DISTRICT OF COLUMBIA

AN ASSESSMENT OF ACCESS TO AND QUALITY OF JUVENILE DEFENSE COUNSEL

NJDC
National Juvenile Defender Center

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EXECUTIVE SUMMARY

In 2017, 50 years after the landmark United States Supreme Court decision affording youth the right to counsel in delinquency proceedings,[1] youth are regularly denied access to and provision of counsel in many states.

The National Juvenile Defender Center (NJDC), in partnership with our regional juvenile defender centers and other key stakeholders, has embarked on a nationwide strategy to assess access to and quality of juvenile defense afforded to youth in conflict with the law. Because juvenile justice systems are a state and local responsibility, rather than a federal one, this requires a state-by-state assessment of access to and quality of juvenile defense counsel. To date, NJDC has conducted such assessments in 23 states, including the District of Columbia.

Several consistent themes emerge across these state assessments, including: an array of systemic barriers that prohibit youth from receiving timely access to qualified juvenile defense counsel, juvenile defense not being recognized or acknowledged as a specialized legal practice, and juvenile defense being significantly under-resourced. While all juvenile justice professionals want to ensure the best outcomes for young people and for society, the U.S. Supreme Court clearly noted in *In re Gault* that "[t]he absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment," and that "[t]he absence of procedural rules based upon constitutional principle has not always produced fair, efficient, and effective procedures."[2] Since the *Gault* decision, juvenile indigent defense systems have faltered and failed in many jurisdictions, leaving far too many children defenseless in courts of law across the country.[3]

1 *In re* Gault, 387 U.S. 1 (1967).
2 *Id.* at 18.
3 *See generally* Nat'l Juvenile Defender Ctr., Access Denied: A National Snapshot of States' Failure to Protect Children's Right to Counsel (2017), http://njdc.info/wp-content/uploads/2017/05/Snapshot-Final_single-4.pdf.

Underscoring the importance of a specialized juvenile defense bar, the Court noted in its 2010 decision in *Graham v. Florida* that there are "special difficulties encountered by counsel in juvenile representation. As some *amici* note, the features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings."[4] Juvenile defenders require specialized knowledge and understanding of adolescence; the skills needed to address unique hearings such as detention, transfer, and disposition; and the capacity to assist and engage their youthful clients in effective decision-making toward their defense if they are to overcome this "significant disadvantage."

In many ways, the District of Columbia is doing far better than much of the rest of the country. The juvenile defense system in the District is highly functional. Access to counsel in pretrial delinquency cases is, by all accounts, universal; there was not a single report or observation of a child appearing before a judge or magistrate without legal representation. While the quality of that defense representation could improve in some areas, by and large, the juvenile defense bar in the District is well resourced and professional, and has access to training and information that enables generally effective representation.

Despite these successes, however, there are areas of improvement that can and should be addressed by a broad spectrum of both private and public stakeholders. By addressing these gaps, stakeholders will be improving justice for the youth of the District of Columbia and promoting a fairer and more just judicial process.

The Core Recommendations that follow represent the principle areas in which the District can address gaps in access to and quality of defense representation for youth in the delinquency system. For more details on how these Core Recommendations might be put into practice, please see suggested Implementation Strategies at the end of the full report.

4 Graham v. Florida, 560 U.S. 48, 78 (2010).

CORE RECOMMENDATIONS
FOR STRENGTHENING JUVENILE DEFENSE IN THE DISTRICT OF COLUMBIA

1 Foster Greater Integration of Adolescent Development Principles into All Aspects of Practice and Training

Practice that is based on the integration of adolescent development principles and the law is a key aspect of what makes defending youth different from defending adults. While stakeholders and training standards in DC talk about specialization in juvenile defense, much of what actually occurs in DC Family Court is a specialization in the laws and procedures that are unique to juvenile court, with little real emphasis placed on the cognitive and psychosocial differences of youth in terms of decision-making, comprehension, foresight, and communication style. All of these contribute to a young person's diminished culpability in the eyes of the law. While a limited number of stakeholders have embraced adolescent developmental concepts in mitigation, dispositional advocacy, and decisions, this is far from universal. All defenders should pursue adequate training to understand developmental concepts and how to integrate them in advocacy at every level. All defenders should also seek out—and the justice system should foster access to—coaching opportunities that will help juvenile defenders learn to better use these concepts in practice.

2 Demand that All Juvenile Defense Attorneys Represent Their Clients' Expressed Interests and that Stakeholders Respect this Role

Despite local and national standards, rule of ethics, and best practices that require defense attorneys to represent their clients' expressed or stated interests, there is not universal commitment to this concept in DC juvenile court practice. The juvenile defender is the youth's advocate, not a system advocate. Attorneys who fail to live up to this standard should not be permitted to represent youth in delinquency or Persons In Need of Supervision (PINS) matters. Other stakeholders should respect and support a youth's constitutional right to an expressed-interest advocate who can help them navigate the system and empower them to have a voice in the court proceedings.

3 Increase Organizational, Monitoring, and Leadership Capabilities of the CJA Juvenile Panel

A consistent theme emerging from this assessment is that members of the CJA panel operate wholly independently with little oversight, mentorship, or support. Furthermore, the panel includes a mix of attorneys—some who appear well-trained and prepared, and some who appear untrained and unprepared. This creates a system in which quality of representation varies greatly and the level of representation a youth receives is subject to the luck of the draw. Increased institutional support for independent CJA attorneys that includes leadership opportunities, training, administrative support, a voucher payment system that reflects best practices in juvenile defense, and greater coordination of resources would improve the juvenile defense bar as a whole.

4 Recruit and Sustain a Cadre of Juvenile Defense Specialists at the Public Defender Service

Despite a long-term practice and preference for having newly hired attorneys begin their careers in a one-year rotation representing juveniles, the Public Defender Service should recruit and develop more dedicated attorneys who build greater expertise in working with youth and navigating youth-related defense services, while also continuing to contribute the strong litigation and advocacy skills for which PDS is renowned.

5 Strengthen Post-Disposition Juvenile Defense Practice

In the District, while access to counsel is guaranteed in juvenile cases through disposition, youth access to post-disposition counsel and quality of post-disposition representation is lacking. In a juvenile justice system that is premised on youth rehabilitation, there is very little access to legal counsel for youth navigating the bulk of the post-adjudicatory process. Juvenile defense attorneys can and should provide critical advocacy that acts as a check on other system stakeholders, such as the courts, Department of Youth Rehabilitation Services (DYRS), and probation. System stakeholders need to take a greater role in ensuring that youth have consistent and dedicated access to counsel while in all out-of-home placements, during reentry, and while on supervision in the community so that legal obstacles, including access to services, can be addressed timely and effectively in a way that supports youth success.

6 Protect Confidentiality of Juvenile Court Records and Increase Access to Record Clearing

The District's confidentiality laws for juvenile records have eroded over time, and juvenile records now pose a significantly stronger barrier to a youth's ability to access education, housing, and employment after they complete their sentences. Many felony adjudications open youth to public disclosure of their involvement with the court and risk long-term stigma. These barriers undercut the rehabilitative goal of the juvenile justice system and impact how attorneys advise clients regarding whether they exercise their rights to go to trial or plead to a lesser charge. Eroding confidentiality is likely contributing to a marked decline in juvenile court trials. Stakeholders should consider ways to strengthen confidentiality of juvenile records and increase opportunities for record clearing, such as simplifying the record sealing process and providing access to an attorney to help with the process.

7 Establish a Comprehensive Juvenile Defense Data Collection System

Data is the key to driving informed decision-making in any system. In the District, there is surprisingly little data being collected, at least in an aggregate and reportable form that can inform overall juvenile defense system functioning. The judiciary, the executive, and defenders themselves all need to improve data collection and reporting systems to track internal metrics related to outcomes that can inform juvenile reform and act as checks on how other systems are operating. Key metrics that defense agencies, the courts, and the executive should collect and regularly analyze include data on race, ethnicity, and gender of youth served, as well as statistics on sexual orientation and gender identity/gender expression of youth in the system; how cases are adjudicated (i.e. plea, trial, or dismissal); disposition outcomes, including placements and whether in-area or out-of-state; and success rates of service programs paid for with public dollars. Greater transparency is needed in the data collected by the DC Superior Court and Court Social Services, and data metrics that do not breach juvenile confidentiality should be made publicly available.

8 Ensure that the Secure Confinement of Youth Is Rare

The overuse of pre-adjudicatory detention was a serious concern during the assessment, particularly given that detention rates exceeded the capacity of the system at a time when juvenile crime rates were falling. The harms of incarcerating youth, even for short periods of time, and the likelihood that the practice increases recidivism are well documented. Detention and secure confinement should not be common and systemic reactions to non-threatening youth behavior. As a system dedicated to rehabilitation and improving the life outcomes of youth, all stakeholders should advocate against the overuse of detention, monitor the capacity of incarceration facilities, and strive to do no harm.

9 Ensure that Youth in PINS Court Receive Effective Expressed-Interest Advocacy and that They Are Not Detained

Youth who are alleged to be Persons in Need of Supervision (PINS) are accused of conduct that brings them into conflict with the law based upon their status as minors. These are often called "status offenses" and are legally less severe than misdemeanors. PINS offenses do not warrant typical juvenile delinquency responses, particularly detention of any kind. Given the high use of out-of-home placements, including detention, found during the assessment period, stakeholders should ensure youth are appointed well-trained lawyers who advocate for their expressed interests, insist upon due process, and ensure they are not detained.

CORE RECOMMENDATIONS
FOR ELIMINATING SYSTEMIC BARRIERS TO JUSTICE FOR CHILDREN

1 Automatically Appoint Counsel to All Youth Without an Assessment of Their Family Finances

The District does an excellent job ensuring no child appears before the court without an attorney to represent them, as required in Juvenile Rule 44. Children, by virtue of their age and development, lack the resources to pay for an attorney. Moreover, the constitutional right to counsel is guaranteed to the child alone. Yet the District continues to predicate appointment of counsel on the income and assets of parents. Youth do not have control over family finances. Making the youth's access to counsel subject to parental grace, should the court find the family is financially capable of paying for a lawyer, sets youth and families up for failure in a system that is intended to promote youth success and rehabilitation. The District should follow the lead of 11 states that automatically provide counsel to all youth, regardless of family income.

2 Eliminate the *De Facto* Indiscriminate Shackling of Youth

In line with the research and sworn affidavits of numerous pediatricians, psychologists, psychiatrists, communications specialists, and other child development experts, improve—or at a minimum, fully implement existing—protections against indiscriminate shackling of youth in every hearing in DC Superior Court. The indiscriminate shackling of youth without an individualized finding of need continues to be a problem in the District, despite a court administrative order to the contrary.

3 Require System Accountability to Reduce Racial and Ethnic Bias and Disparities

The racial and ethnic disparities in the District of Columbia's juvenile justice system are stark. Data on these disparities is sparse, but what does exist shows that the vast majority of youth who are arrested and brought into the juvenile court are youth of color, and that youth who are incarcerated after being found involved in an offense are exclusively youth of color. Court observations confirm this data. The District should take concerted steps to understand, analyze, and address racial and ethnic disparities at every decision point in the system. This will require robust and transparent data collection and reporting, mandatory training and education of all stakeholders, tools for addressing racial disparities within the context of a case, and an honest reflection on the factors that draw youth of color into the justice system well beyond their proportion of the population.

4 Permit Only Personnel Who Have Training in Youth-Appropriate Security and De-Escalation Techniques to Be Responsible for the Care and Security of Youth in Secure Custody at DC Superior Court

Youth are developmentally different from adults and have fundamentally different cognitive, emotional, and psychosocial decision-making abilities and responses to stress. Treating youth like younger versions of adult prisoners can cause harm to youth development and can exacerbate and escalate security problems. Only security personnel who are specially trained in youth development and de-escalation techniques should be allowed to manage the care and security of youth in DC Superior Court.

5 Ensure Youth in Secure Custody Have Greater Access to Confidential Space in Which They Can Confer with Attorneys

There are far too many situations in which attorneys and youth are not afforded the space and privacy necessary for the confidential discussions that are the bedrock of the attorney-client relationship. Particularly in the courthouse and at the New Beginnings Youth Development Center, access to confidential space outside of the hearing of security officials is limited. This creates a systemic barrier to the effective assistance of counsel, particularly when youth are incarcerated.

INTRODUCTION

I. PURPOSE OF ASSESSMENT

The National Juvenile Defender Center (NJDC)'s juvenile defense assessments are comprehensive in scope and designed to furnish policymakers, defense leadership, and other key stakeholders with qualitative and systems data and information upon which they can make informed decisions regarding the nature and structure of their state juvenile defense system. The assessment process provides a wide-ranging picture of the strengths and weaknesses of the juvenile defense system with tailored recommendations crafted to address each state's distinctive characteristics.

II. METHODOLOGY

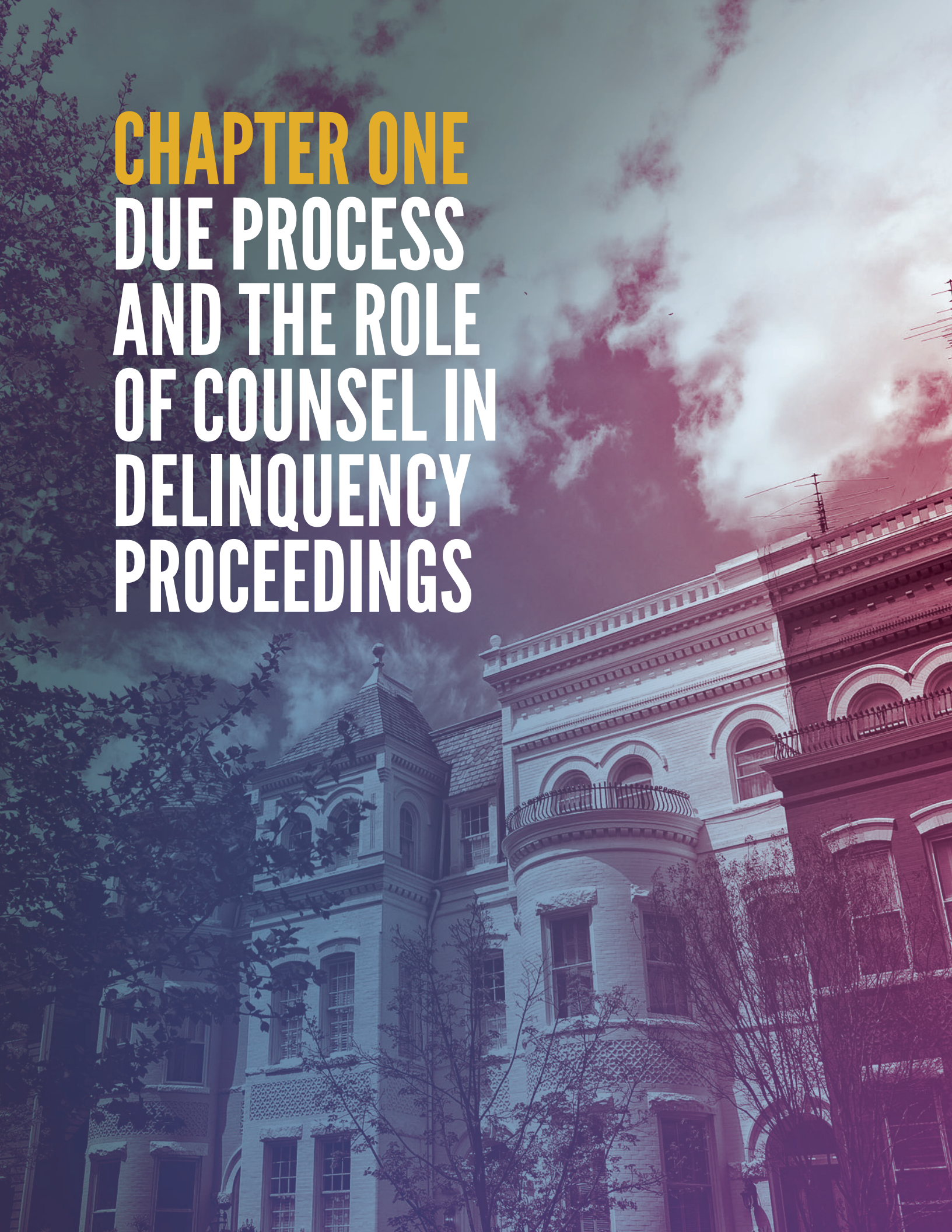
NJDC relied upon its established and structured methodology to conduct this assessment. NJDC, in partnership with its regional juvenile defender centers and other key stakeholders, has completed state assessments in 23 states, including the District of Columbia. Until NJDC began its process of assessing juvenile defense systems, issues, policies, and funding decisions specific to access to juvenile defense counsel and the quality of that counsel at the state level had never been fully understood or studied separately from the adult criminal justice and public defense systems. Where some examinations of adult criminal defense systems have included a juvenile component, such reviews have been cursory and have not comprehensively examined the entire workings of the juvenile system.

NJDC was invited to conduct this assessment in order to provide the District with a detailed picture of the system of juvenile public defense. The Chief Judge of DC Superior Court expressed support for the assessment and issued a letter to all Family Court stakeholders asking for their cooperation in meeting with the assessment Investigative Team and providing access to juvenile court hearings. Similarly, the Director of the Public Defender Service for the District of Columbia and other stakeholders within the District's juvenile justice system were also supportive of the assessment process.

The Mid-Atlantic Juvenile Defender Center (MAJDC), housed at Georgetown Law, was a partner in this assessment. At the start of this process, MAJDC staff met with court officials and other agency leaders to outline the purpose of the assessment and lay the groundwork for engaging in an assessment in the District. NJDC worked with MAJDC to adapt investigative and observational protocols used in NJDC's two dozen previous statewide assessments for use in the District. NJDC staff prepared a comprehensive briefing memorandum with general information about the District's geography, demographics, economy, judicial branch, and politics, and specific information about the juvenile justice system, including the juvenile code, arrest statistics, disproportionate minority contact, the right to counsel in juvenile delinquency proceedings, transfer to adult court, and the adult indigent defense system.

NJDC and MAJDC assembled an Investigative Team of experts in juvenile defense that included current and former public defenders, academics, juvenile defense policy experts, and juvenile justice advocates. Each team member possessed extensive knowledge of the role of defense counsel in juvenile court. Investigative Teams were trained on the assessment methodology and protocols and dispersed across the District to conduct court observations, engage in confidential meetings with key justice system personnel, and conduct site visits to the two secure facilities responsible for housing youth who are detained pretrial or committed to the Department of Youth Rehabilitative Services. Field site visits were conducted in March 2017, with additional interviews and requests for documentation carrying through October 2017. Upon completion of each site visit, the teams debriefed with NJDC staff and submitted field notes that were used to develop this report about access to counsel and quality of representation in the juvenile public defense delivery system in the District of Columbia. The Investigative Team also conducted an analysis of demographics, population rates, juvenile arrest data, disposition rates, and operations throughout the juvenile justice system, using available data through December 2017.

The District's small size presents a unique opportunity to capture a complete picture of the juvenile public defense system, rather than conducting investigations in a representative sample of counties, which is often required in larger states. The Investigative Team in the District had access to the breadth of the juvenile delinquency system and was able to speak with a larger and more concentrated number of stakeholders, including those from the judiciary, the Attorney General's Office, the Department of Youth Rehabilitation Services, Court Social Services, and the juvenile defense bar, among others. To ensure open and frank discussion, the specific names and locations of people interviewed are confidential and will not be identified.



CHAPTER ONE
DUE PROCESS AND THE ROLE OF COUNSEL IN DELINQUENCY PROCEEDINGS

I. THE EVOLUTION OF DUE PROCESS AND THE RIGHT TO COUNSEL IN DELINQUENCY PROCEEDINGS

The first juvenile court in the United States was established on July 3, 1899 in Cook County, Illinois.[5] The court embraced the English common law philosophy of *parens patriae*, which allowed the court to essentially act as a substitute parent, intervening in the lives of children as it saw fit.[6] It was rooted in the notion that a child's guilt or innocence was less important than the ability of the state to rehabilitate them.[7] By 1925, all but two states had created juvenile courts designed to be less punitive and more therapeutic than the adult criminal justice system.[8] However, significant procedural and substantive differences emerged as juvenile courts provided only cursory legal proceedings, placing judicial economy and perceived best interests before due process protections for youth. Rules often 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.[9]

As the number of youth institutionalized 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.[10] 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, right to notice of charges, right to a jury trial, or right against self-incrimination—were denied to children.[11]

A wave of change began with the United States Supreme Court's 1963 decision in *Gideon v. Wainwright*.[12] Emphasizing that "lawyers in criminal court are necessities, not luxuries,"[13] *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.[14] In a unanimous decision, the Court declared, "reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him."[15]

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5 Nat'l Ctr. for Juvenile Justice., Juvenile Offenders and Victims: 2014 National Report 84-85 (Melissa Sickmund & Charles Puzzanchera eds., 2014), http://www.ojjdp.gov/ojstatbb/nr2014/downloads/NR2014.pdf [hereinafter NCJJ 2014 National Report].

6 *Id.* at 84.

7 *See Gault*, 387 U.S. at 15-16.

8 NCJJ 2014 National Report, *supra* note 5, at 84.

9 *Id.*

10 *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)).

11 *Gault*, 387 U.S. at 17; David R. Barrett et al., Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 Harv. L. Rev. 775, 794-95 (1966). *See also* Nat'l Council of Juvenile and 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; Nat'l Research Council & Inst. of Med., Juvenile Crime, Juvenile Justice 158 (Joan McCord et al. eds., 2001).

12 372 U.S. 335 (1963).

13 *Id.* at 344.

14 *Id.* at 348.

15 *Id.* at 344.

On the heels of *Gideon*, the Court decided a series of cases establishing a youth's right to due process protections when facing delinquency proceedings.[16] Seminal among these cases, *In re Gault*, decided in 1967, clearly affirmed the right to counsel in delinquency proceedings under the Due Process Clause of the United States Constitution—as applied to states through the Fourteenth Amendment.[17] Because the District of Columbia is not a state, the constitutional protections of the Due Process Clause apply to the District through the Fifth Amendment.[18] *Gault's* author, Justice Abe Fortas, wrote:

> 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. The child "requires the guiding hand of counsel at every step in the proceedings against him."[19]

The Court in *Gault* recognized that youth in juvenile court were getting "the worst of both worlds,"[20] explaining that youth received "neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."[21] The Court held that children charged with delinquency have a fundamental constitutional right to notice of the charges against them, the right to counsel, the right to confront and cross-examine witnesses against them, and the right against self-incrimination.[22] Moreover, the Court explicitly rejected the State of Arizona's claim that the child had others capable of protecting his interests, instead emphasizing the unique role of counsel and cautioning against the dangers of substituting other court actors as an advocate for the child.[23] "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."[24] While the judge, probation officer, and other court personnel are charged with looking out for an accused child's best interests, the Court noted that a child facing "the awesome prospect of incarceration" requires counsel to guide him in proceedings implicating potential loss of liberty.[25]

Subsequent to *Gault*, the Court continued to consider constitutional protections for youth, holding that the state must prove charges beyond a reasonable doubt for a court to adjudicate a child in a delinquency proceeding—rather than the mere preponderance standard previously relied upon by many state courts,[26] and holding that double jeopardy bars multiple prosecutions of youth based on the same allegations.[27]

Following in the Court's footsteps, Congress enacted the Juvenile Justice and Delinquency Prevention Act (JJDPA)[28] in 1974, which established the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention

16 *Gault*, 387 U.S. at 12; 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).
17 *See generally Gault*, 387 U.S. at 20.
18 *See* Dusenbery v. United States, 534 U.S. 161, 167 (2002).
19 *Gault*, 387 U.S. at 28, 36 (footnotes omitted).
20 *Id.* at 18 n.23 (internal quotations and citation omitted).
21 *Id.*
22 *Id.* at 10. *See also In re* Winship, 397 U.S. 358, 368 (1970) (describing the rights affirmed in *Gault*).
23 *Gault*, 387 U.S. at 36.
24 *Id.*
25 *Id.*
26 *Winship*, 397 U.S. at 368.
27 Breed v. Jones, 421 U.S. 519, 537 (1975).
28 Pub. L. No. 93-415, 88 Stat. 1109 (1974) (codified as amended at 42 U.S.C. § 5601); Pub. L. No. 93-415, 88 Stat. 1109, *amended by* Pub. L. No. 107-273, 116 Stat. 1871 (2002); Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601 (2012).

(OJJDP).[29] The JJDPA, through OJJDP, sought to regulate the function of the juvenile justice system and its treatment of children. Additionally, the JJDPA created the National Advisory Committee for Juvenile Justice and Delinquency Prevention, charged with the development of national juvenile justice standards.[30] Those standards were published in 1980, and required that counsel represent children in all proceedings stemming from a delinquency matter, beginning at the earliest stage of the process.[31]

Even earlier, 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.[32] The standards provided critical guidance on how to establish a juvenile justice system with procedures to ensure fair and effective management of juvenile matters, including a clear mandate that youth have access to counsel in delinquency proceedings.[33] 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 JJDPA to provide funding to the states to decrease the disproportionate number of youth of color in juvenile facilities, both pre- and post-adjudication.[34] However, racial disparities continued to pervade the justice system and, in 1992 when Congress reauthorized the JJDPA, it enacted additional amendments elevating the issue of addressing disproportionate minority confinement as a core protection and tying state funding eligibility to compliance with the core requirement provisions.[35]

With the 1992 reauthorization, Congress also reaffirmed the importance of the role of defense counsel in delinquency proceedings, charging OJJDP with establishing and supporting advocacy programs and services that protect due process rights of youth in juvenile court and calling for improvement of the quality of legal representation for youth in delinquency proceedings.[36] The deficiencies of public defense delivery systems were specifically pinpointed.[37]

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29 *Legislation/JJDP Act*, U.S. Dep't of Justice, Office of Juvenile Justice and 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 and 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 and Delinquency Prevention, In Focus: Disproportionate Minority Contact (2012), http://www.ojjdp.gov/pubs/239457.pdf.

30 88 Stat. 1109. *See also* Douglas C. Dodge, U.S. Dep't of Justice, Office of Juvenile Justice and Delinquency Prevention, Due Process Advocacy (1997), https://www.ncjrs.gov/pdffiles/fs9749.pdf.

31 Nat'l Advisory Comm. for Juvenile Justice and Delinquency Prevention, Standards for the Administration of Juvenile Justice, § 3.132 Representation by Counsel—For the Juvenile (1980).

32 *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/JJ/JJ_Standards_Counsel_for_Private_Parties.authcheckdam.pdf. For a description of the project, *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].

33 Standards Relating to Counsel for Private Parties, *supra* note 32; IJA-ABA Juvenile Justice Standards, *supra* note 32, Standard 1.1.

34 Anti-Drug Abuse Act of 1988, 21 U.S.C. § 1501 (1988). *See also Disproportionate Minority Contact Chronology: 1988 to Date*, U.S. Dep't of Justice, Office of Juvenile Justice and 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 and Delinq. 2009) [hereinafter Hartney & Vuong, Racial and Ethnic Disparities], http://www.nccdglobal.org/sites/default/files/publication_pdf/created-equal.pdf l (last visited June 10, 2015); While disproportionate minority confinement for justice system-involved youth has been a subject of concern since the 1988 federal mandate made more information available on racial disparities in the juvenile system and also promoted efforts to reduce these numbers, no similar efforts have been made in the adult system.

35 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.

36 *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 and Delinquency Prevention, OJJDP Annual Report 2002, at 17-26 (2002) [hereinafter OJJDP Annual Report 2002], https://www.ncjrs.gov/pdffiles1/ojjdp/202038.pdf.

37 Juvenile Justice and Delinquency Prevention Act. *See also* OJJDP Annual Report 2002, *supra* note 36, at 39.

The last reauthorization of the JJDPA occurred in 2002.[38] That reauthorization included additional amendments expanding funding and data collection to include any disproportionate minority *contact* (DMC) within the juvenile justice system, rather than focusing just on disproportionate minority *confinement*.[39] This expansion recognized that youth of color receive disproportionate outcomes at all points of system contact, rather than solely pre-trial secure detention and post-disposition commitment.[40] The JJDPA still stands as the country's primary federal legislation regulating juvenile justice, but it is overdue for reauthorization. At the time of this report, both the U.S. House of Representatives and Senate had approved bills reauthorizing the JJDPA and were working out their differences in conference committee.[41]

In 2012, recognizing that a gap still existed with respect to protecting the due process right to counsel for youth, the National Juvenile Defender Center 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.[42]

The need for competent and dedicated juvenile defense received greater federal support in March 2015, when the U.S. Department of Justice (DOJ) filed a statement of interest to address, at a state level, the due process right to counsel for children accused of delinquency, as established by the Supreme Court in *In re Gault*.[43]

According to the DOJ:

> "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 defensesystems for children and meet their constitutional responsibilities."[44]

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

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

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38 *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*, Office of Juvenile Justice and Delinquency Prevention, *supra* note 29; Kristin Finklea, Juvenile Justice Funding Trends, Congressional Research Service (2016), https://www.fas.org/sgp/crs/misc/RS22655.pdf.

39 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.

40 Rovner, *supra* note 39, at 1, 7.

41 H.R.1809, the Juvenile Justice Reform Act of 2017, 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 Apr. 24, 2018).

42 *See generally* National Juvenile Defense Standards (Nat'l Juvenile Defender Ctr. 2012) [hereinafter Nat'l Juv. Def. Standards] (explaining the role of juvenile defense counsel).

43 *See* Statement of Interest of the United States, N.P. et al. v. Georgia, No. 2014-CV-241025 (Ga. Super. Ct. 2015) [hereinafter 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 (March 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.

44 Dep't of Justice Right to Counsel Press Release, *supra* note 43.


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II. THE ROLE OF DEFENSE 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."[45]

Although the right to counsel for youth in delinquency proceedings was established by the Supreme Court's decision in *Gault* 50 years ago,[46] in many jurisdictions around the country, youth either continue to go unrepresented or, as is too often the case, receive an attorney lacking in 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.[47] It is the juvenile defender who must insist upon the fairness of proceedings, ensure that the child's voice is heard at every stage of the process, and safeguard the due process and equal protection rights of the child.[48] 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.[49] 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.[50] Although best-interest advocacy may be 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."[51] 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.[52]

The right to effective counsel throughout the entirety of a youth's system involvement is critical.

Effective juvenile defense not only requires specialized practice, wherein the attorney who represents a child client must meet all the obligations due to an adult client, but also necessitates the development of 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 youth, and various child-specific systems affecting the case, such as schools and adolescent mental health services.[53] As the Supreme Court has noted, children "cannot be viewed simply as miniature adults" and should not be treated as such.[54] Rather, "[a] child's age is far more than a chronological fact. It is a fact that generates commonsense conclusions about behavior and perception."[55] Youth have different cognitive, emotional, and behavioral capacities than adults, and defenders must engage

45 Statement of Interest in N.P., *supra* note 43, at 7.
46 *In re* Gault, 387 U.S. 1, 36 (1967).
47 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)).
48 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. *In re* Gault, 387 U.S. 1 (1967). *See generally* Model Rules of Prof'l Conduct r. 1.2, 1.3, 1.4, 1.8, 1.14 (Am. Bar Ass'n 1983). "Expressed-interest" (also called stated-interest) representation requires that counsel assert the client's voice in juvenile proceedings.
49 *See* Nat'l Juv. Def. Standards 1.1, 1.2. *See also Gault*, 387 U.S. at 1.
50 "Best interest" representation allows advocates to advocate for their belief in what is best for the child.
51 *In re* Winship, 397 U.S. 358, 365 (1970).
52 *See* Statement of Interest in N.P., *supra* note 43, at 2 n.1.
53 Nat'l Juv. Def. Standards., *supra* note 42, § 1.3.
54 J.D.B. v. North Carolina, 564 U.S. 261, 274 (2011) (citing Eddings v. Oklahoma, 455 U.S. 104, 115–16 (1982)).
55 *J.D.B.*, 564 U.S. at 272 (citations and internal quotation marks omitted).

thoughtfully when communicating with youth and in crafting legal arguments with respect to a youth's reduced culpability and increased capacity for rehabilitation.[56] The juvenile defender must apply this expertise in representing youth at all stages of the justice system. This includes at pre-trial detention, bail, suppression, and other hearings; during the adjudicatory phase of a trial; at disposition hearings, transfer hearings, and any competence proceedings; and at all points post-disposition while a youth remains under the jurisdiction of the juvenile justice system.

Juvenile defenders must ensure a client-centered model of advocacy where they empower and advise the youth client using developmentally appropriate communication, so youth are equipped to understand and make informed decisions about their case, such as whether to accept a plea offer or go to trial, to testify or remain silent, and to accept or advocate against a service plan proffered by the state, or to offer alternatives.[57]

Juvenile defense delivery systems must provide juvenile defenders with the necessary training, support, and supervision to ensure attorneys invest the necessary time to build rapport with clients, obtain discovery and conduct investigation, engage in motion practice, appropriately prepare for hearings, and monitor the post-disposition needs of clients under the court's jurisdiction in consultation with their client to ensure stated-interest representation at all stages of the court involvement.[58]

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

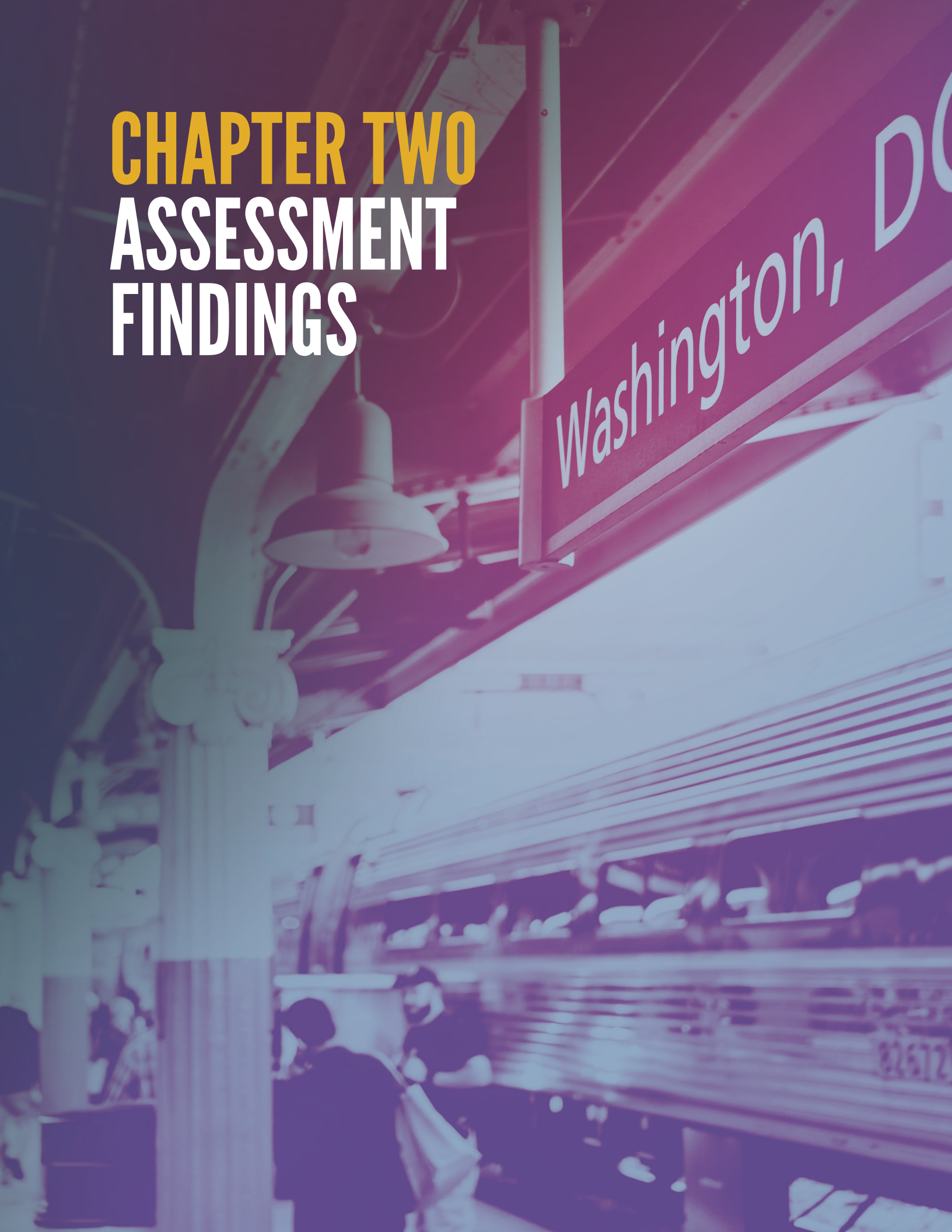
Juvenile defenders must ensure a client-centered model of advocacy where they empower and advise the youth client using developmentally appropriate communication.

56 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 (2008) [hereinafter Ten Core Principles], http://njdc.info/wp-content/uploads/2013/11/10-Core-Principles.pdf.

57 Nat'l Juvenile Defender Ctr., Role of Juvenile Defense Counsel in Delinquency Court 9 (2009). *See also* Ten Core Principles, *supra* note 56.

