

INDIANA

An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings

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While there has recently been an increased focus on indigent defense in Indiana, the authors believe that this assessment highlights the unique importance of and necessity for zealous advocacy on behalf of youth across the state. This report focuses on the access to counsel and quality of representation for youth in Indiana delinquency proceedings; however, it should be noted that these issues do not stand alone and are often intertwined with issues of race and socioeconomic status, which are beyond the scope of this assessment. It is our sincere hope that this report will be a vehicle for improving the provision of justice to all of Indiana's youth.

The richness and depth of information we received for this report came from numerous individuals who work in the juvenile justice system in various capacities throughout Indiana, as well as from many youth and families who shared their experiences and insight. This project would not have been possible without those who took the time to speak with our investigators, provide data and materials, and complete surveys including judges, defense attorneys, prosecutors, and juvenile justice and court personnel from around the state. We acknowledge and applaud their hard work and dedication to Indiana's youth. We are also particularly grateful to those individuals who work on behalf of young people in the juvenile justice system in this and other states who generously devoted their time and expertise to join the investigative team including:

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EXECUTIVE SUMMARY

In 1995, a national assessment of the legal representation of children in delinquency proceedings was conducted by the American Bar Association Juvenile Justice Center, in collaboration with the Youth Law Center and Juvenile Law Center. The findings were published in *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, and the recommendations therein laid the foundation for closer examination of juvenile indigent defense systems in individual states. These examinations are necessary to ensure that state indigent defense systems effectively protect low income youth in light of their particular vulnerabilities.

This assessment of access to counsel and quality of representation for children in Indiana is part of a nationwide effort to address deficiencies and identify strengths in juvenile indigent defense practices. More than thirty-five years after the United States Supreme Court decided in *In re Gault* that children have a constitutional right to counsel, the spirit and promise of this decision have largely remained unfulfilled. With a few exceptions, juvenile indigent defense practices have gone unchecked. The purpose of this assessment is to closely examine juvenile defense practices in Indiana, identify systemic and institutional obstacles that impede the development of an improved legal service delivery system, and offer recommendations for change.

The information in this report is the result of the work of a team of national and state based experts including the National Juvenile Defender Center; the Central Juvenile Defender Center and the Children's Law Center in Covington, Kentucky; the Youth Law T.E.A.M. of the Indiana Juvenile Justice Task Force; and a number of other state, regional and national partners. An investigative team of 14 state and national members conducted site visits and court observations in eleven counties across the state. Interviews were conducted with judges, prosecutors, probation staff, defenders and private attorneys, school personnel, detention personnel, youth, parents, and other stakeholders. A survey was also conducted with public defenders, appointed counsel and juvenile court judges statewide to elicit additional information.

I. Significant Findings

While this report is comprehensive in its findings and recommendations concerning indigent defense representation and systemic barriers to effective representation, some of the most significant findings include:

Excessive Waiver of Counsel

Significant numbers of youth across Indiana waive their right to counsel in delinquency proceedings without consultation with an attorney and, often, without having an adequate understanding of their right to counsel or the benefits of such representation. Investigators found that approximately 50% of youth in the jurisdictions visited routinely waived their right to counsel. In two jurisdictions, it was found that as many as 80% of youth waive their right to counsel. Furthermore, by comparing the number of new delinquency petitions filed in 2004 to the number of “pauper appointments” in delinquency cases for the same year, it was found that nearly 40% of youth throughout the state proceed through court without counsel, not including a very small number with privately retained lawyers.

A number of factors contribute to these high rates of youth proceeding without representation, including encouragement from parents to do so and a reluctance of attorneys to accept additional cases that could jeopardize funding in their office from the Indiana Public Defender Commission. Also contributing to the high rates of youth waiving counsel was the pervasive misunderstanding of the role of counsel in delinquency proceedings. Indiana youth have few resources from which to glean information in order to make a knowing and intelligent waiver of counsel. Not only are youth expected to learn about their rights from confusing and difficult to hear videotaped recordings, but inadequate colloquies from some judges and/or magistrates do little to ensure that youth actually ever learn their rights. Furthermore, the unavailability of counsel with whom to consult on this issue deprives Indiana’s youth of a vital safeguard in the system.

Inadequate Systems for Appointment of Counsel

While too many youth waive the right to counsel, of equal concern is the fact that the timing of appointment of counsel effectively denies many of Indiana’s youth adequate representation. The Indiana Code requires that counsel be appointed at the detention hearing if counsel is not already present and if the child has not waived his right to counsel. However, because counsel is appointed *at* this hearing and not *prior* to the hearing, the majority of youth do not have representation during this crucial stage. Not only does the decision whether to detain a child have immediate and long-range ramifications for the youth and his or her case, but many Indiana counties estimated that 80-90% of youth admit to the charges at this initial hearing.

Lack of Zealous Advocacy

Investigators often found the quality of representation provided for indigent youth in Indiana was dependent upon the counsel they were lucky (or unlucky) to be appointed. While dedicated and zealous advocacy from arrest through post-disposition exists around the state, it was not the norm in many juvenile courts. Investigators saw few defenders meeting or speaking with clients before hearings and an absence of strong advocacy at these hearings. Because defenders were often competing for the time of investigators or feared “rocking the boat” by requesting funds from judges for experts or investigators, very little investigation was being done in clients’ cases. Perhaps as a result, few pre-adjudication motions are filed, and from 5-20% of cases even proceed to fact-finding hearings, depending on the jurisdiction.

Confusion Over Role of Defense Counsel

Ethical and other practice standards dictate that the lawyer’s duty in delinquency proceedings is the representation of the client’s legitimate interests. Unfortunately, many of Indiana’s juvenile court personnel and defenders do not clearly understand these standards. Investigators found a juvenile court culture which supports a “best interests” model of defense representation, and defenders are expected to condone that role and promote such a result. For example, many court personnel in Indiana believe the role of the child’s attorney in a delinquency proceeding is to identify the best interest of the youth and to work with other professionals in the system to achieve that outcome. Such a culture hampers zealous defense advocacy and thwarts the adversarial system designed to promote just outcomes. Perhaps even more disturbing, however, was the confusion among defenders themselves regarding their obligations to their clients. Too often, investigators were told by defenders that their role was to act as guardians for their young clients and to use their own judgment to decide what services would be most appropriate for the child and the family.

Excessive Caseloads and Inadequate Resources

Without adequate time, support, and resources, it is nearly impossible for Indiana juvenile defenders to fulfill their responsibility of providing zealous advocacy for their clients. Investigators consistently observed and were told of the excessive caseloads defenders carry. Despite a decrease in new cases filed in 2004, caseloads have increased in the past ten years by nearly 13%, and juvenile delinquency cases have been a notable part of that increase. Not only are defenders limited in the time they can spend on each case and with each client, but representation is further compromised by a lack of adequate support staff, technology, and access to investigators and social workers.

II. Conclusion and Recommendations

The role of defense counsel is critically important. Without well trained and well resourced defense counsel, there is no practical realization of due process and no accountability of the juvenile justice system. Across Indiana, there are dedicated attorneys working on behalf of children in the justice system, but they are struggling within a system that is overburdened and under-funded. Some defenders remain zealous advocates; others, however, have succumbed to the notion that the juvenile defense attorney plays an insignificant role in juvenile court. Indiana has an obligation to treat children in its justice system with dignity, respect, and fairness, and it must recognize that juvenile defenders, charged with protecting their young clients' constitutional rights, are a vital part of this obligation.

This assessment makes a number of recommendations in Chapter 3 to ensure continued improvement in the juvenile defense delivery system and to assure that youth in the juvenile justice system are guaranteed their constitutional right to effective assistance of counsel. Key recommendations include:

- The Indiana General Assembly should establish limitations on the waiver of counsel by youth in delinquency proceedings consistent with national guidelines by the American Bar Association and the National Juvenile Defender Center, so youth are prohibited from waiving counsel or, at a minimum, are required to consult with counsel before being allowed to waive counsel;
- Juvenile courts should ensure that judges thoroughly inform and educate youth on their constitutional and statutory rights;
- Juvenile courts should ensure that no youth goes unrepresented at any critical stage of proceedings or, at a minimum, that the youth has consulted with counsel before waiving the right to counsel;
- Juvenile courts and counties should ensure that indigent defense delivery systems are independent of the judiciary;
- Counties should ensure that adequately funded juvenile defense systems are in place that conform to standards regarding caseloads, resources and support services, including access to social workers, investigators, experts and interpreters, so defenders have the capacity to investigate and prepare cases properly from arrest through appeal;
- Defense delivery systems should ensure that youth only waive counsel after prior consultation with counsel and after an appropriate colloquy on the record to ensure the youth understands all rights being waived and the potential consequences to which he or she is subject;
- Defense delivery systems should ensure that attorneys providing juvenile representation have a professional work environment with adequate physical resources, such as private office space, furnishings, technology, and research tools;
- Defense delivery systems should ensure that attorneys have appropriate litigation support services necessary for effective representation, such as social workers, interpreters, investigators, paralegals, and clerical support;

- Defense delivery systems should ensure that attorneys have access to experts as needed for effective representation, including but not limited to, evaluation by and testimony of mental health professionals, education specialists, and forensic evidence examiners;
- Public defense and bar organizations should increase opportunities for juvenile defense attorneys to participate in meaningful and intensive training on relevant issues facing children and youth in the juvenile delinquency system including, but not limited to, child development issues, motions practice, dispositional advocacy, detention advocacy, trial skills, competency and capacity, education advocacy, and post disposition advocacy and ensure thorough advertisement of these trainings across the state; and
- Public defense and bar organizations should create a statewide Juvenile Defender office to bring together resources and expertise from across the state, continue the process of evaluating the delivery of legal services to Indiana’s children and implement specific policies and programs as appropriate.

INTRODUCTION

This assessment of access to counsel and quality of representation in Indiana delinquency proceedings is an important part of a national movement to review juvenile indigent defense delivery systems across the country and evaluate how effectively attorneys in juvenile court are fulfilling constitutional and statutory obligations to their clients. This study is designed to provide broad information about the role of defense counsel and the delinquency system, identify structural or systemic barriers to more effective representation of youth, identify and highlight promising practices within the system, and make recommendations for viable ways to improve the delivery of defender services for youth in the justice system.

According to the Annie E. Casey Foundation's 2005 *KIDS COUNT Data Book*, Indiana ranks 30th out of all 50 states across the country in the overall well being of its children.¹ This overall ranking considers the results from a number of measures that are of relevance to this study, including the percentage of teens who are high school dropouts (IN ranks 45th); the percentage of teens not attending school and not working (IN ranks 16th); and the percentage of children living in poverty (IN ranks 16th), among others.² Of Indiana youth aged 17 and younger, almost 4 in 10 live in low income families (defined as below 200% of the federal poverty level); indeed, Indiana's poverty rate for its children is higher than the poverty rate for the overall population.³ Of the estimated 315,603 Indiana youth between the ages of 16 and 19, over 12% are not enrolled in school and are not high school graduates, and nearly 7% are unemployed or not in the labor force.⁴ Furthermore, in 2003, 3,045 of Indiana's children were held in a public or private residential placement.⁵ Given that approximately 26% of people in Indiana are under the age of 18 years, it is imperative that significant attention be paid to the welfare of this population.⁶

Indiana's detained youth also face substantial challenges and dangers. For example, the Indiana Department of Corrections recently agreed to be monitored by the United States Department of Justice to avoid legal action after a federal investigation concluded that conditions violated the "constitutional and federal statutory rights of juveniles" confined in certain facilities in the state.⁷ The 19 month investigation by the Department of Justice revealed numerous instances of violence among committed youth as a result of inadequate supervision, inappropriate use of force by staff against youth, inadequate special education services, and the need to improve mental health evaluations and the provision of related services.⁸

I. Due Process and the Juvenile Justice System

In the landmark 1963 case *Gideon v. Wainwright*, the United States Supreme Court held that the constitutional right to counsel requires the appointment of an attorney to represent an indigent person charged with a felony offense.⁹ Three years later, in a series of cases beginning in 1966, the Supreme Court acknowledged that these bedrock elements of due process were also essential to youth in delinquency proceedings. Arguably the most important of these cases, *In re Gault* stated that juveniles facing delinquency proceedings have the right to counsel under the Due Process Clause of the United States Constitution.¹⁰ In *Gault*, the Court found that juveniles facing “the awesome prospect of incarceration” need counsel for the same reasons that adults facing criminal charges need counsel.¹¹ Noting that the “absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment[,]” the Court determined that a child’s interests in delinquency proceedings are not adequately protected without adherence to due process principles.¹² These principles were reaffirmed several years later when the Supreme Court declared in *In re Winship*, “[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[,]” and held that juveniles are constitutionally entitled to proof “beyond a reasonable doubt” during an adjudication.¹³

The introduction of strong advocates to the juvenile court system theoretically altered the tenor of delinquency cases. Juveniles accused of delinquent acts were to become participants in the proceedings, rather than spectators. *Gault* established that a system in which the child’s views are not heard is a system that violates due process.

With its decision in *In re Gault* and a series of other important cases,¹⁴ the Court focused national attention on the treatment of youth in juvenile justice systems around the country. In 1974, evincing concerns over safeguarding the rights of children, Congress enacted the Juvenile Justice and Delinquency Prevention Act. Among instituting other protections for youth, this Act created the National Advisory Committee for Juvenile Justice and Delinquency Prevention, which was charged with developing national juvenile justice standards and guidelines. Published in 1980, these standards require that children be represented by counsel in all proceedings arising from a delinquency action from the earliest stage of the process.¹⁵

Other organizations acknowledged the importance and necessity of these protections for youth in the juvenile justice system. Beginning in 1971, and continuing over a ten year period, the Institute of Judicial Administration (IJA) and the American Bar Association (ABA) researched and developed twenty-three volumes of comprehensive juvenile justice standards based upon well articulated policies and guidelines.¹⁶ (See Appendix A.) The IJA/ABA Joint Commission on Juvenile Justice Standards relied upon the work of approximately three hundred dedicated professionals around the country with expertise in every discipline connected to the juvenile justice system including the law, the judiciary, social work, corrections, law enforcement, and education, among many others. Adopted in full by 1982 by the American Bar Association, these standards were designed to establish the best possible juvenile justice system for our society, one that would not fluctuate in response to transitory headlines or controversies.

The importance of the role of counsel in delinquency proceedings emphasized by the Supreme Court and the *IJA/ABA Juvenile Justice Standards* remained on the public conscience in 1992 when Congress reauthorized the Juvenile Justice and Delinquency Prevention Act. In this updated version of the legislation, Congress re-emphasized the importance of lawyers in juvenile

delinquency proceedings, specifically noting the inadequacies of prosecutorial and public defender offices to provide individualized justice.

Most recently, organizations ranging from the National Juvenile Defender Center (NJDC) and the American Council of Chief Defenders (ACCD) to the National Council of Juvenile and Family Court Judges (NCJFCJ) have published guiding principles acknowledging the necessity of skilled juvenile defense advocacy to the provision of justice for youth. In January 2005, NJDC and ACCD released *Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems*. (See Appendix B.) These *Principles* were developed to provide criteria by which indigent defense systems may fully implement the Supreme Court’s holding in *In re Gault*. Of utmost importance to these *Principles* is the necessity for indigent defense delivery systems to recognize that children and adolescents are at a crucial stage of development and that skilled juvenile delinquency defense advocacy will positively impact the course of clients’ lives through holistic and zealous representation. Given this important role, the *Principles* indicate that indigent defense delivery systems should “ensure that children do not waive appointment of counsel...[and] that defense counsel are assigned at the earliest possible stage of the delinquency proceedings.”¹⁷

Also in 2005, NCJFCJ released its *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases*. These *Guidelines* were written to be used by courts and other juvenile delinquency system personnel to improve practice in juvenile courts. Similar to the *Ten Principles*, these *Guidelines* advise that “youth charged in the formal juvenile delinquency court must have qualified and adequately compensated legal presentation...[and] court judges and judicial officers should be extremely reluctant to allow a youth to waive the right to counsel.”¹⁸

While there seems to be agreement on the importance of experienced, quality counsel for youth in the juvenile delinquency system, the reality is that this right remains elusive for many youth. In 1993, the American Bar Association Juvenile Justice Center,¹⁹ in conjunction with the Youth Law Center and Juvenile Law Center, received funding from the federal Office of Juvenile Justice and Delinquency Prevention to initiate the Due Process Advocacy Project. The purpose of the project was to build the capacity and effectiveness of juvenile defenders through increasing access to lawyers for young people in delinquency proceedings and enhancing the quality of representation those lawyers provide. One result of this project was the release of the 1995 report *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*.²⁰ This report was the first systematic national assessment of the practices of juvenile defense attorneys and the quality of representation of youth in juvenile court.

The report examined and highlighted the gaps in the quality of legal representation for children in our country. It noted that some attorneys vigorously and enthusiastically represent

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their clients, but it also raised serious concerns that such representation is neither widespread nor common. In 1999, the centennial of the founding of the first juvenile court prompted many people concerned about justice for children to re-examine the processes by which legal services are provided to youth, and a state by state assessment of juvenile defense systems was begun. At the time of this writing, assessments have been conducted in Georgia, Kentucky, Louisiana, Maine, Maryland, Montana, North Carolina, Ohio, Pennsylvania, Texas, Virginia, and Washington to analyze state specific policies and practices. Several additional states are in various stages of the assessment process.

II. This Study and Its Methodology

The National Juvenile Defender Center; the Central Juvenile Defender Center, a project of the Children’s Law Center, Inc. in Covington, Kentucky; and the Youth Law T.E.A.M. of the Indiana Juvenile Justice Task Force, along with state, regional, and national partners, joined forces to produce this study. The goal of this assessment is to ensure excellence in juvenile defense and promote justice for youth in Indiana’s juvenile justice system. Specific objectives include: 1) assessing the ability of Indiana youth to access counsel in delinquency and status offender proceedings; 2) assessing the quality of indigent defense representation provided to youth in Indiana at critical stages in the process; 3) identifying significant, systemic issues affecting the

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juvenile defense bar that impact upon resource allocation, funding and other barriers to effective representation; and 4) providing recommendations for improving Indiana’s system of representation for youth in the juvenile justice system.

The information in this report was obtained through a variety of sources. An investigative team of 14 members conducted site visits and court observations in 11 representative counties across the state. These counties were selected after an extensive analysis of state demographics, crime trends, and indigent defense structures. All investigators were well acquainted with the role of attorneys in juvenile court. Investigators visited each site to conduct interviews, observe juvenile court proceedings, and gather documentary evidence. Interviews were conducted with judges, prosecutors, probation staff, defenders and private defense attorneys, school personnel, detention personnel, youth, parents and other juvenile justice personnel and stakeholders, as appropriate. The assessment was preceded by a statewide mail survey sent to defenders and juvenile court judges to elicit additional information on the appointment of counsel in their courts, waiver of counsel, quality of representation issues, and other systemic issues that impact upon the effective assistance of counsel for juveniles in the state.

Investigators also conducted interviews with 295 youth at six Indiana youth correctional facilities in order to provide the vital perspective of court-involved youth. Investigators asked youth about their access to counsel, as well as their perceptions of the quality of representation

they received. Questions focused on the types of tasks the attorneys performed for them, to their knowledge; the level of contact the attorney had with the youth throughout the proceedings; and the attitude the attorney conveyed toward the youth.

The data resulting from the research and site visits are summarized in Chapter Two of this report. Chapter Two also includes the investigators' findings regarding barriers that limit access to counsel and the quality of representation and other systemic barriers that affect quality representation and just outcomes for youth. The data and findings were reviewed by project investigators and other experts, and recommendations were devised for all three branches of government, as well as other systems that impact upon juvenile justice practices. It is hoped that the recommendations listed in Chapter Three will be used as the basis to continue reform initiatives to improve access to and the quality of representation for indigent youth in Indiana's juvenile justice system.

CHAPTER ONE:

INDIANA'S JUVENILE JUSTICE SYSTEM

I. Structure of Indiana's Court System and Juvenile Court Jurisdiction

The Indiana Constitution provides that the judicial power of the State is vested in "one Supreme Court, one Court of Appeals, Circuit Courts, and such other courts as the General Assembly may establish."²¹ The General Assembly divided Indiana into circuits based on county lines, so nearly all of Indiana's 92 counties have at least one circuit court. Only four smaller counties (Ohio, Dearborn, Jefferson, and Switzerland Counties) have been combined into two circuits with two counties apiece.²²

As local needs grew and necessitated the creation of additional courts, the Indiana General Assembly created superior and county courts. The "majority of Indiana trial courts are superior courts, and nearly all Indiana counties have superior courts in addition to their circuit court."²³ Most superior courts have general jurisdiction and can hear both civil and criminal cases. Circuit courts have unlimited trial jurisdiction, except in matters over which other courts have exclusive or concurrent jurisdiction. With the exception of St. Joseph County, superior or circuit courts across the state have divisions that hear juvenile cases.

