

NATIONAL JUVENILE JUSTICE NETWORK

Seven Ways to Improve Juvenile Indigent Defense

POLICY UPDATE | NOVEMBER 2012

WHY JUVENILE DEFENSE MATTERS

A cardinal principle of our legal system is that anyone charged with a crime has the right to be represented by a competent attorney who can adequately represent his or her interests. This also applies — as the U.S. Supreme Court made clear in its 1967 ruling, *In re Gault* — to youth summoned to court for delinquency. In theory, this assures that the due process rights of all youth, even those who are indigent, are protected. In practice, however, the knowledge that publicly-funded defense attorneys have about juvenile law and the resources they have to investigate cases and connect families with services, vary significantly by county and state — creating a system of “justice by geography.”

Youth in trouble with the law can pay a high price, even after their cases are resolved. They often appear in court without counsel; agree to plea bargains without understanding what they mean; are detained for months or years while awaiting trial; are transferred into the adult system at alarming rates; and their lawyers often stop following their cases once they are adjudicated.

Youth and their families desperately need strong, capable assistance in the courtroom. Many of them understand so little of the court system, according to a 2009 investigation conducted by the Youth Justice Board at the Center for Court Innovation, that young people frequently believe their lawyers are working against them when they see them talking to judges and other members of the court.¹ Given this, it is imperative that policymakers take steps to improve access to quality juvenile indigent defense for youth.

PROMISING IDEAS FOR REFORM

In recent years, a great deal of work has been undertaken across the country to improve juvenile indigent defense. The goal of this document is to highlight a few of the ideas and themes that

¹ Youth Justice Board, “Strong Families, Safe Communities: Recommendations to Improve New York City’s Alternative to Detention Programs,” Center for Court Innovation (2009), 8-9. Accessed on October 5, 2012 at http://www.courtinnovation.org/sites/default/files/YIBreportfinal_20091.pdf.

have emerged from this work. So many juvenile justice reformers have made contributions to this work, however, that this document cannot be an exhaustive guide.

Instead, we elected to highlight the work done by [Models for Change](#), a national initiative funded by the [John D. and Catherine T. MacArthur Foundation](#) to accelerate reform of juvenile justice systems across the country; along with the work of its companion [Juvenile Indigent Defense Action Network](#), which focuses on improving access to and quality of counsel for youth in the justice system. (The network is coordinated by the [National Juvenile Defender Center \(NJDC\)](#), which has established a national agenda for improving juvenile defense.)² To give a sense of additional reforms being implemented around the country, we also included some notable items from our recent publication, [Advances in Juvenile Justice Reform: 2009-2011](#).

A closer look at how reformers have worked toward their goals reveals promising ideas for the reform of juvenile indigent defense centered on training, practice standards, communications and collaboration, creating supportive tools and resources, and advocacy.

Training

- ***Train attorneys regularly and set minimum training standards.*** Pennsylvania implemented regular trainings for attorneys focusing on issues from first court appearance, to sentencing and beyond. Maine,³ Massachusetts, and Michigan⁴ also implemented similar training programs for juvenile defense attorneys between 2009 and 2011.⁵ In 2009, the [Maine Commission on Indigent Legal Services](#) was established⁶ and promulgated [rules](#) that require a minimum of training for counsel appointed to represent youth. The rules became effective in 2010.⁷
- ***Teach attorneys to train their peers.*** Pennsylvania was able to expand the reach of the trainings by teaching participating attorneys how to train colleagues in their home jurisdictions.

² The main ideas in this document, and many of the examples, are drawn from the Models for Change Innovation Brief, “Raising the Standards of Juvenile Indigent Defense,” from December 2011, available at <http://www.modelsforchange.net/publications/312>. The reforms promulgated by Models for Change and the Juvenile Indigent Defense Action Network are just some of the many policy and practice innovations that have stemmed from Models for Change. For more information about Models for Change, visit www.modelsforchange.net.

³ S.P. 423/L.D. 1132/Public Law 419; signed into law and effective June 17, 2009.

⁴ Executive Order 2011-12, signed October 13, 2011.

⁵ Examples of reform in states other than Pennsylvania are drawn from “Advances in Juvenile Justice Reform: 2009-2011,” National Juvenile Justice Network (July 2012), available at <http://www.njjn.org/our-work/juvenile-justice-reform-advances-2009-2011>. The website includes links to much of the legislation and other resources detailed in “Advances,” sorted by both state and issue area.

⁶ S.P. 423/L.D. 1132/Public Law 419; signed into law and effective June 17, 2009.

⁷ Me. Rev. Stat. Ann., Tit. 4, § 1804(2)(B)(2000).

Standards and Accountability

- ***Establish standards for ethics and quality.*** In 2009, the Nevada Supreme Court adopted performance standards for indigent defense, specifically addressing issues unique to juvenile defendants. The Mississippi State Legislature addressed the ethical concerns of juvenile defense attorneys when it passed a law in 2009 specifying that the duties owed to a juvenile defendant are the same as those owed to an adult client.⁸

In 2007, the [Louisiana Public Defender Board \(LPDB\)](#) was established.⁹ Among other powers, LPDB is authorized to execute and enforce performance standards, monitor local defender offices, and ensure uniform quality indigent defense across all jurisdictions in the state. Of the fifteen board members, one must be designated by the juvenile justice advocate.