58 Statement of Interest in N.P., *supra* note 43, at 14.

CHAPTER TWO
ASSESSMENT FINDINGS



In many respects, the District of Columbia is a national leader in ensuring access to counsel, supporting a robust and dedicated juvenile defense system, and having a juvenile court culture that generally values specialization. As with any jurisdiction, however, there are areas for improvement. The findings in this chapter outline the strengths of the District's juvenile defense delivery and identify policy, practice, and systemic obstacles that stakeholders should consider as they look to make improvements.

I. ONE JURISDICTION, THREE JUVENILE DEFENSE STRUCTURES PROVIDING A RANGE OF QUALITY

DC has enshrined the right to counsel in both law and practice. All youth charged with juvenile or PINS offenses appear with defense counsel at their side. In practice, waiver of counsel is not permitted. On any given day in juvenile court, a youth is represented by at least one attorney, if not more should the youth have education needs, mental health concerns, or other ancillary factors that require additional, specialized assistance. By law, representation does not terminate until the juvenile case ends.

A robust juvenile indigent defense bar fulfills the right to counsel for DC's youth. Three separate entities provide the vast majority of delinquency representation: the Public Defender Service (PDS), a panel of court-appointed lawyers (CJA panel), and law school students from DC's clinical programs. Each of these defense entities possesses unique characteristics.

From its inception, the federally funded Public Defender Service has been structured to be a model public defense delivery system. PDS's mandate to provide excellent advocacy, however, has also meant that caseloads are kept low. Consensus among stakeholders was that PDS takes only about one-third of all juvenile cases, though concrete data was not available from any source. As a result, the majority of youth are represented by appointed CJA lawyers who, though loosely affiliated, are not subject to monitoring or an organizing entity. While law school clinical programs only represent a small portion of the overall youth in juvenile court, clinics have significantly contributed to the quality and professionalism of DC's juvenile defense practice. Understanding how each of these defense entities operates is crucial to understanding the role and quality of juvenile defense counsel in Washington, DC.

A. Public Defender Service for the District of Columbia

The Public Defender Service for the District of Columbia is widely recognized as a national leader in criminal defense. Former Attorney General Eric Holder has lauded PDS as "the best public defender's office in the country."[59] Its influence stretches beyond the boundaries of the District. Public defender offices, academic institutions, governmental agencies, and criminal justice and juvenile justice policy organizations across the country count among their staff people who interned for, worked at, or were otherwise trained by PDS. Within the District, PDS has touched every part of the indigent defense system, including juvenile defense, and continues to raise the bar of practice throughout the discipline.

PDS has played a substantial role in systemic juvenile justice issues in the District. In 1986, the agency filed a lawsuit, known as *Jerry M.*, against the District for failing to provide adequate care and rehabilitative services for detained and committed youth, which resulted in major changes in DC's facilities and stakeholder practices.[60] PDS continues to engage with the DC City Council, DC Superior Court, and various Superior Court Committees to advocate for the improvement of the juvenile justice system for the District's youth. The agency employs a special counsel who tracks legislation, keeps the lawyers up to date on new legislation, and provides information to the Council regarding issues relevant to PDS's clients and defenders—including juvenile clients and juvenile defenders. PDS has also been leading efforts to improve education opportunities and transition plans for DYRS-committed youth. Recently, PDS began a juvenile justice fellowship focused on policy issues. As one judge stated, PDS has an "embarrassment of riches" that has allowed them to have a substantial impact on the justice system in the District. In no small part because of PDS, the District of Columbia has an institutionalized due-process culture.

PDS takes an active role in supporting other juvenile defenders in DC to raise the level of practice. PDS was instrumental in the formulation of the current court-appointed panel system and in raising panel attorneys' compensation levels. The lead attorney in the juvenile unit led the effort to draft the Attorney Practice Standards for Juvenile Defense and PINS Attorneys, which were adopted as an administrative order of the court in 2004.[61] Similarly, PDS and other juvenile defenders are active on the Juvenile Court Rules Committee to ensure that children's due process rights are protected.[62] PDS offers two standard trainings for new CJA panel members: a three-day training on special education advocacy and a five-day training on litigation skills and substantive juvenile law, which the agency started offering in the 1990s.[63] In addition, PDS sponsors periodic trainings for juvenile defenders in the District. PDS publishes a Practice Manual and a comprehensive directory of services available to juvenile clients, both of which are updated annually. They also make their social workers and post-disposition services available to clients of attorneys outside of PDS, when there is no conflict.

Since its inception, PDS has been on the forefront of innovative holistic indigent juvenile defense practice. Within PDS, attorneys fought for pay parity with prosecution counterparts. Internally, the Juvenile Unit supervisor at PDS has pay parity with the supervisors in other sections.[64] In 1964, the Legal Aid Agency (PDS's predecessor organization) implemented a project incorporating the use of forensic social workers. In 1982, PDS

59 *U.S. Attorney General Eric Holder: Defending Childhood and Youth: A Public Health Approach to Ending the Cycle of Violence,* Harvard School of Public Health (May 6, 2011), https://theforum.sph.harvard.edu/events/u-s-attorney-general-eric-holder-defending-childhood-and-youth/.

60 District of Columbia v. Jerry M., 571 A.2d 178, 181 (D.C. 1990).

61 Kristin Henning, Randy Hertz, & Hannah McElhinny, *Specializing in Juvenile Defense: The D.C. Public Defender Service as a Case Study, in* Race, Rights, and Reform: 50 Years of Child Advocacy in the Juvenile Justice System (Laura Cohen, Kristin Henning, & Ellen Marrus eds., forthcoming 2018).

62 *Id.*

63 *Id.*

64 *Id.*

established the Juvenile Services Program (JSP) to provide services for youth detained in DC's two custodial facilities. Through the federal Juvenile Accountability Block Grants (JABG) program in the early 2000s, PDS was able to hire three special education attorneys to advocate for PDS child clients' federal special-education rights.[65] In 2001, the Civil Legal Services Unit of PDS was established to enhance this holistic approach to juvenile defense; the unit now serves adults clients, as well. PDS uses a "team defense" model for holistic representation of youth clients, where trial lawyers collaborate with forensic social workers, special education attorneys, and public benefits specialists, who are all employed directly by the agency. As one judge stated, "As an institution, [PDS] understands many issues which bring kids to court do not just arise from delinquency but may be because of external factors."

1. Juvenile Defense Structure at PDS

Day-to-day, PDS represents youth in delinquency cases. At the time of this investigation, the Juvenile Unit consisted of a supervisor, one permanent attorney, and six first-year attorneys, who generally rotate out of the unit after one year. Though the attorneys could request to stay in the unit, few have done so recently. The Juvenile Unit is led by a Deputy Trial Chief who has been there for over 18 years. In addition, supervision is provided by two criminal felony attorneys with adult caseloads. Two juvenile attorneys are assigned to each supervisor.

PDS juvenile attorneys undergo nine weeks of intensive training prior to stepping into a courtroom. This training covers issues, such as juvenile disposition, juvenile detention, and juvenile probable cause, as well as general criminal defense skills, theory, and practice. Within PDS, attorneys have extensive collaboration opportunities, ongoing training, access to social workers and investigators, a team of litigation specialists at all levels of criminal defense on which they can rely, and an internal system for engaging experts outside of the court system. The Juvenile Trial Practice Group (TPG) inside the office offers an opportunity for juvenile defense attorneys to meet with each other, conduct case rounds, and improve litigation skills, as well as to meet with other advocates in the office such as special education attorneys, social workers, and civil legal service advocates.[66] In sum, the juvenile defense attorneys have widespread institutional support.

By statute, PDS has the authority to allocate its resources as necessary to effectively carry out its mission.[67] As such, it may limit caseloads so they are manageable and do not impede quality of representation. Beyond active pre-adjudication juvenile cases, PDS attorneys are expected to manage their cases post-disposition. Even after they transfer to the adult Trial Division, attorneys maintain their juvenile post-disposition cases until the youth is no longer under supervision or the client is rearrested and assigned to a juvenile unit attorney.

PDS is one of only a handful of public defender offices around the country that provide systematized representation to youth in secure facilities. PDS's Juvenile Services Project (JSP) represents youth in custody at both YSC and New Beginnings. JSP has three attorneys who specialize in conditions of confinement and post-commitment reentry advocacy, and provide representation at administrative hearings for disciplinary actions and community placement revocation for youth committed to DYRS. JSP attorneys are hired on a separate track from those going into the PDS Trial Unit. JSP has conducted know-your-rights trainings at facilities and in the community. JSP also presents weekly orientations for youth arriving at New Beginnings.

During business hours in both secure facilities, youth can go to a JSP attorney, no questions asked. This level of access to counsel in secure facilities

65 *Id.*
66 *Id.*
67 D.C. Code Ann. § 2-1602(2) (West 2012).

is remarkable. Across the country, incarceration settings can be deeply traumatic to youth.[68] In such settings, youth can feel like they have no recourse when they experience violence or harmful conduct at the hands of staff or other youth. If a grievance procedure exists, such procedures can feel *pro forma*, without real substance.[69] DC's juvenile institutions, like many across the country, have a history of abuse and neglect of youth within their care.[70] JSP acts as the defense system's eyes and ears, monitoring and giving voice to the youth. JSP also has an office in Southeast DC, where clients of JSP can visit attorneys in a community-based office setting for help with a variety of issues, including navigating DYRS community supervision, transition, reentry, education, and record sealing.

PDS has three other divisions that provide advocacy for youth. The Special Litigation Unit conducts litigation aimed at vindicating the constitutional and statutory rights of PDS clients and challenging pervasive injustices.[71] For example, the Special Litigation Unit filed the *Jerry M.* case, discussed previously. The Civil Legal Services Division, also highlighted previously, provides legal representation to clients—youth and adults—for a vast array of civil matters collateral to their criminal and delinquency matters. The Office of Rehabilitation and Development houses social workers who specialize in juvenile defense and a Resource Specialist who helps compile an annual resource directory.

PDS's Appellate Division fields all the appeals from within the agency. Although no single appellate attorney's job is solely to appeal juvenile decisions, the division has an attorney tasked to "pay special attention to the legal questions unique to juvenile court" with an explicit acknowledgement that "juvenile legal issues are just as important as other criminal legal issues."[72]

1. General Findings

PDS's juvenile practice provoked two sentiments among stakeholders: that they were skillful attorneys and staunch defenders who doggedly ensure every effort is taken to protect their clients, and that they also sometimes miss a holistic approach to juvenile advocacy that includes more than just "the fight." PDS's juvenile attorneys were considered stellar criminal defense lawyers, but not necessarily juvenile specialists, despite their singular focus on juvenile cases.

Almost everyone spoke of the diligence, tenacity, and talent of the PDS's juvenile attorneys. One stakeholder interviewed for this report expressed this sentiment: "I am really concerned about quality of representation when you only really have one good group," noting that PDS attorneys exhibited much more skill and enthusiasm for the work than many CJA attorneys. Many bemoaned the fact that PDS only handles a minority of the cases. Local and federal statutes allow PDS to "determine the best practicable allocation of its staff personnel to the courts where it furnishes representation."[73] PDS does this by focusing its representation on the "most serious cases."[74] While statutorily permitted

68 *See, e.g.*, Barry Holman & Jason Ziedenberg, Justice Policy Institute, Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities (2006), http://www.justicepolicy.org/uploads/justicepolicy/documents/dangers_of_detention.pdf; Ed Finkel, *Juvenile Detention Centers: On the Other Side of 'Lock 'Em Up,' but Not Quite Trauma-Informed,* Juv. Just. Info. Exchange (May 21, 2015), http://jjie.org/2015/05/21/juvenile-detention-centers-on-the-other-side-of-lock-em-up-but-not-quite-trauma-informed.

69 Sandra Simkins & Laura Cohen, *The Critical Role of Post-Disposition Representation in Addressing the Needs of Incarcerated Youth*, 8 J. Marshall L.J. 311, 333 (2015) (describing an instance in Texas where youth felt like the grievance procedure did not "do them much good" because of sabotage and destruction of evidence by staff).

70 Robert E. Pierre, *Oak Hill Center Emptied and Its Baggage Left Behind*, Wash. Post (May 29, 2009), http://www.washingtonpost.com/wp-dyn/content/article/2009/05/28/AR2009052803747.html.

71 *Special Litigation Division*, The Public Defender Service of the District of Columbia, http://www.pdsdc.org/about-us/legal-services/special-litigation-division.

72 Henning et al., *supra* note 61.

73 D.C. Code Ann. § 2-1602(a)(2) (West 2012).

74 Public Defender Service for the District of Columbia, Fiscal Year 2018 Congressional Budget Justification 6-7, n.11 (2017), http://www.pdsdc.org/docs/default-source/annual-reports-and-budgets/fy-2018-pds-congressional-budget-justification---final.pdf?sfvrsn=dcf79cd0_2.

to represent PINS cases,[75] PDS does not handle these matters. The PINS judge is responsible for directly appointing defense attorneys in these cases from among those approved to be on the PINS panel.

The resolute approach PDS attorneys brought to the representation of their clients kept other stakeholders on their toes and injected a critical respect for procedure and process that is often missing in juvenile systems across the country. As one attorney stated, "What every kid deserves is PDS representation, but the system does not allow for it." This notion was supported by the Investigative Team's observations. PDS attorneys were frequently seen deftly citing controlling statutes and case law, knowing and insisting upon proper procedure that other stakeholders were not following, having a command of both the facts and social situations of the youth, and being able to weave these strengths into zealous advocacy for their clients.

At the same time, other parties in the system talked of a perception that PDS, despite its renown as a defense powerhouse, relegated juvenile practice to second-class status, particularly in light of its policy of starting all new attorneys in the juvenile unit. One judge remarked, "juvenile cases are not taken as seriously as they should over there." An attorney opined that PDS is "training lawyers on the backs of kids." Whether accurate or not, this perceived lack of juvenile emphasis took away from some the leadership potential of PDS in juvenile court.

PDS's own view of their structure of the Juvenile Unit differed. PDS had recently completed an internal study to see if the agency should change its juvenile practice. At the conclusion of the study, the organization decided to maintain the current structure. With two experienced and permanent juvenile attorneys (supervisor and line attorney) and a group of incoming lawyers, PDS seeks to maintain a balance between experience and institutional knowledge, and the energy and motivation of new attorneys who come in with a high level of zeal. PDS also recognizes that juvenile practice brings different kinds of pressure on attorneys. They report that having new attorneys in the rotation for a year is intended to avoid potential burnout.

While this fresh perspective has resulted in equally fresh ways of approaching legal challenges, some judges noted that every year a new crop of attorneys must relearn the juvenile court system. Highly motivated and intelligent young attorneys do come at the cost of a cadre of specialists who are able to build upon their experience year after year. Some stakeholders thought that PDS attorneys, because of their "greenness," lacked perspective and judgment.

Though this critique could be dismissed as confusion over the defense role and an oblique way of criticizing PDS's more vigorous approach to defense advocacy, one of the judges clarified that their litigation-focused practice sometimes made the PDS attorneys miss moments for potential negotiation in the soft form of advocacy that can be important in client representation. This perspective was reserved exclusively for the new attorneys, not for either of the long-term PDS attorneys who regularly practiced in juvenile court. For example, one prosecutor said that often the hard-nosed approach taken by newer PDS attorneys negatively impacted plea negotiation. The prosecutor contrasted that with the approach of the law school clinic supervisors, who are also relatively new to legal practice. The prosecutor felt clinical supervisors were far better to talk to because, while also strong and competent legal opponents, they understood the importance of finding common ground when possible. The prosecutor claimed that was not the experience with many newer PDS attorneys.

Despite the fact that rotation out of juvenile court is typically automatic, many stakeholders still felt the newer PDS attorneys either had something to prove or that they were just "waiting to graduate" to adult practice.

75 D.C. Code Ann. § 2-1602(e) (West 2012) (authorizing representation of "[j]uveniles alleged to be delinquent *or in need of supervision*" (emphasis added)).

The Investigative Team was particularly concerned that PDS may have cultivated a culture that artificially separates juvenile practice into "legal work" and "social work." Though there are specific components of juvenile defense advocacy that benefit from or require the expertise of a social worker, the "social work" part of the juvenile defender is in fact an integral part of the job of being a zealous and effective juvenile defender and advocate. Communicating with the client and family, understanding and integrating developmental principles, ensuring that service providers are accountable, assessing the whole picture of the youth in order to best advocate for their position, creating a compelling profile of the client as a basis for advocacy, explaining and resolving challenging aspects of the case, and understanding the social and service structures that impact a youth's life while under court jurisdiction—all are well within the responsibilities of the attorney.[76] Relegating these things to "social work," as if they are not a core responsibility of the lawyer, can seriously hamper the lawyer's ability to advocate effectively. While social workers are key members of an effective juvenile defense team, juvenile defense attorneys need to understand the application of developmental principles to the law, the nuances of treatment programs, juvenile mental health and trauma issues, evaluations, assessments, and placement programs in order to translate those clinical foundations into their legal advocacy. Some stakeholders expressed a feeling that PDS juvenile defense attorneys deferred to their non-attorney clinical teammates because there was a sense that the intense "social work" investment by the attorney was not needed when they moved to adult court. A singular focus by the lawyers on litigation at the expense of more holistic legal advocacy may contribute to the lack of perspective other stakeholders felt. Again, while perception may not necessarily be reality, it is valuable to understand.

While PDS attorneys also, by and large, had a mastery of criminal defense practice, theory, and courtroom skills, the Investigative Team observed little use of legal arguments rooted in a mastery of adolescent development and the differential jurisprudence to which youth are entitled and which has been affirmed by five U.S. Supreme Court cases since 2005.[77] Learning the scientific underpinnings of how adolescent development influences a youth's decision-making, both at the time of an offense and during the process of the case, and then learning to deftly integrate that into legal arguments for mitigation, appropriate services, or even lack of culpability is complicated and nuanced. Yearly turnover limits the degree to which attorneys are able to build this juvenile-specific expertise over time. And while PDS appropriately prides itself as being an example of excellent lawyering for other defenders in the system, in this area, the leadership opportunity could be greater.

The Investigative Team observed little use of legal arguments rooted in a mastery of adolescent development.

Having a new crop of attorneys in the Juvenile Unit every year poses additional challenges. The new attorneys are not only navigating a new legal terrain, but also learning to engage with clients, as well as parents. For example, each new attorney must learn juvenile-specific law, must learn and integrate developmental concepts into every aspect of their advocacy and client interaction, and must learn to navigate a complex mix of stakeholders—such as parents, school officials, and service providers—all while balancing their ethical obligations. It is asking new attorneys to become experts in a specialized area of law with the expectation that within a year, it will no longer be their job.

76 *See generally* Nat'l Juv. Def. Standards, *supra* note 42; Attorney Practice Standards for Representing Juveniles Charged with Delinquency or as Persons in Need of Supervision (Superior Court of D.C., Family Court 2004) (adopted by Admin. Order 04-13) [hereinafter D.C. Juv. Practice Standards], https://www.cjadc.org/Documents/Superior%20Court%20Attorney%20Practice%20Standards%20for%20Juvenile%20Representation.pdf (discussing post-disposition obligations); Robin Walker Sterling et al., National Juvenile Defender Center, Role of Juvenile Defense Counsel in Delinquency Court (2009), http://njdc.info/wp-content/uploads/2013/11/NJDC-Role-of-Counsel.pdf.

77 Montgomery v. Louisiana, 136 S.Ct 718 (2016); Miller v. Alabama, 567 U.S. 460 (2012); J.D.B. v. North Carolina, 564 U.S. 261 (2011); Graham v. Florida, 560 U.S. 48 (2010); Roper v. Simmons, 543 U.S. 551 (2005).

With the one-year structure, PDS may be missing an opportunity to recruit attorneys who are specifically interested in juvenile practice and could become exceptional advocates for youth. As one PDS lawyer stated, their focus is on training "trial lawyers." By recruiting lawyers who are not expecting or wanting to remain in juvenile court, PDS may be creating a self-fulfilling prophecy. One attorney told the Investigative Team: "If you apply to PDS, people tell you not to express a strong interest in staying in juvenile court; that's not what they are looking for." Several others admitted to receiving similar warnings. Whether true or not, this perception likely discourages attorneys who want to practice in juvenile court from applying to PDS.

An unavoidable consequence of this system is that there will be some attorneys in juvenile court who do not want to be there and consider it to be a lesser practice that all PDS attorneys must go through before being allowed to work with adults. One stakeholder remarked that, for some of the new attorneys, it is clear that working with young people is "simply not their cup of tea." As one person stated, even if this is not true, it is nevertheless "not a good look." If an agency is not recruiting attorneys to fill that specific role and is using juvenile court as a place for new attorneys to begin learning their craft, juvenile defense practice is limited from the start.

B. The CJA Panel

Stakeholders estimated that approximately 65-70 percent of youth in DC Superior Court are represented by private attorneys who are authorized to receive court appointments through the Criminal Justice Act (CJA) Juvenile Panel. Membership on the panel is the only way a private attorney not affiliated with PDS or one of the law school clinics can represent a youth in juvenile court, unless paid directly by the family or another non-public source.

1. Structure of the CJA Juvenile Panel

The CJA juvenile panel is composed of more than 40 lawyers, most of whom are solo practitioners. Recently, the CJA panel has been subject to a revamped review process. In 2015, a committee of judges and representatives from PDS selected attorneys from an applicant pool. The committee also collected evaluations from judges familiar with each attorney's practice, though one person with insight into the process explained, "No lawyer can be tanked by just one judge." Stakeholders admitted that this reconstitution of the panel was in recognition of a need to "clean up" some of the poor practices many had seen among the juvenile defense bar, but many told the Investigative Team that there seemed to be a lack of transparency in the process, including clearly defined selection criteria.

Prior to taking cases, new CJA attorneys are required by statute to complete 26 hours of training and four hours of courtroom observation.[78] Of the 26 hours, eight must be dedicated to practical trial skills, at least 12 hours on juvenile law and practice, and the remainder may be devoted to general criminal law issues and "developmental, mental health and cultural issues affecting juveniles."[79] The bulk of this training is provided by PDS. Attorneys must also certify that they have visited the juvenile detention facilities. Certain attorneys can apply for an exemption to these prerequisites if they demonstrate sufficient experience with the juvenile delinquency court.[80] CJA attorneys have continuing training requirements. Every year, they must complete ten hours of training, half of which must be juvenile-related, though not necessarily delinquency focused.[81]

CJA attorneys are compensated at an hourly rate of $90.[82] Compensation is managed through a computerized voucher system where attorneys submit their hours, categorized under a list of defined areas of work, for approval by the court for

78 D.C. Juv. Practice Standards, *supra* note 76, § A-2: Training Requirements and Exemptions.
79 *Id.* The practice standard contains further elaboration of the training requirements.
80 *Id.*
81 *Id.* § A-3.
82 *See* D.C. Code Ann. § 11-2604(a) (West 2016).

payment. CJA fees are capped for individual cases depending on the type of case, though these can be increased upon request to and approval by the court. Misdemeanor cases are capped at $2,000 and felony cases are capped at $7,000, with all caps being the same for both juvenile and adult practice.[83] The individual case cap is based upon cases, not an individual client. In other words, if a youth is rearrested, the attorney has a new case cap, unless the attorney's annual cap has been reached.

2. General Findings Regarding the CJA Panel

Many of the CJA attorneys have been practicing for a long time and mainly in juvenile court. Judges and prosecutors remarked that they often appreciated the perspective the longevity of these lawyers brought. Several people who spoke with the Investigative Team remarked that seasoned CJA attorneys could negotiate the system to their clients' benefit more adeptly than some of the less experienced PDS attorneys and clinic students. However, other stakeholders feared that some CJA attorneys were less tenacious advocates who were less likely to take a stand for their clients when necessary. As one admitted, "There seems to be a reluctance to make waves by some of the CJA attorneys."

a. Wide Fluctuations in CJA Attorney Advocacy

The practice abilities of CJA attorneys range across the spectrum. The Investigative Team observed many excellent examples of advocacy by CJA attorneys. The Investigative Team observed several qualified, competent, and well-prepared CJA attorneys who clearly had a handle on the legal case while also having the confidence of their clients and good rapport with their clients' families. One CJA attorney who represented a young person held in a psychiatric placement told the court how they had visits with the client at the facility to monitor the child's progress and speak with caregivers. The attorney's concrete examples of personally observed failures were able to illustrate the deficiencies in the way the facility was caring for their client in a way the court could believe, rather than being seen as based in speculation. The attorney went on to offer the court a plan for out-patient services that could satisfy his client's needs and address the court's concerns about supervision. Another CJA attorney was seen interceding when a judge asked his client a direct question about an allegation of a fight, explaining that the topic was protected by the Fifth Amendment privilege.

A key principle of juvenile delinquency representation is that the defense attorney represents the expressed interests of the youth.

In general, however, instances of subpar representation observed by the Investigative Team occurred almost exclusively among CJA attorneys. A significant number of CJA attorneys observed during the investigation did not seem to have a grasp on the facts of their cases, and the Investigative Team observed more than one hearing that lay bare the results of insufficient communication between an attorney and the client or the youth's family, with clients and families visibly upset with the attorneys or confused about what was happening. For example, the Investigative Team observed an attorney stand silent as a probation officer shared a litany of negative accusations about the youth's behavior. When the attorney failed to address a single one, the youth's mother took over and addressed each allegation on her child's behalf. The exchange prompted a prosecutor, who had been seated in the gallery with the investigator to say, "Shouldn't the defense attorney be making those arguments?" The Investigative Team also saw examples of CJA lawyers failing to adhere to the most basic standards of representation. One CJA attorney freely admitted to the Investigative Team that they do not file motions in juvenile cases and that they have never used a social worker or an expert in any case.

Other juvenile court stakeholders reported that CJA attorneys were a "mixed bag" in terms of organization and capacity. A prosecutor noted that it seemed a significant number of CJA attorneys let things fall through the cracks and were less

83 Super. Ct. D.C., Admin. Order No. 09-06 (2009); 18 U.S.C. § 3006A (2010).

responsive than other defense attorneys. For example, if the prosecutor had extended a plea offer, that prosecutor would often have to track these attorneys down, sometimes having to hound them or find them in court, just to get them to engage in the plea process. This was something the prosecutor did not experience with PDS or clinic attorneys.

A key principle of juvenile delinquency representation is that the defense attorney represents the expressed interests of the youth.[84] An all too common impulse when representing children is to supplant the children's interests with the attorney's own perception of what might be best. Communicating with youth can be much more challenging than communicating with adult clients. Attorneys may also feel discomfort with allowing a youth to make legal decisions, and a sense of paternalism can take over the decision-making role. A major part of training opportunities provided to the CJA panel, therefore, has included the central role of expressed interest advocacy as an key ethical obligation. Stakeholders have noted that there has been a major shift in the thinking of CJA attorneys to move from a best-interest standard to stated or expressed interest. But concerns still linger that some CJA attorneys engage in best-interest representation, where their misplaced sense of paternalism or a misconstrued ethical obligation leads them to preemptively share damaging information in the name of "telling the truth," rather than representing and protecting their clients' legitimate interests. As one stakeholder put it, "I'm sick of seeing CJA attorneys sell their clients down the river."

b. Administrative and Structural Challenges for CJA Attorneys

CJA attorneys have structural and administrative obstacles that PDS attorneys and clinical programs do not. The Investigative Team discovered that these obstacles significantly affect CJA attorneys' abilities to provide consistent and adequate representation.

1) The Voucher System

Many different kinds of stakeholders who spoke with the Investigative Team repeatedly raised the payment system as an obstacle to CJA attorneys and their ability to represent their clients. Some CJA attorneys said that many of the expected kinds of work defense attorneys must do can be difficult to categorize into the particular billing categories within the court voucher system. One example given was how billing became an obstacle to regular visits to clients at YSC. One attorney stated that they could not bill for waiting times for visits at YSC, and because YSC prohibited CJA attorneys from bringing laptop computers into the facilities, they were unable to do other work for which they could bill while they waited. As a result, "it's just dead time." Though these did not seem like insurmountable obstacles, it was clear that the CJA payment structure was inadvertently creating disincentives for attorneys that ran counter to best practices in defense work—namely in-person visits with clients in detention.

The Investigative Team found a striking disconnect between the expectations the court places on a professional and specialized juvenile attorney panel and its willingness to pay for it. While the binding practice standards to which all juvenile CJA attorneys are expected to adhere are some of the most advanced and detailed in the country, the court's voucher payment guideline for CJA attorneys says, "Charging for every minute that can possibly be charged, even in good faith, is contrary to the spirit of the CJA and the continuing duty of all lawyers to provide pro bono legal representation."[85] CJA attorneys are by and large solo practitioners responsible for maintaining an independent practice without any of the institutional supports of PDS or the clinical programs. The expectation, in both writing and practice, seems to be that they donate portions of their time in every case. Attorneys told the Investigative Team that while practice in other fields or jurisdictions was not forbidden, it was highly discouraged. CJA attorneys talked of an expectation they should be at the

84 Nat'l Juv. Def. Standards, *supra* note 42, § 1.2.

85 Voucher Preparation Guidelines for Attorneys Appointed Under the District of Columbia Criminal Justice Act (Oct. 15, 2012), https://www.dccourts.gov/secure/wvs/pdfs/12-11%20ATTACHMENT%20Voucher%20Preparation%20Guidelines%20--%20October%2012,%202012.pdf.

"immediate beck and call" of the juvenile court in every matter, even beyond those that involve the detention of their client or other imminent harms. This was true despite the fact that they are hourly wage earners, rather than salaried employees like PDS attorneys or clinical supervisors. Many attorneys recounted examples of judges who insisted that attorneys wait in their courtrooms for hours on end, forbidding them from attending to other matters. If the court expects that kind of exclusivity, it is not unreasonable for attorneys to expect the court to pay for that time.

Despite these conflicting views about payment, the Investigative Team found many instances of CJA attorneys who said they regularly did not charge the court for work they felt was necessary and vital, because they felt it was the right thing to do for their clients. Unfortunately, the feeling was that other stakeholders in the system underappreciated those efforts or took advantage of them. The reverse was also true, however, with some CJA attorneys receiving payment for activities that did not rise to the expectations of the court's practice standards. Regardless of issues with the payment process, once a juvenile defense attorney accepts a case as a court-appointed attorney, they have an ethical responsibility to provide quality representation to their clients at all stages of a case, and it is a conflict of interest for an attorney to restrict or neglect services to a client for their own financial self-interest.[86]

Post-disposition practice, other than court hearings, is also not well captured by the system. CJA attorneys said that the inability to bill for post-disposition work that did not involve actual courtroom advocacy made much of the ancillary work for clients committed to DYRS or on probation something for which they could not get paid. However, other CJA attorneys felt there were ways to work with the system, explaining that use of an "other" billing category accompanied by a clear explanation of the work typically led to payment approval in many of these circumstances. Some forms of advocacy, however, like helping clients with sealing or expungement of records, have no mechanism for billing. This means that this key point of post-disposition advocacy that can greatly improve clients' lives is often neglected. Because PDS and clinic attorneys are not paid through the court voucher system, but are salaried employees of their respective employers, they are able to engage in these kinds of post-disposition advocacy without worrying about payment. As a result, youth who are represented by CJA attorneys do not get the same level of access to counsel in post-disposition matters.

CJA attorneys are also not able to bill for work done on cases that were "no-papered"—i.e. those cases to which they were assigned on an initial hearing day but which were ultimately not petitioned and did not proceed to a hearings. When an attorney is assigned a case, the expectation is that the attorney interviews the client, meets with the client's family, develops release arguments, and if the child is detained or the government is seeking detention, prepares for a probable cause hearing. Attorneys are expected to have all this completed prior to the case being called for the initial hearing and do not have the option of waiting to see whether the case is officially "papered" in order to make these deadlines. In those cases that are no-papered, this work is effectively done for free. There can be days in which the attorney has all their cases no-papered, making the entire morning's efforts a donation of time and work. By contrast, PDS attorneys and clinical supervisors receive their salaries regardless of whether their cases are papered or not. Simply having a flat, nominal billable rate for no-papered cases in the voucher system would honor the CJA attorney's time and reasonably compensate them for the work the court expects they will do in such cases.

Beyond disincentivizing some critical defense work, the CJA billing structure also created odd incentives for doing things that conflict directly with juvenile defense best practices. Court hearings, for example, are relatively easy to bill, creating a system where repeated hearings would be a benefit to CJA attorneys. Preparation time for these hearings, however, is not reflected as a billable category in the voucher system. Attorneys have much to do to get ready for a hearing, including drafting arguments or cross-examinations, studying discovery, conducting legal

86 *See* D.C. Rules of Prof'l Conduct r. 1.7(b)(4) (D.C. Bar Ass'n 2007).

research, and counseling clients in order to ensure effective advocacy. Yet, by not acknowledging this work as billable activity, the system signals that it does not value preparation. Ironically, many non-defender stakeholders complained about CJA attorneys not being prepared for hearings. Having a clearly billable category in the voucher system for hearing or trial preparation would be a simple change that would go a long way toward aligning court expectations with actual practice.

Beyond disincentivizing some critical defense work, the CJA billing structure also created odd incentives for doing things that conflict directly with juvenile defense best practices.

The Investigative Team also learned that CJA attorneys have to submit vouchers for payment directly to the judge presiding over the matter for which billing is sought. This struck many attorneys and some judges as a potential conflict. For example, if a CJA attorney had to apply for expert funds or investigation in preparation for trial, the judge presiding over the matter is deciding whether to grant or deny the request. This practice places judges in a position where they are determining what should be appropriate defense work in a case where they are the ultimate adjudicators of the facts and whether the youth's liberty is curtailed. Having a judge make decisions on case-related funding raises significant questions of defense independence and has the potential to clamp down on legitimate defense strategy that an individual judge may not appreciate. In many other jurisdictions, attorney compensation and attorney requests for case-related funds are handled by a presiding judge or by a central administrative entity to avoid these types of potential conflicts.

2) Lack of Institutional Support to the CJA Panel

Current and former CJA attorneys voiced frustration with the fact that they lack administrative support at the court. While the Defender Services Office is responsible for managing the attorney appointment process in individual cases, attorneys have no real support at any stage of their work if they encounter administrative problems, need practice advice or coaching, or are seeking materials to improve their practice.

For example, while the voucher system continues to be a struggle for many attorneys, recent efforts by court administration to clarify the voucher system and train CJA attorneys on navigating the system have not alleviated the issues. One CJA attorney recounted how a judge had rejected their voucher because it was mistakenly classified as a felony case and not as a misdemeanor. The judge instructed the CJA attorney to correct the error. However, because courtroom staff create the vouchers, the CJA attorneys could not access the system to make such corrections. Describing a Kafkaesque scenario, the court finance officer directed the attorney to the courtroom staff, while the courtroom staff continued to tell the CJA attorney to work with the finance office to get the error fixed. Institutional support in the form of a central administrative office or a similar entity could have nipped this circular system in the bud, but no such support exists. For a solo practitioner who relies upon this post-hoc payment to keep a practice going, such setbacks are far more than just administrative. As that attorney said, there are time limits for finalizing vouchers and "if you don't get the voucher in on time, you don't get paid." That same attorney characterized the work as essentially pro bono because the court expected you to be on call from 9:30 a.m. until 4:45 p.m. One former CJA attorney described feeling forced to under-bill at times when representing clients in delinquency cases, implying that forgoing payment was easier than dealing with the unwieldy voucher system.

DC does have a coordinating office responsible for Counsel for Child Abuse and Neglect (CCAN) that ostensibly manages all of the family court panels, including special education, delinquency, abuse and neglect, and PINS. The coordinator of the CCAN Office manages many of the administrative tasks for the abuse and neglect attorneys, but defense attorneys in juvenile court receive comparatively little support. Lawyers and the CCAN staff admitted

that administrative support for issues like vouchers or other payment related concerns is not available to CJA attorneys on the delinquency panel through the CCAN Office. The office simply does not have the capacity to provide the type of administrative support that CJA attorneys need with issues such as the voucher system.

CCAN's coordination of delinquency-related issues is largely limited to ensuring attorney compliance with training requirements necessary for staying on the panel. While technically responsible for supporting the CJA attorneys through trainings, much of the actual trainings are organized by other entities. Stakeholders indicated that the extent of training support by the CCAN coordinator consisted of emails announcing potential trainings, when available. While the office is involved in the development of an annual training program called the Neglect and Delinquency Practice Institute, many attorneys report actual delinquency offerings at the program are limited and the abuse and neglect offerings are more robust. One member of the staff admitted they lack the expertise to adequately understand the training needs of the juvenile panel.

The lack of case management support for the CJA panel also concerned the Investigative Teams. Some attorneys admitted to having no formal system of case management and relied entirely on paper systems that allowed for no ability to track or analyze their own work on more than a case-by-case basis. Other stakeholders suggested that a lack of a formal case management system contributed to sloppy recordkeeping and lost information with some attorneys. Because CJA attorneys are solo practitioners, each is responsible for identifying, buying, or otherwise creating their own systems for case management.