Indiana juvenile courts have original jurisdiction in all proceedings that involve a child alleged to be delinquent or in need of services, paternity, the Interstate Compact for Juveniles, the possibility of involuntary drug and alcohol treatment, the detention of a delinquent child, and other proceedings specified by law.²⁴ While juvenile courts do not have jurisdiction over a child who commits an infraction, violation of a municipal ordinance, or violation of a traffic law, if the violation is a misdemeanor and the child is 16 years of age or older, they do have jurisdiction over a child operating a vehicle while intoxicated.²⁵ Indiana's juvenile courts do not have jurisdiction over youth being prosecuted for certain felony offenses, including murder, kidnapping, rape, robbery, and carjacking if the youth is 16 or older.²⁶ According to the Division of State Court Administration, Indiana juvenile courts disposed of 23,392 cases involving delinquency and 5,837 cases involving status offenders in 2004.²⁷

II. Structure of Indiana’s Indigent Defense System

According to the Indiana Public Defender Commission’s *Standards for Indigent Defense Services in Non-Capital Cases*, indigent defense in Indiana is administered at the county level, and representation is delivered in three ways: public defender programs, contracts between courts and attorneys or law firms, or assigned counsel systems through which judges appoint private attorneys on a case by case basis. Twenty-seven of Indiana’s counties use some form of public defender program to provide indigent defense to their residents. The forms of these public defender programs vary, but generally these programs are one of the following: 1) full-time public defender agencies or offices, 2) a chief public defender with part-time public defenders, 3) public defender offices with no chief public defender, or 4) part-time public defenders with no office and no chief. Forty-five counties use the contract system in which judges contract with an attorney or group of attorneys to provide representation; however, attorneys in some of these counties are actually salaried employees of the court instead of independent contractors. The remaining twenty counties in Indiana employ the assigned counsel system, operating on a case by case basis.²⁸

Responsibilities for the provision and monitoring of indigent defense at the state level fall on a number of different organizations including the Indiana Public Defender Commission, the Public Defender of Indiana, and the Indiana Public Defender Council.

Indiana Public Defender Commission

In 1989, the General Assembly created the Indiana Public Defender Commission, a statewide organization that sets standards for indigent defense, including delinquency representation, and is authorized to reimburse counties that meet these standards for up to 40% of the defense costs of non-capital cases.²⁹ According to statute, the Commission’s primary purposes are to:

- o Make recommendations to the Indiana Supreme Court concerning standards for indigent defense services in capital cases;

“The Public Defender Commission is authorized to reimburse participating counties for up to 40% of indigent defense costs for non-capital cases.”

- o Adopt guidelines and standards for indigent defense services under which counties are eligible for reimbursement, including determining eligibility for legal representation, and minimum and maximum caseloads for public defender offices and contract attorneys;
- o Make recommendations concerning the delivery of indigent defense services in Indiana; and
- o Make an annual report to the Governor, the General Assembly, and the Supreme Court on the operation of the public defense fund.³⁰

The Public Defender Commission is comprised of eleven members: three are appointed by the Governor, three are appointed by the Chief Justice, one is appointed by the Indiana Criminal Justice Institute, two are members of the House of Representatives appointed by the Speaker of the House, and two are members of the Senate appointed by the President *pro tempore* of the

Senate.³¹ The Commission meets quarterly “to review claims, authorize reimbursement to eligible counties and discuss issues in keeping with the Supreme Court and the General Assembly’s intent to provide the highest quality indigent criminal defense possible.”³²

The Public Defender Commission is authorized to reimburse participating counties for up to 40% of indigent defense costs for non-capital cases. It is unclear, however, whether the funding levels provided to the Commission are or will be sufficient to cover these costs. For example, in 2003-2004, the Commission received only \$7 million to reimburse 49 Indiana counties, an amount which was inadequate to meet the reimbursement claims by the eligible counties. The Commission covered these additional costs by borrowing \$1.2 million from the 2004-2005 appropriations.³³ As of the Division of State Court Administration’s 2004 Judicial Service Report, 53 counties had indigent defense delivery plans approved by the Commission.³⁴ Clearly, as the number of eligible counties increases, funding for reimbursement must follow suit.

In 2005, the Indiana Public Defender Commission revised its guidelines related to non-capital cases. Among other changes, the rate of compensation for non-capital cases for assigned counsel was raised to \$60 per hour.³⁵ The Commission also requires that defenders’ compensation be “substantially comparable” to that of prosecutors.³⁶ The Indiana Public Defender Commission also created caseload guidelines to insure that appointed counsel are not assigned excessive caseloads that interfere with providing quality representation. Separate juvenile caseload standards for defenders without staff were revised and adopted by the Indiana Public Defender Commission on March 10, 2004 and became effective July 1, 2004³⁷:

Juvenile Case Types	Full-time Attorneys	Part-time Attorneys
Juvenile C Felony and above	200	100
Juvenile D Felony	250	125
Juvenile Misdemeanor	300	150
Juvenile - Status	400	200
Probation violations	400	200

The Indiana Public Defender Commission also recommends the following standards for adequate support staff: one paralegal for every four attorneys, one investigator for every six attorneys, one law clerk for every two attorneys, and one secretary for every five attorneys. The Commission created different caseload standards for attorneys with and without support staff. Full-time trial attorneys with support staff should have a maximum of 250 juvenile cases, and part-time trial attorneys with support staff should have a maximum of 125 cases. Full-time appellate attorneys with support staff should have a maximum of 25 cases, and part-time appellate attorneys with support staff should have a maximum of 12 cases.³⁸

Public Defender of Indiana

The Public Defender of Indiana is a state funded judicial agency that provides post-conviction representation in adult and juvenile cases and represents juveniles in parole revocation hearings. Its stated mission is to 1) assure fundamental fairness in criminal and juvenile cases resulting in incarceration by providing factual and legal investigation in all capital cases and in juvenile and non-capital cases when sought by the indigent inmate and representation at hearing and on appeal when the post-conviction action has arguable merit, at state expense; and

2) to provide competent counsel for trial and direct appeal at county expense, when the county court cannot locate counsel to represent an indigent defendant.³⁹ The Public Defender's office is divided into two divisions: the Post-Conviction Relief Division, consisting of the Non-Capital, Capital and Juvenile Divisions; and the Appellate Division.

Two attorneys within the Post-Conviction Relief Division are assigned one-half time to represent juveniles in Indiana Department of Corrections facilities in parole revocation and Trial Rule 60(B) proceedings.⁴⁰ Indiana law recognizes that juveniles have the right to be represented by counsel and to have counsel appointed, if indigent, in parole hearings.⁴¹ In 2005, these attorneys represented 139 youth in juvenile parole revocation hearings⁴² and had 29 new or existing cases involving juvenile appeals or Trial Rule 60(B) motions.⁴³

Indiana Public Defender Council

The Indiana Public Defender Council is a resource center for attorneys who represent indigent criminal defendants in the state.⁴⁴ The mission of the Council, established in 1977, is to improve the quality of indigent defense representation through research, training, and the development and dissemination of practice materials.⁴⁵ Its staff also plays a role in the legislative process on issues regarding indigent defendants. The Council is governed by an 11-member Board of Directors and currently boasts a membership of approximately 1,100 attorneys. While the Council sponsors various seminars for criminal defense attorneys and creates numerous publications on criminal justice issues, it has also sponsored training for attorneys doing juvenile defense work.

III. Juveniles' Right to Counsel and Other Statutory Rights

Juveniles in Indiana charged with committing a delinquent act have the right to be represented by counsel at every stage of juvenile proceedings, including disposition.⁴⁶ Juvenile court judges are required to appoint counsel at the detention hearing or initial hearing if the child does not have an attorney and if the child has not lawfully waived his or her right to counsel.⁴⁷ If a youth is in detention, the court must appoint counsel at the detention hearing; however, if the youth is not detained, the court must appoint counsel at the initial hearing. The juvenile court judge must inform the child and his parent, guardian, or custodian of the child's right to counsel and right to have counsel appointed at public expense if the family cannot afford a lawyer.⁴⁸ The court *may* appoint counsel to represent any child in any other proceeding.⁴⁹

Juveniles in Indiana not only have a statutory right to be represented by counsel at every stage of the proceedings, but they are also entitled to other basic due process rights including: the right to cross-examine witnesses, the right to obtain witnesses or tangible evidence by compulsory process, the right to introduce evidence on their own behalf, the right to confront witnesses, and the right against self-incrimination. These rights may be waived only:

- (1) by the child's counsel if the child knowingly and voluntarily joins with the waiver;
- (2) by the child's custodial parent, guardian, custodian or guardian ad litem if:
 - a. that person knowingly and voluntarily waives the right;
 - b. that person has no interest adverse to the child;
 - c. meaningful consultation has occurred between that person and the child; and

- d. the child knowingly and voluntarily joins with the waiver; or
- (3) by the child, without the presence of a custodial parent, guardian, custodian or guardian ad litem, if:
 - a. the child knowingly and voluntarily consents to the waiver; and
 - b. the child has been emancipated by virtue of having married or in accordance with the laws of another state or jurisdiction.⁵⁰

Waiver of one of the child’s constitutional rights does not constitute waiver of all of the child’s constitutional rights.⁵¹ The child may waive his right to meaningful consultation with the custodial parent, guardian, custodian or guardian ad litem if the waiver is made knowingly and voluntarily; the waiver is made in the presence of the child’s custodial parent, guardian, custodian, guardian ad litem, or attorney; and the child is informed of the right to meaningful consultation.⁵² However, in a 2003 decision by the Indiana Court of Appeals, it was acknowledged that a better approach for determining whether a child understood his rights would be for the trial court judge to personally advise each individual child and parent concerning the child’s rights at the same time that the judge questions whether the child and parents understand the rights.⁵³

IV. Indiana Juvenile Court’s Policy, Purpose and Proceedings

While examining the role that public defenders and appointed counsel play in delinquency proceedings, it is important to remember the General Assembly’s intended purpose for Indiana’s juvenile court. It is clear from the Indiana Code that the juvenile court must strike a balance between the well being of the youth, rehabilitation, accountability, and public safety.⁵⁴ As stated in the Indiana Code, the purpose clause for delinquency proceedings requires the juvenile court to:

- recognize the importance of family and children in our society;
- recognize the responsibility of the state to enhance the viability of children and family in our society;
- acknowledge the responsibility each person owes to the other;
- strengthen family life by assisting parents to fulfill their parental obligations;
- ensure that children within the juvenile justice system are treated as persons in need of care, protection, treatment, and rehabilitation;
- remove children from families only when it is in the child's best interest or in the best interest of public safety;
- provide a juvenile justice system that protects the public by enforcing the legal obligations that children have to society and society has to children;
- use diversionary programs when appropriate;
- provide a judicial procedure that ensures fair hearings, recognizes and enforces the legal rights of children and their parents, and recognizes and enforces the accountability of children and parents;

“It is clear from the Indiana Code that the juvenile court must strike a balance between the well being of the youth, rehabilitation, accountability, and public safety.”

- promote public safety and individual accountability by the imposition of appropriate sanctions; and
- provide a continuum of services developed in a cooperative effort by local governments and the state.⁵⁵

V. Stages of Proceedings in Juvenile Court in Indiana

A. Arrest and Detention of Alleged Delinquent Child

In Indiana, a youth alleged to have committed a delinquent act may be taken into custody by a law enforcement officer who has probable cause to believe that the child committed a delinquent act⁵⁶ or who is acting under an order from the court.⁵⁷ Arresting officers may release a child or turn the child over to the child's parent, guardian, or custodian with a written promise from the guardian to return the child before the juvenile court at a specified time. Alternatively, the officer may detain the child if he reasonably believes that:

- 1) the child is unlikely to appear before the juvenile court for subsequent proceedings;
- 2) the child has committed murder, or an act that would be a Class A or B felony if committed by an adult;
- 3) detention is essential to protect the child or community;
- 4) the parent, guardian, or custodian cannot be located or is unwilling to take custody of the child; or
- 5) the child asks to be detained and has a valid reason for this request.⁵⁸

A probation officer or intake officer or the court may review the officer's decision to release or detain and may also order the child detained for any of the aforementioned reasons.⁵⁹ Youth may be detained only in a place designated by the court, and the transporting officer must inform the child's parent, guardian, or custodian of where the child is detained and for what reason.⁶⁰

Youth alleged to be status offenders may not be held in secure facilities or in a shelter care facility that houses persons charged with or incarcerated for crimes;⁶¹ however, a child detained for running away may be held in a juvenile detention facility for up to twenty-four hours, exclusive of weekends and non-judicial days.⁶² Youth alleged to have committed acts which would be crimes if committed by adults may be held in an adult facility for no longer than six hours following arrest and must be separated during that time by sight and sound from adults held on criminal charges.

B. Detention Hearings and Detention Reviews

Indiana law states that if the juvenile is not released to his parents, a detention hearing must be held within forty-eight hours of the child being taken into custody, excluding weekends and legal holidays.⁶³ The law requires that the court appoint defense counsel at the detention hearing if counsel is not already present and if the child has not waived his right to counsel.⁶⁴ A child who has been detained may petition the court for an additional detention hearing to review his or her circumstances.⁶⁵

C. Filing of a Delinquency Petition

When a probation officer, or intake officer, receives written information that a juvenile is a delinquent child, the probation officer must forward the information to the prosecuting attorney. If the prosecuting attorney has reason to believe the juvenile has committed a delinquent act, the prosecuting attorney may file a petition alleging that the child is a delinquent child.⁶⁶ In order to make this determination, the prosecuting attorney shall instruct the probation officer to perform a preliminary inquiry.⁶⁷ The preliminary inquiry is an investigation into the facts and circumstances reported to the court, including information on the child's background, current status, and school performance.⁶⁸ The probation officer then recommends whether to file a delinquency petition, informally adjust the case, refer the case to another agency, or dismiss the case.⁶⁹ The petition must be filed within seven days, excluding weekends and holidays, if and after the youth has been taken into custody.⁷⁰

D. Initial Hearing

Once the juvenile's petition has been filed in juvenile court, he must appear before the court for an initial hearing. At an initial hearing, the juvenile is informed of the nature of the allegations; his or her rights to be represented by counsel, have a speedy trial, confront witnesses, cross-examine witnesses, and obtain witnesses or tangible evidence that the prosecutor has; whether the prosecutor wishes to waive the case to adult court; and the dispositional alternatives available to the court if the juvenile is adjudicated a delinquent child.⁷¹ The court must appoint counsel unless counsel has previously been waived or appointed.⁷² The youth will also admit or deny the allegations in the delinquency petition at this initial hearing.⁷³

E. Waiver Hearing

There are two mechanisms by which juvenile cases may be heard in adult court in Indiana. First, if a juvenile is alleged to have committed an act over which the juvenile court does not have jurisdiction, the case will be filed directly with the adult court, and the services of the juvenile court are never enlisted.⁷⁴ Second, if a juvenile is alleged to have committed an act over which the juvenile court has jurisdiction, but the alleged act is such that the statute allows the prosecutor to seek to have the juvenile waived to adult court, the juvenile court must schedule a waiver hearing.⁷⁵ If the prosecutor seeks waiver of the case to the adult court, an Indiana judge is prohibited from taking an admission or denial at the initial hearing.⁷⁶

If the state seeks to waive a child into adult criminal court, the court may hold a waiver hearing within twenty days, exclusive of weekends and holidays, of the filing of the delinquency petition. The youth is entitled to representation at the waiver hearing, and counsel must be appointed *prior* to the hearing.⁷⁷ If waiver of the youth is granted, the youth's case is transferred from the juvenile system into the adult system. However, if the waiver is denied, the juvenile court will hold a fact-finding hearing within ten days of the denial.⁷⁸

At the waiver hearing, the state must prove by a preponderance of the evidence that the juvenile court should waive jurisdiction by arguing that the child committed the act in the delinquency petition, that the child is of age required by statute, and that it is not in the child's best interest or the community's safety for the child to remain in the juvenile court system.⁷⁹ In 2000, an Indiana appellate court held that the burden subsequently shifts to the youth to prove

that it would not be in his or her best interest to be waived, nor is it in the interest of public safety or community welfare.⁸⁰ While waiver is discretionary by the court under certain circumstances, there are certain cases in which the juvenile court must waive the youth into the adult system. For example, the court *shall* waive jurisdiction over children sixteen years or older, upon motion of the prosecuting attorney and after a full hearing, if there is probable cause that the youth committed a Class A or Class B felony (except certain controlled substances), or involuntary manslaughter or reckless homicide as a Class C felony, unless it is in the best interest of the child and the community for the child to remain in the juvenile justice system.⁸¹ Additionally, a court must waive jurisdiction over a case in which a youth has already been convicted of a felony or non-traffic misdemeanor.⁸²

F. Fact-finding or Plea Negotiation

Upon the filing of a delinquency petition and if the youth is not being waived and denies the allegations in the complaint, the juvenile court is required to hold a fact-finding hearing within twenty days of the filing of the petition if the child is detained or, otherwise, within sixty days.⁸³ However, the court may hold the fact-finding hearing immediately following the initial hearing.⁸⁴ Adjudication of a delinquent offense must be proven beyond a reasonable doubt at the fact-finding hearing.⁸⁵ If the child is found to be a delinquent child based upon the adjudication of the offense, the court will enter judgment and schedule a disposition hearing.⁸⁶ The right to counsel at this fact-finding stage is both statutory and constitutional.⁸⁷

G. Disposition

The juvenile court may hold a dispositional hearing immediately after the initial hearing if the child admits the allegations in the petition, although there is no statutorily required time frame in which this hearing must be held.⁸⁸ The purpose of the dispositional hearing is to consider:

- 1) alternative programs for the care, treatment, rehabilitation or placement of the child;
- 2) the appropriate level of participation by a parent, guardian, or custodian in the selected program; and
- 3) the financial responsibility of the parent or guardian of the estate for services provided for the parent or guardian or the child.⁸⁹

In making decisions regarding the disposition of the case, the court takes into consideration the pre-dispositional report prepared by probation staff.⁹⁰ The court will enter a dispositional decree, accompanied by a statement of the court's findings regarding the needs of the child and the need for participation by the parent, guardian or custodian in the plan of care for the child.⁹¹ For youth determined to be status offenders, the court's dispositional options are separately delineated from those for delinquent offenders.⁹²

H. Post-Disposition Proceedings

At any time after a disposition decree is entered, the juvenile court may order the County Office of Families and Children (OFC) or the probation department to file a progress report on the youth.⁹³ Juvenile courts must hold review hearings at least every twelve months from the date of the youth's removal from home or original disposition decree, whichever is first. At these

hearings, the court must determine if the dispositional decree should be modified and whether the present program of care is in the best interest of the child.⁹⁴ Jurisdiction may no longer continue if the goals of the dispositional decree are met.⁹⁵ As long as the court retains jurisdiction, it may modify dispositional orders on its own motion or upon the motion of the child, parent, guardian, custodian or guardian ad litem, prosecutor, probation officer or caseworker, County OFC attorney, or any person providing court-ordered services to the child.⁹⁶

Adjudications in juvenile court are subject to direct appeal to the Indiana Court of Appeals or the Indiana Supreme Court. The youth retains the right to counsel on appeal. Additionally, youth committed to the Department of Corrections are entitled to counsel through the state public defender in parole revocation and relief from judgment or order (Trial Rule 60) proceedings. Invocation of Trial Rule 60 has been held to be appropriate as an instrument to seek vacation of a dispositional order revoking a juvenile's probation,⁹⁷ to petition for permission to file a belated appeal from a delinquency adjudication,⁹⁸ to raise ineffective assistance of counsel claims,⁹⁹ and to challenge the validity of a guilty plea.¹⁰⁰

