

Georgia

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

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EXECUTIVE SUMMARY

Fulfilling the promise of fair and equal representation in Georgia's criminal justice system has long presented a challenge for the state. Growing sentiment that the state's present system of indigent defense is in urgent need of reform culminated in Chief Justice Norman Fletcher's challenge at his investiture, "to join in the cause of indigent defense, to fix a flawed system." The current debates surrounding the condition of the state's indigent defense have focused almost exclusively on the adult criminal justice system, with scant attention paid to the juvenile justice system that dealt with over 28,000 Georgia children last year.

A national assessment of the representation of children in delinquency proceedings and the needs of juvenile defense attorneys was conducted in 1995 by the American Bar Association (ABA) Juvenile Justice Center, in collaboration with the Youth Law Center and the Juvenile Law Center. These findings were published in *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*. This report laid the foundation for closer evaluation and examination of the role of counsel in the states' delinquency systems. Advocates and others in Georgia concerned with the treatment of children in the juvenile justice system saw a need to evaluate the impact of juvenile court policies and practices on children. This report provides information concerning access to counsel and quality of representation in delinquency proceedings for indigent children in Georgia.

Employing different modes of data collection, a group of national experts visited sites in eleven counties across the state, conducted interviews with a wide array of people in the juvenile court system, observed court proceedings, spoke with detained and incarcerated children and their families, and synthesized data concerning the population of children in the court system. Although the underlying purpose of the assessment was to examine the juvenile indigent defense system and the critical role of counsel for children, the report also discusses other aspects of Georgia's juvenile justice system that necessarily intersect with the primary focus of the assessment. Some of the findings discussed in the report include:

- **Children Without Counsel**

Children are routinely permitted to waive counsel in many counties despite Georgia's statutory mandate that children are guaranteed the right to counsel at all stages of a delinquency proceeding. In some jurisdictions, it is estimated that as many as 90% of the children waive counsel in delinquency proceedings, almost always without the benefit of consulting with a lawyer beforehand and no warnings of the dangers of proceeding without a lawyer. Numerous people in the court system express serious doubts about children's intellectual ability to appreciate their right to counsel and other due process rights. Proceeding

without counsel, children often make unadvised admissions and testify against themselves during proceedings. Without the help of an advocate, children move unsteadily through the court system, confused and ignorant of the real possibility of incarceration.

- **Structural Deficiencies of Indigent Defense for Children**

The fragmented system of indigent defense results in uneven and inconsistent representation of children across the various counties. Beyond the lack of funding for defense services, the structural deficiencies of a system with no uniformity results in lack of resources and pay parity with prosecutors; lack of training and professional development for juvenile defense lawyers; the perception of juvenile defense as demeaning and of lesser importance; and a lack of accountability and leadership.

- **Excessive Caseload and Minimal Client Contact**

Caseloads for juvenile defense attorneys have been estimated as high as 900 cases a year. Heavy caseloads inevitably prevent lawyers from establishing meaningful contact with their clients; it is common practice for attorneys to meet children at the courthouse on the day of their hearing. Several lawyers have established a practice of never initiating contact with clients, putting the burden on the child to call them instead. The lack of time also results in little or no preparation or investigation of cases by attorneys. Rarely are motions filed or experts requested in delinquency cases.

- **The Absence of Due Process**

Delinquency proceedings are informed by an underlying philosophy of the best interests of the child. In some courts this takes precedence over the presumption of innocence to which every accused child is entitled. Some juvenile courts are inclined to find children delinquent in order to get them services that are perceived necessary. As a result, defense attorneys are often viewed as impediments to delinquency proceedings and their role as counsel is severely diminished. The detrimental effects of finding children delinquent and placing such a debilitating label on them often outweighs any benefits received from services that are scarce and poorly designed to treat children's fundamental problems.

- **The Over-Extended Role of Probation**

The myriad roles played by probation officers in the juvenile court system extend far beyond their original role as neutral parties that provide information to the court. Probation officers in juvenile court perform often conflicting tasks that extend from prosecutorial functions such as making charging decisions and negotiating pleas, to law enforcement functions such as advising the police on arrests, offering legal advice to children on their charges and counseling children on their rights. The many guises in which probation officers

perform their duties often cause confusion and conflicts for children who do not know whether a probation officer is their advocate or an adversary.

- **Other Notable Barriers to Effective Representation of Children**

There are a number of areas people in the juvenile court system consistently identified as problems that need to be addressed in order to treat children effectively and sustain a successful juvenile justice system. These include building better treatment programs and alternatives to incarceration, especially for girls, children with mental health needs, and youth with substance abuse and sex offender problems; addressing the influx of children referred to juvenile courts for school-related conduct arising from zero-tolerance policies; and confronting the disparate treatment of African American children in the delinquency system. These are issues that require closer examination beyond the discussion in this report.

CONCLUSION

The consequences for children receiving inadequate representation in the delinquency system and the harm resulting from deficiencies in the indigent defense system are real and of lasting duration. Without effective representation, children are subject to the whims and vagaries of the decisionmakers in the system who may not always make the individualized decisions that best promote the treatment and rehabilitation of the child. Without a zealous advocate, children lose opportunities to vindicate their innocence and run the serious risk of receiving inappropriate interventions and punishments, including unnecessary pretrial detention. Much of the conduct that had been addressed by families, communities and schools in the past are now swept into the juvenile justice system, leading to the criminalization of children for conduct that juvenile courts are ill-prepared to handle. Children's involvement in the delinquency system usually follows a downward trajectory deeper into the delinquency system that begins with restrictive probation terms, escalates to incarceration with longer and longer custody terms, and ultimately ends with an entire childhood spent within the delinquency system. A system that does not ensure fair and equal representation of children cannot render individualized justice, hold children reasonably accountable, provide appropriate rehabilitation, promote family values or enhance public safety.

INTRODUCTION

Thirty-four years after the Supreme Court's landmark decision in *In re Gault* recognized the critical importance of counsel for children accused of a crime, the guarantee of right to counsel and due process has yet to be realized in many juvenile courts in Georgia. Society's trust in the justice system depends upon the realization of fairness and due process. Public confidence is shaken by reports of children facing criminal charges without legal counsel, lawyers who never contact their young clients before court, or lawyers who never investigate charges or interview witnesses. The legitimacy and integrity of our justice systems depends upon ensuring that all citizens, especially children, are afforded due process and competent representation regardless of race, age, or financial status. Equal access to justice is not merely an ideal, but an obligation that we as citizens in a democracy must see fulfilled.

Gault focused attention on the treatment of youth in the juvenile justice system, spurring the states in varying degrees to begin addressing the concerns noted in the Court's decision. At the national level, Congress passed the Juvenile Justice and Delinquency Prevention (JJDP) Act in 1974 which created the National Advisory Committee for Juvenile Justice and Delinquency Prevention. The National Advisory Committee was charged with developing national juvenile justice standards and guidelines. Published in 1974, these standards require that children be represented by counsel in all proceedings arising from a delinquency action from the earliest stage of the process.¹

Beginning in 1971, and ensuing over a ten-year period, the Institute for Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards promulgated twenty-three volumes of comprehensive juvenile justice standards.² The structure of the project was as intricate as the volumes of standards it produced: the Joint Commission consisted of twenty-nine members and four drafting committees supervised the work of thirty scholars who were assigned as reporters to draft individual volumes. The draft standards were circulated widely to individuals and organizations throughout the country for comments and suggestions before final revision and submission to the ABA House of Delegates. Adopted in full by 1981, these standards were designed to establish the best possible juvenile justice system for our society, not to fluctuate in response to transitory headlines or controversies.

Despite these early efforts, studies reveal that children in many regions of the country still receive inadequate assistance of counsel in delinquency cases. When the JJDP Act was reauthorized in 1992, Congress re-emphasized the crucial importance of lawyers for children in delinquency proceedings and especially noted the inadequacy of publicly funded defenders to provide individualized justice. In 1995, the American Bar Association released a report that was the first systematic national assessment of current practices of juve-

nile defense attorneys, examining the gaps in accessibility and quality of legal representation for children across the nation.³ While noting that some attorneys vigorously and enthusiastically represent their clients, the report raised serious concerns that such representation is neither widespread nor common. The centennial of the founding of the Juvenile Court in 1999 prompted many concerned about justice for children to reflect on the achievements and challenges faced by the Juvenile Court over the past century. Many have begun to re-examine the process by which legal services are provided to indigent children.

In Georgia, there long has been recognition that the state's patchwork indigent defense system is irretrievably broken and in need of repair. Various efforts are currently underway to examine the present structure of providing defense services for poor people accused of crimes. Earlier this year, the Chief Justice of the Georgia Supreme Court appointed a Blue Ribbon Commission on Indigent Defense to make findings and recommendations about reforming the indigent defense system. The Commission on Public Trust and Confidence in the Courts has held statewide hearings to learn from defense attorneys, prosecutors, judges, defendants, and others about indigent defense practices. At his investiture, the new Chief Justice of the Georgia Supreme Court, Norman Fletcher, named reform of indigent defense among his top priorities, stating, "How can we assure equal justice without equal representation....I ask all present to join in the cause of indigent defense, to fix a flawed system."⁴

Little attention has focused on the experience of indigent children in the state's juvenile justice system. The fragmented system of indigent defense results in uneven and inconsistent representation of children. In some jurisdictions, judges appoint lawyers for every child coming before the court, while in others, lawyers are viewed as an impediment to the operation of the court. Like everywhere else in the country, the juvenile justice system in Georgia exists in the shadow of the adult criminal justice system. Children in the juvenile justice system are disenfranchised and vulnerable. They are rarely visible to the policymakers and legislators who make the decisions that affect their lives. Moreover, juvenile court proceedings are generally closed to the public and do not receive the kind of attention and scrutiny that occur in the adult system. Not surprisingly, the failures that are apparent in the adult criminal system are heightened in the juvenile system. Despite the fact that the juvenile justice system is universally perceived as the best opportunity to treat, rehabilitate and divert children away from a life of crime, it has often fared worse in funding, resources, support and attention in comparison with the adult system.

Juvenile incarceration rates remain high in Georgia despite an unprecedented decline in serious crime for both adults and juveniles in the last decade.⁵ Studies show that the number of children incarcerated in Georgia has increased 52% between 1995 and 2000.⁶ Most of these children are incarcerated for misdemeanor and nonviolent offenses. The number of children incarcerated for

nonviolent crimes such as property crimes, public order, drug use, violation of probation, and status offenses, increased an average of 35% between 1996 and 2000. In 1999, over 81% of the 21,671 children admitted to the state's detention centers were held for nonviolent offenses. Of the 6,966 children incarcerated in the state's secure correctional facilities in 1999, approximately 65% were African American. Georgia is expected to experience a 27% increase in the confined juvenile population between 2000 and 2005.⁷

A sustained examination of the provision of legal services for children is critical, particularly since punitive laws passed by the legislature increasingly emphasize punishment by incarceration rather than rehabilitation by treatment. Although some research and evidence regarding the condition of the adult indigent defense system in the state have been publicized, there exists no comprehensive, systemic information available to evaluate the delivery of indigent defense services to juveniles in Georgia. This study begins the task of filling the information vacuum regarding access to counsel and quality of legal representation for poor children in Georgia. It is hoped that this preliminary assessment of juvenile indigent defense practices will draw the attention of leaders and policymakers to the needs of the juvenile justice system and the unique challenges of providing legal representation to youth in delinquency proceedings.

METHODOLOGY

The American Bar Association Juvenile Justice Center, in collaboration with the Southern Center for Human Rights, convened a team of national experts to conduct an assessment of access to counsel and quality of representation in Georgia's juvenile justice system. The investigative team consisted of juvenile court practitioners, academics, advocates, former public defenders and managers of defender organizations.

The study was conducted with the purpose of examining the particular characteristics and challenges of representing juveniles in delinquency proceedings in Georgia. Members of the investigative team visited 11 counties across the state, representing approximately one-third of the state's population and three-fourths of the youth held in detention centers.⁸ These counties handled approximately 40% of the delinquency cases filed across the state.⁹ The sample was constructed to include at least one county from each of the 10 judicial administrative districts, and to represent a cross-section of urban, suburban and rural areas, the state's geographic regions, and the diversity of juvenile court structures and indigent defense programs.