The Investigative Team also observed instances where youth appeared in court with a different attorney than their attorney of record. Though practice standards state that stand-in counsel must "represent the client zealously as if his or her own client,"[87] the hearings that the Investigative Team observed made this kind of representation impossible. The stand-in counsel seemed to have been notified about the need to stand in shortly before the hearing. Though the attorney talked with client before the hearing, it was clear that the attorney was not operating with all relevant information. Such situations are unavoidable where CJA attorneys have solo practices, and some hearings—such as probation revocations, re-arrests, custody order returns or DYRS disciplinary hearings—can arise with little to no notice. However, where PDS or clinic students can rely on colleagues and supervisors who can easily access case notes, CJA attorneys do not have that kind of structure. Because so many of the youth are represented by CJA attorneys and these situations are not just sporadic instances, there must be a mechanism to provide stand-in counsel with background information necessary for effective advocacy. While some of this is the nature of court-appointed work, other court stakeholders did not appreciate the challenges that such a system poses for delivering quality defense. The Investigative Team observed at least one courtroom clerk become visibly agitated with the youth and stand-in counsel because they were taking time to confer privately when issues arose, thereby extending the hearing. One attorney explained to the Investigative Team that while something like this may seem inconsequential, it has an impact on attorney behavior. Courtroom clerks are largely responsible for the order of the docket and have control over which cases are called at a given moment. Attorneys report that if certain clerks become annoyed, it can affect how long a particular lawyer and their clients wait each morning.

The quality of a CJA attorney's advocacy can hinge in large part on the availability of resources, especially when it comes to post-disposition advocacy, investigation, and the use of experts. CJA attorneys do not have regular access to social workers. One PDS social worker is available to assist CJA attorneys, but because of the social worker's role in PDS, the assistance can only be in the form of a consultation. This same social worker also provides consultation to the Georgetown clinic.

87 D.C. Juv. Practice Standards, *supra* note 76, § B-6.

C. Law School Clinical Programs

Juvenile defense clinics play a major role in the development of juvenile indigent defense standards and training in the District, as well as training countless young lawyers as they start their legal careers. Two law school clinics provide representation in DC juvenile court—Georgetown Law's Juvenile Justice Clinic and the DC Law Students in Court program.

1. Structure of Law School Clinical Programs

Law students in DC are exempt from the training requirements set for CJA attorney and are instead presumed to have satisfied the training because they are enrolled in clinical programs that require weekly coursework and intensive supervision by licensed attorneys.[88] Every student who represents a youth in DC Superior Court does so on a temporary student bar card issued by the DC Bar. The student's clinical supervisor, who is a fully licensed attorney, must be present at all court hearings and can step in to assist as needed.[89] Each student receives law school course credit for the time they spend representing clients and must complete concurrent law school coursework related to defense representation.

The Juvenile Justice Clinic (JJC) at Georgetown Law has been in existence since 1973.[90] Since its inception, JJC has been a leader in juvenile defense in the District, as well as throughout the country. At the time of this investigation, the majority of juvenile-specific training available to CJA attorneys was organized and provided by the staff at the JJC. The current director is a nationally recognized expert on best practices in juvenile defense and the intersection of juvenile justice and race. The director and a full-time teaching fellow (who also maintains a caseload) supervise third-year law students in their representation of youth. JJC also houses a policy unit, the Juvenile Justice Initiative, as well as the Mid-Atlantic Juvenile Defender Center, a regional affiliate of the National Juvenile Defender Center.

DC Law Students in Court (DCLSIC) is a nonprofit consortium of DC law schools that provides law students from George Washington University, Howard University, Catholic University of America, and the University of the District of Columbia the opportunity to represent people charged with crimes in DC Superior Court.[91] Student attorneys from DCLSIC can elect to take juvenile cases as part of the clinic's criminal defense program. At least one of the supervisors at DCLSIC specializes in juvenile court practice.

2. General Findings

DC's clinical programs have a reputation that far exceeds their small share of juvenile cases. Stakeholders almost universally lauded the clinics. Stakeholders told the Investigative Team that youth with clinic representation seemed to benefit overall because of the personalized and caring attention provided by their attorneys. Court staff, probation officers, and judges commended clinic "attorneys" for their diligence when communicating with clients throughout the case, including in the post-disposition phase. The only criticism of law students came from a stakeholder who thought that students took too long in court and did not grasp the "realities" of practice. While many student attorneys rose to the challenge and took ownership over their cases and advocacy, a minority were reported to be underprepared or wilt under the pressure and require greater support from their in-court supervisors.

While clinical students, like the majority of PDS juvenile defense attorneys, are new to the practice of law, they have either demonstrated or expressed an interest in working on juvenile cases through self-selection in applying for the JJC

88 D.C. Juv. Practice Standards, *supra* note 76, § A-2.
89 D.C. Ct. App. R. 48 (2014), 49 (2015).
90 *History*, Georgetown Law, http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/JJC/about/about-us-history.cfm (last visited Apr. 5, 2018).
91 Georgetown Law and American University's Washington College of Law participate in DCLSIC as part of a civil clinical program, but do not participate in the criminal clinic, given that they have their own criminal and/or juvenile defense clinics.

clinic or explicitly requesting to work on juvenile cases within the DCLSIC clinic. Moreover, student attorneys are not allowed to appear at a hearing without a licensed supervisor by their side. Many of these supervisors have extensive expertise in juvenile defense and are able to provide necessary nuance and support in every case. Additionally, supervisors are required to oversee and sign every written motion submitted by a clinical student, as the student attorneys are not fully barred to practice on their own.

The clinical model requires very low caseloads, with most student attorneys handling only a few active cases. Many stakeholders remarked that clinical students often had stronger relationships with their clients that engendered trust and empowered youth to actively participate in their defense, likely due to the students' ability to invest greater time with their clients. Additionally, the clinical programs are institutional entities that carry with them other financial, administrative, and logistical supports that may be difficult for a solo practitioner to find.

The clinical programs have also fostered future leaders in the juvenile justice community, including the founders of innovative programs such as the DC Lawyers for Youth, Open City Advocates, and the School Justice Project, all juvenile justice nonprofit organizations in the District.

II. JUVENILE DEFENSE AS A SPECIALIZED PRACTICE IN THE DISTRICT OF COLUMBIA

With these three entities, the District has set a high bar for juvenile indigent defense practice that is highly specialized and requires juvenile-specific training, supervision, and resources.[92] The District's juvenile indigent defense delivery system honors this kind of specialization to a significant degree. CJA attorneys on the juvenile panel have particularized, though limited, requirements specific to representing youth. While many CJA attorneys may also engage in other practice areas, their inclusion on the panel often results in a substantial portion of their practice being dedicated to representing youth. Law students in Georgetown's JJC have an exclusively juvenile delinquency practice. As an institution, PDS also has juvenile specialization with its permanent juvenile supervisor and the JPS program, and a degree of specialization with the dedicated one-year juvenile rotation for newly hired attorneys. This level of specialization in juvenile practice does not exist in many other jurisdictions across the country. With that said, there are still areas for improving juvenile defense expertise and enhancing the quality of juvenile counsel in DC.

A. Training

Training is the foundation of juvenile defense practice.[93] DC has placed an emphasis on training juvenile defense attorneys. As described above, before being appointed to juvenile cases, CJA juvenile panel attorneys must initially complete 26 hours of training, 12 hours of which must be devoted to juvenile law and practice and six "may be devoted to general criminal law issues and developmental, mental health and cultural issues affecting juveniles."[94] To remain on the juvenile panel, CJA attorneys must certify that they have completed ten hours of continuing legal education

92 Nat'l Juv. Def. Standards, *supra* note 42, § 1.3.
93 Nat'l Juv. Def. Standards, *supra* note 42, § 1.3, 2.6.
94 D.C. Juv. Practice Standards, *supra* note 76, § A-2.

(CLE) each year, with at least five hours devoted to juvenile law and practice.[95]

Attorneys and law students also have access to a wide array of training opportunities. The Georgetown Juvenile Justice Initiative and the Mid-Atlantic Juvenile Defender Center, which are housed at the Juvenile Justice Clinic, host regular substantive law, skills-based, resource-driven, and developmental-based trainings for the CJA bar that are particular to representing juveniles and can help satisfy CJA panel requirements. The court also offers an annual Neglect and Delinquency Practice Institute that provides several hours of training opportunities for attorneys. Many attorneys, however, complained that this program is largely focused on neglect practice and offers fewer opportunities for juvenile delinquency training sessions. The DC Juvenile Practice Standards presume that clinical students receive sufficient training through their ongoing curricula.[96] Clinical students at Georgetown, and to a much more limited extent at DC Law Students in Court, receive training specific to juvenile issues, such as adolescent development, interviewing techniques, and how developmental characteristics affect legal analyses of issues like consent, waiver, and foreseeability. In addition to its own in-house trainings, PDS sponsors periodic trainings open to all defense attorneys, which include juvenile-specific programs, as outlined in the earlier section on PDS.

Despite these training opportunities, however, the investigation revealed that many attorneys, particularly within the pool of CJA attorneys, lacked expertise in certain aspects of juvenile practice, principally on issues of adolescent development and communicating with youth. One judge opined that more targeted training for the CJA attorneys in trial skills, client-centered advocacy, and cultural competency would also benefit their defense of youth.

In order to provide skilled representation, juvenile defense counsel must be knowledgeable about adolescent development and the unique characteristics of youth, as well as how these factors impact the law.[97] Training in adolescent development informs how attorneys communicate with youth and prepare them to participate in their defense, defend against the charges, and work with them to develop an effective disposition plan to present to the court. Equally important, however, is to weave adolescent development research in motions practice and trials, and otherwise throughout defense advocacy. All the juvenile defense attorneys interviewed during this assessment expressed familiarity with adolescent development principles. When pressed by the Investigative Team, however, it became evident that many of these attorneys were not weaving these principles throughout their practice.

Beginning with the landmark case of *Roper v. Simmons*, which ended the juvenile death penalty, the U.S. Supreme Court has paved the way for the application of adolescent development principles to law. In addition to the Eighth Amendment jurisprudence based upon lessened culpability of youth, the Court in *JDB v. North Carolina* held that age must be a factor to consider when determining whether a youth is in custody for the purpose of the Fifth Amendment *Miranda* analysis.[98] Courts in other states have similarly applied adolescent development concepts to police interrogations and search and seizure.

When asked by the Investigative Team, some stakeholders stated that PDS attorneys and law students sometimes make good developmental arguments on behalf of youth. But one judge acknowledged, "Adolescent development concepts are not well integrated into what they do." Both PDS and CJA attorneys spoke of adolescent development arguments as being more about services, rather than integrated into arguments about intent, comprehension, culpability, or

95 *Id.*
96 D.C. Juv. Practice Standards, *supra* note 76, § A-3.
97 Nat'l Juv. Def. Standards, *supra* note 42, § 1.3.
98 Montgomery v. Louisiana, 136 S.Ct 718 (2016); Miller v. Alabama, 567 U.S. 460 (2012); J.D.B. v. North Carolina, 564 U.S. 261 (2011); Graham v. Florida, 560 U.S. 48 (2010); Roper v. Simmons, 543 U.S. 551 (2005).

consent. One attorney made a remark that, though adolescent development is helpful for explaining why a youth might have engaged in an initial offense, the attorney did not see how much impact it would have on a case otherwise, indicating a severe lack of training or implementation of the training in this area.

This attitude toward adolescent development is reflected in the absence of motions practice, trial advocacy, and appeals on youth-specific factors that have increasingly been raised in other jurisdictions. Competency to stand trial, an especially key concept for young people because of developmental immaturity, had more resonance with stakeholders in the District. As one PDS attorney stated, there are quite a lot of competency cases. A prosecutor agreed such cases were not uncommon. A judge also reported seeing about four to five cases in which defenders raised competency challenges, including whether competency remediation services had been successful or not. The Investigative Team observed a CJA attorney raise the issue of competency for a client and request court funding for a separate defense expert on the issue. Limiting adolescent development arguments solely to the realm of competency, however, misses the broader context of how important developmental considerations apply to youth who are competent. Immature decision-making, susceptibility to suggestions and pressure by authorities, peer influence, the lack of ability to weigh future consequence against short-term rewards, and a host of other scientifically documented differences between youth and adult functioning have implications at nearly every point of a youth's case. However, the Investigative Team rarely observed developmental concepts being used in advocacy in court.

Beyond defense attorneys, however, adequate juvenile-specific training for all juvenile justice stakeholders is critical. Judges, prosecutors, probation officers, and courtroom clerks would all benefit from more information on matters that impact juvenile attorneys' abilities to fully represent their clients. Training on the role of counsel, the science of youth development, studies about what kinds of programs work, and national research on best practices could improve the juvenile courts and enhance access to justice for youth. Interviews with stakeholders uncovered that delinquency court judges receive little training in family court other than on law and procedure. The differences between youth and adults, juvenile-specific Supreme Court jurisprudence, the level of services that exist for youth and whether they are effective, and information on youth-related disabilities and mental health concerns are all critical to proper decision-making in a juvenile court. While prosecutors also have training in juvenile law and court procedures, they reportedly do not receive training on adolescent development and other ways that age intersects with delinquent conduct. It was also not clear what kind of training on positive youth development CSS or DYRS personnel received. Additionally, the Investigative Team noticed instances where courtroom staff did not act in ways that seemed appropriate to the adolescent development level of the youth. Several members of the Investigative Team noted that courtroom clerks advised youth of their legal obligation to return to court for the next hearing in complex, adult-oriented language, often at speeds that could be difficult for adults to comprehend.

All courtroom staff could benefit from training on the unique characteristics of youth, including their ongoing cognitive and emotional development that can affect their understanding and behavior in court.

One investigator observed this take place in the matter of a youth whose attorney had just requested a competency evaluation for his client, yet no one in the courtroom thought it was inappropriate for the courtroom clerk to insist that the youth affirmatively state that they understood the legal warning the clerk had quickly provided. All courtroom staff could benefit from training on the unique characteristics of youth, including their ongoing cognitive and emotional development that can affect their understanding and behavior in court.

B. DC Superior Court Juvenile Court Culture

Every court has a "culture" that develops from a conglomeration of practices, expectations, and behaviors that goes beyond what statutes and rules dictate. It can manifest in an ethos or philosophy common among stakeholders. Sometimes that culture reinforces quality defense representation and sometimes that culture is a barrier to effective lawyering. In DC's Juvenile Court, our Investigative Team found both.

1. Expressed Interest Advocacy Is the Standard, but Not Always the Practice.

DC is among a minority of states that has promulgated its own set of binding practice standards for delinquency attorneys.[99] While many others provide some level of loose guidelines, the *Superior Court Attorney Practice Standards for Representing Juveniles Charged with Delinquency or as Persons in Need of Supervision*, is binding on all attorneys who receive court-appointments to represent youth. In these standards, the role of counsel is unequivocal: lawyers must represent the "legitimate interests" of the client and cannot replace those client interests with what the lawyer feels might be best or what the parents desire.[100] This is echoed in other national standards for juvenile representation.[101] At its heart, advocating for the expressed interests of a juvenile client empowers youth to be full participants in their cases, rather than mere spectators, which is the underlying reasoning in the U.S. Supreme Court's ruling that the Constitution provides youth the right to counsel under the Due Process Clause.[102]

Despite the dictates of client-centered defense representation of youth, there are still some CJA attorneys who believe it is their role to decide what is best for youth in both juvenile and PINS cases. One CJA attorney reported that colleagues have said they feel best-interest representation is their ethical obligation. While stakeholders say this misconception is changing, there are still those who substitute their own judgment for that of their clients. The Investigative Team observed one case in which the defense attorney, rather than the prosecutor or probation officer, suggested that more time in a program was necessary "to hold the youth accountable for his behavior and therapy."

2. Confusion Among Stakeholders as to the Role of Juvenile Defense Counsel

Despite a strong due process culture, the Investigative Team detected an undercurrent of sentiment among juvenile court actors that reflected a denigration of zealous defense advocacy. PDS attorneys were described as "aggressive," "relentless," and "lacking in judgment." One judge implied that PDS attorneys would get better results for clients if they did not try to hammer every legal point, apparently suggesting that attorneys should not ensure all legal rights are protected and preserved for appeal. Although acknowledging the deficiencies in practice of some CJA attorneys, many stakeholders still expressed a preference for working with CJA attorneys. For example, one judge thought that CJA attorneys generally did "better" because they had better judgment about which probable causes issues to tackle and which to leave alone. PDS attorneys, and to a certain extent clinics, were seen by some stakeholders as being obstructive and hurting their clients as a result by insisting that every colorable legal challenge be made. One judge commented that clinic students seemed to want to have their "moment in court," could be overly aggressive, and filed too many motions. A prosecutor stated that PDS attorneys "must be trained to be very adversarial." The prosecutor's sentiment was that though some issues need to be litigated, others were drawn out to the client's detriment—such as

99 These standards were issued pursuant to DC Family Court Act of 2001, Pub. L. 107-114, which provided that the Superior Court shall establish practice standards for attorneys practicing in Family Court. DC also has practice standards for adult and PINS practice. DC's standards mirror national juvenile defense standards which state that attorney's must represent the client's "stated" and "expressed" interests. Nat'l Juv. Def. Standards, *supra* note 42, § 1.2.

100 D.C. Juv. Practice Standards, *supra* note 76, § C-1.

101 *See* IJA-ABA Juvenile Justice Standards, *supra* note 32; Nat'l Juv. Def. Standards, *supra* note 42; D.C. Rules of Prof'l Conduct r. 1.2.

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

a client staying in detention because the attorney was litigating competency. CJA attorneys, on the other hand, were described as looking at the bigger picture (though it was not clear what the bigger picture was) and not fighting the "small things." As an example, one stakeholder expressed frustration with a PDS attorney who litigated a *Brady* request seeking impeachment materials from officer personnel files. That, however, is the defense attorney's job; waiving a client's right to receive materials to which the lawyer thinks the client is entitled would be an abdication of that defense attorney's ethical duties. Probation officers similarly seemed to not fully understand the role of the defense attorney. One probation officer admitted a willingness to work with attorneys who are there to "help" kids, but not those who "are just lawyering," saying it felt like attorneys who questioned probation findings in court were calling them liars. "The good lawyers are the crew who try to help kids, not just dump them back on parents." As one judge said, it seemed clear that probation did not understand the proper role of a defense attorney and the court system.

The Investigative Team was disheartened that these views reflected an apparent misconception by many stakeholders about the role of defense attorneys as a defender of children's rights. The comments suggested that many stakeholders believed there was a certain level of go-along to get-along necessary for "good" juvenile defense advocacy, that defense attorneys should trust the system to do what is best for their clients, and that forcing stakeholders to adhere to procedure or the letter of the law was somehow inappropriate.

Even more concerning, it suggested that some stakeholders would actually reward defense attorneys who did not follow their ethical obligations to insist on their clients' rights or push for their clients' stated interests. The juvenile court remains an adversarial venue in which a youth's freedom is potentially at stake at all times. One key part of a defense attorney's job is to challenge the system. It is the hallmark of a society built on checks and balances. The misconception of a defense attorney's role coupled with observations of court hearings suggested to the Investigative Teams that a significant number of juvenile court stakeholders placed a premium on the efficiency and expediency of hearings and cases, even if it negatively affected defense advocacy or youth rights.

The Investigative Team was disheartened that these views reflected an apparent misconception by many stakeholders about the role of defense attorneys as a defender of children's rights.

Juvenile indigent defense is hampered from the start if stakeholders do not understand that excellent defense advocacy is zealous advocacy. The adversarial process ensures that the prosecution meets its burden to prove the alleged delinquent conduct, and acts as a check on institutions like CSS and DYRS that are charged with providing services to this vulnerable population. Greater training for non-defenders on the ethical role of defense attorneys may improve understanding of the defense role.

C. Juvenile Defense Oversight

The oversight, monitoring, and support of juvenile defense quality is decentralized in the District of Columbia. Each of the three main juvenile defense delivery systems—PDS, the CJA panel, and the law school clinics—operate independently and have varying forms of oversight to ensure quality.

1. Juvenile Defense Quality Controls

As described previously, PDS has statutory authority to decide how and to what extent it provides juvenile defense services and for monitoring its quality. PDS has a robust supervisory structure that includes dedicated juvenile supervisors: one permanent and two rotating senior attorneys that return to the Juvenile Unit as supervisors. The supervisors are responsible for monitoring the juvenile attorneys' practice, including motions and courtroom advocacy. Moreover, the juvenile attorneys at PDS have

strong institutional support at every level, from technology resources to special litigation support. While their method of internal review is not public, by all accounts it is rigorous and attorneys are held to high standards of professionalism and legal practice.

Each of the law school programs is responsible for its own internal monitoring of the quality of both the student attorneys and the supervisory attorneys. Each student attorney is closely supervised in all aspects of their work, from client relations to motions practice to courtroom advocacy. Under the student practice rules, students must be accompanied by a supervising attorney at all court hearings.[103] These supervising attorneys are responsible for ensuring the quality of student practice in the moment and throughout the case. When necessary, supervising attorneys will step in as co-counsel to ensure that client representation is not compromised. The Investigative Team witnessed at least two instances in which a clinical supervisor assisted a student attorney by stepping in to supplement an argument before the court. Supervising attorneys in the clinics often also manage their own caseloads as well. Their role as supervisors requires that they not only understand the latest in both criminal and juvenile defense practice, but also are able to teach it to law students who come to the program with little or no practical experience. In both DCLSIC and JJC, the supervisors are salaried staff and their performance and tenure is managed by the leadership of each program, with input from the leadership of the law schools.

The vast majority of youth charged in juvenile court in the District are represented by a loose confederation of CJA attorneys who receive little to no institutional support. Each individual attorney maintains their own practice and is assigned cases by the court. Some CJA attorneys devote a significant portion of their legal practice to juvenile defense while others dedicate only a small percentage of their time to juvenile cases. Many CJA attorneys expressed a desire for a more cohesive entity that would provide greater support and address issues of accountability, supervision, problem-solving, and mentorship. A mechanism to draw these defense attorneys into a cohesive and collaborative group would elevate the level of practice throughout the panel. The CCAN office is not set up to provide assistance to the panel beyond basic information and CLE monitoring, and there is no formal system of coaching, mentoring, or support for attorneys who want it. Beyond those attorneys who would seek out support and mentoring, there is no true evaluative body responsible for ongoing quality control over the panel. While DC has binding juvenile practice standards that those applying or reapplying to the juvenile panel must certify they have read and will adhere to, there is no entity responsible for ongoing monitoring or enforcement of these standards. Instead, past performance is reviewed at the time of readmission to the panel, every four years or so, and attorneys may be removed or denied readmission from the panel for poor performance. This is not sufficient oversight. While nearly every stakeholder interviewed about this matter applauded the fact that the readmissions panel did in fact deny attorneys for poor past performance, there is no apparent or formal mechanism for addressing poor performance between readmission cycles. This creates two problems: (1) significant numbers of youth may receive deficient legal assistance for years before corrective action is taken, and (2) attorneys are not being provided with constructive feedback, coaching, or other supports to improve their representation. Additionally, because admissions to the panel are staggered, not rolling, qualified attorneys who want to dedicate their efforts to juvenile cases can only do so if the timing is right. An attorney who is available today to be an effective advocate for juveniles is likely to make other employment choices if that opportunity is years away.

Unlike with PDS or clinical programs, where supervisors can ensure access to specialized training, provide support for improving attorney performance, ensure performance expectations are met, monitor caseloads, balance allocation of resources, and address systemic barriers, CJA attorneys must achieve this on their own. As one might expect, the level of success varies greatly.

103 D.C. Ct. App. R. 48 (2014), 49 (2015).

2. Juvenile Defense Data Collection

Data collection was a major concern for the Investigative Team. No entity in the District of Columbia seemed capable of providing concrete aggregate data on juvenile defense metrics such as the number of motions filed, number of trials conducted, client outcomes related to the kind of attorney assigned (PDS, CJA, or clinical), the number or percentage of post-dispositional matters in which counsel was present, client outcomes by race, or other key metrics. Capturing and disseminating this data would allow both individual defender offices and the court to assess where gaps in practice may be manifesting, and could be used to analyze whether those gaps may be the result of challenges with the defense system or systemic barriers that prevent effective advocacy.

PDS maintains its own internal case management system that tracks individual cases and helps attorneys organize matters on a case-by-case basis. The Investigative Team learned that the system, however, does not track—or has not been used to aggregately report—key metrics like those listed previously.

Similarly, each of the law school clinical programs has a case management system, but, like PDS, does not report being able to capture data that can help evaluate ongoing defense outcomes.

The current CJA structure has neither a unified case management system nor a system for collecting defense-related data. Instead, the system relies on sole practitioners to keep records as they see fit. Because independent CJA attorneys take the bulk of juvenile cases, the trends, problems, and other data derived from these cases are not captured as a defense community, and reporting is only possible on the issues the court chooses to track itself. The lack of a common case management system or even a listserv to connect attorneys means that CJA attorneys can only find ad hoc ways to share vital information about issues both broad and case-specific. The only common system for tracking CJA work is the court's payment voucher system. As a system focused exclusively on financial accountability, it is not suited to track the performance metrics necessary for assessing the efficacy of a defender system.

The court does have a robust electronic docketing system that captures many, but not all, key defense-related metrics. Whether counsel is present at a hearing, whether motions are filed, and case outcomes are all entered into each juvenile case docket. The problem, however, is that there does not seem to be a way to draw aggregate data from these docket entries. Data tracking, as demonstrated by the court's annual reviews and statistical reports, is primarily focused on case processing times, the numbers of youth who pass through the system, whether referrals are made and completed, and the types of cases. While gender is tracked, race is noticeably absent as a reported metric. Moreover, Court Social Services, which is an arm of the Family Court, does not provide any publicly accessible data on its programming beyond gross numbers of youth processed through intake, referral, and supervision.[104] Stakeholders from all categories of the juvenile justice system complained that there was no data from CSS that could demonstrate whether any of the services they provided to youth were having an impact. For defense attorneys, this lack of information makes it very difficult to effectively advocate for appropriate and individualized programming for clients. The court's annual reports describe a small portion of the activities CSS undertakes, but do not critically assess whether the programing is effective and provide little to no data or other evidence that would allow others to draw conclusions.[105] Investigative Team outreach to CSS leadership asking for a variety of data points that impacted juvenile defense went unanswered.

104 *See generally* District of Columbia Courts, Statistical Summary 2016, https://www.dccourts.gov/sites/default/files/matters-docs/Statistical-Summary-CY2016-Final.pdf.

105 *See e.g., id.;* Superior Court of the District of Columbia, Family Court 2015 Annual Report 36 (2016) [hereinafter D.C. Family Court 2015 Annual Report], https://www.dccourts.gov/sites/default/files/divisionspdfs/2015-Annual-Report-Narative.pdf (providing the court's data and analysis, which does not include a discussion of program efficacy or provide data relevant to additional program evaluation).

There is also a lack of transparency in aggregate juvenile data collected by the court. The District's Juvenile Justice Committee is granted authority to review juvenile court records to identify trends in juvenile court and "to support prevention, coordination, and innovation" in juvenile justice as part of the District's Juvenile Detention Alternatives Initiative (JDAI).[106] However, this information—even in an aggregate form that provides no identifying information regarding specific youth—is precluded from public disclosure by an administrative order of the Superior Court.[107]

The only agency in the DC juvenile justice system that keeps significant amounts of data and releases it publically is DYRS. The agency's website has noteworthy data points that can be helpful to both defenders and other justice system stakeholders. Among the information it shares is a weekly report on the number and categories of youth who are committed, detained, or held in shelter houses. Stakeholders report that this information used to be available daily and was extremely useful in informing discussions related to release and detention in real time. It is unclear what precipitated the change to weekly reporting. Even still, these numbers are collected in reportable log batches and available for download from DYRS's website, so daily, monthly, and yearly trends can be measured. DYRS is also the only agency in DC's juvenile justice system that publicly reports data on race for youth in its care and programming.

DYRS also collects significant amounts of data beyond what is publicly available on the agency's website. Data related to out-of-state placement of youth, community status revocations, and various other administrative actions that can be taken with youth in their care are all kept and reportable. Unlike with court-based data collection systems, this information is freely accessible via a Freedom of Information Act (FOIA) request or other public record requesting mechanism.

D. Special Education Advocacy that Supports Juvenile Defense Practice

The District of Columbia is unique among jurisdictions with regard to the systemic and financial investment it makes in creating a dedicated panel of Special Education Advocates. While the quality of this panel is beyond the scope of this assessment, its existence, the institutional support behind it, and the regularity of access to the services of these advocates is a tremendous resource for supporting the defense of youth in DC's juvenile courts.

Education is integral to the success of youth and is one of the many things that sets juvenile defense apart from adult criminal defense. Any efforts to rehabilitate or care for youth must take into account educational needs and opportunities. This is even more important in the delinquency context, which has a higher percentage of youth with special education needs.[108] All youth who are eligible for special education have rights under the federal Individual with Disabilities and Education Act.[109] The complexities of the rights under this statute and the interplay of the juvenile justice and education systems require a level of expertise that most lay people, parents, and guardians lack. Public defender offices and nonprofits are increasingly recognizing the importance of education advocacy.

DC has been a trailblazer in this arena. The District maintains a panel of special education attorneys who are authorized to receive payment for appointments through the Family Court, and who are routinely used when the situation arises. Stakeholders stated that though the request for appointment of an educational advocate typically came from defense counsel—either the CJA panel or clinical programs—probation officers and judges also recognized the need for an education attorney

106 Sup. Ct. D.C., Admin. Order 17-04 (2017).
107 *Id.*
108 Sue Burrell & Loren Warboys, *Special Education and the Juvenile Justice System*, OJJDP Juvenile Justice Bull. (U.S. Dep't of Justice 2000); Jacob R. Herendeen, *Overrepresentation of Special Education in the Juvenile Justice System*, Education Masters, paper 59 (2010).
109 Individuals with Disabilities Education Act, 20 U.S.C. § 1400 (2004).

in many cases. One judge remarked they never questioned the reasons behind a defense attorney's request for an education attorney and authorized appointment outright, recognizing the complexity of the issue and its importance to youth success. In March 2017, there were roughly 30 special education attorneys on the panel, with stakeholder estimates of about ten to 12 of these attorneys routinely being appointed to delinquency cases. While some of the attorneys on the Special Education Panel also acted as juvenile defense attorney on the CJA Juvenile Panel, they never wore both hats in a single case. The education lawyer represents the parent as the holder of the youth's education rights, which could potentially create a conflict if the same lawyer also had to represent the youth's stated interests in the delinquency matter.

Beyond the court-appointed Special Education Panel, PDS has its own coterie of education attorneys within its Civil Litigation Unit. PDS's education attorneys provide in-depth assistance to PDS clients and strive to integrate education advocacy with delinquency practice. PDS's education attorneys provide trainings to other stakeholders and are well regarded by other stakeholders.

The School Justice Project (SJP), a non-profit organization referenced in detail in our discussion of post-disposition practices (see pages 65), also provides justice system involved youth with education advocacy, but focuses primarily on youth age 17 to 22, due to an identified gap in representation for this population. These youth may still be under court supervision, but are now old enough to be the holder of their own education rights. For 17-year-olds, SJP has a conflict retainer that states that SJP represents the interests of the youth and will withdraw if the interests of the education rights holder diverge from that of the youth. At the time of this investigation, there had only been one instance of such a withdrawal. SJP's goal is to push special education into defense practice to create fair outcomes and decrease incarceration. Advocacy by SJP attorneys included being present at court hearings and working for alternatives to secure detention. If a client was placed in secure detention, the SJP attorney's goal would be to communicate with the school in the facility to make sure that classes for youth held in detention matched the youth's individualized needs and to push for other ways to maximize the educational opportunities for the youth.

An education attorney's expertise can be invaluable to defense attorneys and courts. Education attorneys can help identify deficiencies in a youth's current education situation and whether the youth's education needs are being met. The Investigative Team noticed a few instances where PDS defense attorneys proactively addressed such deficiencies as part of their courtroom advocacy. There often appeared to be a disconnect, however, between the court's concern for school-related issues when considering detention options and the simultaneous lack of concern for what detention would mean for the education of youth, particularly those with special education needs. For example, one PDS defense attorney brought up the education needs and individualized education program (IEP) of a youth and argued that detention would detrimentally impact the youth because there would be no way that YSC could accommodate his IEP. Despite the fact that the judge's order for detention would place the child in a knowingly insufficient educational environment, the court was unwilling to address this and stated that this should be dealt with as a civil matter. The Investigative Team sensed that the bench did not fully appreciate how disruptive detention could be on the overall wellbeing and positive life outcomes of the youth, specifically on the youth's education. Stakeholders reported that the inability of facilities to fully comply with IEP needs and problems with school reentry after detention rarely factored into a court's decision to detain or release a youth.

The Investigative Team also noted that the educational program at YSC did not separate youth into appropriate grade levels, with youth of different ages and abilities placed into the same classroom simply because they shared a housing unit. This raises questions regarding the quality of education youth receive during their time in secure detention. Attorneys should be raising these issues in all cases, as education is a key component of a youth's success.

III. ROLE OF JUVENILE DEFENSE COUNSEL AT CRITICAL STAGES OF A CASE

In many aspects, the District of Columbia represents the gold standard of due process protections for delinquency-involved youth. In no small part due to the leadership of PDS and the clinics, due process is valued and reflected in DC's court administrative orders, guidelines, and statutory provisions. Additionally, the DC practice standards for delinquency attorneys outline a host of ways defense attorneys should be protecting their clients' due process rights and best practices in juvenile defense advocacy.

> ***Though a strong culture of due process and awareness of the juvenile defense role exists in the District, the Investigative Team noticed significant disparities between statutory protections and practice.***

This bedrock of due process protections gives DC the opportunity to continue leading the field on innovative juvenile defense. Juvenile defense standards, social science, and scientific research on adolescence have given juvenile justice stakeholders a far more accurate idea of what works in terms of not just achieving the system goals of rehabilitation and decreasing recidivism, but also helping youth achieve positive life outcomes. The advice and advocacy of the juvenile defender is all the more crucial for youth as they navigate the complex processes of juvenile court.

However, though a strong culture of due process and awareness of the juvenile defense role exists in the District, the Investigative Team noticed significant disparities between statutory protections and practice. Consensus among stakeholders was that PDS provided more vigorous representation of their clients than CJA attorneys. PDS attorneys also had access to a portfolio of support that CJA attorneys lacked. However, PDS attorneys reportedly only represent about 30 percent of the youth, with CJA attorneys—many of them solo practitioners—taking the vast majority of the remainder of the cases. Very few cases proceeded to trial, and lackluster adolescent-specific practice was observed and reported across the board among all categories of juvenile defenders. Also, despite strong access to counsel throughout the majority of the juvenile court case, many youth lacked comprehensive post-disposition representation.

A lack of cohesion amongst CJA attorneys coupled with a perceived secondary status of juvenile defense practice at PDS appeared to contribute to some of these issues, as described in the following findings. This also likely contributed to what the Investigative Team observed as a juvenile court culture that relies heavily on youth compliance with dispositional or release services and conditions, rather than on the adjudication of the case itself. As a result, a dissonance exists between system actors' acknowledgment of due process principles for youth and the defender's key role in upholding those principles.

> ***Very few cases proceeded to trial, and lackluster adolescent-specific practice was observed and reported across the board among all categories of juvenile defenders.***

A. After Arrest

DC is undoubtedly a national leader in ensuring access to counsel for all youth at initial court hearings. DC's emphasis on due process protections and statutory structure make it an ideal jurisdiction to heed the call for youth to have access to defense counsel prior to the initial court hearings. Growing concerns of juvenile false confessions and the unduly coercive effect of police interrogations on youth[110] have fueled calls to recognize access to counsel at the initial arrest stage as vital to protecting youths' rights. The Supreme Court in *JDB v. North Carolina*[111] and appellate law in various states have affirmed the need for further protection of youth at this stage. Two states have recently enacted measures providing counsel at custodial interrogations for certain categories of children.[112]

In DC, representation during pre-petition stages of a case is possible. The language of the statute contemplates access to counsel at various points and not merely commencing at the initial hearing. Despite this, there is no formal practice by police or CSS of notifying attorneys when a youth is in custody or making any attempt to provide attorneys to youth during interrogation. Defense attorneys also have not yet made it part of their practice to be available during interrogation. While interrogation typically occurs prior to attorneys being assigned to a case, the defense bar has not created a process to alleviate this gap in representation. If a child invokes the right to counsel while being interrogated by police, officers are supposed to stop any further questioning of the child, but there is no mechanism for actually providing the child with access to a lawyer until the child is brought to the court for an initial hearing. This results in children being held for hours (or as long as a day if on a Sunday) without any access to a lawyer. Stakeholders report that it is only in rare cases—when a family is aware of the arrest and retains an attorney for a youth immediately and at their own expense—that a lawyer would be present at a stationhouse interrogation.

