹ *EW, CM, and Disability Rights, Mississippi v. Lauderdale County, Miss.*, Case No. 4:09 CV 137 TSL-LRA (S.D. Miss., April 30, 2010) (settlement agreement order resulting from litigation over extremely poor conditions in juvenile facilities); *J.D., L.E., and R.A. v. C. Ray Nagin, Mayor, City of New Orleans, et al.*, Civil Action No. 07-9755 (E.D. La, Feb. 12, 2010) (consent decree entered into after a class action suit was brought against the city of New Orleans for federal constitutional and statutory violations due to extremely unsafe and unsanitary conditions at the Youth Study Center in New Orleans); *Farrell v. Allen, Director, California Youth Authority*, No. RG 03079344 (Superior Court, Alameda County, November 19, 2004) (consent decree entered after the California Youth Authority (CYA) was sued due to serious ongoing problems with conditions in CYA’s facilities).

¹² See *Advances in Juvenile Justice Reform: 2009-2011*, National Juvenile Justice Network (July 2012), 10-11, available at <http://www.njjn.org/our-work/juvenile-justice-reform-advances-2009-2011>, for examples of legislative changes, court standards, administrative changes, and legal cases that have addressed conditions of confinement.

Take Your Advocacy to the Next Level

Connect with Defenders

To connect with defenders interested in juvenile justice reform you can contact your local or state public defender office, some of which have positions dedicated to legislative advocacy. Additionally, the following organizations work with local affiliates on juvenile justice policy:

- The National Juvenile Defender Center has a network of regional juvenile defender centers across the country that provides support and training to juvenile defenders.¹³ Contact NJDC at www.njdc.info for assistance in locating a juvenile defender organization in your jurisdiction.
- The National Association of Criminal Defense Lawyers (NACDL) works on criminal and juvenile justice issues and has affiliate organizations in many states.¹⁴ You can locate an affiliate here: <http://www.nacdl.org/affiliates/>. NACDL also hosts a State Criminal Justice Network for those working on criminal and juvenile justice policy, which can be found at <http://www.nacdl.org/scjn/>.

Implement the Standards

Helping to spread the word about the new standards is the first step toward getting them used. Additionally, assisting with the following concrete measures can help to foster more widespread adoption and implementation of the standards.

- **Legislation:** Legislation can be an effective means of implementing the various standards discussed above, such as laws requiring the appointment counsel for youth prior to the detention hearing or laws prohibiting the waiver of counsel.¹⁵
- **State performance standards:** The *National Juvenile Defender Standards* can also be incorporated into state performance standards established by the bar or the public defender system, which are standards of professionalism that all attorneys handling cases of this nature in a state must follow.¹⁶
- **Court rules:** Local practice rules and/or court rules can be aligned with the standards, effecting change at the local level.
- **Training:** Public defender offices and state bar organizations can provide training programs that raise awareness of and adherence to the new standards.

¹³ NJDC works to build the capacity of the juvenile defense bar, improve access to counsel, and improve the quality of representation for children in the justice system.

¹⁴ NACDL works at all levels of government—federal, state, and local—to promote a rational and humane criminal justice policy that reflects their mission to ensure justice and due process for all.

¹⁵ *Supra* note 4, 8.

¹⁶ An increasing number of states have established performance standards for attorneys handling delinquency cases. In 2011, the Massachusetts Youth Advocacy Department's Private Counsel Unit developed a policy and procedure for new certification standards for handling juvenile cases; and the Louisiana Public Defender Board issued the state's first trial court performance standards for juvenile delinquency proceedings. See *Advances in Juvenile Justice Reform: 2009-2011*, National Juvenile Justice Network (July 2012), 33, at <http://www.njjn.org/our-work/juvenile-justice-reform-advances-2009-2011>.

Conclusion

The *National Juvenile Defender Standards* make clear that defenders have an obligation to engage in juvenile justice policy reform efforts while also providing zealous advocacy to individual clients. The release of the standards creates a moment of opportunity to highlight the ways in which defenders and policy advocates can collaborate for systemic change, and a platform for advancing changes related to the provision of excellent defender services for youth in the justice system.