In each county, team members observed court proceedings, toured courthouses and holding cells, and conducted interviews with judges, juvenile defense attorneys, prosecutors, probation officers, intake staff, court administrators,

and court clerks. In many counties, members of the team also interviewed children, parents, child advocates, detention center staff, and Department of Juvenile Justice caseworkers. In some instances, follow-up interviews were conducted through telephone interviews. The study was designed to examine the structure of Georgia's varying indigent defense systems and the impact of the structures on appropriate representation for children. The purpose of the assessment is not to evaluate particular courts and counties or specific individuals and departments; accordingly, none of the counties or individuals are identified by name.

This report identifies systemic barriers to fair defense for children, evaluates consequences of such barriers in the juvenile justice system, describes ways in which judges, attorneys, and counties have attempted to address these barriers, and makes recommendations for improving the current system of indigent defense services for children.

CHAPTER ONE

THE ROLE OF JUVENILE DEFENSE COUNSEL IN GEORGIA¹⁰

The Georgia Constitution provides that “[e]very person charged with an offense against the laws of this state shall have the privilege and benefit of counsel.”¹¹ And the Sixth Amendment to the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right to ... have the Assistance of Counsel for his defence.”¹²

In 1963, the United States Supreme Court held in *Gideon v. Wainwright*¹³ that the federal constitutional right to counsel requires the appointment of an attorney to represent a poor person accused of a felony offense. The Court emphasized, “In our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.”¹⁴ A few years later, in *In re Gault*, the Supreme Court explicitly extended federal constitutional protections to children in juvenile delinquency proceedings. The Court held in *Gault* that juveniles facing “the awesome prospect of incarceration” have the right to counsel under the Due Process Clause of the United States Constitution.¹⁵ *Gault* recognized that “a juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it.”¹⁶ 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.¹⁷ Reaffirming this view in a later case, the Supreme Court stated, “[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 court...” and established that juveniles are constitutionally entitled to proof “beyond a reasonable doubt” during an adjudication for delinquency charges.¹⁸

Georgia has incorporated the constitutional protections of due process and right to counsel for juveniles in delinquency proceedings into its own statutes. The Georgia Code mandates that “a party is entitled to representation by legal counsel at all stages of any proceedings alleging delinquency...”¹⁹ The right of legal counsel requires that counsel provide competent legal representation. The Canons of Ethics of the State Bar of Georgia require lawyers to represent clients competently and zealously within the bounds of the law, exercising independent professional judgment on their client’s behalf.²⁰

A. The Attorney-Client Relationship

Juvenile defense attorneys bear an enormous responsibility in representing their youthful clients. In addition to all of the responsibilities of presenting the

CRITICAL STAGES OF THE JUVENILE JUSTICE PROCESS

The Georgia Code provides that children must be represented at all stages of any proceedings alleging delinquency. The following is an outline of the major stages of the juvenile delinquency system where representation by counsel is critical.

Arrest: A child is not entitled to counsel when taken into custody by the police. The police must inform youth of their due process rights, including the right to remain silent and the right to counsel.

Detention: After arrest, some children are taken to a detention center where a probation intake officer is charged with making the initial decision as to whether a child should be detained pending the first appearance in court. No counsel is provided during this interview in which the intake officer solicits information about the child's background and alleged delinquent conduct.

Detention and Probable Cause Hearing: Georgia requires that a hearing be held within 48 hours if a child is taken into custody and detained without an arrest warrant, or within 72 hours if detained pursuant to an arrest warrant. The law requires that children be represented at this hearing, but the vast majority of jurisdictions allow children to proceed without counsel.

Filing of the Petition: The petition is the formal charge of delinquency against the child and must be filed within 72 hours of the detention hearing if the child is further detained, or within 30 days if the child is not detained or has been released following the detention hearing.

Arraignment Hearing: Children are offered an opportunity to enter an admission or denial to the charges at this hearing and are formally advised of their right to counsel and other due process rights. This hearing is often combined with the detention hearing in many counties.

Adjudicatory Hearing: A child is entitled to an adjudicatory hearing within ten days of the filing of the petition if detained; otherwise, within 60 days. Children have the right to counsel at this hearing, but many children waive that right and proceed alone or with only parental representation. There is no right to a jury trial.

Disposition: The dispositional hearing must occur within 30 days of the adjudication or admission if the child is detained. The hearing can occur on the same day as the adjudication and often does in most jurisdictions.

Post-Disposition: Children are not generally entitled to an attorney in collateral post-dispositional proceedings. A child has a right to a lawyer for the appellate process.

criminal case, defenders must understand and apply principles of adolescent growth and development and must prepare social history backgrounds in order to advocate for their clients. To meet these duties, attorneys must necessarily be aware of the strengths and needs of their clients, their educational status and available community resources. Attorneys must work closely with their clients in order to present information that will lead to appropriate outcomes.

Thus, to be effective, juvenile defenders must establish good relationships with their clients, something that cannot be accomplished in the few minutes before a court hearing or solely through telephone interviews. Lawyers must build relationships with their young clients that will enable them to share deeply personal and, at times, painful information. It is vital in this relationship that defense attorneys carefully explain that what clients tell them is confidential.

Equally important, defenders must take the time to keep clients informed before and after court appearances and other important events relating to their case. Children interviewed in detention centers consistently spoke about the need to know the status of their case, when they could go home, and what would happen to them. Clients and their families should be told exactly how to get in touch with counsel and when their lawyer will next be in contact. Clients and families should be advised of their responsibilities between court appearances.

B. Arrest and Detention

Upon arresting a child in Georgia, the arresting officer is required to take the youth before a juvenile or superior court judge, or to a detention facility, if the child is not released to the parents.²¹ Children must be informed of their *Miranda* rights upon being taken into custody, although it is unclear whether this procedure is followed.²² Georgia courts have ruled that failure to follow these procedures would invalidate any resulting confession by a juvenile.²³ On the other hand, it is permissible for an officer to present a juvenile to the victim of a crime for identification *before* taking the child to the detention center.²⁴

In Georgia, a probation officer makes the initial determination to detain or release a youth pending a detention and probable cause hearing. The probation officer will interview the child to obtain information about the child's personal background and home situation. The child is supposed to be informed of his due process rights, including the right to counsel, in this meeting. Frequently, probation officers advise a child about the merits of waiving their right to counsel and hold a discussion with the child about making an admission to the charges and agreeing to a plea. Children are rarely represented by counsel at this important stage of the process.

If a child is detained following a warrantless arrest, a detention and probable cause hearing must occur within 48 hours of the detention, otherwise the hearing must be held within 72 hours.

C. Detention and Probable Cause

A child is entitled to counsel at the detention and probable cause hearing. For children who have not been detained, their first meeting with an attorney may be at the probable cause hearing. If counsel is not waived, the counsel must take the time to explain their job as an advocate and explain what is likely to happen in court. The IJA/ABA Juvenile Justice Standards provide that during the initial stages of representation:

Many important rights of clients involved in juvenile court proceedings can be protected only by prompt advice and action. The lawyer should immediately inform clients of their rights and pursue any investigatory or procedural steps necessary to protect their clients' interests.²⁵

At the detention hearing, counsel should argue that detention be used as a last resort for children who are a danger to the community or unlikely to appear in court. Counsel should offer the court information about the child's family and community ties and support.

Children in the delinquency system have a right to bail in Georgia, although that right can only be invoked by the parent or guardian.²⁶ Under Georgia law, a juvenile himself cannot request that bail be set, even though the right as a constitutional matter belongs to the youth and it is his liberty, not that of his family member, at stake. Most courts do not inform children and their parents of the right to bail, and the few jurisdictions that utilize a bail system do not follow any discernible guidelines about the appropriate level of bail or form of security to set for juveniles.²⁷ In one jurisdiction, the court routinely set bail amounts upwards of \$2,500 for non-violent charges without conducting an inquiry into the family's ability to post bond, the potential harm in releasing the child, or the likelihood that the child will not appear for the next court hearing. As one appointed counsel observed about this process, "*bail is used as a means to continue custody when no legal grounds exist.*"

While Georgia law expressly equates a juvenile's right to bail with the right possessed by an adult, the use of money bail for the juvenile system has been criticized particularly because it disadvantages indigent defendants, especially children, who are not usually financially independent.²⁸ The concern is that the use of bail in the juvenile courts will become a substitute for other, more appropriate, forms of release. The IJA/ABA Juvenile Justice Standards

strongly discourage money bail for juveniles: “The use of bail bonds in any form as an alternative interim status should be prohibited.”²⁹

Existing alternatives to secure detention, such as conditional release, electronic monitoring, shelter care, contract homes, or house arrest, should be explored and proffered to the court as another means of guaranteeing the appearance of a child in court. The IJA/ABA Standards state a strong presumption for interim release and consider the following as the only permissible factors for pre-trial detention:

- A. Protecting the jurisdiction and process of the court [to assure appearance of a child in court];
- B. Reducing the likelihood that the juvenile may inflict serious bodily harm on others during the interim period; or
- C. Protecting the accused juvenile from imminent bodily harm upon his or her request.³⁰

Rarely are juveniles represented at the detention hearings. Juveniles often waive counsel at the detention hearing and admit the allegations before an attorney is ever involved. One contract attorney who handles all the indigent cases for the county confirmed that he has never represented a youth at a detention hearing. Georgia allows children to waive counsel *without* requiring prior consultation with an attorney or other interested adult who can protect their rights. Under the law, a parent is deemed an acceptable substitute for legal counsel in a child’s delinquency case and is often the only advocate in the courtroom for the youth. This law presents difficulties when there is a conflict of interest between the parent and the child, especially if the parent is the complainant. While some courts recognize the dangers of this situation, the law provides no explicit safeguards for children in such cases. Waiver of counsel by children has been severely criticized, not least because of compelling evidence that children do not possess the competence of adults to understand the dimensions of the legal process and the consequences of giving up counsel.³¹ Studies regarding juveniles’ understanding of legal language and the court process cast serious doubts on a youth’s ability to waive counsel without speaking to an attorney or to participate meaningfully in the proceedings without the assistance of counsel.³² The IJA/ABA Juvenile Justice Standards Relating to Pre-Trial Court Proceedings (6.1) states explicitly that, “A juvenile’s right to counsel may not be waived.”

D. Pre-Trial Advocacy and Preparation

The pretrial stage of the proceedings sets the foundation for strategies at adjudication, negotiations with prosecutors, and development of appropriate dispositions. It is a critical period in which attorneys must investigate the facts; obtain discovery from prosecutors; acquire additional information about a

client's personal history through school authorities, probation officers, and child welfare personnel; and file pre-adjudication motions. Attorneys must confer with a client "without delay and as often as necessary to ascertain relevant facts and matters of defense known to the client."³³

Lawyers have a responsibility to understand children's educational rights as well as students' rights in educational institutions given the proliferation of school conduct cases in delinquency court. Acquiring an understanding of a client's educational needs may help lawyers in raising issues of competency and requisite intent, negotiating with prosecutors, or developing appropriate disposition plans. Children eligible for or receiving special education are afforded protections by federal statutes such as the Individuals with Disabilities Education Act ("IDEA"),³⁴ Section 501 of the Rehabilitation Act,³⁵ and Americans with Disabilities Act.³⁶ These statutes protect children from being subjected to either disciplinary actions without due process or discriminatory actions by the school.

There is a great danger during the pretrial period of lost opportunities to provide effective representation. Meeting these responsibilities at the outset of a case is a daunting, if not impossible, task for many defenders who are facing staggering caseloads with limited time and scarce resources. However, without the proper pretrial preparation, the outcomes of many juveniles' cases are severely compromised.

E. Adjudication and Plea Negotiation

A juvenile's guilt or innocence is determined at the adjudication hearing or trial where the state has the burden to prove the delinquent act beyond a reasonable doubt. Juveniles are not entitled to jury trials in Georgia; rather, adjudications are presided over by a judge. Many lawyers believe it is more difficult to get an acquittal from a judge than a jury, especially when judges are routinely privy to more confidential information than juries. Even when an adjudication ends in a delinquency finding, the mitigating evidence that counsel presents at the adjudication stage is critical for the judge to make an individualized, fair and reliable determination at disposition. Thus, it is important that counsel advocate zealously at adjudication and investigate the facts thoroughly, meet and prepare witnesses, utilize experts and other resources, and emphasize the prosecution's heavy burden to prove guilt beyond a reasonable doubt.

