



ARIZONA BRINGING *GAULT* HOME

AN ASSESSMENT OF
ACCESS TO AND QUALITY OF
JUVENILE DEFENSE COUNSEL

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A report of the National Juvenile Defender Center

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EXECUTIVE SUMMARY

More than fifty years ago, the United States Supreme Court recognized children’s constitutional rights to due process and to the assistance of counsel in delinquency court.¹ In its decision in *In re Gault*, a case that originated in Arizona, the Court recognized that juvenile delinquency proceedings, especially those in which a child’s liberty is at stake, are comparable in seriousness to the felony prosecution of an adult.²



The Court outlined the vital role of counsel for children: “to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether [the child] has a defense and to prepare and submit it.”³ In short, the Court found that children need “the guiding hand of counsel at every step in the proceedings against [them].”⁴

But, to this day, “though every state has a basic structure to provide attorneys for children, few states or territories adequately satisfy access to counsel for young people.”⁵

This Assessment of access to counsel and quality of representation for Arizona’s youth is part of a nationwide effort to provide comprehensive information about defense counsel in delinquency proceedings. Over the last two decades, the National Juvenile Defender Center (NJDC) has evaluated juvenile defense delivery systems in 24 states.

The purpose of a state assessment is to provide policymakers, legislators, defense leadership, and other stakeholders with a comprehensive understanding of children’s access to counsel in the state; to identify structural and systemic barriers that impede effective representation of children; to highlight best practices where found; and to make recommendations that will serve as a guide for improving juvenile defender services for children in the state.

1 *In re Gault*, 387 U.S. 1, 1, 16 (1967).

2 *Id.* at 36.

3 *Id.*

4 *Id.*

5 NAT’L JUVENILE DEFENDER CTR., ACCESS DENIED: A NATIONAL SNAPSHOT OF STATES’ FAILURE TO PROTECT CHILDREN’S RIGHT TO COUNSEL 4 (2017), http://njdc.info/wp-content/uploads/2017/05/Snapshot-Final_single-4.pdf [hereinafter ACCESS DENIED].

Among the most pressing needs relayed to assessment investigators in Arizona was the need for specialized representation for children. In response to investigators' questions about what could improve juvenile defense, one juvenile defender responded: "What I would like to see, what we don't have, is a specialization. While other states have juvenile specialization, Arizona does not. Arizona has specialization for family law, bankruptcy, and other obscure areas of the law, but not juvenile delinquency. I would like to pursue that if it ever came about."

Just as courts have long recognized that children are different from adults and deserve special protections when facing the prospect of prosecution, the legal profession has come to recognize that juvenile defense is a highly specialized area of practice. In many places across the country, "juvenile defense specialization" means there are systems in place to encourage and support attorneys to devote their practice exclusively to the representation of children facing delinquency or criminal prosecution. Where practicable, this is the gold standard.⁶ But, even where exclusive practice is not possible, juvenile defense should be recognized as an area of legal practice requiring expertise.

"Extremism in the defense of liberty is no vice. And let me remind you also that moderation in the pursuit of justice is no virtue."⁷

—Barry Goldwater

As in the defense of an adult, a juvenile defender is charged with presenting the voice of the client and representing their stated interests throughout the case. In order to fulfill this role, a juvenile defender must understand child and adolescent development, be able to evaluate a client's maturity and competency, and be able to communicate effectively not only with young clients, but also with parents and guardians without compromising their ethical duties to the child.⁸

Juvenile defenders must become versed in the specialized arguments critical to effective representation in the unique stages of juvenile court, and be informed as to the complexities that arise in mental health and special education settings and how they might impact the course of a delinquency case.⁹ Juvenile defenders must also inform the client of all collateral consequences of a delinquency adjudication, and be knowledgeable of community-based programs for young people.¹⁰

Although some defenders in Arizona have been able to exclusively practice in juvenile delinquency court, many divide their time between juvenile and adult criminal dockets, or between juvenile delinquency and dependency dockets.

Another area of concern is the need for statewide standards of representation of children facing delinquency prosecution. Juvenile defenders in a few jurisdictions reported that they or their offices informally or formally aspire to adhere to the National Juvenile Defense Standards or American Bar Association (ABA) Standards of representing youth in delinquency proceedings, but that there are no statewide standards in place.

6 NATIONAL JUVENILE DEFENSE STANDARDS at 8-9 (NAT'L JUVENILE DEFENDER CTR. 2012), <http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf> [hereinafter NAT'L JUV. DEF. STANDARDS].

7 *Goldwater's 1964 Acceptance Speech*, THE WASH. POST (1998), <https://www.washingtonpost.com/wp-srv/politics/daily/may98/goldwaterspeech.htm>.

8 NATIONAL JUVENILE DEFENSE STANDARDS, *supra* note 6 at §§ 1.3, 2.2, 2.3, 2.6.

9 *Id.* at § 1.3.

10 *Id.* at §§ 1.4, 6.2.



Many stakeholders—including defenders and judges—mentioned to investigators that Arizona Juvenile Court Rule 40.1 (“Duties and Responsibilities of Appointed Counsel and Guardians Ad Litem”) sets forth the ethical and practical duties, as well as minimum training requirements, for attorneys and guardians *ad litem* who are appointed to represent children in dependency cases.¹¹ Some suggested the rule should be expanded to include delinquency representation; others explained to investigators the need for a separate, similar rule to codify and clarify the unique role of the juvenile delinquency defender.

This Assessment revealed that Arizona has no statutorily required or recommended training guidelines or standards for attorneys representing youth in delinquency proceedings. While investigators found that funds exist for juvenile defender training in some areas of the state, most stakeholders and defenders relayed that more specialized training is needed so that juvenile defenders can better advocate for their clients. In addition to juvenile defenders, many county attorneys and jurists admitted to being “self-taught” in the intricacies of juvenile court, and most believed that juvenile-specific training for all stakeholders would improve the system dramatically.

Arizona is a large state geographically, but with only 15 counties, a transformation of the defense system for children is well within reach. With a renewed commitment to implementing the full panoply of rights established by *Gault*, including the right to the ardent representation by counsel for children, Arizona can realize the guarantees of justice and fairness for its youth.

Arizona youth should experience the full protections of due process any time they touch the legal system.

In the state that incubated the Supreme Court’s declaration of youth rights in *Gault*, every young person facing the legal system should be defended by an attorney who thoroughly prepares their defense, aggressively investigates their case, and advocates for their expressed interests through regular motions practice and use of experts. Arizona youth should experience the full protections of due process any time they touch the legal system. The legacy of *Gault* demands it.

11 See ARIZ. JUV. CT. R. PROC. 40.1.

Summary of Key Recommendations:

- 1 Automatically appoint counsel for all youth regardless of their financial circumstances
- 2 Abolish all fees and costs associated with access to a publicly funded juvenile defender
- 3 Eliminate all fees and costs related to juvenile court
- 4 Appoint all youth a qualified juvenile defender prior to any interrogation or interviews by law enforcement
- 5 Appoint all youth counsel and give them an opportunity to consult with counsel prior to the court considering accepting any waiver of counsel
- 6 Appoint all youth counsel prior to their first appearance before a judge
- 7 Encourage pretrial motions practice as part of a fair and effective justice system
- 8 Ensure juvenile defenders provide active advocacy for youth at disposition
- 9 Ensure access to counsel for youth post-disposition
- 10 Promulgate statewide standards for juvenile court practice and juvenile court training
- 11 Develop an oversight mechanism to ensure consistent juvenile defense quality across jurisdictions
- 12 Augment the state's justice system data collection to include access to counsel data in juvenile court
- 13 Improve resources for and access to interpreters in juvenile court
- 14 Ensure probation officers do not provide legal advice to youth, no matter how well-intentioned
- 15 Work to eliminate existing racial disparities in the juvenile court system
- 16 Do not compromise due process for youth to maintain stakeholder collegiality

CHAPTER ONE

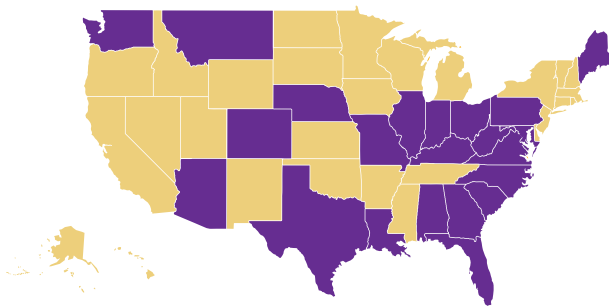
INTRODUCTION



The National Juvenile Defender Center’s (NJDC) state assessments are designed to furnish policymakers and leaders with accurate baseline data and information so they can make informed decisions regarding the nature and structure of the juvenile indigent defense system. Beyond the constitutional mandate to provide children in delinquency courts with counsel, the state of Arizona has a vested interest in ensuring high-quality juvenile defense. When juvenile defense attorneys provide children with effective representation, they can improve the life outcomes of children.



Until NJDC launched its first state assessment, the issues, policies, and funding decisions specific to juvenile defense had never been fully understood or studied separately from adult criminal defense practice. Although some examinations of the adult system have included a juvenile component, such reviews have been cursory. In partnership with its regional juvenile defender centers, NJDC has completed assessments in 24 states, including Arizona.



NJDC has completed assessments in 24 states, including Arizona

When juvenile defense attorneys provide children with effective representation, they can improve the life outcomes of children.

NJDC launched the Arizona Assessment 50 years after the Arizona case leading to the landmark United States Supreme Court decision, *Gault*, was handed down. Our goals in conducting this assessment are to provide the state with a detailed overview of the status of juvenile defense and to advance excellence in juvenile defense practice and policies.

METHODOLOGY

NJDC conducted this assessment in partnership with the Southwest Juvenile Defender Center and the Colorado Juvenile Defender Center. These three organizations led the work of the assessment process and secured state-level support for an analysis of access to and quality of juvenile defense. The Arizona Supreme Court issued a letter to the state's juvenile courts, asking for their participation and cooperation in conducting the assessment.

The assessment team established a site selection committee which, after in-depth review and deliberation, selected seven geographically diverse counties for further study. These counties were selected based on a thorough analysis of state demographics, population rates, arrest data, disposition rates, accessibility to juvenile courts, and a diversity of indigent defense delivery systems. The study sample included urban, suburban, and rural areas and reflects the geographic and cultural diversity of the state.

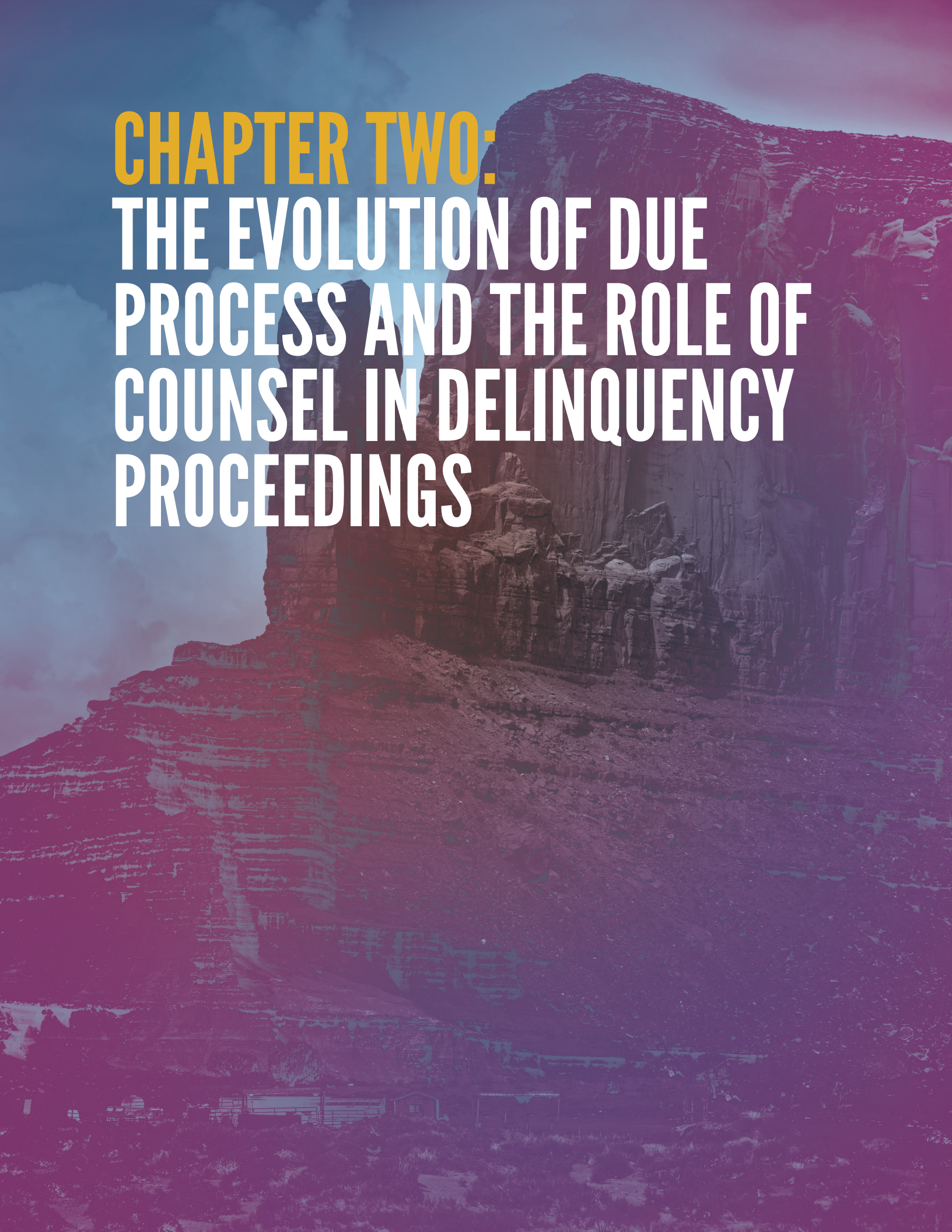
An expert team of national investigators was selected to perform the assessment. The assessment team included current and former public defenders, private practitioners, academics, and juvenile justice advocates, each of whom possessed extensive knowledge of the role of defense counsel in juvenile court. Each site team was trained on assessment protocols and participated in a briefing prior to their site work and a debriefing after the site work. Prior to all site visits, assessment team members reviewed research, reports, and background information about Arizona's juvenile justice system and the county they were scheduled to visit.

Fourteen experienced and highly trained investigators fanned out across the state to conduct site visits, court observations, and confidential meetings and interviews with key justice system stakeholders in the selected counties. The interviews focused on the role and performance of defense counsel, but were conducted with all professionals in the justice system, including public and private defenders, judges, county attorneys, probation officers, and facility staff. Investigators used interview protocols developed by NJDC, which were specifically tailored to Arizona's juvenile court system.

Additionally, investigators gathered documentary evidence and reports while on site and, as practicable, visited local detention centers, where they interviewed administrators and staff. All investigators submitted their field notes, which have been compiled, analyzed, and incorporated into this Assessment.

The resulting report, recommendations, and implementation strategies derive from the field notes, court observations, and de-briefings that were conducted in each site. All interviewee and place names and sites are confidential and serve as the basis for this qualitative analysis of access to and quality of juvenile defense in Arizona.





CHAPTER TWO:
**THE EVOLUTION OF DUE
PROCESS AND THE ROLE OF
COUNSEL IN DELINQUENCY
PROCEEDINGS**

I. THE EVOLUTION OF DUE PROCESS

The first juvenile court in the United States was established on July 3, 1899 in Cook County, Illinois.¹² The court embraced the English common law philosophy of *parens patriae*, which allowed the court to act as a substitute parent, intervening in the lives of children as it saw fit.¹³ It was rooted in the notion that a child’s guilt or innocence was less important than the state’s ability to rehabilitate them.¹⁴

By 1925, all but two states had created juvenile courts designed to be less punitive and more therapeutic than the adult criminal justice system.¹⁵ However, significant procedural and substantive differences emerged as juvenile courts provided only cursory legal proceedings and emphasized judicial economy and children’s best interests over due process protections. Rules gave way to arbitrary judicial preferences.

Typically, no defense attorneys were involved—even when a youth’s liberty interest was at stake. Judges held unfettered discretion and imposed dispositions based on individual interpretations of a child’s best interests, which could vary wildly from warnings to probation supervision to placement in foster homes to confinement in “training schools” and other institutions for unspecified periods of time—irrespective of the alleged offense.¹⁶

As the number of institutionalized youth increased, confidence in the ability of juvenile

courts to succeed in rehabilitating “wayward” youth decreased. However, for almost 70 years after the establishment of the first juvenile court, constitutional challenges to juvenile court practices that denied standard procedural rights were consistently overruled.¹⁷ It was commonplace in state courts for youth to be adjudicated by a mere preponderance of evidence, and basic due process rights—including the right to counsel, notice of charges, jury trial, and against self-incrimination—were denied to children.¹⁸

A wave of change began with the United States Supreme Court’s 1963 decision in *Gideon v. Wainwright*.¹⁹ Emphasizing that “lawyers in criminal court are necessities, not luxuries,”²⁰ *Gideon* held that the Sixth Amendment right to counsel requires appointment of a publicly funded attorney to adults charged with felonies who cannot otherwise afford defense counsel.²¹ In the unanimous decision, the Court wrote, “reason and reflection require us to recognize that in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.”²²

On the heels of *Gideon*, the Supreme Court decided a series of cases affirming a child’s right to due process protections when facing delinquency proceedings.²³ Seminal among these cases, *Gault*—which originated in Arizona and was decided in 1967—announced the right to counsel in

12 NAT’L CTR. FOR JUVENILE JUSTICE., JUVENILE OFFENDERS AND VICTIMS: 2014 NATIONAL REPORT 84-85 (Melissa Sickmund & Charles Puzanchera eds., 2014), <http://www.ojdp.gov/ojstatbb/nr2014/downloads/NR2014.pdf> [hereinafter NCJJ 2014 NATIONAL REPORT].

13 *Id.* at 84.

14 *See In re Gault*, 387 U.S. 1, 15-16 (1967).

15 NCJJ 2014 NATIONAL REPORT, *supra* note 12, at 84.

16 *Id.*

17 *Gault*, 387 U.S. at 11 (citing David R. Barrett et al., Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 HARV. L. REV. 775, 794-95 (1966)).

18 *Id.* *See also* NAT’L COUNCIL OF JUVENILE & FAMILY COURT JUDGES, JUVENILE DELINQUENCY GUIDELINES: IMPROVING COURT PRACTICE IN JUVENILE DELINQUENCY CASES 12 (2005), <http://www.ncjfcj.org/sites/default/files/juveniledelinquencyguidelinescompressed%5B1%5D.pdf> [hereinafter NCJFCJ JUVENILE DELINQUENCY GUIDELINES]; NAT’L RESEARCH COUNCIL & INST. OF MED., JUVENILE CRIME, JUVENILE JUSTICE 158 (Joan McCord et al. eds., 2001).

19 372 U.S. 335 (1963).

20 *Id.* at 344.

21 *Id.* at 348.

22 *Id.* at 344.

23 *In re Gault*, 387 U.S. 1, 12 (1967); *Kent v. United States*, 383 U.S. 541, 553, 557 (1966); *In re Winship*, 397 U.S. 358, 359 (1970); *McKeiver v. Pennsylvania*, 403 U.S. 528, 543 (1971).

delinquency proceedings under the Due Process Clause of the United States Constitution, as applied to states through the Fourteenth Amendment.²⁴ Justice Abe Fortas, writing for the majority, reasoned:

Under our Constitution, the condition of being a boy does not justify a kangaroo court There is no material difference in this respect between adult and juvenile proceedings of the sort here involved The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it.²⁵

The Court recognized in *Gault* that youth in juvenile court received “the worst of both worlds,”²⁶ and “neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.”²⁷ The Court held that children charged with delinquency have a fundamental constitutional right to notice of charges against them, the right to counsel, the right to confront and cross-examine witnesses against them, and the right against self-incrimination.²⁸

The Court explicitly rejected the State of Arizona’s claim that the child had others capable of protecting the child’s interests and heralded the unique role of counsel.²⁹ “The probation officer cannot act as counsel for the child. His role . . . is as arresting officer and witness against the child. Nor can the judge represent the child.”³⁰ While the judge, the probation officer, and other court personnel are

charged with looking out for an accused child’s best interests, children facing “the awesome prospect of incarceration” require counsel to guide them in proceedings implicating potential loss of liberty.³¹

Thereafter, the Court extended other constitutional protections to children, holding that children are entitled to have the state prove the charges against them beyond a reasonable doubt in delinquency proceedings, rather than the mere preponderance standard previously relied upon by many state courts,³² and that double jeopardy bars multiple prosecutions of a child based upon the same allegations.³³

While the judge, the probation officer, and other court personnel are charged with looking out for an accused child’s best interests, children facing “the awesome prospect of incarceration” require counsel to guide them in proceedings implicating potential loss of liberty.

Following the Supreme Court’s lead, Congress enacted the Juvenile Justice and Delinquency Prevention Act (JJDP)³⁴ in 1974, which established the United States Department of Justice’s Office of Juvenile Justice and Delinquency Prevention

24 See generally *Gault*, 387 U.S. at 20.

25 *Id.* at 28, 36 (internal citation omitted).

26 *Id.* at 18 n.23 (internal quotations and citation omitted).

27 *Id.* at 18 n.23.

28 *Id.* at 10. See also *In re Winship*, 397 U.S. 358, 368 (1970) (describing the rights affirmed in *Gault*).

29 *In re Gault*, 387 U.S. 1, 36 (1967).

30 *Id.* at 36.

31 *Id.* at 36.

32 *Winship*, 397 U.S. at 368.

33 *Breed v. Jones*, 421 U.S. 519, 537 (1975).

34 Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109 (1974) (codified as amended at 42 U.S.C. § 5601).

(OJJDP).³⁵ The JJDP, through OJJDP, sought to regulate the function of juvenile justice systems and their treatment of children. Additionally, the JJDP created the National Advisory Committee for Juvenile Justice and Delinquency Prevention, charged with the development of national juvenile justice standards.³⁶ Those standards were published in 1980, requiring that counsel represent children in all proceedings stemming from a delinquency matter, beginning at the earliest stage of the process.³⁷

Prior to the creation of these standards, the Institute for Judicial Administration (IJA) and the American Bar Association (ABA) had recognized the need to create a foundation for establishing constitutionally required protections for youth in delinquency courts, and in 1971 began the production of a 23-volume set of juvenile justice standards.³⁸ These standards provided critical guidance for establishing juvenile justice systems with procedures to ensure fair and effective management of juvenile matters, and included a clear mandate that youth have access to counsel in delinquency proceedings.³⁹

Despite these efforts, by the 1980s it was disturbingly apparent that a disproportionate number of children of color were caught in the web of the juvenile justice system. This stark disparity led Congress to pass legislation in 1988 amending the JJDP to provide funding to the states to decrease the disproportionate number of youth of color in juvenile facilities, both pre- and post-adjudication.⁴⁰ However, these racial disparities persisted. In 1992 when Congress reauthorized the JJDP, it enacted additional amendments elevating the issue of disproportionate minority confinement as a core requirement, tying state funding eligibility to compliance with the core requirement provisions.⁴¹

With the 1992 reauthorization, Congress also reaffirmed the importance of the role of defense counsel in delinquency proceedings and charged OJJDP with establishing and supporting advocacy programs and services to protect due process rights of youth in juvenile court. Congress also called for improvement of the quality of legal representation for youth in delinquency proceedings.⁴² The deficiencies of public defense delivery systems were specifically pinpointed.⁴³

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- 35 *Legislation/JJDP Act*, U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, <http://www.ojjdp.gov/about/legislation.html> (last visited May 26, 2017) ("Congress enacted the Juvenile Justice and Delinquency Prevention (JJDP) Act... in 1974. This landmark legislation established OJJDP to support local and state efforts to prevent delinquency and improve the juvenile justice system."). See also U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, *DISPROPORTIONATE MINORITY CONTACT (DMC) 2* (2014), http://www.ojjdp.gov/mpg/litreviews/Disproportionate_Minority_Contact.pdf; U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, *IN FOCUS: DISPROPORTIONATE MINORITY CONTACT* (2012), <http://www.ojjdp.gov/pubs/239457.pdf>.
- 36 42 U.S.C. § 5601. See also DOUGLAS C. DODGE, U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, *DUE PROCESS ADVOCACY* (1997), <https://www.ncjrs.gov/pdffiles/fs9749.pdf>.
- 37 NAT'L ADVISORY COMM. FOR JUVENILE JUSTICE & DELINQUENCY PREVENTION, *STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE*, § 3.132 REPRESENTATION BY COUNSEL—FOR THE JUVENILE (1980).
- 38 See *JUVENILE JUSTICE STANDARDS: STANDARDS RELATING TO COUNSEL FOR PRIVATE PARTIES* (INST. OF JUDICIAL ADMIN. & AM. BAR ASS'N 1979) [hereinafter *STANDARDS RELATING TO COUNSEL FOR PRIVATE PARTIES*], https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/JJJ_Standards_Counsel_for_Private_Parties.authcheckdam.pdf. See also INST. FOR JUDICIAL ADMIN. & AM. BAR ASS'N, *JUVENILE JUSTICE STANDARDS ANNOTATED: A BALANCED APPROACH* xvi-xviii (Robert E. Shepherd, Jr., ed. 1996), <https://www.ncjrs.gov/pdffiles1/ojjdp/166773.pdf> [hereinafter *IJA-ABA JUVENILE JUSTICE STANDARDS*] (describing the standards project).
- 39 *STANDARDS RELATING TO COUNSEL FOR PRIVATE PARTIES*, *supra* note 38; *IJA-ABA JUVENILE JUSTICE STANDARDS*, *supra* note 38, at 1.
- 40 *Anti-Drug Abuse Act of 1988*, 21 U.S.C.A. § 1501 (1988). See also *Disproportionate Minority Contact Chronology: 1988 to Date*, U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, <http://www.ojjdp.gov/dmc/chronology.html> (last visited Apr. 17, 2018). See generally CHRISTOPHER HARTNEY & LINH VUONG, *CREATED EQUAL: RACIAL AND ETHNIC DISPARITIES IN THE US CRIMINAL JUSTICE SYSTEM 2* (Nat'l Council on Crime & Delinq. 2009), http://www.nccglobal.org/sites/default/files/publication_pdf/created-equal.pdf.
- 41 Heidi M. Hsia et al., *Disproportionate Minority Confinement: 2002 Update*, U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION 1 (2004), <http://www.ncjrs.gov/pdffiles1/ojjdp/201240.pdf>.
- 42 See *Juvenile Justice and Delinquency Prevention Act*, Pub. L. No. 102-586, 106 Stat. 4982 (1992) (reauthorizing the Act for fiscal years 1993-1996), amended by Pub. L. No. 107-273, 116 Stat. 1871 (2002). See also OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, *OJJDP ANNUAL REPORT 2002*, at 17-26 (2002) [hereinafter *OJJDP ANNUAL REPORT 2002*], <https://www.ncjrs.gov/pdffiles1/ojjdp/202038.pdf>.
- 43 *Juvenile Justice and Delinquency Prevention Act*. See also *OJJDP ANNUAL REPORT 2002*, *supra* note 42, at 39.

The last reauthorization of the JJDP Act occurred in 2002⁴⁴ and included additional amendments expanding funding and data collection to any disproportionate minority contact within the juvenile justice system, rather than focusing just on disproportionate minority confinement.⁴⁵ This expansion recognized that youth of color receive disproportionate outcomes at all points of system contact.⁴⁶ The JJDP Act still stands as the country's primary federal legislation regulating juvenile justice, and it is overdue for reauthorization. At the time this report went to print, both the United States House of Representatives and the United States Senate have approved bills reauthorizing the JJDP Act and are working out their differences in conference committee before submitting it to the President for approval.⁴⁷

In 2012, recognizing the still-unaddressed, inadequate, and inconsistent protection of the due process right to counsel for youth, NJDC promulgated *National Juvenile Defense Standards* to provide specific guidance, support, and direction to juvenile defense attorneys and other juvenile court stakeholders on the specific roles and responsibilities of juvenile defenders.⁴⁸

In March 2015, the United States Department of Justice filed a statement of interest to address, at the state level, the due process right to counsel for children accused of delinquency as established by the Supreme Court in *Gault*.⁴⁹ The statement urged:

For too long, the Supreme Court's promise of fairness for young people accused of delinquency has gone unfulfilled in courts across our country. . . . Every child has the right to a competent attorney who will provide the highest level of professional guidance and advocacy. It is time for courts to adequately fund indigent defense systems for children and meet their constitutional responsibilities.⁵⁰

Despite the array of Supreme Court cases, federal law and policies, standards and guidelines, and decades of reform following the *Gault* decision, states continue to struggle with effectively implementing basic due process rights for youth.

Every child has the right to a competent attorney who will provide the highest level of professional guidance and advocacy.

This Assessment is a comprehensive review of the extent to which Arizona has implemented these due process guarantees for youth and the reforms that are still necessary to achieve the promise of *Gault*.

44 See 42 U.S.C. § 5601 (2002). See also 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002); *Legislation/JJDP Act*, U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, <http://www.ojjdp.gov/about/legislation.html> (last visited May 26, 2017); KRISTIN FINKLEA, JUVENILE JUSTICE FUNDING TRENDS, CONGRESSIONAL RESEARCH SERVICE (2016), <https://www.fas.org/sgp/crs/misc/RS22655.pdf>.

45 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002). See also JOSHUA ROVNER, THE SENTENCING PROJECT, DISPROPORTIONATE MINORITY CONTACT IN THE JUVENILE JUSTICE SYSTEM 1 (2014), http://sentencingproject.org/doc/publications/jj_Disproportionate%20Minority%20Contact.pdf.

46 ROVNER, *supra* note 45, at 1, 7.

47 The Juvenile Justice Reform Act of 2017, H.R. 1809, was placed on Senate Legislative Calendar under General Orders as of February 6, 2018. See *All Actions: H.R. 1809 – 115th Congress (2017-2018)*, CONGRESS.GOV, <https://www.congress.gov/bill/115th-congress/house-bill/1809/all-actions?q=%7B%22search%22%3A%5B%22H.R.+1809%22%5D%7D&r=1&overview=closed#tabs> (last visited Feb. 20, 2018).