The [Juvenile Defenders Association of Pennsylvania](#) (JDAP) created performance [guidelines](#) for juvenile defense counsel that incorporated Pennsylvania's Rules of Professional Conduct, Rules of Juvenile Court Procedure, the Juvenile Act, as well as national standards of professional conduct.

- ***Use standards to evaluate attorney performance.*** In 2011, the Louisiana Public Defender Board issued the state's first trial court performance standards for juvenile delinquency proceedings. The Board intends to use the standards in performance evaluations and attorney trainings. The state of Massachusetts established the Massachusetts Youth Advocacy Department to build a well-trained defense bar, and assure that attorneys adhere to performance standards.

Communicate and Collaborate

- ***Form a professional organization.*** In 2006, Pennsylvania created the Juvenile Defenders Association of Pennsylvania, a non-profit organization, to organize the defense community, uphold professional standards, and coordinate future trainings.
- ***Develop partnerships.*** In New Jersey, the clinical law programs of Rutgers School of Law-Camden and Rutgers School of Law-Newark began collaborating with the New Jersey Office of the Public Defender in 2009 to extend the office's reach by providing post-disposition representation to youth. Similarly, [Louisiana State University's Paul M. Herbert Law Center's Juvenile Defense Clinic](#) represents youth in delinquency proceedings before the East Baton Rouge Parish Juvenile Court.
- ***Establish a listserv.*** In 2011, Massachusetts and Michigan¹⁰ each launched efforts to enable attorneys to communicate easily, ask for advice, and share their experiences. In 2004,

⁸ S.B. 2939/Ch. 536, signed into law April 15, 2009; effective July 1, 2009.

⁹ H.B. 436/Act 307, signed into law July 9, 2007; effective August 15, 2007.

¹⁰ Executive Order 2011-12, signed October 13, 2011.

Pennsylvania established a listserv to connect juvenile defense attorneys practicing in jurisdictions across the state. These forums represent successful efforts to build and connect the juvenile defense community.

Tools and Resources

- ***Develop a practice manual.*** In Pennsylvania, the Juvenile Defenders Association of Pennsylvania published the [Pennsylvania Juvenile Defense Notebook](#), which includes ethical and strategic considerations applicable to various stages of juvenile defense, a CD with relevant case law, model forms and motions, and a database of community-based programs and placements. The [Illinois Juvenile Defender Practice Notebook](#) was published in 2008.
- ***Create a collateral consequences checklist.*** [The Pacific Juvenile Defender Center catalogued the collateral consequences](#) of juvenile delinquency proceedings in California. The Juvenile Defenders Association of Pennsylvania produced, “[The Pennsylvania Juvenile Collateral Consequences Checklist](#),” a summary of the short- and long-term consequences of a juvenile delinquency adjudication. Placement facilities, probation officers, schools, and defense attorneys have all found the checklist helpful.
- ***Educate youth and families.*** In Illinois, Models for Change partners recently released “[Your Guide to the Juvenile Justice System in Illinois](#)”— a know-your-rights pamphlet for youth. They also released a comparable guide for families. In 2010, three counties in Washington began to offer 30-minute orientation sessions called “[Juvenile Justice 101](#)” for family members prior to delinquency hearings.

Funding

- ***Provide training scholarships.*** In Pennsylvania, scholarships are provided to attorneys who would otherwise not be able to attend trainings.
- ***Equalize the pay among prosecuting and defense attorneys working juvenile and adult cases.*** In 2006, the Illinois General Assembly passed legislation that required that Chief Public Defenders be paid at least 90 percent of the salary of the State’s Attorney.¹¹

Right to Counsel

- ***Declare all juveniles indigent for purposes of appointment of counsel.*** In 2011, the Pennsylvania Supreme Court adopted a new rule that declared all youth indigent for the

¹¹ Children and Family Justice Center, Bluhm Legal Clinic, Northwestern University School of Law, and the National Juvenile Defender Center, 2007, *Illinois: An Assessment of Access to Counsel & Quality of Representation in Delinquency Proceedings*, Available at <http://www.law.northwestern.edu/legalclinic/cfjc/documents/ILAssessmentReport.pdf>.

purposes of appointment of counsel in juvenile court. A Louisiana law, passed in 2010, did the same.¹²

- ***Ensure youth are represented at critical stages in the process and when their educational rights are at stake.*** In 2009, the Mississippi State Legislature passed a law that specified the critical stages at which juveniles must be represented by counsel.¹³ The Montana Legislature also expanded youths' right to counsel in 2009, and attorneys are now required to meet with youth prior to detention hearings and prior to a youth's waiver of counsel.¹⁴ Also in 2009, the New Jersey Supreme Court declared that a youth's right to counsel attaches at the filing of a delinquency complaint, or when a judge approves an arrest warrant, both deemed critical stages by the court.¹⁵