Similarly, the intake process is a critical stage of the juvenile justice process. CSS intake officers, who are employees of the court, interview all youth before their initial hearings to provide a report for the court. Attorneys report that their clients have been questioned about gang affiliation, drug use, and even the charged offense itself. This raises concerns about a youth's Fifth Amendment right to remain silent and a lack of counsel in what amounts to interrogation regarding offenses, both charged and uncharged. While the Juvenile Court Rules prohibit the use, prior to disposition, of any uncounseled statements made by the youth to the prosecution or probation during intake or diversion discussions,[113] attorneys reported that the answers to these intake questions come into discussions of detention and conditions of pretrial supervision. Such use of these statements prior to disposition violates both the Juvenile Court Rules, the youth's right to remain silent, and right to counsel. Some stakeholders feared that insisting on defense counsel at intake or diversion stages would slow the process and reduce the speed of release decisions and the number of pre-petition diversions. Rule 111 seems intended to strike a balance between the need to enable efficient decisions about release and diversion options that can prevent youth from being formally processed in the juvenile court system and ensuring that what a youth says is not used against them in the case. Ultimately, defense attorneys must remain vigilant whenever a case proceeds to any hearing phase, and object to and fully litigate against the use of these uncounseled statements.

110 Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 L. & Psychol. Rev. 53 (2007); Martin Guggenheim & Randy Hertz, *J.D.B. and the Maturing of Juvenile Confession Suppression Law*, 38 Wash. U. J.L. & Pol'y 109 (2012); Kevin Lapp, *Taking Back Juvenile Confessions*, 64 U.C.L.A. L. Rev. 902 (2017).

111 J.D.B. v. North Carolina, 564 U.S. 261 (2011).

112 In Illinois, youth younger than 15 who are charged with homicide or other serious offenses must have counsel at interrogation. 705 Ill. Comp. Stat. § 405 / 5-170 (2017). California has made a more statutory broad right: all children 15 and under must consult with an attorney prior to interrogation. Cal. Welf. & Inst. Code § 625.6 (West 2018).

113 D.C. Super. Ct. R. Governing Juv. Proc. R. 111 [hereinafter D.C. Juv. R.].

B. Initial Proceedings

1. Appointment of Counsel

DC's Juvenile Court operates every day of the week except Sundays. By the time a youth's case is filed and set for a court hearing, the process of appointment of counsel is well underway. The Defender Services Office (DSO), an arm of PDS, ensures that each youth has an assigned attorney, dividing appointments between PDS, CJA, and law school clinics.[114] This assignment process is done in advance of the initial hearing for non-detained (out-of-custody) youth. For detained youth, the assignment process occurs each morning, giving attorneys the opportunity to interview detained clients, interview family and other supporting figures, and gather information relevant to challenging probable cause or detention. For the vast majority of detained youth, their first court hearing typically occurs within 24 hours of arrest. DC is a national leader in this regard.

All youth are interviewed by the DSO to determine eligibility for counsel. To determine financial eligibility, the DSO uses the U.S. Department of Labor Lower Living Standard Income Level and takes into account factors such as marital status and number of dependents. For those eligible for a court-appointed attorney, which attorney is ultimately assigned depends on a multitude of factors, including the severity of the charge, who is available for appointment the day the case is set for the initial hearing, prior or ongoing representation of that client, and potential conflicts of interest. In juvenile cases, if the family is found able to pay some level of contribution toward the cost of counsel, that contribution order is made to the parent, not the child.

A youth always appears with an attorney in court, starting with the very first hearing. Even in the rare instance where a family of a detained youth says they will hire an attorney but have not yet obtained one for the initial hearing, the court will appoint an attorney for purposes of that hearing rather than proceed without counsel. At the next court hearing, the court-appointed counsel again will be available if private counsel has still not been retained. For youth who are not subject to detention, the court may delay hearings until the family retains counsel.

2. Interviews with Clients

The first interview with the client sets the tone for the subsequent relationship between the attorney and their young client and provides a foundation for excellent advocacy. Prior to the first court appearance, attorneys must interview clients as soon as possible. In that preliminary conversation, an attorney's job encompasses a variety of objectives. The attorney should inform the youth of the nature of the allegations and possible consequences; explain his or her role as an attorney, including an explanation of attorney-client privilege and confidentiality; assess the client's most urgent requests and questions; provide an overview of the case; explain what to expect in court and describe relevant pre-trial release conditions, if applicable; and provide contact information and schedule the next client meeting.[115] Regardless of whether the client is detained or released to the community, that initial meeting should be in a confidential setting.[116]

If the youth is detained and the first matter is a detention hearing, the attorney's obligations must then include assessing the client's wishes about release and obtaining information regarding available conditions of release.[117] The attorney must advocate at the probable cause hearing if detention is sought, challenging the assertions against the client and requiring the allegations to be supported by facts in evidence.[118] Attorneys should seek early appointment when possible to advise young clients in potentially coercive settings against making incriminating statements or acting against their interests.[119]

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114 There is theoretically a fourth delivery system—private attorneys. But stakeholders universally agreed that private attorneys are not common.

115 D.C. Juv. Practice Standards, *supra* note 76, § C-5: Initial Client Interview; Nat'l Juv. Def. Standards, *supra* note 42, § 2.2.

116 Nat'l Juv. Def. Standards, *supra* note 42, § 2.1.

117 D.C. Juv. Practice Standards, *supra* note 76, § D-1.

118 Nat'l Juv. Def. Standards, *supra* note 42, § 3.7.

119 Nat'l Juv. Def. Standards, *supra* note 42, §§ 3.1, 3.2.

The Investigative Team found that prior to the initial hearing, juvenile defenders of all categories had consulted with their clients and the clients' families, and had the opportunity to familiarize themselves with their cases. Overall, judges and courtroom staff remarked that PDS attorneys and clinic students were always well prepared for these initial hearings. One judge described PDS attorneys as "enthusiastic" and always bringing a "fresh look," challenging things that are viewed as routine and specifically arguing each element of the charged offense(s).

Attorneys spoke to the Investigative Team about feeling rushed, particularly when their clients were detained and had to be interviewed in one of two holding areas at the courthouse. Typically, an attorney had about 30 minutes to interview clients and family, but several attorneys reported that marshals and courtroom clerks rushed them to complete interviews in order to keep the docket moving. Some judges remarked that the attorneys, particularly CJA attorneys, did not appear to have spent adequate time with their clients and families before the court appearance, but did not remark on pressure other courtroom actors placed on lawyers to rush.

3. Detention and Probable Cause Hearings

DC law requires a finding of probable cause before a youth can be detained. Consequently, any request by the prosecution or CSS for secure detention or shelter house placement triggers a hearing on probable cause in addition to the initial arraignment hearing. At this probable cause hearing, the court hears live testimony from witnesses (usually a police officer) prior to its determination. This practice is well ingrained. Defenders are never put in a position where they have to request the probable cause hearing. The Investigative Team observed probable cause hearings conducted by both PDS and CJA attorneys. The hearings were more than perfunctory. One hearing took nearly 45 minutes. This practice is one example of how DC leads the country in due process protections for youth.

Similarly, for youth who are released directly to the community without a probable cause hearing, the court may not later detain the youth without a hearing where defenders have an opportunity to challenge probable cause. The Investigative Team saw instances of juvenile defenders making concrete and individualized detention arguments and holding the prosecution to its burden of proof prior to any detention. In one instance, a youth was transferred to DC after being held in a neighboring jurisdiction. Although the government and probation officer wanted the youth to be detained, the PDS attorney highlighted that the youth's IEP required a specific school placement. The attorney provided concrete facts detailing the pitfalls of a shelter house, given that it would require the youth to either travel too far or to switch schools. The court agreed to release the youth home.

In another case, a youth came to court on their own after learning there was a custody order (a juvenile warrant) against them. The youth had missed a previous court date. While in "abscondence," the youth had been staying at a shelter and participating in a work readiness program. The PDS attorney gave this information to the court and also noted that the court could not detain this out-of-custody youth without a probable cause hearing. The judge wanted to hold the youth without a finding of probable cause on the underlying charge, but the attorney argued that it would be unlawful to do so. As a result, the judge sent the case to the detention hearing courtroom for a probable cause hearing. The investigator witnessing the proceeding noticed the palpable annoyance of the other parties at the PDS attorney's position. Their desire was clear: they wanted the PDS attorney to waive the client's right to a hearing because they perceived that the outcome was obviously going to be a determination that probable cause existed. Yet the attorney did not budge and insisted on proper procedure.

This kind of detailed, fact-specific, and zealous advocacy did not occur in every case. Though there were times when attorneys waived probable cause hearings because the parties had successfully negotiated an outcome short of custodial detention, there were circumstances where there was no such compromise and yet attorneys submitted on the issue of probable cause. Though the dangers of detention and the harms to youth are well

documented in social science research,[120] the Investigative Team's observations and interviews with stakeholders found that it was rare for any defense attorney to mention this as part of their advocacy against detention.

Stakeholders report that CSS had recently begun providing defense attorneys with a copy of their intake report prior to the hearing. This change not only makes initial hearings more efficient, but also injects additional transparency into the process that previously hindered the youth's ability to adequately prepare for the initial hearing.

Though defense counsel regularly argued against detention for their clients, the same kind of advocacy was often lacking when it came to shelter house placement. It troubled the Investigative Team that shelter house seemed to be an acceptable alternative to detention, even though it still resulted in a child's removal from home and a disruption to school and home life, with little to no therapeutic services or other support structures while there. Throughout the investigation period for this report, stakeholders discussed openly how the shelter houses were at capacity. Youth ordered into shelter house would not be immediately placed in one, despite the court order; their names would go on a waiting list. Instead of being released, youth were held in secure detention until a bed opened up. When asked about this during interviews, defense counsel all acknowledged that this happened. Yet the Investigative Team saw little advocacy by defense attorneys to have youth in these situations be released home. Defense attorneys seemed resigned to the heightened level of detention beyond what the court had deemed necessary and instead seemed to accept secure detention of their clients in hopes that the waiting period would not be long. At the time of the Investigative Team's site visits, stakeholders estimated that youth were waiting for approximately one week in detention before being released to a shelter house.

Beyond the waiting list issue, the Investigative Team observed parents and guardians repeatedly alerting the judges in hearings about problems with shelter house placement: difficulties with shelter house staff, challenges youth faced getting to and from school, and other complications that came from the youth no longer residing at home. But in none of the observed hearings did defense attorneys make these arguments themselves or present home-based alternatives that might better help the youth succeed. The Investigative Team sensed a sentiment among many in the defense bar that as long as the youth was not in secure confinement, it was not worth advocating for youth to remain at home. Stakeholders similarly seemed to regard shelter house placement as an acceptable routine option, despite clear statutory guidance that removal from the home was to be the exception and not the default. When pressed on this, attorneys and non-attorney stakeholders alike indicated that a fear that judges would impose harsher sanctions on youth if pressed had had a chilling effect on this aspect of defense advocacy.

Finally, of particular note is the District's culture of not accepting guilty pleas at initial hearings. All stakeholders agreed it is a matter of course that a youth's attorney will enter a plea of not guilty at the initial hearing because no party—not the judge, the prosecutor, or the defense attorney—has ample information about the case to assess whether a youth's plea and waiver of trial rights at that stage would be knowing, intelligent, and voluntary. At this point, it is an allegation without any discovery, investigation, or client counseling. This systematic approach to protecting a youth's rights and ensuring that the defense had at least some time to assess the case reflects best practice but is not common in juvenile courts across the country.

120 Edward P. Mulvey, *Highlights from Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders*, OJJDP Juvenile Justice Fact Sheet (U.S. Dep't of Justice 2011), https://www.ncjrs.gov/pdffiles1/ojjdp/230971.pdf; Edward P. Mulvey et al., *Trajectories of Desistance and Continuity in Antisocial Behavior Following Court Adjudication Among Serious Adolescent Offenders*, 22 Dev. & Psychopathology 453 (2010), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2908904/; Holman & Ziedenberg, *supra* note 68, at 2.

C. Maintaining Client Contact and Communication

Client-centered representation requires communication with clients from the first meeting and throughout the case. Early gathering of information better aids the attorney in preparing a defense, acquiring information necessary for plea negotiations, and disposition.

DC practice standards advise juvenile defense attorneys to make a follow-up client interview within 48 hours of their appointment to a case.[121] This meeting is crucial to ensure youth have information about and understanding of the proceedings against them; obtain key information to locate witnesses; preserve evidence; obtain information necessary for potential motions; ascertain the client's mental and physical health, including competency to stand trial and mental state at the time of the alleged offense; obtain education records and prior delinquency history; and gather any information regarding the youth's treatment by investigative agencies upon arrest or in custody.[122] Working effectively with young clients also requires that attorneys communicate in a manner that is appropriate to the age and maturity level of the client and make accommodations if there are any developmental issues that require special adaptation.[123] Counsel must also maintain contact with clients throughout proceedings and especially before court hearings.[124] This includes responding to clients' calls as well as providing updates and developments related to the case.[125]

Because attorneys are assigned to cases in advance of the initial hearing, youth in DC are introduced to their attorneys from the start of the proceedings. Custom and standards also dictate that the attorney handling the initial hearing remains as the counsel of record throughout the case, ensuring continuity.

Keeping a client informed throughout the delinquency case can go a long way toward building trust with youth. YSC staff noted that some youth would "gush" over attorneys with whom they had good relationships, regardless of the outcome of their case. To those youth, it did not matter whether they "lost"; their attorneys had treated them with respect and courtesy, and made them feel like they had someone in their corner.

After the initial hearing, disparities exist in how often an attorney maintains contact with clients between hearings. The Investigative Team learned that PDS and clinic students almost universally maintained contact with the clients between court hearings, often taking time to go to clients' houses or visit shelter homes and YSC. In the case of CJA attorneys, such practice seemed to be the exception, rather than the rule, but a number of CJA attorneys did visit with their clients' family members or with the youth while in local treatment facilities.

Case preparation is also key to providing adequate representation. Judges reported that, in general, defense attorneys appeared to be prepared for their cases. PDS attorneys and clinical students again were universally applauded for their thorough preparation in advance of every hearing, while CJA attorneys garnered mixed reviews.

To those youth, it did not matter whether they "lost"; their attorneys had treated them with respect and courtesy, and made them feel like they had someone in their corner.

Though the continuous representation of youth by a known attorney eased communication with clients, the Investigative Team discovered that shortfalls existed. Stakeholders reported that not all families and youth had sufficient information about the case and the court system and expressed

121 D.C. Juv. Practice Standards, *supra* note 76, § C-6.
122 *Id.*
123 D.C. Juv. Practice Standards, *supra* note 76, § C-4; Nat'l Juv. Def. Standards, *supra* note 42, § 1.3.
124 D.C. Juv. Practice Standards, *supra* note 76, § C-7.
125 *Id.*

a greater need for attorneys to assist youth and families in understanding the process better, prior to hearings.

Juvenile proceedings can be complex, especially if the youth is going to be making decisions about pleading or going to trial, or if the attorney needs to gather information about progress on supervision conditions. Some attorneys told the Investigative Team that, at times, they had to have meetings with clients in the courthouse just prior to the hearings. However, the juvenile courts are not set up to accommodate these meetings on a broad scale, and the attorneys would have to speak with clients in the public hallways if the witness rooms outside the courtrooms were unavailable. When youth are securely detained, the attorney must speak with the client in the holding cell or in the secure hallway behind the courtroom.

The bedrock of an attorney-client relationship is confidentiality and the fierce protection of attorney-client communications. Defense counsel must ensure communications with clients are conducted in private and if need be, make a request to appropriate officials to accommodate confidential client communications.[126]

Youth should be given time and opportunity, as well as the benefit of a confidential space, to ask questions and for the attorney and youth to provide each other with more information. Courthouse meetings cannot be such spaces. Such meetings are largely conducted when attorneys are rushing between hearings and are too close in time to the court hearing. Case-critical conversations can also be stressful for youth and can be made more so in stressful environments, like the waiting area of the courthouse. Adolescent development research shows that such a scenario is likely to drive youth to make decisions based on emotion rather than thoughtful deliberation.[127] Attorneys should meet with clients with adequate time and in a private space so that youth can be in the best position to process information and make meaningfully informed legal decisions. In the rare instance when significant conversations must be done at the courthouse, it should not be done in a public hallway and should be only be done at a time when the attorney is capable of giving the youth their sustained and undivided time and energy.
One shelter house employee confirmed to the Investigative Team that though some attorneys contacted clients a day or two before hearings, most typically met with the youth at court. Youth often complained about not being able to get in touch with their attorneys, even though they made numerous calls. While the shelter house staff acknowledged some attorneys would maintain contact throughout their clients' stay, particularly with complex situations, this seemed to be the exception, rather than the rule.

According to shelter house staff, youth who had good relationships with their attorneys tended to have far less anxiety about their cases. They knew what to expect and trusted their attorneys to work for them. Even a seemingly simple act like taking a youth on a walk to the corner store could make a world of difference. Without this rapport, shelter house staff noticed that youth experienced increased stress and correspondingly tended to have difficulty complying with shelter house rules prior to and upon returning from court hearings. Communicating with the youth five minutes before a hearing created too much anxiety for many of the youth.

Similarly, non-defender stakeholders interviewed for this report told the Investigative Team that youth held at YSC often did not have regular contact with their attorneys. While there are attorneys that regularly visit clients who are detained, the critique was that many CJA attorneys do not, or default to telephone calls over in-person visits. Relying solely on phone calls is not ideal, however. Though brief follow-up conversations may be necessary at times, phone calls cannot replace the value of a face-to-face meeting where a defender discusses the case in-depth with the youth and assesses how the youth is doing in detention. CJA attorneys reported facing obstacles when trying to visit clients at YSC. One CJA attorney reported that they could not take their laptops

126 D.C. Juv. Practice Standards, *supra* note 76, C-2.
127 *See* Laurence Steinberg, *Cognitive and Affective Development in Adolescence*, 9 Trends in Cognitive Sci. 69, 73-74 (2005).

into YSC, while attorneys employed by PDS did not have such restrictions. With the increasing use of electronic discovery, this policy, whether official or an ad hoc restriction put in place by some YSC staff, seriously disadvantages detained youth with CJA attorneys. This practice may in effect deny these youth access to review the evidence against them, an essential part of the adequate assistance of counsel.

Some CJA attorneys stated that they did not always know where their clients were, especially if they did not receive notice of when their clients were released from either YSC or a shelter house. This reason for failing to maintain communication, however, seemed to ring hollow. Though it is true that it would be easier for time-strapped attorneys to be preemptively notified of changes in a client's confinement status, it is an attorney's ethical responsibility to communicate with the client.[128] Increased regular contact, even if it is by phone, would rectify this obstacle. Placing the obligation on the youth to initiate contact does not fulfill ethical duties. A simple call to a detention facility would at least alert an attorney that the child had been released and signal the need to seek the youth at home.

Lack of client contact also makes it easier for defense attorneys to forget the effect a slowly moving judicial system can have on a young person. The Investigative Team was disturbed by the number of times status hearings or other pretrial events were continued, regardless of the reason, without any real concern for the effect this had on youth or their families. For youth in detention, this could prolong their out-of-home confinement and increase the risk of corresponding harms of detention.[129] Youth placed in shelter houses or on electronic monitoring had these restrictions on their liberty continued for a longer time period not out of some supervisory need, but because the adults were not ready. But even for those youth released to the community, more hearings mean more time away from school for the youth and time away from work for families. The Investigative Teams observed several instances where lawyers set matters further out to accommodate their own schedules, despite the fact that their clients were detained. Part of this may have been because many of the CJA attorneys have to be in multiple places due to the nature of their practice. However, defense attorneys should be mindful of the impact hearings can have on youth and their families. Too often the Investigative Team observed attorney convenience take precedent over an individual client's wellbeing.

Though it is true that it would be easier for time-strapped attorneys to be preemptively notified of changes in a client's confinement status, it is an attorney's ethical responsibility to communicate with the client.

Effective communication with youth also requires doing it in a way that is productive and useful for the client. Communicating with adolescents is different from communicating with adults.[130] Many of the youth in juvenile court come from different socio-economic and racial or ethnic backgrounds than the attorneys, which requires cultural sensitivity and competency by the attorneys.

128 *See* D.C. Rules of Prof'l Conduct r. 1.4 (D.C. Bar Ass'n 2007).

129 Holman & Ziedenberg, *supra* note 68, at 8; Richard A. Mendel, The Annie E. Casey Found., No Place for Kids: The Case for Reducing Juvenile Incarceration 12 (2011) [hereinafter No Place for Kids], http://www.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf; Karen M. Abram et al., *Suicidal Thoughts and Behaviors Among Detained Youth*, OJJDP Juvenile Justice Bull. (U.S. Dep't of Justice 2014), http://www.ojjdp.gov/pubs/243891.pdf; Sue Burrell, National Child Traumatic Stress Network, Trauma and the Environment of Care in Juvenile Institutions 2-5 (2013), https://www.nctsn.org/sites/default/files/resources//trauma_and_environment_of_care_in_juvenile_institutions.pdf; Anna Aizer & Joseph J. Doyle, Jr., *Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges* 17-18, 21-23 (Nat'l Bureau of Econ. Research, NBER Working Paper No. 19102, 2013), http://www.mit.edu/~jjdoyle/aizer_doyle_judges_06242013.pdf.

130 NJDC repeatedly emphasizes that attorneys should use "developmentally appropriate language" to communicate with court-involved youth clients. Nat'l Juv. Def. Standards, *supra* note 42, § 5.

Unfortunately, several non-defender stakeholders reported instances where some CJA attorneys demonstrated an overt lack of respect for their young clients. They shared feeling unsettled or angry at the way some attorneys treated their clients. Several non-defender stakeholders reported overhearing attorneys berate or demean clients. One described instances in which this occurred in the public hallway in the courthouse and another reported hearing attorneys who were behind closed doors screaming at youth. Alone, such behavior is deplorable, but when coupled with power dynamics and racial differences, it can be even more problematic, regardless of intent. Some attributed these failings to a lack of cultural sensitivity or a feeling that youth clients did not need the same care and attention as an adult client, or a general disinterest in the youth the lawyers represented.

Finally, even seemingly benign actions like sugarcoating the news for youth can be frustrating for clients and diminish trust. Some attorneys understandably do not want to be the bearer of bad news and want to avoid conflict with families. But not telling the truth or not giving the complete truth to youth can do more harm to the attorney-client relationship, and ultimately, the representation. Some non-defender stakeholders believed that attorneys sometimes took this route.

D. Case Preparation: Discovery, Investigation, Motions, and Experts

Sound defense practice must include careful case preparation. This preparation includes obtaining all discovery from the prosecution, thorough and prompt investigation, filing appropriate motions, and utilizing experts to aid in both the adjudicatory and disposition phases of a case.[131]

1. Discovery

Discovery is essential for providing an attorney with the full measure of the prosecution's case and to aid in the client's defense. Under constitutional case law and local court rules, the prosecution must disclose to the defense anything that may be exculpatory or may mitigate the youth's involvement in the charged offense,[132] as well as any statements, recordings, and other information pertinent to the case that is in the possession of the government.[133] While the government is required to provide the defense with certain information through discovery, defense attorneys have a corresponding responsibility to request this information and continue to press for this information to which their clients are entitled.[134]

Every youth is entitled to vigorous litigation of disagreements over discovery, which may or may not be clear under the facts of a given case when applied to local and constitutional law. Separately, defense attorneys have an independent obligation to conduct their own investigation in every case, particularly on the facts and information not covered under the discovery rules. In DC, the government provides an initial discovery packet to the defense at the initial hearing, which may be supplemented at a later date. Based upon the suggestion of the DC Court of Appeals in *Rosser v. United States*,[135] PDS and clinic attorneys routinely submit *Rosser* letters to the government,

131 D.C. Juv. Practice Standards, *supra* note 76, §§ D-3, D-4, D-5, E-3; Nat'l Juv. Def. Standards, *supra* note 42, § 4.7.
132 Brady v. Maryland, 373 U.S. 83 (1963).
133 D.C. Juv. R. 16.
134 D.C. Juv. Practice Standards, *supra* note 76, § D-4; Nat'l Juv. Def. Standards, *supra* note 42, § 4.1.
135 381 A.2d 598 (D.C. 1977).

requesting discovery, as do the majority of CJA attorneys.[136] Juvenile PDS attorneys and Georgetown clinic students and fellows have their discovery correspondence reviewed by supervisors, underscoring the importance of this step in effective advocacy.

While some non-defender stakeholders saw vigorous discovery litigation as an obstructionist defense tactic, many others recognized that the defense attorney is ethically obligated to protect the rights of each client and to hold the prosecution accountable for providing all information to which the youth is legally entitled. Stakeholders who saw this as quibbling over a technicality seemed to lack an appreciation for the critical importance of discovery materials in assessing the strength and evidence of a case as well as a defense attorney's role and ethical responsibilities.

2. Investigation

Early and thorough investigation is necessary in order to find witnesses and thoroughly test the charges brought against the child client.[137] Structurally, the DC juvenile defense system appears to place an importance on investigation. Investigators are accessible to all juvenile defense attorneys, regardless of where they work, though accessing quality services may vary.

PDS employs an in-house investigative unit, well known for recruiting people with enthusiasm for defense work and talent for the type of dogged effort needed for excellent investigation. While stakeholders report that PDS's professional investigative staff is mostly reserved for non-juvenile cases, the in-house expertise is a resource for juvenile attorneys. PDS's incoming juvenile attorneys are trained on investigative techniques and typically conduct much of their own investigation, with assistance from colleagues. PDS cited a pedagogical purpose for this. Learning to conduct their own investigation undoubtedly gives attorneys a more nuanced understanding of the process and its importance, and the first-year attorneys can draw upon resources, expertise, and support of the agency's professional investigative staff. But the drawback of this method is that it contributes to the appearance that adult felony matters are prioritized over juvenile cases. Because these first-year attorneys represent the majority of PDS's juvenile clients, the sense that youth are being used as a training ground is hard to escape.

CJA attorneys also have access to investigators paid with funds from the court through the court's voucher system. CJA attorneys reported that they can typically hire an investigator for up to $250 without first obtaining court approval. Any amount above $250 requires prior judicial approval, which attorneys reported can be a barrier to timely investigation. The court-paid investigators received troublingly mixed reviews. While some CJA attorneys had excellent working relationships and reported receiving quality assistance from their investigators, others reported that the investigators' performance did not match expectations. One CJA attorney stated a preference for using other lawyers on their "pro bono time" because the CJA investigator pool was not well-trained. Some CJA attorneys have even said that the investigators available to the CJA attorneys have refused to take direction from the defense attorneys who hired them. While the court-paid investigators do have their own training programs, attorneys lamented that there appeared to be a disconnect from legal strategy and what attorneys actually need. One attorney indicated that investigators often came up with their own theories of defense—sometimes based in the law and sometimes not—and were too focused on the process of collecting information without enough regard to how it would be used by the attorneys. Another attorney recounted an experience with an investigator who refused to pursue evidence for developing affirmative defenses because the investigator did not "believe in" those theories. While some of these issues could be addressed through greater communication or attorneys providing investigative memos to their investigators, it also requires a field of investigators who are willing to work with the attorneys.

136 D.C. Juv. R. 16.
137 D.C. Juv. Practice Standards, *supra* note 76, § D-3; Nat'l Juv. Def. Standards, *supra* note 42, § 4.5.

3. Motions

A crucial part of case preparation is filing appropriate motions that can range in subject including challenging pretrial detention, challenging the sufficiency of the petition, discovery motions, suppression of evidence, and trial-related motions.[138] In the court system, motions are integral to zealous advocacy. For those attorneys paid directly through the court, included in motions should be requests for funds for experts and other professionals necessary for trial preparation, evaluation of clients, and testing of physical evidence.[139]

Stakeholders reported vigorous motions practice in DC. One judge noted that motions to suppress identification were more common, but that they have seen a recent drop in Fourth Amendment motions. The judge surmised this could be due to a drop in drug cases filed by the government, where Fourth Amendment litigation seemed to be more common.

PDS attorneys reported having a policy that all viable motions must be filed. A supervisor monitors this requirement. Every written pleading must be reviewed until the supervisor decides that an attorney can file motions without review. Even after that point, any unusual motions must be reviewed by a supervisor.

Strong motions practice was not limited to attorneys from PDS. For example, the Investigative Team observed a CJA attorney arguing for the opportunity to have a hearing for a Motion to have an Expert Interview a Complaining Witness in a sex offense case, laying a strong factual basis for the request. Over the government's objection, the judge set the matter for a hearing and approved the voucher request for the expert.

Despite the strength of motion practice among some members of the CJA panel, most of the CJA attorneys interviewed by the Investigative Teams stated that motions were not a significant part of their practice. Those interviewed cited as reasons that juvenile court was too fast-paced to file motions, that the government would only leave plea offers open until motions were filed, and that filing a motion would basically pave the way to commitment for the client, given the culture in the court at the time of the investigation. However, as these reasons did not seem to deter PDS or clinical programs from a robust motions practice, the absence of parallel motions practice in the CJA bar further underscores the need for an organizational and monitoring mechanism to ensure CJA representation is consistent with other entities.

4. Experts

Defense counsel should also secure experts when appropriate to assist in preparing the defense, obtain a full understanding of the prosecution's case, and rebut the charges.[140] PDS has its own funding to supply experts in cases the agency handles and the use of experts is encouraged, though expert requests are subject to review by a PDS supervisor. CJA attorneys also have access to experts. Funds are available if the attorney makes an application to the court. CJA attorneys reportedly utilized experts less than PDS. Again, one of the reasons for this likely has to do with the voucher system and the maximum expenditures allowed. CJA attorneys have a cap of $1,600 for experts in a case but can request more if the need can be substantiated to the court.

One judge reported not seeing a lot of expert requests and suggested that this might be due to the fact that the majority of cases being petitioned were robberies or other crimes that did not necessarily involve experts, unlike cases with drugs or DNA. There are many experts who can be helpful in a juvenile case, however, from those who aid with substantive offenses to adolescent development experts who can offer analysis on issues related to pre-trial motions, trial, and disposition. Though these kinds of experts were reportedly used by PDS attorneys and the clinics, this was not found to be the case for the vast majority of CJA attorneys. As noted earlier, however, the Investigative Team did witness one CJA attorney ask the court to approve expert funds for use in a sex offense case, which the court indicated it would grant once it received a formal written request.

138 D.C. Juv. Practice Standards, *supra* note 76, § D-5; Nat'l Juv. Def. Standards, *supra* note 42, § 4.7.
139 Nat'l Juv. Def. Standards, *supra* note 42, § 4.7.
140 D.C. Juv. Practice Standards, *supra* note 76, § E-3.

E. Adjudications and Plea Hearings

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 the expressed-interest mandate, defense attorneys must counsel clients with a fair assessment of the case, without exercising "undue influence" on the client's decision by understating or overstating the risks and advantages of either choice.[141] Defense counsel should talk with their clients prior to engaging in plea discussions to get a sense of the client's goals and expectations and must convey to their clients any offers made by the prosecution. Although an attorney's job is to advise, 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.[142]

If a client chooses to proceed to trial, the attorney must adequately prepare and execute trial functions, including filing appropriate motions,[143] preparing witness testimony,[144] making appropriate motions and objections during the course of the trial,[145] cross-examining government witnesses; and presenting defense witnesses or other exhibits and evidence necessary for an adequate defense.[146] Defense counsel should not fall victim to the informality of juvenile court in trials and should present opening and closing arguments.[147]

PDS attorneys are known for their trial skills and their expertise in criminal procedure and law. Much of their nine weeks of training deals with litigation skills needed for trials. As in motions, PDS attorneys are supervised in all their trials. Their supervisor attends every juvenile trial for the entire year they are in the Juvenile Unit.

As one judge stated, "A good lawyer will go to trial and take the government to task." Both judges and prosecutors interviewed by the Investigative Team understood the necessity of having a juvenile delinquency court with a robust use of trials.

Despite a culture of formal adversarial proceedings and respect for the role of trials, stakeholders across the board reported few cases actually going to trial, with the vast majority of cases instead resulting in pleas. As one judge commented, "Legal advocacy is really dead right now." At the time of this investigation, one judge estimated presiding over only five trials in the previous year. Another put the number a bit higher, at seven. Defenders and prosecutors similarly stated that very few cases resulted in trials. Many lawyers expressed concern that the overwhelming number of pleas was leading to an erosion of the guaranteed constitutional presumption of innocence.

Those interviewed for this report cited different factors for the low numbers of trials. Almost all acknowledged that the low number was a relatively new phenomenon. Defense attorneys recalled times when juvenile trials occurred with regularity, sometimes daily. While a drop in juvenile arrests may be one factor, as fewer cases are in the pipeline, it is unlikely the sole explanation for the precipitous drop in cases proceeding to trial.

Many stakeholders asked about this phenomenon cited a 2011 change in DC law that has inadvertently created an incentive to avoid felony adjudications. Since 2011, nearly every felony adjudication has become exempt from certain confidentiality provisions, negatively impacting educational, housing, and employment opportunities.[148] Defense attorneys are ethically bound to advise their clients of this consequence. A plea to a reduced charge of a misdemeanor, on the other hand, ensures that cases remain confidential

141 D.C. Juv. Practice Standards, *supra* note 76, § C-8; Nat'l Juv. Def. Standards, *supra* note 42, § 4.9.
142 D.C. Juv. Practice Standards, *supra* note 76, § C-11.
143 D.C. Juv. Practice Standards, *supra* note 76, § E-5.
144 D.C. Juv. Practice Standards, *supra* note 76, § E-4; Nat'l Juv. Def. Standards, *supra* note 42, §§ 5.5, 5.8, 5.9.
145 D.C. Juv. Practice Standards, *supra* note 76, § E-5; Nat'l Juv. Def. Standards, *supra* note 42, §§ 5.3, 5.6, 5.8.
146 D.C. Juv. Practice Standards, *supra* note 76, § E-6.
147 Nat'l Juv. Def. Standards, *supra* note 42, §§ 5.4, 5.10.
148 D.C. Code Ann. § 16-2333(e) (West 2017).

and minimizes such collateral consequences. One judge recalled that of all the pleas in that courtroom in the previous year, only four or so were to felony offenses. This observation supports the notion that plea agreements to lesser charges may be part of the reason for so few trials. When all juvenile cases remained confidential, the plea calculus could be very different. Because all delinquency offenses carry the same worst-possible disposition—commitment until the youth's 21st birthday—the distinction between misdemeanors and felonies meant very little, and consideration of the facts of a case or a child's needs on supervision were the driving considerations in plea negotiations. Now, however, the misdemeanor-felony distinction carries lifelong collateral consequences and may have long-term negative impact on a youth's potential for success.

Although the move to more pleas may be intended to protect youth from some consequences of adjudication, it creates a pattern of failing to hold the government to its burden. As a result, there is an ultimate failure to afford youth access to justice. Indeed, one attorney voiced discomfort with this recent practice and shared that a significant portion of the youth that attorney represents where overcharged or even innocent. Yet, the attorney recounted, many chose to plead guilty to avoid commitment or to minimize felony exposure.

Prosecutors cited another reason for the drop in trials. As one prosecutor stated, there are now "a lot of off ramps" before a case ever got to trial. The juvenile prosecution unit under the current DC Attorney General has increased its use of diversion in juvenile cases and has given more discretion to line prosecutors to negotiate consent decrees. Juvenile defenders agreed that diversion and consent decrees made some trials less likely.

Many juvenile attorneys and judges also talked about how the decrease in trials may have to do with a belief that the outcome would be worse if a youth took a case to trial rather than plead. Parties referred to this as a "trial tax" or "trial penalty." Lawyers reported at least one judge telling their clients that they would "get credit" for taking a plea, as a sign of taking responsibility for their actions. Such statements imply that consequences would be harsher if youth exercised their constitutional right a trial, though attorneys admitted that entering a plea did not guarantee that a severe disposition would be avoided.

An assessment investigator observed one trial that seemed to bear out some of the sentiments that trials were not welcomed by the juvenile bench. During the course of the trial, the judge was seen making *sua sponte* evidentiary rulings not prompted by the government's objections, taking over questioning, and setting an overall hostile tone to the trial process. After adjudicating the youth delinquent, the judge remarked that since the goal of juvenile court was rehabilitation, the parties should have tried to resolve the case before trial. A comment like this coming from a judge suggested that the court believed youth are not entitled to process or procedure and falsely presumed early confession is necessary for rehabilitation, a notion that is unsupported by any developmental research on adolescents. Although this youth had been at a shelter house without incident, the court removed the youth from the community following trial and placed them in secure detention pending disposition, even though the prosecution had not asked for any change in placement. To the investigator observing the interaction, it felt punitive and demonstrated how attorneys could believe that retaliation for taking a case to trial was possible.

Other stakeholders pointed to the overwhelming focus on a youth's social factors in the District's juvenile courts as a reason why cases did not go to trial. This heavy emphasis on social factors, at times, seemed to come at the expense of the substantive and procedural due process rights of the youth. Many expressed a fear that a services-driven court meant stakeholders prioritized the rehabilitative mandate over due process prerequisites.