48 See generally NAT'L JUV. DEF. STANDARDS, *supra* note 6 (explaining the role of juvenile defense counsel).

49 See Statement of Interest of the United States, N.P. et al. v. Georgia, No. 2014-CV-241025 (Ga. Super. Ct. 2015) [hereinafter Dep't of Justice Statement of Interest in N.P.]. See also Press Release, Dep't of Justice, Department of Justice Statement of Interest Supports Meaningful Right to Counsel in Juvenile Prosecutions (Mar. 13, 2015) [hereinafter Dep't of Justice Right to Counsel Press Release], <https://www.justice.gov/opa/pr/department-justice-statement-interest-supports-meaningful-right-counsel-juvenile-prosecutions>.

50 Dep't of Justice Right to Counsel Press Release, *supra* note 49.

II. THE ROLE OF COUNSEL IN DELINQUENCY PROCEEDINGS

“[C]hildren, like adults, are denied their right to counsel not only when an attorney is entirely absent, but also when an attorney is made available in name only.”⁵¹

— *United States Department of Justice*

Although the right to counsel for youth in delinquency proceedings was established by the United States Supreme Court’s decision in *Gault* 50 years ago,⁵² in many jurisdictions around the country, youth either continue to go unrepresented or, as is too often the case, receive an attorney lacking the skills or supports needed to capably represent the child.

Any actual or constructive denial of representation denies youth due process. The right to effective counsel throughout the entirety of a youth’s system involvement is critical.⁵³ It is the juvenile defender who must insist upon fairness of the proceedings, ensure the child’s voice is heard at every stage of the process, and safeguard the due process and equal protection rights of the child.⁵⁴

The juvenile defender is the only justice system stakeholder who is ethically and constitutionally mandated to zealously advocate for the protection of the youth’s rights in a manner that is consistent with the youth’s expressed interests.⁵⁵ This role is distinct from other juvenile court stakeholders such as the judge, probation officer, guardian *ad litem*, or prosecutor, who consider the perceived “best interests” of the child.⁵⁶ Although well-intentioned, as the Supreme Court stated in reinforcing the right to counsel for juveniles, “[w]e made clear in [*Gault*] that civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile courts.”⁵⁷ If the child’s attorney does not abide by the obligation to provide “expressed interest” advocacy, the youth is deprived of their fundamental right to counsel.⁵⁸

Effective juvenile defense not only requires specialized practice, wherein the attorney must meet all the obligations due to an adult client, but also necessitates expertise in juvenile-specific law and policy, the science of adolescent development and how it impacts a young person’s case, skills, and techniques for effectively communicating with youth, collateral consequences specific to juvenile court, and various child-specific systems affecting delinquency cases, such as schools and adolescent mental health services.⁵⁹

Any actual or constructive denial of representation denies youth due process.

51 Dep’t of Justice Statement of Interest in N.P., *supra* note 49, at 7.

52 387 U.S. 1, 36 (1967).

53 *McMann v. Richardson*, 397 U.S. 759, 771, n.14 (1970) (stating that “the right to counsel is the right to the *effective* assistance of counsel” (emphasis added)).

54 The juvenile defense attorney has a duty to advocate for a client’s “expressed interests,” regardless of whether the “expressed interests” coincide with what the lawyer personally believes to be in the “best interests” of the client. See *Gault*, 387 U.S. at 37. See generally MODEL RULES OF PROF. CONDUCT r. 1.2, 1.3, 1.4, 1.8, 1.14 (AM. BAR ASS’N 1983) [hereinafter ABA MODEL RULES OF PROF. CONDUCT]. “Expressed-interest” (also called stated-interest) representation requires that counsel assert the client’s voice in juvenile proceedings.

55 See NAT’L JUV. DEF. STANDARDS, *supra* note 6, at §§ 1.1, 1.2. See also *Gault*, 387 U.S. at 1.

56 “Best interest” representation allows advocates to advocate for their belief in what is best for the child.

57 *In re Winship*, 397 U.S. 358, 365 (1970).

58 See Dep’t of Justice Statement of Interest in N.P., *supra* note 49, at 2 n.1.

59 NAT’L JUV. DEF. STANDARDS, *supra* note 6, § 1.3.

Children “cannot be viewed simply as miniature adults” and should not be treated as such.⁶⁰ Rather, “[a] child’s age is far more than a chronological fact. It is a fact that generates commonsense conclusions about behavior and perception.”⁶¹ Youth have different cognitive, emotional, and behavioral capacities than adults, and defenders must engage thoughtfully when communicating with youth and in crafting legal arguments with respect to a youth’s reduced culpability and increased likelihood of desistance.⁶² The juvenile defender must apply this expertise in representing youth at all stages of the court system, including pretrial detention hearings, advisory hearings, suppression, the adjudicatory phase of a trial, disposition hearings, transfer hearings, any competence proceedings, and all points of post-disposition while a youth remains under the jurisdiction of the juvenile court.

Juvenile defenders must ensure a client-centered model of advocacy and empower and advise their young client using developmentally appropriate communication so they are equipped to understand and make informed decisions about their case, including whether to accept a plea offer or go to trial, to testify or remain silent, and to accept or advocate against a disposition proffered by the state, or to offer alternatives to juvenile court involvement and treatment.⁶³

Juvenile defense delivery systems must provide juvenile defenders with the necessary training, support, and oversight to ensure attorneys invest the time needed to build rapport with clients, obtain discovery and conduct investigation, engage in motion practice and appropriately prepare for hearings, monitor the post-disposition needs of clients within the court’s jurisdiction, and consult with the client to ensure stated-interest representation at all stages of court involvement.⁶⁴

Today, more than 50 years after *Gault*, it is critical that the due process protections guaranteed to youth, including the vital role of qualified defense counsel, are fully realized in juvenile courts around the country.

60 *J.D.B. v. North Carolina*, 564 U.S. 261, 274 (2011) (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115–16 (1982)).

61 *J.D.B.*, 564 U.S. at 272 (citations and internal quotation marks omitted).

62 NAT’L JUVENILE DEFENDER CTR. & NAT’L LEGAL AID & DEFENDER ASS’N, TEN CORE PRINCIPLES FOR PROVIDING QUALITY DELINQUENCY REPRESENTATION THROUGH PUBLIC DEFENSE DELIVERY SYSTEMS at 2 (2d ed. 2008), http://www.njdc.info/pdf/10_Core_Principles_2008.pdf [hereinafter TEN CORE PRINCIPLES].

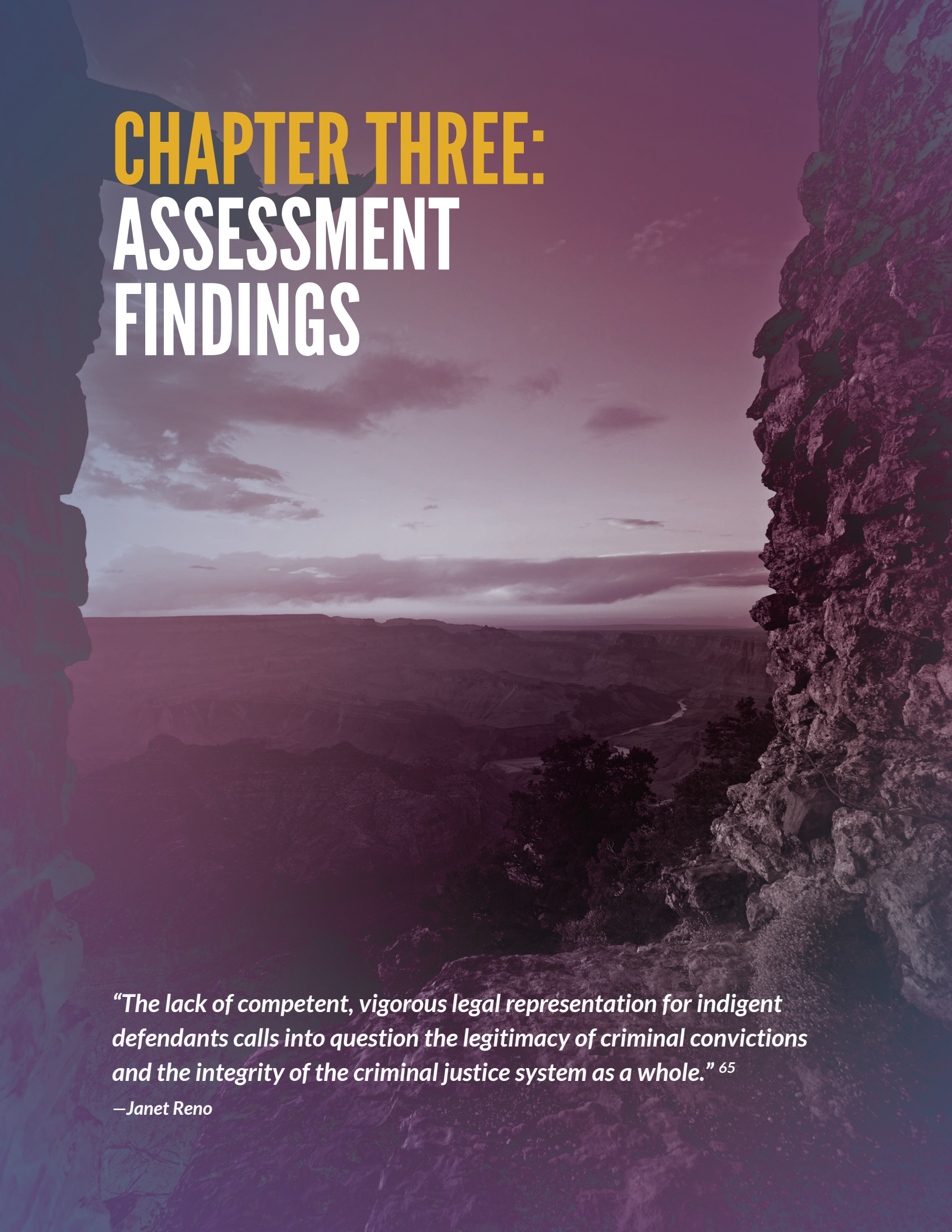
63 NAT’L JUVENILE DEFENDER CTR., ROLE OF JUVENILE DEFENSE COUNSEL IN DELINQUENCY COURT 9 (2009). See also TEN CORE PRINCIPLES, *supra* note 62.

64 Dep’t of Justice Statement of Interest in N.P., *supra* note 49, at 14.



IUSTITIA





CHAPTER THREE: ASSESSMENT FINDINGS

“The lack of competent, vigorous legal representation for indigent defendants calls into question the legitimacy of criminal convictions and the integrity of the criminal justice system as a whole.”⁶⁵

—Janet Reno

I. ANALYSIS OF ETHICS AND ROLE OF COUNSEL IN JUVENILE COURT

This role of the juvenile defender is in line with the constitutional mandate for a child's right to an attorney as set forth in *Gault*,⁶⁶ as well as national best practices.⁶⁷ Without question, children need "the guiding hand of counsel at every step in the proceedings" in juvenile court.⁶⁸ Counsel's immediate action in a case is vital to ensuring that the child's interests are protected and is an important opportunity for the defender and child to build rapport and trust.

Appointment of counsel at the earliest possible moment, as well as continuity of counsel throughout the juvenile court process, ensures that the child's rights are protected and that there are no delays in the proceedings or burdens on the court to provide counsel at every step.

In Arizona, there are pervasive disparities as to how and when children access counsel and the quality of representation youth receive when facing delinquency proceedings. In addition, there are enormous incongruities among practitioners as to how they investigate, prepare, and advocate for their clients. Across the state, attorneys who defend children charged with delinquent acts do not typically engage in the type of legal advocacy envisioned by the United States or Arizona Constitutions, the Arizona Juvenile Code, or ethical codes of professional conduct. The investigative team observed in many places that federal and state constitutional protections were overlooked for children in juvenile court.

Most of the lawyers who defend children, as well as many other professionals, share an authentic and abiding concern for children in the juvenile

justice system. This concern, however, does not automatically translate into any genuine protection or realistic acknowledgement of children's due process rights throughout the juvenile court process.

In Arizona, there are pervasive disparities as to how and when children access counsel and the quality of representation youth receive when facing delinquency proceedings.

A significant percentage of Arizona's youth pass through the delinquency system without effective legal advocates or adequate safeguards to protect their interests. The concern for the child's perceived best interests often overshadows due process, and the court and practitioners too often default to a pre-*Gault*, *parens patriae* style of "justice" that has long been deemed unconstitutional.⁶⁹

But, while even the most skilled defender sometimes finds systemic and institutional barriers to quality representation overwhelming, they need not be insurmountable.

A. Waiver of Counsel

Beyond the right to counsel guaranteed by the Due Process Clause of the United States Constitution and *Gault*, Arizona's youth in juvenile court have "the right to be represented by counsel in all delinquency and incorrigibility proceedings as provided by law,"⁷⁰ and in all juvenile proceedings that may result in detention.⁷¹

National best practices also call for courts to safeguard the right to counsel. For example, the

65 ARIZONA CRIMINAL JUSTICE COMMISSION, THE RISING COST OF INDIGENT DEFENSE IN ARIZONA 14 (2003), <http://azmemory.azlibrary.gov/digital/collection/statepubs/id/3135> (internal citation omitted).

66 *In re Gault*, 387 U.S. 1, 36 (1967).

67 See generally ABA MODEL RULES OF PROF. CONDUCT, *supra* note 54, r. 1.2, 1.3, 1.4, 1.8, 1.14. "Expressed-interest" (also called "stated interest") representation requires that counsel assert the client's voice in juvenile proceedings. See also sources cited *supra* note 6.

68 *Gault*, 387 U.S. at 36.

69 *Id.* at 36.

70 ARIZ. JUV. CT. R. PROC. 10(A).

71 ARIZ. REV. STAT. ANN. § 8-221(A) (2010).

National Council of Juvenile and Family Court Judges' *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases*, which recommends best practices for juvenile delinquency court judges, admonishes judges against allowing youth in delinquency cases to waive the right to counsel.⁷² And the Department of Justice has advocated that children cannot knowingly and intelligently waive their right to counsel without first having a meaningful opportunity to consult with a lawyer.⁷³

Without question, children need the assistance of counsel. No one but defense counsel—not a probation officer, judge, or family member—can act as counsel for a young person.⁷⁴

Throughout Arizona, there is a universally recognized right to and need for the appointment of counsel at every stage of the proceeding, but whether a child appears in court with or without counsel depends upon the jurisdiction, the jurist, and the stage of the proceedings.

Many of the sites visited simply prohibit the waiver of counsel in delinquency proceedings. Some judges reported that they would allow a child to waive counsel, but only in theory; one judge stated that no young person who wished to waive counsel has ever been found to meet the legal criteria to do so. In those jurisdictions, all stakeholders reported to investigators that waiver of counsel is simply not an issue. In many of these sites, the investigators' questions about waiver of counsel were met with surprise: one judge proclaimed, "waiver of counsel—why would I ever allow that?"

In other jurisdictions where waiver was seen frequently by investigators, it was estimated that fewer than 25 percent of youth facing probation revocation had counsel present at revocation hearings and almost no children were represented by counsel at the detention or advisory hearing. While jurists in these jurisdictions fervently believed that youth understand their right to

counsel and validly waive that right, none of the waivers of counsel observed included a thorough analysis of whether the waiver was knowingly, intelligently, and voluntarily given nor an opportunity for youth to consult with counsel prior to the waiver. In one jurisdiction, the discussion centered not on whether youth waived counsel, but on how few asked for counsel.

While many stakeholders in jurisdictions allowing waiver asserted that waiver is never allowed in felony-level cases, many admitted this was true only if the young person entered a denial at the advisory hearing. Youth willing to enter an admission at the advisory hearing were allowed to do so freely and without the appointment or advice of counsel.

Investigators noted that the reasons for waiver seemed to be based on a perception by children, families, and some court officials that there was no risk in proceeding without counsel, especially in low-level cases, and no benefit to having an attorney. Some investigators observed that the right to counsel was inaccurately or incompletely explained by a probation officer in the hallway before court. When these youth were observed in court—often appearing for probation or diversion violations—the young person and parent were asked if they wanted an attorney and said they did not, and the cases proceeded without counsel and without a valid waiver of counsel.

Court officials reported that decisions to waive counsel were "absolutely motivated by the attorney fee."

Investigators reported that the decision to decline counsel seemed motivated by the families' desires to avoid the attorney fee, which the probation officer always explained in detail, or by the desire to avoid returning to court at a later date. When asked about underlying causes of youth waiver of counsel,

72 NCJFCJ JUVENILE DELINQUENCY GUIDELINES, *supra* note 18, at 25.

73 Dep't of Justice Statement of Interest in N.P., *supra* note 49, at 1. See also Dep't of Justice Right to Counsel Press Release, *supra* note 49.

74 *In re Gault*, 387 U.S. 1, 36 (1967).

court officials reported that decisions to waive counsel were “absolutely motivated by the attorney fee.”

In one jurisdiction, the court director told investigators that waiver of counsel is not a problem because the probation officers do a good job explaining to children why they were detained, explaining new offenses, informing children of their rights and the possible consequences, and answering any questions about why they are involved in the system. The director emphasized that “[i]t doesn’t make a difference if the kid does or not have an attorney, we all advocate for their best interests.” When “best interests” are perceived to be sufficient, young people in Arizona courts face exactly what Gerald Gault faced 50 years ago—unbridled discretion that was found to be unconstitutional.

In another jurisdiction, investigators observed a judge allow a young girl to waive her right to counsel:

The court asked if the girl read the petition, did she understand, and did she want a lawyer. The girl looked at her mom, who shook her head no. The girl said she did not want a lawyer. When asked if anyone coerced her to waive her right to an attorney, the girl did not understand what was meant by “coercing her” to waive the right. After the judge restated it without explaining it further, the girl said no. The judge found the waiver sufficient.

Investigators also learned that there is no data collected in Arizona regarding the waiver of counsel.

Although waivers of counsel were observed in only a few jurisdictions, the fact that waivers are happening at all is troubling—especially when children waive counsel, not because they know their rights and voluntarily relinquish them, but because they have been led to believe that counsel is superfluous, expensive, and causes undue delay.⁷⁵

All of Arizona’s children deserve to be represented by counsel at all stages of the proceedings, and this right should not depend upon where they live or whether anyone else—court officials or their family—believes that juvenile defense counsel is unnecessary.

Although waivers of counsel were observed in only a few jurisdictions, the fact that waivers are happening at all is troubling—especially when children waive counsel, not because they know their rights and voluntarily relinquish them, but because they have been led to believe that counsel is superfluous, expensive, and causes undue delay.

To ensure uniform access to counsel across the state, children should be automatically eligible for an attorney based upon their status as children, not their financial status or the financial status of their parents or caregivers.⁷⁶ In the meantime, judges and other stakeholders should ensure that any fees or costs associated with the appointment of counsel be waived for all children.

There must be a concerted effort to ensure that waiver of counsel is rare, and that it never occurs before a child first consults with an attorney. In the rare instance that a child wishes to waive counsel, the court must ensure the child fully appreciates the nature of the proceedings, including the short- and long-term direct and collateral consequences of waiving counsel, and that the child knows they can change their mind about waiver at any time and have a free attorney appointed.

75 See NAT’L JUVENILE DEFENDER CTR., ENSURING YOUNG PEOPLE ARE NOT CRIMINALIZED FOR POVERTY, BAIL, FEES, FINES, COSTS, AND RESTITUTION IN JUVENILE COURT 2 (2018), http://njdc.info/wp-content/uploads/2018/04/Bail-Fines-and-Fees-Bench-Card_Final.pdf.

76 See ACCESS DENIED, *supra* note 6, at 11 (2017) (“[T]he presumption of eligibility has the laudable effect of children accessing counsel more quickly and more frequently.”); NAT’L JUVENILE DEFENDER CTR., HONORING GAULT: ENSURING ACCESS TO COUNSEL IN DELINQUENCY PROCEEDINGS 2 (2016), <http://njdc.info/wp-content/uploads/2016/10/Access-to-Counsel-Information-Card-Final-8.18.16.pdf>.

B. Timing and Appointment of Counsel

Counsel's immediate action early in a case is vital to ensuring the child's interests are protected "at every step in the proceedings."⁷⁷ Early and frequent contacts are also important opportunities for the defender and child to build rapport, trust, and confidence in each other.⁷⁸ By some measure, *when* counsel is appointed is as important as *whether* counsel is appointed at all.⁷⁹

The National Council of Juvenile and Family Court Judges (NCJFCJ) discourages any delay in the appointment of counsel, because it "creates unnecessary and inefficient delays, often requiring additional hearings that could have been avoided."⁸⁰ NCJFCJ's guidelines also recognize other problems caused by unnecessary delay in appointment:

[Such delay] prevents indigent youth and families from being able to access counsel in advance of the hearing to fully explore the options and make advised and considered decisions about the best course of action. Finally, it prevents the public defender from being able to prepare for the initial hearing prior to the court date.⁸¹

By some measure, when counsel is appointed is as important as whether counsel is appointed at all.

The guidelines note that these delays are unique to children whose families cannot afford private attorneys: "Families who can afford private counsel do not have these barriers and rarely appear at a detention or initial juvenile delinquency court

hearing without prior consultation with counsel."⁸²

Under Arizona law, youth in juvenile court have the right to be represented by counsel if the result of the proceeding could include detention.⁸³ The right to receive appointed counsel arises when a child or their parent or guardian is found to be indigent.⁸⁴ The system by which counsel is afforded to children varies based on the county.⁸⁵ In counties with public defender offices, the public defender may be appointed in delinquency or incorrigibility proceedings at the request of the court.⁸⁶ Eligibility for counsel must be determined on an individual, case-by-case basis.⁸⁷

Despite these barriers, investigators found that some jurisdictions had a system in place to ensure automatic early appointment and ongoing representation throughout the court proceedings. Some jurisdictions provide counsel for all children and prohibit waiver in theory, in practice, or both. In these jurisdictions, investigators described a system for appointment that ensured counsel was present for all children at the detention hearings when children were in custody, or at the advisory hearings for children who were not in custody.

In most jurisdictions, judges were willing to appoint counsel for any child who requested counsel, and would attempt to appoint the same attorney who represented the child previously when possible. However, in those instances, the appointment of counsel necessitated a continuance to a later date.

In other jurisdictions, it was reported that there was no system in place for children to obtain counsel before their initial hearing, so children appeared at these hearings alone. Investigators learned that children who requested counsel or whom the judge believed "needed counsel" were instructed to return for a later court date after counsel was obtained from the designated defender office or

77 *Gault*, 387 U.S. at 36.

78 NAT'L JUV. DEF. STANDARDS, *supra* note 6, at §§ 2.1 cmt. See also IJA-ABA JUVENILE JUSTICE STANDARDS, *supra* note 38, at 36.

79 *Id.* at §§ 2.1, 3.1; IJA-ABA JUVENILE JUSTICE STANDARDS, *supra* note 38, at 73, 75; NCJFCJ JUVENILE DELINQUENCY GUIDELINES, *supra* note 18, at 74.

80 NCJFCJ JUVENILE DELINQUENCY GUIDELINES, *supra* note 18, at 78.

81 *Id.* at 78.

82 *Id.* at 78.

83 ARIZ. REV. STAT. ANN. § 8-221(A) (2010).

84 § 8-221(B).

85 § 8-221(H); ARIZ. REV. STAT. ANN. § 11-584(A)(6) (2010).

86 § 8-221(H)(1); § 11-584(A)(6).

87 *JV-132324 v. Superior Court In and For County of Maricopa*, 890 P.2d 632 (Ariz. Ct. App. 1995); ARIZ. JUV. CT. R. PROC. 10.

through the court’s appointment process. This meant that detained children were most likely sent back to detention and that children who were not detained were ordered to adhere to an array of conditions on standard pretrial probation.

Children who did not want to return at a later date were permitted to enter an admission at the initial hearing without ever meeting with a lawyer. In one jurisdiction, stakeholders estimated that 20 percent of children entered pleas at the advisory hearing with no prior contact with counsel.

No jurisdiction reported that counsel was provided for interrogation.

Overall, investigators reported that children seemed to fare better in jurisdictions that ensured early and automatic appointment of counsel. For example, where counsel was appointed before the first hearing, stakeholders reported that children were more likely to have input into the direction of their case and possess a better understanding of the court process and their rights. In jurisdictions in which the appointment of counsel was delayed or waiver was encouraged, children were more likely to accept a plea to the charges as they were presented, without a full understanding of the ramifications of their decisions.

Children seemed to fare better in jurisdictions that ensured early and automatic appointment of counsel.

Without question, juvenile courts bear responsibility to ensure that children have counsel appointed at the earliest stages. In a few jurisdictions in Arizona, juvenile courts have done just that. The court, all system decisionmakers, and policy advocates should work to establish the practices and policies necessary to ensure that all

Arizona youth have access to counsel prior to and at initial proceedings.⁸⁸

C. Client Contact and Communication

The attorney-client relationship is fundamental to effective representation, and it takes time to establish. Counsel for children must be aware of the unique characteristics of each client and take the time needed not only to learn about the child’s strengths, but also to integrate those strengths into the presentation of the case at every step of representation.⁸⁹

Regular contact with child clients must be maintained and is crucial to ensuring youth have information about and an understanding of the proceedings against them.⁹⁰ Ongoing client communication is also essential to obtaining key information to locate witnesses; preserving evidence; obtaining information necessary for potential motions; ascertaining the client’s mental and physical health, including competence to stand trial or mental state at the time of the alleged offense; obtaining records and delinquency history; and gathering information regarding how the child was treated by investigating agencies, arresting officers, or facility staff.

Consistent with an attorney’s duty to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation,”⁹¹ counsel must “work to overcome barriers to effective communication by being sensitive to difference, communicating in a developmentally appropriate manner . . . and taking time to ensure the client has fully understood the communication.”⁹²

NCJFCJ guidelines state that counsel should be appointed prior to the detention or initial hearing, and must have time to consult with and prepare

88 NAT’L JUV. DEF. STANDARDS, *supra* note 6, at § 3.1; NCJFCJ JUVENILE DELINQUENCY GUIDELINES, *supra* note 18, at 74, 79; IJA-ABA JUVENILE JUSTICE STANDARDS, *supra* note 38, at 1, 15; NAT’L JUVENILE DEFENDER CTR., HONORING GAULT: ENSURING ACCESS TO COUNSEL IN DELINQUENCY PROCEEDINGS 2 (2016), <http://njdc.info/wp-content/uploads/2016/10/Access-to-Counsel-Information-Card-Final-8.18.16.pdf>.

89 NAT’L JUV. DEF. STANDARDS, *supra* note 6, at § 2.1 cmt. See also IJA-ABA JUVENILE JUSTICE STANDARDS, *supra* note 38, at 1, 15.

90 NAT’L JUV. DEF. STANDARDS, *supra* note 6, at § 2.4.

91 ARIZ. R. PROF. CONDUCT 42(1.4)(b).

92 NAT’L JUV. DEF. STANDARDS, *supra* note 6, at § 2.6.

the client.⁹³ NCJFCJ acknowledges that delays in appointment “create less effective juvenile delinquency court systems” and recommends that “if it is not possible for a youth and family to contact counsel prior to the first juvenile delinquency court hearing, the second preference is to provide access on the day of the first hearing with sufficient time for the youth, family, and counsel to discuss the case before entering the courtroom.”⁹⁴

A recurring problem in many jurisdictions across Arizona is the failure of attorneys to engage in meaningful communication with their clients prior to court hearings, whether the youth are detained or not. In some jurisdictions, counsel is appointed during or after the initial hearing, denying the child their right to counsel at that hearing and hindering timely communication between the attorney and their client.

Investigators learned that the onus is often on the child to schedule a meeting with their defender. In several jurisdictions, a letter is sent to the child and their family once counsel is appointed. Many defenders reported to investigators that pre-hearing contact almost never occurs and they only meet with the child right before the hearing. This practice was common with both public defenders and appointed counsel.

One defender told investigators: “I am available if kids call, but they don’t call.” Some defenders told investigators that they do not schedule regular office appointments for clients and do not attempt to contact clients in advance of a hearing.

Investigators found that in some jurisdictions, defenders were able to meet at length and in private with their clients prior to the hearings, but that in most jurisdictions, attorneys met with their clients briefly, if at all, and often in the hallway right before court was about to begin. Many defenders admitted to meeting clients in the hallway of the courthouse immediately before the client’s hearing and recognized that there is no privacy and little opportunity for confidentiality.

One of the judges indicated that insufficient client communication is one of the problems with contract attorneys—that many times you can tell

the attorney has not met with the client previously and they are just meeting when the case is called. While some ask for continuances to take more time with the client, many do not “because they want to handle the case and move on.”

The length of time spent with clients varied across the state: investigators observed some attorneys meeting with children for less than five minutes before hearings. Some defenders reported that the average meeting is 15 to 30 minutes, and others reported meetings of 45 minutes to an hour.

Defenders reported that they are generally in more regular contact with detained clients, but not every detained client. A detention administrator reported, “one or two of the public defenders are here meeting with their clients at least one hour every week or at least making a phone call, but others never come.” The administrator also noted that, although it is incredibly rare that detained youth can afford private counsel, when they do, the private attorneys “visit often and are great with their clients.”

In one jurisdiction, investigators noted that defenders do not regularly meet with clients in detention, in programs, or in the attorneys’ offices, and noted that “regular visits and communication with clients is not encouraged or emphasized by supervising attorneys.”

One stakeholder told an investigator that some defenders do not talk to their clients at all, especially in less serious cases: “It is Arizona law that in any representation of a juvenile, the defense attorney must talk to the child. It doesn’t always happen in smaller cases, but it should be insisted upon in a more serious case.”

One parent reported that their child only talked to their attorney at court hearings and felt that more contact with the attorney would have been very helpful.

Even in jurisdictions in which counsel is appointed automatically at the time the petition is filed, attorneys need to do more to spend time and build rapport with their clients in a confidential setting:

Counsel must anticipate that a young client, due to his or her developmental immaturity, may require frequent contact between court dates. Counsel must also assume that young clients will often not understand the language of court officers, even if they have been in court previously. Prior to court hearings, counsel should contact the client to remind him or her of the objectives of the hearing, expectations of the client and counsel at the hearing, as well as the date, time, and location of court. Counsel should clarify how and when the client should be in contact, as well as counsel's willingness to receive collect calls from detention facilities. If the client is detained, counsel, or someone from counsel's office, should visit the client in detention regularly, including regular visits in between court dates.⁹⁵

Arizona's youth deserve representation that includes regular and effective attorney-client communication. Juvenile courts must ensure that counsel is appointed automatically, in advance of a child's first appearance, and that private settings exist for children to communicate confidentially with their attorneys.⁹⁶

D. Advisory and Detention Hearings

Children have the right to counsel and the right to appointed counsel at any hearing that could result in detention.⁹⁷ Under Arizona law, depending upon the charge, if a child is not detained and does not face detention at the advisory hearing, counsel is not mandatory.⁹⁸ But, established national best practices demand early appointment of counsel

and vigorous representation at all stages of a case due to the attendant harms of juvenile court involvement and the fact that detention and loss of liberty is almost always possible.⁹⁹

At the initial hearing, "counsel's first obligation is to preserve the client's rights."¹⁰⁰ Accordingly, "[c]ounsel should enter a plea of not guilty, assert constitutional rights, preserve the right to file motions, demand discovery, and set the next court date" and "preserve all of the client's options until adequate investigation, discovery, and legal research can be completed."¹⁰¹

In Arizona, the initial hearing in juvenile court can be an advisory hearing for non-detained youth, or a combined advisory hearing and detention hearing for children who are detained after an arrest. Even though not required in every instance, investigators reported that some jurisdictions appoint counsel when a petition is filed, and many judges insist upon counsel for children at every hearing—even at advisory hearings when children are not detained. But, investigators in far too many jurisdictions observed children appearing at advisory hearings unrepresented.