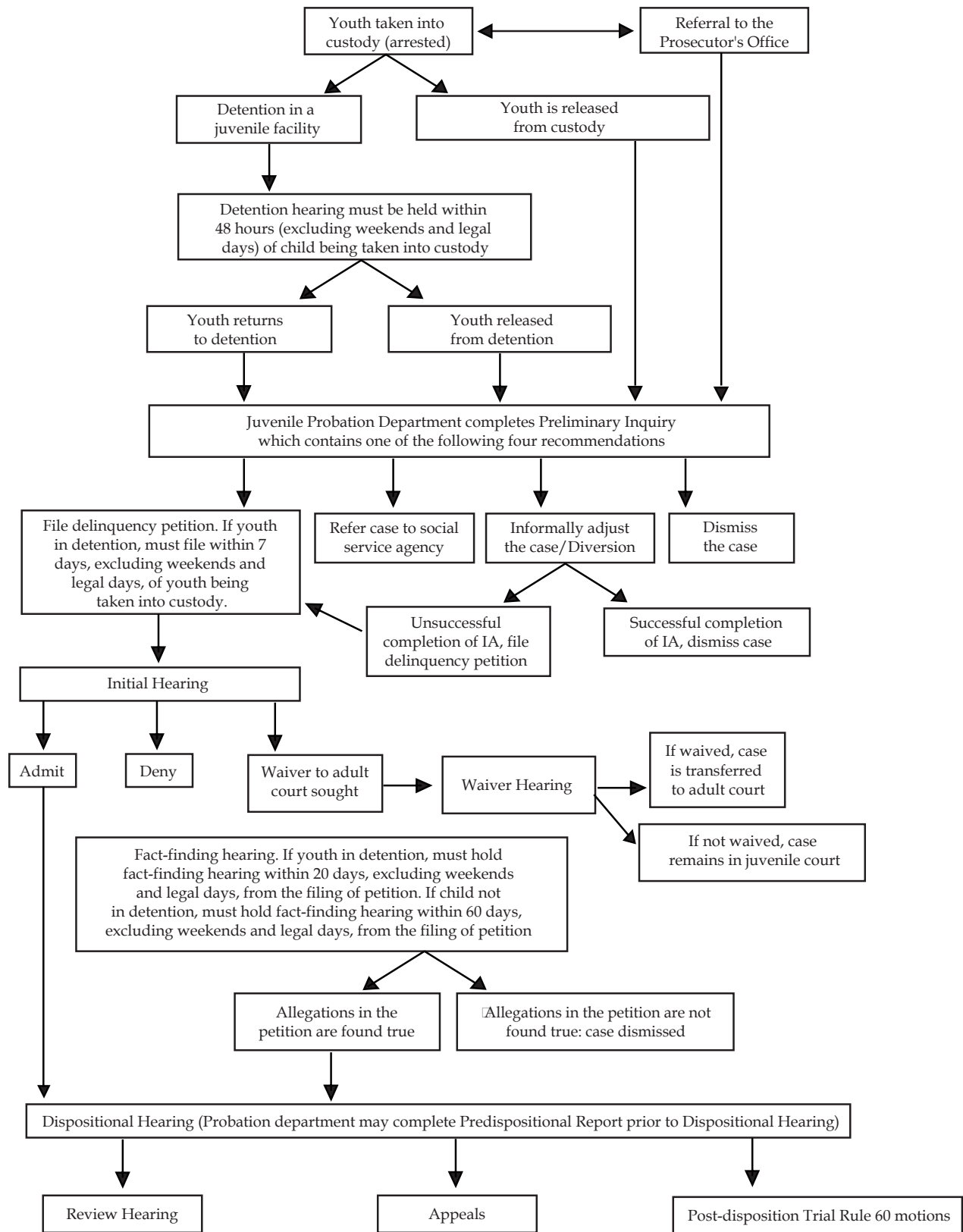
VI. Indiana's Juvenile Delinquency Services

Services for juveniles in the delinquency system are organized at both the state and local level in Indiana. Most of the twenty-four juvenile detention centers are administered at the county level by local juvenile courts. These courts also organize supervision of the probation departments which are responsible for predisposition investigation and probation supervision. A few detention facilities are administered by the local Sheriff's or Police Department or by private contractors. The Department of Corrections administers the state's delinquency institutions and parole services.¹⁰¹

Juvenile detention facilities are used to detain youth awaiting adjudication, post-adjudication awaiting placement, as a disposition, or as a sanction for probation violations. Indiana also has a system of detention alternatives for juveniles who require detention, but for whom there may not be a local facility. In order to prevent these youth being placed in adult jails, they may be subject to alternative placements including holdover facilities, home detention, and a combination of electronic monitoring and supervision.¹⁰²

The Indiana Department of Corrections (DOC) is responsible for adult and juvenile state institutions, camps and centers and accepts juveniles between the ages of 12 and 17.¹⁰³ DOC administers eight juvenile facilities ranging from minimum to maximum security.¹⁰⁴ DOC also contracts with some private providers for beds. Local juvenile courts are also authorized to order juveniles into private placements without committing them to the state Department of Corrections. These private placements include child-caring institutions, transitional living programs, and staff-secure or secure residential treatment facilities, among others.¹⁰⁵

Indiana has eight Parole Districts, each of which is responsible for monitoring offenders transferred from prison to parole supervision. These offices supervise both adults and juveniles on parole.¹⁰⁶ As of January 31, 2005 there were 1,219 juvenile males and females in DOC facilities and over 1,000 youth being supervised on parole.¹⁰⁷



CHAPTER TWO:

ASSESSMENT FINDINGS

Survey responses, research, and site visits conducted in the course of this assessment confirm that there are wide differences in practice among lawyers for delinquent children in counties across Indiana. Despite the good intentions of a number of professionals in the state's juvenile justice system, because of structural problems and institutional barriers, a large number of Indiana's youth are compromised by a lack of effective assistance of counsel from arrest to post-dispositional advocacy.

Given its reliance on the state's entire indigent defense delivery system, juvenile representation across Indiana cannot be viewed in a vacuum, however. Indiana's system of providing counsel to indigent defendants is fractured in that counties have the ability to choose the system of providing representation, but they are also largely responsible for bearing these costs. Even when counties comport with the Indiana Public Defender Commission guidelines and, therefore, become eligible for state reimbursement, the state's contribution remains less than half of the cost of providing indigent defense services.

Because the state's system impacts the provision of legal advocacy for juveniles, as well as adults, it is important to acknowledge issues challenging the state's entire indigent defense system. First, Indiana's system lacks effective oversight and monitoring to ensure adherence to structural standards and compliance with basic performance guidelines. Absent such oversight, wide discrepancies in access to counsel and the quality of representation are likely to remain the norm. Additionally, Indiana's funding structure for indigent defense services inappropriately places the burden on local counties, further aggravating the inconsistency in the quality of representation between counties and resulting in inadequate resources. Finally, because of the local responsibilities for providing indigent defense, the judiciary is often responsible for the appointment of counsel for indigent defendants and respondents. This responsibility creates a conflict of interest in which the independence of such attorneys and their ability to provide zealous advocacy may be compromised. An extensive analysis of these issues is beyond the scope of this report; however, additional study with the participation of the legislative, judiciary and executive branches to examine the need for large scale reform appears warranted.

While the aforementioned issues are relevant to the provision of defense services in Indiana, generally, the remainder of this chapter is devoted to findings related to representation in the juvenile justice system, specifically, including: 1) whether youth have access to counsel and the barriers that impede such access; 2) quality of representation at all critical stages of proceeding; 3) systemic barriers related to structure of the public defense delivery system; and 4) other barriers that impede just outcomes for youth in delinquency proceedings. Adherence to the principles set forth in the *IJA/ABA Juvenile Justice Standards* by all parties to delinquency proceedings, including attorneys, judges, and juvenile probation officers, among others, would ensure a consistently high and uniform practice on behalf of Indiana’s children. As such, these *Standards* have been included throughout this chapter to serve as a reference point from which to analyze the findings.

I. Access to Counsel and the Problem of Waiver

The importance of counsel for a youth in the justice system can never be overstated. A variety of legal standards and recommended practices emphasize the necessity of the right to counsel for fair and just proceedings. For example, the *IJA/ABA Juvenile Justice Standards* specifically state that a “juvenile’s right to counsel may not be waived.”¹⁰⁸ Similarly, the *Ten Core Principles for Providing Quality Delinquency Representation through Indigent Defense Delivery Systems* recognizes that the indigent defense delivery system “should ensure that children do not waive appointment of counsel . . . [and] should ensure that counsel are assigned at the earliest possible stage of the delinquency proceedings.”¹⁰⁹ This standard has been articulated most recently by the National Council of Juvenile and Family Court Judges, whose guidelines for juvenile delinquency cases note that judges and judicial officers “should be extremely reluctant to allow a youth to waive the right to counsel. On the rare occasion when the court accepts a waiver of the right to counsel, the court should take steps to ensure that the youth is fully informed of the consequences of the decision. A waiver of counsel should only be accepted after the youth has consulted

with an attorney about the decision and continues to desire to waive the right.”¹¹⁰

“Of the 295 youth interviewed in facilities operated by the Indiana Department of Corrections, 23.7% indicated that they were unrepresented by counsel.”

Perhaps the most disturbing finding in this assessment is that it has become a tolerated, if not accepted, practice across many jurisdictions in Indiana that youth go unrepresented by counsel, even during some of the most critical proceedings that affect their liberty interests. There are

significant numbers of youth across Indiana who waive their right to counsel in delinquency proceedings without having consulted with an attorney and without an adequate understanding of the benefits of counsel, their right to counsel, or the role that counsel plays.

Of the 295 youth interviewed in facilities operated by the Indiana Department of Corrections, 23.7% indicated that they were unrepresented by counsel. The most common reasons given by youth for waiving counsel were 1) they were guilty, 2) they were “caught red-handed,” or 3) they could not afford counsel. If the child waived counsel, the most likely person who discussed waiver with him or her was 1) his parent/guardian (25.8%), 2) the judge (24.2%),

3) no one (24.2%), or 4) his parole/probation officer (15.2%). These responses reveal a lack of understanding among many youth about the role of counsel, their right to appointed counsel if indigent, and, generally, the nature of the adversarial process.

Of the eleven jurisdictions visited by site investigators, only three counties provided the majority of youth with a public defender or appointed counsel if the youth was otherwise unrepresented. One of those jurisdictions appointed a public defender for every child under the theory that all youth are indigent due to their dependent status. In another, the only time a public defender did not represent a youth was when private counsel was obtained prior to the case. In the third county, one magistrate explained that only approximately five youth every year waive their right to counsel. The magistrate said that occasionally the parents will want the youth to waive counsel, but he explains to them that this is the decision of the parents and the child, not just the parents.¹¹¹

For the majority of jurisdictions, however, significant numbers of youth are waiving their right to counsel. In 2004, the Indiana Supreme Court reported that 26,653 new delinquency appointments were filed, and 16,437 “pauper appointments” were made.¹¹² By comparing these numbers, it is estimated that almost 40% of youth went unrepresented, not including a very limited number who may have hired private counsel. For 2003, the percentage was even higher, with 49% of cases not receiving pauper counsel.¹¹³ A number of factors appear to contribute to these high waiver rates:

A. Parental Encouragement

Probably the most significant factor in the decisions of children to waive their right to counsel was the encouragement of a parent or authority figure to do so. While well meaning parents often want their child to accept responsibility for wrongdoing and accept the consequences of their actions, the majority of parents do not understand their child’s rights, nor the collateral consequences a child may face by waiving these rights. For example, one investigator observed parents and youth discussing the decision to waive counsel; however, it was clear that the parent was making the decision to waive without an understanding of the charges or possible dispositions. By having counsel involved at this discussion, it would at least ensure that the parents (and more importantly the child) understood the consequences of waiving the right to counsel. One parent’s claim that “if he [the child] didn’t do it, then he needs a lawyer” succinctly illustrates the misunderstanding of the role of counsel. Too often other factors such as financial stress over missing work for hearings related to the charges or poor parent/child relationships enter into a parent’s decision.

“If he didn’t do it,
then he needs a
lawyer.” - Parent

B. Lack of Defense Counsel Visibility and Misunderstanding of the Role of Counsel

Investigators noted in several jurisdictions that defense counsel were simply not visible within the courthouse building. Because appointments of counsel are made either at the detention or initial hearing in the majority of counties, attorneys are not already present in the courtroom to demonstrate their role in the process. If a child does not waive counsel at these hearings, the judge appoints an attorney and gives the child the name of the attorney. In one county,

investigators found that youth were not given the contact information for the attorney, but were told that the public defender would meet with them at the next court date. Even if the youth were given contact information, it was frequently difficult for the youth to make contact with counsel. Indeed, in one county, it was rumored that one of the public defenders kept his voicemail full, so he could not receive calls from his clients. Further contributing to the perceived inaccessibility of defenders was the practice in one county to have a public defender present in the courtroom at detention hearings, but not officially appointing the counsel at that time. Thus, the services of the defender were not actually available to the youth until the next court date.

Because often neither defense counsel nor prosecutors took an active role in juvenile court proceedings, except in more serious or contested hearings, investigators found that youth and parents did not understand that an attorney was readily accessible to them for consultation. Therefore, in many instances, youth appeared to waive their right to counsel without a clear understanding of the role that counsel could play in the case and the benefits of having an attorney advocate for them. Some youth expressed the concern that the appointment of an attorney would merely delay the proceedings, particularly if the youth was held in detention. In other instances, youth indicated they did not think the attorney would have any impact on the case, or they did not need an attorney because they were guilty.

Furthermore, in jurisdictions where waiver was very high, probation officers handled much of the information flow to the court. This creates a culture where there is often little understanding of the role of the defense attorney or what effect an attorney may have in a given case. Some youth felt that probation officers would advocate for them and, therefore, they did not need an attorney.

C. No Consultation with Counsel Prior to Waiver

Youth rarely consult with counsel prior to waiving their right to an attorney, as indicated by public defender surveys. Investigators noted, and survey results corroborated, that the decision to waive counsel is greatly increased when the child consults only with the parent and not an attorney. For instance, when the youth consulted with an attorney before deciding whether to waive counsel, the attorney respondents indicated that youth “never waived” (38.6%) or “rarely waived” (50%), while when consulting only with a parent after a colloquy, the child “often waived” (47.7%) or “sometimes waived” (22.7%). Again, because counsel are generally not appointed until the detention hearing or the initial hearing, youth rarely have the opportunity to consult with counsel prior to waiver. It should also be noted that even if youth could consult with counsel prior to waiver, in two counties, investigators found this consultation to be a group consultation with multiple youth at the same time and no privacy for individual questions.

D. Inadequate and Incomplete Colloquies

Nearly half of the defenders interviewed indicated that youth “often” waive counsel after a colloquy is given by the court, but that there is inadequate discussion during that colloquy of the rights being waived, including the right to have an attorney appointed for the youth. For instance, nearly half indicated that the colloquy did not include the right to appointed counsel, the right to present witnesses, or a discussion about the right to take their case to trial, to present evidence and cross-examine the state’s witnesses. More than half indicated the right to appeal was never discussed in the colloquy, and nearly two-thirds indicated there was no meaningful

“The judge speaks
to youth only
using \$10 words when
the kids understand
\$0.25 words.”
- Juvenile Defender

questioning about whether the youth and/or parents understood the legal concepts presented. Additionally, attorneys felt that nearly half the time there was no discussion of the consequences of waiving these rights if the child was adjudicated. One juvenile defender noted, “the judge speaks to youth only using \$10 words when the kids understand \$0.25 words.”

Site investigators corroborated these defenders’ concerns about inadequate or incomplete colloquies by judges. The use of videotaped recordings as a method of advising youth of their right to counsel and other rights was perceived in each of the jurisdictions where it was observed as woefully inadequate and confusing. One

investigator explained her experience with the video recording, “I went into a conference room where a large screened TV was playing a video advisement of rights. It was about 10-15 minutes long, and the judge was reading from a benchbook in terms not particularly kid-friendly. Of the 20+ people in the room, not a soul was watching the video, which was almost at an inaudible level. I stood right next to the television and could barely hear it.” It also appeared that the large majority of youth and parents ignored the video while waiting for their court hearings. Investigators observed very little colloquy actually occurring in court following the out-of-court video, the absence of which clearly aggravates the problem of parents and youth understanding the child’s rights. One appellate defender explained that often if kids don’t seem to understand their rights, they are told to leave the courtroom and listen to the video again.

Perhaps contributing to the inadequate colloquies on rights is the pervasive belief that defense counsel is either unnecessary or a waste of time. For example, a magistrate in one county said she didn’t think children needed attorneys because she didn’t think “the end result would be different if there was an attorney.” One site investigator described a courtroom in which “the judge, in explaining the choices of the juvenile, never used the words ‘your rights’ when talking about the right to a lawyer. I saw no waiver of the right to counsel because it was never explained in those terms. Instead, the judge asked if a lawyer was ‘necessary.’ It was clear, too, from the way it was explained that getting a lawyer would cause at least a slight delay and, most often, the parents were ready to just get it over with.” It was also commonly noted that while a court may advise a

“I went into a conference room
where a large screened TV was
playing a video advisement of
rights...at an inaudible level...I stood
right next to the television and could
barely hear it.” - Investigator

youth of the right to have an attorney and the court’s willingness to appoint counsel, there was no follow-up question from the court as to whether the youth wished to exercise his right to an attorney. Rather, the judge would simply ask the youth and/or parent if they had any questions. It is likely these interactions, or lack thereof, that led one juvenile defender to claim that “kids are coerced into waiving counsel all the time in this court. Judges bend over backwards to obtain waivers.” Another defender expressed that “kids are encouraged by probation intake to admit and waive counsel all the time.”

E. Funding Constraints

The lack of adequate funding in many jurisdictions has clearly had a significant impact upon the practice of routine waiver. The caseload standards devised by the Indiana Public Defender Commission, while designed with the admirable intention to ensure quality counsel, have seemingly created a disincentive for attorneys and offices to take cases. For example, in counties where public defenders were on contract for a set amount of funding, they were at times not eager to incur additional cases involving juveniles and, thus, did little to encourage a system where youth did not waive. In one telling incident, an investigator observed a public defender sitting in a courtroom while child after child waived the right to an attorney. When the investigator approached the attorney about these waivers, the attorney indicated that accepting too many cases from juvenile court would place their public defender program in jeopardy of losing reimbursement funding, as they would exceed Commission caseload standards.

II. Quality of Representation at Critical Stages

While it is critically important for youth to have counsel throughout delinquency proceedings, it goes without saying that in order to be effective, this counsel must zealously advocate on behalf of his or her client. Investigators directly observed and were told of excellent defenders around the state who engaged in active motions practice, effectively took cases to trial, and continued representation post disposition. Indeed, one dedicated defender responded to a question about when his representation of his clients ends by exclaiming, “I suppose when I die, or if I ever quit my job.” Unfortunately, this dedication and zealous representation is not always common practice in Indiana.

A. Arrest and Detention

Good advocacy at the child’s entry point into the system is vitally important and can have significant implications for the youth throughout the proceedings. The *IJA/ABA Juvenile Justice Standards* explain that during the initial stages of representation, “[m]any important rights of

“Good advocacy at the child’s entry point into the system is vitally important and can have significant implications for the youth throughout the proceedings.”

clients involved in juvenile court proceedings can be protected only by prompt advice and action. Lawyers should immediately inform clients of their rights and pursue any investigatory or procedural steps necessary to protection of their clients’ interests.”¹¹⁴

Given a variety of factors, investigators often found that defenders were not able to practice zealous advocacy from the time of arrest through the decision by a court to detain a youth at a detention hearing. In many jurisdictions, counsel is appointed at the detention hearing, so there is no chance for attorneys to meet with clients or advocate at this stage. Thus, attorneys are rarely present for detention hearings and perhaps as a result, waiver of counsel is pervasive at this stage in the proceedings. In jurisdictions where lawyers were appointed for the detention hearing, few

“I personally have never had any reason to go to the juvenile detention center. There are [public defenders] who have been there.”
- Juvenile Defender

of the surveyed defenders ever met with their young clients prior to walking into court for the detention hearing. In some cases, this may be attributable to restrictions at the detention center. One county prohibited defenders from entering intake at the detention center to meet with their clients. One of the intake officers remarked that “public defenders are not allowed to come into intake to see kids and interview them.” In another county, the times during which a paralegal could meet with clients were extremely restrictive. Other attorneys simply chose not to visit their

clients. One public defender claimed he has “never had any reason to go to the juvenile detention center.”