Protecting the child's rights in the plea negotiations is particularly difficult because so many pleas are negotiated and handled before a child has even had an opportunity to consult with a lawyer. This situation is particularly troubling when coupled with the lack of any plea colloquy that is conducted by the court before taking a child's plea. The majority of the courts observed do not conduct any meaningful colloquy with children to ensure that they understand the

consequences of pleading to the charges, including the rights they were relinquishing. Some judges conducted a perfunctory colloquy only *after* a child had pled to the charges and answered factual questions about the case. Only a few judges were observed who address children during the plea hearing in age-appropriate language, actively engaging them in questions about their mental capacity, whether the plea is voluntary, whether they understand the constitutional rights that are forfeited, and whether the admission has a foundation in fact. Children are seldom asked to respond with their understanding of what the rights mean. Without a proper colloquy to determine whether youth have the mental capacity to understand their legal rights and the significance of their pleas, there are significant questions about whether children are intelligently and voluntarily waiving their rights.

Even when attorneys are present in a case, plea offers are often hastily explained to youth and their families in whispered conversations inside courtrooms or in courthouse hallways. Counsel must take the time necessary with their clients to fully explore the pleas and alternatives to the pleas, in private settings where clients have the freedom and confidential opportunity to ask questions and express their concerns.

F. Disposition

The purpose of the dispositional process is to develop plans for juveniles that meet their educational, emotional and physical needs while protecting the public from future offenses. In order to impose any disposition plan on a child found delinquent, the court must find that he is need of treatment, rehabilitation, or supervision. The disposition hearing is an opportunity for the trial judge to receive evidence from the state, the defense, the probation department and other people concerning the child's care and custody. Judges have the authority to order an array of expert evaluations to assist in this process, including psychiatric, psychological, educational, or neurological reports.

In general, courts have wide latitude in fashioning a plan of disposition, except in cases where a youth is adjudicated delinquent of a designated felony which requires a minimum of 12 months or 18 months (for repeat designated felony offenders) to a maximum of 60 months in restrictive custody.³⁷ Youth can be sentenced by juvenile court up until their twenty-first birthday. For all other offenses, the range of dispositions include fines, restitution, community service, supervised or unsupervised probation, treatment programs, short term programs in secure facilities ("boot camp"), or commitment to the Department of Juvenile Justice. An order of commitment to DJJ remains in force for two years or until the child is discharged by the Department.³⁸ Once youth are transferred to the custody of DJJ, the Department decides how and where they will serve their sentence, including secure confinement, group home, residential treatment, nonresidential treatment in a community-based setting, or pro-

bation supervision. The court may make recommendations as to what placement or services a child requires, but DJJ has sole discretion to make the final placement determination. Once physical custody of a child is transferred to DJJ, the court loses jurisdiction and cannot change, modify or vacate its order of commitment except upon a finding of mistake or fraud.³⁹

Counsel has a responsibility to explore every possible resource during the dispositional process to advocate for a favorable plan for the client. Counsel should work with the client and the family to ensure that relevant information gets to probation officers for the disposition report, review the predisposition report, and present the evidence of the child's specific needs, limitations, or other facts to enable the court to make an individualized determination of disposition. In addition, the IJA/ABA Juvenile Justice Standards recognize counsel's continuing duty to "maintain contact with both the client and the agency or institution involved in the dispositional 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."⁴⁰

G. Post-Dispositional Representation

Children often need lawyers after the dispositional hearing for direct appeals of issues arising during the pretrial process or adjudication hearings, reviews of dispositions, collateral reviews of adjudication, the need for particular services such as drug or mental health treatment, or challenges to dangerous or unlawful conditions of confinement. The IJA/ABA Standards provide that lawyers who represent juveniles at trial or on appeal ordinarily should be prepared to assist clients in post-disposition actions to challenge the proceedings leading to placements or to challenge the appropriateness of treatment facilities.⁴¹ In reality, appeals in juvenile cases are rarely taken in Georgia. Defender offices are not usually organized to provide continuous representation and have no means of following their clients into post-disposition. For appointed counsel, the current fee structure for both panel and contract defenders does not pay lawyers to follow a client's progress after disposition and provide post-disposition representation. Moreover, many lawyers point to the short sentences in juvenile cases that limit the time to perfect appeals, especially when sentences are not likely to be stayed while appeals are pending.

Nonetheless, there are strong arguments to pursue appeals in cases of felony adjudications, such as designated felony adjudications, which not only carry severe sanctions, but have important implications for plea bargaining or sentencing in the future if the youth becomes involved again with the juvenile court or adult criminal court. As the laws in Georgia provide for greater punishment for children, imposing longer and stricter sentencing terms, there is more time to perfect appeals and more compelling reasons to challenge adjudications and dispositions.

CHAPTER TWO

ASSESSMENT RESULTS AND FINDINGS

The people who work in Georgia's juvenile justice system share a genuine commitment and dedication to the children they serve. They recognize the serious responsibilities they bear in helping children and their families navigate the intricacies of the juvenile system. Numerous individuals acknowledged the unique challenges facing lawyers who represent children in delinquency proceedings. Even with well-intentioned and caring individuals in the system, this assessment found that, largely because of structural problems and institutional barriers, many young people in Georgia go through the delinquency system without effective advocates or adequate safeguards to protect their interests. The discussion that follows is intended to identify and explore the barriers to effective representation and consider the special challenges confronting attorneys as advocates in the juvenile system.

A. Overview

Georgia does not have a uniform system for providing indigent defense to children in the juvenile justice system. Each of the 159 counties in this state bears the primary responsibility for devising and implementing its own system for the appointment of counsel. With few exceptions, even counties within the same judicial circuit do not share responsibility for developing and administering the system of representing indigent children. Although limited state funding exists for those counties that choose to apply, there is hardly any state oversight of how those funds are used to provide representation for children in the juvenile courts. All of these factors combine to create a fragmented system and 159 different ways of representing children. Certainly, in counties that do not take state funds, the system of indigent defense is exclusively subject to local control. Despite variations across the counties, it is the prevailing practice in virtually all of the counties that judges exercise enormous discretion in how counsel is appointed, who is appointed, and, at times, the level of compensation for counsel.

The juvenile courts in Georgia are not organized uniformly in terms of court organization, personnel and resources. The juvenile system is a patchwork of courts composed of county-based, full- and part-time juvenile court judges; superior court judges exercising juvenile jurisdiction; circuit-wide, full- and part-time juvenile court judges; and full- and part-time associate juvenile court judges. Although the Georgia Code provides for the creation of a juvenile court in every county in the state, the state had never appropriated funds to operate juvenile courts until the passage of a recent law that made funding available for the salaries of circuit-wide juvenile court judges.⁴² Although more juvenile court judges will be appointed as a result of the new law, according to 1998 statistics, there were 56 full- and part-time juvenile court judges

who heard juvenile court cases exclusively; superior court judges heard juvenile cases in 55 counties; and there were 33 associate juvenile court judges serving in 46 counties.⁴³ Because judges play a more active role in delinquency proceedings than adult cases, the benefits of having judges who specialize in juvenile law and are invested in the juvenile justice system cannot be overstated.

B. Structures of Indigent Defense Systems for Children

Currently, three basic models of indigent defense systems exist to provide counsel to children across the individual counties in Georgia – panel appointments, contract attorneys, and public defender services.⁴⁴

Approximately 40% of Georgia's counties utilize the panel appointment system whereby each judge appoints from a list of attorneys that is maintained by the court. The judges, and sometimes court administrators, determine the criteria for inclusion on the list as well as removal. The process by which an attorney is appointed from the panel varies even amongst counties with the panel system. Some judges directly appoint a specific lawyer from a list they maintain, while other judges rely on the court administrator to choose a lawyer using a system devised by the court. In counties that comply with guidelines adopted by the Georgia Supreme Court, appointed lawyers are paid \$45 an hour for out-of-court work and \$60 an hour for in-court representation – a sum that is well below the market rates attorneys receive for non-appointed criminal cases and provides a powerful disincentive to conduct investigations. Some counties impose a maximum cap on each case, and require that any amount above the cap be approved by the judge on the case. In a large urban county, for example, the maximum cap on each case is \$300. Other counties pay appointed counsel a flat fee according to the type of hearing and whether the case is contested or pled, with no compensation for out-of-court work or expenses.

Another 40% of the counties provide defense services to children by contracting with one or two lawyers to handle all or a percentage of the cases in court for a flat fee. These contracts are often awarded through a bidding process whereby the lawyer submitting the lowest bid usually wins the contract. Most of these contracts are so low that the lawyers awarded these contracts perform the work part-time and maintain a separate private practice to supplement their income. In one county, for example, the contract defender receives a flat fee of \$2,000 per month to handle half of all the cases in juvenile court (including both delinquency and deprivation cases), estimated at 250 cases a year, while maintaining a private practice as well. Contract defenders receive no benefits and no overhead support of any kind from the counties.

Finally, a handful of counties, some in conjunction with others, provide defense services through a public defender office that employs lawyers, and sometimes investigators, on a full-time basis with salaries and benefits. Even among public defender offices, there exist variations in organization and support for defending juvenile cases. Many public defender offices view juvenile court as a training ground for their inexperienced attorneys and force them to rotate to adult criminal court after a suitable period of time. At least one public defender office has created a separate division dedicated for juvenile defenders who are specifically hired and trained to represent children in juvenile court. None of the counties rely exclusively on public defenders to provide representation to children; these systems are invariably supplemented by appointment of private attorneys.

C. Children Without Counsel

The most disturbing aspect of this court observation was the incredible number of children who waived their right to counsel....The judge did little to determine whether or not a child was knowingly, voluntarily and intelligently waiving his or her right to counsel. The judge merely says, "You have a right to have an attorney and if you can't afford one we will appoint you one. You also have a right to proceed without an attorney. Do you wish to go forward without an attorney?" He does not say anything more and does not explain anything more. In one case, where the child was obviously confused by the judge's question, the judge responded with some irritation, "I said, do you want an attorney? You can hire an attorney, you can have an appointed attorney, or you can have no attorney at all. What do you want?" The judge did not explain anything more.

– *Juvenile Court Observer*

Under the Georgia Code, children are guaranteed the right to counsel at “all stages of any proceedings alleging delinquency.”⁴⁵ Yet large numbers of children are routinely allowed, and implicitly encouraged, in numerous courts to waive their right to counsel in order to clear the courts’ dockets. One juvenile judge even expressed concern about the negative impact on the operation of the court if children truly understood their right to counsel and asserted that right. Obtaining waivers from children is considered by many people working in the juvenile court to be a critical part of managing the court docket and handling the caseloads that come through juvenile court.

In one county, a juvenile court judge estimates that at least 50% of the children in his courtroom go through the proceedings unrepresented by counsel. A probation officer in the same county who is responsible for explaining to children

their rights, estimate that 90% of the children waive their right to counsel at the detention hearing. In another county, the juvenile judge gave a similar figure, estimating that 90% of the children in court waive counsel at the detention hearing and nearly all of their cases end in guilty pleas.

In a few of the courts encountered in the assessment, waiver of counsel is not an issue because a child is automatically appointed a lawyer without regard to income level if one is not retained. A juvenile court judge in such a county expressed astonishment at how a court could allow a child to proceed in a delinquency proceedings without benefit of counsel: *“Every child needs to see an attorney because children are not as mature as adults and need to talk to a professional. Children do not understand what the potential consequences are and that is why they need a lawyer to advocate for them. Every child who comes before this court gets a lawyer.”* This practice was usually found in counties that had a contract defender or a public defender who was already being paid a flat fee for handling all the appointed cases. No matter how many children he was appointed to represent, it did not cost the county any additional money. The concern regarding this practice is that defense attorneys quickly become overburdened with more cases than they can competently handle.