An investigator reported that in one jurisdiction, every child on the advisory docket appeared without counsel, and all but one of those children waived counsel and entered an admission to the charges that day. Investigators later confirmed that this is common practice in this jurisdiction—especially when children face non-felony-level charges.¹⁰²

In another jurisdiction, stakeholders reported to investigators that although there are no statistics

95 NAT'L JUV. DEF. STANDARDS, *supra* note 6, at § 2.4 cmt. (citing Jodi L. Viljoen & Ronald Roesch, *Competence to Waive Interrogation Rights and Adjudicative Competence in Adolescent Defendants: Cognitive Development, Attorney Contact, and Psychological Symptoms*, 29 L. & HUM. BEHAV. 723 (2005)) (finding that spending more time with an attorney increased legal comprehension in youth). See also NAT'L JUVENILE DEFENDER CTR., *ROLE OF JUVENILE DEFENSE COUNSEL IN DELINQUENCY COURT* 24 (2009) (discussing the ABA's Model Rule of Professional Conduct 1.4 concerning communication).

96 NCJFCJ JUVENILE DELINQUENCY GUIDELINES, *supra* note 18, at 90 ("If it is not possible for a youth and family to contact counsel prior to the first juvenile delinquency court hearing, the second preference is to provide access on the day of the first hearing with sufficient time for the youth, family, and counsel to discuss the case before entering the courtroom.")

97 ARIZ. REV. STAT. ANN. § 8-221(A) (2010).

98 *Id.*

99 NAT'L JUV. DEF. STANDARDS, *supra* note 6, at §§ 1.4, 10.2; NCJFCJ JUVENILE DELINQUENCY GUIDELINES, *supra* note 18, at 30 (explaining that "[i]n order to best represent the client and to provide for the speedy administration of juvenile cases, it is the responsibility of counsel for youth to begin active representation of the client before the detention or initial hearing"); TEN CORE PRINCIPLES, *supra* note 62, at 74.

100 NAT'L JUV. DEF. STANDARDS, *supra* note 6, at § 3.6.

101 *Id.*

102 Investigators also noted that none of the purported waivers of counsel would pass muster as knowing, intelligent, and voluntary, and that the jurist appeared to follow the same script in every case.

on how many youth enter a plea at the advisory hearing, they estimated it could be as high as 20 percent or more.

It is troubling that the Arizona Juvenile Rules seem to support, if not encourage, children’s waiver of rights. They require the court to not only advise children of their rights to counsel and other trial rights and ensure they understand those rights, but in the same breath, also instruct the court to “determine . . . whether the juvenile knowingly, intelligently and voluntarily *wishes to waive[] those rights*” at the advisory hearing.¹⁰³ Rule 28, which governs advisory hearings, provides the only guidance for a plea colloquy in the juvenile rules.¹⁰⁴ The outcomes of these rules and practices is a system in which youth must opt in to counsel rather than being afforded access to counsel as a matter of law and a basic tenet of due process.

Every child on the advisory docket appeared without counsel, and all but one of those children waived counsel and entered an admission to the charges that day.

Best practices demand that at detention hearings, counsel must “make every effort to have meaningful contact with the client prior to the detention hearing,” “seek immediate release of a detained client if doing so is consistent with the client’s expressed interests,” and “present the court with alternatives to detention and a pretrial release plan.”¹⁰⁵

Arizona has a system in which youth must opt in to counsel rather than being afforded access to counsel as a matter of law and a basic tenet of due process.

Investigators reported that while some defenders in a few jurisdictions provide good advocacy at detention hearings, in most jurisdictions counsel was either waived, appointed too late, or, even when appointed in a timely manner, seemed unprepared to make meaningful arguments on the child’s behalf. One judge told investigators that there is good representation at most detention hearings, but that they do “sometimes wish attorneys would ask for release more often, especially if the parent doesn’t show.”

One investigator observed four detention hearings, and reported that in two of the hearings, the juvenile defender “appeared engaged and made appropriate arguments for release.” But, in the other two, the juvenile defender appeared to be “merely going through the motions: one defender requested that their client be released from detention, but then conceded, ‘but I know the court is not inclined to do that’ and requested a detention review.”

One judge told investigators, “I’ve never held a detention hearing at which the defense called witnesses or cross-examined the probation officer who made the detention recommendation.”

A decision to detain can be reviewed upon the court’s own motion or upon the written motion of the child or the county prosecutor, so long as the request is supported by something not previously presented to the court.¹⁰⁶ Investigators were not able to ascertain how often such reviews were sought or how often they were decided in a child’s favor.

103 ARIZ. JUV. CT. R. PROC. 28(C)(2)-(5) (emphasis added).

104 ARIZ. JUV. CT. R. PROC. 28(C)(6)-(7)(a).

105 NAT’L JUV. DEF. STANDARDS, *supra* note 6, at § 3.8.

106 ARIZ. JUV. CT. R. PROC. 23(E).

Investigators in several jurisdictions also expressed concerns that children being released were always or nearly always released on boilerplate conditions of release.¹⁰⁷

Despite the scant or nonexistent detention advocacy in many jurisdictions, stakeholders reported to investigators that detention is down. The reasons cited for decreased detention rates were varied. In many jurisdictions, judges indicated a strong desire not to detain children. Some were following the trend set by judges before them, and others expressed a general unwillingness to detain children—especially in jurisdictions that do not have a local detention facility or whose detention center is hours away from most children and their families in the county. Whatever the reason for the decrease in detention, strong defense advocacy is critical to ensuring due process especially when liberty is at stake.

Under Arizona’s detention hearing statute, “[p]robable cause may be based upon the allegations in a petition, complaint or referral filed by a law enforcement official, along with a properly executed affidavit or sworn testimony.”¹⁰⁸ In one jurisdiction in which counsel is present at all detention hearings, a defender told investigators that although the judge makes a probable cause determination in all cases, “it can be difficult to get judges to pay attention to probable cause.”

In one court observation, an investigator noted that probable cause was not addressed until after the child was released and the clerk remembered to bring it up, but everyone agreed it didn’t need to be addressed because the child was released.

Investigators learned that across the state, probable cause is rarely, if ever, challenged at advisory hearings or detention hearings. One judge told investigators, “I have never had a defense

attorney challenge probable cause at the detention hearing [and] all defense advocacy is focused on the flight/danger argument.”

Investigators learned that in most jurisdictions, when probable cause is determined, it is based on the papers filed in court but with no live testimony. In one jurisdiction, investigators were told that because paper referrals are not supported by an affidavit of probable cause, youth are generally not detained unless they fail to appear in court.

“I have never had a defense attorney challenge probable cause at the detention hearing.”

-Juvenile Court Judge

Under Arizona law, children may not be held in detention for more than 24 hours unless a petition or complaint has been filed, and a detention hearing, if applicable, must be held within 24 hours after a petition has been filed.¹⁰⁹ Holidays and weekends are included in this calculation; therefore, when applicable, detention hearings must be held on a holiday or during the weekend.¹¹⁰

Despite this, investigators found that the practice varied from county to county, with some counties requiring detention hearings as soon as possible and at the latest, within 24 hours of arrest. Investigators in other counties reported that petitions were often filed at the last possible minute, and detention hearings were then held within 24 hours of the petition being filed. And stakeholders in some jurisdictions reported that detention hearings were not held on holidays and weekends.

107 See ARIZ. JUV. CT. R. PROC. 23(E)(F); The ANNIE E. CASEY FOUND., TRANSFORMING JUVENILE PROBATION 14 (2018), <http://www.aecf.org/resources/transforming-juvenile-probation/> [hereinafter TRANSFORMING JUVENILE PROBATION] (discussing the counterproductive use of numerous, standard conditions and the National Council of Juvenile and Family Court Judges’ recommendation for individualized case plans, expectations, and goals).

108 ARIZ. JUV. CT. R. PROC. 23(D).

109 ARIZ. JUV. CT. R. PROC. 23(C).

110 JV-111701 v. Superior Court In and For County of Maricopa, 786 P.2d 998, 1004 (Ariz. Ct. App. 1989). See NAT’L JUVENILE DEFENDER CTR., CONFINED WITHOUT CAUSE 11 (2018), <http://njdc.info/wp-content/uploads/2018/05/Confined-Without-Cause.pdf> (citing Cty. of Riverside v. McLaughlin, 500 U.S. 44, 58 (1991) (holding that a county’s policy of holding probable cause hearings within two days was unconstitutional under the Fourth Amendment because the county excluded weekends and holidays when computing the time)).

There were also many differences in whether detention hearings were held in person, over the phone, or via videoconference. Judges in some jurisdictions reported that only the judges appeared remotely and everyone else was together in a hearing room. In other jurisdictions, the use of videoconferencing was utilized when attorneys were unable to meet with youth before a hearing, or when hearings were conducted on holidays or weekends.

A judge in one jurisdiction told investigators that, although there is an option for the judge to appear via phone and many judges do, appearing in person is preferred: “I always insist that I be there in person because a lot of what I decide is based on what I see of the kid and the family.”

In most jurisdictions, stakeholders told investigators that videoconferencing or phone hearings worked well and were a necessity in counties without a local detention center or those in which parties and court staff would have to travel great distances (three to five hours each way) to have everyone in one hearing room. In other jurisdictions, defenders expressed concerns that video conference hearings were held more as a convenience to the court and detention staff than as a necessity, and that it came at a great cost to providing zealous expressed-interest advocacy for their clients.

The appointment and presence of counsel for the initial hearing ensures a youth’s vital due process rights. Judges and defenders across Arizona must work together to ensure that all children have counsel for advisory and detention hearings. In keeping with best practices, defense attorneys must challenge probable cause and move to dismiss when probable cause is not sufficiently established. Defenders must also educate the court about the harms of detention and argue strenuously against detention in every case, consistent with their clients’ expressed interests.¹¹¹

E. Case Preparation, Discovery, Investigation, Motions, and Experts

Recognizing that a delinquency proceeding for a child can be “comparable in seriousness to a felony prosecution,” the Court in *Gault* explained the importance of the assistance of counsel: “The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it.”¹¹²

In all delinquency cases, information about the case is necessary to aid in the decision to plead or go to trial. It is the lawyer’s duty to conduct prompt investigation and to “[e]xplore all avenues leading to facts concerning responsibility for the acts or conditions alleged . . .”¹¹³ “The investigation should always include efforts to secure information in the possession of prosecution, law enforcement, education, probation and social welfare authorities[, and t]he duty to investigate exists regardless of client’s admissions . . .”¹¹⁴

Thorough investigation is invaluable. In addition to aiding in the client’s decision to enter an admission, accept a plea, or go to trial, information discovered through investigation can persuade the government to drop the case altogether or dismiss certain charges. Without investigating the case or pursuing all available discovery from the government, defenders are unable to effectively advise about plea offers or taking the case to trial.

Investigators were told that “months pass between motions and years pass between trials in juvenile court.”

111 NAT’L JUV. DEF. STANDARDS, *supra* note 6, at § 3.8 cmt.

112 *In re Gault*, 387 U.S. 1, 36 (1967).

113 IJA-ABA JUVENILE JUSTICE STANDARDS, *supra* note 38, at 80

114 *Id.*

While investigators observed some instances of juvenile defenders providing diligent and client-centered advocacy for their young clients, this level of practice was not the norm. In most places, representation was well-meaning, and even caring, but neither client-centered nor zealous. And, as was noted previously, many defenders do not have the opportunity to prepare their clients and cases—especially for the initial hearings—because they are appointed too late or do not spend enough time with their clients before hearings.

Investigators were told that “months pass between motions and years pass between trials in juvenile court.” Investigators heard from all stakeholders in the system that there is virtually no motions practice, no adjudication hearings, and no use of experts, “just negotiation and agreement.”

A judge in one county told investigators, “there is not much lawyering going on” and in another, a judge remarked, “I haven’t seen a written pretrial motion in years.” Another judge said that there are motions in 30 to 40 percent of cases, “but most of those get worked out before a hearing is set.”

Juvenile court culture and practices should not discourage an effective defense. But, a defender in one jurisdiction told investigators that “when advocacy goes up, diversion offers go down.” A county attorney in another jurisdiction confirmed that belief: “I see motions to suppress about 30 percent of the time. The filing of the motion won’t impact an offer, but if I have to go through with the motion hearing, I will often rescind the offer.”

Throughout the state, defenders expressed concerns that prosecutors do not want cases formally litigated, so defenders believe they need to keep the prosecutors happy in order to benefit from good plea offers. After observing several hearings, one investigator reported, “if the parties were not sitting at different tables, it would have been very difficult to tell who was representing the child and who was representing the county.”

In other jurisdictions, motions practice was less sporadic. Defenders in one county reported that motions are common in certain types of cases, such as alleged sex offenses and when competency

is at issue; but investigators learned that even in counties where motions are sometimes filed, “it is well known which defenders will file motions and which ones simply do not.”

“If the parties were not sitting at different tables, it would have been very difficult to tell who was representing the child and who was representing the county.”

— Assessment Team Member

Regarding the use of experts, some attorneys in public defender offices reported to investigators that while there is a budget in their office for experts, they felt they had to fight to get one in juvenile cases. In other jurisdictions, public defender leadership reported that attorneys rarely ask for experts in juvenile cases.

One defender noted the challenges rural jurisdictions face: “One of the biggest problems we have is that most of our experts are from out of town, and urban areas have a lot more resources and access . . . all the rural counties have those same problems.”

One investigator summed it up this way: “While the number of trials or pre-trial motions is not necessarily indicative of the strength of practice or zealousness of representation, a lack of trials coupled with evident shortcomings in other areas of representation is very concerning. It appears that children are not receiving adequate assistance of counsel—the bar *must* be raised.”

It appears that children are not receiving adequate assistance of counsel—the bar must be raised.

Every child charged with an offense has the right to an attorney who will develop all available legal defenses and prepare mitigation evidence. The failure to enable this in every case runs contrary

to the Supreme Court’s recognition that children require counsel’s assistance to investigate, ascertain whether any defenses exist, counsel their young clients, and submit arguments to the court.¹¹⁵ Juvenile defenders must promptly and routinely investigate, request discovery, meet with clients, file motions, challenge detention, challenge probable cause, and strenuously advocate for the client’s expressed interests.¹¹⁶ Anything less amounts to a denial of the right to counsel mandated by *Gault*.¹¹⁷

F. Adjudication and Plea Hearings

Defense counsel must work with their clients to understand their goals and expectations prior to engaging in plea discussions, and must convey any offers made by the prosecution, just as in an adult case.¹¹⁸ Although an attorney’s job is to advise and counsel, the ultimate decision must be the client’s as to whether to accept a plea offer or proceed to trial, and that choice must be respected.¹¹⁹

Advising young clients on the merits of going to trial versus accepting a plea offer is one of the most challenging aspects of juvenile practice. In keeping with expressed-interest representation, defense attorneys must counsel clients with an objective assessment of the case and without exercising undue influence on the client’s decision.¹²⁰ This is especially important because pleas are an all-too-common occurrence, especially in juvenile court. Investigators learned that in most counties, an estimated 90 percent or more of cases end in pleas.

If a client chooses to proceed to trial, the attorney must engage in the full range of trial practice, including filing appropriate motions,¹²¹ preparing witness testimony,¹²² making appropriate motions and objections during the course of the trial,¹²³ cross-examining government witnesses, and presenting defense witnesses and other evidence

necessary for an adequate defense.¹²⁴ Defense counsel should not fall victim to the informality of trials in juvenile court and should present opening and closing arguments.¹²⁵

Investigators across the state heard from system stakeholders that, “we don’t have trials here” and “trials are very rare.” Even in larger, seemingly better resourced areas, defenders reported: “I have had maybe five to six trials in the last two years.” In another jurisdiction, a probation officer told investigators, “I simply cannot remember when the last juvenile trial was in this community.”

Although the vast majority of juvenile delinquency cases in Arizona end in pleas, the role of the defender and the timing of the pleas varies across the state. One defender admitted that although almost all cases end in a plea, the defender advises clients to wait to accept a plea until about 60 days after appointment, because a full investigation is always needed before entering a plea agreement. In another jurisdiction, a defender said that most non-detained children plea at the initial hearing, but that the judge will then appoint counsel to represent the child for a later hearing at which the plea colloquy is put on the record. Another defender revealed that cases proceed in one of two ways: “either the child pleads, which happens in 80 to 85 percent of cases, or the prosecutor dismisses.”

While a defender in one jurisdiction speculated that an estimated 15 to 20 percent of children enter a guilty plea at the initial hearing, before counsel is appointed, stakeholders in other counties stated that the practice was more common, especially with low-level offenses. In another county, an investigator could not get a sense of the scope of the problem: “No one was able to estimate the rate at which detained juveniles accepted a plea at detention hearings or how commonly that occurs.”

No county tracked the timing or number of guilty pleas or how many children entered pleas without

115 See *Gault*, 387 U.S. at 36.

116 NCJFCJ JUVENILE DELINQUENCY GUIDELINES, *supra* note 18, at 30–31; NAT’L JUV. DEF. STANDARDS, *supra* note 6, at §§ 3.6–4.8.

117 See *Gault*, 387 U.S. at 36.

118 See NAT’L JUV. DEF. STANDARDS, *supra* note 6, at § 4.9.

119 *Id.*

120 *Id.*

121 *Id.* at § 4.7

122 *Id.* at § 5.2.

123 *Id.* at §§ 5.3, 5.6, 5.8.

124 *Id.* at §§ 5.5, 5.6, 5.8, 5.9.

125 *Id.* at §§ 5.4, 5.10.

counsel. One defender supervisor told investigators that they want to do a better job tracking all aspects of the court process, including the entry of pleas: “I’m hopeful that with a new case management system we can do both data collection and case management.”

With regard to the role of counsel and the juvenile defender’s ethical mandate to advocate for the expressed interests of the client, one newer attorney did not describe to investigators how the client was involved in making a decision about whether to plea or go to trial, but said, “I will go to trial when there is a point to it,” and, that with felonies, “I will go to trial unless I see an incentive not to.”

No county tracked the timing or number of guilty pleas or how many children entered pleas without counsel.

However, accepting pleas to charges that should not have been filled in the first place harms youth and undercuts the legitimacy of the courts. In one county, a defender said that “the county attorney routinely over-charges and then offers pleas to what the original charge should have been.” In other counties, investigators learned that a disturbingly high number of the cases they discussed with stakeholders or observed in court were pleas to low-level misdemeanors or status offenses involving cases of “kids being kids,” like fighting in school, truancy, or trespassing.

When asked about causes of the lack of trials, stakeholders in one jurisdiction speculated that it could be due to conservative filings and good deals offered by county attorneys: while serious cases get direct filed in adult criminal court, in less serious cases, defenders could count on county attorneys to offer “charging adjustments” at the disposition stage, which means adjudicated felonies will be reduced to misdemeanors upon successful completion of release conditions or treatment.

Stakeholders in other jurisdictions also credited the county attorneys for the lack of trials: “Some say

there are no trials because the prosecutor doesn’t want to go to trial, so they make good deals or offer diversion or informal adjustment, and will amend and amend”

One probation officer told investigators that “there are no trials because kids confess more than adults.” The absence of counsel at interrogation, as well as the lack of motions practice challenging these confessions, likely contributes to the low number of trials.

Many stakeholders credited the culture of collegiality and concern for children for the high-plea and low-trial atmosphere. Most system stakeholders saw this as a strength. In some jurisdictions, the only person who recognized the dangers of a culture in which very few or no cases are taken to trial was the the judge.

For example, at one point in an interview, investigators asked a judge three questions: one concerning the use of experts, one asking how defense attorneys could better represent their clients, and one concerning the level of preparation defenders put into their cases. The judge gave identical, rapid-fire answers to each of the investigators’ questions: “Defenders could be stronger advocates for their clients.”

Another judge told investigators that “for the most part, the parties do a good job at trial, although some have a reputation for being less prepared than they should be.” The judge continued, “but I sometimes think to myself that the attorneys really need to read the statutes and caselaw before making their arguments.”

Investigators observed one hearing in which a judge demanded better advocacy from the defender and better negotiation from the prosecutor:

A contract attorney was going to plead a 13-year-old girl to the petition on a class 3 felony. There seemingly hadn’t been any attempt to negotiate. The young girl was black, and the male attorney was white. I’m not sure that played a role, but it may have. The judge didn’t accept the plea, but set the case for a later hearing and told the attorneys to try harder.

In only one jurisdiction, the county attorney reported that defenders “are very trial oriented,” and that “even some cases with really good offers get set for trial.”

Juvenile defenders must act with diligence and zeal in advocating for every client. This includes actively trying cases where facts or laws are in dispute and making meaningful recommendations at all phases of the court process. Although the length of time a case could take to resolve may be a factor to be considered when a child is deciding whether to plea or proceed to trial, the best way to ensure justice and fairness is for counsel to fully investigate every case, notwithstanding the possible outcome. Defenders must advocate for their client’s well-informed and expressed interests at each stage of every case.

G. Disposition

Dispositional advocacy must be based on thorough and effective planning with youth clients and, as much as possible within the contours of the attorney-client relationship, with the client’s family. “The role of counsel at disposition is essentially the same at disposition as at earlier stages of the proceedings: to advocate, within the bounds of the law, [for] the best outcome available under the circumstances according to the client’s view of the matter”¹²⁶

Disposition planning should begin at the first meeting between defender and client. Good planning can result in not only client-driven outcomes, but also better advocacy and better-informed plea negotiations. As part of disposition planning, defense counsel should investigate and obtain as much information about the client as possible, including family background and any relevant educational, social, psychological, and psychiatric evaluations or disposition reports; and should challenge discrepancies in the reports and unfavorable recommendations, as warranted.¹²⁷

The attorney should also be aware of all of the possible disposition options and identify the least restrictive options to discuss with the child.¹²⁸ In order to do this satisfactorily, the attorney must be familiar with the client’s history, current goals and options, and the available programs, alternatives to placement, and collateral consequences of adjudication.¹²⁹ Counsel should discuss and explain disposition procedures, as well as any probation or commitment plans proposed by the prosecutor or probation officer to the child.¹³⁰

At the time of disposition, the attorney must advocate for the client’s wishes, challenging any recommendations submitted to the court that are adverse to the client’s interests.¹³¹ After the hearing, the attorney must also explain the disposition order to the client, clarifying and emphasizing the client’s court-ordered requirements, and informing the client of the potential consequences of not following the order.¹³² The attorney must also advise the youth of the right to appeal a disposition.¹³³

Investigators learned that not every child was represented at disposition, and where they were, defenders provided less-than-vigorous representation.

In one jurisdiction, after reporting that “kids always have lawyers,” a judge admitted that counsel is not provided for the disposition hearing. Instead, representation in that judge’s courtroom ends after the adjudication hearing. The judge asked investigators, “Why would it go further?” This question signaled to investigators that the bench has little appreciation for the role an attorney can play in highlighting mitigation or providing disposition plans that are client-driven and that the probation department may not be considering.

¹²⁶ IJA-ABA JUVENILE JUSTICE STANDARDS, *supra* note 38, at 179. See also NAT’L JUV. DEF. STANDARDS, *supra* note 6, at §§ 1.1, 6.1.

¹²⁷ ARIZ. JUV. CT. R. PROC. 30(A).

¹²⁸ NAT’L JUV. DEF. STANDARDS, *supra* note 6, at §§ 6.2–6.5.

¹²⁹ *Id.* at § 6.2.

¹³⁰ *Id.* at § 6.3.

¹³¹ *Id.* at §§ 6.5, 6.7.

¹³² *Id.* at § 6.8.

¹³³ *Id.* at § 7.2.

Not every child was represented at disposition, and where they were, defenders provided less-than-vigorous representation.

Following court observations, investigators reported that juvenile defenders did not make any independent recommendations or arguments at disposition hearings. In most of the counties observed, it appeared that attorneys conducted little or no preparation for disposition hearings, and most defenders simply relied on the recommendation of the probation officer, which is offered in a written report submitted prior to the court hearing.

Of particular concern to investigators was the squandered time between adjudication and disposition, especially for children who were detained. Investigators noted that defense attorneys were in a very “reactive” role at the disposition hearing and seemed to have spent no time working with the child to develop an alternate disposition plan.

Defenders told investigators that they have presented written alternative disposition plans, but that it is rare. Investigators observed, and stakeholders confirmed, that the majority of disposition advocacy is done in court through verbal arguments and requests. One judge told investigators that they could not recall a disposition hearing at which the defense retained an expert or called any witnesses.

Both judges and defenders told investigators that attorneys only “very occasionally” make alternative disposition arguments, but one judge said these plans are “unrealistic” and the defenders have found that the judge does not listen to their alternative plans. It appeared to investigators that the vast majority of cases are resolved with a probationary disposition, with little or no advocacy or opposition from the defense.

Defenders in some jurisdictions reported that they are not able to work with probation to try to get an agreed-upon disposition plan. One attorney felt that “probation officers come to court with

their minds made up, and although the judges will listen to defense arguments, they almost always implement probation’s plan as written.” One judge reported, “no alternative disposition arguments are presented.” Another judge reported a need for more training for everyone on available disposition options.

In contrast, a judge in another jurisdiction noted: “We need attorneys involved with disposition planning and advocacy.” A defender who reported regularly writing and submitting mitigation memos and responses to the probation report and recommendations said that defenders often make disposition recommendations that differ from probation. County attorneys and judges in this jurisdiction agreed that the defenders generally make requests for something less restrictive or ask for dispositions that are somewhat more tailored to the interests of the youth.

The active disposition advocacy described in this county illustrates that strong defense disposition practice is possible in Arizona, though it was not seen in most other sites.

It was reported in several jurisdictions that few youth were being committed to the state’s juvenile correction facility. Whether the dispositional outcome is commitment or probation, active and client-directed disposition advocacy is essential to youth success and community safety. Many defenders did not report working with their clients to plan and present youth-driven disposition arguments, and investigators across the state reported that disposition orders are “cookie-cutter” and that every child is placed on probation with many conditions that are unrelated to the charges or the interests of the child.

The active disposition advocacy described in this county illustrates that strong defense disposition practice is possible in Arizona, though it was not seen in most other sites.

Many stakeholders complained that far too many children were on probation, probation is too restrictive, children are subject to too many conditions, and probation officers file far too many technical violations.

Investigators confirmed that Arizona has instituted uniform conditions of probation for children, which include 12 enumerated rules, two standard special conditions, and any other terms, conditions, or special conditions as ordered by the court.¹³⁴ The Code of Judicial Administration requires the presiding judge to ensure all judges within their jurisdiction use the Uniform Conditions of Supervised Juvenile Probation form for cases assigned to the probation department for supervision.¹³⁵ The courts must use the form for disposition, but the form may be amended as follows:¹³⁶ “If a court changes a condition, the change shall be documented on the form. When special conditions are imposed in addition to those specified, they shall be listed under Special Condition 3, or attached in a separate document.”¹³⁷

Investigators reported that defenders approached disposition hearings with a sense of futility. The use of the uniform conditions, and the fact that they are perceived as being standardized and even required is a problem. Growing research shows that when fewer, individualized, and targeted interventions are put in place, the goals of the juvenile court are more likely to be realized: youth will succeed and community safety will be enhanced.¹³⁸

Disposition is a critical stage of practice in delinquency proceedings that can directly impact a young person’s future success. “The active participation of counsel at disposition is often essential to protection of clients’ rights and to furtherance of their legitimate interests [and, i]n many cases, the lawyer’s most valuable service to clients will be rendered at this stage of the proceedings.”¹³⁹

Defenders have an obligation to consult with their clients, to ascertain their interests and needs, and to actively present a disposition recommendation that is independent of that of the court or probation staff. Further, counsel must familiarize themselves with the dispositional alternatives available to the court and must work with the child to formulate and present a disposition plan that is appropriate to the child’s circumstances.¹⁴⁰

Arizona youth deserve to have defense counsel who will listen to them, advise them, and work with them to build a plan that moves them toward success and away from the court. This client-driven disposition plan must be presented to the court and given the time and consideration required of fair and effective juvenile courts. Anything less compromises the rights of children to effective representation at all stages of the proceedings.

134 ARIZ. CODE JUD. ADMIN. § 6-307 app. A (2018).

135 ARIZ. CODE JUD. ADMIN. § 6-307(D)(1) (2015).

136 § 6-307(D)(2).

137 § 6-307(D)(3).

138 THE ANNIE E. CASEY FOUND., PROBATION PRACTICE AND REFORM: KEY THEMES AND FINDINGS FROM AVAILABLE LITERATURE (May 2016), <http://www.aecf.org/m/privy/Deep-End-Resource-Guide-8b-Probation-Practice-and-Reform.pdf>; TRANSFORMING JUVENILE PROBATION, *supra* note 107, at 14; Dick Mendel, *Case Now Strong for Ending Probation’s Place As Default Disposition in Juvenile Justice*, JUV. JUST. INFO. EXCHANGE (Apr. 14, 2016), <http://jjie.org/2016/04/14/case-now-strong-for-ending-probations-place-as-default-disposition-in-juvenile-justice/227322/>; Nat’l Council of Juvenile and Family Court Judges, Resolution Regarding Juvenile Probation and Adolescent Development (July 15, 2017), https://www.ncjfcj.org/sites/default/files/Fnl_AdoptedProbationPolicyResolution_7-2017_1.pdf. See also NCJFCJ Resolves to Help Modernize Approach to Juvenile Probation with Better Understanding of Adolescent Brain Development, NAT’L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES (Aug. 21, 2017), <https://www.ncjfcj.org/Juvenile-Probation-Resolution>; ROBERT G. SCHWARTZ, STONELEIGH FOUND., YOUTH ON PROBATION: BRINGING A 20TH CENTURY SERVICE INTO A DEVELOPMENTALLY FRIENDLY 21ST CENTURY WORLD (2017), <http://njdc.info/wp-content/uploads/2017/10/Youth-on-Probation-Monograph.pdf>.