This conformed with the Investigative Team's observations of pre-trial status hearings. In many, the status of the pending charges was not discussed. Instead the parties were preoccupied with whether the youth was in compliance with pretrial conditions. Judges routinely began hearings by asking for a report from the CSS caseworker, including drug test results. The Investigative Team

also observed this practice in a "trial call"—a short hearing, the purpose of which is to determine whether the parties were ready to proceed to trial later that day. Instead of addressing whether the parties were ready or if procedural issues needed be addressed, the judge started by asking the probation officer to provide a report of whether the youth had complied with pretrial release conditions. Only after hearing a litany of examples, in fine detail, of how the child had failed to meet the judge's orders, did the judge ask the defense whether they were ready for trial. As one defender observing wondered, why would a youth want to go to trial before the same judge who had just learned about their positive drug tests? Other attorneys interviewed as part of this investigation indicated that this was not an isolated incident and that the judge regularly called for reports on a child's behavior—unrelated to the charged offense—right before that same judge was to make findings of fact and determinations of credibility. Another lawyer stated, "What confounds me as a defender is that you put all that information in a CSS report that the court gets [right] before trial." One stakeholder questioned, "How can anyone believe that hearing would be impartial? The judge already has an impression that this is a bad kid before hearing any evidence related to the case."

It also seems to run counter to the spirit of the DC Juvenile Code, which expressly prohibits the court from reviewing or considering predisposition study reports prior to factfinding.[149] While it is arguable that CSS reports regarding the child's compliance with release conditions does not technically constitute a predisposition study, much of the same potentially prejudicial information would be included in both.

One factor that affected all attorneys' abilities to prepare for cases was the delay in getting case information from CSS. Though under Juvenile Rule 32, CSS reports are due three days in advance of the disposition hearing, there is no corresponding rule for reports delivered to the court for status hearings or other pre-trial hearings.[150] Stakeholders shared that defense attorneys regularly do not receive these reports until the day before, and sometimes even the day of, the hearing. This delay meant that attorneys had even less time to address any issues raised by CSS in the reports, placing them at significant disadvantage and potentially undermining their ability to fulfill their mandate to provide effective assistance of counsel.

One stakeholder questioned, "How can anyone believe that hearing would be impartial? The judge already has an impression that this is a bad kid before hearing any evidence related to the case."

Attorney skill or competence also has some impact on whether a case proceeds to trial. As one attorney admitted, they advised clients not to take a case to trial unless there was some "hook" or alternative theory. That same attorney suggested that it was largely on the youth to aid in coming up with a defense. If not, the case usually pled. This attorney did not acknowledge the presumption of innocence or recognize any need to hold the government to its burden of proof.

For any case where a youth is adjudicated delinquent, that youth must be apprised of the consequences of having a juvenile record. Increasingly, juvenile cases result in a plethora of collateral consequences that follow a youth into adulthood, including the particular DC consequence of having the majority of felony adjudications exempted from confidentiality provisions. It is paramount that defenders inform youth of these consequences. However, some stakeholders working with youth reported that youth were either ignorant of the consequences of their plea beyond a very surface understanding, or were completely bewildered by the extent of consequences, even in misdemeanor cases, once faced with them in real life.

149 D.C. Code Ann. § 16-2319(a) (West 2005).
150 D.C. Juv. R. 32(b).

F. Disposition

Disposition planning should begin as soon as the attorney meets the client. Excellent disposition planning can result in less involvement with the delinquency system through plea negotiation and advocacy. As part of disposition planning, defense counsel should investigate and obtain information relevant to the client, including family background and social, psychological, psychiatric, and other information.[151] The attorney should also be aware of the possible disposition options and identify the least restrictive option appropriate for the young person.[152] In order to do this satisfactorily, the attorney must be familiar with the available programs and disposition options.[153] Counsel should explain disposition procedures and any proposed plans, such as those for probation or commitment. If psychiatric or psychological evaluations are part of disposition planning, counsel should fully explain the process to their client, along with any confidentiality limitations, and should educate their client about the findings of the evaluation and how they may affect disposition.

At the time of disposition, the attorney should advocate for the client's wishes, challenging when appropriate any reports adverse to their client's interests.[154] Once a disposition order is made by the court, the attorney must explain the court order to the client, as well as the client's obligations under that order and potential consequences for not following the order.[155] The attorney must also advise the youth, as with adjudications, of the right to appeal a disposition.[156]

The patterns of defense practice in the District at other stages manifest in disposition advocacy as well. PDS attorneys and clinic students again stood out in their zealous advocacy and preparation, recognizing that disposition is one of the most important stages of the juvenile case.

Judges stated that, with good education lawyers and social workers at their disposal, PDS attorneys routinely came to dispositions prepared and offered their own disposition plans. The Investigative Team confirmed this. In one court hearing, the Investigative Team observed a PDS attorney arguing for a disposition to go forward and asked for the youth to be released home on probation. The defense attorney corrected the judge's misperception that the evaluations had not yet been completed and outlined their client's history of shelter compliance and improvement at school. The defense attorney pointed out that the shelter house was a significant distance from school, proving a hardship on the youth. Two evaluations had also recommended release to a community-based program. The defense attorney even had prepared a short disposition video. The judge, on the other hand, scoffed at the idea of watching a disposition video and declined to enter a disposition order at that time, instead ordering the child to remain in the shelter house until the next hearing in two weeks. Though ultimately not successful, the defense advocacy was impeccable, particularly given the attitude exhibited by the judge. The judge's body language, tone, and commentary communicated to observers a lack of appreciation for the defense attorney's advocacy, advocacy which was neither disrespectful nor inappropriate.

PDS attorneys and clinical students also regularly submit sentencing memoranda. One stakeholder cited as an example a memorandum that had included a challenge to the risk assessment instrument regarding a child's propensity for violence, which that stakeholder believed was an illustration of valuable defense practice at disposition.

151 *Id.*
152 Nat'l Juv. Def. Standards, *supra* note 42, § 6.2.
153 *Id.*
154 Nat'l Juv. Def. Standards, *supra* note 42, §§ 6.5, 6.7; D.C. Juv. Practice Standards, *supra* note 76, § G-1: Disposition Hearings.
155 Nat'l Juv. Def. Standards, *supra* note 42, § 6.8; D.C. Juv. Practice Standards, *supra* note 76, § G-1.
156 D.C. Juv. Practice Standards, *supra* note 76, § G-1; Nat'l Juv. Def. Standards, *supra* note 42, § 7.2.

Clinical students and PDS attorneys were found to consistently offer alternate plans for disposition that provided the court with options to consider beyond what CSS or DYRS provided, including suggestions for mentoring programs, vocation opportunities, or service referrals beyond those funded by the court. PDS attorneys regularly leveraged their social workers to help with disposition planning, and clinical students, particularly at Georgetown, were required to submit a viable defense alternative disposition plan in every case. Once again, however, the Investigative Team observed CJA attorneys exhibit varying levels of preparation and advocacy at disposition, ranging from excellent to virtually nonexistent.

Education advocacy and social worker assistance can be invaluable in disposition advocacy. The Investigative Team did note that only two social workers were assigned to PDS's juvenile unit, one of whom also consulted for CJA attorneys and the Georgetown clinic. Beyond this, the Investigative Team found no other indication that social workers were actively utilized in juvenile disposition planning. Given limited social worker resources, lawyers should understand and be able to identify appropriate community resources as part of their routine disposition advocacy, in line with best practices.

The kinds of conditions and services ordered by the court displayed a strong interest by stakeholders in youth success at school. Yet the Investigative Team noted the incongruity between that interest and the little concern for the multitude of hearings that worked against this.

The Investigative Team also noticed long delays between adjudication and disposition. Judges and attorneys said this was due to the need for programs to be set up. Court observations and stakeholder interviews suggested that judges were hesitant to make a final disposition order of probation or commitment without a firm plan in place. Though this reason may be sound for both out-of-custody and detained youth, numerous hearings over a drawn-out period pose hardships on youth and families. More than a few times, the Investigative Team saw probation officers and other service providers in court asking for additional time to set up services. For detained youth, these delays resulted in prolonged detention in settings where youth were removed from their family and community and denied the opportunity for healthy development. Out-of-custody youth suffered as well. Court days are not fast-paced affairs. Long calendars and attorneys juggling appearances throughout the courthouse can result in youth and families waiting long hours in the hallways for their case to be called. Routinely, the Investigative Team heard judges reminding youth to take their court orders back to school as documentation to have their tardiness and absences excused. The kinds of conditions and services ordered by the court displayed a strong interest by stakeholders in youth success at school. Yet the Investigative Team noted the incongruity between that interest and the little concern for the multitude of hearings that worked against this. Repeated hearing dates also put pressure on family members, who would have to miss work and other obligations because court actors were not ready to proceed.

The Investigative Team was also alarmed by the absence of advocacy against the numerous probation conditions imposed at disposition. Just as in the context of release at the initial hearing, the practice in DC is to impose a large number of release conditions, which risks overwhelming youth or making it impossible for them to achieve success. Some youth walked out of hearings with as many as 12 or more conditions. One child was ordered into four different types of therapeutic services, without

any substantive discussion of how each service addressed a particular issue this youth was facing. One judge said that he had begun to notice a shift to attorneys arguing whether certain conditions are feasible because of IEP, homelessness, or other factors. However, no defender made these kinds of arguments during the investigation observations. Nor did any stakeholder acknowledge research that shows when fewer, more individualized and targeted interventions are put in place, the goals of the juvenile court are more likely to be realized: that youth will be more likely to succeed in life.[157]

G. Diversion

In recent years, a growing number of jurisdictions have focused on diverting youth from the juvenile justice system.[158] DC has made strides in diverting youth from formal case processing, increasing pre-petition diversion, and creating alternatives to formal processing after the filing of a delinquency case.

The Office of the Attorney General runs a pre-petition diversion program called Alternatives to Court Experience (ACE),[159] focusing on school-based offenses. Stakeholders have reported seeing a drastic decrease in school-based referrals since its implementation. Juvenile defense attorneys have virtually no role in this type of diversion under current practices, since there is no mechanism for appointment of counsel before a case has formally been initiated with the court. However, the Investigative Team noted that diversion failures were listed in CSS reports on subsequent petitions, and stakeholders suggested that the judge admonish diversion youth on the importance of complying with conditions. Given that diversion failures have at least some impact on future cases, some form of defense counsel involvement might be helpful. In light of this, the District could consider following the model of some jurisdictions where counsel is provided in a limited capacity for the purpose of advising and counseling on the particulars of the program and consequences of failure.[160]

After a petition has been filed in a case, youth may be referred to a specialty court, the Juvenile

157 The Annie E. Casey Found., Probation Practice and Reform: Key Themes and Findings from Available Literature (2016), http://www.aecf.org/m/privy/Deep-End-Resource-Guide-8b-Probation-Practice-and-Reform.pdf; 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.

158 Development Services Group, Diversion from Formal Juvenile Court Processing (2017), https://www.ojjdp.gov/mpg/litreviews/Diversion_Programs.pdf; Models for Change Juvenile Diversion Workgroup, Juvenile Diversion Guidebook (2011), http://www.models-forchange.net/publications/301.

159 *Juvenile Diversion Program*, Office of the Attorney General for D.C., https://oag.dc.gov/public-safety/juvenile-diversion-program (last visited Apr. 5, 2018).

160 Models for Change Juvenile Diversion Workgroup, *supra* note 158.

Behavior Diversion Program (JBDP), which serves as an alternative pathway for certain offenses. JBDP aims to reduce delinquency behavior by addressing the underlying mental health needs of youth. JBDP links youth with appropriate community-based mental health services. Participation by the youth is voluntary. In order to enter JBDP, the youth must have an Axis I diagnosis.[161] Referrals for this program can be made by any party. Once the youth is referred, the juvenile judge certifies, and the OAG must confirm, the youth's eligibility. The youth's case is then passed to the suitability committee, which includes representatives from CSS, the Department of Behavioral Health, and other service providers. A single juvenile court judge has presided over JBDP since its inception in 2011. Youth who are referred to this specialty court are guaranteed counsel in all proceedings.

There are three tracks in which a youth may participate in JBDP. In the first track, the youth is not required to plead guilty to the allegations but agrees to a program of supervision that, if the youth successfully completes, will result in the case being dismissed without an adjudication. The second track is post-plea, meaning the youth must admit the charges, but upon successful completion of the program, the youth withdraws the plea and the case is dismissed by the OAG. Youth in the third track participate in JBDP as a condition of their probation and may have their probation terminated early if they successfully complete the program.[162] Eligibility for each track is largely offense-based. JBDP Court is held on Mondays and Wednesdays. At the time of the investigation, there was a backlog for accepting youth into JBDP court, with youth in detention receiving priority.

Defense attorneys play a role in JBDP hearings. As one judge stated, defense counsel are crucial in explaining the program to clients and advising them throughout the process, noting that PDS attorneys were very good in this regard. However, the actual role of counsel during the program seemed to be limited. The Investigative Team noticed that defense attorneys rarely spoke in court. Defense attorneys are also not part of the treatment planning process. Stakeholders stated that the holistic approach taken by the judge in charge of the program made it less necessary for on-the-record advocacy. No clear reason was given why defense counsel were not part of the treatment team process. Inclusion of defense attorneys in the planning process could ensure that the youth's interests and expressed goals are a part of the decision-making process. The Investigative Team noticed that even with frequent review hearings, bureaucratic coordination at times resulted in the delay of services. Moreover, even when youth are progressing well in the program, defense attorneys can play an important role in advocating for their clients' expressed wishes throughout the process and ensuring that the collaborative approach does not inadvertently overshadow other rights the child may need help protecting, such as the right to remain silent, where appropriate.

Many stakeholders agreed that the program seemed to be working well. A 2015 report assessing the program found a reduction in recidivism and psychiatric symptoms in JBDP participants.[163] Noting the success of JBDP and that its purpose seemed to mirror the original purpose of delinquency court, many attorneys asked why only a select few cases could benefit from holistic, wraparound services with dedicated service providers who are able to address issues of mental illness, trauma, and emotional obstacles, in a court environment that is focused on youth success over rigid compliance to a litany of orders or punitive accountability.

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161 The Diagnostic and Statistical Manual of Mental Orders (DSM) organizes psychiatric diagnoses into five dimension or axes. An Axis 1 diagnosis consists of all psychological diagnostic categories (clinical disorders) except mental retardations and personality disorder. Axis 1 diagnoses include disorders such as depression and schizophrenia, anxiety disorders, and substance-related disorders. *See* American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (DSM-5) (5th ed. 2013).

162 *Juvenile Behavior Diversion Program Brochure*, Superior Court of D.C. (2014), https://www.dccourts.gov/sites/default/files/division-spdfs/committee%20on%20admissions%20pdf/JBDP_Brochure.pdf.

163 *See* Aaron M. Ramirez et al., *Recidivism and Psychiatric Symptom Outcomes in a Juvenile Mental Health Court*, 66 Juv. & Fam. Ct. J. 31 (2015).

Yet, despite the promise of JBDP, a few things concerned the Investigative Team. The general use of shelter house continued in JBDP, with the court using shelter house as a way station of sorts if services had not yet been set up. JBDP also had just as many, if not more, court hearings, which raised issues of continued absences from school and family having to prioritize court over other obligations. Such intense intervention in the lives of youth and family can be onerous and should be minimized whenever non-justice system interventions are available. Finally, despite the successes of the program, the secondary role of defense attorneys in the process—particularly their exclusion from the treatment planning process—raises concerns about the potential for the gradual erosion of due process if not carefully monitored, especially if the current judge were to rotate out of the assignment and the practices of JBDP changed as a result. Several attorneys remarked that JBDP could be very different if not for the leadership of the judge running the program. The fact that defense attorneys have been part of the court working group responsible for monitoring the program is, however, encouraging.

H. Post-Disposition

Advocacy by defense counsel in the post-disposition context can improve the lives of youth in facilities and residential placements, as well as at home. An attorney can make sure that youth rights and interests are served while they are under court jurisdiction. Attorneys can also track whether ordered services are being provided and are appropriate. They can offer advice and encouragement to the youth. When the youth has been out of the home setting, an attorney can ease the transition home by ensuring that services are uninterrupted, transcripts are sent, school credits are transferred, and other related issues are addressed. Having a lawyer at their side is also invaluable for youth to maintain positive progress in their programs. Moreover, for those youth who are sent out of state after disposition, it is important for youth to understand that there is someone in DC who is advocating for their interests, checking in on them, and supporting them if they face challenges in placement. DC's practice standards state that attorneys must continue to represent clients from the initial court proceedings through disposition, post-disposition hearings, "and any other related proceedings until the case is closed."[164] This includes probation and parole review hearings, probation violation hearings, and hearings on increased restrictions while committed to DYRS, whether that matter is in the court or part of an administrative hearing.[165] Such representation also includes visiting clients wherever they may be placed, maintaining regular contact, advocating for the client who is at risk of being removed from the community, and filing appropriate pleadings if agencies mandated to provide services are not in compliance with court orders.[166] Attorneys should also ensure that when the client is taken out of the home, they are safe and not subject to harmful or abusive conditions.[167]

By statute, juvenile defenders in DC must represent youth until their cases are terminated. All youth in DC are represented at any post-disposition court hearings, including probation violation hearings, review hearings, and any other hearings that take place in the courtroom following disposition.

In addition to court hearings in the post-disposition phase, youth who are committed to DYRS may be subject to DYRS administrative hearings regarding the level of their supervision and liberty. After a youth is committed to DYRS, the agency determines the appropriate level of supervision for youth; the court has no authority to direct placement.[168] Approximately 50 percent of youth committed to DYRS over the past two years were supervised

164 D.C. Juv. Practice Standards, *supra* note 76, § B-5.
165 Nat'l Juv. Def. Standards, *supra* note 42, § 7.7.
166 D.C. Juv. Practice Standards, *supra* note 76, § G-2; Nat'l Juv. Def. Standards, *supra* note 42, § 7.5.
167 Nat'l Juv. Def. Standards, *supra* note 42, § 7.5.
168 *In re* P.S., 821 A.2d 905 (D.C. 2003).

in the community.[169] DYRS conducts "community status review hearings" when committed youth are alleged to be in non-compliance with DYRS release conditions in order to review whether to increase the youth's level of supervision, including removal from the community. In 2016, DYRS instituted community status review proceedings against 77 youth, finding a need to increase the level of restrictions placed on 50; as of September 30, 2017 the agency had initiated community status review proceedings against 24 youth, finding a need to increase the level of restrictions placed on 18 of them.[170] DYRS regulations allow for counsel to be at these hearings. Sources within DYRS say it is not unusual for youth to waive their right to an attorney at this stage, though the agency was unable to provide data on how often that occurred. Youth who have not had any contact with their attorneys since they were committed may either not understand the value of such assistance or not know how to contact their attorney. Whatever the case, waiver of a right—even a right provided through a municipal regulation that governs DYRS administrative hearings—must be knowing, intelligent, and voluntary. If youth are not provided access to counsel before making the decision to proceed without the assistance of a defense attorney, it is doubtful the youth have a full understanding of the legal and practical consequences of the waiver, calling into question the validity of the proceeding.

PDS clients benefit from substantial representation when they are securely confined at DYRS's commitment facility, New Beginnings, or at YSC, where youth who are detained pending community status review hearings are held. PDS's Juvenile Services Project (JSP) provides representation to PDS clients at disciplinary hearings and community status revocation hearings. JSP may, at times, provide some limited representation for youth who are represented by non-PDS attorneys in such hearings, so long as there is no conflict and the attorney of record agrees. Defense attorneys and institution staff alike recognize the importance of JSP; one person described JSP as putting DYRS "through the ringer." One staff person stated that, "JSP provides great representation for their clients" and they did a much better job of staying involved with youth post-disposition than CJA attorneys. While JSP may provide some advocacy to CJA clients in community status revocation hearings, if a conflict exists, JSP is barred from assisting.

Stakeholders interviewed for this report noted that students from the clinical programs, particularly the Georgetown JJC, provided consistent post-disposition advocacy for clients. Though the clinic model means representation may change with student turnover, the clinic has established a system that retains institutional knowledge about clients in order to provide consistent representation throughout a youth's case. Each student's caseload includes post-disposition cases. During the summer when school is not in session, the faculty handles the post-disposition caseload. Detailed transfer memoranda are required of each student to ease transition and lessen the chance that information will be lost. Georgetown represents youth in post-disposition matters that take place both in the courtroom and in ancillary matters such as DYRS community status review hearings.

DC is also home to two unique organizations providing distinct models of post-disposition services. The School Justice Project (SJP) and Open City Advocates are non-profits started by DC-based attorneys who saw an opportunity to improve post-disposition and successful life outcomes for delinquency-involved youth.

Started in 2013, SJP provides education advocacy to youth from the ages of 17 to 22. In addition to conducting school-related advocacy, SJP assists youth with obtaining necessary social and therapeutic services and receiving support at school. SJP also coordinates with various entities for youth returning from placements. SJP consists of three attorneys and one administrative staff person. Cases are accumulated through referrals.

169 In FY 2016, of 410 total committed youth, 218 were held in New Beginnings or an out-of-state placement; in FY 2017 of 335 total committed youth, 173 were held in New Beginnings or an out-of-state placement. This information was provided pursuant to a FOIA request and is on file with the authors.

170 This information on calendar year statistics was provided pursuant to a FOIA request and is on file with the authors.

Open City Advocates provides post-disposition services to youth committed to New Beginnings. Through a combination of law students and pro bono attorneys, Open City Advocates staff mentor youth both during and after their commitment, monitor their progress while in the institution, and assist in smoothing the reentry process when youth return to the community. According to recent data, only ten percent of youth represented by Open City during post-disposition were convicted of a new crime in the six months after release, versus 36 percent of youth overall. In 2016, 82 percent of Open City's clients were either reenrolled in school or employed.[171]

Despite the obligation, levied by both statute and practice standards, to provide post-disposition representation, many juvenile defense attorneys do not provide the requisite level of representation in or out of the courtroom.

In the courtroom, the Investigative Team observed lackluster advocacy at probation and commitment review hearings, little to no advocacy challenging allegations of technical probation violation hearings,[172] and attorneys who said virtually nothing during these hearings. In one probation review hearing observed by the Investigative Team, the probation report noted that the youth had a positive marijuana test, had issues with his GPS compliance, and had missed a few days attendance at CSS's Balanced and Restorative Justice (BARJ) reporting center. In one sentence, the CJA attorney vaguely alluded to the youth having problems with transportation to the BARJ facility, then notified the court he needed to prepare for another case in a different courtroom. The burden of advocating for the youth fell to the teen's father. The father explained to the judge that the family was going through a family emergency and his daughter had been helping out. The father also explained that housing instability caused the youth to miss BARJ. The attorney remained silent the entire time. While the judge ultimately admonished the youth and did not detain her, the result had little to do with the attorney's presence in the room; in this case, the father, not the attorney, was the youth's advocate.

Insufficient advocacy by defense attorneys in probation violation hearings was not an isolated incident. As one CSS caseworker admitted, defense attorneys rarely questioned or challenged any information underlying alleged technical violations or highlighted deficiencies in treatment plans or failures by service providers.

For CJA attorneys, the problem seemed to be two-fold and related: (1) the payment structure does not make it clear that the court will compensate them for post-disposition advocacy beyond court appearances; and (2) the general culture in DC's juvenile court does not seem to value active post-disposition defense representation. Stakeholders reported that some CJA attorneys were known to tell their clients that they no longer represented them after disposition, though they still remained the attorneys of record. As one CJA attorney admitted: "You need to find ways to incentivize attorneys to do post-disposition work." Attorneys report that post-disposition work is not one of the billable options available to them in the voucher system, particularly if there is no court hearing attached to the work. Not only does that create a disincentive to do the work, it also implies the court does not place much value on post-disposition advocacy. It is important to note that the administrative order that outlines the CJA payment structure explicitly contemplates payment for "[r]epresentation furnished other than in the Superior Court or the District of Columbia Court of Appeals" and assigns a cap of $500 for such advocacy in a given case.[173] Yet actual practice does not seem to support this.

At the time of the writing of this assessment, a case is pending before the DC Court of Appeals where the juvenile court refused to pay CJA attorneys for representing clients at critical points of post-disposition, including DYRS community status review hearings.[174] NJDC and other juvenile justice

171 Sarah Kellogg, *Impacting Juvenile Justice: Meet Open City Advocates*, Washington Lawyer 23, 24 (Nov. 2017).
172 "Technical violations" are alleged violations of conditions of probation that are not based on a new juvenile offense.
173 Superior Court of the District of Columbia Administrative Order 09-06, CJA and CCAN Fee Schedule.
174 *In re* N.H.M., No. 16-FS-1289(L), 16-FS-1290 (D.C. filed Dec. 16, 2016).

organizations have submitted an amicus brief advocating that youth have a right to counsel during this critical stage of the youth's case and that all court-appointed attorneys must be compensated for such representation.[175] At DYRS revocation hearings, substantial liberty interests of youth are at stake: the agency is determining whether to remove a youth from the community and place them in a higher level of out-of-home supervision, such as a residential treatment center or New Beginnings. As amicus, NJDC argues that to deny assistance of counsel at this crucial point violates the constitutional rights of these youth.[176] At the time this report went to print, the case had not yet been decided.

Even post-disposition advocacy by frontline PDS juvenile defense attorneys fell short of the ideal. While PDS attorneys acknowledged that thorough post-disposition advocacy should include visits to facilities, calls to clients in their homes or placements to monitor progress while on probation, and representation in revocation hearings, this does not always happen. As one PDS attorney stated, realistically their post-disposition practice was "more reactive than proactive."

PDS relies primarily on JSP for the bulk of post-disposition advocacy. Since JSP's advocacy is limited to advocacy within the institutions, the most consistent post-disposition advocacy by PDS has been that within the secure commitment facility, New Beginnings, and within the YSC, for youth detained for community status reviews or awaiting post-disposition placement. CJA attorneys have also come to rely on JSP representation for their clients at revocation and discipline hearings. In addition to disincentives created by the compensation structure and culture, CJA attorneys told the Investigative Team that the quick timelines of institutional hearings meant that they often could not attend. While JSP has become a valuable ally in assisting CJA attorneys with these hearings if there is no conflict, JSP has also come to be a crutch or a non-perfect fix for a structural failure of large-scale CJA post-disposition representation.

Even though JSP attorneys are well-trained and experts in their jobs, they are not the attorneys of record for youth who have CJA attorneys. In effect, JSP is providing ad hoc representation to youth without providing the continuity of services that youth need and that are called for by national standards. At least for PDS's clients, JSP attorneys have access to the files and notes of the attorney. But such is most likely not the case for CJA attorneys. Moreover, the timeline of hearings makes it unrealistic for any more than superficial transfer of information about a client to the JSP attorney.

Across the board, many attorneys reported not always knowing where their committed clients were placed during the post-disposition phase. This is particularly troubling when the youth is taken out of the home. For CJA cases, the youth often did not know who their attorney was and their attorneys did not know where their clients were, unless a court hearing occurred. PDS attorneys were also reported to not always know where their clients were, such as when a youth may have been released to their home, only to later have that release revoked for some allegation of non-compliance. This signals a failure of vigorous post-disposition client communication and connection.

Post-disposition advocacy is not necessarily time-intensive but can have a huge impact on youth. On the front end of commitment, the attorney can ease the transition to commitment services and, if there is a disruption, alert the appropriate parties. For example, the attorney could ensure that the youth has their educational transcript sent to the residential treatment center. The attorney could touch base with the youth at least once a month by placing a phone call or sending an email or text. If a youth is returning to the community, the attorney could work with both caseworkers and the family to ensure that a home is waiting for them. If the youth does not have a place to live, DYRS may place the youth in a group home until a place is found, but that youth could languish in placement without

175 Brief for Amicus Curiae National Juvenile Defender Center in Support of Appellant and Reversal, *In re* N.H.M., No. 16-FS-1289(L), 16-FS-1290 (D.C. filed Dec. 16, 2016).

176 *Id.*

pressure from the youth's attorney to find a suitable alternative. Yet, the Investigative Team found that these types of advocacy were not regular practice.

As one stakeholder stated, attorneys should know the DYRS counselors assigned to their clients' cases and be involved in Team Decision-Making Meetings so they can identify relevant issues and be the client's advocate throughout the post-disposition decision-making process. Team Decision-Making Meetings are held to determine the best treatment and rehabilitation plan for the youth, based on the youth's individual strengths and needs, and are used as the basis for DYRS's programming plan for each committed youth.[177] The meetings are comprised of the youth, DYRS worker, a mediator/facilitator, group home or foster care representatives, and potentially a parent, service providers, or other involved entities. The youth's attorney, though a potential participant, is rarely at these meetings unless the youth has legal representation from the School Justice Project, Open City Advocates, or Georgetown's clinic. As one attorney stated, such absence was a shame because an attorney's advocacy could be invaluable at these meetings. In these meetings, the team would note all the instances of noncompliance with DYRS conditions by the youth. An attorney would be able to advocate against the allegations or at least provide context. Many youth are incapable of advocating for themselves, particularly when faced with a group of adults claiming the youth did something wrong. The attorney could also ensure that positive aspects and strengths of the youth are recorded. PDS and CJA attorneys were reported to rarely attend these meetings. As such, the majority of youth going through this process were without any legal advocates.

Some attorneys alleged that DYRS intentionally fails to notify the youth's attorney of the dates and times of these meetings or does so only at the last minute, when it is likely attorneys will not be able to attend. This runs counter to DYRS internal policies, which list the youth's attorney as a suggested participant at every care planning meeting contemplated by the manual.[178]

Another obstacle to post-disposition access to counsel is specific to DYRS's New Beginnings facility. Unlike at YSC, New Beginnings has no private meeting space for attorney-youth consultations. Attorneys who have visited their clients at New Beginnings report that staff at times refused to leave the room for "safety reasons" or simply refused to provide a private space where necessary, confidential attorney-client consultation could occur. The excuse of safety rings hollow, given that attorneys meet privately with youth clients at YSC and adult clients at the DC jail without any concerns for safety. The failure to provide necessary confidential space is itself a systemic barrier to effective post-disposition access to counsel.

Youth placed out of state by DYRS arguably have the least access to post-disposition counsel but may have the greatest need for it. DYRS may place youth in substance abuse inpatient facilities, family/therapeutic group homes, residential treatment centers, and psychiatric residential treatment facilities outside of the DC Metropolitan area. These placements can be made across the United States, as there are limited facility options near the District. Attorneys talked of clients being held in facilities as far away as Florida or Arizona. Just under one-third of all youth committed to DYRS are placed out of state.[179] As with clients who are confined to New Beginnings or YSC, the responsibility of ensuring that the placement is appropriate and not harming the youth should not be abdicated to a DYRS worker or a family member, yet attorneys often do precisely that. These out-of-state treatment facilities are regulated, but there

177 *Team Decision Making Meetings*, DC.GOV, DEP'T OF YOUTH REHABILITATION SERVS., https://dyrs.dc.gov/page/team-decision-making-meetings (last visited Apr. 5, 2018).

178 DEPARTMENT OF YOUTH REHABILITATION SERVICES, CARE PLANNING AND COORDINATION HANDBOOK F-13–F-15, (2017) (on file with NJDC).

179 For FY 2016, out of state placements accounted for 31 percent of commitments (or 126 youth); for FY 2017 30 percent of commitments (or 108 youth) were placed out of state. This information was provided pursuant to a FOIA request and is on file with the authors.

are more than enough accounts of abuses at these facilities to warrant independent monitoring.[180] Social workers at PDS, and at times attorneys, conduct visits to DYRS-contracted treatment facilities when they learn that a youth's situation is deteriorating, to verify services are in place, to figure out if a school setting is appropriate, and to assess what interventions may be needed. But this is not routine and checks are not made at all placements. The Investigative Team had no reports or examples of CJA attorneys providing such assistance to clients placed in out-of-state facilities. Given the reported difficulty of receiving any payment for advocacy outside of the courtroom, this is understandable. However, even phone calls to youth in residential treatment and conversations with service providers in those facilities are reportedly not routine across all categories of defense attorneys.

I. Appeals

Robust juvenile appellate practice is a sign of a well-functioning juvenile defense system. Trial attorneys must advise clients of their right to appeal and about the potential advantages and disadvantages. If a client chooses to appeal, their defense attorney must file a notice of appeal, order a transcript, and fulfill any other necessary obligations until appellate counsel is appointed.[181]

PDS has a separate appellate unit consisting of dedicated appellate attorneys. The unit is largely responsible for a significant percentage of DC's case law on criminal procedure and juvenile delinquency. PDS even litigated the issue of indiscriminate shackling of youth in the Family Court, prior to the presiding judge issuing an administrative order aimed at eliminating the practice. For CJA cases, an appellate panel handles the appeal.

Despite these opportunities, appellate litigation in the District does not have a specialized focus on the juvenile-specific jurisprudence that has begun to percolate around the country since the U.S. Supreme Court's recognition of youth difference. There have been few reported appeals grounded specifically in issues of adolescent development in areas such as search and seizure, competency, and *Miranda* waiver.

This seemed to be in line with a general sense from practitioners that, while adolescent development may explain more about the behavior of youth, few could clearly articulate how adolescent development could impact legal practice, arguments, motions, and judicial decisions. The Investigative Team felt that the lack of a specific juvenile focus in appellate advocacy constituted a lost opportunity given the talent and skills of the appellate advocates in DC, particularly at PDS.

Finally, while the District is one of a minority of jurisdictions that provide a mechanism for expedited interlocutory appeals of detention hearings, it is rarely used. Attorneys point out that a determination as to whether a youth poses a danger is particularly subjective and that, even despite the overuse of detention during the investigative period, few felt that an appellate court would find an abuse of discretion by the trial judge, which is the legal standard required for reversal on detention determinations.

180 *See, e.g.*, Adam Schiff, *A Bill to Finally End the Abuse of Teens at Residential Treatment Programs and "Boot Camps"*, Huffington Post (Sept. 14, 2015, 10:13 AM), https://www.huffingtonpost.com/rep-adam-schiff/a-bill-to-finally-end-the_b_7787814.html; Nancy Phillips & Chris Palmer, *Death, Rapes, and Broken Bones at Philly's Only Residential Treatment Center*, Philly.com (Apr. 22, 2017, 6:29 AM), http://www.philly.com/philly/news/pennsylvania/philadelphia/Death-rape-Philadelphia-Wordsworth-residential-treatment-center-troubled-youth.html.

181 D.C. Juv. Practice Standards, *supra* note 76, § I-1; Nat'l Juv. Def. Standards, *supra* note 42, §§ 7.3, 7.4.

IV. OPPORTUNITIES TO IMPROVE JUSTICE AND FAIRNESS FOR CHILDREN AT A SYSTEMIC LEVEL

Juvenile defense attorneys do not work in a vacuum, and there are significant systemic issues that may negatively impact their ability to provide quality juvenile defense for their clients. The Investigative Team found several areas in which justice system improvements would have a noticeable effect on juvenile defense and procedural justice for youth in the District of Columbia.

A. Shackling

Placing shackles on youth can have profoundly negative effects. Clinical psychologists, pediatricians, and other adolescent development experts note that shackling is degrading for young people, that it harms identity development, and that young people are more vulnerable to lasting harm from feeling humiliation and shame than adults.[182] The practice also impedes the attorney-client relationship, chills juveniles' constitutional right to due process, runs counter to the presumption of innocence, and draws into question the rehabilitative ideals of the juvenile court.[183] Despite recent efforts to reform the practice, the District regularly engages in indiscriminate shackling of youth—the practice of universally restraining youth without an individualized assessment of whether shackling is appropriate for each child—throughout its juvenile justice system.

In recognition of the negative impacts of shackling of youth, the presiding judge of the DC Superior Court promulgated Administrative Order 15-07 in 2015, which requires an individual determination in each case as to whether restraints are necessary on youth in secure custody when they appear in the courtroom. The administrative order explicitly states that it does not affect shackling during transportation but that the court "will make an independent and individualized determination on the use of restraints" and "will order the removal of restraints, unless the Family Court finds that there is reason to believe that the use of restraints is necessary for the safety of the respondent or others, or to prevent flight."[184] With this order, DC joined a growing number of jurisdictions throughout the country that have prohibited indiscriminate shackling of youth in court by statute, court rule, and other policy measures.[185]

Despite this order, youth in DC's juvenile court face indiscriminate shackling daily. As the youth's advocate in the courtroom, defense counsel bears the ultimate responsibility for advocating for removal of restraints and for monitoring compliance with jurisdictional directives regarding shackling.[186] Yet throughout the assessment period, not a single defense attorney acknowledged the use of shackles on the record, let alone advocated against the use of shackling. Young people routinely appeared in court with handcuffs, belly chains, and leg irons. Despite the order's direction that the court "will make" a finding on the appropriateness of such restraints, the Investigative Team saw not a single hearing on this issue. These restraints visibly weighed children down and made movement difficult. Shackling of youth had no correlation to the seriousness of conduct. The Investigative Team saw youth accused of minor delinquency offenses such as drug possession and shoplifting—and even in PINS matters such as running away from home—who were fully chained and shackled while in court.

182 *See, e.g.*, Aff. of Dr. Julian Ford (Dec. 11, 2014), http://njdc.info/wp-content/uploads/2014/09/Ford-Affidavit-Final-Dec-2014.pdf; Aff. of Dr. Gene Griffin (Dec. 12, 2014), http://njdc.info/wp-content/uploads/2014/09/Griffin-Affidavit-II.pdf; Aff. of Dr. Marty Beyer (Jan. 15, 2015), http://njdc.info/wp-content/uploads/2014/09/Beyer-Affidavit-w-CV-Jan-2015-Final.pdf; Aff. of Dr. Robert Bidwell (Feb. 12, 2015), http://njdc.info/wp-content/uploads/2014/09/Bidwell-Shackling-Affidavit-General-April-2015.pdf.