Many courts rely on probation officers to inform children of their right to counsel and make no further inquiry to ensure that each child understands what the right to counsel is and what a lawyer can do for the child, including the dangers of proceeding without an attorney. Hardly anyone expressed concerns about the adequacy of this process for ensuring the child’s due process rights, especially for the child who has apparent mental deficiencies. Probation officers will frequently offer the child their opinion as to whether or not a child should ask for a lawyer. Many probation officers use a written waiver form that children are asked to sign to acknowledge their waiver of counsel. Investigators noted that this form is not written in language that a child can understand and is certainly not accessible to any one who has a low literacy level. Despite this lack of safeguards, it is rare that a child’s competency to waive counsel is ever challenged. An investigator observed, *“Almost everyone in juvenile court acknowledged and expressed concern that most youth waive their right to an attorney. However, no one indicated that anything was or would be established to prevent this from occurring on a regular basis.... Without defense counsel, a youth’s future is left to the whims of the prosecutor and the judge.”*

Of particular concern is the manner in which children waive their right to counsel, almost always without having a prior opportunity to meet with a lawyer to gain an understanding of their rights. In several counties, children are not represented at the detention hearings where they often make unadvised admissions and testify against themselves during the probable cause inquiry of the hearing. These mistakes cannot ordinarily be undone and have an impact on

the rest of the child's case. For example, in one county where children were routinely permitted to waive counsel at the detention hearing, an investigator observed that unrepresented children were being encouraged to admit or deny the charge during the probable cause determination, and to take the stand to testify about the charge. In contrast, the investigator observed that in those cases where a public defender was present, children rarely testified at the probable cause determination.

In most counties, probation officers routinely advise children to waive counsel during the intake process at the detention center or on the day of the probable cause hearing in the hallways of the courthouse or when they are in a holding cell at the court. It seems unlikely that such hurried and perfunctory advising of a child's rights is conducive to ensuring that children appreciate their rights. A juvenile court judge remarked, *"Sometimes you think they understand (their rights), sometimes I hear the kids ask their lawyer, 'what happened?' You have to take time with them to make sure they understand."*

The current system of appointing counsel in some counties also creates an incentive for children to waive counsel at detention hearings because they are presented with a choice of staying locked up for a few more days while a lawyer is found, or going ahead with the case by foregoing a lawyer. In one county, the juvenile court instituted a system of employing a "duty day attorney" whose responsibility is to provide representation for children appearing in court that particular day. To some extent, this practice gives children the opportunity to consult with an attorney before they make a decision to waive counsel and curbs the impulse of children and parents to waive counsel in order to obtain an expeditious resolution. Another obstacle to obtaining counsel at the early stages is the appointment system that some counties maintain. In one county, for instance, the parent must apply for counsel in person at court in advance of the hearing. If a parent is unable to leave work during the court's hours of operation, the first opportunity to apply for counsel is on the day of the hearing. If this occurs, the hearing will be postponed and the proceeding continued for 48 hours. Not surprisingly, many children and families waive counsel because they want to resolve the matter promptly, even at the cost of proceeding without counsel.

Despite the high incidence of children waiving counsel, many people in the juvenile courts – ranging from judges and probation officers to defense attorneys and detention staff – expressed doubts about whether children truly appreciate their right to counsel and whether they have the intellectual capacity to understand the legal proceedings. *"Children and their parents are waiving counsel because they do not understand what a lawyer can do for them and there is no one to tell them what a big mistake they are making. The public perception is that juvenile court is not a place where you are in serious trouble and therefore, people are more apt to proceed unrepresented,"* explains a

"If I get a chance to talk to the kids [before their hearing], they get a lawyer. I tell them they need a lawyer. That is not my job, but those kids have no idea what is going on and all of the kids think that there is some difference between a 'lawyer,' an 'attorney,' and a 'public defender.' I have to explain that they are all the same thing and that they should all have a lawyer."

*– Holding Cell
Guard in
Juvenile Court*

“I did not think my son needed to have a lawyer when we came to court because he was innocent and had nothing to do with the charges against him. I’m not even sure I was told we could have a lawyer. But now I wish we had a lawyer to speak up for us because my son ended up taking the blame for the kids who were responsible and got sentenced to serve time. Now we got no one to turn to for help.”

*– Mother of
Incarcerated Child*

private attorney. A further perception exists in the courthouse that having an appointed lawyer makes no discernible difference to the outcome of a child’s case because they are so ill-prepared, and therefore children can do no worse by handling their own representation. A probation officer shared, *“I tell the kids to waive counsel. What’s the point? Look who’s representing them [referring to the public defenders]?”*

One investigator, observing delinquency proceedings in a rural county, noted the ways in which an attorney could have enhanced the children’s participation and understanding of the legal proceedings: *“Case after case, you could imagine the ways in which a lawyer could have made a difference. Many of the children clearly did not understand what was going on. In one case, it was the district attorney who suspected that the child – who was asked to sign a waiver of counsel form along with entering a plea of guilty – did not understand and could not read and asked the judge to start over. The kid still never got it, but signed the forms nonetheless. There were children and parents who clearly couldn’t read. They seemed too embarrassed to speak up, but would mumble under their breaths as they were leaving, clearly distraught and confused.”*

Under Georgia law, a parent is permitted to represent a child in delinquency proceedings without any assistance from legal counsel. As court observers noted, parents often represent their children in delinquency hearings with disastrous results. *“Having a parent represent a child is usually no better, and sometimes worse, than having no representation at all,”* observed an investigator. Parents often have interests that are adverse to that of their child, a fact not immediately apparent to the court until the proceedings are conducted and the child has been forced to make self-incriminating and damaging statements under the examination of a parent. As a juvenile court judge noted, *“Parents are not always able to serve in the best interest of their children. I think it is wrong to have parents representing their children in court.”* One case observed is illustrative of the myriad problems inherent in having parents represent their children: *The child was charged with disrupting public school but was currently doing very well in school according to a probation officer. But the case went to trial with the parents representing the child. They waived opening statements and put their child on the stand. The parents posed questions to the child that elicited testimony about prior bad acts, problems at home that were irrelevant and failed to present any mitigating evidence for the charged conduct. It was clear that the child did not understand what his options were. Ironically, the probation officer was the only one in the courtroom who provided any advocacy for the child, telling the judge how well the child was doing in school and how proud he was of him. The child was found delinquent.*

D. Lack of Preparation and Investigation

The stage of appointment does affect the quality of the outcome. I would like to be involved at an earlier stage. I do not have enough time to get prepared – one to two weeks from arraignment to trial is not enough time. It would not work in adult court and it doesn't work here.

–Contract Defender

With few exceptions, defense attorneys confirmed that they rarely conduct investigations, visit crime scenes, track down witnesses to interview, or retain experts in juvenile cases. One defender stated, “*I rely on the client and the client's parents to say whether there are any witnesses.*” Echoing this sentiment, many defense attorneys put the onus of finding witnesses and bringing them to court on the child and the parents. Many lawyers cite the lack of seriousness of juvenile cases and the absence of harm to their clients as reasons for not investigating or preparing ahead for their cases. As one panel defender indicated when asked why defense attorneys do not meet with clients before the day of court, “*We have the ability to do that, but it's never hurt anyone [that we don't].*” Defense attorneys in most of the counties rarely interact with probation officers to acquire information. Yet probation officers are the people who often possess the greatest wealth of information about children in the courts; they maintain files filled with children's background information and their records. “*We have most of the information on the kids who come through here from school records to interviews we've conducted with them,*” says one probation officer, “*but lawyers hardly ever come to look at them or ask for them. It would tell them a few things about their kids if they did.*”

“If the juvenile justice system is their first glimpse of justice, I can't imagine what impressions we are leaving on the kids or their parents. It is a sad state over there [in juvenile court].”

– Private Attorney

Since there is little preparation or investigation, motions practice is virtually non-existent in juvenile cases in most counties. As a panel lawyer stated, “*I'm as guilty as other attorneys.... I don't file motions.*” Discovery motions are almost never filed. Instead, defense attorneys in most counties rely on open discovery by the prosecution which puts a defense attorney's access to information at the discretion and good will of the prosecutors. Some attorneys observed that open discovery works if defense attorneys have a good relationship with the prosecutors. Otherwise, attorneys who are not on friendly terms with prosecutors will have a more difficult time gaining access to discovery. One appointed counsel stated, “*Some defense lawyers are not trusted by the prosecutors and do not get to just look at a DA's file by asking, or get all the information that's available.*” Some defense attorneys offer as rationale for not conducting investigations the fact that they have access to the prosecutors' files. “*I have never asked for an investigator because I never felt that anything had been denied to me by the prosecutor,*” explains a panel lawyer, apparently unaware of the need for independent investigations.

“Sometimes Fourth and Fifth Amendment issues are missed. Other times, everybody just does a wink-wink and ignores the Fourth and Fifth Amendment issues because it would be in the child’s interest to be committed to DJJ in order to get services from the system.”

– Prosecutor

Suppression motions or motions to dismiss are also rarities in juvenile defense practice. *“When you are new you might write a motion, but not anymore because you won’t be found ineffective if you don’t,”* says a public defender. Both defense attorneys and prosecutors expressed views that motions practice rarely occurs because ineffective assistance of counsel is not an issue in juvenile cases and therefore, they do not feel compelled to raise legal issues. Issues of competency, criminal responsibility or violation of *Miranda* rights are almost never raised. Some defense attorneys report that they will sometimes make oral motions in court rather than filing written motions. However, the vast majority of defense attorneys agree that motions practice is not necessary or even helpful to their clients because most judges do not like to deal with them and frown upon lawyers who file them.

A prosecutor in one of the larger counties stated, *“Suppression motions are disruptive. Motions and defense attorneys interfere with the process.”* Defense experts are virtually never used or requested by lawyers even when there are apparent mental health issues in a child’s case. *“I would have to pay for experts out of my own pocket, and that’s something I can’t afford to do,”* says a contract defender. Most defense attorneys believe experts are not warranted in juvenile cases because most cases are not serious enough to justify the expense and trouble of having an expert at adjudication.

Overall, there is a general sense of futility among defense attorneys about preparing juvenile cases for adjudication because courts are less interested in inquiring into the guilt or innocence of a child, and more intent on dispensing treatment or punishment to the child. One juvenile judge asserted, *“It’s a failure [of juvenile court] when we go to trial in delinquency....Charges are not the issue here. The issue here is what’s the risk factor?”* In many of the counties observed, the adjudication stage of proceedings is perfunctory and non-adversarial. According to an appointed attorney, *“Juvenile court is a chance to straighten a kid out. I don’t look at a trial as a matter of winning or losing, but as a question of are we going to get this kid some help.”* One judge observed that of the approximately 10-12% of the juvenile cases that go to trial in his courtroom, *“99% of those defendants take the stand and wind up admitting to what they are charged with anyway.”* Part of this phenomenon, which was observed in several jurisdictions, is largely attributable to the poor quality of advocacy and lack of preparation by defense attorneys. Investigators observed attorneys during adjudications who had trouble remembering clients’ and witnesses’ names, were unfamiliar with the facts and circumstances of the cases, and elicited damaging testimony from their own clients on the witness stand. Reflecting the attitude of the system, *“Most trials are about what was done, not if something was done,”* says a contract defender.

“If the kids had proper representation [from defense attorneys], a lot more cases would be dismissed.”

– Probation Officer

E. Excessive Caseloads and Minimal Client Contact

It's standard operating procedure for kids to meet their lawyer for the first and only time in the courtroom right as the case is called.

– Probation Officer

Juvenile defense attorneys across the varying counties universally report handling demanding to excessive caseloads. Lawyers who work on a part-time basis, particularly contract defenders, often have the highest caseloads, with some estimates of over 900 juvenile cases a year for one lawyer. The average juvenile caseload estimate for most part-time juvenile defense attorneys generally fell in the range of 200 to 350 cases per year. Of course, these numbers are easily doubled and tripled to well over 1,000 cases per year when taking into account the private practice cases that these lawyers work on as well.