139 IJA-ABA JUVENILE JUSTICE STANDARDS, *supra* note 38, at 89.

140 IJA-ABA JUVENILE JUSTICE STANDARDS, *supra* note 38, at 89-90.

H. Post-Disposition

The post-disposition phase of a case is often the longest period of court contact in the lives of youth and families. It is critical that youth retain access to counsel while on probation and especially while they are placed in facilities away from their family and community.

To ensure that youth receive adequate due process protections, national standards require that counsel continue representation after a youth is adjudicated and placed on probation or committed to the jurisdiction of the court or a state agency.¹⁴¹ While some states have legislated that attorneys have a continuing obligation to represent youth while under the jurisdiction of the juvenile justice system,¹⁴² Arizona has not, and post-disposition practice varies from county to county.

Even in jurisdictions where counsel is appointed early and automatically, or in which children rarely waived counsel, investigators found that representation ended troublingly early—after the disposition hearing, but before the child had completed the disposition and was still subject to court review and possible revocation proceedings.

In one such county, investigators were told by a county attorney that only about 25 percent of children were represented at probation violation hearings, that “most [children] admit to violations because it is simple,” and that the county attorneys are not involved unless a defender is involved. This, despite the fact that the Arizona Rules of Juvenile Procedure provide for a right to counsel at probation revocation hearings.¹⁴³

In another county where children are reportedly always represented at other stages of the case, investigators learned that representation ends shortly after disposition, at the time an appeal must be filed. Most attorneys do not follow up with their clients unless a new hearing is scheduled.

No jurisdiction reported that counsel is routinely appointed to represent children for post-disposition proceedings, including for appeal or expungement. If young people are not being appointed lawyers for appeals, it is very unlikely that youth have access to counsel for other post-dispositional matters that do not involve court hearings—such as conditions of confinement, reentry matters, and mangaging collateral consequences.

Investigators were told by a county attorney that only about 25 percent of children were represented at probation violation hearings.

One investigator reported that for some children for whom early termination from probation is an option, the defender will set a calendar reminder to check in with the child as the early termination date nears. But, for the most part, attorneys “will rely on the child’s probation officer to initiate a hearing for early termination if the hearing wasn’t set out by the judge on the front end.”

After one court observation, investigators reported that even though the child was represented, there was negligible advocacy: “While the juvenile defender seemed knowledgeable, all argument and information-sharing was ceded to the probation officer.” In these examples, the onus of advocacy has been placed on probation officers, in direct contrast to *Gault*, which explicitly stated that probation officers cannot be responsible for advocating on a child’s behalf.¹⁴⁴

Investigators in one jurisdiction reported that attorneys withdraw after disposition unless the child is placed out of home, then they stay on for the review hearings. But, this was rare since youth committed to the Arizona Department of Juvenile

141 NAT’L JUV. DEF. STANDARDS, *supra* note 6, at §§ 1.4, 7.1, 7.5; IJA-ABA JUVENILE JUSTICE STANDARDS, *supra* note 38, at 91.

142 See, e.g., KY. REV. STAT. ANN. § 31.110(3) (West 2015); OHIO REV. CODE § 2151.352 (West 2005); OHIO R. JUV. PROC. 4, 35. See generally NAT’L JUVENILE DEFENDER CTR., ADDRESSING THE LEGAL NEEDS OF YOUTH AFTER DISPOSITION (2013), <http://njdc.info/wp-content/uploads/2014/01/Post-Dispo-Inno-Brief-2013.pdf>.

143 ARIZ. JUV. CT. R. PROC. 32(D)(2)(a).

144 *In re Gault*, 387 U.S. 1, 36 (1967).

Corrections (AJDC) do not have the right to legal representation or post-dispositional review.¹⁴⁵

In most jurisdictions, investigators were told the same thing: there is virtually no post-disposition practice in the jurisdiction, no following up with clients between review hearings, and no destruction-of-records representation. While attorneys may feel overwhelmed by open cases after disposition, continued attorney-client contact and vigorous post-disposition advocacy leads to better outcomes for children and communities.¹⁴⁶

Best practices urge juvenile courts to ensure that children are represented by counsel at every stage of the proceedings, “including post-disposition and reentry hearings.”¹⁴⁷ Children should be represented by the same lawyer who represented them in earlier stages of the case.¹⁴⁸

Arizona’s juvenile defenders should prepare for, attend, and advocate zealously on behalf of their clients at all post-disposition review hearings, including probation violation hearings, sentence modifications, review hearings, and other collateral reviews. Counsel should also ensure the court fulfills its obligations to facilitate youth success related to court-ordered conditions; advocate where a youth has difficulty accessing education or necessary treatment services; monitor institutions where youth are held and challenge dangerous or unlawful conditions of confinement; advocate at institutional administrative proceedings; assist youth with setting aside and/or sealing of juvenile records when eligible; advocate for removal from the sex offender registry when eligible; ensure youth are released from facilities at the earliest possible point and that community programming is

used effectively; and advocate to ensure children are given the opportunity to succeed while they are subject to the continuing jurisdiction of the juvenile court.¹⁴⁹ Juvenile defense systems must institutionalize the practice of affording meaningful access to counsel for youth post-disposition.

I. Appeals

Appellate practice is an important part of juvenile defense: “A robust and expeditious juvenile appellate practice is a fundamental component of a fair and effective juvenile delinquency system.”¹⁵⁰ Adjudications have long-term consequences and may have important implications for plea negotiations or sentencing if a child is arrested in the future.¹⁵¹

The discussion with a child about their right to appeal should occur early in the representation and throughout the case. Attorneys must not only explain potential appellate issues to their clients as the case progresses, but also explain the factors the client should consider in deciding whether to appeal.¹⁵² And, for a child who wishes to appeal, juvenile defenders must file appropriate notices of appeal and either themselves represent the client or arrange for other representation.¹⁵³

While the Arizona Juvenile Code and Juvenile Court Rules unequivocally provide children the right to appeal and the right to appointed counsel on appeal,¹⁵⁴ in most counties, juvenile appeals are seldom filed. The investigative team found that there are a few appeals in certain jurisdictions, and none in most.

145 Children generally have the right to counsel in any proceeding that may result in detention, such as revocation of probation hearings and appeals of juvenile court orders. See ARIZ. JUV. CT. R. PROC. 10(A), 32(D)(2)(a), 103(D); ARIZ. REV. STAT. ANN. §§ 8-221(A) (2010), 8-235(D) (1999), 11-584(A)(7) (2010).

146 NAT’L JUV. DEF. STANDARDS, *supra* note 6, at §§ 1.4, 7.1, 7.5; IJA-ABA JUVENILE JUSTICE STANDARDS, *supra* note 38, at 91.

147 NCJFCJ JUVENILE DELINQUENCY GUIDELINES, *supra* note 18, at 169, 181, 196.

148 *Id.* at 196.

149 See NAT’L JUV. DEF. STANDARDS, *supra* note 6, at §§ 1.4, 7.1, 7.5. See also IJA-ABA JUVENILE JUSTICE STANDARDS, *supra* note 38, at 91.

150 NAT’L JUVENILE DEFENDER CTR., APPEALS: A CRITICAL CHECK ON THE JUVENILE DELINQUENCY SYSTEM 2 (2014), <http://njdc.info/wp-content/uploads/2014/10/Appeals-HR-10.4.14.pdf>.

151 Megan Annitto, *Juvenile Justice on Appeal*, 66 U. MIAMI L. REV. 671, 701-04 (2012).

152 NAT’L JUV. DEF. STANDARDS, *supra* note 6, at § 7.3.

153 IJA-ABA JUVENILE JUSTICE STANDARDS, *supra* note 38, at 92.

154 ARIZ. REV. STAT. ANN. § 8-235(C), (D) (1999); ARIZ. JUV. CT. R. PROC. 103(C), (D).



A search of appellate decisions from January 1, 2016 through January 1, 2018 revealed that there were no juvenile delinquency decisions from seven of Arizona's fifteen counties. Six of the remaining counties had one to three cases each, and the remaining two counties had 20 and 12 each, for a total of 42 delinquency decisions statewide over two years.

The investigative team found a theme in many jurisdictions: where there is very little trial advocacy or few motions filed, there are very few, if any, appeals. When one judge was asked how many juvenile appeals there were, the judge laughed and pulled out a stack of paper less than a foot high and said that was all that had been filed in nearly 25 years.

In one jurisdiction, an investigator attributed the lack of appeals to the widespread collegiality. Investigators reported very little, and in most places no, defender resources allocated for post-disposition advocacy, including for juvenile appeals.

When one judge was asked how many juvenile appeals there were, the judge laughed and pulled out a stack of paper less than a foot high and said that was all that had been filed in nearly 25 years.

"Appeals play a unique role in the delinquency context, even beyond providing for accuracy and integrity in the conclusions, they are often the only vehicle for public accountability and transparency."¹⁵⁵ Because there are few resources devoted to appellate practice and no statewide system in place for juvenile appeals, these trends will continue unless juvenile courts and juvenile defender systems dedicate more time and resources to this important aspect of juvenile defense.

155 Anitto, *supra* note 151, at 18.

II. BARRIERS TO AND OPPORTUNITIES FOR JUST AND BALANCED OUTCOMES

A. Juvenile Court System Barriers to Justice and Fairness for Youth

1. Juvenile Court Culture

Every court has a culture that develops from a combination of practices, expectations, and behaviors that go beyond what the law and court rules dictate. In the best juvenile courts, the culture reinforces due process and high-quality defense representation for children. But in courts that see zealous defense as an impediment to serving the best interest of the child, the culture is a barrier to effective lawyering and undermines constitutional protections. In Arizona’s juvenile courts, the investigative team found both.

The informality of juvenile court proceedings has long been an issue, but the *Gault* Court resolved that tension, declaring informality unacceptable because it breeds lax observance of children’s due process rights and other basic rights afforded to adults.¹⁵⁶

A study cited by the *Gault* Court warned:

There is increasing evidence that the informal procedures, contrary to the original expectation, may themselves constitute a further obstacle to effective treatment of the delinquent to the extent that they engender in the child a sense of injustice provoked by seemingly all-powerful and challenge-less exercise of authority by judges and probation officers.¹⁵⁷

Even though more than 50 years have passed since *Gault* was decided, this quote still rings true in many counties in Arizona.

Investigators observed court culture that discourages vigorous, client-centered advocacy, manifested differently throughout the state. In one county, although all children are afforded counsel, investigators reported that “zealous advocacy by attorneys is lacking, which is attributed to the informal, collaborative culture between the judge, prosecutor, defense attorney, and probation staff.” Investigators reported the current group of county attorneys’ reputation for being “very reasonable” contributed to the informality. But this culture of informality has a downside: defenders intimidated that county attorneys take umbrage when defenders formally litigate cases, so defenders try to keep them “happy” in order to benefit from good plea offers.

One defender reported that “informality is good, because the judge allows a lot of private bench conferences which allows sensitive information to stay private in a public courtroom, but those are also often bad because probation officers can spew out all sorts of case history and there are huge evidentiary problems.”

Investigators noted the widespread prevalence of “minute entries,” informal discovery practices, scant or nonexistent motions and trial practice, and a culture described as one in which “anyone who won’t get along, don’t get along.” In one jurisdiction, investigators were told that the court expects defense attorneys to just be quiet.

One court administrator reported to investigators that the juvenile court is undergoing planning for better case management, in an “attempt at a new system overhaul” focused on “changing the culture of unprofessionalism.” The court is exploring options for improved technology and the development of a centralized case management system. Currently, judicial assistants who attend hearings are responsible for manually entering

¹⁵⁶ *In re Gault*, 387 U.S. 1, 26 (1967).

¹⁵⁷ *Id.* at 26 n.37; PRESIDENT’S COMM’N ON LAW ENF’T & ADMIN. OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 85 (1967), <https://www.ncjrs.gov/pdffiles1/nij/42.pdf>.

information about hearings and outcomes into the file. Court officials told investigators that, as a result of this outdated system, attorneys rarely file written motions and judges rarely enter written orders. The court administrator sees this practice of reliance on “minute entries,”¹⁵⁸ rather than formal orders, as reflective of a general lack of professionalism in the juvenile justice system, which negatively reflects on the system as a whole.

Investigators noted that while children are estimated to enter pleas in more than 90 percent of cases in most jurisdictions, stakeholders believed that children overall obtained “reasonable results,” like diversion or adjudications for misdemeanors instead of felonies. However, the so-called good results still included court involvement, and any perceived benefits were not the result of strong client-directed advocacy, but of a general culture of de-incarceration and treatment based on perceived best interests.

A court’s emphasis on children’s best interests may appear positive. But to ensure youth success, a court must consider a young person’s stated interests, which are only available to the court through strong defense advocacy and scrupulous adherence to due process requirements.

In stark contrast to some courts’ focus on children’s best interests, investigators observed that children in another jurisdiction were shackled “frequently and seemingly indiscriminately,” despite reforms that had been recently enacted to limit the use of shackling.¹⁵⁹

And, while most jurisdictions touted a newfound philosophy of de-incarceration, a judge in one jurisdiction told investigators, “I love the detention center, I know you’re not supposed to love detention, but I do.” Investigators reported that the

judge also said that while the court prefers not to commit kids to the Arizona Department of Juvenile Corrections, local detention is used to “stabilize and reset” children who were struggling to meet the court’s conditions. This cuts against clear evidence that any detention or incarceration of youth leads to lasting harms in the lives and identity development of youth.

Investigators at more than one site reported that a troubling practice seems to be incentivized by an Arizona law that requires the court to transfer the case of a child to adult criminal court if they turn 18 during the pendency of the case.¹⁶⁰ Investigators reported defenders’ concerns from several jurisdictions that cases for children who were nearing their 18th birthday were sometimes dragged out so the case would be transferred. One defender told investigators that because of this practice, “the age of juvenile court jurisdiction in Arizona ends at essentially when kids reach 17 and a half.”

“Justice by geography” is not uncommon in juvenile court systems across the country, but investigators found the geographical differences in Arizona were particularly stark. It seems in some places and in some moments that the *Gault* decision never happened.

The culture created in many of Arizona’s juvenile courts devalues the importance of constitutional protections for youth and favors a system that puts the best interests of the child above zealous advocacy by all stakeholders, including defenders. This is troubling given the serious and lasting consequences of juvenile court involvement.

158 A minute entry is a court entry made during the hearing or in the minutes following the conclusion of a hearing. Unlike an official court order or ruling, minute entries are generally unsigned and are often in the form of the court’s notes taken during a hearing. *Compare* ARIZ. SUP. CT. R., r. 125(a), *with* (b).

159 ARIZ. JUV. CT. R. PROC. 12(E); Miriam Wasser, *Youth Advocates Demand Arizona Courts End Indiscriminate Shackling of Juveniles*, PHOENIX NEW TIMES (Apr. 29, 2016, 10:59 AM), <http://www.phoenixnewtimes.com/news/youth-advocates-demand-arizona-courts-end-indiscriminate-shackling-of-juveniles-8240661>.

160 If a juvenile turns 18 “during the pendency of a delinquency action or before completion of the sentence . . . for an act that if committed by an adult would be a misdemeanor or petty offense or a civil traffic violation, the court shall transfer the case to the appropriate criminal court” for prosecution as an adult. ARIZ. REV. STAT. ANN. § 8-302(D) (1998).



It has long been recognized that upholding children’s constitutional protections and aspiring to rehabilitate them are laudable, and necessary coexisting functions of the juvenile court. But, “[u]nless appropriate due process of law is followed, even the juvenile who has violated the law may not feel that he is being fairly treated and may therefore resist the rehabilitative efforts of court personnel.”¹⁶¹

Accordingly, Arizona must work to change its juvenile court culture. In keeping with best practices that value the unique role of the juvenile defender, defenders must have support to advocate zealously for every client’s position and to protect each child’s constitutional and other rights within the adversary system.¹⁶²

“Justice by geography” is not uncommon in juvenile court systems across the country, but investigators found the geographical differences in Arizona were particularly stark.

161 *Id.* at 26 (quoting STANTON WHEELER & LEONARD S. COTTRELL, *JUVENILE DELINQUENCY: ITS PREVENTION AND CONTROL* 33 (1966)).

162 NCJFCJ *JUVENILE DELINQUENCY GUIDELINES*, *supra* note 18, at 30.

2. Fees, Fines, and Costs

As soon as a child enters Arizona’s juvenile court system, they and their family become subject to an extraordinary number of fines, fees, and costs. These financial sanctions, which can accrue to thousands of dollars, are regularly assessed against youth and families presumed or found by a court to be indigent. Juvenile system fines, fees, and costs impose a heavy burden on impoverished families, extend and deepen children’s involvement in the juvenile justice system, and hinder youth and family success.

a. Arizona’s Panoply of Court-Imposed Financial Obligations

Even though an estimated 90 to 99 percent of Arizona youth and families involved in delinquency cases meet indigence standards, the state allows juvenile courts to charge families for every aspect of their child’s involvement in the justice system. Investigators found that “there is no limit” on the number or amount of fines, fees, and costs that children and their families incur as a result of their juvenile court involvement. Nothing in juvenile court is free—not the attorney, probation, shelter care, detention, treatment, or other ordered services.

In order to access their constitutional right to counsel, a child and their family can be charged an indigent administrative assessment,¹⁶³ an administrative assessment,¹⁶⁴ and the cost of legal services provided.¹⁶⁵

Even before a child is adjudicated, they and their family can be assessed for foster care, shelter care, or treatment;¹⁶⁶ pre-petition diversion to

a community-based alternative program or a diversion program administered by the juvenile court;¹⁶⁷ pre-adjudicatory diversion services, including treatment, counseling, or education;¹⁶⁸ and pre-adjudicatory probation services, including counseling, education, and non-residential programs.¹⁶⁹

If a youth is adjudicated delinquent, they and their family can be charged for the cost, expense, and maintenance of placement, including medical, dental, and mental health care, when the child is committed to the Department of Juvenile Corrections or another state department;¹⁷⁰ the cost, expense, and maintenance, including food, clothing, shelter, and supervision, for the time the child is detained in a juvenile detention facility;¹⁷¹ probation or other post-disposition supervision;¹⁷² and a monetary assessment “in aid of rehabilitation.”¹⁷³

These costs are in addition to fines, surcharges, and assessments levied on youth when they are adjudicated for specified offenses, including up to \$150 when adjudicated incorrigible;¹⁷⁴ up to \$500, plus surcharges and assessments, when adjudicated delinquent for the unlawful purchase, possession, or consumption of alcoholic beverages;¹⁷⁵ up to \$150, plus surcharges and assessments, when adjudicated delinquent for any non-felony offense, including curfew violations and truancy;¹⁷⁶ between \$300 and \$1,000 when adjudicated delinquent for graffiti;¹⁷⁷ and between \$250 and \$500 when adjudicated delinquent for DUI.¹⁷⁸ Children who are unable to pay fines, penalties, or “juvenile monetary assessments” in full on the date they are ordered by the court are charged a mandatory, one-time \$20 payment fee for the privilege of paying off their court-ordered financial sanctions over time.¹⁷⁹

163 ARIZ. REV. STAT. ANN. § 11-584(C)(1) (2010).

164 § 11-584(C)(2).

165 ARIZ. REV. STAT. ANN. § 8-221(G) (2010).

166 ARIZ. REV. STAT. ANN. § 8-243 (2011).

167 ARIZ. REV. STAT. ANN. § 8-321(A) (2011).

168 ARIZ. REV. STAT. ANN. § 8-234(D) (2006).

169 § 8-321(F).

170 § 8-243(B).

171 § 8-243(C).

172 ARIZ. REV. STAT. ANN. § 8-241(A) (2014).

173 ARIZ. REV. STAT. ANN. § 8-341(G) (2018).

174 § 8-341(H).

175 ARIZ. REV. STAT. ANN. § 8-323(F)(5) (2009).

176 § 8-323(B).

177 § 8-341(S).

178 ARIZ. REV. STAT. ANN. § 8-343(J) (2009).

179 ARIZ. REV. STAT. ANN. § 12-116(A) (2006).

FEES, FINES, AND COSTS IN ARIZONA'S JUVENILE JUSTICE SYSTEM

The extraordinary number of fines, fees, and costs allowed under Arizona law tell only part of the story of the financial assessments levied on youth and families by the juvenile justice system. Local jurisdictions reported to investigators that they also charge for court-ordered evaluations—such as educational, psychiatric, sex offender, and substance abuse—that are used to determine which services and types of treatment a youth should receive. And, children and their families can then be charged for each service or treatment plan ordered.

Some jurisdictions reported that it is the probation department, not the court, that assesses a family's ability to pay for treatment and services provided while a child is on probation. The youth and their family are billed by the court clerk for amounts determined by the probation department. Those assessments become the legal responsibility of the youth and/or the family to pay and can impact the child's ability to successfully complete probation.

When a youth turns 18, Arizona law instructs the juvenile court to enter a juvenile restitution order for any unpaid costs, fees, surcharges, or monetary assessments.¹⁸⁰ These orders are enforced as civil judgments against the youth and/or their family, and do not expire until they are paid in full.¹⁸¹ Youth and families are charged ten percent annual interest on unpaid balances of juvenile restitution orders.¹⁸² Some jurisdictions reported participating in Arizona's Tax Intercept program to collect unpaid assessments.¹⁸³

¹⁸⁰ ARIZ. REV. STAT. ANN. § 8-344(D)(1) (2018).

¹⁸¹ § 8-344(F).

¹⁸² *Id.*

¹⁸³ See *Tax Intercept – Arizona*, ONTARIO SYSTEMS, <http://www.rrtrain-ingcenter.com/module/tax-intercept-arizona> (last visited Aug. 17, 2018).



KEY RECOMMENDATIONS:

- 1 Abolish all fees and costs associated with access to a publicly funded juvenile defender
- 2 Eliminate all fees and costs related to juvenile court

FEES & COSTS IN ARIZONA HARM CHILDREN



PROBATION
EXTENSION



CIVIL
JUDGMENT



WAIVER OF
COUNSEL



TAX
INTERCEPTS



INTEREST



NO RECORD
DESTRUCTION
OR SET-ASIDE

b. Financial Obligations Hinder Youth Rights

Beyond the obvious economic hardships these multiple fines, fees, and costs place on youth and families, Arizona's juvenile court-imposed financial obligations have a direct, negative impact on children's constitutional rights.

i. Waiver of Counsel

The United States Supreme Court has long held that children in delinquency court are entitled to publicly funded counsel.¹⁸⁴ Arizona law theoretically provides free representation to youth through public defenders and court-appointed counsel; however, youth and families can be charged two assessment fees when the child asserts their constitutional right to counsel and can be assessed for the cost of the legal services the child receives.¹⁸⁵

Investigators found that the assessment of fees for appointed counsel varies across the state. While some counties assess no fees for appointed counsel in juvenile court, most counties assess some fee—ranging from a \$25 application or administrative fee to a \$250 to \$400 attorney fee in each case. Despite the law's requirement that parents be assessed "an amount that the parent or guardian is able to pay without incurring substantial hardship to the family,"¹⁸⁶ investigators found that counties instead assess flat fees, without regard to each family's unique financial situation.

One defender reported: "The courts routinely assess \$400 attorney fees to families at the start of the case, when according to state law, the court is not supposed to assess such a fee unless the court makes a finding that the family can pay an amount that is not a financial hardship."

One jurisdiction reported that the fee would be automatically waived if the parent was a victim in the case, and most reported that there is some mechanism in place for the court to waive the fee. But investigators across the state found the waiver process to be largely informal and information about it difficult to find.

What did not vary among counties that assess appointed-counsel fees was the emphasis placed on the fees by court personnel explaining the right to counsel to youth. Investigators reported that when probation officers spoke with youth prior to hearings or when judicial officers explained children's rights at the outset of a hearing, the fees associated with having a court-appointed attorney were "always explained in detail."

Investigators observed numerous conversations between probation officers and youth in hallways outside courtrooms, just prior to the youth entering court for a hearing. The probation officers' explanation of the child's right to counsel nearly always included a version of: "if you want an attorney, you will have to pay a fee and come back for court at a later date."

184 *In re Gault*, 387 U.S. 1, 42 (1967).

185 ARIZ. REV. STAT. ANN. §§ 11-584(C)(1)-(2) (2010), 8-221(G) (2010).

186 § 8-221(G).

Investigators then observed court, where they saw most of these children decline counsel, admit to the charges, and receive a rote disposition. Investigators reported that the children’s decision to decline counsel seemed motivated by their families’ desires to avoid attorney fees. Probation officers supported this hunch, telling investigators that attorney fees “absolutely come into play” in children’s decisions to waive their right to counsel.

ii. *Extended Probation*

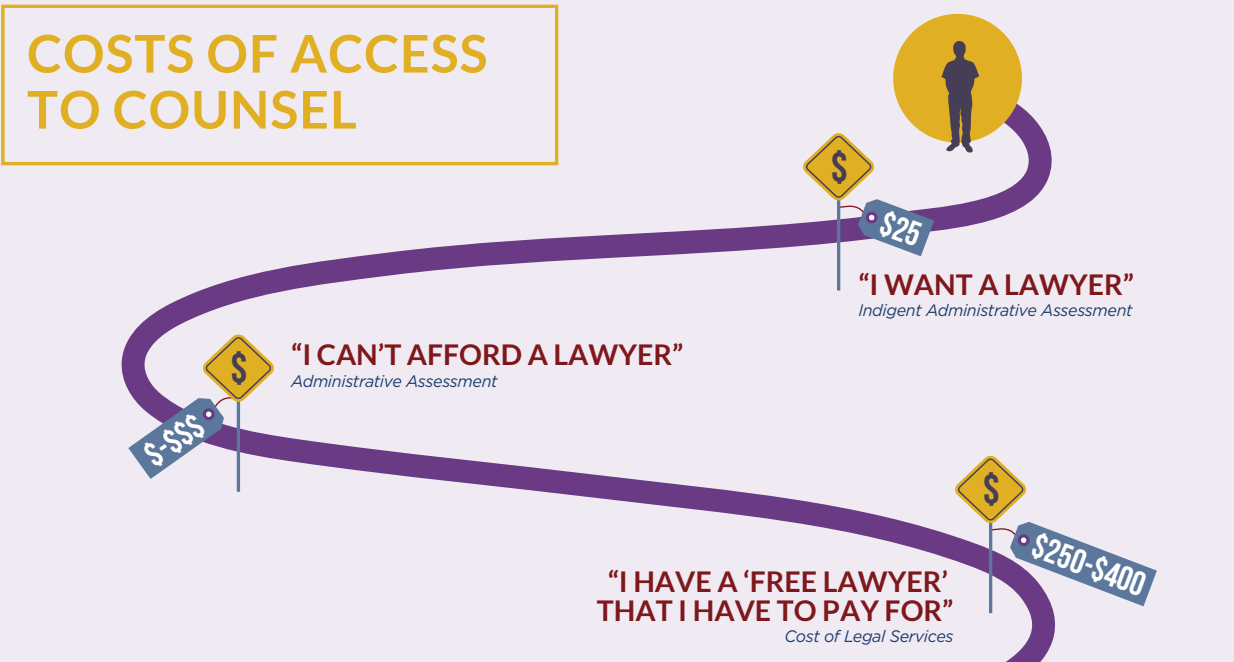
While many of Arizona’s juvenile court fines, fees, and costs are legally discretionary (if mandatory in practice), monthly probation supervision fees are mandatory under state law.¹⁸⁷ Monthly probation supervision fees must be “not less than fifty dollars,”¹⁸⁸ and were reported to range among the counties from \$50 to \$65 per month.

In some counties, investigators found that every adjudicated child is placed on standard probation, at a minimum, and that every probation order continues for at least one year. This equates to

a yearly minimum of \$600 to \$780 in probation fees assessed on families already living below the poverty line.

Standard probation may be extended beyond one year if the youth has violated conditions of their probation—which often include requirements to pay court assessments—or failed to pay restitution.¹⁸⁹ Youth on intensive probation must pay restitution and probation fees, and probation officers must “request the county attorney to bring before the court any probationer who fails to pay down . . .”¹⁹⁰

Juvenile probation officers are required to “[e]nsure the collection of monies owed as a condition of probation.”¹⁹¹ This conflation of probation supervision and the collection of monetary assessments fundamentally changes the role of the probation officer¹⁹² and results in children’s probation being extended because they are unable to pay court-ordered financial assessments. One defender told investigators, “I have never known a child who has successfully completed probation.”



187 ARIZ. REV. STAT. ANN. § 8-241(A) (2014).

188 § 8-241(A).

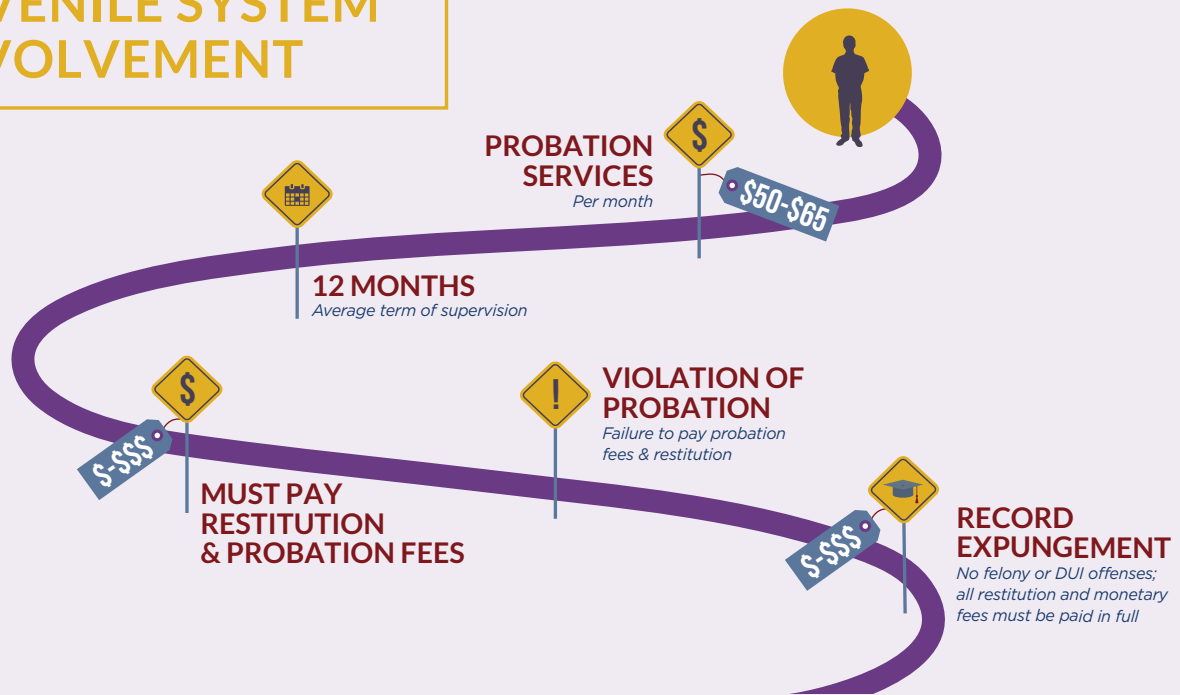
189 ARIZ. REV. STAT. ANN. § 8-341(B) (2018).