In 2011, the Pennsylvania Supreme Court adopted a new procedural rule that requires the court to appoint a responsible adult to act as a youth's spokesperson with regard to educational matters.¹⁶

Advocacy

- ***Hold judges accountable.*** In 2011, Illinois passed a law requiring judges to review additional factors before sentencing youth, and only allowing commitment to the Department of Juvenile Justice if such commitment is the least restrictive alternative appropriate for the youth.¹⁷ Judges in Pennsylvania are now required to explain their dispositions and the reasoning behind them on the record. Moreover, before ordering youth into out-of-home placements, judges must explain why there are no less restrictive alternatives available.
- ***Clarify court procedure to ensure efficiency and due process.*** Between 2009 and 2011, Texas and Tennessee each passed laws that clarify juvenile court procedure. The Texas Legislature amended the procedure to file a motion for a new trial seeking to vacate a juvenile court adjudication, a process that was causing confusion among attorneys.¹⁸ Tennessee guaranteed youths' due process rights by clarifying placement procedures for youth.¹⁹
- ***Streamline expungement.*** Juvenile justice stakeholders in Pennsylvania developed and piloted a new procedure for expunging juvenile records. Between 2009 and 2011,

¹² H.B. 663/Act 593, signed into law June 25, 2010; effective August 15, 2010.

¹³ S.B. 2939/Ch. 536, signed into law April 15, 2009; effective July 1, 2009.

¹⁴ S.B. 91/Ch. 37, signed into law March 20, 2009; effective October 1, 2009.

¹⁵ *In re P.M.P.*, 200 N.J. 166 (2009).

¹⁶ Pennsylvania Juvenile Court Judge's Commission, "Proposed Rule Changes Announced," Pennsylvania Juvenile Justice, 19:5, May 2011, available at <https://www.pabar.org/public/probono/ICICNewsletter05-11.pdf>.

¹⁷ H.B. 83/Public Act 97-362, signed into law August 15, 2011; effective January 1, 2012.

¹⁸ H.B. 1688, signed into law June 19, 2009; effective September 1, 2009.

¹⁹ H.B. 713/Ch. 486, signed into law June 16, 2011; effective July 1, 2011.

Delaware²⁰, Maryland²¹, and North Carolina²² each passed laws that improve expungement opportunities for youth.

- ***Restrict the shackling of youth in court.*** In Pennsylvania, youth may not be shackled in court unless they present a flight risk or danger. Florida,²³ Massachusetts,²⁴ New York,²⁵ and Oregon²⁶ also recently limited the shackling of youth in court.
- ***Limit strip searches.*** A circuit court in Oregon, in its opinion limiting the use of shackling, additionally ruled that strip searches may not be routinely conducted after visits and court appearances; searches must be restricted to those situations in which there is a reasonable suspicion that the youth might have acquired contraband.²⁷
- ***Prohibit ex parte (unilateral) communication with judges.*** In April 2011, the Pennsylvania Supreme Court prohibited *ex parte* communication in juvenile court proceedings. If it occurs, all parties must be informed of the content by the court.²⁸

CONCLUSION

As a nation, we believe that juvenile indigent defense is necessary to ensure the fairness and integrity of the juvenile justice system. Indigent defendants are appointed publicly-funded attorneys because their liberty is at stake and the legal system is complicated—a rationale that is doubly important when dealing with youth, precisely because of their age and the additional concerns this raises. As a result, improving the access to and quality of representation provided to indigent youth should be a top priority.

The suggestions in this policy update offer a very brief summary of ways to improve juvenile indigent defense, which should lead in turn to better outcomes for youth and families, and a fairer juvenile justice system overall. For more information on this topic, please refer to the source documents, and to the [National Juvenile Defender Center](#) (NJDC) and the [Models for Change](#) initiative.

²⁰ H.B. 177/Ch. 188, signed into law August 22, 2011; effective January 1, 2012.

²¹ H.B. 122/Ch. 712, signed into law May 19, 2009; effective October 1, 2009.

²² S.B. 397/Session Law 2011-278, signed into law June 23, 2011; effective December 1, 2011.

²³ *In re Amendments to the Florida Rules of Juvenile Procedure*, 26 So. 3d 552 (Fla. 2009)/Florida Rules of Juvenile Procedure, Rule 8.100.

²⁴ *Trial Court of the Commonwealth Court Officer Policy and Procedures Manual*, Chapter 4, Courtroom Procedures, Section VI, Juvenile Court Sessions; effective March 1, 2010.

²⁵ *John F. v. Gladys Carrion*, January 25, 2010.

²⁶ Letter Opinion, J.L. Collins, Presiding Judge, Yamhill County Oregon Circuit Court (February 7, 2011), available at <http://www.njjn.org/uploads/digital-library/Oregon-Court-Limits-Shackling-and-Strip-Searching-of-Youth-Letter-Opinion-2.7.11.pdf>

²⁷ Id.

²⁸ Pennsylvania Juvenile Court Judge's Commission, "Proposed Rule Changes Announced," Pennsylvania Juvenile Justice, 19:5, May 2011, available at <https://www.pabar.org/public/probono/JCICNewsletter05-11.pdf>.