It is difficult to ascertain precise caseload statistics because most lawyers do not maintain an accounting of the number of juvenile cases they handle in a given year; they have neither the time nor the means to track these figures. There seems to be a tacit acceptance that high caseloads are simply an inevitability of the indigent defense system, and most people acknowledged the fact without evaluating the effect on the quality of representation in individual cases. According to a probation officer, *“The public defenders have so many cases. We can't ask them to do too much.”* One juvenile court judge, in a contract defender county, observed that high caseloads had an effect on the level of advocacy: *“The court and the children would be better served if the lawyer could take more time with the children and get involved in the case earlier on, but that is not possible with [a part-time defender] who also has a private practice.”* While most lawyers did not necessarily view high caseloads as affecting the quality of their representation, they did often recognize how little time they had to spend on their cases. One contract defender lamented the fact that heavy caseloads limited her ability to meet clients and prepare cases properly, yet she felt there was nothing she could do if she wanted to keep her contract.

Inevitably, the heavy caseloads prevent lawyers from having any meaningful contact with their clients. It is common practice for many attorneys to meet clients at the courthouse on the day of the hearing because they could not manage to meet with them earlier. Various people acknowledge that the inability of attorneys to meet their clients early and establish a meaningful attorney-client relationship with them adversely affects children's understanding of the proceedings, their ability to assist in their own defense, and their willingness to trust lawyers. At the same time, the lack of contact allows some defense attorneys to process these children more expeditiously through the system. Several

probation officers expressed frustration at having to fill the vacuum left by lawyers who have no contact with their clients. *“These kids desperately want to talk to someone and it usually ends up being us. The public defender just isn’t there for them,”* one probation officer shared. Children and their families often call probation officers for help because they cannot reach their attorneys.

“I don’t call my clients when I receive the paperwork from the court because I don’t have an obligation to chase them down. If they want to talk to me they know where to find me.”

– Contract Defender

Incredibly, some lawyers have made it a practice never to initiate contact with clients, putting the burden on the child to make contact.

Detention staff in one county report, *“The kids never see their lawyers and the lawyers never return their phone calls. After awhile, the kids just stop trying.”* Similar sentiments were expressed by practically every detention staff in the various detention centers visited in this assessment. Detention staff also report that those attorneys who are most likely to visit their clients in detention are the retained attorneys, not the appointed attorneys. *“For the most part, the kids have no idea whatsoever what is going on with their cases. They ask us to help them and we don’t know what to say,”* says a detention center staff. One child reported, *“We have so much trouble getting to talk to our lawyers from inside here. There are so many of us and we all want to know what’s going on with our case, so it’s not like we can get to a phone just like that. It’s easier for them to come to us. Most times they aren’t even there when we call.”* It is not uncommon for detention staff, in individual cases, to take on the burden of calling a child’s lawyer to find out the status of the case, especially if it appears a child has fallen through the cracks in the system.⁴⁶

Children interviewed at detention centers uniformly report that they have never met with their lawyers while in detention. A 16-year-old youth recently sentenced to boot camp for a disrupting school charge says, *“I never saw my lawyer until they took me to court the other day. We didn’t talk much, and he just told me to plea. It all happened kind of fast so I don’t remember much of what happened.”* Another youth, 13 years old, who was detained on an assault charge for fighting in school describes his day at court, *“I tried to say something to the judge about what happened, but no one let me talk. My lawyer didn’t explain things right and I wanted to make sure they got my story. He [lawyer] didn’t know me and didn’t even try to understand what happened.”* Several children spoke about the difficulties of getting in contact with someone in the court system who could tell them how long they would be in detention and what was happening in their individual cases.

F. The Need for Training and Professional Development

In the overwhelming majority of counties, attorneys in juvenile court are not required to have any prior training or experience to represent children in delinquency proceedings. None of the counties in the assessment has set minimum performance standards for juvenile defense attorneys, nor are there standards

regarding best practices for juvenile defense. With a few exceptions, defense attorneys do not receive funding to attend training programs and continuing legal education classes, unlike prosecutors who are funded to take full advantage of legal education opportunities. Lawyers uniformly report that the training they receive is strictly on-the-job, learning as they do the actual cases. It is apparent in most of the counties that the only requirement necessary to represent children in delinquency court is the possession of a valid attorney's license.

When I first began practicing in juvenile court, I was flying by the seat of my pants. Juvenile court is viewed as a good training ground for new lawyers because no one sees your mistakes.

–Appointed Counsel

Although most defense attorneys acknowledged that more training and professional support would be welcome, some believe it is not worth the time or money to receive more training in juvenile law because juvenile defense comprises only a fraction of their practice. In one county visited, the juvenile court judge mandates that attorneys attend a juvenile law seminar as a prerequisite to being eligible for appointments in juvenile court. It is a welcome step towards ensuring that lawyers have a basic understanding of the juvenile code and procedures and a level of commitment to representing children.

A few lawyers indicated that they do not feel the need for more training because they have acquired all the skills and knowledge they need by practicing in juvenile court. As one public defender stated, *“I know my judges and I know what they are going to do with the kids so I don't need to say anything at the hearings.”* In counties where children are adjudicated in superior court rather than juvenile court, the risk of poor advocacy increases when a child is represented by a lawyer who is not experienced with juvenile law before a court that does not specialize in juvenile matters. *“In the smaller counties, children really suffer because they have to go to superior court instead of juvenile court and they [judges and lawyers] don't even know juvenile law there at all,”* said a contract defender. In such counties, courts and appointed counsel are frequently operating *“by the seat of their pants.”*

G. Issues Regarding Resources and Pay Parity

The majority of the people who work in juvenile court, including judges, prosecutors, defense attorneys, and probation officers, acknowledge in varying degrees that the indigent defense system for children needs more support and resources. However, they differ in their opinions about how the system should be changed and where the problems exist. By far, the biggest problem people agree about indigent defense is that an inadequate level of funding is expended on defense services. Many judges are concerned about the expenditures

“Juvenile law is a very specialized area of practice; there are many nuances to the Juvenile Code which you can use to advocate to your client's advantage. You cannot assume that if you do adult criminal defense that you can just walk in and handle a juvenile case. But many lawyers do not realize that so they take juvenile cases and commit malpractice.”

– Private Attorney

“There is no training for the defenders. When defenders meet with kids, they try to transfer compassion and interest in 15 minutes to a kid who does not trust them. The issues kids face are complicated and 15 minutes is not enough time to determine the underlying cause of the problems. Kids don't trust you in 15 minutes. These skills need to be developed. Training is critical.”

– Probation Officer

“We do not force lawyers on juveniles because the County has to pay for them.”

– Juvenile
Court Judge

“There is a need for a full-time public defender. Representation would be improved if a lawyer could take more time with children and get into a case earlier. However, [the contract defender] has a law practice and cannot spend the kind of time I believe he needs to represent the children adequately because of the low salary and the demands of his law practice.”

– Juvenile
Court Judge

made for appointment of counsel and mindful of the impact such expenditures have on the court’s overall budget and the county’s coffers. Unfortunately, some judges improperly take these factors into account in dispensing justice. Recognizing financial constraint as a factor for not putting more effort into a juvenile case, one appointed lawyer noted, *“The budget for appointed counsel might be insufficient to pay the attorneys if they were to put more time and work into their cases.”*

Given the diversity of indigent defense systems in the various counties, the level of compensation for juvenile defense attorneys ranges widely from salaries of public defenders starting around \$40,000 in urban counties to a contract defender who is paid a flat fee of \$18,300 to handle all the cases in court to an appointed counsel who is paid at an hourly rate of \$60 for in-court and \$40 for out-of-court representation with a maximum cap on each case. In addition, those attorneys who are not hired on a full-time basis must also pay for their own overhead, including benefits, insurance, office space, telephones, computers, office supplies, and clerical support.

An inevitable consequence of the low remuneration paid to juvenile defense attorneys is that they have to supplement their income by maintaining a separate private practice. This, in turn, prevents them from devoting the time necessary to adequately represent children. *“I get the new case files for juveniles way too late to do anything. Especially since I work only part-time and I have to pay for an investigator or researcher out of my own pocket,”* revealed a frustrated defender. The part-time nature of many defense attorneys’ juvenile practice means that they are compelled to pare their representation down to the bare minimum. One contract defender remarked, *“In most juvenile cases, 5 or 10 minutes is all you need.”*

In sharp contrast, prosecutors generally do not confront the same lack of support or resources that plague juvenile defense attorneys. Structurally, prosecutors are uniformly organized on a circuit-wide basis and primarily state-funded with one district attorney’s office for each of the state’s 48 judicial circuits. The practical effect is that prosecutors work on a full-time, salaried basis and are better trained with access to more resources and professional development than most defense attorneys.

Most prosecutors questioned about their access to resources in juvenile cases have not expressed the degree of frustration and futility that is evident in the experience of defense counsel. Recognizing the difference that resources can make to juvenile defense attorneys and the impact of the lack of resources on the quality of representation, one prosecutor observed, *“If public defenders had the resources of retained counsel, there’s no question that kids would be better off with the public defenders.”* For the most part, prosecutors are able to secure investigative assistance, clerical support, and other resources from

within their office or through the probation office without encountering the same difficulties as defense attorneys for children.

H. Perceptions of Juvenile Court Practice – Of Lesser Importance

I don't usually say anything at the preliminary hearing because I know my judge and I know the judge knows what he is going to do without me. The hearings are really between the judge and probation. I don't do anything.

–Juvenile Defense Attorney

With some exceptions, there is a persistent belief among many people who work inside and outside the juvenile justice system that juvenile court practice is not as important or serious-minded as adult representation. The perception that representing children in delinquency proceedings is work suitable for the inexperienced and unskilled lawyer pervades the attitudes of many defense lawyers, as well as some judges and prosecutors. “Public defenders don't take the cases seriously. It's not ‘kiddie law.’ These cases change children's lives. One probable cause hearing can impact their lives forever,” remarked one probation officer. A view exists among defense attorneys and others that juvenile court is not the place for attorneys to advance their careers or use their talents as skilled advocates. “Public defenders who are advocates move on to superior court and do not stay in juvenile court because they are good,” stated a probation officer. Consequently, the turnover rate is very high among juvenile defenders, many of whom acknowledge the attractions of moving on to defend or even to prosecute adult cases which, in their view, present more professional opportunities and challenges.

Part of this attitude apparently stems from the lack of respect that is accorded defense advocacy in delinquency cases. Because delinquency hearings are not handled as adversarial proceedings in most courtrooms, defense attorneys often see their role diminished and made largely superfluous. As one prosecutor remarked, “Resources are adequate for the public defender because there isn't much for him to do here.”

The sentiment of one probation officer is a familiar refrain in the delinquency system: “Lawyers are not necessary; they tend to complicate things.” Some defense attorneys justify the minimal defense practices in delinquency matters by a belief that juveniles do not face the same risks of prison time or harsh sentences as adults, rather than acknowledge that advocacy can, in many cases, result in better outcomes for the child's case. “I can't devote the time to adequately represent the children, but it doesn't matter because children aren't treated very harshly anyway. Sometimes they are better off without me,” according to a contract defender.

“The public defenders are committed, but this is a training ground for them. Juvenile courts are held in lower regard and priority. We get the inexperienced young lawyers. We should get a mixture of experience so that new lawyers would have mentors in juvenile court that could train them. Then it should be determined who in the Public Defender Office wants to do juvenile work as a career and not merely as a stepping stone.”

– Probation Officer

“We [juvenile courts] don’t exist. The policymakers don’t care about us. They are right across the street. We invite them to come and see what we do here but they don’t care. Kids don’t vote and have no power.”

– Probation Officer

These unfortunate perceptions and attitudes of the informality and innocuousness of juvenile court proceedings that relegate juvenile practice and specifically juvenile representation to a position of lesser importance are exacerbated by structural problems of low compensation, lack of resources and lack of professional support and development for juvenile defense attorneys. There is a distinct lack of leadership in the defense bar surrounding issues of professional development and mentoring for juvenile defense attorneys. Some lawyers pointed out the advantages of working in a public defender office alongside lawyers designated to represent youth, including professional support, training and resources. One defender explains that having a full-time public defender system “*provides a built-in structure among lawyers for sharing expertise, legal knowledge and resources.*” In general, juvenile courts are marginalized in the overall criminal justice system for funding and resources, in part because of the isolation created by the wall of confidentiality that surrounds its proceedings and the reality that juvenile courts serve a constituency that has no political power.