190 ARIZ. REV. STAT. ANN. § 8-353(C)(5) (2006).

191 ARIZ. CODE JUD. ADMIN. § 6-301(J)(1)(d) (2008).

192 Anne Larason Schneider & Jean Shumway Warner, *The Role of Restitution in Juvenile Justice Systems*, 5 YALE L. & POL’Y REV. 382, 394-95 (“Jurisdictions in which restitution has been integrated with probation have seen the role and the nature of the work of probation officers change considerably. The probation officers’ work has shifted from counseling, social services, or once-a-month visits to implementing and monitoring restitution requirements.”).

CONSEQUENCES OF JUVENILE SYSTEM INVOLVEMENT



iii. Inability to Clear Records

A fundamental feature of the juvenile court, compared to adult criminal court, is its emphasis on allowing children to move beyond their youthful mistakes and lead successful lives uninhibited by their interaction with the juvenile system; “to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past.”¹⁹³

Arizona allows youth two methods of burying their youthful errors: setting aside an adjudication¹⁹⁴ and the destruction of juvenile records.¹⁹⁵ Both are unavailable to youth who are unable to pay in full all restitution and monetary assessments.¹⁹⁶

Youth are regularly denied opportunities to set aside adjudications and have their juvenile records destroyed not only because they may owe unpaid

assessments, but also because their parents may continue to owe unpaid costs. According to one defender: “Though fees assessed to parents are not supposed to be counted against children for destruction of records, in practice these fees are. Some courts deny destruction of records for children who were never ordered to pay fines or fees, but whose parents may owe as little as \$25.”

While set-aside and record destruction should be integral pieces of ensuring Arizona’s juvenile justice system achieves its mission of allowing children to reach their full potential,¹⁹⁷ in reality they are reserved for youth whose families are financially able to pay Arizona’s numerous financial sanctions. Children whose families do not have the means to meet Arizona’s innumerable assessments are not permitted the benefit of a forgotten past.

193 *In re Gault*, 387 U.S. 1, 24 (1967).

194 ARIZ. REV. STAT. ANN. § 8-348 (2009).

195 ARIZ. REV. STAT. ANN. § 8-349 (2002).

196 §§ 8-348(C)(4), 8-349(C)(6).

197 *Arizona Juvenile Court Mission Statement*, THE JUDICIAL BRANCH OF ARIZONA: MARICOPA COUNTY, <http://www.superiorcourt.maricopa.gov/SuperiorCourt/JuvenileCourt/mission.asp> (last visited Aug. 14, 2018).

Children whose families do not have the means to meet Arizona’s innumerable assessments are not permitted the benefit of a forgotten past.

c. Financial Assessments Impede the Delivery of Justice

In addition to transforming juvenile probation officers into collection agents, Arizona’s myriad financial assessments corrupt the roles of other justice system stakeholders and offer little to no financial benefit.

i. Defenders Fail to Challenge Assessments

Investigators found that across the state, most defenders failed to challenge the imposition of fines, fees, and costs. Investigators observed several hearings in which restitution was ordered; none of the investigators observed defenders contesting the restitution amount or the court considering a child’s or family’s ability to pay.

Stakeholders reported that challenges, while possible, were rarely raised. One defender commented that financial sanctions were often not challenged because the plea deals offered were “so good,” and the attorney didn’t want to ruin the deal for the child.

Court officials and defenders alike relayed that there is not enough emphasis on challenging financial sanctions or on explaining financial impacts to children and their families.

ii. Assessment by Geography

Stakeholders reported that some courts are reluctant to order fines and fees, and rarely do so. But in one county, a commissioner proudly relayed to investigators that the court had collected nearly \$200,000 in the previous year, without any appreciation of the burden those financial sanctions had placed on the children and families in the county.

During court observations, investigators witnessed a judge explaining that probation fees could be suspended, “but we have to get restitution paid.” The judge noted that the court’s jurisdiction could be extended past age 18 to allow for the payment of financial sanctions.

In some jurisdictions, investigators noted that financial sanctions are pursued through a civil judgment after a child turns 18.¹⁹⁸ One judge explained that if a youth turns 18 and has not paid financial obligations, “it goes to collections, we get tax intercepts, and a civil judgment is entered on the child and parent.” But in at least one jurisdiction, investigators learned that enforcement almost never occurs after the court’s jurisdiction has ended.

A defender described a conflict of priorities among stakeholders in one county: “The finance people at the court are still of the old-fashioned mindset that children and families should pay the costs of the court system that prosecutes them and are a means of raising revenue. The leadership of the probation department, though, is more of the ‘fees are bad for families’ mindset.”

In addition to transforming juvenile probation officers into collection agents, Arizona’s myriad financial assessments corrupt the roles of other justice system stakeholders and offer little to no financial benefit.

198 ARIZ. REV. STAT. ANN. § 8-243(C) (2011) (“The assessment is collectible as a civil judgment.”).

iii. Harm to Families, Little Financial Benefit to Counties

The fines, fees, and costs assessed against children's families can cause serious harm to their financial wellbeing. One defender explained that financial sanctions are regularly levied against families who are eligible for a waiver or reduction of fees, but they are not aware of their options or cannot navigate the system: "The process to apply for fee waivers is burdensome and may be inaccessible for families."

Despite the severe financial burdens being placed on youth and families, investigators found no evidence that Arizona counties experience any significant financial benefit. One stakeholder reported: "Overall, very little is collected by the county in fees, though the fees are still very burdensome on families. I doubt the court collects enough to pay the salaries of the people in charge of assessing fees."

Even when courts collect fines and fees, the money appears to have negligible impact on the system or the county budget. Funds collected from assessments charged to children who ask for a court-appointed lawyer must be paid to the county general fund, in an account designated to "supplement, not supplant, funding provided by counties for public defense."¹⁹⁹ A finance officer in a larger county noted \$750,000 in the fund, but investigators found no link between the existence of these special funds and any increase in the funding or quality of juvenile defense.

Investigators also found that not every county earmarks financial assessments in accordance with state law. One county finance official reported to investigators that the appointed counsel fee in juvenile cases does not directly fund juvenile indigent defense. When asked what effect a presumption of indigence and truly free appointed counsel would have on the juvenile indigent defense budget, the official responded, "none."

Fines, fees, and costs levied by the juvenile court system against youth and families have lasting, negative effects.²⁰⁰ Defenders must integrate advocacy against financial sanctions into all aspects of their representation of youth clients. Defenders should be aware of the client's and their family's financial situation and bring any financial hardship to the court's attention. Defenders should advocate for dispositions that do not include fines, fees, or costs; move the court to reduce or eliminate fines, fees, and costs based upon an individual client's financial situation; and advocate for state or local policy changes that reduce the financial burden juvenile court involvement places on youth and families, especially when a young person's rights or chances of future success are harmed.

In one county, a commissioner proudly relayed to investigators that the court had collected nearly
\$200,000
in the previous year, without any appreciation of the burden those financial sanctions had placed on the children and families in the county.

199 ARIZ. REV. STAT. ANN. § 11-584(E) (2010).

200 See generally RICHARD J. BONNIE ET AL., REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 192 (National Research Council of the National Academies, 2013); 45. Tamar R. Birckhead, *Toward a Theory of Procedural Justice for Juveniles*, 57 BUFF. L. REV. 1447, 1471, 1476-83 (2009); NAT'L JUVENILE DEFENDER CTR., THE COST OF JUVENILE PROBATION: A CRITICAL LOOK INTO JUVENILE SUPERVISION FEES (2017), http://njdc.info/wp-content/uploads/2017/08/NJDC_The-Cost-of-Juvenile-Probation.pdf.

3. Role of Probation Officers

Although tasked with many functions in juvenile court, the Supreme Court in *Gault* found that probation officers function as law enforcement:

They initiate proceedings and file petitions which they verify, as here, alleging the delinquency of the child, and they testify, as here, against the child. And here the probation officer was also superintendent of the Detention Home. The probation officer cannot act as counsel for the child. His role in the adjudicatory hearing, by statute and, in fact, is as arresting officer and witness against the child.²⁰¹

This quote resonates to this day in a juvenile court system that continues to rely heavily on the judgment and action of probation officers. Not only are probation officers the gatekeepers of the youth court system, their recommendations are highly influential on other decisionmakers in the process, including county attorneys, judges, and even juvenile defenders.

While probation officers are vital members of the juvenile justice system, they are often forced to assume multiple and at times conflicting roles in the juvenile court process. In deciding whether to refer a case to the county attorney, make a referral for diversion, or terminate inquiry into a case altogether, the probation officer is arguably one of the most powerful decisionmakers in Arizona's juvenile court system.

Despite the significant ramifications of probation officers' decisions, youth often interact with probation without the assistance of counsel to protect their rights. While the law ensures the right to counsel in the formal stages of the adjudicatory process to protect children's rights, probation's wide discretion to obtain admissions and impose conditions of diversion means that many children

never get far enough in the formal decision-making process to reap the benefits of the protections the right to counsel is intended to afford.

For example, investigators found that decisions about diversion had been delegated to the probation department, even though the statute gives county attorneys this discretion.²⁰² One probation officer said, "one of my primary jobs is to go over all the complaints and make the decision of who goes to diversion; technically it is supposed to be the county attorney who does this, by statute, but we have a list of offenses and they have given us the ability to just send those cases directly to diversion." Investigators expressed concern that this process disregards the fact that no one with legal training has determined the charges are valid.

A probation officer also reported that they can "violate" a child's probation and give consequences if the child admits, without filing a charge or bringing the child to court.²⁰³

In another jurisdiction, a defender told investigators, "Probation officers here in juvenile court have a lot of power, a ton. And in many cases where I disagree, everyone defers to the probation officers."

In some jurisdictions, investigators observed that in court, the probation officer always sits at defense counsel's table, which impairs client confidentiality and can negatively impact the attorney-client relationship. In another jurisdiction, the child was flanked by the parent and the probation officer, and the defender was pushed off to the side.

One defender lamented, "I can't talk to my client, it's very close quarters, and the probation officer has more power than the prosecution." Defenders across the state reported feeling futile: "If the probation officer says that a kid should stay detained, they stay detained."

201 *In re Gault*, 387 U.S. 1, 35 (1967).

202 ARIZ. REV. STAT. ANN. § 8-321 (2011); ARIZ. JUV. CT. R. PROC. 22(C).

203 Indeed, a child's probation may modify or clarify any regulation which the probation officer has imposed. ARIZ. JUV. CT. R. PROC. 31(C). See also ARIZ. JUV. CT. R. PROC. 31(A) ("In addition, the assigned juvenile probation officer may impose regulations which are consistent with and necessary to the implementation of the conditions imposed by the court.").

Courtroom observations revealed that the county attorney seemed prepared, but had very little to do, given that the state’s case was typically presented by the probation officer. And in one county, investigators relayed that it seemed that no one in the room needed to be an attorney—not the defender, county attorney, or judge—because the probation officers “ran the show.”

Investigators found in jurisdictions across the state that seemingly every child receives probation, no matter what happens in court. And there is very little defender advocacy at disposition, where probation officers always speak first, make requests, and share reports, and seem to have their recommendations accepted by the judge the vast majority of the time.

Many probation officers revealed that insufficiencies in the system forced them into inappropriate roles, and a few well-intentioned officers said to investigators, “if not us, then who?”

One probation officer explained the awesome responsibility placed on them to advise children before their initial hearing:

I think about how this person has never even been inside a court, and it is my moral responsibility to explain it to them. I tell them that I am a probation officer and what that is, what the recommendation is, and how I might be their probation officer. I tell them, “you’ve been charged with this,” and I explain how the judge will proceed. I feel like if they don’t understand, they will need an attorney, but that is their decision. I explain about the rights and that the judge will ask if they want an attorney. I explain what will happen if you ask for an attorney. I tell them that everybody makes mistakes and want them to be as prepared as they can.

Investigators noted that while probation officers had good intentions, they were performing functions that should be undertaken by counsel. At

times, probation officers seemed to be treading into the dangerous territory of providing legal advice.

Because part of probation officers’ explanation of a child’s right to counsel is “if you want an attorney, you will have to pay a fee and come back for court at a later date,” investigators observed that most children in court declined counsel and admitted to the charges on the spot, and the court accepted the probation officer’s recommendation. What may have started with good intentions becomes an implicitly coerced waiver of counsel by a court official.

While probation officers had good intentions, they were performing functions that should be undertaken by counsel.

In several jurisdictions, investigators reported that there were many individual probation officers, and in some instances, probation supervisors, who were deeply committed to juvenile specialization, trauma-informed and evidence-based treatment, and a therapeutic approach to probation services in juvenile court.²⁰⁴ But these officers existed side by side with, and in contrast to, officers who saw themselves as law enforcement, were heavily armed—both in and out of court—and who were deeply committed to a law enforcement role.

This tension between probation services focused on either supporting or surveilling youth is not unique to Arizona. There is a growing trend across the country to move away from surveillance and toward supportive services for youth.²⁰⁵

Juvenile probation is big business, and probation services fees are seen as a vital revenue stream for what is viewed by many as much-needed services for “troubled” youth.²⁰⁶ However, a growing body of research suggests that probation is ineffective, especially for low-risk youth: “Traditional community supervision—both as an alternative to residential supervision (probation) and as a

204 In fact, sections 6-201.1(J)(1) and (K)(5)-(8) of the Arizona Code of Judicial Administration mandate the development and implementation of probation policies and procedures that are evidence based.

205 TRANSFORMING JUVENILE PROBATION, *supra* note 107, at 9.

206 ARIZ. REV. STAT. ANN. §§ 8-241(A) (2014), 8-321(F) (2011); ARIZ. CODE JUD. ADMIN. §§ 5-103 (2011), 6-306 (2002).

means to continue supervision after release from a correctional institution (parole)—is ineffective.”²⁰⁷ Other recent studies concur: “the impact of community supervision is at best limited and at worst leaves clients more likely to recidivate.”²⁰⁸

Instead of placing seemingly every court-involved youth on probation, Arizona youth and communities would be better served by reserving probation for high-risk youth:

Formal probation, in which a youth is assigned a probation officer and held responsible by a court for complying with terms of probation, should be limited only to youth charged with serious offenses or otherwise assessed to be a risk to public safety. Youth who have not committed serious offenses and are not at high risk for re-arrest should not be placed on probation. These young people should be handled outside of the court system by community organizations and/or public agencies unconnected to the court system.”²⁰⁹

For youth who could best benefit from probation as part of their disposition, such services should be “focused, strategic and goal oriented . . . [and] carefully designed and individualized to maximize the likelihood that each young person placed on supervision will avoid negative behaviors and make progress on their path toward healthy and constructive roles in adult society.”²¹⁰

The overreliance on probation officers to meet responsibilities that should be filled by defense counsel is troubling. Juvenile defenders and Arizona’s juvenile defense leadership must step in and fulfill their constitutional obligation to provide client-directed advocacy and ensure that defenders are well-trained and adequately supported to resist the blurring of probation roles in the future.

4. Racial and Ethnic Disparities

Disturbingly similar to every other state, Arizona’s juvenile courts treat youth of color more harshly than white youth. In September 2016, the American Institutes for Research published a report titled, “An Examination of Ethnic Disparities in Arizona’s Juvenile Justice System.”²¹¹ This study examined the data from Arizona’s 75,316 referrals to the juvenile justice system in the two-year period from January 1, 2013 to December 31, 2014.²¹²

The report’s key findings revealed that Black and Latinx youth experience disparate treatment and receive harsher sanctions than white youth, and that while Black youth experience greater levels of disparity than Latinx youth, the disparities affecting Latinx youth vary proportionally with the population of the county.²¹³

The study also found that Native American and Black youth are more likely than white youth to be referred to juvenile court;²¹⁴ Native youth are more likely than white youth to be referred to adult court;²¹⁵ Latinx, Black, and Native youth are more likely to be held in secure detention;²¹⁶ and Black and Native youth are more likely to have a formal petition filed in juvenile court.²¹⁷

Further, the study found at that time that Latinx youth were not overrepresented in referrals to juvenile court, but did experience disparate treatment once they were in the system.²¹⁸ This may no longer be true because from state fiscal year 2014 to 2016, the percentage of referrals

207 TRANSFORMING JUVENILE PROBATION, *supra* note 107, at 6 (internal citation omitted).

208 *Id.* at 6.

209 *Id.* at 19.

210 *Id.* at 20.

211 Konrad Haight & G. Roger Jarjoura, *An Examination of Ethnic Disparities in Arizona’s Juvenile Justice System: Final Technical Report*, AM. INST. FOR RESEARCH (Sept. 2016), <https://www.ncjrs.gov/pdffiles1/ojjdp/grants/250803.pdf> (examining Administrative Office of the Courts data, available at <https://www.azcourts.gov/jjssd/ResearchInfo>).

212 *Id.* at 1.

213 *Id.* at 2.

214 *Id.* at 1.

215 *Id.* at 15.

216 *Id.*

217 *Id.* at 16.

218 *Id.* at 2.

of Hispanic youth rose nine percent and the percentage of referrals of white youth dropped ten percent.²¹⁹ Ongoing analysis is needed.

A 2011 study of juvenile diversion in Maricopa County found that “[d]isproportionate minority contact with the juvenile system continues to persist” and “that race or ethnicity may be playing a role in a juvenile’s chances of being offered diversion at the offense level.”²²⁰

Not surprisingly, investigators observed many of these findings reflected in their observations. Said one stakeholder:

Most of the county is Hispanic, which is reflected in probation and law enforcement, but not in judges, attorneys, or management. What do we see? The rich white kid never gets picked up or prosecuted, but there is zero discussion in this jurisdiction about racial or socioeconomic issues by the defense. There was one defense attorney who tried to raise the issue of race somewhat ineffectively, and the judge, and the state, and everyone else in the courtroom threw a fit.

Many defenders reported a shameful lack of diversity in those who represent children or those who are judges or commissioners.

Investigators found that many stakeholders were willing and even enthusiastic about addressing... racial and ethnic disparities racial and ethnic disparities in juvenile court and were aware that tracking such data was a priority for the Administrative Office of the Courts. However, stakeholders in other jurisdictions were either unaware of or incredulous about any disparate

impact. In fact, investigators in several locations reported that stakeholders did not believe that racial disparities exist in juvenile court.

One court official told investigators, “We all grew up here and are used to dealing with people of all races, so it just isn’t a problem here.” In another county in which court staff reported no disparities, an investigator who observed delinquency hearings noted that Native American youth were defendants in six of the ten hearings observed in just one day. A court official in another jurisdiction told investigators that the overrepresentation of Native youth “isn’t a problem because there are so many more services available on the reservations.”

Latinx, Black, and Native youth are more likely to be held in secure detention; and Black and Native youth are more likely to have a formal petition filed in juvenile court.

Native American youth comprise approximately five percent of the youth population in Arizona²²¹ and represent, on average, 5.97 percent of youth across all stages of Arizona’s juvenile court involvement.²²² However, this data gives an incomplete picture of Native American youth involvement in the juvenile justice system, because it does not account for youth processed through Arizona’s Tribal juvenile courts. More comprehensive data and further analysis is needed to gain a complete picture of Native American youth involvement in these juvenile court systems.

219 Compare ADMIN. OFFICE OF THE COURTS, ARIZ. SUPREME COURT, ARIZONA’S JUVENILE COURT COUNTS FY2016 at 8 tbl. 1.4 (2017), <https://www.azcourts.gov/Portals/29/JJSD%20Publication%20Reports/Juveniles%20Processed/AZJuvCrtCountsFY16.pdf> [hereinafter ARIZONA’S JUVENILE COURT COUNTS FY2016], with ADMIN. OFFICE OF THE COURTS, ARIZ. SUPREME COURT, ARIZONA’S JUVENILE COURT COUNTS FY2014 at 8 tbl. 1.4 (2014), <https://www.azcourts.gov/Portals/29/JJSD%20Publication%20Reports/Juveniles%20Processed/AZJuvCrtCountsFY14.pdf>.

220 ACLU OF ARIZONA, PROTECTING WHAT WORKS: JUVENILE DIVERSION IN MARICOPA COUNTY 5-6 (2011) https://www.acluaz.org/sites/default/files/field_documents/aclu_juvenile_diversion_2011.pdf.

221 According to the Kids Count Data Center, in 2017, non-Hispanic American Indian and Alaskan Native youth made up about five percent of youth aged 5-11 and five percent of youth aged 12-17. *Child Population by Race and Age Group*, KIDS COUNT DATA CENTER, THE ANNIE E. CASEY FOUND. (Aug. 2017), <https://datacenter.kidscount.org/data/tables/8446-child-population-by-race-and-age-group#detailed/2/4/false/871/68,13|63/17077,17078>.

222 ADMIN. OFFICE OF THE COURTS, ARIZ. SUPREME COURT, ARIZONA’S JUVENILE COURT COUNTS FY2017 8, 14, 18, 22, 26, 30, 34, 38, 42, 47, 51 (2017), <https://www.azcourts.gov/Portals/29/JJSD%20Publication%20Reports/Juveniles%20Processed/AZJuvCrtCountsFY17.pdf?ver=2018-06-27-080458-920> [hereinafter ARIZONA’S JUVENILE COURT COUNTS FY2017].

Investigators noted a scarcity of training available for defenders representing the ethnically and racially diverse youth in Arizona and additionally noted that there is no concerted effort to address the racial and ethnic disparities present at all stages of juvenile court involvement.

While all stakeholders should recognize existing racial disparities in the juvenile court system and work to eliminate them, juvenile defenders have a unique role and specific responsibilities. Juvenile defenders must recognize their own vulnerability “to the negative effects of implicit bias as they practice in a paternalistic system that is easily manipulated by perceptions of race and class” and provide “loyal, client-directed legal advocacy” to safeguard against the harms caused by the effects of racial injustice in the juvenile justice system.²²³

Further, Arizona must be committed to combatting racial injustice by requiring ongoing data collection and analysis of the impact of race on system involvement and outcomes and by requiring training for all stakeholders on implicit racial bias and how it affects decision-making at every stage of a child’s involvement in the juvenile justice system.

5. Insufficient System and Practices for Appointment of Interpreters

Although Latinx youth are not disproportionately referred to juvenile court, the rate of petitions filed for Latinx youth is higher than the rate of petitions filed for white youth across the state.²²⁴ Nearly 30 percent of the Arizona population speaks a language other than English at home.²²⁵ In 2015, recognizing a need for interpreter services, the Arizona Judiciary undertook efforts to improve interpreter services by establishing the Court Interpreter Program Advisory Committee, and has since taken steps to improving the access to and quality of courtroom interpreters.²²⁶

While there is no specific provision under Arizona law for the appointment of interpreters in juvenile court,²²⁷ Arizona caselaw specifies that the failure to appoint an interpreter for a defendant who is unable to comprehend English is a denial of due process.²²⁸

Despite this, investigators expressed concerns about the ability of children and their families to access court interpreter services when needed. While access to Spanish-speaking interpreters in court was apparent in some jurisdictions, it was not universal.

There was a widespread inability amongst stakeholders to explain the process for accessing interpreter services, and a general belief that children “very rarely” need interpreters. Courtroom observations revealed that defenders never requested an interpreter for non-English speaking clients or their family members who were present in the courtroom.

Also troubling were the perceptions expressed by court officials and defenders in some jurisdictions. One jurist reasoned that there are not language barriers in juvenile court, “because 80 percent of court staff speak Spanish.” Yet, in one jurisdiction, investigators learned that access to interpreters had been a “hot button issue” even requiring intervention by the Department of Justice, but that problems persisted.

One investigator who was fluent in Spanish expressed deep concern after speaking to a youth and his mother in Spanish and learning that they were planning to decline the use of an interpreter and an attorney, apparently because they felt like they had the proficiency to proceed in English and did not want to draw attention to themselves or inconvenience the court. The investigator noted that the court was quick to accept another child and parent’s decision to decline the appointment of

223 Kristin Henning, *Race, Paternalism, and the Right to Counsel*, 54 AM. CRIM. L. REV. 649, 694 (2017).

224 Referrals involving Latinx youth became formal petitions 1.17 times more often than those involving white youth. Haight & Jarjoura, *supra* note 211, at 16.

225 James King, *Nearly 30 Percent of Arizona Population Speaks Language Other Than English at Home*, PHOENIX NEW TIMES (Apr. 28, 2010, 12:11 PM), <http://www.phoenixnewtimes.com/news/nearly-30-percent-of-arizona-population-speaks-language-other-than-english-at-home-6648075> (reporting numbers from the U.S. Census Bureau).

226 See *Arizona Language Access and Interpreter Information*, ARIZONA JUDICIAL BRANCH, <http://www.azcourts.gov/interpreter> (last visited Aug. 1, 2018).

227 ARIZ. REV. STAT. ANN. § 12-241 (2018).

228 *State v. Rios*, 539 P.2d 900, 901 (Ariz. 1975).

an interpreter without delving further and without any awareness of the cultural issues that would disincentivize a child from requesting an interpreter or attorney.

Defenders and probation officers also widely reported a need for interpreters outside the courtroom setting, such as in the field with probation officers, but that there was no opportunity to access them.

To satisfy due process, courts must ensure that children have interpreters when needed.²²⁹ And, attorneys have a duty to enlist the assistance of interpreters when needed to ensure effective communication with their young clients.²³⁰ Accordingly, Arizona must work to overcome the barriers that exist to ensuring the use of interpreters when needed.

6. Diversion

Diversion programs should provide youth with an alternative to juvenile court involvement. Arizona offers two types of diversion—one pre-filing and one pre-adjudication—that are available at the discretion of the county attorney.²³¹ Although called diversion, the post-filing, pre-adjudication program is not true diversion from court, but does serve as an alternative to adjudication supervised by court personnel.²³²

Investigators were concerned that, although there is wide use of both types of diversion, there was still an astonishingly high number of children facing court intervention for low-level offenses. The best intervention for low-risk youth is no intervention: “Research finds that for youth at lower risk of reoffending, the most effective strategy for juvenile courts and probation agencies is to abstain from interfering—in other words, issue a warning and

stay out of the way.”²³³ Investigators found that diversion programs tend to be overutilized where a warning would suffice and underutilized where access to services through diversion could prevent formal court processing.²³⁴

Investigators also found differences among counties in how diversion is operated. In one jurisdiction, most first- and second-time misdemeanors are referred to diversion. In other jurisdictions, county attorneys have changed the way certain offenses are filed so they qualify for diversion. One county attorney told investigators that the office “routinely down-file[s] felony marijuana charges to make the cases eligible for pre-trial diversion.”

Investigators learned that, although the statute gives the county attorney “sole discretion” as to diversion decisions,²³⁵ some county attorneys have ceded discretion on diversion decisions to the probation department. In one jurisdiction in which diversion decisions were handled by probation, a probation officer explained the process:

When a juvenile is referred to diversion, he meets with a juvenile probation officer for intake. During intake, the juvenile must admit to the allegations; if the juvenile does not admit to the charge, he will be rejected from diversion. The probation officer has full discretion to determine the consequences that will be imposed as part of diversion, which is supervised by a probation officer in the same way that post-adjudication probation is handled. And probation officers have full discretion to determine how to handle a violation of the diversion rules.

229 ARIZ. REV. STAT. ANN. § 12-241 (2018); *Rios*, 539 P.2d at 901.

230 NAT'L JUV. DEF. STANDARDS., *supra* note 6, at § 2.6.

231 ARIZ. REV. STAT. ANN. § 8-321(A) (2011); ARIZ. JUV. CT. R. PROC. 22(C).

232 § 8-321(C) (“The county attorney may designate the offenses that shall be retained by the juvenile court for diversion or that shall be referred directly to a community based alternative program that is authorized by the county attorney.”); ARIZ. JUV. CT. R. PROC. 9(B) (“Reference to diversion, diverted or deferred means the processing of a juvenile incorrigibility or delinquency matter which may obviate the need to adjudicate the juvenile.”).

233 TRANSFORMING JUVENILE PROBATION, *supra* note 107, at 9.

234 *Id.* at 13.

235 § 8-321(C).

A recent study of the racial and ethnic disparities in Arizona’s juvenile justice system examined Administrative Office of the Courts data from state fiscal years 2014 and 2015 and found that there were disparities²³⁶ in diversion based upon race and ethnicity:

Over the two-year period for the entire state, Latino youth were un[der]represented in diversions from formal court processing. White youth were diverted 1.11 times more often Black and Native American youth were underrepresented in diversions to a greater degree than Hispanic youth. White youth were diverted 1.16 times more often than Black youth and 1.25 times more often than Native American youth.²³⁷

Probation officers have full discretion to determine how to handle a violation of the diversion rules.

Arizona must institute efforts to ensure that diversion is being offered to youth who could most benefit from diversion, and that warning and releasing children is used as an accepted, scientifically sound alternative to any court involvement. Arizona must eliminate racial, ethnic, and geographic disparities in diversion decisions. Further, “[i]n appropriate cases, and when consistent with the client’s expressed interest, counsel should advocate for pre-petition diversion, informal resolution, or referrals outside of the traditional court process.”²³⁸

7. Special Challenges for Rural and Remote Communities

All of Arizona’s children have the same right to counsel, no matter where they reside.²³⁹ And every attorney who represents a child in a delinquency proceeding in Arizona has the same responsibility to provide effective representation.²⁴⁰

Investigators found challenges that impacted children’s ability to access well-resourced, well-trained, and zealous advocates across the state. However, defenders in Arizona’s rural communities face special challenges, including the ability to specialize and access their clients, experts, resources, services, and training. And even in locations that do not qualify as rural, Arizona’s vast distances and geographical features result in many of the same challenges.