Additionally, investigators noted that detention hearings were somewhat “ cursory,” and in some jurisdictions, defenders played little to no role at this stage of the process. One public defender assigned to do detention hearings acknowledged that he rarely contests probable cause and described his role as “just get[ting] the facts out, whether good or bad.” In another courtroom, the public defender was late to the detention hearing and the judge refused to wait, so the youth was effectively denied counsel. In another county where detention hearings are scheduled for a night at the end of the week, hired counsel have been known to make motions to hold hearings for their clients earlier in the week; however, it was noted that the public defenders in the county have not engaged in similar practice. In another county, the investigator observed a defender who was nearly silent during the court proceedings, even failing to speak with his client, but for his failed attempts to make jokes with the judge.

B. Pretrial Practice

According to the *IJA/ABA Juvenile Justice Standards*, at the pretrial stage, lawyers representing children must confer with them “without delay and as often as necessary to ascertain all relevant facts and matters of defense known to the client.”¹¹⁵ The *Standards* stress the duty of lawyers to conduct a prompt investigation of the facts and circumstances of the case and to obtain information in the possession of prosecutors, police, school authorities, probation officers, and child welfare personnel.¹¹⁶

Investigators found very uneven pretrial practices among defenders. In one county, a public defender noted that he regularly filed suppression and competency motions. The judge in this county corroborated that the

“Lawyers routinely try cases, and there is an active motion practice. Suppression motions are filed when appropriate, and few discovery disputes arise because the state is good about complying. Lawyers have access to all files and can hire their own independent experts if necessary.”
- Investigator

public defenders have an active motions practice and generally do excellent work. In another county, investigators found that “lawyers routinely try cases, and there is an active motion practice.”

“[M]ore than half of the juveniles interviewed in DOC facilities (54.8%) felt they had inadequate time with their counsel.”

Suppression motions are filed when appropriate, and few discovery disputes arise because the state is good about complying. Lawyers have access to all files and can hire their own independent experts if necessary.” Within other counties, practice among the public defenders and appointed counsel was significantly less proactive. One magistrate noted that one of the public defenders in his county used investigators, while the other two public defenders did not. Other defenders regularly filed pre-trial motions,

but never raised issues of competency. However, in a majority of cases, investigators noted a general lack of pre-trial work in juvenile delinquency cases. Motions practice was infrequent to non-existent, including motions for competency, discovery, and suppression issues.

It was also generally found that defenders rarely used experts or investigative help. To one judge’s knowledge “no defender had ever asked for funds for an expert or an investigator.” In at least one county, however, a defender stated that this failure to request funds was due to a fear of retaliation against her client. This defender explained that “the judge does not like to be proved wrong and will take it out on other clients, so I sacrifice one juvenile[’s need for mental health services/expert] to protect others. If I get it for one child, the next won’t get it.” In other situations, public defender offices were forced to share investigators among huge numbers of attorneys. Thus, investigation in juvenile cases was often sacrificed for the adult cases.

Also of note is that youth felt that their attorneys spent insufficient time meeting with them pre-adjudication. Of those who had attorneys, more than half of the juveniles interviewed in DOC facilities (54.8%) felt they had inadequate time with their counsel. However, nearly half of the attorneys surveyed (47.2%) felt they had “very adequate” time with the client and others “somewhat adequate” (30.2%), while only a small percentage of judges felt the time spent was inadequate (14.3%).

C. Adjudication and Plea Negotiations

While investigators did observe zealous defense at several adjudications by attorneys who were well prepared, insightful, and experienced, a relatively small number of cases in juvenile court in Indiana actually proceed to fact-finding hearings. While some court officers claimed that fewer than 5% of cases result in fact finding hearings, others suggested that 10-20% of cases in their counties ended up in adjudication. In some instances, whether a case goes to adjudication depends on whether the youth is appointed a defender or has hired counsel. A prosecutor in one county explained that “typically when I get a retained counsel on a case, it always goes to fact finding.” In many cases, attorneys appeared ill-prepared, hurried and overwhelmed at the prospect of trying cases. Indeed, one magistrate complained that the biggest problem with the public defenders in his county was they didn’t communicate with their clients, “[i]f I were facing charges, I would hate to think I was meeting the attorney for the first time on the day of the trial.”

“[D]efenders and others reported that 90% of their cases ended in pleas.”

The overwhelming majority of cases in Indiana's juvenile court result in the entry of a plea or admission to the facts alleged. Generally, defenders and others reported that 90% of their cases ended in pleas. This estimate is particularly disturbing given that investigators observed pleas in several cases in which there were obviously questionable factual or legal bases for the charges.

D. Disposition

The *IJA/ABA Juvenile Justice Standards* provide that courts should order the least restrictive dispositions that satisfy the needs of both youth and society.¹¹⁷ The *Standards* further provide that courts should also consider the individual needs and desires of youth in determining appropriate dispositional options.¹¹⁸ It is the duty of counsel to explore "social or legal dispositional alternatives" and "resources and services available in the community."¹¹⁹ Clearly, increased advocacy at disposition hearings should be a priority for the defender community, as this is a critical stage at which "just outcomes" can be dramatically affected by good advocacy.

Similar to advocacy at all other stages of the process, disposition advocacy in Indiana falls in extremes, and the outcomes for youth are dependent upon the counsel they are assigned. In one county, it was observed and corroborated that the public defenders zealously pursue least restrictive settings for their clients at disposition. In another county, investigators observed one public defender carrying no case files and saying nothing in court, nor communicating with the young client or the client's family, but saw another public defender meeting with the family and collecting background information to present at disposition.

Too often, however, investigators observed disposition reports being "rubber-stamped" with little or no discussion and/or comment from the attorney. Comments from youth revealed that their attorneys were generally silent and did not present or advocate for their position during disposition. Survey data also showed that attorneys do not prepare for disposition hearings, or are not present at all, and do not explore issues with the child that can impact upon the hearing, such as family history, placement options, school issues, mental health issues, or other resources available to the child and family. In fact, one probation officer reported that he often acts as a liaison between the youth, the parents and the defense counsel because he knows more about the families than the attorney.

A wide disparity was also found in the relationship between probation staff and public defenders and appointed counsel. In some jurisdictions, there existed a "good working relationship" between the two, with good information sharing and communication about the child's needs and recommendations. In others, however, there existed significant tension and criticisms between the groups, generally resulting in poor communication and information sharing abilities.

E. Post-Disposition Advocacy and Appeals

Representation of youth should not end at the dispositional hearing. The *IJA/ABA Juvenile Justice Standards* recognize the responsibility of counsel to continue representation in appropriate circumstances. According to the *Standards*, the attorney should be prepared to counsel and render or assist in securing appropriate legal services for the client in "matters arising from the original proceeding."¹²⁰ The *Standards* provide that lawyers who represent juveniles at

“There are significant inconsistencies among jurisdictions in Indiana as to when defenders believe their representation ends on a case.”

adjudication or on appeal ordinarily should be prepared to assist clients in post-disposition actions either to challenge the proceedings leading to placements or to challenge the appropriateness of treatment facilities.¹²¹ The *Standards* also provide that “[l]egal representation should also be provided the juvenile in all proceedings arising from or related

to a delinquency or in need of supervision action, including . . . other administrative proceedings related to the treatment process which may substantially affect the juvenile’s custody, status or course of treatment[.]”¹²² Counsel must also file appropriate notices of appeal and provide or arrange for representation perfecting appeals.¹²³

There are significant inconsistencies among jurisdictions in Indiana as to when defenders believe their representation ends on a case. Generally, attorneys indicated that once the disposition hearing is held, they have no further responsibility to the client, unless the court appoints them again on a new petition or for a review hearing. Some attorneys, however, interpreted their role as continuing until the case was dismissed or there were no active disposition orders still in effect. A small number of attorneys also reported that they had received requests from youth to continue their representation when the youth went to DOC facilities.

Appellate practice by local trial offices is nearly non-existent, and the process by which appeals are handled is unclear. More than half (56.8%) of the juveniles interviewed indicated that their lawyer did not explain their right to appeal, and even more did not discuss any possible issues on appeal (77.1%). Nearly half (43.2%) of the defenders surveyed indicated that they were not authorized to pursue juvenile appeals. The majority of attorneys indicated that time constraints (65.9%) and financial considerations (52.2%) hinder the representation of delinquent youth on appeal.

It must be noted, however, that the Public Defender of Indiana provides a system of representation for youth in DOC facilities who request post-disposition relief through Trial Rule 60 motions. Additionally, it appears that many youth receive representation for parole revocation hearings once arrested and lodged at one particular state facility. The Public Defender of Indiana also contracts with some counties to handle appeals. In recent years, important cases have been won on appeal establishing and clarifying rights for Indiana’s youth. For example, in 2003 in *N.M. v. State*, the Indiana Court of Appeals considered the use of *en masse* videotaped advisements of rights for youth and remarked that “given the special status of juveniles and the extra protection afforded them, we question whether such an advisement is adequate or appropriate.”¹²⁴ The Court suggested that it would make more sense for judges to advise youth of their rights personally, during the required colloquy to check whether youth understand the rights, but stopped short of barring the use of videotaped advisements.

III. Systemic Barriers to Effective Representation

A. The Need for Leadership Among the Juvenile Defense Bar to Effect Systemic Change

Nationally, juvenile court practice has long been an afterthought in the criminal justice system, and the vital importance of strong juvenile defense advocacy has received little attention or recognition. While the legal climate in this arena is slowly changing, Indiana juvenile defenders, like those in many states, do not feel empowered to effectuate systemic changes within local systems and on a statewide level.

A significant contributor to the disempowerment of juvenile defenders stems from the view that juvenile court is a training ground for defenders. While it was not uncommon for other court personnel to view juvenile defense in this light, it was particularly disappointing when one chief public defender revealed to an investigator that he sees juvenile court as not practicing “real law” and that he views juvenile assignments as the worst because “you have to be in court a lot.” Further aggravating this problem is the fact that juvenile public defenders are often forced to share support staff and investigators with adult offices, but often are unable to actually take advantage of this assistance.

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Furthermore, while state resources for juvenile public defenders have increased over the past several years, it is clear that these benefits are slow to trickle down to the front lines across the state. For example, a few defenders mentioned the Indiana Public Defender Commission’s mentor training system and trainings that had been done on juvenile issues; however, the general feedback to questions about resources for defenders was that there was little to no training for attorneys in this field. It was also mentioned on more than one occasion that county offices have very little contact with the state public defender office.

Perhaps as a result of this lack of support, juvenile defenders in Indiana generally did not perceive themselves as being able to make systemic changes to the way that juveniles are treated by the system. Investigators noted overwhelmingly that defenders did not see a role for themselves outside of the courtroom on juvenile justice issues and did not understand the power of their role both inside and outside of the courtroom. Furthermore, the juvenile defender community did not readily engage with other systems serving youth in the state. As a result, defenders were rarely included at the table when local juvenile justice initiatives were discussed and/or planned that would clearly impact policies relevant to their practices. For example, many defenders complained of various school policies that unnecessarily sent youth into the juvenile courts, criminalized behavior, and added to a youth’s criminal record, but saw no strategies available to them to work with the schools or others to change this practice. Further compounding this problem is the reality of the Indiana system that many, if not most, defenders and appointed counsel have outside practices and, as such, have limited time to devote to juvenile defense issues. Others who work in small jurisdictions expressed concern about “rocking the boat” or losing their contracts if they were seen as too contentious.

It is vital that Indiana develop a constituency of strong juvenile defense advocates who can level the playing field on issues pertaining to juvenile justice, both locally and statewide, and who can safeguard the rights of youth in this system at every stage. Defenders have a unique voice within the system and need to establish for themselves a stronger role in the development of policies and practices that impact youth in the juvenile justice system.

B. Misperception About the Role of Counsel As “Best Interest” Rather Than Advocate

According to the *IJA/ABA Standards*, the client’s interests are “paramount,” and the “lawyer’s principal duty is the representation of the client’s legitimate interests.”¹²⁵ Attorneys in the delinquency system are part of an adversarial process that charges them with zealously representing their client’s interests and advocating just outcomes for the youth.

Many court personnel in Indiana perceive the role of the attorney for the youth to be to identify the “best interest” for the youth and to promote that outcome. In situations where other court personnel expect or demand that defenders play this role, it can be particularly difficult for defenders to fight for the expressed interests, rather than the best interests, of their clients. For example, in one county the Director of the Court Appointed Special Advocate (CASA) program explained to an investigator that the role of the defender is “to represent the parents, [and] only CASA represents the child.” A judge in another county delineated his expectations for defenders; he “want[ed] the public defender to be torn between acting ethically within the bounds of professional canons of practice and wanting to get his client and his client’s family the services he believes they need.” In yet another county, the judge believed that representation in juvenile court should be different than adult court and should be more “treatment based.” A magistrate believed that the juvenile justice system was too adversarial to the detriment of the youth.

Of particular concern, however, is the confusion among juvenile defenders themselves as to their obligations to their young clients. According to investigators, many defenders in the state see themselves as guardians and believe it is acceptable to substitute their judgment for that of their clients. Observers noted attorneys who had a policy of not meeting with youth without a parent present, and in one case, an attorney described his role as “a provider of information, more than an advocate.” One public defender described his role in the delinquency system as “[i]deally I want to serve more of a guardian role. Trying to get them through the process, get them the services they need and address any procedural defects that might arise.” Another claimed that the juvenile system “is not a criminal process, it is about best interests.” Investigators found that the role confusion was particularly pervasive in counties with high levels of waiver of counsel.

C. Excessive Caseloads and Lack of Adequate Defender Resources

According to the 2004 Indiana Judicial Service Report, while there was a 4.9% decrease from 2003 in new cases filed in 2004, caseloads have increased in the past 10 years by 12.9%.¹²⁶ Juvenile delinquency cases have been a noticeable segment of this increase. Indeed, while the number of other cases may have declined in 2004, the number of delinquency cases filed increased by 792 from 2003 to 2004.¹²⁷ Thus, although investigators did not have ready access to accurate caseload data in all of the jurisdictions, it was evident that excessive caseloads are a significant problem in some counties. In one county, investigators were told, “if you were forced to identify a single issue impeding quality representation, it would have to be the exorbitant caseloads imposed on defenders. Measured against any standard, the number per attorney is obscene and has a negative

impact on absolutely everything that follows.” Particularly in larger urban areas, excessive caseloads were identified as the cause of other significant problems including high rates of waiver and poor quality of representation. Furthermore, high caseloads also contributed to some counties failing to meet standards for Indiana Public Defender Commission reimbursement with state funds.

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- Investigator

The problem of excessive caseloads is clearly exacerbated in some areas by the lack of adequate support staff, technology and access to investigators and/or social workers. In several instances, defenders or appointed counsel noted they had inadequate office space, had no available interview room at the courthouse to interview youth, and were without computers or access to case files. One juvenile defender explained, “we are understaffed, under-funded, do no independent research, conduct no investigation, we have no support staff, murder cases must be tried within 30 days and, fortunately, the ADA’s aren’t prepared either. If they aren’t ready in 30 days, the case is dropped. We count on that.” Clearly, without such basics, the defender’s work on each case is much more difficult and inefficient, thereby compromising their capacity and ability to zealously advocate for their clients and the system’s ability to provide just outcomes for all.

Defenders in many parts of the state also expressed the need for more training and other support from the state and/or bar associations. While a few defenders were aware of websites and training available through the Indiana Public Defender Council, the majority was not, and they indicated that they had never, or rarely, attended any juvenile specific training.

D. The Appointment Process

1) Inconsistency in Interpretation of Eligibility Requirements

“Interpretations across the state as to the eligibility criteria for youth to receive appointed counsel are clearly inconsistent.”

Interpretations across the state as to the eligibility criteria for youth to receive appointed counsel are clearly inconsistent. In some jurisdictions, all youth are considered eligible for appointed counsel or a public defender, while in others, the parental income determines eligibility. In other jurisdictions, a judge may consider the child eligible, but assess an attorney fee against a parent at the end of the proceedings as part of a disposition order. In another, a judge explained that she would appoint an attorney if the case was going to a fact finding hearing. Generally, judges appointed counsel for

youth if the parent was the complaining witness against the child; however, even this practice was not uniform. Some judges and magistrates interviewed agreed that there were “no standards to govern our indigency determinations.”

2) Timing of Appointments Inadequate for Effective Representation

While the large percentage of youth who waive counsel is a pervasive problem across the state, of equal and related concern is the time at which many appointments of counsel occur.

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As previously mentioned, most counties do not have in place a system for effective representation at the detention hearing stage, one of the most critical points for strong advocacy. Because counsel is often appointed at the detention hearing or the initial hearing, as opposed to prior to these hearings, youth are left with no protection of counsel at these important hearings. This absence of representation is particularly relevant because many youth admit to offenses at this stage. In one county, a prosecutor estimated that approximately 1/3 of youth admit to offenses at the initial hearing; however, it was more common for these estimates to be 80-90% of youth admitting at the initial hearing.

What investigators saw in one county aptly demonstrates how the late appointment of counsel also creates a strong disincentive for youth to request counsel and, therefore, brings into question the voluntariness of their waivers of counsel. In this county, if the youth requests counsel at the detention hearing, the proceeding is stopped and supposedly continued within 48 hours; however, investigators learned that it was often continued until later than this required time. Given that youth are more focused on short term benefits and consequences, it is extremely unlikely that a youth would choose to stay in detention for possibly longer than two days so he can have the assistance of counsel over making an uninformed decision to

waive counsel with the hope of a more speedy resolution to his case. Therefore, a majority of youth are making life changing decisions with no advice of counsel.

In other counties, appointments of counsel were subjective decisions depending on the likely trajectory of the case. For example, investigators observed counsel being appointed only if a case was to proceed to a fact-finding hearing. In other instances, counsel was appointed at the time of disposition after the youth had already been adjudicated delinquent, but the court was contemplating commitment to the Department of Corrections.

3) Qualifications of Counsel Not Standardized

Although the Indiana Public Defender Commission has standards for the appointment of attorneys to handle indigent juveniles’ cases, because many counties do not participate in the reimbursement program, these standards are not uniformly applied across the state. As a result, investigators saw a broad range of attorneys with varied experience handling juvenile cases. In some counties and courtrooms, investigators encountered experienced trial lawyers with

significant criminal and juvenile defense experience who treated their indigent juvenile clients with the same degree of skill and quality as their paid clients. At the other extreme, however, investigators found attorneys with limited or no experience or training handling cases in juvenile court, often without supervision or oversight. When describing the performance of youth appearing in fact finding hearings without counsel, one magistrate went so far as to claim that “sometimes the children do better than the lawyers.” Other attorneys had some experience, but displayed little interest, enthusiasm or compassion for representing juveniles in the delinquency system.

“Almost without exception, investigators noted a significant over-dependence by Indiana school systems on the juvenile courts to solve problems related to truancy, fighting, and other discipline issues.”

It was frequently mentioned to investigators that there were no requirements for attorneys to join the list of appointed counsel. For the most part, these attorneys were not required to have any minimum qualifications or to participate in any special training. Indeed, the breadth of many of these attorneys’ private practices indicated that there was very little, if any, specialization in juvenile law.

IV. Other Factors Affecting Just Outcomes for Youth in Delinquency Proceedings

A. Over-dependence by school systems on juvenile court

Almost without exception, investigators noted a significant over-dependence by Indiana school systems on the juvenile courts to solve problems related to truancy, fighting, and other discipline issues. As has been the case in many states, school referrals to courts appear to have increased dramatically over the last several years. One county estimated that its school related cases had increased threefold, while another suggested that its school related cases had quadrupled over the past three years.

There are several reasons suggested for this increased reliance by schools on the court system. One Indiana county judge believed that schools were failing to produce appropriate Individualized Education Plans for special education youth, so they would be able to expel more children and refer them to the justice system. A probation officer in another county suggested that the teacher’s union is forcing the schools to refer more cases to the delinquency system and that many of these referred youth have special education needs. Several courts utilized programs whereby youth who were suspended from school were automatically referred to the court, sometimes without a formal petition having been filed. Regardless of the various theories, it is clear that Indiana schools are using the juvenile justice system as a “dumping ground” for youth with special needs.

Furthermore, investigators found no system in place in any of the courts visited to provide assistance for children with disabilities who needed special education advocacy. Attorneys and judges generally knew little about the rights of children with disabilities and the possible

implications of these disabilities for their delinquency cases. The high percentage of youth in the juvenile justice system with mental health and/or educational disabilities makes it imperative that attorneys, judges and other professionals working with these youth understand their rights, as well as the nature and extent of their disabilities and how they may be manifested.