I. The Absence of Due Process

Juvenile court can be frustrating. While the stated mission of the juvenile court is ‘remedial,’ there is less justice dispensed in this system than in any other I am aware of.

– Private Attorney

The prevailing philosophy among many people who were interviewed is that delinquency proceedings should be informed by the “best interest of the child” standard. While some attorneys believe it is their duty in defending a child to represent the expressed interests of the child in delinquency cases, living up to this ethic is nearly impossible when the culture of juvenile court is geared towards finding children delinquent in order to get them services. A juvenile court judge described the approach of juvenile court as a “*conspiracy of justice*” where a “*huge bond of trust*” exists that ensures a nonadversarial environment with everyone believing they are acting in the best interests of the child. One prosecutor expressed her disgust with defense attorneys who try to vindicate their clients’ innocence: “*The defense lawyers just interfere with everything because they don’t do what is in the best interests of the child. If they do what the child wants, the child doesn’t learn anything.*” In such an environment, the inclination is to work together with the participants of the court system so that a “good” defense attorney is one who maintains a nonadversarial relationship with the prosecutors. However, one probation officer observed that the public defenders and prosecutors sometimes “*collaborate too much*” and the defenders “*are not always aggressive enough; it may be because they’re overwhelmed with cases and it’s just easier to strike a deal.*”

Prosecutors view this philosophy as particularly suited for the juvenile process. As one prosecutor stated, *“We [defenders and prosecutors] share a common goal of what’s in the best interest of the child and redirecting him – we can work together better; it’s more personal and timing issues require that cases be handled very quickly.”*

Judges set the tone for the posture they expect defense attorneys to display in their courtrooms. As one juvenile judge imparted, *“I expect my lawyers to act in the best interests of the child. If they can get the child off, but it is not in that child’s best interest, then they should not do it.”* Defense attorneys who are considered good at their jobs are described by various people as knowing the judges’ preferences and understanding what the judges expect from them in terms of their roles in court. The nonadversarial culture of juvenile court undoubtedly affects the level of zealous advocacy that lawyers feel they can engage in. One appointed counsel stated explicitly, *“I think if I made waves, it would affect my appointment to cases.”*

The overwhelming majority of cases are resolved by pleas often without the advice of counsel and without a plea colloquy to ascertain that the child understands his or her rights. The average reported plea rate across the counties visited is in excess of 90%. One public defender in a county with 15-20% of the cases going to trial reported that he has only tried one case in the last six months. Children are often encouraged or implicitly pressured to plead to the charges by the various people involved in their case, including probation officers, lawyers, and judges. One investigator observed: *“By and large, the presumption of innocence is ignored by every player in the courtroom. Children are pleading on the theory that they need the services of a probation officer, rather than the services of a good criminal defense lawyer. Statistically, we know that findings of delinquency on these ‘first time offenses’ ultimately lead to longer periods of incarceration and commitment. Something needs to be done to improve the quality of representation at the adjudication stage of the case.”*

Pleas and adjudications are viewed as necessary hurdles to get to what is considered the most important phase in virtually every delinquency case – the disposition. By and large, in Georgia, dispositional hearings are conducted right after the arraignment or adjudication. It is common in many jurisdictions where few treatment alternatives exist between probation and incarceration that children are given the same sentences for a wide variety of offenses. Most attorneys confirm that they devote little preparation to investigate or research a plan of disposition for the child. *“Disposition hearings are really conducted between probation and the judge. My input as the defense attorney is not required. They have all the information on the kids and know the programs available,”* says one defender. Most defense attorneys feel that they are not equipped and well-positioned to actively participate in the dispositional plan-

“I tell the minor, I will up the sentence if you take it to trial, because you could have pleaded and saved us all of this trouble. So I give them ninety days instead of sixty days [in boot camp].”

– Juvenile
Court Judge

ning for their clients so they do not even bother. However, investigators observed effective advocacy by some lawyers who came prepared with a plan for the child and challenged recommendations of probation or prosecutors to win better conditions for their clients. A few judges noted that they would welcome and give serious consideration to a lawyer's proposed disposition plan based on research into the child's background and needs.

Regarding post-disposition advocacy, most defense attorneys have never filed an appeal or filed for a modification of disposition. One defender remarked that filing a motion for new trial *"just gets [the judges] angry and doesn't usually get you anywhere."* A few lawyers mentioned the futility of filing appeals when the appeal process would take longer than a client's sentence and a stay of the sentence is not possible. In some cases, children and families report asking their lawyers to file an appeal but being ignored or put off by their attorneys. Most attorneys end their representation after disposition and do not endeavor to follow the progress of their clients after sentencing so it is rare that lawyers request a modification of disposition for a client. *"We don't have the capability or the time to track our clients after the case ends. Sometimes the judge will hear something directly from a kid or a probation officer will be contacted if a child has been hurt while incarcerated,"* says a defender. In cases where modifications have been requested, they have usually been initiated by parents concerned about a child's well-being while incarcerated. Probation officers lend their assistance in guiding parents through this process.

CHAPTER THREE

ADDITIONAL CHALLENGES TO THE EFFECTIVE REPRESENTATION OF CHILDREN

The accused appears dazed and uncommunicative; he is clearly confused. He sits next to the public defender, but they do not communicate. The public defender rises and goes to the judge's chambers with the probation officer, court administrator, and the state's attorney. Back in court, the police officer was allowed to put on the record what the defendant's guardian told her about [the accused child's conduct]. The court announced that bail would be set: \$2,500 for the burglary and \$1,000 for the criminal trespass. The child was remanded, crying, to the custody of the deputies. The public defender sat throughout the proceeding saying nothing and not communicating with his client.

– Juvenile Court Observer

A. The Over-Extended Role of Probation

Probation is the binding force that holds together the entire juvenile system in this county. Probation officers serve in every conceivable capacity in the juvenile court and are apparent in every aspect of the court process. They intake children, interview families, investigate the charges, advise children of their rights, draft the petition, testify at hearings, maintain records, make recommendations, and supervise children. Some of their duties seem to conflict with each other and create confusion for children who encounter them in their various guises and don't know if they are an advocate or an adversary.

– Juvenile Court Observer

The role of the probation officer is possibly the most diverse and influential within the juvenile justice system in Georgia. Probation officers are the backbone of the juvenile court system in every jurisdiction visited, whether they are employed by the county or the state Department of Juvenile Justice. As a group, probation officers possess tremendous power to affect the lives of children in juvenile court on a case by case basis. They play an integral role in every aspect of a child's case, from arrest through sentencing, and at every stage, they are an indispensable resource to judges, prosecutors, defense attorneys, and even law enforcement. Because of their position in the system, probation officers can be a potent ally for children, but they can also present unexpected barriers to effective legal advocacy. Probation officers often play legal roles that redound to the detriment of the child who follows their advice. As

one attorney explained, *“Probation has so much influence with the judges and the prosecutors that sometimes it’s extremely difficult to challenge their authority in court. Their status and credibility with the court is sacred.”*

Of all the actors in the court system, probation officers are engaged most continuously with a child’s case throughout the delinquency process. In court, judges adopt their recommendations on detention and disposition an average of 95% of the time, and defer to their assessment of children’s character and demeanor for sentencing. For children and their families, probation officers act as their point of contact with the court. They have more substantive contact with children and their families than the defense attorneys, and families depend on them for information and guidance about the court proceedings. Prosecutors rely on probation to prepare a case from the beginning to end, including drafting petitions, investigating the case, subpoenaing witnesses, gathering evidence, and recommending dispositions. Defense attorneys depend on probation officers as the recordkeepers and repositories of information about the case, their client, program availability and options, and sometimes, for communications with the client. Clerks rely on probation officers to make determinations of indigency, screen cases for informal diversion, and inform parents about court dates. In sum, probation officers appear in every imaginable part of the juvenile justice system, playing vital, active and sometimes conflicting and confusing roles for both the children, the court, and themselves.

1. Probation Officers as Intake Officers

Intake probation officers are usually the first court personnel that a child meets after being arrested. These probation officers conduct intake of children arrested on delinquency charges and are responsible for initially determining whether a child should be held in detention or released to the parents’ custody. This decision is made without reference to any written criteria or guidelines specifying risk factors that would justify holding a child in detention pending the court hearing. For the most part, each probation officer makes the determination based on his own experience, philosophy, and knowledge regarding the child’s personal background and home situation. However, in some jurisdictions, there is an attempt to utilize a system devised by the Department of Juvenile Justice for making an objective assessment of relevant risk factors to justify detention.⁴⁷ Probation officers who are employed through the Department of Juvenile Justice are trained to use this instrument in their detention decisions. The system uses a Detention Assessment Instrument (DAI) to measure a child’s risk levels based on a set of objective criteria that is scored on a numerical scale. Children scoring on the high end of the scale are presumptively detained; children scoring in the middle range are available for release with conditions; and children scoring on the low end of the scale may be released unconditionally. Not every jurisdiction uses this instrument, and among those who use it, the DAI recommendations are not consistently fol-

lowed by probation officers and judges. A recent study found that there was a 66% override of the DAI among youth recommended for release with conditions.⁴⁸ The study cited court policy and court warrants, as well as discretionary decisions by intake probation officers, as the largest contributors to detention overrides.⁴⁹

One defender noted that the DAI would be a helpful instrument except that the court's existing policies often override the DAI outcomes, and because detention decisions cannot be appealed, there is no review of a judge's decision to detain a child. A probation officer, explaining her rationale for overriding low DAI scores, remarked, "*Detention could be used for more juveniles, to send a message to juveniles.... Some kids just have to get the message. Detention helps.*" As a Department of Juvenile Justice staff commented, "*It is difficult to impose uniform standards in a state that really prides itself on and values local control.*"

2. Probation Officers as Defense Counsel

The role of probation at intake is critical for a number of other important reasons beyond the unlimited discretion to decide whether a child goes home to wait for their court date or is held at a detention center instead. In virtually every county visited, probation officers are responsible for advising a child of his due process rights, including the right to counsel. Probation officers will frequently offer their opinions about whether or not a child needs legal representation. According to one probation officer, "*I don't usually tell a child to get a lawyer if the child is planning to admit to the case or if the charge is something simple. I might tell the child to get a lawyer in something complicated.*" It is not uncommon during this process for the probation officers to dispense substantive legal advice to the child – to discuss issues of guilt or innocence, possible defenses, and the relative merits of admitting to the charge or contesting the case.

Prosecutors and defense attorneys are well aware that probation officers often cross the line into the unlicensed practice of law. "*Some probation officers play lawyer. Some do it well. Some do not,*" remarks a prosecutor. Some probation officers acknowledge their limitations in advising children of their rights and are not comfortable with how well they explain the importance of counsel to children. A probation supervisor expressed, doubtfully, "*Supposedly, it's the job of the intake probation officer to read and review a child's rights with them before they waive or request counsel, but I don't think we do a very good job.*" Another probation officer says that she does her best to explain to children their right to counsel, however, she believes, "*The judges should explain the need for lawyers in a more detailed way so that youth may have a better understanding of the need for an attorney.*"

"Many of the juveniles do not need lawyers. Many times, a probation officer can do the job a lawyer does."

– Probation Officer

3. Probation Officers as Prosecutors and Law Enforcement

In some counties, probation works closely with law enforcement to influence decisions about arrest and charging. An investigator described the intake process in one county: *“The intake officer took a call from a police officer and told him everything she knew about a case based on the interview she had just completed (with a youth). She told the police that they had the wrong child, and that another boy was responsible. But since she knew this child was heading for trouble, she would hold him in detention anyway but asked the police to find and arrest the other youth as well. The youth being improperly held in detention had, after being advised by the probation officer, waived counsel.”*

“I thought the probation officer was going to help me. She told me to tell her what happened so I could go home, and I did ... I signed a bunch of papers and then I was sent to the detention center....She told them in court what I said to her but she didn't get it right.”