Effective juvenile defense requires specialized practice, where the attorney is not only equipped to meet all the obligations due to an adult client, but also has expertise in juvenile-specific law and policy and the science of adolescence, special skills and techniques for effectively communicating with youth, knowledge of collateral consequences of juvenile court involvement, and experience with child-specific systems affecting delinquency cases, such as schools and adolescent mental health services.²⁴¹

In some locations in Arizona, specialization is difficult to institute, given the low number of juvenile delinquency cases in the court system. For example, according to Census data, the counties in Arizona that have the largest percentage of rural populations are Apache, Navajo, and LaPaz. In

236 Haight & Jarjoura, *supra* note 211, at 8 n.1 (“Disparity refers to the state of being unequal, and we use it here to mean that minority youth are not being treated equitably with white youth based on the RRI and logistic regression odds ratios. Overrepresentation indicates that the rate at which minority youth are represented at a given decision point is higher than we would expect compared to the rate at which white youth are present. Underrepresentation indicates that the rate at which minority youth are represented at a given decision point is lower than we would expect compared to the rate at which white youth are present. Over- and underrepresentation are also based on the RRI and logistic regression odds ratios. We use these three terms interchangeably as they both mean that the RRI and odds ratios indicate that minority youth are not represented at a rate equal to White youth. We use the terms over- and underrepresentation to indicate the specific direction of the disparity.”).

237 *Id.* at E-8.

238 NAT’L JUV. DEF. STANDARDS, *supra* note 6, at § 3.4.

239 See *In re Gault*, 387 U.S. 1, 36 (1967); ARIZ. JUV. CT. R. PROC. 10(A); ARIZ. REV. STAT. ANN. § 8-221(A) (2011).

240 See ARIZ. R. PROF. CONDUCT 42 (1.1)-(1.4).

241 NAT’L JUV. DEF. STANDARDS, *supra* note 6, § 1.3.

fiscal year 2017, a total of 281 juvenile delinquency petitions were filed in these three counties.²⁴²

Many of Arizona's counties are vast, and travel from one community to others within the same county can span hundreds of miles and up to 10 hours' round trip.²⁴³ Juvenile defenders in some of Arizona's remote and rural communities reported to investigators that access to resources and services are scarce, and their ability to offer dispositional alternatives is extremely limited.

Stakeholders reported that children in rural and remote communities have difficulty maintaining regular contact with their attorneys, and probation officers face significant challenges maintaining regular contact with children on probation. Likewise, stakeholders reported difficulties maintaining family engagement, especially when the court is located far away or when children are removed from their community and sent many hours from home.

A defender noted that, in one of Arizona's many geographically large counties: "Sometimes as punishment the judge says the client must come to the court, which is hours away, without any provision for transportation. If the family can't afford gas, the child will be arrested, and that breeds a culture of contempt for the court."

One defender told investigators that "the rural jurisdictions need to look at the stats" because it seemed to this defender that commitment rates and the use of intensive probation were higher in rural counties than urban counties, "due to the lack of local resources." And, it should be noted that while Administrative Office of the Courts data reports Arizona Department of Juvenile Corrections commitments and standard and intensive probation dispositions by county, it does not provide the numbers of adjudications by county, so a true county-by-county comparison cannot be made.²⁴⁴

Stakeholders reported that children in rural and remote communities have difficulty maintaining regular contact with their attorneys.

Investigators discovered an overreliance on the delinquency system to treat mental health issues and other issues that would be more appropriately addressed in community settings. Though investigators believed this practice may be well-intentioned and due to a lack of alternative available resources in the community, it can lead to an inappropriate and dangerous overuse of detention and saddle youth with court records and a range of consequences that could derail their education, employment, and professional opportunities.

Many defenders and court officials acknowledged that juvenile delinquency specialization would be difficult to implement in rural counties and emphasized the need for defenders to access special training and adhere to specific juvenile defense guidelines to maintain the proper role of counsel in delinquency proceedings. One defender told investigators, "Specialization is tricky in small and rural jurisdictions, but juvenile defenders need training and support to maintain a clear role." Investigators discovered that many defenders in rural and remote jurisdictions have mixed caseloads, including delinquency and other family court cases.

242 ARIZONA'S JUVENILE COURT COUNTS FY2017, *supra* note 222, at 21 tbl. 4. There were 81 petitions filed in Apache County, 14 in La Paz County, and 186 in Navajo County during fiscal year 2017. This means that a fifth of Arizona's counties handle fewer than 3.55 percent of all of the juvenile cases filed across the state.

243 Driving Directions from Colorado City, Arizona to Wiggins Crossing, Arizona, GOOGLE MAPS, <http://maps.google.com> (indicating that driving between these two locations within Coconino County takes approximately five and a half hours one way).

244 See, e.g., ARIZONA'S JUVENILE COURT COUNTS FY2017, *supra* note 222, at 21-40.

Some stakeholders reported moderate success in attracting defenders to juvenile court by offering contracts with incentives, such as student loan repayment. But, a court official in another jurisdiction reported that their attorney contracts for juvenile court are “flat fee” contracts, providing payment to attorneys per case, not per hour, which raises concerns about the incentive for attorneys to take as many cases as possible while devoting little time and effort to each case.

One court official recommended to investigators that the state enact a delinquency court equivalent to Juvenile Rule 40.1 for dependency practitioners to provide clear guidance for the unique role and responsibilities of defenders in delinquency proceedings.²⁴⁵

Arizona must create juvenile specialization where practicable and provide specialized training and guidance throughout the state to ensure all of Arizona’s children the same access to well-resourced, effective juvenile defenders at all stages of juvenile court involvement. Arizona must make concerted efforts to ensure uniformity in the availability of dispositional alternatives for all children, no matter where they live.

B. Juvenile Defense System Opportunities

1. Juvenile Defender Specialization, Standards, and Training

Juvenile defense specialization is essential to providing adequate delinquency defense to youth.²⁴⁶ Even where exclusive delinquency practice is not possible, juvenile defense must be recognized as an area of legal practice that requires expertise, specialized standards of representation, and training.

In response to investigators’ questions about what could improve juvenile defense, one juvenile defender responded: “What I would like to see, what we don’t have, is a specialization. While other states have juvenile specialization, Arizona does not. Arizona has specialization for family law, bankruptcy, and other obscure areas of the law, but not juvenile. I would like to pursue that if it ever came about.”

Juvenile defenders in a few jurisdictions reported that they or their offices informally or formally aspired to adhere to the National Juvenile Defense Standards or the ABA Juvenile Justice Standards Relating to Counsel for Private Parties, but there is no statewide standard in place. Arizona also has no statutorily required or recommended training guidelines or standards for attorneys representing youth in delinquency proceedings.

While funds exist for juvenile defender training in some areas of the state, investigators found that most stakeholders and defenders agree that more specialized training is needed so that juvenile defenders can better advocate for their clients. While many county attorneys and jurists admitted to being somewhat “self-taught” in the intricacies of juvenile court, most believed that juvenile-specific training for everyone would improve the system dramatically.

245 ARIZ. JUV. CT. R. PROC. 40.1 (providing guidelines for appointed counsel and guardians ad litem in dependency cases). See also ARIZ. JUV. CT. R. PROC. 40.2 (providing duties and responsibilities of counsel appointed for parent representation; there is currently no such rule for appointed counsel in delinquency matters).

246 NAT’L JUV. DEF. STANDARDS, *supra* note 6, at 8-9.

Some offices have seen an increase in funding, in response to the training requirements for dependency practitioners in Juvenile Rule 40.1, but many reported that this has not increased the budget or training opportunities for delinquency defense, and some reported that it has restricted the time and opportunities for training—especially for those who practice in both delinquency and dependency courts.

While there was an enthusiastic interest in delinquency training by defenders in offices that support juvenile defense specialization, a few contract attorneys who handle mostly adult criminal cases and “overflow” or conflict cases in juvenile court reported to investigators, flatly, that they had no interest in obtaining any juvenile defense-specific training.

One chief defender in a rural jurisdiction told investigators that “there is a hefty budget for training, but there are often not trainings available and I cannot always spare an attorney to attend the trainings, because they have to cover the courts, too.”

A noted opportunity for juvenile defenders is a three-day statewide training for attorneys providing representation in the juvenile delinquency system and a separate day-long training for juvenile defenders, both hosted annually by the Arizona Public Defender Association, a non-profit corporation comprised of the indigent representation offices and programs in the state at the city, county, tribal, and federal levels.²⁴⁷

Despite these two trainings, there are simply not enough opportunities for specialized training related to delinquency defense. Accordingly, Arizona should provide increased opportunities for juvenile defense attorneys to participate in meaningful and intensive training on relevant issues facing children and youth in the juvenile

court system, including adolescent development; the availability and appropriate use of diversion and probation services; effective motions practice; detention advocacy, including the use of extraordinary writs to challenge the unnecessary and inappropriate use of detention; trial skills; effective disposition, post-disposition, and appellate advocacy; the collateral consequences of delinquency adjudications; role of counsel and ethical considerations; and issues relating to cultural diversity.²⁴⁸

Arizona should implement a train-the-trainer program to enhance and sustain training and skills development. Arizona should adopt standards of practice for all defenders who practice in delinquency proceedings and establish mechanisms for monitoring compliance with the standards.²⁴⁹

Arizona should form an advisory committee to draft and propose a delinquency court equivalent to Arizona Juvenile Court Rule 40.1.

2. Leadership and Oversight

Leadership and oversight are essential to a fair and just juvenile court system. “Recognizing juvenile defense as a specialized practice necessitates an institutional framework with a management and support structure, which in turn provides defenders with training, feedback, evaluation, promotion, and leadership opportunities within the juvenile indigent defense system.”²⁵⁰

Many of the shortcomings in Arizona’s juvenile defense system identified in this report can be attributed to a lack of—and addressed by—centralized oversight and leadership. State-level management could provide a platform for effective juvenile defense, consistency in expectations, and performance rooted in standards and regular monitoring.

247 See ARIZ. PUB. DEF. ASS’N, apda.us (last visited Aug. 1, 2018). Training for public defenders is governed by section 5-105 of the Arizona Code of Judicial Administration.

248 NAT’L JUV. DEF. STANDARDS, *supra* note 6, at §§ 1.3, 9.2.

249 See, e.g., *id.*

250 *Id.* at 8, §§ 9.1, 9.3, 9.4, 10.1.

In one sense, the idea of centralized oversight for Arizona’s juvenile defense system may seem foreign or even unappealing in a place like Arizona, which is vast, culturally and geographically diverse, and deeply committed to its local people, budgets, and cultures. But, with only 15 counties and a need to establish a consistent system of effective juvenile defense, centralized oversight is critical and would address the ongoing and urgent deficits in juvenile defense reported across the state.

Arizona should designate a statewide oversight body to devise a plan to provide ongoing evaluation of the delivery of legal services to Arizona’s children. This oversight body could be used to strengthen the defense delivery system for youth and provide management of several key issues, including adopting a presumption of indigence for children, ensuring uniform early appointment of counsel, implementing practice standards for juvenile defenders, and mandating specialized and ongoing training for those who represent children in juvenile delinquency proceedings. This group could also provide technical assistance, such as a system to collect data, and support for much-needed defender resources, such as sample motions and briefs.

3. Collection and Utilization of System Data

The Juvenile Justice Services Division of the Administrative Office of the Courts (AOC) collects, houses, and publishes an impressive amount of data about the juvenile justice system.²⁵¹ AOC reports contain statewide data regarding many aspects of the juvenile court system, such as referrals, detention, diversion, offenses, petitions, dismissals, penalties, adult court filings and transfer, and crosscutting issues like race and gender.

However, there was no statewide, and little to no local, data collected concerning whether youth have access to counsel in court and juvenile defender advocacy issues, like requests for discovery; procedural and substantive motions filed; waiver of counsel; trials sought versus cases tried; case outcomes; time spent per case or per stage of the

proceeding; the use of defense team personnel like social workers, investigators, and experts; and appeals, post-disposition representation, or expungement information.

Most defenders and defender supervisors were aware of the data AOC collects, but none reported that they routinely reviewed the data or had a system in place to make the best use of them. One chief defender told investigators, “regarding stats on pleas, motions filed, demographics, population stats—I don’t track that stuff. We are trying to build a database to track that stuff and I’m hopeful that with the new system we can do both data collection and case management.”

Especially in a state as rich in data as Arizona, the juvenile defender system should have the capacity to collect and routinely analyze data so that best practices and innovations can be promoted.

Arizona should implement the use of a centralized data system that will provide cloud-based case management and document storage, with sufficient protections to ensure conflict-free representation as well as confidentiality, to all juvenile defense attorneys providing representation in delinquency cases, including public defenders, contract counsel, legal defenders, legal advocates, and other appointed or conflict counsel. Defense leadership should ensure the system allows it to cull data and compare to AOC data to ensure uniform early access to counsel, access to no-cost counsel for youth, uniform determination of indigency, fidelity to uniform standards of representation, and training requirements.

4. Resources

There is a perception that nothing is adequately funded in Arizona, and juvenile defense is no exception. Investigators heard and observed an overall need for more skilled juvenile defenders and more qualified investigators, social workers, and paralegals.

251 See, e.g., ARIZONA’S JUVENILE COURT COUNTS FY2016, *supra* note 219.

Investigators also found that where resources do exist in defender offices, there is a perception that they are reserved for adult cases. Juvenile defenders in more than one defender office reported that the juvenile defenders are the “poor red-headed step child” of the office. But, it was not clear to investigators whether there is a true misallocation of resources within those offices. When pressed by investigators, one defender supervisor reported that requests for experts and the use of defense staff are reviewed on a case-by-case basis, but indicated there was not as great a need for resources to support cases in juvenile court.

One defender supervisor lamented that it “would be nice to see the defense bar treated equally with probation, prosecutors, and court services. If we had social workers, there is some other stuff we could really do to help, but we don’t get grants or have soft money [like the others do].” Another supervisor told investigators that the juvenile office has very limited funds to cover the costs of experts or other litigation support.

Most defenders and defender offices reported that there is not much, if any, money budgeted for juvenile defense-specific training. One juvenile defender supervisor emphatically reported that there is no line-item funding in the budget for the training of juvenile defenders, while adult defenders have a dedicated training budget. A defender supervisor in another jurisdiction told investigators that there is money in the budget for juvenile training, but there is neither the time nor enough opportunities to send defenders to training.

Juvenile defenders in many jurisdictions reported receiving some local training, but told investigators they are not authorized to travel to attend trainings or seminars unless they personally cover the cost. Further, there was a consensus that there are more resources and training opportunities for dependency than delinquency defense.

In some jurisdictions, defense expert funds come out of the public defender budget. In others, the funds come from the court itself. One jurist reported that if a juvenile defendant wanted an expert, “They would have to come to me and we would have to find money. But I have never been asked for money to hire an expert.”

Many, but not all, sites reported that there is pay parity between defenders and county attorneys. One supervisor reported to investigators that pay parity did not exist between defenders and county attorneys, but that efforts to ensure pay parity were ongoing.

In the jurisdictions in which there was not pay parity between adult and juvenile defenders, investigators learned that there were also disparities between dependency and delinquency cases. One probation supervisor speculated that the juvenile defense attorneys prefer to take dependency cases because those cases “go on and on” and the attorneys can make more money. A court official in another jurisdiction reported that the county recently changed the system to pay contract attorneys a flat fee in delinquency cases.

Investigators reported that there were very few, and in most places no, defender resources allocated for post-disposition advocacy, including for juvenile appeals and record destruction. And, a few jurisdictions had no resources and no system for any advocacy at the detention or initial hearing stage of the proceedings. Juvenile defense attorneys must be adequately compensated to provide the constitutionally required level of representation that youth both require and deserve.

Arizona has an obligation to treat children and youth in the juvenile court system with dignity, respect, and, above all, fundamental fairness. To that end, Arizona must consistently allocate sufficient resources to support the zealous representation of youth in delinquency proceedings, including funds for training, statewide oversight and leadership, and expert services.





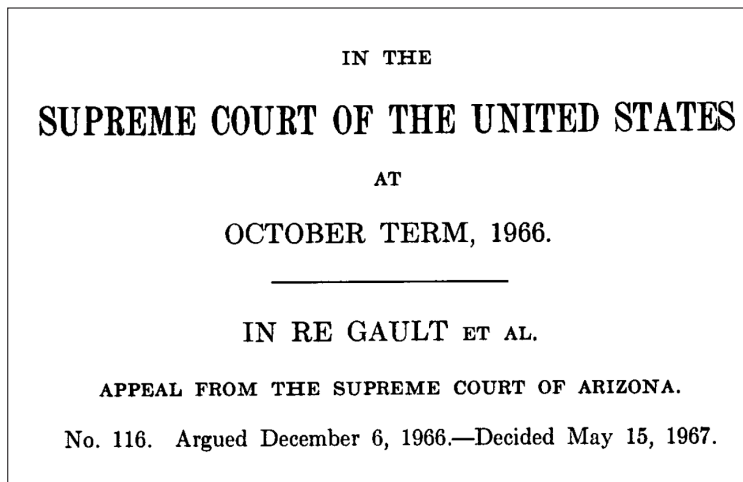
CHAPTER FOUR: A CALL TO ACTION

“Being kind in a system that is unjust is not enough.” ²⁵²

—Sister Helen Prejean

I. STRENGTHS AND PROMISING PRACTICES

Fifty-one years ago, a case from Arizona established children’s constitutional protections.



Across the state, investigators noted that system stakeholders share a deep concern for Arizona’s children and a genuine desire for children in the system to succeed. Most of the stakeholders surveyed by investigators, including those with decision-making power or influence on the outcome of the proceedings, like judges, county attorneys, probation officers, and juvenile defenders, reported the belief that children do not belong in AJDC. The declining numbers of children committed to state care supports this.²⁵³ Further, although the transfer of children to adult court has been on the rise statewide since 2015, transfer is declining or not occurring at all in many counties.²⁵⁴

The Administrative Office of the Courts collects and releases data from Arizona’s juvenile courts.²⁵⁵ And, because the collection of data is routine and the data is valued, there is a unique opportunity to collect and utilize more system data that specifically focuses on juvenile defense.²⁵⁶

Investigators reported that there is pay parity between public defenders and county attorneys in many counties, and a commitment to attracting and retaining public defenders and appointed counsel for youth. Investigators learned that at least one county matches up to \$500 per month for student loan payment for defenders, which widens the pool of applicants and incentivizes longevity.

Fifty-one years ago, a case from Arizona established children’s constitutional protections. Today, shortcomings in Arizona’s systems for providing those protections leave its most vulnerable young people at risk and thwart the goals of the juvenile court system. Building upon these strengths and using the following recommendations as a roadmap, Arizona can bring *Gault* home and ensure justice, fairness, and success for its young people.

252 Sister Helen Prejean (@helenprejean), TWITTER (Sept. 3, 2017, 8:30 AM), <https://twitter.com/helenprejean/status/904366113521364994>.

253 ARIZONA’S JUVENILE COURT COUNTS FY2017, *supra* note 222, at 44.

254 *Id.* at 45-53.

255 *See, e.g., id.*

256 Investigators also learned that stakeholders were accustomed to collecting and using data in conjunction with the Annie E. Casey Foundation’s efforts since 2011 to expand the Juvenile Detention Alternative Initiative (JDAI) in Arizona to a state-wide initiative. *See Juvenile Detention Alternatives Initiative, ARIZONA JUDICIAL BRANCH*, <http://www.azcourts.gov/jjisd/Operations-Budget/JDAI> (last visited Aug. 1, 2018).

II. RECOMMENDATIONS

1 Automatically appoint counsel for all youth regardless of their financial circumstances

To ensure uniform access to counsel across the state, there should be a statewide presumption that children are automatically eligible for an attorney based upon their status as children, not their financial status or the financial status of their parents or caregivers. Basing a child’s right to an attorney on the willingness of a parent to pay the fees associated with accessing a “free” attorney does not fulfill the state’s obligation of ensuring access to counsel under the United States or Arizona Constitutions.

2 Abolish all fees and costs associated with access to a publicly funded juvenile defender

Fees and costs associated with publicly funded defense counsel interfere with a child’s constitutional right to counsel. Application fees present a barrier to a child’s assertion of their right to counsel, and assessing the costs of counsel to youth or their families inappropriately shifts the burden of providing this constitutionally mandated service from the state to families who cannot afford to hire counsel. All fees and costs associated with the appointment of counsel should be abolished or waived for all children. There should be no fee to apply for counsel, no costs associated with juvenile defense representation, and no attendant fees or costs imposed on youth or families in delinquency court.

3 Eliminate all fees and costs related to juvenile court

Arizona law provides for an astonishing number of fines, fees, and costs associated with juvenile court involvement. There appears to be no aspect of the juvenile justice system for which the state does not attempt to charge youth and families. These practices defeat the purpose of the juvenile court system, extend and deepen children’s involvement in the justice system, and mire youth and families in debt for years after court involvement has ended, while providing no discernable financial benefit to the state or counties. Arizona should eliminate the imposition of all fees and costs related to juvenile court. Arizona youth should benefit from the juvenile justice system, not be responsible for financing it.

4

Appoint all youth a qualified juvenile defender prior to any interrogation or interviews by law enforcement

Attorneys should be automatically appointed at interrogation. Children should be provided a number to call an attorney prior to law enforcement commencing any questioning. Without access to a lawyer, children are unjustly exposed to law enforcement officers who may use coercive tactics leading to false confessions or disclosures of information, in violation of the youth's constitutional and statutory rights, which can be used against them in court.

5

Appoint all youth counsel and give them an opportunity to consult with counsel prior to the court considering accepting any waiver of counsel

There must be a concerted effort to ensure that waiver of counsel never occurs before a child first consults with an attorney. Judges across Arizona are accepting waivers of counsel from youth that do not meet the constitutional threshold. In some counties, court officials fail to accurately advise youth about their rights or the consequences of waiving an attorney. Arizona courts should also ensure that in the rare instance a youth waives counsel, they are appointed advisory counsel who are able to answer any legal questions and appear at all court hearings. Advisory counsel should be prepared to step in at any point should the child request an attorney.

6

Appoint all youth counsel prior to their first appearance before a judge

Juvenile courts bear responsibility of ensuring that children have counsel at the earliest stages of juvenile court proceedings. In jurisdictions where such early access does not exist, the court should work with the public defender, private bar, funding sources, and the legislature to overcome the barriers to creating a system of early appointment and representation. Arizona courts should consider establishing a rule requiring that non-detained youth be appointed counsel a minimum of five days prior to their advisory hearing.

7

Encourage pretrial motions practice as part of a fair and effective justice system

Strong motions practice is an essential element of due process. In many Arizona counties, defense attorneys are not engaging in robust pretrial motions practice. All court personnel should insist that youth have full and fair access to the court and should not discourage motions practice by rescinding diversion or plea offers for youth who challenge the evidence against them. A court culture based on justice should insist upon the regular testing of evidence.

8

Ensure juvenile defenders provide active advocacy for youth at disposition

Courts, defense offices, and individual defenders should insist on more thorough, client-driven advocacy from defense counsel at this stage of the proceedings. Disposition is the stage at which crucial decisions are made about the level of court intervention in the life of a child. Yet, far too many defense attorneys in Arizona either do not actively advocate for individualized, client-driven disposition plans for their clients or are completely absent from the process.

9

Ensure access to counsel for youth post-disposition

Defense attorneys should be available to youth until the child is no longer under the supervision of the justice system. Issues such as appeals, probation revocation hearings, modification or early termination of probation hearings, community reentry, conditions of confinement, and record clearance are just some of the many areas in which youth need defense advocates to ensure their success.

10

Promulgate statewide standards for juvenile court practice and juvenile court training

The Arizona Supreme Court should adopt practice standards for defenders, prosecutors, and judges and ensure that each discipline has an oversight and monitoring process to ensure fidelity to the standards. There is currently no uniform measure by which to ensure and assess quality or address inadequate practice in juvenile law. Juvenile court practice is vastly different from adult criminal court, and Arizona's youth deserve access to attorneys who are qualified to practice in juvenile court. Juvenile-specific training should be required of all juvenile court stakeholders to ensure their practice is specialized and developmentally sound.

11

Develop an oversight mechanism to ensure consistent juvenile defense quality across jurisdictions

Arizona should appoint an oversight body tasked with monitoring juvenile defense quality statewide. Aside from creating, promulgating, and monitoring compliance with statewide juvenile defense performance and training standards, such an organization could receive and review complaints from the public, identify when county juvenile defense systems are inefficient, and make recommendations for bringing county systems into compliance with state standards and the rights and interests of youth. The body should also ensure that defender systems employ an automated system for case management, billing, and oversight that contains data on defense advocacy, such as the number of discovery requests made; motions filed; trials scheduled versus cases tried; the use of defense social workers or experts; case outcomes by race, ethnicity, and gender; post-disposition activities; and other relevant defense activities. An existing organization like the Arizona Public Defender Association may be appropriate to take on these functions.

12

Augment the state's justice system data collection to include access to counsel data in juvenile court

Every county should collect data about whether and at what point youth are appointed counsel and provide such information through the Juvenile Justice Services Division of the Administrative Office of the Courts' system.

13

Improve resources for and access to interpreters in juvenile court

Due process requires that youth have access to courts in a language that allows them to fully participate in their defense. Defense attorneys, judges, and prosecutors have a responsibility to ensure there is language access to the courts. While efforts are being made to increase the availability and quality of interpreters in Arizona's courts, there remains a significant gap of services in juvenile courts across the state.

14

Ensure probation officers do not provide legal advice to youth, no matter how well-intentioned

In no circumstance should probation officers provide legal advice to youth. Doing so not only would violate rules against practicing law without a license, but also runs the risk of usurping the constitutional role of the defense attorney and confusing the message a youth receives from their actual legal advocate, impinging on the youth's due process rights.

15

Work to eliminate existing racial disparities in the juvenile court system

All stakeholders must work on developing concrete strategies to examine the causes of disparities, including implicit bias. Existing racial disparities in the Arizona juvenile court system are well documented. Courts should consider conducting racial impact studies on policies and practices that lead to disparities across decision points including youth incarceration and transfer of youth to adult court.

16

Do not compromise due process for youth to maintain stakeholder collegiality

The rights of an individual child should not be subordinate to a culture of cooperation among the adults in the juvenile court system. While many jurisdictions in Arizona praised the fact that there was strong stakeholder collegiality, it was frequently noted as the reason for low instances of defense attorneys filing motions, taking cases to trial, and filing appeals. Children have legitimate legal interests and rights that should be upheld, and defense attorneys have an ethical obligation to advocate for those interests and rights, even if other stakeholders disagree.



IMPLEMENTATION STRATEGIES

The state legislature should:

- Require appointment of counsel for every child without requiring a financial determination of eligibility for purposes of appointing counsel. This will ensure that financial burdens related to accessing publicly funded counsel do not coerce waiver of counsel.
- Require that young people are appointed a qualified juvenile defender prior to any interrogation or interviews by law enforcement.
- Require that every youth accused of an offense be automatically appointed a defense attorney prior to the initial court appearance with sufficient time to consult with that attorney in preparation for the hearing.
- Prohibit the acceptance of a youth's waiver of counsel without the court first appointing counsel for the youth and providing the youth and counsel with the opportunity to discuss the potential benefits and dangers of waiving the right to counsel. Any waiver of counsel must occur in open court, with the youth and the youth's attorney present. No waiver of counsel can be accepted without a written finding by the court that the waiver was knowing, intelligent, and voluntary, as required by the United States Constitution and state law. The written findings must include an articulation of the evidence the court relied upon for making that finding.
- Require appointment of advisory counsel in any instance in which a youth waives their right to counsel.
- Ensure that every child is represented by counsel at disposition hearings.
- Establish a post-disposition right to counsel and ensure that every child is represented in post disposition matters, including probation revocation hearings, modification or early termination of probation, community reentry, conditions of confinement, and appeals.
- Ensure Arizona's courts are sufficiently funded to provide adequate interpreter services in juvenile proceedings.
- Mandate baseline and ongoing training for attorneys representing youth in juvenile cases.
- Prohibit the imposition of fees or costs on youth and families related to their involvement in the juvenile justice system.

The judiciary should:

- Support effective and specialized juvenile defense practices and systems.
- Immediately halt the imposition of any fees or costs associated with the appointment of counsel in juvenile court.
- Amend Arizona Juvenile Court Rule of Procedure 10(A) to ensure the appointment of counsel before the initial advisory or detention hearing.
- Ensure that youth receive access to a qualified juvenile defense attorney prior to accepting any waiver of counsel by informing defenders of appointed cases with enough time to allow them a meaningful opportunity to interview their clients before the initial advisory or detention hearing.
- In counties where structures prevent early appointment of counsel, work with the public defender, private bar, funding sources, and the legislature to overcome those barriers and create a system in which attorneys are appointed and present for initial hearings in every case.
- Prohibit probation officers and other court personnel who are not defense attorneys from providing advice or opinions to youth and families regarding waiver of counsel.
- Remind youth and their families of the youth's right to counsel prior to any hearing in which counsel is not present, and provide youth with a renewed opportunity to exercise their right to counsel.
- Ensure that counsel remains appointed and is present for dispositional hearings in every case.
- Refrain from accepting pleas from youth who are not represented by counsel. The court should insist that defense attorneys play an active role in offering client-driven disposition alternatives.
- Abolish universal conditions of probation in favor of individualized dispositions that focus on incentives for youth success.
- Ensure that no child appears for a probation revocation hearing—particularly in cases where their liberty may be revoked—without defense counsel.
- Ensure that all youth and families appearing in juvenile court have language-appropriate resources, including access to interpreters. The court should engage youth and families in a colloquy that sufficiently demonstrates whether language assistance is required.
- Form an advisory committee of juvenile defenders to draft and propose juvenile court standards that outline the duties, responsibilities, and minimum training requirements for all appointed counsel in delinquency proceedings.
- Form an advisory committee of juvenile prosecutors to draft and propose Juvenile Court Standards that outline the duties, responsibilities, and minimum training requirements for all county attorneys in delinquency proceedings.
- Form an advisory committee of juvenile court judges to draft and propose Juvenile Court Standards that outline the duties, responsibilities, and minimum training requirements for all juvenile court judges in delinquency proceedings.
- Work with court administration and the defense bar to identify resources for increasing juvenile-specific training for defense attorneys, members of the judiciary, and other juvenile court stakeholders. At a minimum, training should include topics such as adolescent development, implicit racial bias, the harms of detention, and disposition alternatives.