183 *See* Campaign Against Indiscriminate Juvenile Shackling, Toolkit 4, 8 (2016) [hereinafter CAIJS Toolkit], http://njdc.info/wp-content/uploads/2016/01/Toolkit-Final-011916.pdf.

184 Super. Ct. D.C., Admin. Order 15-07 (2015).

185 CAIJS Toolkit, *supra* note 183.

186 Nat'l Juv. Def. Standards, *supra* note 42, § 3.8.

While most juvenile justice stakeholders interviewed for this report said that they opposed indiscriminate shackling of youth, actual practice contradicted these sentiments. The one time the Investigative Team saw a youth who was in custody but not shackled inside the courtroom was in the case of a youth with known mental health concerns who was in the care of DYRS's "at risk" staff, rather than with the U.S. Marshals.

In interviews, defense attorneys stated they knew they could ask for clients to be unshackled and claimed that at times they did so. Judges stated that they often brought it up before proceedings began. Prosecutors stated that they were also encouraged to speak up when youth are in shackles. The Investigative Team did not see such advocacy, however. Of the 18 hearings involving detained youth observed by the Investigative Team, 17 of those youth appeared in shackles. In only one of those instances was the issue ever addressed on the record. In that case, the judge apologized to the youth for not being able to remove the shackles and explained the restraints were necessary for court administrative reasons. This, despite the fact that the administrative order requires a finding that the individual child be a risk of flight or a danger to themselves or others.

While most juvenile justice stakeholders interviewed for this report said that they opposed indiscriminate shackling of youth, actual practice contradicted these sentiments.

Interviews and observations revealed that an internal U.S. Marshals administrative policy had a profound impact on the practice of shackling and related advocacy by defense counsel. All stakeholders seemed to abdicate their responsibilities under the court's administrative order to accommodate this policy. According to the Marshals' policy, a youth can only be unshackled if there are two marshals in the courtroom. This policy, by definition, does not afford any individualized assessment of a youth's level of risk as required by the administrative order. Moreover, at no point throughout the assessment did more than a single marshal ever staff any of the courtrooms observed. This staffing choice by the U.S. Marshals Service automatically placed their internal policy in conflict with the chief judge's order in every single case involving a detained youth. Judges and attorneys universally deferred to the Marshals' staffing policy. The policy has effectively rendered the chief judge's order on shackling meaningless.

Defense counsel said they felt hamstrung by this "two-marshal rule." In many instances, they and their clients felt the policy made them choose between two bad options—agree to be shackled without any finding that shackles are necessary or raise the issue and have the case postponed for hours until the U.S. Marshals Service sent a second marshal to the courtroom. Not only did the latter choice take up valuable time for the attorney, but it also meant family members would have to stay longer and miss work or other obligations while waiting for the second marshal. Attorneys also spoke of a strong subtext that they would be villainized or penalized by courtroom staff if they asked for shackles to be removed. Such requests, attorneys stated, were perceived as throwing a wrench into courtroom efficiency. Hence, the overwhelming sense from advocates and other personnel was that advocating for the youth's right to be free from shackles would be met with retribution.

The authors of the two-marshal policy, the U.S. Marshals Service, expressed a strong belief that shackling was essential and that it kept youth safer. One marshal said that shackling children protected the children from the marshals who were trained to respond to certain levels of aggression with force, rather than with de-escalation techniques. This raised the question among the Investigative Team whether it made sense to defer to the policy of an organization that did not share the same beliefs about indiscriminate shackling as the court. The Marshals Service's stance also seemed to legitimize stakeholders' belief that there was no incentive to honor the administrative order and staff the courtrooms with more than one marshal.

DYRS, which manages the transportation of every youth from its two secure detention facilities to the courthouse, is responsible for managing youth who are deemed "at risk" once they get to the courthouse. By statute, DYRS is to deliver all youth who are not at risk to the Marshals upon arriving at the courthouse.[187] DC Superior Court Administrative Order 15-11 outlines what makes a child "at risk": youth who are under age 13 or those over age 13 who are particularly vulnerable, based on physical or mental health concerns, gender identity, sexual orientation, or who are charged with PINS offenses. DYRS policy includes a presumption against shackling, except during transportation. However, the Investigative Team observed that at-risk youth under DYRS supervision appeared in court shackled more often than not. In each of those cases, defense attorneys did not raise the issue of shackling, even in cases where there were two DYRS workers in the courtroom.

Attorneys also spoke of a strong subtext that they would be villainized or penalized by courtroom staff if they asked for shackles to be removed. Such requests, attorneys stated, were perceived as throwing a wrench into courtroom efficiency.

Some believed that the wording of the administrative order on shackling contributed to the problem. The order presumes detained youth will be shackled as they enter the courtroom and be unshackled only after a hearing on whether restraints are appropriate. Other jurisdictions have chosen instead to presume that youth are not a danger and not in need of shackling unless a stakeholder gives the court a justification for that child needing to be restrained.[188] Only after such a finding would restraints be authorized within the courtroom.

As one investigator noted, it is a problem of institutional perspective and culture. "When you are a hammer, everything looks like a nail; the Marshals are trained in the management of adult prisoners and in the use of physical force to maintain order. So they can't perceive of young people needing to be treated any differently." Marshals interviewed for this report admitted that they are not trained in how to work with adolescents, are not encouraged to use de-escalation techniques with youth, and are required to follow all policies of restraint put in place for adults. One marshal even acknowledged that his agency should not be working with youth, pointing out that DRYS workers were trained to manage youth and that marshals were not.

B. Holding Facilities at the Court House

All youth who are detained at YSC or New Beginnings are under the care of DYRS, which is responsible for transporting them to the courthouse for hearings. Upon arriving at the courthouse, detained youth are held in two different secure areas while awaiting their hearings. DYRS is responsible for youth in the At-Risk Room, while the U.S. Marshals Service manages the general juvenile cellblock.

The DYRS At-Risk Unit is a holding area with four male group-holding cells and two female group-holding cells. At the time of this assessment, the area was staffed by six DYRS employee. The DYRS staff appeared to have a youth-centric approach to working with those in their care. The area itself appeared to be clean, well-lit, equipped with surveillance cameras, and at a comfortable temperature. The toilet area had a partition designed to shield the youth from others and cameras. Staff reported that they had never heard of a youth complaining that they had not yet seen their attorneys and spoke generally favorably about the observed interactions with attorneys. There was, however, only a single room set aside for attorneys to have confidential conversations with

187 D.C. Code Ann. § 16-2310.01 (West 1986).

188 *See, e.g.*, Conn. Gen. Stat. Ann. § 46(b)-122(a) (West 2015); Fla. R. Juv. Proc. 8.100(b); 237 Pa. Stat. and Cons. Stat. Ann. § 139 (West 2011).

clients. DYRS staff said that there could be a backup of attorneys standing in the entryway waiting to use the room if it was a busy day, which could create pressure for attorneys to finish conversations quickly. DYRS staff are trained in de-escalation techniques for youth, and those who interacted with the Investigative Team appeared generally concerned with the welfare of the youth. Though DYRS staff did not carry weapons, at-risk youth—those deemed to be the most vulnerable and thus placed in DYRS care—were still shackled when transported to and from the courtrooms.

The U.S. Marshals Service oversees the regular juvenile holding area where the bulk of the in-custody youth are housed. The area has the capacity to hold 30 youth. One marshal estimated that on a typical day, there would be 20 youth, though at times the number has been as high as 40. The marshals reported that they had never received a complaint from an attorney regarding access to clients. However, attorneys must speak with their clients through a Plexiglas barrier that does not have a cut-out to allow attorneys to pass youth court documents and other papers for review and signature. Attorneys also report that the area is monitored by marshals, and it was unclear whether the marshals could hear these conversations. This interview area is available daily, but only before noon. After noon, attorneys can only talk to their clients in the holding cells behind the courtroom, which provide no privacy. Attorneys reported that the marshals stationed in the cell block will permit only a single attorney visit each morning; if the attorney forgets something or something occurs that requires the attorney to speak with the client again, they are told it has to wait until the youth are brought to the courtroom holding cell later in the day.

As reported earlier, stakeholders readily admitted that U.S. Marshals did not have the expertise to deal with detained youth. None of the marshals underwent specialized training on interacting with youth or youth development and trauma. The marshals regularly referred to detained youth as "prisoners." Their holding facility is operated like an adult correctional cellblock. The marshals had no ability to deal with issues that went beyond security, such as supplying youth with food, drink, or medication if necessary. One marshal told the Investigative Team that if a youth needed something—even a blanket—that would have to be supplied by DYRS. Without DYRS staff in the general youth holding block, and with attorney access to the cellblock terminated at noon, it is left to the marshals to seek out such assistance only if they feel it is warranted.

A common sentiment amongst the marshals was that DYRS staff were better at handling youth because of their experience and training. One marshal said he would like to see DYRS take over responsibility of all youth: "We will turn over the keys and DYRS can have this space." The U.S. Marshals Service has its own set of policies and procedures, which were developed for use on adults, including use of force and search procedures. One particularly egregious procedure security staff reported was that youth have to undergo a groin search upon entry to the cellblock. While the marshals recognized that having grown adults handle a youth's genitals might be traumatic for the youth, particularly those who may have endured abuse previously, they said they were not permitted to make any exceptions to this policy.

Another concern of the Investigative Team was that the marshals and DYRS often do not release youth immediately when the court has ordered a child's release or when youth have had their charges dismissed or "no papered." Marshals reported that delays in paperwork from the courtroom could mean that youth wait for hours in custody even though they should be released. The marshals stated that this can make youth distressed and cause problems. For example, they recounted one instance in which a youth who had learned his charges had been dismissed had remained in custody for hours. Eventually this youth got so agitated with the delay that the marshals used a taser on him. That youth ultimately incurred additional charges as a result of that incident even though his underlying charges had been dismissed.

C. Racial and Ethnic Disparities

Racial and ethnic disparities in delinquency systems across the country are well documented. DC is no exception. The overwhelming majority of the youth in DC's juvenile courts are African American, along with a growing population of Latino youth. While white youth make up 25.3 percent of the overall youth population in the District of Columbia, stakeholders interviewed for this assessment said that white youth were "rarely" or "almost never" prosecuted in juvenile court. During the courtroom observations, the Investigative Team saw not a single case involving a white youth.[189] At the arrest stage, Black girls in DC are 30 times more likely to be arrested than either white boys or girls.[190] Black boys in DC are 83 times more likely to be arrested than either white boys or girls.[191] The percentage of African American and Latino youth detained is even higher. In 2015, 100 percent of youth committed to the care of DYRS were African American. In 2016, that percentage dropped to 96 percent, with the remaining four percent made up of Latino youth.[192] In a system with this level of racial and ethnic disparity, defense counsel can play a crucial advocacy role.

Defense counsel must practice with cultural competency and be cognizant of their own biases and attitudes.[193] Attorneys must also be on guard for any bias by stakeholders and raise issues of racial disparities and other bias based upon the client's identity.[194] Advocacy should include empirical research and other data on disparate treatment.[195]

As the Investigative Team observed, the demographics of DC's juvenile defense bar differ significantly from that of the clients they represent. One stakeholder who worked closely with many of the newer juvenile attorneys stated that some of these attorneys often do not understand African American family dynamics and culture and have a difficult time communicating with family members as a result.

On a system-wide level, the issue of race seemed both obvious and ignored at the same time. As one court staff member stated, "All black males are seen as one and the same [by the system]." Race was rarely raised by defense counsel when advocating for release, at disposition, for lesser probation conditions, or at any hearings.

> ***In 2015, 100 percent of youth committed to the care of DYRS were African American. In 2016, that percentage dropped to 96 percent, with the remaining four percent made up of Latino youth.***

The increase in Latino youth, particularly those coming from immigrant families, has also raised the issue of access to interpreters and other language-access issues. Client communication requirements for defense counsel do not change because the client speaks a language other than English. In circumstances where the attorney does not speak the client's language, the attorney should request an interpreter and obtain any other assistance to ensure that representation is not compromised because of language barriers.[196]

189 In 2015, Black youth made up 63.1 percent of the District's overall population of youth under age 18 and Hispanic youth constituted 14.3 percent of the youth population. Kids Count provides an interactive map to compare child well-being in different states. *See Choose a Location*, Kids Count Data Center, http://datacenter.kidscount.org (last visited Apr. 5, 2018).

190 Yasmin Vafa et al., Rights4Girls & Georgetown Juvenile Justice Initiative, Beyond the Walls: A Look at Girls in D.C.'s Juvenile Justice System 29 (2018) (citing data provided by the Metropolitan Police Department in response to a FOIA request and analyzed by the report authors).

191 *Id.* at 29 n.197.

192 *Youth Population Snapshot*, DC.gov, Dep't of Youth Rehabilitation Servs., https://dyrs.dc.gov/page/youth-snapshot (last visited Apr. 5, 2018).

193 Nat'l Juv. Def. Standards, *supra* note 42, § 2.6.

194 Nat'l Juv. Def. Standards, *supra* note 42, § 2.7.

195 *Id.*

196 D.C. Juv. Practice Standards, *supra* note 76, § C-4.

The Latino youth population comprises over 14 percent of DC's population.[197] Attorneys and judges remarked on the need for greater out-of-court access to interpreters or for bilingual probation officers, as well as a lack of bilingual Spanish-English defense attorneys. Stakeholders could only think of one attorney on the juvenile CJA panel who they would consider bilingual in Spanish. Stakeholders also reported that there were few resources for foreign language-speaking youth in custody.

In one PINS case observed by the Investigative Team, a Spanish-speaking youth was referred to therapy, even though there were no Spanish-speaking interpreters at that program. There are also very few Spanish-bilingual probation officers, and stakeholders reported that the need exceeded capacity within CSS. Even if the youth speaks English, the youth's parents may not. This concern was expressed by probation staff but did not come up in any defender conversations. Defense attorneys should consider advocating for greater language access for their clients, where appropriate, to better help clients who require language assistance in all aspects of court involvement.

D. Use of Detention and Other Restrictions on Liberty

With juvenile crime falling throughout the country, many juvenile facilities have seen a drop in the detention population. Even when there are corresponding drops in secure confinement—which was not necessarily the case during the Investigative Team's investigation—defense counsel must be on guard against any increased use of other restraints on liberty, such as shelter house placement and electronic or GPS monitoring. While these alternatives might be useful in making stakeholders more comfortable with avoiding secure confinement, these kinds of restrictions on liberty must still only be used when necessary and appropriate on an individual basis, not as a default.

1. Detention

At the time of the Investigative Team's site visits in March 2017, DC's detention rates had increased significantly from prior periods, despite the attendant drop in juvenile crime and arrest rates. During the investigation period, the detained population at YSC ranged between a low of 86 and high of 108 youth, with an average daily population of 91.4 for the month of March.[198] YSC staff told the Investigative Team that the facility's capacity was 88 residents. One defense attorney estimated that one-third to one-half of his clients were at YSC. When stakeholders were asked why there was such a high rate of detention in the District, most said it had to do with the philosophy of the judges who served in juvenile court at that time. When juvenile crime is falling throughout the country and jurisdictions are shifting from incarceration models, it was disheartening for the Investigative Team to hear of rising detention rates in DC. According to DYRS's own records, YSC was over capacity for 145 days during fiscal year 2017.[199] One stakeholder reported that when YSC was beyond capacity, youth slept on cots in the halls. Investigative Team members observed extra cots stacked in common areas while visiting YSC. Stakeholders also reported that the rate of detention for girls has increased. At the time of the Investigative Team's visit, one of the YSC boys' units had been converted to accommodate the increase of girls. At the time of the investigation, there were 33 girls at YSC.

Particularly striking to the Investigative Team were the sentiments of institutional staff. Those interviewed expressed consternation at the detention levels. Staff mentioned that kids as young as 12 were held at YSC, stating that "courts are jam-packing us with kids." PINS youth are intermingled in the population, and staff recognized that this was

197 Kids Count Data Center, *supra* note 189. Compare with the U.S. Census Bureau, which puts the 2016 Latino population—both adults and youth—at nearly 11 percent of the District's population. *See Hispanic or Latino Origin: American Community Survey 1-Year Estimates*, Census Reporter, https://censusreporter.org/data/table/?table=B03003&geo_ids=16000US1150000&primary_geo_id=16000US1150000 (last visited Apr. 5, 2018).

198 Daily population counts from March 1 through March 19, 2017, *Youth Population Snapshot: Population Statistics for DYRS-Run Facilities*, DC.gov, Dep't of Youth Rehabilitation Servs., https://dyrs.dc.gov/page/youth-snapshot.

199 Information provided on October 17, 2017 pursuant to a FOIA request on file with the authors.

hard on the PINS youth. The increase in numbers was also making it harder to maintain appropriate separation between youth.

It is important to note that detention rates can and do fluctuate. For the month of December 2017, the average daily population at YSC was 34.1.[200] Subsequent interviews with stakeholders suggested that a change to DC's juvenile detention law that took effect on July 1, 2017 may have been the impetus for the change. Prior to July 2017, when detention rates were significantly higher, the statute allowed for detention if the court found it was necessary to "protect" the youth.[201] Many defense attorneys complained that judges interpreted this provision very broadly to justify the incarceration of children for technical violations of release conditions or probation, or for infractions such as staying out late at night, marijuana use, or any number of behaviors that the court believed could arguably place the youth in danger. With the change in the statute, youth may now only be detained if they pose a risk of significant harm to the person or property of others or if detention is necessary to secure their appearance at the next court date.[202] This change in the statute may explain why detention rates dropped significantly without any change in the judges who were assigned to juvenile court.

While the stark decrease between the Team's visit and the finalization of this report is encouraging, all stakeholders—but particularly juvenile defense attorneys—must be vigilant in consistently working to decrease the number of youth detained.

Detention numbers may trend up or down depending on a number of factors, but there should be a concerted plan by juvenile justice stakeholders to commit to a decrease in the use of detention as there has been in other jurisdictions. Detention is not a successful or effective mode of rehabilitation and may ultimately undermine public safety.[203]

2. Shelter House Placement

As noted in a previous section of this report, equally disconcerting to the Investigative Team was the prevalent use of shelter house placement pre-trial. A shelter house is an out-of-home placement, the use of which is regulated by DC law. The Code requires youth placed in shelter houses to be brought to trial within 45 days,[204] in recognition of the heightened liberty burden placed on these youth. The statutory standard for determining whether shelter home placement is necessary remains the same whether it is pretrial or awaiting disposition.[205]

At least one judge said they kept the youth at the shelter house in order for the youth to receive services. But in many instances, the Investigative Team observed hearings involving youth already in shelter houses being continued to a later date because services had not been set up, despite a juvenile court rule that requires disposition for youth placed in shelter houses to occur within 15 days.[206] The frequent use of shelter houses also resulted in a backlog in which youth ordered to shelter houses were detained at YSC while waiting for space to open at a shelter house. Stakeholders reported that youth could wait in YSC for up to a week before going to a shelter house. Despite this, the Investigative Team did not witness defense attorneys raising the waiting list during the investigation period either systemically or in individual case advocacy. The sense was that everyone knew about the waiting list, including the judges, so it felt meaningless to bring it up or address it in advocacy.

Shelter houses also seemed to be used as a default holding facility, or as the necessary step-down between secure detention and home release. This overuse of shelter homes was seen routinely in all courtrooms, including JBDP. Defense attorneys appeared to have taken this for granted. DC law

200 Daily population counts from December 1 through December 31, 2017. *See* DC.GOV, DEP'T OF YOUTH REHABLITATION SERVS., *supra* note 198.
201 D.C. Code Ann. § 16-2310 (West 2009).
202 D.C. CODE ANN. § 16-2310(a) (West 2017).
203 *See* NO PLACE FOR KIDS, *supra* note 129.
204 § 16-2310(b).
205 *Id.*
206 D.C. JUV. R. 32(a).

provides that youth should not be detained in shelter care unless the safety of the child requires it and "no alternative resources or arrangements are available to the family that would adequately safeguard the child without requiring removal."[207] Yet, the Investigative Team observed that the most common reasons for shelter house placement were because the system—not the youth—had yet to fulfill its obligations to establish viable programming or because stakeholders felt the youth must "prove himself" in the equivalent of a youth halfway house before "earning" the right to go home. Though the Investigative Team observed that PDS and clinic students advocated for home release as opposed to shelter house placement, many others, particularly CJA attorneys, seemed not to want to rock the boat if the choice were perceived to be between shelter house or YSC.

The Investigative Team heard family members speak up in court hearings about disruptions to school and safety concerns regarding the shelter houses. The Investigative Team saw little evidence that youth in shelter houses were given many services in those homes, though some youth in shelter houses were ordered to attend one of CSS's Balanced and Restorative Justice (BARJ) programs. The Investigative Team found the quality of the BARJ services to be in dispute. At least one CCS worker described BARJ as a "babysitting" service with ineffectual programming.[208] Moreover, stakeholders complained that because BARJ services often were not in the communities where the youth lived, opportunities to connect youth to programs and services within their communities were missed.

3. GPS Monitoring

The Investigative Team also observed the routine use of GPS monitoring as a condition of both pre-trial release and disposition. The harms of GPS monitoring are beginning to be documented nationally.[209] GPS monitoring causes youth to feel further stigmatized as "delinquent" or "criminal."[210] Moreover, even though the youth are not in actual secure detention, the use of GPS is a significant restriction on liberty. The GPS monitor tracks the youth's movements and collects data on patterns of behavior, which raises concerns that it exceeds the scope of supervision and violates the youth's privacy.[211] GPS infractions can lead to probation violations, incarceration, and increased punitive consequences when the youth has not committed any new offense. The Investigative Team also observed cases where a condition of probation included GPS monitoring "at the probation officer's discretion." GPS monitors restrict a youth's liberty; having this as a discretionary condition allows a probation officer to restrict liberty without due process. This especially concerned the Investigative Team after observing hearings in which probation officers focused on their own feelings of being "disrespected" or complaints of youth cussing at staff, rather than focusing on programming that actually promoted youth success. The Investigative Team feared that probation officers who viewed undesirable, yet typical, adolescent behavior as worthy of court-sanctioned punishment, rather than redirection, could use this unchecked authority to severely restrict a youth's freedom of movement.

While defense attorneys must be strategic about their advocacy and there may be good reasons in individual cases for not addressing the significant restraint on liberty that GPS monitoring can pose, it struck the Investigative Team that in all of the hearings they observed in which GPS monitoring was an issue, its imposition appeared to be a matter of course rather than an individualized, deliberate decision.

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207 § 16-2310(b).

208 The authors of this report requested from Family Court Social Services Division (FCSSD) copies of any data or validation studies or other assessments of the effectiveness BARJ and other community-based programs to which youth are referred by FCSSD, but those requests went unanswered. FCSSD, as an arm of the judiciary, is not subject to the federal Freedom of Information Act (FOIA) or other public record statutes that would require release of this information, if it exists.

209 *See, e.g.*, Kate Weisburd, *Monitoring the Youth: The Collision of Rights and Rehabilitation,* 101 Iowa L. Rev. 297 (2015).

210 *Id.*

211 Rena Coen et al., U.C. Berkeley School of Law, Electronic Monitoring of Youth in the California Juvenile Justice System (2017).

E. Data and Evaluation of Programs

Measures that restrict liberty—including custodial detention, out-of-state placements, GPS, and shelter house—are used throughout juvenile cases. Yet, as stakeholders pointed out, no data seemed to back up the effectiveness of any these programs. An important part of defense advocacy is challenging court interventions that have no evidenced benefit.

There was a general dearth of data across DC's juvenile justice system. While DYRS did provide statistics on numbers, the efficacy of their respective programs was in some doubt. CSS did not respond to requests by the Investigative Team for any data on the use or effectiveness of any of its interventions. As a grant-funded initiative, JBDP is the only court program that has collected data to show tentative results that it decreases recidivism.[212] Open City Advocates also has kept track of recidivism, employment, and school reenrollment rates.[213]

The general lack of consistent data can make for ad hoc, and potentially ill-informed, decision-making. Many stakeholders, including judges, admitted that they had little information on what works and what does not beyond anecdotal experiences. While the Investigative Team saw some juvenile defense attorneys attempt to push back on the appropriateness of particular interventions, they and other system stakeholders typically lacked data or evidence to back up their arguments for or against a potential course of action. As one stakeholder said, "I would love data to support the lawyers' demands. How effective are the programs?" While the Family Court does have the ability to collect some data related to juvenile cases, it is unclear which key metrics are reportable. The Family Court releases an annual report that includes data on case processing timeframes and the numbers of youth involved in the system, but the most recent report from 2015 misses some key metrics, such as race and ethnicity of youth involved in the juvenile court system or data related to sexual orientation and gender identity or gender expression, and does not include analysis of outcome data beyond whether cases are completed.[214] While the court does report on the use of detention at initial hearings, stakeholders criticized that it did not report on detention at later stages of a case. Moreover, while the report finds CSS programs to be successfully achieving statutory objectives, it provides no data or evidence to support those conclusions.[215]

Data within and across defense entities would also contribute to raising the effectiveness of the defense bar, yet none had the kind of robust data gathering mechanism that could ensure effective and zealous advocacy. PDS utilizes a case management system for maintaining information that can be accessed by various team members, but data such as numbers of trials and motions are either not tracked or not released. But even if PDS were to have robust defense-related data, it would represent only about one-third of the overall juvenile cases in the District. CJA attorneys have no integrated system for tracking similar information. As solo practitioners, they may have their own individual case management systems or informal data gathering, but this is left up to each individual CJA attorney's capacity and will. There is no case management system available to the CJA panel beyond the voucher system, which focuses exclusively on payments. There is no confidential, unified system in place that is capable of identifying aggregate trends in defense practice, nor is there a defense-centered system that can report on metrics such as recidivism rates; detention rates based upon race, ethnicity, and other relevant factors; use of GPS or shelter care; commitment levels; and other factors to measure the impact of these on youth outcomes.

212 Ramirez et al., *supra* note 343.

213 Open City Advocates, *2016 Update from Our CEO, Penelope Spain* (2016), https://static1.squarespace.com/static/54d39459e4b0ff-9c649f8b54/t/58595dcd9de4bbcefb4ff988/1482251725817/OCA+2016+Newsletter.pdf (last visited Dec. 29, 2017).

214 *See* D.C. Family Court 2015 Annual Report, *supra* note 105.

215 *See id.*

F. Supervision Conditions (Pre-Adjudication and Post-Disposition)

In numerous court hearings, the Investigative Team observed judges imposing conditions on youth both as part of their pre-trial release and as part of post-disposition supervision or probation. Many court hearings seemed to be almost exclusively about whether youth had "complied" with these conditions. Judges and probation officers seemed more interested in whether a youth had followed a rule to the letter, rather than whether a youth's behavior improved or whether youth had achieved key successes in spite of spotty compliance. The entire system of supervision seemed premised on monitoring and control, not on youth strengths, growth, or long-term measures of success. Probation intervention has not often been the subject of research. However, the research that does exist shows that "routine probation . . . has little or no positive effect on delinquent behavior."[216] Advances in research have resulted in conclusions of what works better than typical systems of probation. Such measures include programs that are targeted toward helping youth develop their "problem-solving and perspective-taking" skills, family counseling, mentoring, and close relationships to caring and responsible adults, while directing correctional interventions only to youth identified as high-risk of re-offense.[217]

The sheer number of obligations and conditions imposed on youth in the District stood out. A strong presumption of supervision seemed to exist structurally, with a probation officer being assigned at the first hearing. Probation officers interviewed for this assessment readily admitted that though the system was set up this way, not every youth needs the close supervision that resulted with nearly every case.

When a youth was released to the community, the court routinely attached a list of conditions that the youth had to abide by while the case was pending. Though by law, pre-trial release does not need to include conditions, in practice all children were ordered to comply with some condition, even though the court had deemed there was no cause to detain them. The prevalent use of conditions seemed to counter the statutory presumption that children are released to their families unless they pose a risk of significant harm to the person or property of others or are a risk of flight.[218] Instead, the culture of the juvenile court in DC seems to be one in which release to one's family is a privilege that will only continue if the youth complies with a multitude of conditions. The Investigative Team observed many of the following pre-trial conditions being imposed on released youth: curfew (which sometimes included a 24-hour curfew), regular meetings with the CSS caseworker, school attendance (at times verified by a card that needed to be signed by the teacher in every class), urine drug screens, stay-away orders, electronic monitoring or GPS tracking, home confinement, anger management, employment, mentoring, and often a catch-all condition like "comply with any referrals probation may make." Probation conditions largely mirrored the pre-trial conditions, and in some cases, the court imposed even more. A recent resolution from the National Council of Juvenile and Family Court Judges recognizes that cookie-cutter conditions that are not specifically tailored to a youth's individualized needs run counter to adolescent development, increase technical violations, and result in higher rates of incarceration.[219] The resolution calls on juvenile court judges to refrain from using compliance-based conditions with youth and from using incarceration as a sanction.[220] In DC, the Investigative Team observed a heavy emphasis on compliance monitoring that affected how probation officers saw themselves, with some viewing their

216 The Annie E. Casey Found., *supra* note 158, at 1.
217 Mendel, *supra* note 157.
218 D.C. Code Ann. § 16-2310 (West 2017). As noted *supra* text accompanying note 201, at the time of the investigation and observations in March 2017, youth could also be detained if a court found them to be a harm to themselves. Since July 1, 2017, that is no longer the law in the District of Columbia.
219 Nat'l Council of Juvenile and Family Court Judges, Resolution Regarding Juvenile Probation and Adolescent Development (July 15, 2017) [hereinafter NCJFCJ Resolution Regarding Juvenile Probation and Adolescent Development]. *See also* Schwartz, *supra* note 157.
220 *See* NCJFCJ Resolution Regarding Juvenile Probation and Adolescent Development, *supra* note 219.

role as more akin to law enforcement focused on catching youth breaking the rules than as youth specialists charged with guiding youth to succeed.

One judge spoke to the Investigative Team about an unease with "technical violations"—an allegation that the youth was not following the conditions of probation but had not re-offended. The judge welcomed more information from defense attorneys on what should be done in those circumstances, but said such advocacy was lacking. The judge felt defense attorneys could do more to shed light on unaddressed needs or suggest alternative programming or solutions capitalizing on their client's strengths to help the youth stay on track.

G. Record Confidentiality, Expungement, and Sealing

The notion that juvenile delinquency should be treated differently than criminal actions by an adult is reflected in a juvenile justice system's principle of confidentiality of juvenile records. In the District, all juvenile courtrooms are closed and accessible only by lawyers, probation and commitment workers, and other court-related personnel with business in that courtroom. Courtrooms are closed to shield youth—who are supposed to be engaging in a rehabilitative process that sets them up for later success—and to spare them the stigma of public notice and public hearings, thus enabling them the anonymity to rebuild their connections with the community. Much of that anonymity has been pierced by a 2011 change in DC law. Stakeholders reported that prior to 2011, nearly all court records were confidential and inaccessible to the public. In 2011, however, changes to the DC Code enabled public disclosure of the name, arrest, charges, and disposition of youth adjudicated delinquent for nearly any felony offenses.[221] Such disclosures create real and lasting barriers to youth success, making it difficult for youth to access education, secure employment, or find housing. By placing these critical aspects of a successful future beyond the reach of those with juvenile adjudications, it is hard to imagine how anyone would expect them to become contributing members of their communities.

Some of these barriers may be mitigated by clearing juvenile records, but that does not erase disclosures that have already been made public. Most, if not all, jurisdictions have some provisions providing for sealing, expungement, or other mechanisms for clearing juvenile records. The record-clearing process in DC is highly complex. One attorney stated that even they needed help in deciphering the sealing statute. This is all the more reason why attorneys must advise clients about the process.[222] If the attorney cannot assist the client with sealing and expungement, the attorney should make referrals to organizations that can.[223] Defense monitoring of the record-clearing process is also important to ensure that relevant organizations have followed through on sealing the client's records when required.

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The District has organizations that can assist clients with sealing. PDS clients have access to the Community Defender Division within its agency, which assists adult and juvenile clients with the record-clearing process. DC Law Students in Court regularly sponsors expungement clinics at which community members can seek assistance in sealing adult and juvenile records.[224] The Georgetown Juvenile Justice Clinic has developed a resource

221 D.C. Code Ann. § 16-2333(e) (West 2017).
222 Nat'l Juv. Def. Standards, *supra* note 42, § 7.6.
223 *Id.*
224 Law Students in Court, *supra* note 261.

manual explaining the sealing process.[225]

Very few juvenile attorneys interviewed during this assessment had assisted clients with record sealing. There seemed to be multiple reasons for this. The first obstacle is the timeline of sealing—two years after the case has ended or at a time when the client can establish factual innocence.[226] With such long waiting periods after a case has closed, even attorneys who have vigorous post-disposition practices may well have closed their files and lost contact with clients. To compound the problem, CJA attorneys are not compensated for providing sealing assistance, again leaving these attorneys with the two undesirable options of working for free or not providing assistance. Other jurisdictions have rectified problems caused by complicated record-clearing processes by enacting automatic sunset provisions for juvenile records and/or providing for automatic sealing at the end of a juvenile case. DC does not currently have such provisions.

H. PINS Court

DC youth subject to PINS (persons in need of supervision) jurisdiction appear before a single judge and are represented by attorneys from the court's PINS panel. While some PINS attorneys have also been on the CJA panel, bringing their delinquency experience and training to their PINS practice, the majority of PINS attorneys are not. Many have a background in the abuse and neglect system, which may have contributed to the Investigative Team's observation that representation seemed to be based on what the attorney believed were the best interests of the youth, rather than their expressed interests.

The Investigative Team was unsettled by the lack of process in PINS Court; the heavy use of detention, shelter care, and GPS monitoring; and a lack of advocacy from some of the defense attorneys. Stakeholders spoke of a sense that PINS Court is "informal" and "non-adversarial." However, the use of shackles, secure confinement, and significant restraints on a youth's liberty suggest it is certainly adversarial to the youth involved.

Like with delinquency cases, defense attorneys in PINS matters are appointed prior to or at the first hearing. Stakeholders reported that PINS cases can languish for months, and even years. This is particularly troubling if the youth is held in shelter care, given that an adjudication of the matter would be required to be held within 45 days.[227]

The Investigative Team noticed significant variations in the quality of defense in PINS Court. Several of the attorneys had a clear mastery of their cases and familiarity with their clients, made well-reasoned arguments about the youth's progress and reasons for continuing them in the community, played a valuable role in contextualizing alleged failures to follow CSS's supervision conditions, and demonstrated a connection with their clients. In one case, the defense attorney's command of the facts and good rapport with the client and family enabled the attorney to convince the judge that the child should stay home, while CSS and the prosecution were pushing for detention. Other attorneys appeared as if they were looking at the case for the very first time, freely opined about what they personally thought was best for the child (rather than advocating for what the client desired), or stood virtually mute. In one matter, after the defense attorney stated their name for the record, the attorney did not say a single word for the rest of the hearing, a hearing that ended with the client being held in shelter care. There seemed to be a need for training on the role of the defense attorney in PINS Court as a check on the system and as the voice of the child. This lack of defense advocacy appeared to the Investigative Team to be a greater problem in PINS Court than in juvenile court. Court observations for this investigation were conducted in March 2017. At that time, a new law regarding PINS detention had been passed, though it had not yet gone into effect. As of late 2017, the law prohibits the detention of PINS youth and

225 Kristin Henning et al., Georgetown Law Juvenile Justice Clinic, Sealing Juvenile Records in the District of Columbia: An Advocate's Guide (2014), http://njdc.info/wp-content/uploads/2013/08/Sealing-Records-September-4.compressed.pdf.
226 D.C. Code Ann. §§ 16-2335 (West 2017), 16-2335.02 (West 2011). *See also supra* Chapter Two.
227 D.C. Code Ann. § 16-2310(e)(1)(C) (West 2017).

only allows for placement in shelter care if it is required to protect the child, there is no one who can care for the child, and "no alternative resources or arrangements are available to the family that would adequately safeguard the child without requiring removal."[228] Stakeholders should have been aware of the law's passage, its provisions, and its intent; even if it was not yet binding, it could well have been used in defense advocacy as persuasive authority against detention. Because PINS cases are classified as status offenses—i.e. cases which are committable only by children and are not severe enough to be considered juvenile offenses—defense attorneys should certainly be advocating that youth not be detained, if the youth desires not to be.