– *Detained Youth*

Intake provides an unparalleled opportunity for probation officers to elicit information about the circumstances of the charges from the child they are interviewing and to share this information with law enforcement, investigators, prosecutors, and judges. Many probation officers do this to the disadvantage of the child. Because children are almost never represented by counsel at this stage of the process, or even present with an adult family member, these interviews are conducted solely between the child and probation officer. *“We ask the kids what they did in order to decide whether they should admit or deny the charges at intake,”* explains a probation officer. It is a routine occurrence in the majority of counties that children waive their right to counsel for the interview. Rarely are children advised by probation officers that statements they make to probation officers can be used against them in court or plea negotiations. *“I will tell the judge what the child told me during the intake interview about the charges at the detention hearing,”* says a probation officer. Probation officers view this as part of their role and function at intake in order to facilitate cases at the detention hearings. Many attorneys expressed concern about the impact of this practice on their ability to effectively represent their clients.

In most jurisdictions, probation officers not only perform intake on a case and make charging recommendations to the prosecutors, they also prepare the petition to be filed against the child in court, participating actively in prosecutorial functions. In these jurisdictions, probation officers are also responsible for representing the state during detention or probable cause hearings. In smaller jurisdictions, probation officers regularly act as the prosecutors throughout the entire case. As a routine matter, prosecutors do not attend probable cause hearings, relying on probation officers to present the allegations to the court and to present law enforcement witnesses if necessary. Probation officers also conduct the investigations, identify and subpoena witnesses and make recommendations on disposition.

It is not uncommon for probation officers to discuss the charges with the child and to use the information elicited as leverage to facilitate a plea agreement

even before a prosecutor or defense attorney appears in the process. The negotiated plea is formally presented to the prosecutor and court for approval without any involvement of a defense attorney. Pleas fashioned in this way are often accompanied by the youth waiving counsel through the probation officer so the child remains unrepresented throughout the process.

By far, the largest group of children detained, comprising at least 26% of the detention population last year, are in court for technical violations of probation. Probation officers are also responsible for charging, and in some counties, prosecuting children for violating the terms of their probation, considered “technical violations.” For many children, the multitude of conditions imposed on them are so onerous that, without meaningful assistance from the probation officer, they inevitably fail to comply. When these children violate the terms of probation, their probation officers are responsible for testifying to the facts of the violation. *“We put the burden on the child to prove they have lived up to the conditions of their probation. That’s not my responsibility,”* testified a probation officer. As one judge stated, *“I listen carefully to what my probation officers are telling me about a child and how amenable he is to rehabilitation. I don’t want to waste resources on a lost cause. Better to send them to state custody.”* A large number of children who come back to court on technical violations of probation are invariably incarcerated.

Probation officers interviewed in the counties universally spoke about the paucity of resources and the lack of time they have to work with children. A probation officer observed that intake was less about the charges and more about counseling a few years ago, but now the *“way it is set up, everything is complaint oriented”* and processing children through is all they do now. By and large, probation officers evinced an interest and desire to work with children and address their needs. Many of them have found programs or funding to start programs that would provide direct services to children. Some probation officers spend so much time in court that they have no time to visit and maintain contact with the children they are supervising on probation. Almost every probation officer agreed that their efforts are not enough – there are simply too many children to serve, too many roles they play, and too little time and resources to make a difference.

B. Lack of Treatment Programs & Alternatives to Incarceration

The only “programs” run around here are different versions of the same game – short-term “boot camp” sort of programs and community service. We really don’t have alternative placements for adjudicated kids and nothing ... that will help them in the long run.

– Private Attorney

“Sometimes I think we set up kids to fail by the conditions we pile on them for probation. Some of these kids have learning disabilities and mental health problems that prevent them from fulfilling the conditions. And many of them have home situations with single, working moms that make it hard for them to get to their mandatory programs. Then keep in mind that these are children who are, by definition, irresponsible. So when they do return to court, they are at risk of being incarcerated because the court believes they got their chance and blew it.”

– Probation Officer

Virtually everyone agrees that there is a gap in treatment programs for children between the two extremes of probation and incarceration. In Georgia, judges have three basic sentencing options at disposition: probation; short-term secure program; or commitment to the Department of Juvenile Justice (DJJ) which invariably entails confinement in a secure correctional facility. Short term programs, often referred to as “boot camps” are essentially short-term confinements in one of the secure correctional facilities of DJJ and were originally modeled on paramilitary camps where children as young as 10 were subjected to military style discipline and training. Although many people expressed little or no confidence in the effectiveness of the state secure facilities to rehabilitate children, a notable number of people, including judges and defense attorneys, have never visited the detention centers, short-term programs, or secure confinement facilities. One judge consistently referred to confinement in a detention center as “therapeutic detention” and often sent truants and status offenders to the center, although she had never visited the detention center herself. One DJJ staff was adamant that detention is not a place for most children: *“The role of detention as punishment is ineffective – it’s not therapy. It should primarily be used to ensure a child will show up for court. You have SB440 kids [adult-charged youth] mingling with a runaway girl and a sexual abuse victim in the same area.”*

There are four areas those knowledgeable about the system consistently identified as lacking in the juvenile system: programs designed for girls; mental health treatment; drug abuse programs; and sex offender and victimization programs.

1. Program Needs for Girls

Speaking about the girls she encounters in the delinquency system, a probation officer in an urban county shared, *“Girls have so much going on. There are sexual abuse issues for many of them. They have low self-esteem, poor body image, and many of them get involved in prostitution. If they are not involved, they are at risk.”* Girls are often held in detention centers for status offenses such as running away from their group homes or foster care placements because there is no secure residential alternative in the community for them. Many people acknowledged that the numbers of girls coming into the delinquency system have increased significantly over the last several years and that juvenile justice professionals and policymakers don’t fully understand the nature and causes of girls’ delinquency.

2. Mental Health Treatment and Resources

Similarly, the growing numbers of children with serious mental health problems who come into the delinquency system present specific needs that the system is ill-equipped to handle. One juvenile court judge estimates that more

than 60% of the children in his court need mental health services. *“Half of my kids are on psychotropic meds,”* says one probation officer in a large urban county. A Department of Juvenile Justice official estimated that 90% of the girls in long-term secure facilities are on some form of medication to address mental health illnesses. The Commissioner of the Department of Juvenile Justice stated that 32% of the children in the Department’s custody have been institutionalized for mental health problems and 80% of these children are on some form of psychotropic medication.⁵⁰ Detention centers and secure facilities are not the appropriate settings to address these children’s needs, yet they become the default providers of mental health care even though they often offer no more than medication and suicide counseling. The few mental health resources in the community that exist for children are overburdened and underfunded with long waiting lists of children needing care. There is a critical need for more residential mental health programs for children in this state.

“Once in juvenile court, the focus shifts to the conduct and not the illness. So, in effect, we are criminalizing children’s mental illness and holding them responsible for something they have no control over.”

– Private Attorney

Children incarcerated with mental health problems are rotated in and out of hospitals. The state contracts with certain hospitals to set aside a few beds to deal with the emergency cases. As one mental health advocate stated, *“Mental health care for children in this state, especially children in the juvenile justice system, is nothing more than crisis handling. Comprehensive treatment centers for poor children with mental health needs really don’t exist in this state.”* The dearth of mental health services in the community contributes in no small part to the rising numbers of children with these needs coming into contact with the delinquency system. *“When children’s mental health needs are not identified and addressed back at home and in school, many of them come to court charged with conduct that arises directly from their mental health problems,”* explains a defense attorney.

3. Substance Abuse Treatment, Sex Offender Programs and Other Alternatives

Substance abuse was identified as a significant problem among children in the system, along with a lack of effective programs to treat these children. Probation officers in a rural county estimate that 70-75% of their youth have some form of substance abuse that needed treatment. In one probation officer’s view, *“Locking kids up who have drug problems or alcohol abuse issues is not going to solve the problem. They are addicted to these substances and without a treatment regimen to help them get off the addiction or give them a chance, they’ll just return to it when they come out.”* However, even if the court identifies substance abuse as the underlying problem with youth, programs for drug rehabilitation are scarce, especially in counties that are rural and isolated. Even in the urban counties, there are no substance abuse residential programs designed for children.

Programs for sex offenders are even scarcer in the system. *“We are seeing more sex offenders in our court system, and there are no places for them to receive the specialized care they need. Right now they just get incarcerated along with other children and that’s not good for either group,”* says one juvenile defender. Many people expressed frustration about the institutional ability of the juvenile system to handle these children without the proper services and alternatives in place. *“Without good and effective treatment and intervention programs, we are not really serving the best interests of the child; we are just processing them through the system towards incarceration,”* says one defense attorney.

Other necessary services that professionals persistently identified as scarce or lacking are: shelter programs for boys, home placements, aftercare and transition services to help youth move from restrictive to less restrictive settings, family counseling and parenting skills for youth, and transportation services for children on probation to attend court-ordered programs. A few juvenile courts have access to a wider range of treatment and placement alternatives for their youth in part because these courts have explored opportunities outside their budget in grants and innovative pilot projects, giving them more flexibility to contract for services and programs. Generally, the preference among most people interviewed is to keep youth in the community and out of state custody, but the scarcity of community-based alternatives compels a different result.

C. Zero Tolerance and the Consequences of School Conduct Charges

There was overwhelming concern and dismay expressed about the impact of zero tolerance policies on children and the proliferation of cases referred to juvenile court involving minor school infractions, such as running in the halls, skipping classes, talking back to a teacher, or verbal altercations between students. “Zero tolerance” is a catch-phrase that refers to the current policy of schools to immediately and automatically impose severe sanctions on a student for any violation of school rules and regulations.⁵¹ In many of Georgia’s public schools, this means formal charges are filed against a child for violating the school’s rules. Some counties have hired full-time police officers to be in the schools who are responsible for enforcing the schools’ zero tolerance policies. One judge noted the relationship between the increase in the number of schools filing charges against their students and the increase in the number of police officers in schools. The judge believes this is *“not a good trend”* and that *“fighting and petty theft, should be dealt with at the schools, not through formal charges.”* The judge also noted that having police officers in the public schools invariably has a disproportionate impact on minority children because they are the ones who attend public schools. *“Woodland Academy (private school) is going to call the parent first when something happens with a student, not 911. But local public high schools will involve a resource officer right*

away and they are duty-bound to process the case through the system.” Georgia juvenile courts are being flooded with school-related cases.

Georgia has a statute which makes it a “misdemeanor of a high and aggravated nature” to “disrupt or interfere with the operation of any public school.”⁵² This law is routinely invoked against students for behavior ranging from cursing at the principal to fighting with another student on school property. *“Schools are less about education and more about enforcing rules that they’ve lost sight of their own obligation to their students,”* says one probation officer. *“They don’t want difficult kids in the classrooms, so they get rid of them by pushing them into the delinquency system.”* Certain public school districts enforce a policy that permanently expels a child if they are sent to boot camp. Once this occurs, the child must complete the rest of his or her education in an alternative school, a place that has been criticized as a dumping ground for behavior disordered children and a gateway back into prison.⁵³ One prosecutor, expressing her frustration with school-related charges, stated, *“Some of the stuff the schools bring in here drives me bananas. Too many people are turning to the courts for intervention – not everything is criminal and some things should be handled in the schools.”* The consequences of court intervention for children with school charges can be far-reaching; because so many of them waive counsel and plead to the charges, they become a delinquent youth in the system, acquiring a record which may be used in the future to impose harsher penalties. The influx of low level school charges further taxes an already overburdened court system.

There was a strong sense that juvenile courts should not be involved in the majority of school conduct cases and that schools were too quickly abdicating their responsibilities by charging their students with largely minor infractions. A few judges and defense attorneys pointed out that schools were abdicating their responsibility in another way with children that have special education needs. It is much easier for the school to isolate and separate children rather than diagnose and accommodate their disabilities. According to one judge, *“Many of these children have mental health and special education needs that schools have not addressed. Juvenile court is not the place to take care of them; they belong back in the schools with appropriate education programs.”*

One case observed by an investigator is emblematic of the problems of learning-disabled children in the delinquency system: *A 13-year-old child was charged with disrupting school. The public defender had no school records and made no mention of the special education issues this child might have. The mother is trying to share some information with the judge who tells her not to address the court and to talk to her lawyer, who is actually the child’s lawyer. The judge is reading the psychological evaluation and hears a probation officer read the report of a field probation officer. The judge indicates that she is inclined to agree with the probation officer’s recommendation to send*

“I see a number of children charged with school violations who need special education programs but are not getting them from their schools. Schools have a legal duty to identify children with special needs and implement individualized education plans. Instead, they punish a child for conduct that is a result of their unmet needs and expect the courts to deal with them.”