All juvenile defense attorneys should:

- In counties where early appointment of counsel is not occurring, work with the judges, court administrators, funding sources, and the legislature to create a system in which attorneys are notified, appointed, and present for initial hearings in every case.
- Meet with clients sufficiently in advance of each hearing and in a confidential setting so as to understand the client's expressed interest. Attorneys should not place the onus for engagement on the youth client.
- Engage in robust motions practice. Defenders should object on the record to prosecutorial efforts to erode motions practice as an interference with the client's right to effective assistance of counsel.
- Develop a client-driven disposition plan for every child's case. Defense attorneys should be actively offering the court plans for disposition that are client-driven, speak to the concerns of the court, and are likely to be achievable.
- Actively participate in the development and use of an automated data and information system for juvenile defense to track indicators such as the number of discovery requests made; motions filed; trials scheduled versus cases tried; the use of defense social workers or experts; case outcomes by race, ethnicity, and gender; post-disposition activities; and other relevant defense activities.
- Advocate for qualified language assistance whenever clients are unable to engage fully in the proceedings.
- Advocate against the imposition of fees and costs on clients in each case and work with clients to advance their rights and interests related to court-imposed financial obligations.

- Work with juvenile defense leadership to create juvenile defense standards that are in line with national best practices and the precepts of adolescent development.
- Seek out and regularly attend juvenile-specific training opportunities and stay abreast of developments in juvenile law and procedure, ethical obligations, adolescent development science, implicit racial bias, the harms of detention, and disposition alternatives.
- Keep detailed information when they observe a juvenile court hearing in which a youth is not represented by counsel and share that information with any organization working to reform waiver-of-counsel practices in Arizona.
- Be available to consult with any youth who needs advice on waiver of counsel.

Defense leadership should:

- Support juvenile defense as a specialization and ensure access to resources, support services, and payment on par with defenders in adult court.
- Create leadership opportunities for juvenile defenders.
- Develop, provide, and seek out juvenile-specific training opportunities.
- Create pathways to careers in juvenile public defense for attorneys of color.
- Participate in the development and implementation of juvenile defense-specific practice standards and mandate individual attorney participation in the entry and collection of juvenile defense-specific data.
- Develop and maintain a reportable system to track indicators on defense advocacy such as the number of discovery requests made; motions filed; trials scheduled versus cases

tried; the use of defense social workers or experts; case outcomes by race, ethnicity, and gender; post-disposition activities; and other relevant defense activities. Use this data to gain a more accurate measure of the state of defense practice and where resources should be employed to address gaps. Ensure sufficient protections are built into the system to maintain conflict-free representation and confidentiality.

County attorneys should:

- Support effective and specialized juvenile defense practice.
- Seek out regular juvenile-specific training that includes information on adolescent development, implicit racial bias, the harms of detention, and disposition alternatives.
- Develop a set of juvenile prosecution practice standards and establish oversight to monitor and improve practice in juvenile court.

Probation officers should:

- Support effective and specialized juvenile defense practice.
- Refrain from providing legal advice of any kind to youth or their families and establish procedures to ensure youth have ready access to counsel.
- Seek out regular juvenile-specific training that includes information on adolescent development, implicit racial bias, the harms of detention, graduated responses, trauma-informed responses, positive youth development, and disposition alternatives.

Non-profit and civil society organizations should:

- Work with local courts and juvenile defense systems to address gaps outlined in this Assessment.

Arizona law schools should:

- Provide increased opportunities for law students' involvement in juvenile defense through internships, externships, clinics, and paid fellowships.
- Offer an array of courses in juvenile delinquency law both to attract students to this practice area and to prepare students for careers in juvenile justice.
- Provide leadership on juvenile defense issues and the treatment of youth in the juvenile justice system through clinical programs, research, and community involvement.
- Offer continuing legal education courses and other professional opportunities for attorneys to improve the quality of representation in delinquency proceedings.
- Create opportunities for law students of color to participate and engage in clinics and courses geared toward juvenile public defense.

The Arizona Department of Juvenile Corrections should:

- Have a minimum of three staff attorneys to assist youth with facility-based legal matters, parole hearings, release conditions, and other matters in which youth require legal assistance while under their care.



APPENDICES

SUMMARY OF THE LAW: JUVENILE DEFENSE IN ARIZONA

I. THE RIGHT TO COUNSEL IN ARIZONA

Beyond the right to counsel guaranteed by the Due Process Clause of the United States Constitution and *In re Gault*, Arizona's youth in juvenile court have "the right to be represented by counsel in all delinquency and incorrigibility proceedings as provided by law,"²⁵⁷ and in all juvenile proceedings that may result in detention.²⁵⁸ If a child or the child's parent or guardian are found to be indigent and are entitled to representation, the juvenile court must appoint an attorney, unless waived "by both the juvenile and the parent or guardian."²⁵⁹

Arizona has no presumption of indigence in juvenile court proceedings.²⁶⁰ "If a [child], parent or guardian is found to be indigent and entitled to counsel, the juvenile court shall appoint an attorney" to represent the child.²⁶¹ "Indigent" refers to a person who is financially unable to retain counsel.²⁶²

If an indigent child is charged with an offense that may result in detention, the court must appoint counsel; however, if an indigent child is charged with an incorrigibility offense that will not result in detention, they have no absolute right to court-appointed counsel; rather, the juvenile court has discretion to appoint a public defender when the court determines it is advisable to protect the interests of the youth.²⁶³

Children who are detained after intake have the right to access an attorney while in detention.²⁶⁴ Children also have the right to counsel in revocation of probation hearings²⁶⁵ and on appeal of a final juvenile court order.²⁶⁶

If there appears to be a conflict of interest between the child and the child's parent or guardian, "including a conflict of interest arising from payment of the fee for appointed counsel," the court may appoint an attorney for the child in addition to an attorney for the parent or guardian.²⁶⁷

If the court finds that the child or parent or guardian has sufficient financial resources to reimburse, at least in part, the costs of the services of an attorney appointed pursuant to this section, the court shall order the child or the parent or guardian to pay to the appointed attorney or the county, through the clerk of the court, an amount that the parent or guardian is able to pay without incurring substantial hardship to the family.²⁶⁸

However, failure to comply with such an order to pay is not grounds for contempt or for a child's attorney to withdraw from representation.²⁶⁹ An order requiring payment to the appointed attorney or the county may be enforced as a civil judgment.²⁷⁰

The system by which counsel is provided varies by county. In counties with public defender offices, the public defender may act as appointed counsel in delinquency or incorrigibility proceedings at the request of the court.²⁷¹

257 ARIZ. JUV. CT. R. PROC. 10(A).

258 ARIZ. REV. STAT. ANN. § 8-221(A) (2010).

259 § 8-221(B).

260 ARIZ. REV. STAT. ANN. § 8-221(B) (2010); ARIZ. JUV. CT. R. PROC. 10(B).

261 § 8-221(B).

262 ARIZ. JUV. CT. R. PROC. 10(B).

263 *Haas v. Colosi*, 40 P.3d 1249, 1253 (Ariz. Ct. App. 2002). But, if an attorney is not appointed for an incorrigibility proceeding, the child may not be detained in later proceedings related to that offense. *Lana A. v. Woodburn*, 116 P.3d 1222, 1226 (Ariz. Ct. App. 2005).

264 ARIZ. JUV. CT. R. PROC. 23(B)(5)-(6).

265 ARIZ. JUV. CT. R. PROC. 32(D)(2)(a).

266 ARIZ. JUV. CT. R. PROC. 103(D); ARIZ. REV. STAT. ANN. § 8-235(D) (1999). See also ARIZ. REV. STAT. ANN. § 11-584(A)(7) (2010) (noting that the Public Defender shall represent on appeal if ordered by the court).

267 ARIZ. REV. STAT. ANN. § 8-221(E) (2010).

268 § 8-221(G).

269 § 8-221(G).

270 § 8-221(G).

271 § 8-221(H)(1); § 11-584(A)(6) (2010).

II. SYSTEM STRUCTURES IN ARIZONA

A. Structure of Arizona's Indigent Defense System

Arizona has a mixed system of defense delivery. Each county has authority to develop its own system to provide indigent representation.²⁷² "In any county the board of supervisors may establish the office of public defender and appoint a suitable person to hold that office."²⁷³ Ten of Arizona's counties have public defender offices: Cochise, Coconino, LaPaz, Maricopa, Mohave, Navajo, Pima, Pinal, Yavapai, and Yuma.²⁷⁴

In some counties that have a public defender, there may be additional county offices called the county Legal Defender, Legal Advocate, Public Advocate, or Office of Public Defense.²⁷⁵ Attorneys in these offices are employed in cases where there might be a conflict of interest, such as in a case with multiple defendants. Counties may also use private contract attorneys in cases with multiple defendants or if the public defender office's workload exceeds that which is allowable under current guidelines.²⁷⁶

Counties without a public defender, generally smaller rural counties, utilize private attorneys for all indigent defendants.²⁷⁷ These counties have attorneys on a contract basis, the details of which vary from county to county.²⁷⁸

Indigent defense is primarily funded by counties with assistance from the state.²⁷⁹

In counties with public defender offices, the public defender may act as appointed counsel in delinquency or incorrigibility proceedings at the request of the court.²⁸⁰ In other juvenile proceedings in those counties, the public defender may act as appointed counsel if the board of supervisors authorizes the appointment.²⁸¹

At the state level, Arizona has an Arizona Public Defender Association (APDA), a non-profit corporation comprised of all the indigent representation offices and programs in the state at the city, county, tribal, and federal levels.²⁸² This organization was created to raise the level of defense practice and provide training to public defenders across the state.

272 HOLLY R. STEVENS ET AL., THE SPANGENBERG PROJECT, CTR. FOR JUSTICE, LAW AND SOCIETY AT GEORGE MASON UNIVERSITY, STATE, COUNTY, AND LOCAL EXPENDITURES FOR INDIGENT DEFENSE SERVICES: FISCAL YEAR 2008 at 12 (2010), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_expenditures_fy08.authcheckdam.pdf.

273 ARIZ. REV. STAT. ANN. § 11-581 (2018).

274 See *infra* p. 82, Appellate District, Court, Defender Office, and Detention Facility Locations; See *infra* p. 83, County Demographics and Juvenile Case Filings.

275 *Id.*

276 See, e.g., *State v. Smith*, 681 P.2d 1374, 1380 (Ariz. 1984).

277 ARIZONA CRIMINAL JUSTICE COMMISSION, THE RISING COST OF INDIGENT DEFENSE IN ARIZONA 6 (2003), <http://azmemory.azlibrary.gov/digital/collection/statepubs/id/3135>.

278 *Id.* at 6.

279 ARIZ. REV. STAT. ANN. §§ 11-588 (2003), 41-2421(B), (J) (2012); 41-2409(C) (1999). See also STEVENS ET AL., *supra* note 272, at 5.

280 ARIZ. REV. STAT. ANN. §§ 8-221(H)(1) (2010), 11-584(A)(6) (2010).

281 §§ 8-221(H)(2), 11-584(A)(8).

282 ARIZ. PUB. DEF. ASS'N, apda.us (last visited Aug. 1, 2018).

B. Overview of Arizona’s Juvenile Justice System

1. Judicial System

Arizona’s court system has three levels: the courts of Appellate Jurisdiction (Level 3) which include the Court of Appeals and the Supreme Court; the courts of General Jurisdiction (Level 2), which include the Superior Courts and comprise the state-wide trial courts; and the courts of Limited Jurisdiction (Level 1), which include justice of the peace courts and city courts.²⁸³ Juvenile courts are in Level 2.²⁸⁴ “Juvenile court’ means the juvenile division of the superior court when exercising its jurisdiction over children in any proceeding relating to delinquency, dependency or incorrigibility.”²⁸⁵ There is at least one superior court judge per county, and counties with more than one superior court judge have a special juvenile court.²⁸⁶ “The jurisdiction and authority of the courts of this state in all proceedings and matters affecting juveniles shall be as provided by the legislature or the people by initiative or referendum.”²⁸⁷

Arizona’s superior court judges are selected and retained by a hybrid system based upon the population. In counties with a population over 250,000, judges are selected by merit.²⁸⁸ Only Pima, Pinal, and Maricopa counties subscribe to this method, although the constitution provides that other counties can adopt this process through a ballot initiative.²⁸⁹ After appointment in those

counties, judges serve for two years and then must run in a retention election in the next general election.²⁹⁰ If retained, judges will go on to serve a four-year term.²⁹¹ In the remaining 13 counties, judges run in partisan primaries followed by nonpartisan general elections.²⁹² Interim vacancies are filled through gubernatorial appointment, and those appointed judges must run in the next general election.²⁹³

2. Juvenile Probation

Juvenile probation services are provided by each county. The presiding judge of the juvenile court must appoint a director of juvenile court services, who recommends the appointment of probation officers.²⁹⁴ Probation staff must meet minimum qualifications established by the Arizona Supreme Court and must be hired pursuant to rules and procedures approved by that court.²⁹⁵ Following the decision in *Gault*, Arizona passed statutory amendments to align the role of probation officers with due process and “changed [t]his role to that of an officer of the court charged with the responsibility of gathering and evaluating information for the court and supervising those children assigned to [the probation officer] by the juvenile court after an adjudication of delinquency or incorrigibility.”²⁹⁶ The powers and duties of probation officers are governed by the Code of Judicial Administration.²⁹⁷ The Code of Judicial Administration also establishes the Committee on Probation, which “shall promote standardization, consistency and coordination of [juvenile and adult]

283 *Today’s Court System Has Three Levels*, ARIZONA JUDICIAL BRANCH, <https://www.azcourts.gov/guidetoazcourts/Todays-Court-System-Has-Three-Levels> (last visited Aug. 1, 2018).

284 *Superior Court*, ARIZONA JUDICIAL BRANCH, <http://www.azcourts.gov/AZ-Courts/Superior-Court> (last visited Aug. 1, 2018).

285 ARIZ. REV. STAT. ANN. § 8-201(21) (2017).

286 *Superior Court*, ARIZONA JUDICIAL BRANCH, <http://www.azcourts.gov/AZ-Courts/Superior-Court> (last visited Aug. 1, 2018). All 15 counties now have a juvenile court. See *infra* p. 82, Appellate District, Court, Defender Office, and Detention Facility Locations; See *infra* p. 83, County Demographics and Juvenile Case Filings.

287 ARIZ. CONST. art. VI, § 15.

288 *Methods of Judicial Selection: Arizona*, NAT’L CTR. FOR STATE COURTS, http://www.judicialselection.us/judicial_selection/methods/selection_of_judges.cfm?state=AZ (last visited Aug. 1, 2018).

289 *Id.*

290 *Id.*

291 *Id.*

292 *Id.*

293 *Id.*

294 ARIZ. REV. STAT. ANN. § 8-203(A) (1995).

295 § 8-203(C), (E).

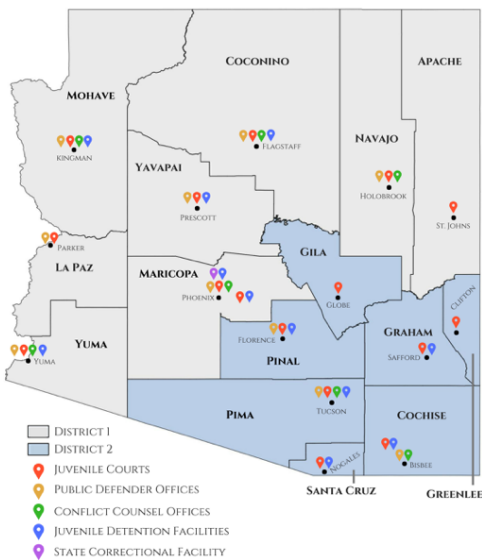
296 *In the Matter of Maricopa County, Juvenile Action No. J-81405-S, 594 P.2d 506, 508* (Ariz. 1979).

297 ARIZ. CODE JUD. ADMIN. §§ 6-105 (2010), 6-105.01 (2018).

probation services statewide and recommend evidence-based practices and programs that improve the quality and effectiveness of probation services.”²⁹⁸

3. Juvenile Detention Facilities

There are currently juvenile detention centers in ten counties, including two in Maricopa County.²⁹⁹ The state has provided juvenile detention facility oversight and guidance through the Juvenile Detention Task Force since 2007.³⁰⁰ Two years after the group’s inception, the Arizona Judicial Council approved statewide juvenile detention standards, which had been submitted by the Task Force.³⁰¹



Appellate District, Court, Defender Office, and Detention Facility Locations

4. Arizona Department of Juvenile Corrections

The Arizona Department of Juvenile Corrections is responsible for the “legal care and custody” of youth who are committed by the court.³⁰² ADJC must “operate and maintain or contract for secure care facilities”³⁰³ to provide rehabilitation, education, and treatment to children who have been deemed to be a threat to public safety and unsuitable for a less secure setting.³⁰⁴ Children adjudicated as incorrigible or under the age of fourteen may not be committed to ADJC.³⁰⁵ ADJC also houses youth who have been released to community corrections or parole supervision, but have had their conditional liberty revoked.³⁰⁶

Children committed to ADJC can be held at a contract facility or at the main facility, Adobe Mountain School.³⁰⁷ Commitment to ADJC may continue until the child’s 18th birthday, unless discharged sooner by ADJC.³⁰⁸

298 ARIZ. CODE JUD. ADMIN. § 6-114 (2009).

299 See p. 82, Appellate District, Court, Defender Office, and Detention Facility Locations; See *infra* p. 83, County Demographics and Juvenile Case Filings.

300 See *Arizona Juvenile Detention Standards*, ARIZ. JUDICIAL BRANCH, <https://www.azcourts.gov/jisd/Operations-Budget/Juvenile-Detention-Standards> (last visited Aug. 1, 2018) (“The Task Force was comprised of fourteen individuals, consisting of juvenile court directors, juvenile detention facility administrators, Presiding Juvenile Court Judges representing both rural and urban counties and at least one individual from another agency involved in the detention of juvenile delinquents. The Task Force reviewed the Arizona Auditor General’s Performance Audit Report on Detention Operations and identified and developed mandatory juvenile detention center operational standards consistent with the recommendations of the Auditor General. The Task Force also developed statewide standards for the application of Rule 23(D), Rules of Procedure for the Juvenile Court to appropriately and consistently screen juveniles for detention and institute a thorough inspection and compliance process.”).

301 *Id.*

302 ARIZ. CODE JUD. ADMIN. § 6-304(A) (2001).

303 See, e.g., MINGUS MOUNTAIN ACADEMY, <http://www.mmaaz.com/> (last visited Aug. 1, 2018) (a residential treatment facility for girls).

304 ARIZ. REV. STAT. ANN. § 41-2816(A) (1994).

305 ARIZ. REV. STAT. ANN. § 8-342(A) (2016).

306 § 41-2816(A).

307 See *Adobe Mountain School – Secure Care*, ARIZ. DEP’T OF JUVENILE CORRECTIONS, <https://adjc.az.gov/adobe-mountain-school> (last visited Aug. 1, 2018).

308 ARIZ. REV. STAT. ANN. § 8-246 (2000).

C. Relevant Data and Statistics

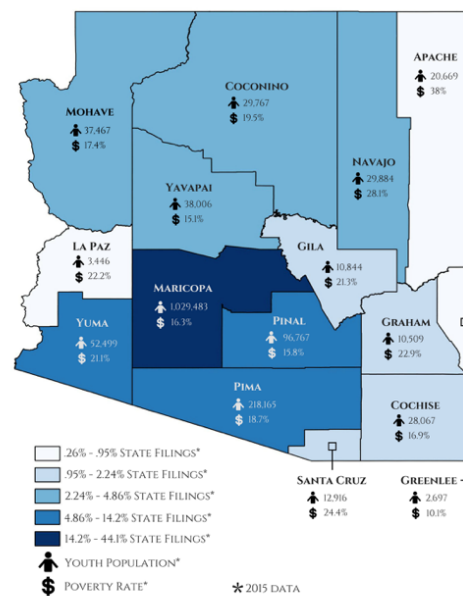
1. Demographics

As of July 1, 2017, Arizona had an estimated population of 7,016,270.³⁰⁹ The 2017 estimates by age groups reflect that 23.3 percent of residents were under age 18, and 6.2 percent were under age five.³¹⁰ Estimates by race reflect that 54.9 percent were white, not Hispanic or Latinx; 31.4 percent Hispanic or Latinx; 5.3 percent American Indian or Alaskan Native; 5.0 percent Black or African American; 3.5 percent Asian; 0.03 percent Native Hawaiian and Other Pacific Islander; and 2.8 percent two or more races.³¹¹

The five largest ancestry groups in Arizona as reported by Arizonans in the 2000 Census were: Mexican (18.0 percent), German (15.6 percent), English (10.4 percent), Irish (10.2 percent), and American Indian (6.1 percent).³¹² The American Indian population is around 18 percent of the total population in La Paz and Gila counties, nearly 30 percent of the population in Coconino County, nearly 46 percent of the population in Navajo County, and 75 percent of the population in Apache County.³¹³

2. Juvenile Case Filings

In Arizona, children aged eight to 17 are subject to juvenile court jurisdiction for incorrigible or delinquent acts.³¹⁴ According to Census data, the population of children aged five to 17 in 2016 was estimated to be 1,192,173.³¹⁵ In fiscal year 2017, according to a report filed by the Administrative Office of the Courts, Juvenile Justice Services Division, there were 33,744 referrals made and 7,692 petitions filed in juvenile courts in the state.³¹⁶ Of these petitioned, 51.57 percent were felonies, 32.96 percent misdemeanors, 7.06 percent violations of probation or ordinances, 3.21 percent status offenses, and 5.2 percent other.³¹⁷



County Demographic and Juvenile Case Filings

309 QuickFacts: Arizona, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/az> (last visited Aug. 1, 2018).

310 *Id.*

311 *Id.*

312 ANGELA BRITTINGHAM & G. PATRICIA DE LA CRUZ, U.S. CENSUS BUREAU, ANCESTRY: 2000 at 6 tbl. 3 (2004), <https://www.census.gov/history/pdf/ancestry.pdf>.

313 QuickFacts: Arizona, U.S. CENSUS BUREAU <https://www.census.gov/quickfacts/fact/table/apachecountyarizona.coconinocountyarizona.gilacountyarizona.lapazcountyarizona.navajocountyarizona/RHI325217> (last visited Aug. 12, 2018).

314 ARIZ. JUV. CT. R. PROC. 1(A); ARIZ. REV. STAT. ANN. § 8-201(13), (15)(iv) (2017) (providing that a child under eight who commits an act that would be delinquency or incorrigible if committed by an older child is a dependent, not a delinquent child).

315 *Child Population by Age Group*, KIDS COUNT DATA CENTER, THE ANNIE E. CASEY FOUND. (Aug. 2017), <https://datacenter.kidscount.org/data/tables/101-child-population-by-age-group?loc=4&loct=2#detailed/2/4/false/870/63,64,6/419,420>.

316 ARIZONA'S JUVENILE COURT COUNTS FY2017, *supra* note 222, at 5.

317 *Id.* at 22.

3. Economy

In 2017, according to the Center for American Progress, Arizona had 16.4 percent of people below the poverty line (\$24,340 for a family of four) and, 23.3 percent of children under 18 fell below the poverty line.³¹⁸ Residents below the poverty line were represented as follows: 33.3 percent Native American, 23.5 percent Latinx, 22.1 percent African American, 14.0 percent white, and 13.3 percent Asian.³¹⁹

According to Census data, the per capita income in 2016 dollars was \$26,686.³²⁰ The median household income in 2016 dollars was \$51,340.³²¹

In the five-year span between 2012 and 2016, 86.2 percent of people older than 24 had a high school diploma and 28.0 percent of people older than 24 had a bachelor's degree or higher.³²²

III. OVERVIEW OF RELEVANT PORTIONS OF ARIZONA'S JUVENILE CODE AND JUVENILE COURT RULES

Juvenile court proceedings in Arizona are governed by Arizona's Juvenile Code,³²³ the Arizona Rules of Procedure for the Juvenile Court,³²⁴ and caselaw.

A. Juvenile Court Jurisdiction

Children aged eight to 17 are subject to juvenile court jurisdiction for delinquent or incorrigible acts in Arizona.³²⁵ A delinquent act is one that would be a criminal offense if committed by an adult; a violation of a law that can only be committed by a child but that has been designated as a delinquent act; or an act that is a crime under a city, county, or other political subdivision of Arizona.³²⁶ Acts criminally prosecuted in adult court are not delinquent acts, and a child prosecuted as an adult may not be adjudicated delinquent for the same act.³²⁷

The juvenile court has original jurisdiction over delinquency matters,³²⁸ but that jurisdiction is not exclusive; rather, the juvenile court shares jurisdiction with the adult division when a juvenile is charged as an adult with an eligible offense.³²⁹

While juvenile court jurisdiction generally ends on a child's 18th birthday, the juvenile court can retain jurisdiction over youth until age 21 for treatment services, provided that the youth is under court

318 *Arizona*, TALK POVERTY, CTR. FOR AM. PROGRESS (2017), <https://talkpoverty.org/state-year-report/arizona-2017-report/>.

319 *Id.*

320 *QuickFacts: Arizona*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/az> (last visited Aug. 1, 2018).

321 *Id.*

322 *Id.*

323 ARIZ. REV. STAT. ANN. §§ 8-201 to 8-291.11, 8-301 to 8-422.

324 ARIZ. JUV. CT. R. PROC. 1-108.

325 ARIZ. JUV. CT. R. PROC. 1(B); ARIZ. REV. STAT. ANN. § 8-201(6), (13), (15)(a)(iv) (2017) (specifying that a child under eight who commits an act that would be a delinquency or incorrigible act if committed by an older child is a dependent, not a delinquent child).

326 § 8-201(12).

327 § 8-201(12); ARIZ. REV. STAT. ANN. § 13-501 (2015).

328 ARIZ. REV. STAT. ANN. § 8-202(A)-(B) (2017).

329 § 8-202(H)(2); § 13-501(E) (2015); *State v. Espinoza*, 276 P.3d 55, 61 (Ariz. Ct. App. 2012).

supervision as an adjudicated delinquent juvenile when they turn 18, both the youth and the state agree to continue jurisdiction, and no motion was filed to transfer the youth to adult court.³³⁰ If a juvenile turns 18 during the pendency of their juvenile delinquency case, the court must transfer the matter to the adult criminal division of the superior court.³³¹

B. Arrest and Initial Detention

Some children who are detained by law enforcement at the scene of a crime or shortly thereafter are taken to a local juvenile detention facility.³³² Children may be taken into temporary custody pursuant to a court order or a warrant, or without a warrant if there are reasonable grounds to believe the child has committed a delinquent or incorrigible act, or has run away from their parents, guardian, or custodian.³³³ A private citizen may arrest a child in certain circumstances.³³⁴

“‘Detention’ means the temporary confinement of a juvenile who requires secure care in a physically restricting facility that is completely surrounded by a locked and physically secure barrier with restricted ingress and egress for the protection of the juvenile or the community pending court disposition”³³⁵ There are no statewide requirements to be utilized by detention facilities in their determination of whether to hold or release children brought to the facility.³³⁶ A child taken into custody based upon reasonable grounds that the child committed an act that would be a felony if committed by an adult or a breach of the peace may only be released to the child’s parent, guardian, or custodian, or to the juvenile court.³³⁷

Children may not be held in detention for more than 24 hours unless a petition or complaint has been filed, and cannot be held longer than 24 hours after a petition has been filed, unless the court orders that they be held at the detention hearing.³³⁸ Holidays and weekends are included in this calculation; therefore, when applicable, detention hearings must be held on a holiday or during the weekend.³³⁹

Upon being admitted to detention, the juvenile must be advised of their right to access counsel by telephone and private visit.³⁴⁰

C. Diversion

Pre-filing and pre-adjudication diversion is available at the discretion of the county attorney for many offenses.³⁴¹

The court has sole discretion to truly divert certain low-level, first-time offending youth who are at least ten years of age to a counseling program or “make the complaint a matter of record in lieu of the child appearing at the juvenile court.”³⁴² While there are reporting guidelines for formal diversion programs authorized by the county attorney,³⁴³ it is not clear if the courts uniformly utilize and report court diversions or whether the court includes its own diversions in the reporting.

330 ARIZ. REV. STAT. ANN. § 8-341(N) (2018).

331 ARIZ. REV. STAT. ANN. § 8-302(D) (2017).

332 ARIZ. REV. STAT. ANN. § 8-305(A), (E) (2018).

333 ARIZ. REV. STAT. ANN. § 8-303(B)-(C)(2) (2014).

334 § 8-303(C)(3); ARIZ. REV. STAT. ANN. § 13-3884 (1979).

335 ARIZ. REV. STAT. ANN. § 8-201(16) (2017). *See generally* § 8-305.

336 ARIZ. CODE OF JUD. ADMIN. § 6-311(C)-(D) (2009).

337 8-303(E).

338 ARIZ. JUV. CT. R. PROC. 23(C).

339 JV-111701 v. Superior Court In and For County of Maricopa, 786 P.2d 998, 1004 (Ariz. Ct. App. 1989).

340 ARIZ. JUV. CT. R. PROC. 23(B).

341 ARIZ. REV. STAT. ANN. § 8-321 (2011); ARIZ. JUV. CT. R. PROC. 22(C).

342 ARIZ. REV. STAT. ANN. § 8-307(A) (1998) (limiting this type of referral to alleged first-time misdemeanor offenses, excluding assault or battery).

343 ARIZ. REV. STAT. ANN. § 8-328(B) (2009).

D. Petition/Referral

A written referral to juvenile court for incorrigible or delinquent acts can be filed by an individual or an agency.³⁴⁴ Specific facts about the child, the child's parent, guardian, custodian, or spouse, as well as the date, time, place, and a description of the acts and the applicable law must be set forth in the referral.³⁴⁵ If the child is in detention, the referral must also include the date and time the child was taken into custody and the place of detention.³⁴⁶ After review and if the referral has not been designated for diversion, the juvenile court must submit the referral to the county attorney.³⁴⁷

A juvenile court proceeding will commence upon the filing of the petition by the county attorney or, for an offense that is not a felony, by referral of a uniform traffic ticket and complaint form.³⁴⁸ A juvenile court matter will also begin after proper transfer from a criminal court.³⁴⁹

E. Appointment of Counsel

Youth in juvenile court have the right to be represented by counsel if the result of the proceeding could include detention.³⁵⁰ The right to appointed counsel arises when a child or their parent or guardian is found to be indigent.³⁵¹ The system by which counsel is provided to children varies based on the county.³⁵² In counties with public defender offices, the public defender may act as appointed counsel in delinquency or incorrigibility proceedings at the request of the court.³⁵³ Automatic appointment of counsel is not permitted because counsel must be provided on an individual, case-by-case basis.³⁵⁴

F. Shackling

Beginning in early 2017, children in juvenile court proceedings are to be “free of mechanical restraints unless there are no less restrictive alternatives that will prevent flight or physical harm to the juvenile or another person.”³⁵⁵ The court may use the following factors to determine whether the use of mechanical restraints is necessary:

- The youth has displayed threatening or physically aggressive behavior towards others;
- The youth is likely to flee, has expressed an intention to flee, or has previously attempted to flee secure care;
- A probation officer, detention administrator or designee, or juvenile detention officer has recommended the use of mechanical restraints; and
- A present security situation in the courtroom or courthouse, including a risk of gang violence or gang-related conduct or a specific concern due to a witness presence, warrants the use of mechanical restraints.³⁵⁶

The rule also provides that a child who appears in court in mechanical restraints may object through counsel and the judge will then approve or disapprove of the use of restraints after considering the factors listed above.³⁵⁷

344 ARIZ. JUV. CT. R. PROC. 22(A).

345 *Id.*

346 *Id.*

347 ARIZ. JUV. CT. R. PROC. 22(D).

348 ARIZ. REV. STAT. ANN. § 8-301(2)-(3) (1999).

349 § 8-301(1); ARIZ. REV. STAT. ANN. § 8-302(A)-(B) (1998).