While school systems, probation offices and courts should maintain a healthy working relationship on behalf of youth common to these systems, courts are not in the position to act as school principals and administer discipline. Litigation on these issues by the Indiana Civil Liberties Union has curtailed some practices where due process violations have occurred and courts have been used inappropriately; however, the inappropriate flow of school related cases into courts continues to cause frustration on the part of judges, probation staff, defense counsel and others who have limited resources and expertise in solving education related issues for the child. It is imperative that communities examine and utilize better research-based strategies for reducing the “school to prison pipeline.”

B. Overdependence on Probation Staff

Probation services play a vital role working with Indiana youth and their families. Investigators interviewed dozens of probation staff across the state and observed them working as an integral part of the court system. The role that probation plays is varied, however, and in many counties, probation staff dominated the proceedings in lieu of attorneys, both prosecutors and defense counsel. In one county, investigators were told, “overall, probation gets away with whatever they want until anyone tries to challenge it. There aren’t many people challenging it.” In another county, it was explained that “probation has the most voice with the judge.” Investigators did find one county where probation did not seem to have significant power, as one probation officer explained “probation here works as an objective resource available to the court for dispositional recommendations. And, believe me, our recommendations are not always adopted.” However, this probation officer did confirm that his county was unique and that probation does have more power in other counties.

Not only did the recommendations of probation officers carry significant weight, but probation officers also played a multitude of roles in the juvenile court process. They appear to be handling everything from intake and detention decisions, advising youth what to do in court, explaining rights, and making recommendations for disposition. Indeed, in one county when a judge placed a youth on probation, he would not set a term for the end of the probationary period, but would leave the decision to the probation officer. This overdependence on probation staff appears to have tipped the scales most dramatically toward a “best interest” system in delinquency cases, in lieu of ensuring due process for youth who face serious consequences.

C. Fees

In Indiana, courts are able to order defendants and respondents or their parents to repay court costs and the costs of indigent defense services.¹²⁸ According to the Division of State Court Administration, the primary sources of this revenue are filing fees, court costs, fines and user fees assessed to the litigants. The cost statutorily recommended for a juvenile case in Indiana is

\$120; however, given additional storage fees, public defense fees, judicial salaries fees, etc., the total juvenile filing fee that can be imposed is \$150. Additionally, the Indiana General Assembly has imposed costs for certain programs, several of which directly affect youth in the system. For example, courts may impose an initial juvenile probation user fee from \$25 to \$100 and a monthly user fee from \$10 to \$25. If a guardian ad litem or special advocate has been appointed for a youth, the court may force the parent to pay up to \$100 for this service. If a juvenile is placed in an informal adjustment program before a delinquency petition is filed, the court may order fees of \$5 to \$15.¹²⁹

“[F]amilies and youth often become entangled in a web of accruing fees such that their child’s liberty comes at an excessively high price.”

For the majority of youth and families in the juvenile justice system, these costs are well beyond their means. Thus, while many parents are already burdened with the potential financial ramifications of missing work to attend court proceedings, they must also shoulder the fees imposed for these proceedings. Furthermore, families and youth often become entangled in a web of accruing fees such that their child’s liberty comes at an excessively high price. For example, in one county, a prosecutor reported that approximately 10% of youth placed on probation complete all of the conditions except for payment of their fees. Because their fees are not paid, their probation is extended, but with the extension of probation comes additional fees, and the vicious cycle continues.

D. Criminalization of Mentally Ill Youth As Delinquents

Studies have consistently shown that 50-75% of youth in juvenile justice populations have mental health disorders, and as many as two in three of these youth also have co-occurring substance abuse disorders.¹³⁰ A recent congressional study confirmed that many children are languishing in juvenile detention centers across the country, including in Indiana, because their communities lack facilities to treat their mental health needs.¹³¹

According to the Indiana State Bar Association, “because of limitations and shortages in community based care, and an increasingly more punitive approach toward the misconduct of children, the juvenile justice system has increasingly become the ‘de facto’ mental health treatment system for children with mental health needs.”¹³² This assessment’s findings confirm this conclusion. Many of those interviewed found that their courts and juvenile justice systems lacked adequate resources for youth with mental illness and other disabilities. While some believed that these youth were more prone to problematic behaviors, most saw these behaviors being criminalized in an attempt to get services for the youth.

Investigators observed significant discrepancies among jurisdictions in Indiana as to how these youth were handled and whether appropriate resources were available. Observers noted youth with severe mental health problems as young as eight years old before the courts on delinquency charges, some with significant histories of hospitalization. However, there was little to no discussion about these youths’ competency to stand trial and their capacity to assist counsel. When questioned by investigators, defenders often noted that they hoped they did not get a client charged with a very serious offense where competency was an issue. Perhaps because the issue

of competence is rarely raised in Indiana, there is an inadequate system of addressing needs and restoring competency if a youth is found incompetent.

E. Shifting of Child Welfare Cases Onto the Delinquency Docket

Investigators too frequently observed cases of youth in the child welfare system who were inappropriately involved in delinquency proceedings. In many of these cases, they noted outcomes that seemed overly harsh or unrealistic given what appeared to be long systemic involvement with some youth in out-of-home placements. Many of these cases involved Child In Need of Services (CHINS) youth who were now experiencing behavior problems as they moved into pre-adolescence or adolescence. These “problems” were often normal adolescent experiences with schools, relationships, and/or minor delinquent behaviors. These inappropriate referrals also involved school truancy cases or “educational neglect” where youth with education issues were being shifted into the child welfare system and faced the possibility of removal from home. As these cases clog the delinquency system, they also overload the number of cases assigned to defense counsel, further compromising the quality of representation for all youth in the system.

CHAPTER THREE:

CONCLUSION & RECOMMENDATIONS

Indiana is constitutionally and statutorily obligated to ensure that the due process rights of children in the juvenile justice system are protected and that every child has meaningful access to effective assistance of counsel at all stages of the justice process. The presence of defense counsel is critically important, but without well trained, well resourced defenders, there is no practical realization of due process and no accountability of the juvenile justice system. Ensuring just outcomes for children in the delinquency system goes beyond what the public defender system can do acting alone, however. All of Indiana's citizens have an abiding interest in supporting systemic reform of the juvenile justice system in ways that will ensure the success and safety of all of its children. Thus, not only must public defense-focused organizations dedicate themselves to the fair administration of justice for Indiana's youth, but all branches of government, at the state and local level, must be committed to achieving these ends.

While a number of national standards and guidelines, including the *IJA/ABA Juvenile Justice Standards*, the *Ten Core Principles for Providing Quality Delinquency Representation through Indigent Defense Delivery Systems*, and the *Juvenile Delinquency Guidelines* developed by the National Council of Juvenile and Family Court Judges, should inform the process of reforming the provision of indigent defense to youth in Indiana's juvenile justice system, the following recommendations address specific challenges facing systems in Indiana.

The Indiana General Assembly should:

- Establish limitations on the waiver of counsel by youth in delinquency proceedings consistent with national guidelines by the American Bar Association and the National Juvenile Defender Center, so youth are prohibited from waiving counsel or, at a minimum, are required to consult with counsel before being allowed to waive the right to counsel;
- Ensure counsel are appointed for and provide representation at all critical stages of juvenile court proceedings, but no later than prior to a child's first appearance in court;

- Ensure an adequately state-funded indigent system is in place for juveniles that can ensure caseloads within national and state standards, adequate support and technology systems, and training resources for attorneys in the delinquency system; and
- Ensure the principles of due process are protected in juvenile court proceedings, particularly when a child's liberty interests are at stake, including for youth who are incompetent to stand trial or assist counsel in their defense.

Indiana Juvenile Courts should:

- Ensure no juvenile subject to the jurisdiction of the delinquency and/or criminal justice system goes unrepresented at any critical stage of proceedings or, at a minimum, that the youth has consulted with counsel before waiving the right to counsel;
- Ensure that judges thoroughly inform and educate youth on their constitutional and statutory rights;
- Ensure all judges handling juvenile matters receive ongoing training in juvenile specific issues, particularly focusing on adolescent development, special education and mental health;
- Ensure that systems of accountability are in place and utilized for local public defense systems, including standards against which performance is measured to guarantee effectiveness; and
- Ensure that indigent defense delivery systems are independent of the judiciary.

Local Counties should:

- Ensure that adequately funded juvenile defense systems are in place that conform to standards regarding caseloads, resources and support services, including access to social workers, investigators, experts and interpreters, so defenders have the capacity to investigate and prepare cases properly from commencement through appeal;
- Ensure that measures of accountability are in place for local juvenile defense services and that the appointment of counsel is independent of the control of the judiciary;
- Investigate the adoption of specialized guidelines for the eligibility and appointment of counsel for youth in delinquency proceedings including minimum attorney qualifications; expectations for attorney preparation, investigation and client contact; and requirements for ongoing professional education in juvenile law and related issues;
- Ensure all children are presumed indigent for the purpose of appointment of counsel in delinquency proceedings;
- Require all juvenile court personnel to attend trainings on adolescent development;

- Eliminate the requirement that all juvenile court fees be paid before a youth's probationary period will be terminated; and
- Establish oversight and monitoring mechanisms of juvenile court practice to ensure that decisions made at every point in the juvenile justice process do not have a disparate impact on children with mental health and educational needs.

Local Public Defense Systems should:

- Ensure all children are represented at the earliest possible stage of delinquency proceedings;
- Explore the possibility of placing a volunteer lawyer, law student, or public defender in the detention center to begin work on cases;
- Ensure that youth only waive counsel after prior consultation with counsel and after an appropriate colloquy on the record to ensure the youth understands all rights being waived and the potential consequences to which he or she is subject;
- Ensure children have zealous and continuous legal representation throughout the delinquency process, including but not limited to detention, pre-trial motions or hearings, adjudication, disposition, post-disposition, probation, appeal, expungement, and sealing of records;
- Ensure that attorneys providing juvenile representation have a professional work environment with adequate physical resources, such as private office space, furnishings, technology, and research tools;
- Ensure attorneys have appropriate litigation support services necessary for effective representation, such as social workers, interpreters, investigators, paralegals, and clerical support;
- Ensure attorneys have access to experts as needed for effective representation, including but not limited to, evaluation by and testimony of mental health professionals, education specialists, and forensic evidence examiners;
- Ensure attorneys have caseloads within standards reasonably established by the Indiana Public Defender Commission and national standards, with adequate supervision and mentoring to ensure effective representation and adherence to recognized performance standards; and
- Ensure attorneys receive appropriate periodic training on a variety of topics on juvenile law, including detention advocacy, trial and litigation skills, dispositional planning, post-dispositional advocacy, appellate advocacy, and administrative hearing representation. Additionally, attorneys should receive training in various other substantive issues that affect their juvenile clients, such as child and adolescent development, communication skills with children, competency and capacity issues, ethical issues in representing children, substance abuse, gender-specific programming, mental health and disability law, transfers to adult court and waiver hearings, and education related issues.

State Public Defense and Bar Organizations should:

- Increase opportunities for juvenile defense attorneys to participate in meaningful and intensive training on relevant issues facing children and youth in the juvenile delinquency system including, but not limited to, child development issues, motions practice, dispositional advocacy, detention advocacy, trial skills, competency and capacity, education advocacy, and post disposition advocacy and ensure thorough advertisement of these trainings across the state;
- Investigate the adoption of guidelines for the eligibility and appointment of counsel for youth in delinquency proceedings including minimum attorney qualifications; expectations for attorney preparation, investigation and client contact; and requirements for ongoing professional education in juvenile law and related issues;
- Re-examine the numbers and system established for caseload standards for juvenile delinquency cases in light of the financial disincentive for defense counsel to take on new cases and the risk of jeopardizing state reimbursement for county expenses;
- Promote leadership among the juvenile defense bar and encourage specialization in juvenile defense;
- Designate a statewide Juvenile Defender office to bring together resources and expertise from across the state, continue the process of evaluating the delivery of legal services to Indiana's children and implement specific policies and programs as appropriate;
- Increase appellate and other post-dispositional advocacy initiatives;
- Develop a system of oversight that includes a consistent and detailed system of data collection on public defender representation across the state at the trial and appellate levels;
- Provide strong legislative advocacy on right to counsel issues and other substantive issues involving children and youth in the justice system; and
- Provide leadership in developing a uniform system of indigent juvenile defense that promotes excellence, adheres to national and state standards, and demands accountability.

Law Schools in Indiana should:

- Provide increased opportunities for law students' involvement in juvenile defense through internships, externships, clinics and paid fellowships;
- Offer courses in juvenile law to prepare students for practicing in these areas; and
- Provide leadership on indigent juvenile defense issues and the treatment of youth in the juvenile justice system through clinical programs, research and community involvement.

APPENDIX A

IJA-ABA Juvenile Justice Standards Relating to Counsel for Private Parties

PART I. GENERAL STANDARDS

Standard 1.1. Counsel in Juvenile Proceedings, Generally.

The participation of counsel on behalf of all parties subject to juvenile and family court proceedings is essential to the administration of justice and to the fair and accurate resolution of issues at all stages of those proceedings.

Standard 1.2. Standards in Juvenile Proceedings, Generally.

- (a) As a member of the bar, a lawyer involved in juvenile court matters is bound to know and is subject to standards of professional conduct set forth in statutes, rules, decisions of courts, and codes, canons or other standards of professional conduct. Counsel has no duty to exercise any directive of the client that is inconsistent with law or these standards. Counsel may, however, challenge standards that he or she believes limit unconstitutionally or otherwise improperly representation of clients subject to juvenile court proceedings.
- (b) As used in these standards, the term “unprofessional conduct” denotes conduct which is now or should be subject to disciplinary sanction. Where other terms are used, the standard is intended as a guide to honorable and competent professional conduct or as a model for institutional organization.

Standard 1.3. Misrepresentation of Factual Propositions or Legal Authority.

It is unprofessional conduct for counsel intentionally to misrepresent factual propositions or legal authority to the court or to opposing counsel and probation personnel in the course of discussions concerning entrance of a plea, early disposition or any other matter related to the juvenile court proceeding. Entrance of a plea concerning the client’s responsibility in law for alleged misconduct or concerning the existence in law of an alleged status offense is a statement of the party’s posture with respect to the proceeding and is not a representation of fact or of legal authority.

Standard 1.4. Relations with Probation and Social Work Personnel.

A lawyer engaged in juvenile court practice typically deals with social work and probation department personnel throughout the course of handling a case. In general, the lawyer should cooperate with these agencies and should instruct the client to do so, except to the extent such

cooperation is or will likely become inconsistent with protection of the client's legitimate interests in the proceeding or of any other rights of the client under the law.

Standard 1.5. Punctuality.

A lawyer should be prompt in all dealings with the court, including attendance, submissions of motions, briefs and other papers, and in dealings with clients and other interested persons. It is unprofessional conduct for counsel intentionally to use procedural devices for which there is no legitimate basis, to misrepresent facts to the court or to accept conflicting responsibilities for the purpose of delaying court proceedings. The lawyer should also emphasize the importance of punctuality in attendance in court to the client and to witnesses to be called, and, to the extent feasible, facilitate their prompt attendance.

Standard 1.6. Public Statements.

- (a) The lawyer representing a client before the juvenile court should avoid personal publicity connected with the case, both during trial and thereafter.
- (b) Counsel should comply with statutory and court rules governing dissemination of information concerning juvenile and family court matters and, to the extent consistent with those rules, with the ABA Standards Relating to Fair Trial and Free Press.

Standard 1.7. Improvement in The Juvenile Justice System.

In each jurisdiction, lawyers practicing before the juvenile court should actively seek improvement in the administration of juvenile justice and the provision of resources for the treatment of persons subject to the jurisdiction of the juvenile court.

PART II. PROVISIONS AND ORGANIZATION OF LEGAL SERVICES

Standard 2.1. General Principles.

- (a) Responsibility for provision of legal services.
Provision of satisfactory legal representation in juvenile and family court cases is the proper concern of all segments of the legal community. It is, accordingly, the responsibility of courts, defender agencies, legal professional groups, individual practitioners and educational institutions to ensure that competent counsel and adequate supporting services are available for representation of all persons with business before juvenile and family courts.
 - (i) Lawyers active in practice should be encouraged to qualify themselves for participation in juvenile and family court cases through formal training, association with experienced juvenile counsel or by other means. To this end, law firms should encourage members to represent parties involved in such matters.
 - (ii) Suitable undergraduate and postgraduate educational curricula concerning legal and nonlegal subjects relevant to representation in juvenile and family courts should regularly be available.

- (iii) Careful and candid evaluation of representation in cases involving children should be undertaken by judicial and professional groups, including the organized bar, particularly but not solely where assigned counsel-whether public or private-appears.

(b) Compensation for services.

- (i) Lawyers participating in juvenile court matters, whether retained or appointed, are entitled to reasonable compensation for time and services performed according to prevailing professional standards. In determining fees for their services, lawyers should take into account the time and labor actually required, the skill required to perform the legal service properly, the likelihood that acceptance of the case will preclude other employment for the lawyer, the fee customarily charged in the locality for similar legal services, the possible consequences of the proceedings, and the experience, reputation and ability of the lawyer or lawyers performing the services. In setting fees lawyers should also consider the performance of services incident to full representation in cases involving juveniles, including counseling and activities related to locating or evaluating appropriate community services for a client or a client's family.
- (ii) Lawyers should also take into account in determining fees the capacity of a client to pay the fee. The resources of parents who agree to pay for representation of their children in juvenile court proceedings may be considered if there is no adversity of interest as defined in Standard 3.2, *infra*, and if the parents understand that a lawyer's entire loyalty is to the child and that the parents have no control over the case. Where adversity of interests or desires between parent and child becomes apparent during the course of representation, a lawyer should be ready to reconsider the fee taking into account the child's resources alone.
- (iii) As in all other cases of representation, it is unprofessional conduct for a lawyer to overreach the client or the client's parents in setting a fee, to imply that compensation is for anything other than professional services rendered by the lawyer or by others for him or her, to divide the fee with a layman, or to undertake representation in cases where no financial award may result on the understanding that payment of the fee is contingent in any way on the outcome of the case.
- (iv) Lawyers employed in a legal aid or public defender office should be compensated on a basis equivalent to that paid other government attorneys of similar qualification, experience and responsibility.

(c) Supporting services.

Competent representation cannot be assured unless adequate supporting services are available. Representation in cases involving juveniles typically requires investigatory, expert and other nonlegal services. These should be available to lawyers and to their clients at all stages of juvenile and family court proceedings.

- (i) Where lawyers are assigned, they should have regular access to all reasonably necessary supporting services.
 - (ii) Where a defender system is involved, adequate supporting services should be available within the organization itself.
- (d) Independence.
Any plan for providing counsel to private parties in juvenile court proceedings must be designed to guarantee the professional independence of counsel and the integrity of the lawyer-client relationship.

Standard 2.2. Organization of Services.

- (a) In general.
Counsel should be provided in a systematic manner and in accordance with a widely publicized plan. Where possible, a coordinated plan for representation which combines defender and assigned counsel systems should be adopted.
- (b) Defender systems.
 - (i) Application of general defender standards.
A defender system responsible for representation in some or all juvenile court proceedings generally should apply to staff and offices engaged in juvenile court matters its usual standards for selection, supervision, assignment and tenure of lawyers, restrictions on private practice, provision of facilities and other organizational procedures.
 - (ii) Facilities.
If local circumstances require, the defender system should maintain a separate office for juvenile court legal and supporting staff, located in a place convenient to the courts and equipped with adequate library, interviewing and other facilities. A supervising attorney experienced in juvenile court representation should be assigned to and responsible for the operation of that office.
 - (iii) Specialization.
While rotation of defender staff from one duty to another is an appropriate training device, there should be opportunity for staff to specialize in juvenile court representation to the extent local circumstances permit.
 - (iv) Caseload.
It is the responsibility of every defender office to ensure that its personnel can offer prompt, full and effective counseling and representation to each client. A defender office should not accept more assignments than its staff can adequately discharge.

(c) Assigned counsel systems.

- (i) An assigned counsel plan should have available to it an adequate pool of competent attorneys experienced in juvenile court matters and an adequate plan for all necessary legal and supporting services.
- (ii) Appointments through an assigned counsel system should be made, as nearly as possible, according to some rational and systematic sequence. Where the nature of the action or other circumstances require, a lawyer may be selected because of his or her special qualifications to serve in the case, without regard to the established sequence.