Hearings for PINS cases are set at recurring intervals every four to six weeks in front of a single judge. The Investigative Team noted that the judge employed developmentally appropriate language when speaking to the children. As a whole, however, the lack of formal procedure in a courtroom that still relied on detention or shelter care, or a threat thereof, gave the PINS Court an aura of punishment. As the U.S. Supreme Court stated in the landmark case of *In re Gault*, "unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure."[229] The prosecution and CSS staff frequently defaulted to requests for detention, with at least one of the parties requesting detention in approximately half of the cases observed. Three of the cases involved youth who were already detained, and appeared in court fully shackled. Significantly, the defense attorneys made no request to have the shackles removed, nor did the judge acknowledge their use or overtly authorize it, as required by the Superior Court's administrative order on shackling.[230] In one of the cases, a youth was ordered into a shelter house, simply based upon the underlying PINS allegation. The youth had never been placed on conditions of release by the court and therefore had never violated a valid court order, a requirement under federal guidelines for detaining PINS youth.[231]

Several stakeholders noted that the PINS Court did not have many, if any, PINS-specific services. Services offered to youth typically mirrored that of the delinquency system without a real reckoning of why the PINS behavior was manifesting. At least one attorney acknowledged research showing youth involved in status offenses had very different reasons for engaging in these behaviors than those in the delinquency system,[232] but admitted the lack of PINS-specific programing made addressing those issues difficult. Other stakeholders surmised that CSS supervision in PINS cases, which was heavily focused on compliance rather than programming to address the underlying causes of the PINS-related behavior, contributed to the more delinquency-like appearances of the PINS system. Indeed, some youth were being held in secure detention at YSC alongside youth charged with delinquency offenses, while waiting for CSS to put services into place. Stakeholders also reported that many youth are sent away to residential programs, particularly youth who may have been exploited in the commercial sex industry.[233] At the time of the Investigative Team's visits, the court was actively working to establish a separate specialty court program specific to the sexual exploitation of youth, called HOPE Court (Here Opportunities Prepare you for Excellence).[234]

I. Title 16: Youth in Adult Court

Counsel for youth in adult court should have much of the same specialized training and experience in representing youth required of juvenile defense counsel in delinquency cases.

228 § 16-2310(a), (b).
229 *In re* Gault, 387 U.S. 1, 18 (1967).
230 Super. Ct. D.C., Admin. Order 15-07 (2015).
231 34 U.S.C. § 11133(a)(9)(F)(i) (2017).
232 Coalition for Juvenile Justice, National Standards for the Care of Youth Charged with Status Offenses (2015) (supporting the proposition that the behavior underlying PINS offense cannot be treated by detention).
233 The authors for this assessment report requested more information on use of pretrial residential programming that might be available through a CSS referral without receiving a response. Information held by CSS is not subject to the federal Freedom of Information Act (FOIA) or other public record statutes that would require release of this information, if it exists.
234 That program began in January 2018 but its structure and effectiveness are beyond the scope of this report.

Beyond understanding adult criminal law and procedure, attorneys must be aware of the special developmental considerations of youth that will impact the case, such as competency, culpability defenses, appropriate rehabilitative services, and the effect adult incarceration can have on youth.[235]

In DC, cases in which youth are prosecuted directly in the adult criminal court are commonly referred to as Title 16 cases. These youth are represented in adult criminal court by PDS lawyers or attorneys on the CJA Criminal Panel. Because Title 16 cases are solely in adult criminal court, juvenile CJA attorneys do not represent these youth. PDS does not have a specific unit or set of attorneys who handle Title 16 cases. At one point, PDS had a senior attorney dedicated to Title 16 cases, but that person left and has not been replaced. Title 16 cases are distributed among PDS's felony attorneys, all of whom started their practice by representing youth in the Juvenile Unit.

While an assessment of access to and quality of counsel for youth in the adult system is beyond the scope of this report, it is relevant to note that the issues of training, support, and structure that impact the delivery of effective youth-oriented representation are likely to exist, and may be compounded, in the adult system.

DC's statute allowing for the prosecution of certain classes of youth in adult criminal court passed in 1970, predating many of the other "direct file" or "mandatory file" provisions that arose throughout the country. Publicly available data from a variety of sources suggests that from 2010 to 2015, 515 youth between the ages of 15 and 17 were prosecuted as adults, with approximately half receiving sentences of less than three years.[236] This data demonstrates that about half of youth prosecuted as adults were not kept significantly longer in the system than if they had been prosecuted as juveniles, and they were not able to avail themselves of the rehabilitative services of juvenile court before being released.

235 *See* Nat'l Juv. Def. Standards, *supra* note 42.

236 *See Sentencing Data*, DC.gov: District of Columbia Sentencing Commission, https://scdc.dc.gov/page/sentencing-data (last accessed March 3, 2018) (analysis of data points on file with authors).


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CHAPTER THREE
RECOMMENDATIONS AND IMPLEMENTATION STRATEGIES

In many respects, the District of Columbia is an example for other jurisdictions across the country to follow as to best practices in juvenile defense.

There exists:

- universal access to counsel for all youth from before the initial hearing through disposition;
- systemic support for rigorous evidence-based testing of probable cause for all youth facing detention;
- significant specialization and professionalization of the juvenile defense bar across all sectors;
- a general recognition that juvenile justice is a specialty practice that requires dedicated judges, prosecutors, and probation officers;
- juvenile defense participation at high levels of court reform efforts; and
- a defense system that is generally well resourced compared to other jurisdictions.

Jurisdictions across the country struggle with many of these issues and can learn much from how the District of Columbia has successfully fulfilled these obligations and lived up to best practices.

Despite these successes, however, there are areas of improvement that can and should be addressed by a broad spectrum of private and public stakeholders. By addressing these gaps, stakeholders will be improving justice for the youth of the District of Columbia and promoting a fairer and more just judicial process.

The Core Recommendations that follow represent the principle areas in which the District can improve its current gaps in access to and quality of defense representation for youth in the delinquency system. The Implementation Strategies derived from these Core Recommendations stand as detailed suggestions to relevant stakeholder groups, including defense system leaders, juvenile defense attorneys, policymakers, and court and government officials.

CORE RECOMMENDATIONS
FOR STRENGTHENING JUVENILE DEFENSE IN THE DISTRICT OF COLUMBIA

1 Foster Greater Integration of Adolescent Development Principles into All Aspects of Practice and Training

Practice that is based on the integration of adolescent development principles and the law is a key aspect of what makes defending youth different from defending adults. While stakeholders and training standards in DC talk about specialization in juvenile defense, much of what actually occurs in DC Family Court is a specialization in the laws and procedures that are unique to juvenile court, with little real emphasis placed on the cognitive and psychosocial differences of youth in terms of decision-making, comprehension, foresight, and communication style. All of these contribute to a young person's diminished culpability in the eyes of the law. While a limited number of stakeholders have embraced adolescent developmental concepts in mitigation, dispositional advocacy, and decisions, this is far from universal. All defenders should pursue adequate training to understand developmental concepts and how to integrate them in advocacy at every level. All defenders should also seek out—and the justice system should foster access to—coaching opportunities that will help juvenile defenders learn to better use these concepts in practice.

2 Demand that All Juvenile Defense Attorneys Represent Their Clients' Expressed Interests and that Stakeholders Respect this Role

Despite local and national standards, rule of ethics, and best practices that require defense attorneys to represent their clients' expressed or stated interests, there is not universal commitment to this concept in DC juvenile court practice. The juvenile defender is the youth's advocate, not a system advocate. Attorneys who fail to live up to this standard should not be permitted to represent youth in delinquency or Persons In Need of Supervision (PINS) matters. Other stakeholders should respect and support a youth's constitutional right to an expressed-interest advocate who can help them navigate the system and empower them to have a voice in the court proceedings.

3 Increase Organizational, Monitoring, and Leadership Capabilities of the CJA Juvenile Panel

A consistent theme emerging from this assessment is that members of the CJA panel operate wholly independently with little oversight, mentorship, or support. Furthermore, the panel includes a mix of attorneys—some who appear well-trained and prepared, and some who appear untrained and unprepared. This creates a system in which quality of representation varies greatly and the level of representation a youth receives is subject to the luck of the draw. Increased institutional support for independent CJA attorneys that includes leadership opportunities, training, administrative support, a voucher payment system that reflects best practices in juvenile defense, and greater coordination of resources would improve the juvenile defense bar as a whole.

4 Recruit and Sustain a Cadre of Juvenile Defense Specialists at the Public Defender Service

Despite a long-term practice and preference for having newly hired attorneys begin their careers in a one-year rotation representing juveniles, the Public Defender Service should recruit and develop more dedicated attorneys who build greater expertise in working with youth and navigating youth-related defense services, while also continuing to contribute the strong litigation and advocacy skills for which PDS is renowned.

5 Strengthen Post-Disposition Juvenile Defense Practice

In the District, while access to counsel is guaranteed in juvenile cases through disposition, youth access to post-disposition counsel and quality of post-disposition representation is lacking. In a juvenile justice system that is premised on youth rehabilitation, there is very little access to legal counsel for youth navigating the bulk of the post-adjudicatory process. Juvenile defense attorneys can and should provide critical advocacy that acts as a check on other system stakeholders, such as the courts, Department of Youth Rehabilitation Services (DYRS), and probation. System stakeholders need to take a greater role in ensuring that youth have consistent and dedicated access to counsel while in all out-of-home placements, during reentry, and while on supervision in the community so that legal obstacles, including access to services, can be addressed timely and effectively in a way that supports youth success.

6 Protect Confidentiality of Juvenile Court Records and Increase Access to Record Clearing

The District's confidentiality laws for juvenile records have eroded over time, and juvenile records now pose a significantly stronger barrier to a youth's ability to access education, housing, and employment after they complete their sentences. Many felony adjudications open youth to public disclosure of their involvement with the court and risk long-term stigma. These barriers undercut the rehabilitative goal of the juvenile justice system and impact how attorneys advise clients regarding whether they exercise their rights to go to trial or plead to a lesser charge. Eroding confidentiality is likely contributing to a marked decline in juvenile court trials. Stakeholders should consider ways to strengthen confidentiality of juvenile records and increase opportunities for record clearing, such as simplifying the record sealing process and providing access to an attorney to help with the process.

7 Establish a Comprehensive Juvenile Defense Data Collection System

Data is the key to driving informed decision-making in any system. In the District, there is surprisingly little data being collected, at least in an aggregate and reportable form that can inform overall juvenile defense system functioning. The judiciary, the executive, and defenders themselves all need to improve data collection and reporting systems to track internal metrics related to outcomes that can inform juvenile reform and act as checks on how other systems are operating. Key metrics that defense agencies, the courts, and the executive should collect and regularly analyze include data on race, ethnicity, and gender of youth served, as well as statistics on sexual orientation and gender identity/gender expression of youth in the system; how cases are adjudicated (i.e. plea, trial, or dismissal); disposition outcomes, including placements and whether in-area or out-of-state; and success rates of service programs paid for with public dollars. Greater transparency is needed in the data collected by the DC Superior Court and Court Social Services, and data metrics that do not breach juvenile confidentiality should be made publicly available.

8 Ensure that the Secure Confinement of Youth Is Rare

The overuse of pre-adjudicatory detention was a serious concern during the assessment, particularly given that detention rates exceeded the capacity of the system at a time when juvenile crime rates were falling. The harms of incarcerating youth, even for short periods of time, and the likelihood that the practice increases recidivism are well documented. Detention and secure confinement should not be common and systemic reactions to non-threatening youth behavior. As a system dedicated to rehabilitation and improving the life outcomes of youth, all stakeholders should advocate against the overuse of detention, monitor the capacity of incarceration facilities, and strive to do no harm.

9 Ensure that Youth in PINS Court Receive Effective Expressed-Interest Advocacy and that They Are Not Detained

Youth who are alleged to be Persons in Need of Supervision (PINS) are accused of conduct that brings them into conflict with the law based upon their status as minors. These are often called "status offenses" and are legally less severe than misdemeanors. PINS offenses do not warrant typical juvenile delinquency responses, particularly detention of any kind. Given the high use of out-of-home placements, including detention, found during the assessment period, stakeholders should ensure youth are appointed well-trained lawyers who advocate for their expressed interests, insist upon due process, and ensure they are not detained.

CORE RECOMMENDATIONS
FOR ELIMINATING SYSTEMIC BARRIERS TO JUSTICE FOR CHILDREN

1 Automatically Appoint Counsel to All Youth Without an Assessment of Their Family Finances

The District does an excellent job ensuring no child appears before the court without an attorney to represent them, as required in Juvenile Rule 44. Children, by virtue of their age and development, lack the resources to pay for an attorney. Moreover, the constitutional right to counsel is guaranteed to the child alone. Yet the District continues to predicate appointment of counsel on the income and assets of parents. Youth do not have control over family finances. Making the youth's access to counsel subject to parental grace, should the court find the family is financially capable of paying for a lawyer, sets youth and families up for failure in a system that is intended to promote youth success and rehabilitation. The District should follow the lead of 11 states that automatically provide counsel to all youth, regardless of family income.

2 Eliminate the *De Facto* Indiscriminate Shackling of Youth

In line with the research and sworn affidavits of numerous pediatricians, psychologists, psychiatrists, communications specialists, and other child development experts, improve—or at a minimum, fully implement existing—protections against indiscriminate shackling of youth in every hearing in DC Superior Court. The indiscriminate shackling of youth without an individualized finding of need continues to be a problem in the District, despite a court administrative order to the contrary.

3 Require System Accountability to Reduce Racial and Ethnic Bias and Disparities

The racial and ethnic disparities in the District of Columbia's juvenile justice system are stark. Data on these disparities is sparse, but what does exist shows that the vast majority of youth who are arrested and brought into the juvenile court are youth of color, and that youth who are incarcerated after being found involved in an offense are exclusively youth of color. Court observations confirm this data. The District should take concerted steps to understand, analyze, and address racial and ethnic disparities at every decision point in the system. This will require robust and transparent data collection and reporting, mandatory training and education of all stakeholders, tools for addressing racial disparities within the context of a case, and an honest reflection on the factors that draw youth of color into the justice system well beyond their proportion of the population.

4 Permit Only Personnel Who Have Training in Youth-Appropriate Security and De-Escalation Techniques to Be Responsible for the Care and Security of Youth in Secure Custody at DC Superior Court

Youth are developmentally different from adults and have fundamentally different cognitive, emotional, and psychosocial decision-making abilities and responses to stress. Treating youth like younger versions of adult prisoners can cause harm to youth development and can exacerbate and escalate security problems. Only security personnel who are specially trained in youth development and de-escalation techniques should be allowed to manage the care and security of youth in DC Superior Court.

5 Youth in Secure Custody Need Greater Access to Confidential Space in Which They Can Confer with Attorneys

There are far too many situations in which attorneys and youth are not afforded the space and privacy necessary for the confidential discussions that are the bedrock of the attorney-client relationship. Particularly in the courthouse and at the New Beginnings Youth Development Center, access to confidential space outside of the hearing of security officials is limited. This creates a systemic barrier to the effective assistance of counsel, particularly when youth are incarcerated.

IMPLEMENTATION STRATEGIES

In the District of Columbia, stakeholders have a great tradition of working together to reflect on areas of improvement and enhance due process protections while meeting the needs of the public. In order to implement the Core Recommendations and improve the quality of juvenile defense in the District, continued collaboration is essential. The Judiciary; the City Council; the Public Defender Service; the CJA panel; clinical programs; the Department of Youth Rehabilitation Services; the DC Office of the Attorney General; law enforcement agencies; the United States Marshal Service; and nonprofit, advocacy, and community groups can and must all participate in a concerted effort to reform policy and practice. The Implementation Strategies that follow are designed to address the Core Recommendations with specific multi-systemic reforms. Stakeholders in DC must work together to ensure that any child brought before the juvenile justice system receives the fairness and due process to which all children are entitled.

The Judiciary and Court Administration should:

- Adjust training requirements in the *Superior Court Attorney Practice Standards for Representing Juveniles Charged with Delinquency or as Persons in Need of Supervision* to require mandatory hours related to adolescent development and how it applies to the defense of clients in attorney-client communication and advising, detention and disposition advocacy, the defense of the charges, competency, mitigation, culpability, and other aspects of practice.
- Adjust training requirements in the *Superior Court Attorney Practice Standards for Representing Juveniles Charged with Delinquency or as Persons in Need of Supervision* to require mandatory hours related to racial disparities and implicit racial bias.
- Provide training to all non-defender stakeholders on implicit bias and mechanisms to overcome implicit bias.
- Provide training to all juvenile court stakeholders, including judges, prosecutors, probation officers, DYRS workers, and courtroom staff on the role of juvenile defense counsel.
- Increase juvenile defense attorney oversight to ensure a commitment to stated-interest advocacy.
- Work with PDS and the Georgetown Juvenile Justice Clinic to design and establish a juvenile defense training specialist position, either at the court or in one of the defense organizations, who is responsible for training for the juvenile CJA panel and who can serve as a resource attorney to provide technical assistance to CJA attorneys who request it.
- Establish and incentivize juvenile defense leadership positions within the CJA panel, along with a mentoring system where experienced and skilled CJA attorneys mentor newer attorneys.
- Convene a working group that includes members of the CJA panel to reexamine and consider reforming the CJA voucher system, taking into account technological and administrative concerns, how payment policies impact attorney performance at the practical level, and whether the billing categories reflect what the *Superior Court Attorney Practice Standards* actually require CJA attorneys to do.
- Create nominal flat billing rates on cases for which CJA attorneys are assigned and perform work, but which later become no-papered.
- Change the voucher system to clarify compensation for post-disposition services and billable actions during this time.
- Include sealing and expungement as compensated services for CJA attorneys after cases have closed and post-disposition services are no longer covered by the traditional voucher structure.

- Establish an Office for Juvenile Defense at the court that can provide centralized administrative support on issues like voucher management, investigator and social worker oversight, and access to experts, as well as training and professional support to the juvenile CJA panel.

- Shift the CJA voucher approval process away from juvenile court docket judges to an entity removed from juvenile court cases. Attorney compensation should be handled by a central administrative entity to avoid actual or perceived interference with defense attorney judgment or any appearance of a lack of defense independence.

- Convene a working group to consider and establish protocols for monitoring and oversight of CJA attorneys' performance in case representation on a more regular and transparent basis. Oversight and evaluation only at readmission every four years is not enough, and it misses the opportunity for ongoing support for better practice.

- Monitor the use of detention or other out-of-home placements in PINS Court through rigorous data collection and reporting obligations, to ensure practice comports with statutory intent and national best practices.

- Establish data collection systems and publicly reporting on metrics such as requests for investigators, number and kind of motions filed, number of trials, use of experts, and other measures to monitor and ensure zealous juvenile defense advocacy; including and publicly releasing data on race, ethnicity, and other demographic metrics to aid attorneys in their representation of youth and to aid policy advocates in system improvement efforts; and, at a minimum, revise Administrative Order 17-04, which bars public access to non-identifying data on race analyzed by the District's Juvenile Justice Committee.

- Track and publicly report data on pre-adjudication programming and services under CSS and CSS contractors that can be used to assess the effectiveness of programming available to the courts and can support arguments by both CSS workers and defenders regarding what interventions are most appropriate in individual cases.

- Convene a working group to examine attorney access to clients at DYRS and CSS facilities or contracted facilities, including visitation hurdles and confidential meeting space issues raised in this assessment.

- Remove the presumption of shackling in Superior Court Administrative Order 16-09.

- At a minimum, ensure compliance with the current shackling order by instituting mandatory training on proper adherence to the order for all courtroom personnel, including judges, clerks, prosecutors, and defense attorneys.

- Convene a working group to examine the staffing policies of the U.S. Marshals Service for the District of Columbia and the Department of Youth Rehabilitation Services with the aim of creating a multi-stakeholder solution that takes into account security concerns as well as the harms of shackling on youth so that staff policies do not undermine the legal rights of youth, access to counsel, or the administrative orders of the court.

- Address the lack of sufficient confidential attorney-client meeting space in the juvenile court waiting areas, in the cellblocks behind each courtroom, and in the At-Risk Room.

- Work with the U.S. Marshals Service and Superior Court facilities management to find a way to cut a hole in the Plexiglas dividers that separate attorneys from their clients in the general juvenile holding cell, which would allow for the sharing of important paperwork between attorneys and clients.

- Convene a working group to discuss guidelines for detention, including possibilities such as prohibiting detention for technical probation violations or misdemeanors.

- Promulgate a court rule that provides for automatic sealing of juvenile records in certain circumstances where youth have satisfactorily completed probation or commitment periods.

The DC City Council should:

- End the indiscriminate shackling of youth in DC Superior Court, create clear directives about when and if shackles may be used, and preclude internal staffing choices from the shackling calculus.
- Establish incentives for monitoring, analyzing, and minimizing inappropriate pre-adjudicatory detention. For example, establish a funding stream for alternatives to detention that is conditioned upon staying below capacity at detention facilities.
- Ensure the District's juvenile records are confidential and eliminate exceptions that allow for wide disclosures regarding juvenile court involvement that not only exacerbates collateral consequences for youth and undermines long-term public safety, but also may be contributing to the erosion of trials in DC's juvenile court.
- Provide for automatic sealing of juvenile records in certain circumstances where youth have satisfactorily completed probation or commitment periods. This will promote youth success by removing barriers to education, housing, and employment and will ultimately improve public safety.
- Clarify that youth have a right to an attorney at any post-disposition hearings where their liberty is at stake, including representation at DYRS community status review hearings and disciplinary hearings.
- Ensure that youth subjected to custodial interrogation receive actual access to an attorney before waiving the right to remain silent.

All Juvenile Defense Attorneys should:

- Object to and litigate any failures to comply with existing court orders or future statutes on the shackling of youth in DC Superior Court, in accordance with clients' informed expressed interests.
- Advocate for greater individualized and targeted dispositions, push back against incarceration for technical violations for probation, and advocate for release that can be addressed within the community.
- Establish data collection systems that capture metrics such as requests for investigators, number and kind of motions filed, number of trials, use of experts, and other measures to monitor and ensure zealous juvenile defense advocacy.
- Take a stronger advocacy position in considerations of the Interstate Compact on the Placement of Children and the Interstate Compact for Juveniles by arguing against placement of clients in distant facilities as an undue hardship for the child under DC Code § 4-1422, if such placement is counter to the child's wishes.
- Be mindful of their ethical obligations to communicate with youth and ensure that regular, developmentally appropriate, and confidential communication is a priority, even in the face of pressure by other stakeholders to cut corners or save time. Defense attorneys should consider training in motivational interviewing techniques and communication skills targeted at maximizing youth comprehension.
- Seek out training, mentoring, or coaching on adolescent developmental science and its applicability to juvenile law and procedure to better integrate these concepts through motions practice, use of experts, trial practice, detention and disposition advocacy, and supporting appellate advocacy.
- Seek out training, mentoring, or coaching on implicit racial bias in the juvenile justice system, and explicitly challenge alleged risk factors or suspicious behaviors that masquerade as race-neutral concerns but which are unintentionally exacerbating disparities.

The Public Defender Service for the District of Columbia should:

- Revise recruiting policies to attract juvenile attorneys to its Trial Unit who are specifically interested in juvenile defense practice.
- Create an appellate attorney position that specializes in juvenile matters and pushes courts to consider adolescent development at all levels of a juvenile case.
- Consider reinvesting in an attorney who specializes in Title 16 cases and who can be a resource to other criminal court attorneys who represent young clients.

The Mid-Atlantic Juvenile Defender Center should:

- Work with PDS and the court to enhance the delivery of a robust, developmentally informed training program for all juvenile defense attorneys in the District that includes information on implicit racial bias in the juvenile justice system.
- Develop ways of improving information-sharing mechanisms—such as an interactive listserv—for all juvenile defense attorneys in the District to share general knowledge, litigation strategy, and motions, and to collaborate over systemic obstacles. This will also enhance cross-learning among peers and develop a broader range of juvenile defense leaders across defender groups.
- Continue to leverage national and regional resources, both material and financial, to help augment attorney training, community-building, and leadership within the District.

The United States Marshals Service should:

- Work with Chief Judge, the City Council, the Department of Youth Rehabilitation Services, and other key stakeholders to shift responsibility for the handling of youth away from the U.S. Marshals Service to DYRS.
- Adjust its policies for working with youth to include appropriate youth-specific de-escalation techniques and modified use of force protocols.
- Provide training on adolescent development and trauma to any marshals before they are allowed to work with youth in the juvenile cell block or in juvenile courtrooms.
- Reallocate juvenile courtroom staffing to ensure efficient and timely removal of shackles from youth unless the juvenile court judge orders an individual child to remain shackled, or reconsider protocols that will allow for a single marshal to be present.
- Refrain from denying attorney access to youth in the juvenile cell block more than once a day, as this is a significant restriction on access to counsel, particularly when situations are changing and attorneys need to consult with clients about changes in strategy.
- Work with the juvenile court facility management to ensure that holes are cut into the Plexiglas in the juvenile cell block meeting spaces, to allow attorneys to pass necessary documents to youth for their review prior to court hearings.

The Department of Youth Rehabilitation Services (DYRS) should:

- Work with Chief Judge, the City Council, the U.S. Marshals Service, and other key stakeholders to shift responsibility for the handling of youth away from the U.S. Marshals Service to DYRS.
- Ensure greater access to counsel for youth at YSC by allowing juvenile defense attorneys to bring laptops and other necessary work materials into the areas of the facility in which attorney-client meetings occur.
- Provide confidential meeting space at New Beginnings for attorney-client consultations and ensure that staff respect the confidential nature of those meetings.
- Work with the court to ensure that all youth entering juvenile courtrooms are not inhibited by shackles unless there is an express order by the sitting judge, in a particular and individualized case, that the child remain in shackles.
- Participate in any working groups reevaluating the management of youth in secure custody while at DC Superior Court, including being open to potential solutions that will provide DYRS with oversight over greater numbers of youth in the courthouse.
- Participate in any working group to examine attorney access to DYRS facilities or contracted facilities and consider instituting a more effective "closer to home" policy that keeps youth placements within a three-hour drive of the District of Columbia.
- Work with the juvenile court facility management to provide more than one confidential attorney meeting room in the at-risk holding unit.
- Ensure that all stakeholders are provided with DYRS statistics on race and ethnicity breakdowns of youth in detention.

Court Social Services should:

- Increase transparency by tracking and publicly reporting on taxpayer funded services it provides to youth, including efficacy rates, validation reports, and actual metrics that demonstrate the success or failure of particular interventions for youth in the District.
- Track and publicly report on the racial breakdown of youth it serves, by type of intervention.
- Consider cross-training opportunities with juvenile defense attorneys that enhance youth responses to probation supervision and leverage the roles of each stakeholder in ensuring the success of youth.
- Work with national nonprofit organizations that specialize in improving the developmental appropriateness of probation supervision and responses.


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ADDENDUM
CONTEXT FOR JUVENILE DEFENSE IN THE DISTRICT OF COLUMBIA

This addendums simply provides the legal and structural context in which the assessment investigation took place. It is intended to be an objective look at the parameters within which juvenile defense operated and to contextualize the *Findings* in Chapter Two—which outline the strengths and challenges of that system as uncovered by the investigation—and the *Recommendations and Implementation Strategies* in Chapter Three, intended to provide stakeholders with actionable ideas for implementing improvements to the current system.

I. The Legal Right to Counsel in Juvenile Court in DC

A youth's right to counsel in the District of Columbia is governed by the DC Code[237] and the Superior Court Rules Governing Juvenile Proceedings,[238] and is informed by the *Superior Court Attorney Practice Standards for Representing Juveniles Charged with Delinquency or as Persons in Need of Supervision*,[239] which are juvenile defense practice standards promulgated by an administrative order of the DC Superior Court.

Under the DC Code, youth in the District have a statutory right to "be represented by counsel at all critical stages of [Family Court] Division proceedings, including the time of admission or denial of allegations in the petition and all subsequent stages" in both delinquency and Persons In Need of Supervision (PINS) proceedings.[240] Court rules provide that both delinquency and PINS respondents "shall be represented by counsel at all judicial hearings including, but not limited to, the detention or shelter care hearing or the initial appearance, hearings on contested motions, any transfer hearing, the pretrial conference, the factfinding hearing, the disposition hearing, and hearings for the review of a dispositional order."[241] The law is silent on the right to defense counsel during interrogation or intake.

In the District, attorneys are expected to represent their clients in post-disposition matters as well.[242] Standard G of the DC Juvenile Practice Standards reads, "[a]s long as counsel is appointed in a juvenile or PINS case, counsel's obligations to a client continue from initial hearing through termination of the court's jurisdiction in the matter."[243] The Standards require the attorney to keep in regular contact with their client, visit their clients in placement, and advocate for the client's needs, such as home passes and clothing vouchers.[244]

237 D.C. Code Ann. § 16-2301 *et seq.*
238 D.C. Juv. R. 1–119.
239 D.C. Juv. Practice Standards, *supra* note 76, § G-2.
240 D.C. Code Ann. § 16-2304(a) (West 2000).
241 D.C. Juv. R. 44.
242 *See* D.C. Code Ann. § 16-2327(c) (West 2014); D.C. Juv. R. 32(h)(3), 44. At the time this report went to print, the breadth of representation at post-disposition hearings before the Department of Youth Rehabilitation Services is issue is currently being litigated before the DC Court of Appeals in N.H.M. v. District of Columbia, No. 16-FS-1289(L), 16-FS-1290 (D.C. filed Dec. 16, 2016).
243 D.C. Juv. Practice Standards, *supra* note 76, § G.
244 *Id.* § G-2.

Furthermore, the court rules declare that it is defense counsel's duty to "prepare for, attend and advocate zealously on behalf of clients at all post-disposition reviews including revocation hearings," and to "file appropriate pleadings with the Court when Court Social Services, YSA or other youth agency is not in compliance with court directives."[245]

II. Structure of the DC Juvenile Justice and Criminal Justice Systems: Federal vs. Local

The District of Columbia is a unique jurisdiction in that, although it operates like a state in many ways, it is ultimately federally controlled. Congress oversees the District, though the District is without a voting representative in either house of Congress.[246] Congress ceded local control of certain matters to the city through the District of Columbia Home Rule Act of 1973 (Home Rule); however, the District's budget and all new statutes are subject to approval by Congress, and Congress has the power to override any decision made by the DC City Council.[247] Home Rule precludes the DC Council from limiting the powers of the U.S. Attorney's Office, which prosecutes adults in the District.[248] The allocation of authority between local and federal control directly affects the functioning, control, and oversight of the actors in the criminal and juvenile justice systems.

The District's judicial system is federal—the court system was created through Article I of the United States Constitution and is funded by Congressional appropriations, with the President of the United States appointing the District's judges, subject to Senate approval. The District's court system is comprised of two local courts, the DC Superior Court and the DC Court of Appeals. DC Superior Court is the court of first impression for all juvenile, criminal, and civil matters in the District. The DC Court of Appeals is the highest local court in the District and is the equivalent of a state supreme court, though it gets its authority from Article I of the U.S. Constitution, rather than a state constitution. The DC Court of Appeals hears direct appeals in all cases, including juvenile matters, from DC Superior Court. Appeals from the DC Court of Appeals go directly to the U.S. Supreme Court.

In the DC juvenile justice system, a bifurcation of authority between the federal and local governments contributes to a somewhat complicated network of authority and responsibility. The pretrial supervision and probation agency is Court Social Services (CSS),[249] which is a division of the Superior Court (a federal court). The security and supervision of detainees, both youth and adults, while inside DC Superior Court, is the responsibility of the U.S. Marshal for the District of Columbia, a branch of the federal U.S. Marshals Service. The District's Department of Youth Rehabilitation Services (DYRS), however, retains in-courthouse custody and care of youth deemed to be "at risk" as defined by the DC Code.[250] DYRS is a cabinet-level agency of the District of Columbia government. DYRS also runs the DC juvenile detention center—the Youth Services Center—and the commitment facility at New Beginnings, located in Laurel, Maryland. DYRS is responsible for all transportation of youth from these facilities to DC Superior Court, and is responsible for the supervision of youth at the courthouse who have been deemed to be "at risk". Finally, this District agency also manages the supervision and placement of committed youth during the duration of their commitment.

The prosecuting authority in Washington, DC for all juvenile cases is the Office of the Attorney General (OAG), a local DC government agency headed by a locally-elected Attorney General. The OAG also prosecutes youth and adults 16 and older who are

245 *Id.*
246 The District has a non-voting delegate in the House of Representatives, Representative Eleanor Holmes Norton.
247 D.C. Code Ann. §§ 1-206.01 (West 1973), 1-206.02 (West 1995).
248 *Id.*
249 Also sometimes referred to as the Family Court Social Services Division (FCCSD).
250 D.C. Code Ann. § 16-2310.01 (West 1986) (defining "at risk" as a "child under the age of 13 or any child 13 years of age or older who, because of his or her size or physical stature, is determined to be especially physically or psychologically vulnerable to attacks by other children"). For more information on this process and the problems with this structure, *see infra* pages 73-74

charged with traffic offenses in DC Superior Court's traffic division.[251]

The federal United States Attorney's Office (USAO) prosecutes all adult criminal matters, except for traffic cases. Youth who are charged as adults are, therefore, prosecuted by the USAO. The primary way youth are prosecuted as adults is via DC's direct file mechanism, "Title 16,"[252] which authorizes the USAO to choose to prosecute youth directly in criminal court pursuant to certain statutory guidelines.[253]

The primary law enforcement agency in the District is the Metropolitan Police Department (MPD), which is controlled by the District government. The District is also policed by nearly a dozen other local, regional, and federal law enforcement agencies that have overlapping geographic jurisdiction. The District government retains authority over several of these—including DC Housing Authority Police and DC Protective Services Police—while the federal government is responsible for law enforcement agencies such as the Park Police, Capitol Police, and Secret Service. There is also a regional Metro Transit Police agency responsible for law enforcement on public transportation in the greater DC bus and metrorail system, which is subject to oversight by a regional transit authority. Youth in the District are subject to arrest by any of these law enforcement agencies acting within their jurisdiction.

A. Structure of the District's Juvenile Defense System

Youth facing delinquency charges in the District may be represented by the Public Defender Service (PDS), a law school clinic, a court-appointed attorney (CJA attorney), or privately retained counsel. PDS is federally funded, though it is an independent organization governed by an 11-member Board of Trustees.[254] By construction, PDS is funded at levels to ensure it is a model of public defense service, giving it more resources for its caseload than many other public defense systems in the country.[255] PDS is statutorily authorized to represent adult clients, as well as youth in both delinquency and PINS cases.[256] The federal enabling statute that created PDS limited it to no more than 60 percent of the District's overall public defense cases and gave the agency discretion as to how to apportion the division of cases between itself and the CJA panel.[257]

The bulk of juvenile cases in DC are represented by court-appointed CJA attorneys. To be eligible to take cases, CJA attorneys must apply to be on a designated list of approved attorneys, known as a panel.[258] Delinquency, PINS, and Special Education each have their own panel of approved attorneys capable of taking court-appointed cases in these areas. The panel is only open for applications every four years.[259] The Superior Court strives to have the panel list reflect "due regard for attorneys with the highest qualifications available," and it retains a panel size "consistent with the needs of the Superior Court."[260]

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251 D.C. Code § 16-2301(3)(c) (West 2017) (excluding youth who are 16 years old and above from juvenile court jurisdiction for traffic cases). The Office of the Attorney General website lists the types of cases handled by their office, including criminal traffic offenses. *See Criminal Section*, Office of the Attorney Gen. for D.C, https://oag.dc.gov/node/423502 (last visited Apr. 5, 2018).

252 The District also has a transfer statute allowing the OAG to request to transfer youth to the criminal system.

253 Under Title 16, youth age 15 or older who are charged with murder, first degree sexual abuse, burglary in the first degree, robbery while armed, or assault with intent to commit any such offense may prosecuted directly in the adult system. D.C. Code Ann. § 16-2307(e-1) (West 2005).

254 *Who We Are*, The Public Defender Service for D.C., http://www.pdsdc.org:8000/PDS/MissionAndHistory.aspx (last visited Apr. 5, 2018).

255 *Id.*

256 D.C. Code Ann. § 2-1602 (West 2012).

257 District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. No. 91-358, tit. III, § 301, 84 Stat. 654 (1970).

258 Sup. Ct. D.C., Admin. Order 09-07 (2009).

259 *Id.*

260 Joint Committee on Judicial Administration, Plan for Furnishing Representation to Indigents Under the District of Columbia Criminal Justice Act 1-2 (2016) [hereinafter Plan for Furnishing Representation to Indigents], https://www.dccourts.gov/sites/default/files/matters-docs/cja_plan.pdf.

Two law school clinical programs also accepted a small number of juvenile cases in DC Superior Court at the time of this assessment: Georgetown Law's Juvenile Justice Clinic and the DC Law Students in Court program.[261] In law school clinics, student attorneys represent youth under the close supervision of law school faculty.[262]

B. Overview of the Juvenile Justice System

1. Judicial System

Juvenile delinquency and PINS cases are to be heard in the Family Court of the DC Superior Court. At the time of this assessment, one magistrate judge was responsible for initial hearings (which combine probable cause and detention hearings in both delinquency and PINS cases), two associate judges heard delinquency cases, and two magistrate judges presided over juvenile specialty courtrooms—the Juvenile Behavior Diversion Program and the PINS Courtroom. In the recent past, three judges heard juvenile cases; the number was recently reduced to two as a result of a drop in the number of juvenile cases being petitioned.[263] The initial-hearing courtroom is to be open every day except Sunday, while the juvenile calendar judges are to hear juvenile cases Monday through Friday. Judges are to be assigned to the juvenile docket by the Chief Judge of Superior Court.[264] Most judges serve on the juvenile calendar in rotations of one to four years.[265] The judges are appointed by the President, and approved by Congress for a 15-year term.[266] Judges can apply for a reappointment for a second 15-year term, subject to the approval of the DC Commission on Judicial Disabilities and Tenure.[267] Magistrate judges, on the other hand, are hired through an application process by the Chief Judge of the DC Superior Court.[268]

2. Intake and Pre-Trial Placement and Supervision

Once police arrest a youth and choose not to divert them into alternate programming, the youth is to be interviewed for intake with Court Social Services (CSS), either at the courthouse or at the intake office at the Youth Services Center (YSC), depending on the time of day. Based on this intake interview, CSS is to decide whether to detain the child pending the initial hearing (usually overnight), and whether to recommend that the OAG file a petition against the child. Whether the child is detained or released, CSS is to prepare a report that includes court history, social factors, and recommendations about how the child should be supervised pending resolution of the case. CSS presents its report in court during the initial hearing.