350 ARIZ. REV. STAT. ANN. § 8-221(A) (2010).

351 § 8-221(B).

352 § 8-221(H); ARIZ. REV. STAT. ANN. § 11-584(A)(6) (2010).

353 § 8-221(H)(1); § 11-584(A)(6).

354 JV-132324 v. Superior Court In and For County of Maricopa, 890 P.2d 632, 641 (Ariz. Ct. App. 1995); ARIZ. JUV. CT. R. PROC. 10.

355 ARIZ. JUV. CT. R. PROC. 12(E).

356 ARIZ. JUV. CT. R. PROC. 12(E)(1)(a)-(d).

357 ARIZ. JUV. CT. R. PROC. 12(E)(2)-(3)

G. Appointment of Interpreters

There is no specific provision under Arizona law for the appointment of interpreters in juvenile court. When it is deemed necessary, the court may appoint an interpreter.³⁵⁸ Arizona caselaw provides that the failure to appoint an interpreter for a defendant unable to comprehend English is a denial of due process.³⁵⁹ The appointment of an interpreter is a county expense that is not to be deducted from the monies provided for the appointment of counsel.³⁶⁰

H. Advisory Hearings

For detained children, a petition must be filed within 24 hours of their being detained, and an advisory hearing held within 24 hours of the filing of the petition.³⁶¹ Children who are not detained must have an advisory hearing within 30 days of the filing of the petition.³⁶²

The purpose of the advisory hearing is to advise the child and the child's parent, guardian, or custodian of the allegations in the petition and determine whether the child admits or denies the allegations.³⁶³

If the child is not represented by counsel at the advisory hearing, the court must advise the child of the right to counsel and appointed counsel if they are indigent.³⁶⁴ The court also must advise of the right to silence and to call and confront witnesses, and “determine whether the juvenile understands the constitutional rights set forth by the court and whether the child knowingly, intelligently and voluntarily wishes to waive[] those rights.”³⁶⁵ A child can enter an admission or guilty plea at the advisory hearing.³⁶⁶ If the child denies the allegations, the court must set the matter for an adjudication hearing.³⁶⁷ If the child is released, the court may set conditions of release and advise that a violation of the conditions may result in a warrant for the child's arrest and detention.³⁶⁸ The court must additionally “determine how a verbatim record of the adjudication hearing will be made.”³⁶⁹

The court is required to enter written findings in a minute entry or order at the conclusion of the hearing.³⁷⁰ If the child enters an admission at the advisory hearing, the court must enter an adjudication for incorrigibility or delinquency and either proceed with disposition or set the matter for a disposition hearing.³⁷¹ Further, until the adjudication and disposition hearing occur, the child is subject to any orders of the court under the supervision of a probation officer.³⁷²

358 ARIZ. REV. STAT. ANN. § 12-241 (2018).

359 State v. Rios, 539 P.2d 900, 901 (Ariz. 1975).

360 *Id.*

361 ARIZ. JUV. CT. R. PROC. 23(C); 28(B)(1).

362 ARIZ. JUV. CT. R. PROC. 28(B)(2).

363 ARIZ. JUV. CT. R. PROC. 28(A).

364 ARIZ. JUV. CT. R. PROC. 28(C)(1).

365 ARIZ. JUV. CT. R. PROC. 28(C)(2)-(5).

366 ARIZ. JUV. CT. R. PROC. 28(C)(6)-(E).

367 ARIZ. JUV. CT. R. PROC. 28(C)(7)(b).

368 ARIZ. JUV. CT. R. PROC. 28(C)(8).

369 ARIZ. JUV. CT. R. PROC. 28(C)(9).

370 ARIZ. JUV. CT. R. PROC. 28(D).

371 ARIZ. JUV. CT. R. PROC. 28(E).

372 ARIZ. JUV. CT. R. PROC. 28(E).

I. Detention Determinations

Children may not be held in detention for more than 24 hours unless a petition or complaint has been filed, and a detention hearing, if applicable, must be held within 24 hours after a petition has been filed.³⁷³ Holidays and weekends are included in this calculation; therefore, when applicable, detention hearings must be held on a holiday or during the weekend.³⁷⁴ Children have the right to counsel at detention hearings and the right to appointed counsel if they or their parent, guardian, or custodian are found to be indigent.³⁷⁵ The timing of appointment varies by county.

“Probable cause may be based upon the allegations in a petition, complaint or referral filed by a law enforcement official, along with a properly executed affidavit or sworn testimony.”³⁷⁶ A child may be detained only if there is probable cause to believe the child committed the acts alleged and they:³⁷⁷

- Will not be present at any hearing;
- Are likely to injure themselves or others;
- Must be held for another jurisdiction;
- Custodial protection is required in the interests of the child or the public; or
- Must be held pending the filing of a complaint for transfer to adult court.

Children may be released with or without conditions and are subject to revocation of release if they fail to appear or violate a condition of release.³⁷⁸

A decision to detain a child can be reviewed upon the court’s own motion or upon the written motion of the child or the county prosecutor.³⁷⁹ Any such request must allege something not previously presented to the court.³⁸⁰ A hearing on the motion must be held within five days, but can be accelerated in the interests of justice.³⁸¹

J. Waiver of Counsel

Once a child or the child’s parent or guardian is found to be indigent, “the juvenile court shall appoint an attorney to represent the person or persons unless counsel for the juvenile is waived by both the juvenile and the parent or guardian.”³⁸² Absent a valid waiver of counsel, a child is not permitted to proceed without counsel.³⁸³

A child may waive the right to counsel if the waiver is:

- “Knowingly, intelligently and voluntarily given in view of the juvenile’s age, education, and apparent maturity”;³⁸⁴
- “Obtained in the presence of the parent, guardian or custodian in attendance on behalf of the juvenile”;³⁸⁵ and
- “Set out in writing or in the minute entry of the court.”³⁸⁶

Counsel for the child may be appointed if there is a conflict of interest between the child and their parent or guardian.³⁸⁷ When there is such a conflict, waiver of counsel is permitted, but “the court shall impose such safeguards on the waiver of counsel as appear in the best interests of the juvenile.”³⁸⁸

373 ARIZ. JUV. CT. R. PROC. 23(C).

374 JV-111701 v. Superior Court In and For County of Maricopa, 786 P.2d 998, 1004 (Ariz. Ct. App. 1989).

375 ARIZ. REV. STAT. ANN. § 8-221(A), (B) (2010).

376 ARIZ. JUV. CT. R. PROC. 23(D).

377 ARIZ. JUV. CT. R. PROC. 23(D)(1)-(5).

378 ARIZ. JUV. CT. R. PROC. 23(E)(F).

379 ARIZ. JUV. CT. R. PROC. 23(E).

380 *Id.*

381 *Id.*

382 ARIZ. REV. STAT. ANN. § 8-221(B) (2010).

383 JV-132324 v. Superior Court In and For County of Maricopa, 890 P.2d 632, 641 (Ariz. Ct. App. 1995); ARIZ. JUV. CT. R. PROC. 10(D).

384 ARIZ. JUV. CT. R. PROC. 10(D).

385 *Id.*

386 *Id.*

387 ARIZ. REV. STAT. ANN. § 8-221(E) (2010).

388 ARIZ. JUV. CT. R. PROC. 10(D).

K. Adjudication Hearings

The juvenile court holds an adjudication hearing to determine whether a child has committed the acts alleged in the petition.³⁸⁹ This hearing, which is open to the public,³⁹⁰ must take place within 45 days for a child who is detained and within 60 days for a child who is not detained.³⁹¹ The burden of proof for adjudication is proof beyond a reasonable doubt.³⁹²

The rule favors informal procedure: “as informal as the requirements of due process and fairness permit, and shall proceed generally in a manner similar to the trial of a civil action before the court sitting without a jury, except that the juvenile may not be compelled to be a witness.”³⁹³ If the court finds the allegations in the petition have been proven beyond a reasonable doubt, the court must adjudicate the child as incorrigible or delinquent in writing, in a minute entry or order; if the court finds the allegations have not been proven, the petition must be dismissed.³⁹⁴

L. Guilty Pleas

Although the rule governing the advisory hearing also contains the requirements for the entry of an admission or guilty plea, there is nothing in the rules to suggest that a plea cannot be entered at a later proceeding.³⁹⁵ The rule provides that if the alleged victim has requested to be heard if a plea agreement is being presented, the plea agreement shall not be accepted by the court unless the prosecutor has properly conferred with, advised, and presented the victim’s position, if known, to the court.³⁹⁶

“If the juvenile wishes to admit to allegations, the court must accept the admission or plea if supported by a factual basis and a finding that the juvenile knowingly, intelligently and voluntarily waives the rights enumerated above.”³⁹⁷ Once the child enters an admission, the court must find that the child entered a valid waiver of constitutional rights and that there is a factual basis in support of the admission.³⁹⁸ Upon an admission, the court must adjudicate the juvenile as delinquent or incorrigible and either proceed with disposition or set the matter for a disposition hearing.³⁹⁹ A guilty plea waives any inquiry on appeal into the admissibility of a juvenile suspect’s statements to police.⁴⁰⁰

389 ARIZ. JUV. CT. R. PROC. 29(A).

390 ARIZ. JUV. CT. R. PROC. 19(B) (providing that the court may close the hearing upon written order finding “a need to protect the best interests of a victim, the juvenile, a witness, the state, or a clear public interest in confidentiality”).

391 ARIZ. JUV. CT. R. PROC. 29(B).

392 ARIZ. JUV. CT. R. PROC. 29(C).

393 ARIZ. JUV. CT. R. PROC. 29(D).

394 ARIZ. JUV. CT. R. PROC. 29(E).

395 ARIZ. JUV. CT. R. PROC. 28(C)(6)-(E).

396 ARIZ. JUV. CT. R. PROC. 28(C)(6).

397 ARIZ. JUV. CT. R. PROC. 28(C)(7)(a).

398 ARIZ. JUV. CT. R. PROC. 28(D).

399 ARIZ. JUV. CT. R. PROC. 28(E).

400 *State v. Jackson*, 576 P.2d 129, 132 (Ariz. 1978) (citing *State v. Lerner*, 551 P.2d 553 (Ariz. 1976)).

M. Disposition

After adjudication, the court must hold a disposition hearing within 30 days for a detained child and within 45 days for a child who is not detained.⁴⁰¹

Before the disposition hearing, the court must order the probation officer to investigate the matter and submit a written report with recommendations for disposition of the child.⁴⁰² The court may order that the child participate in physical and/or mental evaluations as part of the investigation.⁴⁰³ The pre-disposition report can be waived by stipulation of the parties and court order if no written victim impact statement was provided.⁴⁰⁴

The court has “broad power to make a proper disposition.”⁴⁰⁵ The purpose of disposition is rehabilitation, not punishment.⁴⁰⁶

The disposition options generally include probation,⁴⁰⁷ monetary sanctions including restitution, and a change in custody including commitment to detention or a state institution.⁴⁰⁸

The jurisdiction of the court and the length of commitment to juvenile corrections extend to the child’s 18th birthday.⁴⁰⁹ There are exceptions, however: a restitution order does not expire until it is paid in full,⁴¹⁰ and jurisdiction over a child’s disposition can be extended for treatment services until the child turns 21.⁴¹¹

As in most jurisdictions, a disposition order is not considered to be a criminal conviction and is not supposed to impose any of the civil disabilities that generally result from a criminal conviction.⁴¹²

N. Fees and Financial Sanctions

The services of the public defender or court-appointed counsel are theoretically without expense to a child; however, there are three instances in which the court may make an assessment, including:⁴¹³

- An “indigent administrative assessment of not more than twenty-five dollars”;⁴¹⁴
- An “administrative assessment fee of not more than twenty-five dollars” to be paid by the child or the child’s parent or guardian;⁴¹⁵ and
- A reasonable amount of repayment to the county as reimbursement for the cost of legal services.⁴¹⁶

When determining the amount and payment method, “the court shall take into account the financial resources of the defendant and the nature of the burden that the payment will impose.”⁴¹⁷

Any assessments collected must be “paid into the county general fund in the account designed for use solely by the public defender and court appointed counsel to defray the costs of public defenders and court appointed counsel.”⁴¹⁸

401 ARIZ. JUV. CT. R. PROC. 30(B).

402 ARIZ. JUV. CT. R. PROC. 30(A).

403 ARIZ. JUV. CT. R. PROC. 30(A)(4).

404 ARIZ. JUV. CT. R. PROC. 30(A)(3).

405 Maricopa County Juvenile Action No. J-72918-S, 524 P.2d 131, 1312 (Ariz. 1974).

406 *In re Kristen C.*, 975 P.2d 152, 153 (Ariz. Ct. App. 1999).

407 ARIZ. JUV. CT. R. PROC. 31(A). *See generally* Maricopa County Juv. Action No. JV-500210, 864 P.2d 560, 561 (Ariz. Ct. App. 1993) (holding that because children lack the maturity, knowledge, and experience to know what is in their best interest and the purpose of juvenile court disposition is rehabilitation, children do not have the right to reject probation).

408 ARIZ. REV. STAT. ANN. §§ 8-341(A) (2018), 8-344 to 8-346 (governing restitution orders and payments).

409 ARIZ. REV. STAT. ANN. § 8-246(A)-(B) (2018).

410 ARIZ. REV. STAT. ANN. § 8-344(F) (2018).

411 ARIZ. REV. STAT. ANN. § 8-341(N) (2018).

412 ARIZ. REV. STAT. ANN. § 8-207(A) (2006).

413 ARIZ. REV. STAT. ANN. § 11-584(C) (2010).

414 § 11-584(C)(1).

415 § 11-584(C)(2).

416 § 11-584(C)(3).

417 § 11-584(D).

418 § 11-584(E).

The Arizona Supreme Court is charged with the administration of activities and providing the cost of services for children who are referred to the juvenile court as delinquent or incorrigible but who are placed in foster care, shelter care, or treatment, rather than being placed in a state institution.⁴¹⁹ If a child is ordered to participate in a treatment or education program, or in services ordered under a diversion agreement, the juvenile court must “inquire into the ability of the child or the child’s parent to bear the charge or expense” of the treatment, program, or care and if the “court is satisfied that the child or the child’s parent can bear the charge or expense or any portion of the charge or expense, the juvenile court may fix the amount of the payment and shall direct the child or parent to pay the amount monthly to the clerk of the court until the child is discharged” from care or any required program.⁴²⁰ Those funds must be transmitted for deposit in the Supreme Court’s juvenile probation services fund.⁴²¹

For a child committed to a state institution or the Arizona Department of Juvenile Corrections, the court must likewise inquire into the child, parent, or guardian, or the child’s estate to determine their ability to pay for the “expense and maintenance including the medical, dental and mental health care of the child while the child is committed to the custody of the department of juvenile corrections” or other institution, agency or person.⁴²² If the court is satisfied that the expenses or any portion of the expenses can be borne by the child, their parent, guardian, or estate, the “juvenile court shall fix the amount thereof and direct that the child, the child’s estate, parent or guardian or the person who has custody of the child pay the amount monthly to the department of juvenile corrections or other

public or private institution or agency, or private person or persons to which the child is awarded or committed.”⁴²³ The recipient of the payments must acknowledge receipt and utilize the money as set forth in the statute.⁴²⁴

The court may also assess monthly the cost of food, shelter, and supervision of a child committed to a juvenile detention facility after an inquiry into the ability to pay as above.⁴²⁵ Such assessment may be collected as a civil judgment.⁴²⁶

The juvenile court may order that all or part of the charges for expenses and maintenance be waived if it determines that extenuating circumstances exist.⁴²⁷

Notwithstanding the order to pay monthly costs, at disposition, the juvenile court must order a child’s parent to pay a fee for “not less than fifty dollars a month for the supervision” of the child.⁴²⁸ The court may order a lower monthly amount for a parent deemed unable to pay.⁴²⁹ The payments are utilized by the state for children under supervision of the department of corrections, and by the county, through the county juvenile probation fund for children supervised by probation.⁴³⁰

For a child who is diverted from prosecution by the county attorney, the court must assess a fee of \$50 on the child’s parent; or, following a determination of the parent’s inability to pay, a lesser amount.⁴³¹ The fees can be waived if the county attorney determines the existence of extenuating circumstances.⁴³² These payments are to be used for local community-based alternatives or diversion programs and other probation services.⁴³³

419 ARIZ. REV. STAT. ANN. § 8-243(A) (2011).

420 § 8-243(A).

421 *Id.*

422 § 8-243(B).

423 *Id.*

424 *Id.*

425 § 8-243(C).

426 *Id.*

427 § 8-243(E).

428 ARIZ. REV. STAT. ANN. § 8-241(A) (2014).

429 *Id.*

430 § 8-241(B).

431 ARIZ. REV. STAT. ANN. § 8-321(N) (2011).

432 *Id.*

433 *Id.*

As part of an order of disposition, the juvenile court can order payment of a fine of \$300 to \$1,000 for a child adjudicated delinquent of a graffiti-type offense (criminal damaging by “[r]ecklessly drawing or inscribing a message, slogan, sign or symbol . . . made on any public or private building, structure or surface, except the ground, and that is made without permission of the owner.”).⁴³⁴ The court may instead order the child to perform community restitution if it finds it is in the best interest of the child.⁴³⁵ A child performing community restitution in lieu of payment is credited at the rate of ten dollars per hour of service.⁴³⁶

For children adjudicated delinquent and whose offenses involve a victim, the probation officer must assess the child’s parent a fee of \$25, unless the parent or sibling of the child is the victim or unless it is determined that the parent cannot pay or can only pay a lesser amount.⁴³⁷ These funds must be transmitted for deposit in the state’s victims’ rights fund.⁴³⁸

O. Juvenile Sex Offender Registration

The juvenile court may order a child who is adjudicated delinquent of a sex offense to register as a sex offender until age 25.⁴³⁹ Children adjudicated delinquent are not subject to community notification unless it is ordered by the court.⁴⁴⁰ When a child is adjudicated delinquent of certain offenses and is attending school while on probation, the child’s school district must be notified by the court of the adjudication.⁴⁴¹ The school must make this information available to all teachers, and to any parents, guardians, or custodians upon request.⁴⁴²

P. Post-Disposition Proceedings

Children have a right to counsel in certain post-disposition proceedings, including revocation of probation hearings⁴⁴³ and appeals of juvenile court orders.⁴⁴⁴ Children generally have the right to counsel in any proceeding that may result in detention.⁴⁴⁵

1. Probation Modification or Termination

A child’s probation officer can modify or clarify any regulation that was imposed by the probation officer.⁴⁴⁶ The court can modify any court-imposed condition or probation regulation after notice is given to the county attorney and the child.⁴⁴⁷ The child, the probation officer, or the state can request that the court modify or clarify any condition or regulation, and the court may hold a hearing at

434 ARIZ. REV. STAT. ANN. § 8-341(S) (2018).

435 *Id.*

436 *Id.*

437 ARIZ. REV. STAT. ANN. § 8-418(A) (2006).

438 *Id.*

439 ARIZ. REV. STAT. ANN. § 13-3821(D) (2018).

440 ARIZ. REV. STAT. ANN. § 13-3825(L) (2017).

441 ARIZ. REV. STAT. ANN. § 8-350(A) (2009) (providing for notification of a “dangerous offense” or a violation of sexual conduct with a minor, sexual assault, molestation of a child, or continuous sexual abuse of a child).

442 § 8-350(C).

443 ARIZ. JUV. CT. R. PROC. 32(D)(2)(a).

444 ARIZ. REV. STAT. ANN. §§ 8-235(D) (1999), 11-584(A)(7) (2010); ARIZ. JUV. CT. R. PROC. 103(D).

445 ARIZ. REV. STAT. ANN. § 8-221(A) (2010); ARIZ. JUV. CT. R. PROC. 10(A).

446 ARIZ. JUV. CT. R. PROC. 31(C). *See* ARIZ. JUV. CT. R. PROC. 31(A) (providing that a child’s probation officer “may impose regulations which are consistent with and necessary to the implementation of the conditions imposed by the court”).

447 ARIZ. JUV. CT. R. PROC. 31(C).

the request of any party.⁴⁴⁸ A written copy of a clarification or modification must be given to the child.⁴⁴⁹

The court may terminate the child's probation at any time before the child reaches 18 on its own motion or at the request of the child or the probation officer and after notice and an opportunity to respond by all parties, including the victim, as applicable.⁴⁵⁰

2. Probation Revocation

A child's probation officer or the county attorney may petition the court to revoke the child's probation if there is probable cause to believe the child has violated a regulation or condition of probation.⁴⁵¹ At the time the petition is filed or thereafter, the court must determine, based upon the allegation in the petition, whether probable cause to support the allegation exists.⁴⁵² The court must conduct an advisory hearing within 24 hours of the child's detention or within 14 days for a child not in detention.⁴⁵³ At the hearing, the child has the right to counsel and to appointed counsel if indigent, the right to silence, and the right to call and confront witnesses.⁴⁵⁴ The child may waive those rights and may enter a plea agreement or an admission.⁴⁵⁵

The probation violation hearing must be held within 21 days of the advisory hearing, unless good cause supports a hearing on a later date.⁴⁵⁶ The burden of proof is a preponderance of the evidence.⁴⁵⁷ If a violation is proven, the court may revoke, modify, or continue the child's probation.⁴⁵⁸ If a child is adjudicated for acts committed subsequent to being placed on probation, the child shall be found in violation and the court may proceed to disposition.⁴⁵⁹

3. Appeals

At the end of the disposition hearing, the juvenile court must explain the right to appeal and the method of appeal.⁴⁶⁰ Any child may appeal a final order of the juvenile court.⁴⁶¹ The order of the court may not be stayed pending appeal unless the child is subject to suitable arrangements for their care and custody and the court determines a stay is appropriate.⁴⁶² If restitution has been ordered, any payment made must be held by the court clerk pending the appeal.⁴⁶³ The juvenile court must appoint an attorney for the child on appeal, with costs to be paid by the county, and appeals of juvenile cases are given priority over other cases except extraordinary writs or special actions in the court of appeals.⁴⁶⁴ A notice of appeal must be filed within 15 days after the final order of the court is filed with the juvenile court clerk.⁴⁶⁵

448 *Id.*

449 *Id.*

450 ARIZ. JUV. CT. R. PROC. 31(C).

451 ARIZ. JUV. CT. R. PROC. 32(A).

452 ARIZ. JUV. CT. R. PROC. 32(C).

453 ARIZ. JUV. CT. R. PROC. 32(D)(1).

454 ARIZ. JUV. CT. R. PROC. 32(D)(2)(a)-(d).

455 ARIZ. JUV. CT. R. PROC. 32(D)(2)(e)-(g).

456 ARIZ. JUV. CT. R. PROC. 32(E)(1).

457 ARIZ. JUV. CT. R. PROC. 32(E)(2).

458 ARIZ. JUV. CT. R. PROC. 32(E)(5).

459 ARIZ. JUV. CT. R. PROC. 32(E)(6).

460 ARIZ. JUV. CT. R. PROC. 30(B)(4), 103(A).

461 ARIZ. REV. STAT. ANN. § 8-235(A) (1999); ARIZ. JUV. CT. R. PROC. 103(B).

462 § 8-235(B); ARIZ. JUV. CT. R. PROC. 103(B).

463 ARIZ. JUV. CT. R. PROC. 103(B).

464 § 8-235(D), (C); ARIZ. JUV. CT. R. PROC. 103(D), (C).

465 ARIZ. JUV. CT. R. PROC. 104(A).

Q. Youth in Adult Criminal Court

The state can elect to request that jurisdiction of a youth in any felony case be transferred to the criminal division of the superior court.⁴⁶⁶ A child may be transferred if, at a hearing, the court finds probable cause to support that the child committed the offense and that public safety is served by transfer in light of the statutory factors.⁴⁶⁷

Youth aged 14 or older or 15 or older are also prosecuted as adults by statutory exclusion for certain charged serious offenses, as well as being charged as a repeat and chronic felony offender.⁴⁶⁸ A case originally filed in the criminal court by prosecutorial discretion may be transferred back to the juvenile court on motion of the prosecutor.⁴⁶⁹

If a youth turns 18 “during the pendency of a delinquency action or before completion of the sentence . . . for an act that if committed by an adult would be a misdemeanor or petty offense or a civil traffic violation, the court shall transfer the case to the appropriate criminal court” for prosecution as an adult.⁴⁷⁰

R. Record Confidentiality and Destruction

Juvenile court records, including a child’s arrest records, legal file, orders of disposition, and appeals, are public, unless a court orders a record closed.⁴⁷¹ A child’s social file, which is maintained by probation, is confidential and must be withheld from the public unless ordered by the court.⁴⁷² Juvenile court proceedings in cases involving delinquency, incorrigibility, diversion in delinquency

cases, and transfer to adult court are open to the public unless ordered by the court to be closed.⁴⁷³

The records of certain juvenile court cases may be set aside upon application if the court finds that:

- The person is eligible and has successfully completed all of the terms and conditions of probation or was discharged from the department of juvenile corrections upon successful completion of the individualized treatment plan;
- All restitution and monetary assessments have been paid in full;
- The destruction of the records is in the interests of justice; and
- The destruction of the records would further the rehabilitative process of the applicant.⁴⁷⁴

If the request to set aside is granted, the juvenile is released from most, but not all, of the penalties and disabilities resulting from the adjudication, and the record may still be used or accessed for some enumerated purposes.⁴⁷⁵

Juvenile court records relating to charges that did not result in an adjudication and certain non-felony-level adjudications may be ordered to be destroyed upon application to the court, so long as the person is at least 18 years of age and is not subject to a disqualifying event.⁴⁷⁶ Additionally, juvenile court records relating to certain felony-level adjudications or adjudications for DUI may be ordered to be destroyed upon application to the court, so long as the person is at least 25 years of age and is not subject to a disqualifying event.⁴⁷⁷

466 ARIZ. REV. STAT. ANN. § 8-327(A) (1998); ARIZ. JUV. CT. R. PROC. 34(A).

467 § 8-327(B)-(D); ARIZ. JUV. CT. R. PROC. 34(B)-(F).

468 ARIZ. REV. STAT. ANN. § 13-501 (2015).

469 ARIZ. REV. STAT. ANN. § 8-302(B) (1998).

470 § 8-302(D).

471 ARIZ. REV. STAT. ANN. § 8-208(A), (G) (1999); ARIZ. JUV. CT. R. PROC. 19(A)(1).

472 ARIZ. JUV. CT. R. PROC. 19(A)(2).

473 ARIZ. JUV. CT. R. PROC. 19(B).

474 ARIZ. REV. STAT. ANN. § 8-348(A), (C)-(D) (2009).

475 § 8-348(B).

476 ARIZ. REV. STAT. ANN. § 8-349(B)-(C) (2002).

477 § 8-349(D)-(E).

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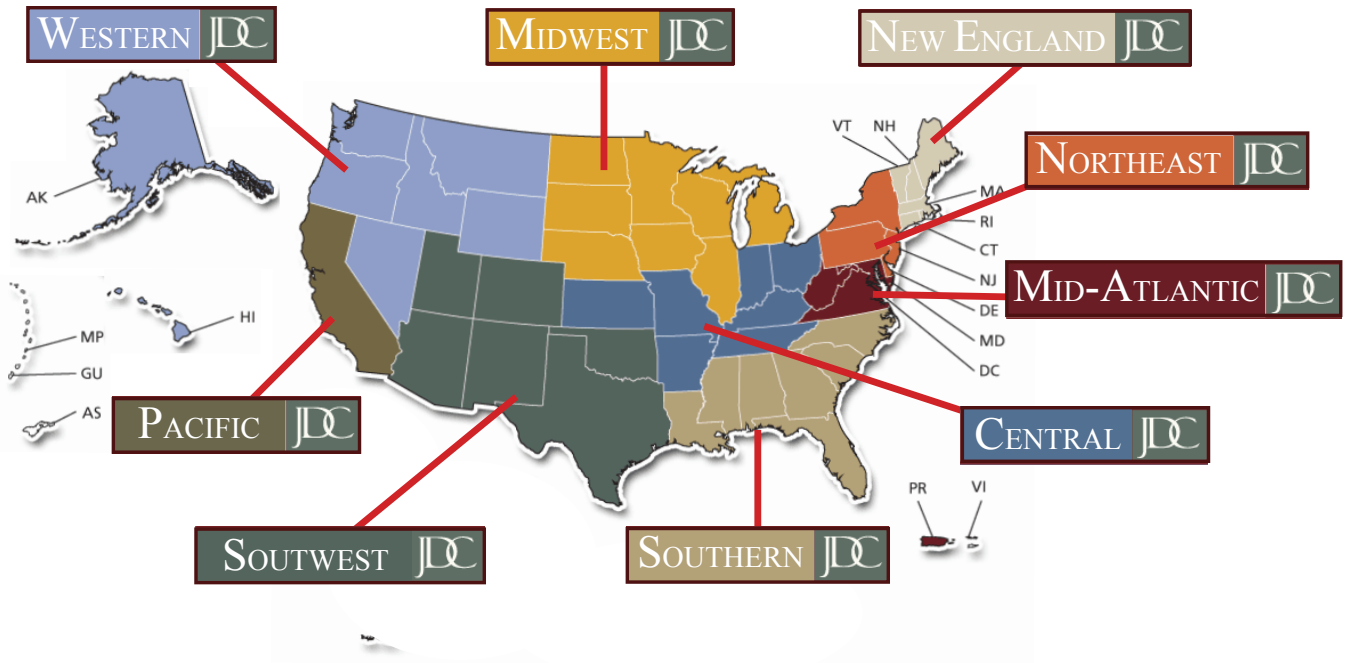
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