Standard 2.3. Types of Proceedings.

(a) Delinquency and in need of supervision proceedings.

- (i) Counsel should be provided for any juvenile subject to delinquency or in need of supervision proceedings.
- (ii) Legal representation should also be provided the juvenile in all proceedings arising from or related to a delinquency or in need of supervision action, including mental competency, transfer, postdisposition, probation revocation, and classification, institutional transfer, disciplinary or other administrative proceedings related to the treatment process which may substantially affect the juvenile's custody, status or course of treatment. The nature of the forum and the formal classification of the proceeding is irrelevant for this purpose.

(b) Child protective, custody and adoption proceedings.

Counsel should be available to the respondent parents, including the father of an illegitimate child, or other guardian or legal custodian in a neglect or dependency proceeding. Independent counsel should also be provided for the juvenile who is the subject of proceedings affecting his or her status or custody. Counsel should be available at all stages of such proceedings and in all proceedings collateral to neglect and dependency matters, except where temporary emergency action is involved and immediate participation of counsel is not practicable.

Standard 2.4. Stages of Proceedings.

(a) Initial provision of counsel.

- (i) When a juvenile is taken into custody, placed in detention or made subject to an intake process, the authorities taking such action have the responsibility promptly to notify the juvenile's lawyer, if there is one, or advise the juvenile with respect to the availability of legal counsel.

- (ii) In administrative or judicial postdispositional proceedings which may affect the juvenile's custody, status or course of treatment, counsel should be available at the earliest stage of the decisional process, whether the respondent is present or not. Notification of counsel and, where necessary, provision of counsel in such proceedings is the responsibility of the judicial or administrative agency.
- (b) Duration of representation and withdrawal of counsel.
- (i) Lawyers initially retained or appointed should continue their representation through all stages of the proceeding, unless geographical or other compelling factors make continued participation impracticable.
 - (ii) Once appointed or retained, counsel should not request leave to withdraw unless compelled by serious illness or other incapacity, or unless contemporaneous or announced future conduct of the client is such as seriously to compromise the lawyer's professional integrity. Counsel should not seek to withdraw on the belief that the contentions of the client lack merit, but should present for consideration such points as the client desires to be raised provided counsel can do so without violating standards of professional ethics.
 - (iii) If leave to withdraw is granted, or if the client justifiably asks that counsel be replaced, successor counsel should be available.

PART III. THE LAWYER-CLIENT RELATIONSHIP

Standard 3.1. The Nature Of The Relationship.

- (a) Client's interests paramount.
However engaged, the lawyer's principal duty is the representation of the client's legitimate interests. Considerations of personal and professional advantage or convenience should not influence counsel's advice or performance.
- (b) Determination of client's interests.
 - (i) Generally.
In general, determination of the client's interests in the proceedings, and hence the plea to be entered, is ultimately the responsibility of the client after full consultation with the attorney.
 - (ii) Counsel for the juvenile.
 - [a] Counsel for the respondent in a delinquency or in need of supervision proceeding should ordinarily be bound by the client's definition of his or her interests with respect to admission or denial of the facts or conditions alleged. It is

appropriate and desirable for counsel to advise the client concerning the probable success and consequences of adopting any posture with respect to those proceedings.

[b] Where counsel is appointed to represent a juvenile subject to child protective proceedings, and the juvenile is capable of considered judgment on his or her own behalf, determination of the client's interest in the proceeding should ultimately remain the client's responsibility, after full consultation with counsel.

[c] In delinquency and in need of supervision proceedings, where it is locally permissible to so adjudicate very young persons, and in child protective proceedings, the respondent may be incapable of considered judgment in his or her own behalf.

[1] Where a guardian ad litem has been appointed, primary responsibility for determination of the posture of the case rests with the guardian and the juvenile.

[2] Where a guardian ad litem has not been appointed, the attorney should ask that one be appointed.

[3] Where a guardian ad litem has not been appointed and, for some reason, it appears that independent advice to the juvenile will not otherwise be available, counsel should inquire thoroughly into all circumstances that a careful and competent person in the juvenile's position should consider in determining the juvenile's interests with respect to the proceeding. After consultation with the juvenile, the parents (where their interests do not appear to conflict with the juvenile's), and any other family members or interested persons, the attorney may remain neutral concerning the proceeding, limiting participation to presentation and examination of material evidence or, if necessary, the attorney may adopt the position requiring the least intrusive intervention justified by the juvenile's circumstances.

(iii) Counsel for the parent.

It is appropriate and desirable for an attorney to consider all circumstances, including the apparent interests of the juvenile, when counseling and advising a parent who is charged in a child protective proceeding or who is seeking representation during a delinquency or in need of supervision proceeding. The posture to be adopted with respect to the facts and conditions alleged in the proceeding, however, remains ultimately the responsibility of the client.

Standard 3.2 Adversity of Interests.

(a) Adversity of interests defined.

For purposes of these standards, adversity of interests exists when a lawyer or lawyers associated in practice:

- (i) Formally represent more than one client in a proceeding and have a duty to contend in behalf of one client that which their duty to another requires them to oppose.
- (ii) Formally represent more than one client and it is their duty to contend in behalf of one client that which may prejudice the other client's interests at any point in the proceeding.
- (iii) Formally represent one client but are required by some third person or institution, including their employer, to accommodate their representation of that client to factors unrelated to the client's legitimate interests.

(b) Resolution of adversity.

At the earliest feasible opportunity, counsel should disclose to the client any interest in or connection with the case or any other matter that might be relevant to the client's selection of a lawyer. Counsel should at the same time seek to determine whether adversity of interests potentially exists and, if so, should immediately seek to withdraw from representation of the client who will be least prejudiced by such withdrawal.

Standard 3.3. Confidentiality.

(a) Establishment of confidential relationship.

Counsel should seek from the outset to establish a relationship of trust and confidence with the client. The lawyer should explain that full disclosure to counsel of all facts known to the client is necessary for effective representation, and at the same time explain that the lawyer's obligation of confidentiality makes privileged the client's disclosures relating to the case.

(b) Preservation of client's confidences and secrets.

- (i) Except as permitted by 3.3(d), below, an attorney should not knowingly reveal a confidence or secret of a client to another, including the parent of a juvenile client.
- (ii) Except as permitted by 3.3(d), below, an attorney should not knowingly use a confidence or secret of a client to the disadvantage of the client or, unless the attorney has secured the consent of the client after full disclosure, for the attorney's own advantage or that of a third person.

(c) Preservation of secrets of a juvenile client's parent or guardian.

The attorney should not reveal information gained from or concerning the parent

or guardian of a juvenile client in the course of representation with respect to a delinquency or in need of supervision proceeding against the client, where (1) the parent or guardian has requested the information be held inviolate, or (2) disclosure of the information would likely be embarrassing or detrimental to the parent or guardian and (3) preservation would not conflict with the attorney's primary responsibility to the interests of the client.

- (i) The attorney should not encourage secret communications when it is apparent that the parent or guardian believes those communications to be confidential or privileged and disclosure may become necessary to full and effective representation of the client.
- (ii) Except as permitted by 3.3(d), below, an attorney should not knowingly reveal the parent's secret communication to others or use a secret communication to the parent's disadvantage or to the advantage of the attorney or of a third person, unless (1) the parent competently consents to such revelation or use after full disclosure or (2) such disclosure or use is necessary to the discharge of the attorney's primary responsibility to the client.

(d) Disclosure of confidential communications.

In addition to circumstances specifically mentioned above, a lawyer may reveal:

- (i) Confidences or secrets with the informed and competent consent of the client or clients affected, but only after full disclosure of all relevant circumstances to them. If the client is a juvenile incapable of considered judgment with respect to disclosure of a secret or confidence, a lawyer may reveal such communications if such disclosure (1) will not disadvantage the juvenile and (2) will further rendition of counseling, advice or other service to the client.
- (ii) Confidences or secrets when permitted under disciplinary rules of the ABA Code of Professional Responsibility or as required by law or court order.
- (iii) The intention of a client to commit a crime or an act which if done by an adult would constitute a crime, or acts that constitute neglect or abuse of a child, together with any information necessary to prevent such conduct. A lawyer must reveal such intention if the conduct would seriously endanger the life or safety of any person or corrupt the processes of the courts and the lawyer believes disclosure is necessary to prevent the harm. If feasible, the lawyer should first inform the client of the duty to make such revelation and seek to persuade the client to abandon the plan.
- (iv) Confidences or secrets material to an action to collect a fee or to defend himself or herself or any employees or associates against an accusation of wrongful conduct.

Standard 3.4. Advice and Service with Respect to Anticipated Unlawful Conduct.

It is unprofessional conduct for a lawyer to assist a client to engage in conduct the lawyer believes to be illegal or fraudulent, except as part of a bona fide effort to determine the validity, scope, meaning or application of a law.

Standard 3.5. Duty to Keep Client Informed.

The lawyer has a duty to keep the client informed of the developments in the case, and of the lawyer's efforts and progress with respect to all phases of representation. This duty may extend, in the case of a juvenile client, to a parent or guardian whose interests are not adverse to the juvenile's, subject to the requirements of confidentiality set forth in 3.3, above.

PART IV. INITIAL STAGES OF REPRESENTATION

Standard 4.1. Prompt Action to Protect the Client.

Many important rights of clients involved in juvenile court proceedings can be protected only by prompt advice and action. The lawyers should immediately inform clients of their rights and pursue any investigatory or procedural steps necessary to protection of their clients' interests.

Standard 4.2. Interviewing the Client.

- (a) The lawyer should confer with a client without delay and as often as necessary to ascertain all relevant facts and matters of defense known to the client.
- (b) In interviewing a client, it is proper for the lawyer to question the credibility of the client's statements or those of any other witness. The lawyer may not, however, suggest expressly or by implication that the client or any other witness prepare or give, on oath or to the lawyer, a version of the facts which is in any respect untruthful, nor may the lawyer intimate that the client should be less than candid in revealing material facts to the attorney.

Standard 4.3. Investigation and Preparation.

- (a) It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts concerning responsibility for the acts or conditions alleged and social or legal dispositional alternatives. The investigation should always include efforts to secure information in the possession of prosecution, law enforcement, education, probation and social welfare authorities. The duty to investigate exists regardless of the client's admissions or statements of facts establishing responsibility for the alleged facts and conditions or of any stated desire by the client to admit responsibility for those acts and conditions.
- (b) Where circumstances appear to warrant it, the lawyer should also investigate resources and services available in the community and, if appropriate, recommend

them to the client and the client's family. The lawyer's responsibility in this regard is independent of the posture taken with respect to any proceeding in which the client is involved.

- (c) It is unprofessional conduct for a lawyer to use illegal means to obtain evidence or information or to employ, instruct or encourage others to do so.

Standard 4.4. Relations with Prospective Witnesses.

The ethical and legal rules concerning counsel's relations with lay and expert witnesses generally govern lawyers engaged in juvenile court representation.

PART V. ADVISING AND COUNSELING THE CLIENT

Standard 5.1. Advising the Client Concerning the Case.

- (a) After counsel is fully informed on the facts and the law, he or she should with complete candor advise the client involved in juvenile court proceedings concerning all aspects of the case, including counsel's frank estimate of the probable outcome. It is unprofessional conduct for a lawyer intentionally to understate or overstate the risks, hazards or prospects of the case in order unduly or improperly to influence the client's determination of his or her posture in the matter.
- (b) The lawyer should caution the client to avoid communication about the case with witnesses where such communication would constitute, apparently or in reality, improper activity. Where the right to jury trial exists and has been exercised, the lawyer should further caution the client with regard to communication with prospective or selected jurors.

Standard 5.2. Control and Direction of the Case.

- (a) Certain decisions relating to the conduct of the case are in most cases ultimately for the client and others are ultimately for the lawyer. The client, after full consultation with counsel, is ordinarily responsible for determining:
 - (i) the plea to be entered at adjudication;
 - (ii) whether to cooperate in consent judgment or early disposition plans;
 - (iii) whether to be tried as a juvenile or an adult, where the client has that choice;
 - (iv) whether to waive jury trial;
 - (v) whether to testify on his or her own behalf.

- (b) Decisions concerning what witnesses to call, whether and how to conduct cross-examination, what jurors to accept and strike, what trial motions should be made, and any other strategic and tactical decisions not inconsistent with determinations ultimately the responsibility of and made by the client, are the exclusive province of the lawyer after full consultation with the client.
- (c) If a disagreement on significant matters of tactics or strategy arises between the lawyer and the client, the lawyer should make a record of the circumstances, his or her advice and reasons, and the conclusion reached. This record should be made in a manner which protects the confidentiality of the lawyer-client relationship.

Standard 5.3. Counseling.

A lawyer engaged in juvenile court representation often has occasion to counsel the client and, in some cases, the client's family with respect to nonlegal matters. This responsibility is generally appropriate to the lawyer's role and should be discharged, as any other, to the best of the lawyer's training and ability.

PART VI. INTAKE, EARLY DISPOSITION AND DETENTION

Standard 6.1. Intake and Early Disposition Generally.

Whenever the nature and circumstances of the case permit, counsel should explore the possibility of early diversion from the formal juvenile court process through subjudicial agencies and other community resources. Participation in pre- or nonjudicial stages of the juvenile court process may be critical to such diversion, as well as to protection of the client's rights.

Standard 6.2. Intake Hearings.

- (a) In jurisdictions where intake hearings are held prior to reference of a juvenile court matter for judicial proceedings, the lawyer should be familiar with and explain to the client and, if the client is a minor, to the client's parents, the nature of the hearing, the procedures to be followed, the several dispositions available and their probable consequences. The lawyer should further advise the client of his or her rights at the intake hearing, including the privilege against self-incrimination where appropriate, and of the use that may be made of the client's statements.
- (b) The lawyer should be prepared to make to the intake hearing officer arguments concerning the jurisdictional sufficiency of the allegations made and to present facts and circumstances relating to the occurrence of and the client's responsibility for the acts or conditions charged or to the necessity for official treatment of the matter.

Standard 6.3. Early Disposition.

- (a) When the client admits the acts or conditions alleged in the juvenile court proceeding and, after investigation, the lawyer is satisfied that the admission is factually

supported and that the court would have jurisdiction to act, the lawyer should, with the client's consent, consider developing or cooperating in the development of a plan for informal or voluntary adjustment of the case.

- (b) A lawyer should not participate in an admission of responsibility by the client for purposes of securing informal or early disposition when the client denies responsibility for the acts or conditions alleged.

Standard 6.4. Detention.

- (a) If the client is detained or the client's child is held in shelter care, the lawyer should immediately consider all steps that may in good faith be taken to secure the child's release from custody.
- (b) Where the intake department has initial responsibility for custodial decisions, the lawyer should promptly seek to discover the grounds for removal from the home and may present facts and arguments for release at the intake hearing or earlier. If a judicial detention hearing will be held, the attorney should be prepared, where circumstances warrant, to present facts and arguments relating to the jurisdictional sufficiency of the allegations, the appropriateness of the place of and criteria used for detention, and any noncompliance with procedures for referral to court or for detention. The attorney should also be prepared to present evidence with regard to the necessity for detention and a plan for pretrial release of the juvenile.
- (c) The lawyer should not personally guarantee the attendance or behavior of the client or any other person, whether as surety on a bail bond or otherwise.

PART VII. ADJUDICATION

Standard 7.1. Adjudication without Trial.

- (a) Counsel may conclude, after full investigation and preparation, that under the evidence and the law the charges involving the client will probably be sustained. Counsel should so advise the client and, if negotiated pleas are allowed under prevailing law, may seek the client's consent to engage in plea discussions with the prosecuting agency. Where the client denies guilt, the lawyer cannot properly participate in submitting a plea of involvement when the prevailing law requires that such a plea be supported by an admission of responsibility in fact.
- (b) The lawyer should keep the client advised of all developments during plea discussions with the prosecuting agency and should communicate to the client all proposals made by the prosecuting agency. Where it appears that the client's participation in a psychiatric, medical, social or other diagnostic or treatment regime would be significant in obtaining a desired result, the lawyer should so advise the client and, when circumstances warrant, seek the client's consent to participation in such a program.

Standard 7.2. Formality, In General.

While the traditional formality and procedure of criminal trials may not in every respect be necessary to the proper conduct of juvenile court proceedings, it is the lawyer's duty to make all motions, objections or requests necessary to protection of the client's rights in such form and at such time as will best serve the client's legitimate interests at trial or on appeal.

Standard 7.3. Discovery and Motion Practice.

(a) Discovery.

- (i) Counsel should promptly seek disclosure of any documents, exhibits or other information potentially material to representation of clients in juvenile court proceedings. If such disclosure is not readily available through informal processes, counsel should diligently pursue formal methods of discovery including, where appropriate, the filing of motions for bills of particulars, for discovery and inspection of exhibits, documents and photographs, for production of statements by and evidence favorable to the respondent, for production of a list of witnesses, and for the taking of depositions.
- (ii) In seeking discovery, the lawyer may find that rules specifically applicable to juvenile court proceedings do not exist in a particular jurisdiction or that they improperly or unconstitutionally limit disclosure. In order to make possible adequate representation of the client, counsel should in such cases investigate the appropriateness and feasibility of employing discovery techniques available in criminal or civil proceedings in the jurisdiction.

(b) Other motions.

Where the circumstances warrant, counsel should promptly make any motions material to the protection and vindication of the client's rights, such as motions to dismiss the petition, to suppress evidence, for mental examination, or appointment of an investigator or expert witness, for severance, or to disqualify a judge. Such motions should ordinarily be made in writing when that would be required for similar motions in civil or criminal proceedings in the jurisdiction. If a hearing on the motion is required, it should be scheduled at some time prior to the adjudication hearing if there is any likelihood that consolidation will work to the client's disadvantage.

Standard 7.4. Compliance with Orders.

- (a) Control of proceedings is principally the responsibility of the court, and the lawyer should comply promptly with all rules, orders and decisions of the judge. Counsel has the right to make respectful requests for reconsideration of adverse rulings and has the duty to set forth on the record adverse rulings or judicial conduct which counsel considers prejudicial to the client's legitimate interests.

- (b) The lawyer should be prepared to object to the introduction of any evidence damaging to the client's interest if counsel has any legitimate doubt concerning its admissibility under constitutional or local rules of evidence.

Standard 7.5. Relations with Court and Participants.

- (a) The lawyer should at all times support the authority of the court by preserving professional decorum and by manifesting an attitude of professional respect toward the judge, opposing counsel, witnesses and jurors.
 - (i) When court is in session, the lawyer should address the court and not the prosecutor directly on any matter relating to the case unless the person acting as prosecutor is giving evidence in the proceeding.
 - (ii) It is unprofessional conduct for a lawyer to engage in behavior or tactics purposely calculated to irritate or annoy the court, the prosecutor or probation department personnel.
- (b) When in the company of clients or clients' parents, the attorney should maintain a professional demeanor in all associations with opposing counsel and with court or probation personnel.

Standard 7.7. Presentation of Evidence.

It is unprofessional conduct for a lawyer knowingly to offer false evidence or to bring inadmissible evidence to the attention of the trier of fact, to ask questions or display demonstrative evidence known to be improper or inadmissible, or intentionally to make impermissible comments or arguments in the presence of the trier of fact. When a jury is empaneled, if the lawyer has substantial doubt concerning the admissibility of evidence, he or she should tender it by an offer of proof and obtain a ruling on its admissibility prior to presentation.

Standard 7.8. Examination of Witnesses.

- (a) The lawyer in juvenile court proceedings should be prepared to examine fully any witness whose testimony is damaging to the client's interests. It is unprofessional conduct for counsel knowingly to forego or limit examination of a witness when it is obvious that failure to examine fully will prejudice the client's legitimate interests.
- (b) The lawyer's knowledge that a witness is telling the truth does not preclude cross-examination in all circumstances, but may affect the method and scope of cross-examination. Counsel should not misuse the power of cross-examination or impeachment by employing it to discredit the honesty or general character of a witness known to be testifying truthfully.

- (c) The examination of all witnesses should be conducted fairly and with due regard for the dignity and, to the extent allowed by the circumstances of the case, the privacy of the witness. In general, and particularly when a youthful witness is testifying, the lawyer should avoid unnecessary intimidation or humiliation of the witness.
- (d) A lawyer should not knowingly call as a witness one who will claim a valid privilege not to testify for the sole purpose of impressing that claim on the fact-finder. In some instances, as defined in the ABA Code of Professional Responsibility, doing so will constitute unprofessional conduct.
- (e) It is unprofessional conduct to ask a question that implies the existence of a factual predicate which the examiner knows cannot be supported by evidence.