Youth who are detained by CSS must have that detention decision reviewed by a magistrate at an initial hearing not later than the next day, excluding Sundays.[269] Youth who are not detained by CSS are to be given a later date at which to appear in court for an initial hearing.[270]

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261 DC Law Students in Court, Inc. is a non-profit organization that partners with area law schools to train law students how to represent the District's low-income residents in civil, criminal, and juvenile matters at DC Superior Court. The program is housed at University of the District of Columbia (UDC) Law School, and its juvenile clinic included students from the George Washington University, Howard University, and UDC law schools at the time of this report. *See Law Students: Member Law Schools,* Law Students in Court, http://dclawstudents.org/prospective-law-student/ (last visited Apr. 5, 2018).

262 D.C. Ct. App. R. 48 (2014), 49 (2015).

263 For example, from 2014-2015, new juvenile filings decreased 30 percent, and from 2015-2016, new juvenile filings decreased another six percent. *See* D.C. Family Court 2015 Annual Report, *supra* note 105, at 36; Superior Court of the District of Columbia, Family Court 2016 Annual Report 33 (2017), https://www.dccourts.gov/sites/default/files/divisionspdfs/Family-Court-2016-Annual-Report.pdf.

264 D.C. Code Ann. § 11-908A (West 2012).

265 Under § 11-908A, judges are assigned to the Family Court for a minimum of three years. Judges may choose to stay longer. However, judges may be moved from the delinquency docket to other calendars within Family Court within those three years.

266 Center for Court Excellence, How the District of Columbia Gets Its Judges 2 (2011), http://www.courtexcellence.org/uploads/publications/How_DC_Gets_its_Judges_Report_Final_as_Published_Dec2011_2.pdf.

267 *Id.*

268 *Id.* at 3.

269 D.C. Code Ann. § 16-2312(a)(2) (West 2017).

270 D.C. Code Ann. § 16-2306 (West 1970).

At the initial hearing, which is presided over by a magistrate judge, all youth with pending cases are to be either detained or released. If a youth is detained, they are to be placed in either YSC or a shelter house. If youth are placed in the community, either at a shelter house or their home, the court may order conditions of release the youth must follow while supervised by a CSS probation officer.

3. Post-Disposition Supervision

After a child has been found involved in a juvenile offense, post-disposition supervision is split between CSS and DYRS, depending on the youth's disposition. If a youth is placed on probation, they are to be supervised by CSS. If a youth is committed to DYRS, they are to be supervised by DYRS, even if they are ultimately placed in the community. DYRS can supervise committed youth in the community, in group homes, and in secure detention.[271]

4. Juvenile Confinement Facilities

YSC is the juvenile jail, which houses youth awaiting trial and those awaiting post-disposition placement. YSC is located in Northeast DC and is run by DYRS. Youth awaiting trial may also be placed in shelter houses. Shelter houses are privately run, staff-secure facilities that contract with DYRS.

New Beginnings is the equivalent of a juvenile prison and houses committed youth who are identified as needing the highest security level. New Beginnings is located in Laurel, Maryland, approximately one hour from DC, and is run by DYRS. Committed youth who are not released to their families may also be housed at group homes.[272] Group homes are privately run, staff-secure facilities that contract with DYRS. These are located both inside and outside of the District. DYRS may also place committed youth at out-of-state residential treatment centers (RTC) or psychiatric residential treatment facilities (PRTF).[273] These facilities are in a variety of locations across the country.

III. Overview of Relevant Portions of DC's Juvenile Code and Juvenile Rules

The section of the DC Code dedicated to juvenile offenses and proceedings and the Superior Court Rules for Juvenile Procedure are the legal foundations governing juvenile matters in the District. What follows is a summary of key portions of these provisions that have direct bearing on the findings and recommendations within this report.

A. Juvenile Court Jurisdiction

The Family Court Division of DC Superior Court has original jurisdiction over "proceedings in which a child, as defined in section 16-2301, is alleged to be delinquent, neglected, or in need of supervision."[274] A child is defined as someone who committed a delinquent act when they were under age 18, who has not yet reached age 21, and who is not charged as an adult by the U.S. Attorney's Office or charged with a traffic offense committed while over the age of 16.[275] The Family Division of the Superior Court retains jurisdiction over the case of a child until the child is 21 years old, unless the case is terminated prior to age 21.[276] There is no lower age of jurisdiction in DC.[277] The term "delinquent act" as used throughout the DC Code means an "act designated as an offense under the law of the District of Columbia, or of a State if the act occurred in a State, or under Federal law. Traffic offenses shall not be deemed delinquent acts unless committed by an individual who is under the age of sixteen."[278] A "delinquent child" is defined as a child who "has committed a delinquent act *and*

271 District of Columbia Department of Youth Rehabilitation Services, Annual Performance Report: Fiscal Year 2012 at 10-11 (2013), https://dyrs.dc.gov/sites/default/files/dc/sites/dyrs/page_content/attachments/DYRS_AR-low-res_041713.pdf.
272 *Id.* at 12.
273 *Id.* at 13.
274 D.C. Code Ann. § 11-1101 (West 2002).
275 D.C. Code Ann. § 16-2301 (West 2017).
276 D.C. Code Ann. § 16-2303 (West 1970).
277 *See* § 16-2301 (not listing a lower age of jurisdiction, meaning youth of any age can be prosecuted).
278 § 16-2301(7).

is in need of care or rehabilitation."[279] A child "in need of supervision" (known locally as a PINS) is a child who is alleged to have "committed an offense committable only by children"—such as truancy, underage smoking, or curfew violations—as well as a runaway youth or a youth who is "habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and is ungovernable," and who is "in need of care or rehabilitation."[280]

B. Arrest and Overnight Detention

Children may be taken into custody through a custody order issued by the court[281] or may be arrested by law enforcement on suspicion of an offense.[282] If a delinquency petition has been filed prior to the child being taken into custody, the court may issue a custody order, which is similar to a juvenile warrant,[283] set a time for the initial appearance, and issue a summons. If the court believes grounds for taking a child into custody exist under section 16-2309 (such as the allegation the child has committed a delinquent act, has run away, or is not in school) or the court believes the child may leave or be taken out of the jurisdiction, it may direct the police to take the child into custody upon serving the summons.[284] Police may also seek custody orders from the court before a petition is filed. Police can obtain these by following a procedure that includes final approval by a judicial officer.[285]

If a child is arrested under any of these scenarios, they must be either detained overnight or released to a guardian and given a date to return to court.[286] By statute, once the child has been arrested, CSS makes the initial determination whether to release the child to a parent or to hold them until they appear before a judge.[287] The DC Code includes a presumption of release: the child *shall* be released to parents unless CSS determines that detention or shelter care is required.[288] A child may be securely detained only if detention is required to "protect the person or property of others from significant harm, or to secure the child's presence at the next court hearing."[289] A child may be detained in shelter care if such detention is required (1) "to protect the person of the child, or because the child has no parent, guardian, or other person or agency able to provide supervision and care for him, and the child appears unable to care for himself," *and* (2) "no alternative resources or arrangements are available to the family that would adequately safeguard the child without requiring removal."[290] This decision to detain by CSS must be reviewed by the court no later than the next day, excluding Sundays (*see Section G. Initial Hearings*).

C. Diversion, Consent Decrees, and Juvenile Behavior Diversion Program

Youth may be diverted away from formal processing in the juvenile justice system at various points either by the Metropolitan Police Department (MPD) or the OAG. At the time of arrest, MPD has the option to divert the case rather than taking the child for intake with CSS.[291] The OAG also has the option to divert the case for pre-trial or pre-petition diversion, a decision they can make during the petitioning process (locally known as "papering") or after.[292] At the time of this assessment investigation, the diversion program utilized by both MPD and

279 § 16-2301(6) (emphasis added).
280 § 16-2301(8).
281 D.C. Code Ann. §§ 16-2306(c) (West 1970), 16-2311(c) (West 2015), 16-2309(a)(1) (West 2015); D.C. Juv. R. 4.
282 § 16-2309(b).
283 § 16-2306.
284 *Id.*
285 D.C. Juv. R. 4(1).
286 *See, e.g.*, Super. Ct. D.C., Admin. Order 17-03 (2017).
287 D.C. Code Ann. § 16-2311(a)(1) (West 2015).
288 § 16-2311(b)(1).
289 D.C. Code Ann. § 16-2310(a) (West 2017). It should be noted that at the time of the initial investigations under this assessment, detention was also permissible if the child posed a danger to himself. This will be removed by legislation that takes effect on July 1, 2018.
290 § 16-2310(b).
291 Metro. Police Dep't for D.C., Exec. Order EO-17-033 (2017), https://go.mpdconline.com/GO/EO_17_033.pdf.
292 *Id.*

OAG was the Alternatives to the Court Experience (ACE) Diversion Program, run by the Department of Behavioral Health (DBH).[293] Youth placed in this program by either MPD or the OAG are not formally processed by the court system.

Although not pure diversion from the juvenile court system, the prosecutor's office may also offer youth a consent decree after filing a petition against the youth but prior to adjudication in the case. Consent decrees are agreements between the government and the youth in which the youth agrees to a term of supervised probation in exchange for the government suspending prosecution. If the youth fulfills their obligations under an agreement for a set period of time, the court will dismiss the petition.[294] Youth who do not successfully complete a consent decree are subject to prosecution on the original charge. Consent decrees are only to be entered if both parties agree, and the youth is to be represented by an attorney and receive counsel on the consequences of the agreement.[295]

Beyond consent decrees, there is a court-run diversion program called the Juvenile Behavioral Diversion Program (JBDP), which functions much like a mental health court and is only for children with a qualifying clinical diagnosis.[296] While this program does not divert youth from the judicial process, it does allow for the dismissal of charges in some cases.[297]

D. Petition

CSS is tasked with making an initial recommendation whether a petition should be filed against a youth in delinquency and PINS cases.[298] If CSS does not recommend the filing of a petition, the OAG can still proceed, and CSS must advise the complainant that they can ask the OAG to review the decision not to prosecute.[299]

If the OAG decides to proceed against the youth, it must file the petition within seven days of CSS receiving the case referral (excluding Sundays and legal holidays).[300] The petition must state the facts that give the Family Division of the court jurisdiction over the child, the statute or ordinance the child is alleged to have violated, a statement that it appears the child is in need of care or rehabilitation, and any other facts required by the court.[301] The Juvenile Rules require the petition to include "the essential facts constituting the offense or offenses charged."[302] A PINS petition must include the law that the child is accused of violating, specifics of the allegation, dates of the acts giving rise to the charge that the child committed a status offense, and that the child is in need of care or rehabilitation.[303]

293 *See Juvenile Diversion Program: How Juvenile Diversion Benefits the District*, Office of the Attorney General for D.C., https://oag.dc.gov/page/how-juvenile-diversion-benefits-district (last visited Apr. 5, 2018).
294 D.C. Code Ann. § 16-2314 (West 1970).
295 *Id.*
296 Super. Ct. D.C., Admin. Order 10-17 (2010).
297 *Id.* There are three tracks available to respondents through JBDP, including Track I, in which a plea is never entered, or Track II, in which a plea is entered, but dismissed with a successful completion of the program. *See* Sup. Ct. of D.C., Juvenile Behavioral Diversion Program Description 5 (2010), https://www.dccourts.gov/sites/default/files/2017-03/10-17_ATTACHMENT_Juvenile_Behavioral_Diversion_Program_Description.pdf (attachment to DC Admin. order 10-17).
298 D.C. Code Ann. § 16-2305(a) (West 2005).
299 *Id.*
300 § 16-2305(d).
301 *Id.*
302 D.C. Juv. R. 3.
303 § 16-2305(d); D.C. Juv. R. 7(c).

E. Appointment of Counsel

Both the Code and the Rules require that a child be appointed an attorney if the child and their parent are "financially unable to obtain adequate representation,"[304] and the court has the option to appoint counsel for the child over the child's or their guardian's objection.[305] Under the Rules, "[i] f counsel is not retained for the respondent, or if it does not appear that counsel will be retained, counsel *shall* be appointed."[306] If the Court determines that the party is financially able to obtain counsel but has not, the court may assign counsel and assess reasonable attorney's fees or direct the family to "retain private counsel within a specified period of time."[307]

Counsel is appointed as soon as it is determined a person cannot afford an attorney. The Defender Services Office (DSO) is responsible for determining whether a person is "financially unable to obtain adequate representation."[308] The income determination for children charged with delinquency considers their parents' income.[309] If the DSO finds that someone is not eligible for free counsel, it may determine that the person has enough money to contribute some portion toward the cost of their representation, an amount reflected in a "contribution order" that can be issued by the court.[310]

DSO, which is an arm of the Public Defender Service, by statute coordinates the appointment of counsel to each juvenile case among PDS, the CJA panel, a law school clinic, or pro bono attorneys.[311] Final approval of each appointment must be made by the court.[312]

Appointment of counsel takes place prior to the initial hearing, as counsel is required at the initial hearing.[313]

Appointments are made by the court to: insure the full use of attorneys from the Public Defender Service and qualified law students participating in clinical programs. Qualified attorneys who have expressed an interest in appointments to represent indigent clients on a pro bono basis may be appointed within the discretion of the Court.[314]

F. Shackling

In DC Superior Court, the use of restraints on juveniles is governed by Administrative Order 16-09. The Order includes a presumption that shackles be removed, allows the defense to waive the presence of their client for the purposes of the shackles determination, requires the court itself to raise the issue, and requires an individualized determination be made in written findings of fact in support of an order to shackle.[315]

G. Initial Hearings

The initial-hearing courtroom for children accused of delinquency is to be available Monday through Saturday.[316] Detained children are to be brought to the initial-hearing courtroom the same day as their arrest, or the next day if they are arrested and processed after the cut-off time.[317] If the child has been released, they are to report to the initial-hearing court on the day their notice instructs them to, which must be within five days of the

304 D.C. Code Ann. § 16-2304(a) (West 2000); D.C. Juv. R. 44.
305 § 16-2304(a).
306 D.C. Juv. R. 44(a)(1) (emphasis added).
307 D.C. Juv. R. 44(b)(2).
308 *Id.*
309 *Id.*
310 D.C. Juv. R. 44(b)(2).
311 D.C. Code Ann. § 2-1602(b) (West 2012).
312 *Id.*
313 D.C. Code Ann. § 16-2304(a) (West 2000).
314 Plan for Furnishing Representation to Indigents, *supra* note 260, at (II)(A)(2).
315 Super. Ct. D.C., Admin. Order 16-09 (2016).
316 D.C. Code Ann. § 16-2312 (West 2017).
317 *Id.*; Super. Ct. D.C., Admin. Order 17-03 (2017). Children arrested after the cutoff time on Saturday must wait until Monday to be brought before a judge.

delinquency or PINS petition being filed.[318] Initial hearings are to include an arraignment and, where pre-trial detention is requested, a probable cause determination and a detention hearing. The petition should be filed at or before the hearing.[319] However, the filing of a petition may be continued for up to five days for good cause shown, which is referred to as a "five-day hold."[320]

At the initial hearing, the child is to be arraigned. Youth are to be informed of their right to counsel, that the judicial officer will appoint counsel if the youth is unable to obtain counsel, that the youth is not required to make a statement, and that any statement made by the youth may be used against them.[321] The Code and Rules are silent on the issue of waiver of counsel, but the Code does allow for the judge to appoint the child counsel over the child's objection.[322] At the hearing, the youth has the right to hear the petition read and is to enter a plea. Once the child enters the plea, the judge is to set the next court date—a status hearing date for not guilty pleas, and a disposition date for guilty pleas (unless the case goes to immediate disposition).[323]

If the judge finds no probable cause, the child must be released. If the judge finds probable cause, they may release the child or order the child to be placed in secure detention or in a shelter house and must set forth reasons in writing.[324]

H. Detention Determinations

A child may only be securely detained if detention is required to protect the person or property of others from significant harm or to secure the child's presence at the next court hearing.[325] The statute also allows the court to place a child in shelter care if necessary to protect the child, if there is no one capable of caring for the child, *and* only when no alternative resources or arrangements are available to the family that would adequately safeguard the child without requiring removal.[326]

A child has the right to an interlocutory appeal to the DC Court of Appeals to challenge a detention order, placement in shelter care, or pretrial release conditions, if they file a notice to appeal within two days of the detention order, and the appeal is to be expedited to be heard within three days of the filing of the notice.[327]

I. Adjudication Hearing

Youth in the District have a right to a fair and speedy trial.[328] A child who is securely detained shall proceed to trial within 30 days of being ordered into detention, unless the child is charged with murder, assault with intent to kill, first-degree sexual abuse, burglary in the first degree, or robbery while armed, in which case the trial is to proceed within 45 days.[329] A child who is placed in a shelter house pending trial has the right to have their trial within 45 days of the date of being ordered to the shelter house.[330]

318 D.C. Code Ann. § 16-2308 (West 1970).
319 § 16-2312(a)(1)(C).
320 § 16-2312(g).
321 D.C. Juv. R. 10(a).
322 D.C. Code Ann. § 16-2304 (West 2000). In practice, waiver does not generally occur.
323 D.C. Juv. R. 10.
324 D.C. Code Ann. §§ 16-2312 (West 2017), 16-2310 (West 2017).
325 D.C. Code Ann. § 16-2310(a) (West 2017). At the time of the site visits in March of 2017, the statute had also permitted detention if the court determined it was necessary to "protect" the child from harm to self, but that provision was removed as part of the Comprehensive Youth Justice Act of 2016. This change took effect on July 1, 2017.
326 § 16-2310(b).
327 D.C. Code Ann. § 16-2328 (West 1977).
328 *In re* D.H., 666 A.2d 462, 473 (D.C. 1995). *See also* § 16-2310(e).
329 § 16-2310(e).
330 *Id.*

Youth do not have the right to a jury trial in Family Court.[331] Adjudications are to be held confidentially and generally exclude the public, except in select circumstances.[332] The hearings are to be "recorded by appropriate means."[333] Pretrial motions, such as motions to suppress and motions for discovery, must be raised before trial,[334] and except as otherwise provided by statute or rule, are to be heard at the time of the factfinding hearing.[335] Admissibility of evidence and privileges of witnesses are governed by common law, except where superseded by Congress or the Rules,[336] and evidence must be competent, material, and relevant.[337]

The judge must determine, beyond a reasonable doubt, that the delinquency allegations against the child occurred in order to find a child involved in the offense.[338] For PINS allegations, the standard of proof is preponderance of the evidence.[339] The judge must make a written finding of fact[340] generally, and "specially upon request."[341] The judge may find a youth involved of a lesser-included offense, including attempt.[342] Furthermore, the judge must make separate findings for each co-respondent youth in the case of co-respondents.[343]

If a child is found to be "not involved" in the delinquent act, the child must be released immediately from all supervision.[344]

J. Guilty Pleas

By statute, a child may plead guilty starting at arraignment, up and until being adjudicated delinquent.[345] Plea deals may occur after discussions between the OAG and the child's attorney.[346] Any plea deal acts as a recommendation to the judge, but is not binding on the judge for the pre-disposition release decision or the disposition decision.[347] A child has the option of entering a conditional plea, which they may withdraw if they prevail on a pretrial motion appeal.[348]

When the child seeks to enter a guilty plea, the judge must advise the child in open court to ensure they understand, among other things, the charge and the maximum penalty they may face (commitment until their 21st birthday) and that they are waiving their rights to a factfinding hearing, to confront the witnesses against them, and to appeal (unless preserved to withdraw pending an appeal of a pretrial motion).[349] The judge must also determine that the plea is voluntary and ensure there is a factual basis for the plea by directly addressing the child in open court.[350]

331 D.C. Code Ann. § 16-2316(e)(1) (West 2005).
332 § 16-2316(e).
333 *Id.*
334 D.C. Juv. R. 12(b).
335 D.C. Code Ann. § 16-2317 (West 2007).
336 D.C. Juv. R. 26.
337 D.C. Code Ann. § 16-2316 (West 2005).
338 *In re* Winship, 397 U.S. 358 (1970).
339 § 16-2317.
340 *Id.*
341 D.C. Juv. R. 31.
342 *Id.*
343 *Id.*
344 § 16-2317(b).
345 D.C. Juv. R. 11(a)(1).
346 D.C. Juv. R. 11(d)(1).
347 D.C. Juv. R. 11(d).
348 D.C. Juv. R. 11(a)(2).
349 D.C. Juv. R. 11(b).
350 D.C. Juv. R. 11(b), (c).

K. Disposition

If the child is found "involved" (after a plea or factfinding hearing) in the charged offense and found to be in need of care and rehabilitation, the case proceeds to disposition (sentencing in the juvenile context). The case may proceed to immediate disposition if all parties agree and if there is no victim involved who wishes to submit a statement,[351] or a disposition hearing may be set for a later date (within 15 days if the child is detained or in shelter care).[352] In anticipation of the disposition hearing, CSS is to prepare a predisposition report regarding the child's family, environment, and other factors, such as prior record, evaluations, and victim impact statements, relevant to the child's "need for treatment or disposition of the case," unless the report is waived by the judge with all parties' consent.[353] CSS must provide written copies of the report to all parties, including the attorney for the youth, at least three business days prior to the hearing.[354]

At the disposition hearing, the respondent has the right to comment on the predisposition report, to "introduce testimony or other information relating to any alleged factual inaccuracy in the disposition report," and to make a statement directly to the judge.[355] The prosecutor, the victim(s), and victims' immediate family members also may address the court and present relevant information.[356]

Because a delinquent child is defined as a child who has committed a delinquent act *and* is in need of care or rehabilitation,[357] the judge is required to make a factual finding as to whether the child is in need of care and rehabilitation at the disposition hearing, but there is a rebuttable presumption that the child is in such need if found delinquent.[358] Because of this presumption, the child must prove by clear and convincing evidence that they are not in need of care and rehabilitation to prevent formal disposition.[359] If the judge finds the child is not in need of care or rehabilitation by clear and convincing evidence, the judge must terminate proceedings and release the child from all supervision.[360]

At disposition, the judge may place the child on probation, transfer custody of the child to DYRS, or commit the child to an in-patient medical or psychiatric program.[361] Judges may place a child on probation for up to one year or may commit the child to an agency for an indeterminate period until the child turns 21.[362] Both probation and commitment may be terminated by their respective supervising agencies prior to the end of their disposition period if it appears the "purpose of the order has been achieved," unless the judge sets a minimum period of commitment for the child or specifies that the commitment can only end upon a Family Court order.[363] The judge's order must include written reasons for placing the child outside of the home if they plan to do so.[364] The judge may also order restitution for property damage or personal injury resulting from the delinquent act.[365] A hearing on the extent of liability and the ability of the youth or the youth's family to pay the restitution must be held within 30 days of disposition, if not integrated into the factfinding or disposition hearings.[366]

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351 D.C. Juv. R. 32.
352 D.C. Juv. R. 32(a).
353 D.C. Code Ann. § 16-2319 (West 2005); D.C. Juv. R. 32(b).
354 D.C. Juv. R. 32(a)(2).
355 D.C. Juv. R. 32(c)(1).
356 *Id.*
357 D.C. Code Ann. § 16-2301 (West 2017).
358 D.C. Code Ann. § 16-2317(c) (West 2007).
359 § 16-2317(d).
360 *Id.*
361 D.C. Code Ann. § 16-2320(c) (West 2017).
362 D.C. Code Ann. § 16-2322 (West 2017).
363 *Id.*
364 D.C. Juv. R. 32(d).
365 D.C. Code Ann. § 16-2320.01 (West 2011).
366 *Id.*

L. Post-Disposition Proceedings

1. Appeals

Judgments of the Family Court are considered final for appellate purposes and may be appealed to the DC Court of Appeals.[367] At the time of entering the disposition order, the judge is to notify the child of their right to an appeal and the right to file *in forma pauperis* for those who cannot afford the appeal (presumed for those who qualified for a court-appointed attorney).[368] A child must file the notice of appeal within 30 days of the order or final judgment they wish to have reviewed[369] and may file a motion to have the appeal expedited.[370] Once the child has filed the notice of appeal, they are to receive a copy of the trial transcript, for free if they are unable to pay.[371] For youth who qualified for court-appointed counsel in DC Superior Court, the DC Court of Appeals is to "accept this finding and appoint an attorney on appeal without additional proof of eligibility."[372] A child is entitled to appointment of counsel in the direct appeal from an adjudication of delinquency or need for supervision.[373] The Court has discretion to appoint counsel in other matters such as habeas corpus appeals.[374] A child does not have the right to "designate that a specific counsel be appointed."[375]

2. Reviews of Probation and Probation Revocation

If a child is placed on probation, the term of that probation may not exceed one year.[376] As part of that probation, the court may give the child certain conditions that must be followed,[377] and shall order the child to complete a minimum of 90 hours of community service.[378] If a child is alleged to have violated the terms of a probation order, CSS may deal with it informally or may refer the case to the OAG for initiation of revocation proceedings.[379] In its discretion, the OAG may file a petition to revoke probation.[380] The petition to revoke must give the child notice of the terms the child is alleged to have violated, the acts that constitute the alleged violation, and the date the alleged acts occurred, in addition to the date of being placed on probation and the time and manner in which notice of the terms of probation were given.[381]

The child has the right to an attorney at any probation revocation hearing.[382] The standard of proof at a probation revocation hearing is preponderance of the evidence.[383] If the court finds that the child violated their probation order, the judge may modify the probation order, extend the period of probation, or commit the child to DYRS.[384]

3. ICPC/ICJ

Because DC is such a small jurisdiction, youth are often placed outside the District to receive services in group homes, Residential Treatment Centers (RTC), and Psychiatric Residential Treatment Facilities (PRTF). Interstate compacts codified in the DC Code govern the placement of children outside DC, including the Interstate Compact on the Placement of Children (ICPC)[385] and the

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367 D.C. Code Ann. § 16-2329 (West 1977).
368 D.C. Juv. R. 32(c)(2); D.C. Ct. App. R. 24(a)(1) (2004).
369 D.C. Ct. App. R. 4(b) (2016).
370 D.C. Ct. App. R. 4(c)(1).
371 § 16-2329(c).
372 Plan for Furnishing Representation to Indigents, *supra* note 260, at (III)(B).
373 *Id.* at 11.
374 *Id.*
375 *Id.*
376 D.C. Code Ann. § 16-2322(a)(3) (West 2017).
377 D.C. Code Ann. § 16-2320(c)(1) (West 2017) (referencing § 16-2320(a)).
378 *Id.*
379 D.C. Juv. R. 32(i).
380 *Id.*; D.C. Code Ann. § 16-2327(b) (West 2014).
381 D.C. Juv. R. 32(i)(2).
382 D.C. Juv. R. 32(i)(3).
383 D.C. Code Ann. § 16-2327(c) (West 2014).
384 § 16-2327(d).
385 D.C. Code Ann. §§ 4-1421–4-1424 (West).

Interstate Compact for Juveniles (ICJ).[386]
To make an out-of-state placement, the judge must find that equivalent facilities are not available in DC and that "institutional care in the receiving state is in the best interest of the child and will not produce undue hardship,"[387] and they must sign an order making such a determination, referred to as an Article VI order.[388] The child has a right to a hearing and an opportunity to be heard to contest the placement under the ICPC.[389]

4. Reviews of Commitment

Once a child is committed to DYRS, case law has clarified that a judge may not direct which facility or services the agency must use for the care of a committed child.[390] Nevertheless, the DC Code grants the judge the power, upon petition by the child, to "modify a dispositional order…on the grounds that the child is not receiving appropriate services or level of placement" and may "specify a plan" to promote the child's rehabilitation and public safety, but may not specify the treatment provider or facility.[391] The child can petition the judge to review the disposition order once every six months.[392] The judge also has the power to terminate a commitment order if, after six months of finding that the child is not receiving appropriate services, they find that DYRS "is not providing or cannot provide appropriate services or level of placement."[393]

5. Administrative Hearings

Children committed to DYRS may be placed in the community at home or with a relative, in a group home, or in an out-of-home placement such as a secure facility or a PRTF.[394] When a child is placed in the community, DYRS is to draft a Community Placement Agreement (CPA), which is an agreement between the child and the agency that outlines the conditions of their community placement, such as attending school, maintaining a curfew, and meeting with their caseworker.[395] If DYRS seeks to increase the level of the child's supervision, potentially removing them from the community, the agency should base that decision on at least two separate violations of a child's CPA, the same violation of the CPA twice, absconding, or being charged with a list of enumerated offenses.[396] If the agency seeks to increase the child's level of supervision, the child has a right to contest the movement at a Community Status Review Hearing (CSRH).[397]
At a CSRH, the child has a number of due process rights, including the right to representation, the right to notice, the right to challenge the agency's evidence, the right cross-examine the agency's witness(es), and the right to present their own evidence.[398] The decision is ultimately made by a panel of at least three DYRS employees who have experience working directly with youth, but no prior relationship with the child involved in that particular hearing.[399]

386 Interstate Commission for Juveniles, Interstate Compact for Juveniles (2008), https://www.juvenilecompact.org/sites/default/files/ICJRevisedLanguage.pdf.
387 D.C. Code Ann. §§ 4-1421–4-1424 (West).
388 D.C. Code Ann. § 4-1422 Art. VI (West 1989).
389 D.C. Code Ann. § 4-1424 (West 1989).
390 *In re* P.S., 821 A.2d 905 (D.C. 2003).
391 D.C. Code Ann. § 16-2323(h) (West 2016).
392 *Id.*. *But see In re* K.A., 879 A.2d 1 (D.C. 2005) (holding that the court may not terminate commitment in favor of placing the youth on probation).
393 D.C. Code Ann. § 16-2324 (West 2005).
394 *See, e.g.*, National Council on Crime and Delinquency & The Annie E. Casey Found., DYRS Risk Assessment and Structured Decision-Making: Validation Study & System Assessment Summary Report (2012), https://dyrs.dc.gov/publication/risk-assessment-and-structured-decision-making-validation-study-and-system-assessment.
395 D.C. Mun. Regs. tit. 29 § 1200–1299.
396 D.C. Mun. Regs. tit. 29 § 1202 (2009).
397 *Id.*
398 *Id.*
399 *Id.*

M. Children in Adult Criminal Court

In the DC Code, the definition of "child" excludes youth 16 years old and older who are charged by the United States Attorney with murder, first degree sexual abuse, burglary in the first degree, robbery while armed, or assault with intent to commit any such offense.[400] The U.S. Attorney may directly charge 16- and 17-year-olds as adults for these enumerated crimes and in doing so, prosecute the child as an adult in the criminal court. The adult criminal court retains jurisdiction over these cases, even if the child pleads to a lesser-included offense that would not have been subject to direct file in adult court. DC has no mechanism that would allow transfer of a case that is filed in adult court back to the jurisdiction of the juvenile court.

The OAG (the juvenile prosecutor) may move to transfer a child's case from juvenile court to criminal court for prosecution under DC Code § 16-2307 if the child is 15 years old and is alleged to have committed a felony, if the child is 16 or older and is already under commitment to an agency or institution as a delinquent child, if a person 18 years of age or older is alleged to have committed a delinquent act prior to turning 18 years of age, or if a child under 18 years of age is charged with the illegal possession or control of a firearm in certain areas (such as near schools or playgrounds). Transfer decisions may be appealed via interlocutory appeal within two days of the transfer order, and the appeal is expedited to be heard within three days in the DC Court of Appeals.[401] While the appeal is pending, the criminal prosecution is stayed and the child remains in a juvenile detention facility.[402]

Once a child is prosecuted in adult criminal court, either through direct file[403] or through transfer, the Family Court loses jurisdiction over any subsequent delinquent acts, unless "(1) the criminal prosecution is terminated other than by a plea of guilty, a verdict of guilty, or a verdict of not guilty by reason of insanity, and (2) at the time of the termination of the criminal prosecution no indictment or information has been filed for criminal prosecution for an offense alleged to have been committed by the child subsequent to transfer."[404]

400 D.C. Code Ann. § 16-2301 (West 2017).
401 D.C. Code Ann. § 16-2328 (West 1977).
402 D.C. Code Ann. § 16-2328(c) (West 1977).
403 Marrow v. United States, 592 A.2d 1042 (D.C. 1991).
404 D.C. Code Ann. § 16-2307 (West 2015).

N. Record Confidentiality and Sealing Provisions

As a general rule in DC, juvenile records—including case, social files, and police records—are to be confidential and the information contained therein not divulged.[405] However, DC juvenile records statutes contain complicated lists of exceptions that allow for certain actors to access certain records under specific circumstances.[406] For example, a youth's parents may access the youth's case records, no matter the age of the child.[407] And juvenile prosecutors may access records and may share specific information with victims and eyewitnesses,[408] among other confidentiality exceptions.[409]

In addition, if a child is adjudicated delinquent for a list of enumerated crimes,[410] the public may access the youth's name, the fact of arrest, the charges at arrest, the charges in the petition, whether the petition resulted in an adjudication, whether the youth was found involved, the charges for which they were found involved, and the initial disposition.[411]

If two years have passed since the youth was released from supervision, they have not been subsequently adjudicated delinquent or in need of services or convicted of a crime, and they have no open cases pending against them, the youth qualifies to have their juvenile records sealed.[412] To have a record sealed, the child must file a motion requesting the judge to issue a sealing order.[413] If the child qualifies under the statute, the judge must grant the sealing order.[414]

Records may also be sealed at any time if the child is not adjudicated delinquent and has a claim of actual innocence. Actual innocence must be proven by the child by a preponderance of the evidence, assuming the motion is filed within four years.[415]

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405 D.C. Code Ann. §§ 16-2331(b), 16-2332(b), 16-2333(a) (West 2017).
406 D.C. Code Ann. §§ 16-2331(c), 16-2332(c), 16-2333(b), 16-2333.01 (West 2011).
407 § 16-2331(c)(2)(C).
408 § 16-2331(c)(2)(A), (c)(2)(D)-(E).
409 §§ 16-2331(c), 16-2332(c), 16-2333(b), 16-2333.01.
410 The public may access this information if a child has been (1) adjudicated delinquent for one or more "crime[s] of violence" as defined by D.C. Code section 23-1331(4) or a weapons or firearm felony under Chapter 45 of Title 22 and Chapter 23 of Title 6; or (2) two or more "dangerous crimes" under section 23-1331(3), unauthorized use of a vehicle, theft in the first degree when the property used or stolen is a motor vehicle, an assault, or any combination thereof. As At the time of publishing, a crime of violence under D.C. Code section 23-1331(4) included: "aggravated assault; act of terrorism; arson; assault on a police officer (felony); assault with a dangerous weapon; assault with intent to kill, commit first degree sexual abuse, commit second degree sexual abuse, or commit child sexual abuse; assault with significant bodily injury; assault with intent to commit any other offense; burglary; carjacking; armed carjacking; child sexual abuse; cruelty to children in the first degree; extortion or blackmail accompanied by threats of violence; gang recruitment, participation, or retention by the use or threatened use of force, coercion, or intimidation; kidnapping; malicious disfigurement; manslaughter; manufacture or possession of a weapon of mass destruction; mayhem; murder; robbery; sexual abuse in the first, second, or third degrees; use, dissemination, or detonation of a weapon of mass destruction; or an attempt, solicitation, or conspiracy to commit any of the foregoing offenses." At the time of publishing, "dangerous crime[s]" under 23-1331(3) included "[a]ny felony offense under Chapter 45 of Title 22 (Weapons) or Unit A of Chapter 25 of Title 7 (Firearms Control); [a]ny felony offense under Chapter 27 of Title 22 (Prostitution, Pandering); [a]ny felony offense under Unit A of Chapter 9 of Title 48 (Controlled Substances); [a]rson or attempted arson of any premises adaptable for overnight accommodation of persons or for carrying on business; [b]urglary or attempted burglary; [c]ruelty to children; [r]obbery or attempted robbery; [s]exual abuse in the first degree, or assault with intent to commit first degree sexual abuse; [a]ny felony offense established by the Prohibition Against Human Trafficking Amendment Act of 2010 [D.C. Law 18-239] or any conspiracy to commit such an offense; or [f]leeing from an officer in a motor vehicle (felony)."
411 D.C. Code Ann. § 16-2333(e) (West 2017).
412 D.C. Code Ann. § 16-2335 (West 2017).
413 *Id.*
414 *Id.*
415 D.C. Code Ann. § 16-2335.02(c) (West 2011). If it has been longer than four years since the case closed, the burden is clear and convincing evidence. § 16-2335.02(d).

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