Standard 7.9. Testimony by the Respondent.

- (a) It is the lawyer's duty to protect the client's privilege against self-incrimination in juvenile court proceedings. When the client has elected not to testify, the lawyer should be alert to invoke the privilege and should insist on its recognition unless the client competently decides that invocation should not be continued.
- (b) If the respondent has admitted to counsel facts which establish his or her responsibility for the acts or conditions alleged and if the lawyer, after independent investigation, is satisfied that those admissions are true, and the respondent insists on exercising the right to testify at the adjudication hearing, the lawyer must advise the client against taking the stand to testify falsely and, if necessary, take appropriate steps to avoid lending aid to perjury.
 - (i) If, before adjudication, the respondent insists on taking the stand to testify falsely, the lawyer must withdraw from the case if that is feasible and should seek the leave of the court to do so if necessary.
 - (ii) If withdrawal from the case is not feasible or is not permitted by the court, or if the situation arises during adjudication without notice, it is unprofessional conduct for the lawyer to lend aid to perjury or to use the perjured testimony. Before the respondent takes the stand in these circumstances the lawyer should, if possible, make a record of the fact that respondent is taking the stand against the advice of counsel without revealing that fact to the court. Counsel's examination should be confined to identifying the witness as the respondent and permitting the witness to make his or her statement to the trier of fact. Counsel may not engage in direct examination of the respondent in the conventional manner and may not recite or rely on the false testimony in argument.

Standard 7.10. Argument.

The lawyer in juvenile court representation should comply with the rules generally governing argument in civil and criminal proceedings.

Standard 8.1. In General.

A proceeding to transfer a respondent from the jurisdiction of the juvenile court to a criminal court is a critical stage in both juvenile and criminal justice processes. Competent representation by counsel is essential to the protection of the juvenile's rights in such a proceeding.

Standard 8.2. Investigation and Preparation.

- (a) In any case where transfer is likely, counsel should seek to discover at the earliest opportunity whether transfer will be sought and, if so, the procedure and criteria according to which that determination will be made.
- (b) The lawyer should promptly investigate all circumstances of the case bearing on the appropriateness of transfer and should seek disclosure of any reports or other evidence that will be submitted to or may be considered by the court in the course of transfer proceedings. Where circumstances warrant, counsel should promptly move for appointment of an investigator or expert witness to aid in the preparation of the defense and for any other order necessary to protection of the client's rights.

Standard 8.3. Advising and Counseling the Client Concerning Transfer.

Upon learning that transfer will be sought or may be elected, counsel should fully explain the nature of the proceeding and the consequences of transfer to the client and the client's parents. In so doing, counsel may further advise the client concerning participation in diagnostic and treatment programs which may provide information material to the transfer decision.

Standard 8.4. Transfer Hearings.

If a transfer hearing is held, the rules set forth in Part VII of these standards shall generally apply to counsel's conduct of that hearing.

Standard 8.5. Post-Hearing Remedies.

If transfer for criminal prosecution is ordered, the lawyer should act promptly to preserve an appeal from that order and should be prepared to make any appropriate motions for post-transfer relief.

Standard 9.1. In General.

The active participation of counsel at disposition is often essential to protection of clients' rights and to furtherance of their legitimate interests. In many cases the lawyer's most valuable service to clients will be rendered at this stage of the proceeding.

Standard 9.2. Investigation and Preparation.

- (a) Counsel should be familiar with the dispositional alternatives available to the court, with its procedures and practices at the disposition stage, and with community services that might be useful in the formation of a dispositional plan appropriate to the client's circumstances.
- (b) The lawyer should promptly investigate all sources of evidence including any reports or other information that will be brought to the court's attention and interview all witnesses material to the disposition decision.
 - (i) If access to social investigation, psychological, psychiatric or other reports or information is not provided voluntarily or promptly, counsel should be prepared to seek their disclosure and time to study them through formal measures.
 - (ii) Whether or not social and other reports are readily available, the lawyer has a duty independently to investigate the client's circumstances, including such factors as previous history, family relations, economic condition and any other information relevant to disposition.
- (c) The lawyer should seek to secure the assistance of psychiatric, psychological, medical or other expert personnel needed for purposes of evaluation, consultation or testimony with respect to formation of a dispositional plan.

Standard 9.3. Counseling Prior to Disposition.

- (a) The lawyer should explain to the client the nature of the disposition hearing, the issues involved and the alternatives open to the court. The lawyer should also explain fully and candidly the nature, obligations and consequences of any proposed dispositional plan, including the meaning of conditions of probation, the characteristics of any institution to which commitment is possible, and the probable duration of the client's responsibilities under the proposed dispositional plan. Ordinarily, the lawyer should not make or agree to a specific dispositional recommendation without the client's consent.
- (b) When psychological or psychiatric evaluations are ordered by the court or arranged by counsel prior to disposition, the lawyer should explain the nature of the procedure to the client and encourage the client's cooperation with the person or persons administering the diagnostic procedure.

- (c) The lawyer must exercise discretion in revealing or discussing the contents of psychiatric, psychological, medical and social reports, tests or evaluations bearing on the client's history or condition or, if the client is a juvenile, the history or condition of the client's parents. In general, the lawyer should not disclose data or conclusions contained in such reports to the extent that, in the lawyer's judgment based on knowledge of the client and the client's family, revelation would be likely to affect adversely the client's well-being or relationships within the family and disclosure is not necessary to protect the client's interests in the proceeding.

Standard 9.4. Disposition Hearing.

- (a) It is the lawyer's duty to insist that proper procedure be followed throughout the disposition stage and that orders entered be based on adequate reliable evidence.
 - (i) Where the dispositional hearing is not separate from adjudication or where the court does not have before it all evidence required by statute, rules of court or the circumstances of the case, the lawyer should seek a continuance until such evidence can be presented if to do so would serve the client's interests.
 - (ii) The lawyer at disposition should be free to examine fully and to impeach any witness whose evidence is damaging to the client's interests and to challenge the accuracy, credibility and weight of any reports, written statements or other evidence before the court. The lawyer should not knowingly limit or forego examination or contradiction by proof of any witness, including a social worker or probation department officer, when failure to examine fully will prejudice the client's interests. Counsel may seek to compel the presence of witnesses whose statements of fact or opinion are before the court or the production of other evidence on which conclusions of fact presented at disposition are based.
- (b) The lawyer may, during disposition, ask that the client be excused during presentation of evidence when, in counsel's judgment, exposure to a particular item of evidence would adversely affect the well-being of the client or the client's relationship with his or her family, and the client's presence is not necessary to protecting his or her interests in the proceeding.

Standard 9.5. Counseling After Disposition.

When a dispositional decision has been reached, it is the lawyer's duty to explain the nature, obligations and consequences of the disposition to the client and his or her family and to urge upon the client the need for accepting and cooperating with the dispositional order. If appeal from either the adjudicative or dispositional decree is contemplated, the client should be advised of that possibility, but the attorney must counsel compliance with the court's decision during the interim.

Standard 10.1. Relations with the Client After Disposition.

- (a) The lawyer's responsibility to the client does not necessarily end with dismissal of the charges or entry of a final dispositional order. The attorney should be prepared to counsel and render or assist in securing appropriate legal services for the client in matters arising from the original proceeding.
 - (i) If the client has been found to be within the juvenile court's jurisdiction, the lawyer should maintain contact with both the client and the agency or institution involved in the disposition plan in order to ensure that the client's rights are respected and, where necessary, to counsel the client and the client's family concerning the dispositional plan.
 - (ii) Whether or not the charges against the client have been dismissed, where the lawyer is aware that the client or the client's family needs and desires community or other medical, psychiatric, psychological, social or legal services, he or she should render all possible assistance in arranging for such services.
- (b) The decision to pursue an available claim for postdispositional relief from judicial and correctional or other administrative determinations related to juvenile court proceedings, including appeal, habeas corpus or an action to protect the client's right to treatment, is ordinarily the client's responsibility after full consultation with counsel.

Standard 10.2. Post-Dispositional Hearings Before the Juvenile Court.

- (a) The lawyer who represents a client during initial juvenile court proceedings should ordinarily be prepared to represent the client with respect to proceedings to review or modify adjudicative or dispositional orders made during earlier hearings or to pursue any affirmative remedies that may be available to the client under local juvenile court law.
- (b) The lawyer should advise the client of the pendency or availability of a postdispositional hearing or proceeding and of its nature, issues and potential consequences. Counsel should urge and, if necessary, seek to facilitate the prompt attendance at any such hearing of the client and of any material witnesses who may be called.

Standard 10.3. Counsel on Appeal.

- (a) Trial counsel, whether retained or appointed by the court, should conduct the appeal unless new counsel is substituted by the client or by the appropriate court. Where there exists an adequate pool of competent counsel available for assignment to appeals from juvenile court orders and substitution will not work substantial disadvantage to the client's interests, new counsel may be appointed in place of trial counsel.

- (b) Whether or not trial counsel expects to conduct the appeal, he or she should promptly inform the client, and where the client is a minor and the parents' interests are not adverse, the client's parents of the right to appeal and take all steps necessary to protect that right until appellate counsel is substituted or the client decides not to exercise this privilege.
- (c) Counsel on appeal, after reviewing the record below and undertaking any other appropriate investigation, should candidly inform the client as to whether there are meritorious grounds for appeal and the probable results of any such appeal, and should further explain the potential advantages and disadvantages associated with appeal. However, appellate counsel should not seek to withdraw from a case solely because his or her own analysis indicates that the appeal lacks merit.

Standard 10.4. Conduct of the Appeal.

The rules generally governing conduct of appeals in criminal and civil cases govern conduct of appeals in juvenile court matters.

Standard 10.5. Post-Dispositional Remedies: Protection of the Client's Right to Treatment.

- (a) A lawyer who has represented a client through trial and/or appellate proceedings should be prepared to continue representation when post-dispositional action, whether affirmative or defensive, is sought, unless new counsel is appointed at the request of the client or continued representation would, because of geographical considerations or other factors, work unreasonable hardship.
- (b) Counsel representing a client in post-dispositional matters should promptly undertake any factual or legal investigation in order to determine whether grounds exist for relief from juvenile court or administrative action. If there is reasonable prospect of a favorable result, the lawyer should advise the client and, if their interests are not adverse, the client's parents of the nature, consequences, probable outcome and advantages or disadvantages associated with such proceedings.
- (c) The lawyer engaged in post-dispositional representation should conduct those proceedings according to the principles generally governing representation in juvenile court matters.

Standard 10.6. Probation Revocation; Parole Revocation.

- (a) Trial counsel should be prepared to continue representation if revocation of the client's probation or parole is sought, unless new counsel is appointed or continued representation would, because of geographical or other factors, work unreasonable hardship.
- (b) Where proceedings to revoke conditional liberty are conducted in substantially the same manner as original petitions alleging delinquency or need for supervision, the standards governing representation in juvenile court generally

apply. Where special procedures are used in such matters, counsel should advise the client concerning those procedures and be prepared to participate in the revocation proceedings at the earliest stage.

Standard 10.7. Challenges to the Effectiveness of Counsel.

- (a) A lawyer appointed or retained to represent a client previously represented by other counsel has a good faith duty to examine prior counsel's actions and strategy. If, after investigation, the new attorney is satisfied that prior counsel did not provide effective assistance, the client should be so advised and any appropriate relief for the client on that ground should be vigorously pursued.
- (b) A lawyer whose conduct of a juvenile court case is drawn into question may testify in judicial, administrative or investigatory proceedings concerning the matters charged, even though in so doing the lawyer must reveal information which was given by the client in confidence.

APPENDIX B

American Council of Chief Defenders
National Juvenile Defender Center

TEN CORE PRINCIPLES FOR PROVIDING QUALITY DELINQUENCY REPRESENTATION THROUGH INDIGENT DEFENSE DELIVERY SYSTEMS

January 2005

Preamble¹

A. Goal of These Principles

The Ten Core Principles for Providing Quality Delinquency Representation through Indigent Defense Delivery Systems are developed to provide criteria by which an indigent defense system may fully implement the holding of *In Re: Gault*.² Counsel's paramount responsibilities to children charged with delinquency offenses are to zealously defend them from the charges leveled against them and to protect their due process rights. The Principles also serve to offer greater guidance to the leadership of indigent defense providers as to the role of public defenders, contract attorneys or assigned counsel in delivering zealous, comprehensive and quality legal representation on behalf of children in delinquency proceedings as well as those prosecuted in adult court.³

While the goal of the juvenile court has shifted in the past decade toward a more punitive model of client accountability and public safety, juvenile defender organizations should reaffirm the fundamental purposes of juvenile court: (1) to provide a fair and reliable forum for adjudication; and (2) to provide appropriate support, resources, opportunities and treatment to assure the rehabilitation and development of competencies of children found delinquent. Delinquency cases are complex, and their consequences have significant implications for children and their families. Therefore, it is of paramount importance that children have ready access to highly qualified, well-resourced defense counsel.

Defender organizations should further reject attempts by courts or by state legislatures to criminalize juvenile behavior in order to obtain necessary services for children. Indigent defense counsel should play a strong role in determining this and other juvenile justice related policies.

In 1995, the American Bar Association's Juvenile Justice Center published *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, a national study that revealed major failings in juvenile defense across the nation. The report spurred the creation of the National Juvenile Defender Center and nine regional defender centers around the country. The National Juvenile Defender Center conducts state and county assessments of juvenile indigent defense systems that focus on access to counsel and measure the quality of representation.⁴

B. The Representation of Children and Adolescents is a Specialty

The Indigent Defense Delivery System must recognize that children and adolescents are at a crucial stage of development and that skilled juvenile delinquency defense advocacy will positively impact the course of clients' lives through holistic and zealous representation.

The Indigent Defense Delivery System must provide training regarding the stages of child and adolescent development and the advances in brain research that confirm that children and young adults do not possess the same cognitive, emotional, decision-making or behavioral capacities as adults. Expectations, at any stage of the court process, of children accused of crimes must be individually defined according to scientific, evidence-based practice.

The Indigent Defense Delivery System must emphasize that it is the obligation of juvenile defense counsel to maximize each client's participation in his or her own case in order to ensure that the client understands the court process and to facilitate the most informed decision making by the client. The client's minority status does not negate counsel's obligation to appropriately litigate factual and legal issues that require judicial determination and to obtain the necessary trial skills to present these issues in the courtroom.

The **American Council of Chief Defenders** (ACCD), a section of the National Legal Aid & Defender Association, is dedicated to promoting fair justice systems by advocating sound public policies and ensuring quality legal representation to people who are facing a loss of liberty or accused of a crime who cannot afford an attorney. For more information, see www.nlada.org or call (202) 452-0620.

The **National Juvenile Defender Center** (NJDC) is committed to ensuring excellence in juvenile defense and promoting justice for all children. For more information, see www.njdc.info or call (202) 452-0010.

C. Indigent Defense Delivery Systems Must Pay Particular Attention to the Most Vulnerable and Over-Represented Groups of Children in the Delinquency System

Nationally, children of color are severely over-represented at every stage of the juvenile justice process. Research has demonstrated that involvement in the juvenile court system increases the likelihood that a child will subsequently be convicted and incarcerated as an adult. Defenders must work to increase awareness of issues such as disparities in race and class, and they must zealously advocate for the elimination of the disproportionate representation of minority youth in juvenile courts and detention facilities.

Children with mental health and developmental disabilities are also over-represented in the juvenile justice system. Defenders must recognize mental illness and developmental impairments, legally address these needs and secure appropriate assistance for these clients as an essential component of quality legal representation.

Drug- and alcohol-dependent juveniles and those dually diagnosed with addiction and mental health disorders are more likely to become involved with the juvenile justice system. Defenders must recognize, understand and advocate for appropriate treatment services for these clients.

Research shows that the population of girls in the delinquency system is increasing, and juvenile justice system personnel are now beginning to acknowledge that girls' issues are distinct from boys'. Gender-based interventions and the programmatic needs of girls, who have frequently suffered from abuse and neglect, must be assessed and appropriate gender-based services developed and funded.

In addition, awareness and unique advocacy are needed for the special issues presented by lesbian, gay, bisexual and transgender youth.

Ten Principles

1 The Indigent Defense Delivery System Upholds Juveniles' Right to Counsel Throughout the Delinquency Process and Recognizes The Need For Zealous Representation to Protect Children

A. The indigent defense delivery system should ensure that children do not waive appointment of counsel. The indigent defense delivery system should ensure that defense counsel are assigned at the earliest possible stage of the delinquency proceedings.⁵

B. The indigent defense delivery system recognizes that the delinquency process is adversarial and should provide children with continuous legal representation throughout the delinquency process including, but not limited to, detention, pre-trial motions or hearings, adjudication, disposition, post-disposition, probation, appeal, expungement and sealing of records.

C. The indigent defense delivery system should include the active participation of the private bar or conflict office whenever a conflict of interest arises for the primary defender service provider.⁶

2 The Indigent Defense Delivery System Recognizes that Legal Representation of Children is a Specialized Area of the Law

A. The indigent defense delivery system recognizes that representing children in delinquency proceedings is a complex specialty in the law and that it is different from, but equally as important as, the legal representation of adults. The indigent defense delivery system further acknowledges the specialized nature of representing juveniles processed as adults in transfer/waiver proceedings.⁷

B. The indigent defense delivery system leadership demonstrates that it respects its juvenile defense team members and that it values the provision of quality, zealous and comprehensive delinquency representation services.

C. The indigent defense delivery system leadership recognizes that delinquency representation is not a training assignment for new attorneys or future adult court advocates, and it encourages experienced attorneys to provide delinquency representation.

3 The Indigent Defense Delivery System Supports Quality Juvenile Delinquency Representation Through Personnel and

A. The indigent defense delivery system encourages juvenile representation specialization without limiting attorney and support staff's access to promotional progression, financial advancement or personnel benefits.

B. The indigent defense delivery system provides a professional work environment and adequate operational resources such as office space, furnishings, technology, confidential client interview areas⁸ and current legal research tools. The system includes juvenile representation resources in budgetary planning to ensure parity in the allocation of equipment and resources.

4 The Indigent Defense Delivery System Utilizes Expert and Ancillary Services to Provide Quality Juvenile Defense Services

A. The indigent defense delivery system supports requests for essential expert services throughout the delinquency process and whenever individual juvenile case representation requires these services for effective and quality representation. These services include, but are not limited to, evaluation by and testimony of mental health professionals, education specialists, forensic evidence examiners, DNA experts, ballistics analysis and accident reconstruction experts.

B. The indigent defense delivery system ensures the provision of all litigation support services necessary for the delivery of quality services, including, but not limited to, interpreters, court reporters, social workers, investigators, paralegals and other support staff.

5 The Indigent Defense Delivery System Supervises Attorneys and Staff and Monitors Work and Caseloads

A. The leadership of the indigent defense delivery system monitors defense counsel’s caseload to permit the rendering of quality representation. The workload of indigent defenders, including appointed and other work, should never be so large as to interfere with the rendering of zealous advocacy or continuing client contact nor should it lead to the breach of ethical obligations.¹⁰ The concept of workload may be adjusted by factors such as case complexity and available support services.

B. Whenever it is deemed appropriate, the leadership of the indigent defense delivery system, in consultation with staff, may adjust attorney case assignments and resources to guarantee the continued delivery of quality juvenile defense services.

6 The Indigent Defense Delivery System Supervises and Systematically Reviews Juvenile Defense Team Staff for Quality According to National, State and/or Local Performance Guidelines or Standards

A. The indigent defense delivery system provides supervision and management direction for attorneys and all team members who provide defense representation services to children.¹¹

B. The leadership of the indigent defense delivery system adopts guidelines and clearly defines the organization’s vision as well as expectations for the delivery of quality legal representation. These guidelines should be consistent with national, state and/or local performance standards, measures or rules.¹²

C. The indigent defense delivery system provides administrative monitoring, coaching and systematic reviews for all attorneys and staff representing juveniles, whether contract defenders, assigned counsel or employees of defender offices.

7 The Indigent Defense System Provides and Supports Comprehensive, Ongoing Training and Education for All Attorneys and Support Staff Involved in the Representation of Children

A. The indigent defense delivery system supports and encourages juvenile defense team members through internal and external comprehensive training¹³ on topics including, but not limited to, detention advocacy, litigation and trial skills, dispositional planning, post-dispositional practice, educational rights, appellate advocacy and administrative hearing representation.

B. The indigent defense delivery system recognizes juvenile delinquency defense as a specialty that requires continuous training in unique areas of the law.¹⁴ In addition to understanding the juvenile court process and systems,

juvenile team members should be competent in juvenile law, the collateral consequences of adjudication and conviction, and other disciplines that uniquely impact juvenile cases, such as, but not limited to:

1. Administrative appeals
2. Child welfare and entitlements
3. Child and adolescent development
4. Communicating and building attorney-client relationships with children and adolescents
5. Community-based treatment resources and programs
6. Competency and capacity
7. Counsel’s role in treatment and problem solving courts¹⁵
8. Dependency court/abuse and neglect court process
9. Diversionary programs
10. Drug addiction and substance abuse
11. Ethical issues and considerations
12. Gender-specific programming
13. Immigration
14. Mental health, physical health and treatment
15. Racial, ethnic and cultural understanding
16. Role of parents/guardians
17. Sexual orientation and gender identity awareness
18. Special education
19. Transfer to adult court and waiver hearings
20. Zero tolerance, school suspension and expulsion policies

8 The Indigent Defense Delivery System Has an Obligation to Present Independent Treatment and Disposition Alternatives to the Court

A. Indigent defense delivery system counsel have an obligation to consult with clients and, independent from court or probation staff, to actively seek out and advocate for treatment and placement alternatives that best serve the unique needs and dispositional requests of each child.

B. The leadership and staff of the indigent defense delivery system work in partnership with other juvenile justice agencies and community leaders to minimize custodial detention and the incarceration of children and to support the creation of a continuum of community-based, culturally sensitive and gender-specific treatment alternatives.

C. The indigent defense delivery system provides independent post-conviction monitoring of each child’s treatment, placement or program to ensure that rehabilitative needs are met. If clients’ expressed needs are not effectively addressed, attorneys are responsible for intervention and advocacy before the appropriate authority.

9 The Indigent Defense Delivery System Advocates for the Educational Needs of Clients

A. The indigent defense delivery system recognizes that access to education and to an appropriate educational curriculum is of paramount importance to juveniles facing delinquency adjudication and disposition.

B. The indigent defense delivery system advocates, either through direct representation or through collaborations with community-based partners, for the appropriate provision of the individualized educational needs of clients.

C. The leadership and staff of the indigent defense delivery system work with community leaders and relevant agencies to advocate for and support an educational system that recognizes the behavioral manifestations and unique needs of special education students.

D. The leadership and staff of the indigent defense delivery system work with juvenile court personnel, school officials and others to find alternatives to prosecutions based on zero tolerance or school-related incidents.

10 The Indigent Defense Delivery System Must Promote Fairness and Equity For Children

A. The indigent defense delivery system should demonstrate strong support for the right to counsel and due process in delinquency courts to safeguard a juvenile justice system that is fair, non-discriminatory and rehabilitative.

B. The leadership of the indigent defense delivery system should advocate for positive change through legal advocacy, legislative improvements and systems reform on behalf of the children whom they serve.

C. The leadership and staff of the indigent defense delivery system are active participants in the community to improve school, mental health and other treatment services and opportunities available to children and families involved in the juvenile justice system.

Notes

¹ These principles were developed over a one-year period through a joint collaboration between the National Juvenile Defender Center and the American Council of Chief Defenders, a section of the National Legal Aid and Defender Association (NLADA), which officially adopted them on December 4, 2004.

² 387 U.S. 1 (1967). According to the IJA/ABA Juvenile Justice Standard Relating to Counsel for Private Parties 3.1 (1996), “the lawyer’s principal duty is the representation of the client’s legitimate interests” as distinct and different from the best interest standard applied in neglect and abuse cases. The Commentary goes on to state that “counsel’s principal responsibility lies in full and conscientious representation” and that “no lesser obligation exists when youthful clients or juvenile court proceedings are involved.”

³ For purposes of these Principles, the term “delinquency proceeding” denotes all proceedings in juvenile court as well as any proceeding lodged against an alleged status offender, such as for truancy, running away, incorrigibility, etc.

⁴ Common findings among these assessments include, among other barriers to adequate representation, a lack of access to competent counsel, inadequate time and resources for defenders to prepare for hearings or trials, a juvenile court culture that encourages pleas to move cases quickly, a lack of pretrial and dispositional advocacy and an over-reliance on probation. For more information, see *Selling Justice Short: Juvenile Indigent Defense in Texas* (2000); *The Children Left Behind: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Louisiana* (2001); *Georgia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2001); *Virginia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2002); *An Assessment of Counsel and Quality of Representation in Delinquency Proceedings in Ohio* (2003); *Maine: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *Maryland: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *Montana: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *North Carolina: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *Pennsylvania: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *Washington: An Assessment of Access to Counsel and Quality of Representation in Juvenile Offender Matters* (2003).

⁵ *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 3.

⁶ A conflict of interest includes both codefendants and intra-family conflicts, among other potential conflicts that may arise. See also *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 2.

⁷ For purposes of this Principle, the term “transfer/waiver proceedings” refers to any proceedings related to prosecuting youth in adult court, including those known in some jurisdictions as certification, bind-over, decline, remand, direct file, or youthful offenders.

⁸ *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 8.

⁹ *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 4.

¹⁰ See National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976), 5.1, 5.3; American Bar Association, *Standards for Criminal Justice, Providing Defense Services* (3rd ed., 1992), 5-5.3; American Bar Association, *Standards for Criminal Justice: Prosecution Function and Defense Function* (3rd ed., 1993), 4-1.3(e); National Advisory Commission on Criminal Justice Standards and Goals, *Report of the Task Force on Courts, Chapter 13, “The Defense”* (1973), 13.12; National Legal Aid and Defender Association and American Bar Association, *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services* (NLADA, 1984; ABA, 1985), III-6, III-12; National Legal Aid and Defender Association, *Standards for the Administration of Assigned Counsel Systems* (1989), 4.1.4.1.2; *ABA Model Code of Professional Responsibility* DR 6-101; *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 5.

¹¹ *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principles 6 and 10.

¹² For example, Institute of Judicial Administration-American Bar Association, *Juvenile Justice Standards* (1979); National Advisory Commission on Criminal Justice Standards and Goals, *Report of the Task Force on Courts, Chapter 13, “The Defense”* (1973); National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976); American Bar Association, *Standards for Criminal Justice, Providing Defense Services* (3rd ed., 1992); American Bar Association, *Standards for Criminal Justice: Prosecution Function and Defense Function* (3rd ed., 1993); *Standards and Evaluation Design for Appellate Defender Offices* (NLADA, 1980); *Performance Guidelines for Criminal Defense Representation* (NLADA, 1995).

¹³ *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 9; National Legal Aid and Defender Association, *Training and Development Standards* (1997), Standards 1 to 9.

¹⁴ National Legal Aid and Defender Association, *Training and Development Standards* (1997), Standard 7.2, footnote 2.

¹⁵ American Council of Chief Defenders, *Ten Tenets of Fair and Effective Problem Solving Courts* (2002).

ENDNOTES

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 - 2 *Id.* at 45, 47, 51.
 - 3 *Id.* at 86; U.S. Census Bureau, *Small Area Income & Poverty Assessments*, available at: www.census.gov/hhes/www/saippe/ (select “State & county data,” then request 2003 data for Indiana, then check the box to view “Age 0-17 in poverty”)
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 - 5 Sickmund, Melissa, Sladky, T.J., and Kang, Wei, *Census of Juveniles in Residential Placement Databook* (2005), available at: <http://www.ojjdp.ncjrs.org/ojstatbb/cjrp/>.
 - 6 U.S. Census Bureau, *2000 Census Data*, available at: www.census.gov/main/www/cen2000.html (select “State & County Quick Facts,” then select Indiana).
 - 7 Settlement Agreement at 1, *United States v. State of Indiana, the Logansport Intake/Diagnostic Facility and the South Bend Juvenile Correctional Facility*, available at: http://www.usdoj.gov/crt/split/documents/indianajuv_setagree_2-8-06.pdf.
 - 8 Evans, Tim, *Feds Will Monitor State’s Juvenile Facilities*, THE INDIANAPOLIS STAR (Feb. 8, 2006), available at: <http://www.indystar.com/apps/pbcs.dll/article?AID=/20060208/NEWS01/60208005>.
 - 9 *Gideon v. Wainwright*, 372 U.S. 335 (1963).
 - 10 *In re Gault*, 387 U.S. 1, 41 (1967).
 - 11 *Id.* at 36.
 - 12 *Id.* at 18.
 - 13 *In re Winship*, 397 U.S. 358, 365-366 (1970).
 - 14 *See, Kent v. United States*, 383 U.S. 541 (1966) (due process attaches to hearings on transfer from juvenile to adult jurisdiction); *In re Gault*, 387 U.S. 1 (1967) (due process attaches to delinquency hearings); *In re Winship*, 397 U.S. 358 (1970) (standard of proof in delinquency proceedings is beyond a reasonable doubt); *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971) (right to a jury trial is not a fundamental due process right in delinquency proceedings); *Breed v. Jones*, 421 U.S. 519 (1975) (delinquency proceeding places respondent “in jeopardy” and triggers double jeopardy protections); *Schall v. Martin*, 467 U.S. 253 (1984) (preventive detention of children charged with delinquent acts is constitutional).
 - 15 *See*, National Advisory Committee for Juvenile Justice and Delinquency Prevention, 3.312 *Representation by Counsel – For the Juvenile*, STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, U.S. Dept. of Justice) July 1980.
 - 16 IJA/ABA JUV. JUST. STDS. ANN. xvi (Robert E. Shepherd, Jr., ed. 1996).
 - 17 American Council of Chief Defenders & National Juvenile Defender Center, *Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems*, Principle 1 (2005).
 - 18 National Council of Juvenile and Family Court Judges, *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases*, 25 (2005).
 - 19 The ABA Juvenile Justice Center created the National Juvenile Defender Center, which is now separately incorporated and housed in Washington, D.C. and provides the partnerships for these assessments.
 - 20 Puritz, Patricia, *et al.*, *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (1995).
 - 21 IND. CONST. art. 7, § 1.
 - 22 *Know Your Indiana Courts*, <http://www.in.gov/judiciary/about/04-trialcourts.html> (last visited March 22, 2006).
 - 23 *Id.*
 - 24 *See generally*, Ind. Code Ann. § 31-30-1-1; *but see* Ind. Code Ann. § 31-30-1-9.
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25 Ind. Code Ann. § 31-30-1-2.
26 Ind. Code Ann. § 31-30-1-4.
27 Division of State Court Administration, *Honored to Serve: 2004 Indiana Judicial Service Report*, 95 (2004).
28 For a more thorough explanation of these systems and a listing of which counties use which systems, please see the Indiana Public Defender Commission's *Standards for Indigent Defense Services in Non-Capital Cases 4-5*, (2004), available at <http://www.in.gov/judiciary/pdc/docs/standards/indigent-defense-non-cap.pdf>.
29 Ind. Code Ann. § 33-40-6-5.
30 Ind. Code Ann. § 33-40-5-4.
31 Ind. Code Ann. § 33-40-5-2.
32 *Public Defender Commission*, <http://www.in.gov/judiciary/pdc/about.html> (last visited March 22, 2006).
33 Public Defender Commission, *2003-2004 Annual Report*, 5 (2004).
34 *Honored to Serve*, *supra* note 27, at 24.
35 *Standards for Indigent Defense Services*, *supra* note 28, at 11-12.
36 *Id.* at 11.
37 Public Defender Commission, *Indiana Public Defender Juvenile Case Law Standards* (2004), available at: <http://www.in.gov/judiciary/pdc/docs/standards/juvenile-caseload.pdf>
38 *Standards for Indigent Defense Services*, *supra* note 28.
39 Public Defender of Indiana, *2004-2005 Annual Report*, 1 (2005).
40 *Id.* at 2.
41 Ind. Code Ann. § 11-13-6-9.
42 Public Defender, *Annual Report*, *supra* note 39, at 46.
43 *Id.* at 45.
44 Ind. Code Ann. § 33-40-4-5.
45 *Id.*
46 Ind. Code Ann. §§ 31-32-2-2, 31-32-4-1; *D.H. v. State*, 688 N.E.2d 221, 223 (Ind. Ct. App. 1997).
47 Ind. Code Ann. § 31-32-4-2.
48 *N.M. v. State*, 791 N.E.2d 802 (Ind. Ct. App. 2003).
49 Ind. Code Ann. § 31-32-4-2.
50 Ind. Code Ann. § 31-32-5-1.
51 *D.D.B. v. State*, 691 N.E.2d 486, 487 (Ind. Ct. App. 1998).
52 Ind. Code Ann. § 31-32-5-2.
53 *N.M.*, 791 N.E.2d at 806 n. 3.
54 Ind. Code Ann. § 31-10-2-1.
55 *Id.*
56 Ind. Code Ann. § 31-37-4-2.
57 Ind. Code Ann. § 31-37-4-1.
58 Ind. Code Ann. § 31-37-5-3.
59 Ind. Code Ann. § 31-37-6-6.
60 Ind. Code Ann. § 31-37-5-4.
61 Ind. Code Ann. § 31-37-7-1.
62 Ind. Code Ann. § 31-37-7-3. Note that this provision does not apply to youth charged with any other status offense, who may not be detained for any period of time.
63 Ind. Code Ann. § 31-37-6-2.
64 Ind. Code Ann. §§ 31-32-4-2, 31-37-6-5.
65 Ind. Code Ann. § 31-37-6-8.
66 Ind. Code Ann. § 31-37-10-1.
67 Ind. Code Ann. § 31-37-8-1.
68 Ind. Code Ann. § 31-37-8-2.
69 Ind. Code Ann. § 31-37-8-5.
70 Ind. Code Ann. § 31-37-11-1.
71 Ind. Code Ann. § 31-37-12-5.
72 Ind. Code Ann. § 31-37-12-3.

73 Ind. Code Ann. § 31-37-12-7.
74 Ind. Code Ann. § 31-30-1-4 (sets forth the crimes that if, committed by a child at least 16 years of
age, will be filed directly in adult court).
75 Ind. Code Ann. § 31-37-12-4.
76 *Id.*
77 *Gebov v. Gray*, 471 F.2d 575, 579 (7th Cir. 1973).
78 Ind. Code Ann. § 31-37-11-3.
79 Ind. Code Ann. §§ 31-30-3-2 to -6.
80 *Moore v. State*, 723 N.E.2d 442, 446 (Ind. Ct. App. 2000).
81 Ind. Code Ann. § 31-30-3-5.
82 Ind. Code Ann. § 31-30-3-6.
83 Ind. Code Ann. § 31-37-11-2.
84 Ind. Code Ann. § 31-37-12-9.
85 *J.H. v. State*, 655 N.E.2d 624 (Ind. Ct. App. 1995).
86 Ind. Code Ann. § 31-37-13-2.
87 Ind. Code Ann. § 31-32-4-2; *see also In re Gault*, 387 U.S. 1 (1969); *Bridges v. State*, 299 N.E.2d 616,
617 (Ind. 1973); *D.H. v. State*, 688 N.E.2d 221 (Ind. Ct. App. 1997).
88 Ind. Code Ann. § 31-37-12-9.
89 Ind. Code Ann. § 31-37-18-1.
90 Ind. Code Ann. §§ 31-37-17-1, 31-37-18-1.1.
91 Ind. Code Ann. §§ 31-37-18-6, 31-37-18-9.
92 For status offender dispositions, see Ind. Code Ann. § 31-37-19-1, and for delinquent dispositions,
see options listed at Ind. Code Ann. §§ 31-37-19-5, 31-37-19-6.
93 Ind. Code Ann. § 31-37-20-1.
94 Ind. Code Ann. § 31-37-20-2.
95 Ind. Code Ann. § 31-37-20-3.
96 Ind. Code Ann. § 31-37-22-1.
97 *C.B. v. State*, 553 N.E.2d 488 (Ind. Ct. App. 1990).
98 *Haluska v. State*, 663 N.E.2d 1193 (Ind. Ct. App. 1996).
99 *S.E. v. State*, 744 N.E.2d 536, 539 (Ind. Ct. App. 2001).
100 *W.T.J. v. State*, 713 N.E.2d 938 (Ind. Ct. App. 1999).
101 National Center for Juvenile Justice, *State Juvenile Justice Profiles: Indiana*, available at: [http://
www.ncjj.org/stateprofiles/profiles/](http://www.ncjj.org/stateprofiles/profiles/) (then select Indiana from drop-down menu at top of page).
102 *Id.*
103 *Id.*
104 Indiana Department of Correction, *Juvenile Facility Security Levels*, [http://www.in.gov/
indcorrection/juvfac.html](http://www.in.gov/indcorrection/juvfac.html) (last visited March 22, 2006).
105 *State Juvenile Justice Profiles: Indiana*, *supra* note 101.
106 Indiana Department of Correction, *Parole Districts*, [http://www.in.gov/indcorrection/parolefac.
html](http://www.in.gov/indcorrection/parolefac.html) (last visited March 22, 2006).
107 Indiana Department of Correction, *Offender Population Statistical Report (2005)*, available at:
<http://www.in.gov/indcorrection/pdf/stats/0105OffenderPopulation.pdf>
108 IJA-ABA *Juvenile Justice Standards, Standards Relating to Pretrial Court Proceedings* 6.1(a) (1980).
109 *Ten Core Principles*, *supra* note 17.
110 *Juvenile Delinquency Guidelines*, *supra* note 18.
111 While the IJA/ABA *Juvenile Justice Standards* recommend that juveniles should never be allowed
to waive counsel, Indiana law allows parents to waive their child's right to counsel if there has
been meaningful consultation between the parent and the child and the child knowingly and
voluntarily joins in this decision. Ind. Code Ann. § 31-32-5-1.
112 *Honored to Serve*, *supra* note 27, at 90, 109.
113 *Id.* at 82, 109.
114 IJA-ABA *Juvenile Justice Standards, Standards Relating to Counsel for Private Parties* 4.1 (1980).
115 *Id.* at Standard 4.2(a).
116 *Id.* at Standard 4.3(a).
117 IJA-ABA *Juvenile Justice Standards, Standards Relating to Disposition* 2.1.

118 *Id.* at Standard 2.2.
119 IJA-ABA *Juvenile Justice Standards, Standards Relating to Counsel for Private Parties* 4.3 (1980).
120 *Id.* at Standard 10.1.
121 *Id.* at Standard 10.5.
122 *Id.* at Standard 2.3(a).
123 *Id.* at Standard 10.3(b).
124 *N.M. v. State*, 791 N.E.2d 802, 806 n.3 (2003).
125 IJA-ABA *Juvenile Justice Standards, Standards Relating to Counsel for Private Parties* 3.1 (1980).
126 *Honored to Serve*, *supra* note 27, at 1.
127 *Id.* at 83. There were 25,861 delinquency cases files in 2003 and 26,653 delinquency cases filed in 2004.
128 Ind. Code Ann. § 33-40-3-6.
129 *Honored to Serve*, *supra* note 27, at 126, 135 (descriptions of all fees).
130 Civil Rights of Children Committee, Indiana State Bar Association, *Children, Mental Health and the Law Summit: Final Report and Recommendations*, 2 (2005), available at: http://www.inbar.org/content/pdf/Mental_Health_Report%20.pdf.
131 U.S. House of Representatives Committee on Government Reform-Minority Staff, Special Investigations Division, *Incarceration of Youth Who Are Waiting for Community Mental Health Services in the United States* (prepared for Rep. Henry A. Waxman & Sen. Susan Collins) (July 2004), available at: <http://www.democrats.reform.house.gov/story.asp?id=418>.
132 *Children, Mental Health and the Law Summit Report*, *supra* note 130. In 2005, the Indiana State Bar Association sponsored the “Children, Mental Health and the Law Summit,” with specific findings and recommendations in four areas: 1) routine screening, assessment, treatment and diversion of children with mental health needs in the delinquency system; 2) special education advocacy to help children with disabilities in the juvenile justice system; 3) ensuring juvenile competency to stand trial; and 4) funding, building capacity and removing barriers to services. The report makes several significant recommendations, including development of an Indiana juvenile competency model, and the appointment of counsel in every delinquency case to ensure juveniles are not subjected to delinquency proceedings if they are incompetent to stand trial.



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