– Public Defender

the child to boot camp. After the judge sentences him to boot camp, the boy says to the court, "This is my first time seeing him [probation officer who read report to the court] in my life. I want to talk on my own behalf. He don't know me. I did not commit no felony." But the judge put him off. After he is taken away in shackles, the mother tells the judge that her son has a learning disability, "I don't know if he's been tested in this report [referring to psychological evaluation] but I have the paperwork. Talk to my counselor, he knows us. This is harsh." The mother gives the judge the name of the counselor whose been working with them and the telephone number, but no one writes it down. The lawyer is silent throughout this process.

D. Disparate Treatment of Minority Youth and Institutional Racism

Juvenile court is a sea of black faces.

– Juvenile Court Judge

Georgia's experience with children of color in its delinquency system reflects the larger trend in the rest of the country that minority children – particularly African American youth – “receive different and harsher treatment” throughout the juvenile justice system.⁵⁴ In one county, an estimated 95% of the delinquency court is African American, yet they only comprise 40% of the county's general population. In a large urban county with a 45% African American general population, 86% of the delinquency cases involved African American youth. The disproportionate numbers of detained African American youth is particularly revealing. In 2000, African American children made up 62% of the state's overall detention population, while only 29% of the general population is African American.⁵⁵ The figures are even starker for long-term incarceration, with 72% African American children held in secure correctional facilities in 1999.⁵⁶ According to studies by the Department of Juvenile Justice, Hispanic and African American male detention populations, between the ages of 13 and 17, are projected to increase 31% and 24%, respectively, by 2006.

While some people acknowledged that African American children are over-represented in the system, most of them attribute this fact to racism in the larger society that diverts them into the delinquency system in the first place. “Once people are in the system, they get treated the same but society may divert and treat some youth differently at the outset,” observed one juvenile court judge. One prosecutor remarked, “This overrepresentation could be the result of decisions by law enforcement at the front end to arrest and charge them. We just look at the merits of the case.” Following arrest, decisions about whether or not to detain a child are prone to race bias because the decision is usually made without mandatory and objective criteria. Decisions about diversion and formal charging are left to the unrestrained discretion of one or two individuals in the probation and district attorney's office. A few

people noted that diversion opportunities are better for white youth than youth of color. A defender noted, *“White kids stand a better chance of being diverted out of the system.”* National studies show that “African American children are more likely than their white counterparts to be formally charged in juvenile court, and treated more harshly, even when referred for the same offense.”⁵⁷

Some view the disproportionate representation of African American children as linked to the socioeconomic status of African Americans. *“There is no difference in treatment if money is equal; it’s just that more people of color are poor,”* says one juvenile court judge. Echoing this sentiment, one defender explained, *“With poor families, their ability to help us help their child is very limited, both because parents can’t purchase services for them and most parents are not good accessors of information and services.”* Referring to racial stereotypes that play a larger role in her jurisdiction, a defender observed that Latino youth labor under negative racial stereotypes: *“Courts automatically assume that Latino kids are in a gang and if they’re in a gang, they’re criminals.”* Latino youth are more likely to be held for extended periods of time, and their cases are more likely to be formally charged. *“They just won’t get the initial breaks other kids can get.”* Recent national research show that these racial stereotypes are reinforced by the news media’s portrayal of Hispanic or African American youth who rarely appear in the news unless they are in stories about crime or immigration.⁵⁸

CHAPTER FOUR CONCLUSION AND RECOMMENDATIONS

Many of Georgia's indigent children facing charges in juvenile court are not provided opportunities for meaningful representation envisioned by the Court in *Gault* thirty-four years ago. Numerous children are permitted to waive their rights and proceed through the court process without counsel. Children appointed counsel have virtually no contact with their lawyers, often meeting them for the first time at the courthouse on the day of their hearing. Lawyers overwhelmed with excessive caseloads have little time and resources to investigate cases, interview witnesses, file pre-trial motions, review medical and educational records, request expert evaluations, and prepare for trial and disposition.

Juvenile courts place little value on lawyers who zealously advocate for their clients. There is a marked absence of adversarial process in delinquency proceedings that minimizes defense counsel's role as advocate. The vast majority of children in juvenile court plead guilty and are processed through the system without a lawyer being appointed. Lawyers who advocate vigorously for their clients, who ask for investigators, file motions, request continuances and set cases for trial, believe they risk losing appointments from the court. The court culture, fee structures, and the powerful role of probation produces a system that leaves children in the delinquency system without a voice to represent them. Children in the juvenile courts are on their own, left to defend their interests with only the hope that the adults who hold their futures in their hands will not leave them utterly defenseless.

The state of Georgia has a particular obligation to ensure that the right to due process of every child is protected and that every child has meaningful access to effective counsel at all stages of the justice process. The people of Georgia have an interest in supporting a juvenile justice system that serves children with integrity and fulfills the promise of fair and equal justice. To this end, the following recommendations are made:

1. Establish a statewide public defender program organized by judicial circuit with full-time juvenile defenders to represent children and provide meaningful access to qualified investigators, social workers, and other necessary support.
2. Appoint attorneys as early as possible in all juvenile cases and encourage continuity of representation to ensure meaningful attorney-client relationships.

3. Establish and support independent oversight and monitoring of the juvenile indigent defense system to ensure greater accountability, data collection and resource allocation.
4. Develop statewide guidelines and minimum practice standards for competent representation in juvenile court and abandon the practice of permitting waiver of counsel by youth.
5. Develop and support comprehensive training and professional development opportunities for juvenile defense attorneys.
6. Presume the indigency of children for the purposes of the appointment of counsel.
7. Adopt standards to ensure that probation officers serve as a neutral party and provide information to the court, without assuming the duties of law enforcement, prosecutors, or defense attorneys. Judges should ensure that defense counsel and probation officers fulfill their appropriate roles.
8. Explore grant-based funding resources for juvenile court programs and support pilot projects that provide more diversion opportunities and community-based treatment alternatives.
9. Work with schools and communities to reconsider zero-tolerance policies that may inappropriately send children to the courts.
10. Collaborate with the appropriate state agencies to share information and develop comprehensive policies for the detention and commitment of children and the provision of mental health services for children.

ENDNOTES

¹ National Advisory Committee for Juvenile Justice and Delinquency Prevention, July 1980, “3.312 Representation by Counsel – For the Juvenile,” Standards for the Administration of Juvenile Justice (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, U.S. Dept. of Justice).

² *IJA/ABA Juvenile Justice Standards Annotated, Standards Relating to Counsel for Private Parties* (1996).

³ ABA Juvenile Justice Center, *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (December 1995).

⁴ Speech by Georgia Supreme Court Chief Justice Norman Fletcher, June 28, 2001.

⁵ In the last decade, Georgia’s reported violent crime rate dropped 28% for violent crimes and 19% for property crimes.

⁶ Applied Research Services, Inc. *Projecting Confined Juvenile Populations in Georgia*, (September 2000), p. 17.

⁷ Applied Research Services, Inc. *Projecting Confined Juvenile Populations in Georgia*, (September 2000), p. 1.

⁸ Georgia Department of Juvenile Justice, Statistics for Detention Populations, 2000.

⁹ Statistic based on 1998 caseload data reported to the Administrative Office of the Courts. See 1998 Annual Report on the Work of the Georgia Courts.

¹⁰ With the author’s permission, this section borrows substantially from the ABA Juvenile Justice Center, *A Call for Justice*, Chapter 2: The Role of Defense Counsel in Delinquency Proceedings, (December 1995), pp. 29-40, with additional commentary and revisions incorporating Georgia juvenile practice and procedure.

¹¹ Ga. Const., art. I, § 1, ¶ XIV.

¹² U.S. Const., amend. VI.

¹³ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

¹⁴ *Gideon v. Wainwright*, 372 U.S. 335, 334 (1963).

¹⁵ *In re Gault*, 387 U.S. 1, 20 (1967).

¹⁶ *In re Gault*, 387 U.S. 1, 36 (1967).

¹⁷ *In re Gault*, 387 U.S. 1, 18 (1967).

¹⁸ *In re Winship*, 397 U.S. 358, 365-366 (1970).

¹⁹ O.C.G.A. § 15-11-6 (West 2001).

²⁰ Canons of Ethics, Canons 5, 6, 7, EC 2-23 (State Bar of Georgia).

²¹ O.C.G.A. 15-11-47(a) (West 2001).

²² The Georgia Code makes constitutional doctrines governing arrest applicable to juveniles, including the exclusionary rule. But rarely have appellate decisions focused upon constitutional claims. See Murphy, M. *Georgia Juvenile Practice and Procedure*, 4th Ed. (2001), p. 252.

²³ *M.K.H. v. State*, 135 Ga. App. 565 (1975); *Bussey v. State*, 144 Ga. App. 875 (1978).

²⁴ *B.G. v. State*, 143 Ga. App. 725 (1977).

²⁵ *IJA/ABA Juvenile Justice Standards, Annotated, Standards Relating to Counsel for Private Parties*, Standard 4.1 (1996).

²⁶ O.C.G.A. § 15-11-47(d) (West 2001).

²⁷ See R. Martz, "State denies bail to youths, agencies claim." *Atlanta Journal-Constitution*, May 12, 2001, p. E-1.

²⁸ *L.O.W. v. District Court*, 623 P.2d 1253 (1981) (noting problem with a money bail system for indigent juveniles or parents unwilling or unable to post bail and upholding the strict statutory standards needed to justify detention). See also *Tate v. Short*, 401 U.S. 395 (1971); *William v. Illinois*, 399 U.S. 235 (1970); *In re William M.*, 89 Cal. Rptr. 33, 40 n. 17 (1970).

²⁹ *IJA/ABA Juvenile Justice Standards Annotated, Standards Relating to Interim Status: The Release, Control and Detention of Accused Juvenile Offenders Between Arrest and Disposition*, Standard 4.7 (1996).

³⁰ *IJA/ABA Juvenile Justice Standards Annotated, Standards Relating to Interim Status: The Release, Control and Detention of Accused Juvenile Offenders Between Arrest and Disposition*, Basic Principle 3.2 (1996).

³¹ Grisso, T. and Schwartz, R., eds. *Youth on Trial*, Chapter 4: Juveniles' Waiver of Legal Rights: Confessions, Miranda, and the Right to Counsel, p. 125 (2000).

³² Grisso, T. and Schwartz, R., eds. *Youth on Trial*, Chapter 4: Juveniles' Waiver of Legal Rights: Confessions, Miranda, and the Right to Counsel, p. 125 (2000).

³³ *IJA/ABA Juvenile Justice Standards Annotated, Standards Relating to Counsel for Private Parties*, Standard 4.2(a) (1996).

³⁴ Individuals with Disabilities Education Act, 20 U.S.C. § 1415.

³⁵ Section 504 of the Vocational Rehabilitation Act, 29 U.S.C. § 794.

³⁶ Americans with Disabilities Act, 42 U.S.C. § 12132.

³⁷ O.C.G.A. § 15-11-63(e)-(g) (West 2001).

³⁸ O.C.G.A. § 15-11-70 (West 2001).

³⁹ O.C.G.A. § 15-11-40 (West 2001).

⁴⁰ *IJA/ABA Juvenile Justice Standards, Annotated, Standards Relating to Counsel for Private Parties*, Standard 10.1(a)i (1996).

⁴¹ *IJA/ABA Juvenile Justice Standards, Annotated, Standards Relating to Counsel for Private Parties*, Standard 10.5 (1996).

⁴² O.C.G.A. 15-11-18(a) and (d) (West 2001).

⁴³ 1998 Annual Report on the Work of the Georgia Courts.

⁴⁴ For the most part, indigent defense structures for children mirror the system for adults in each county. See Southern Center for Human Rights, *Promises to Keep: Achieving Fairness and Equal Justice for the Poor in Criminal Cases*, (November 2000), p. 12-14 for detailed discussion of structural deficiencies in Georgia's indigent defense systems.

⁴⁵ O.C.G.A. § 15-11-6 (West 2001).

⁴⁶ There have been incidents of children languishing in detention centers past their release dates because court personnel and agency workers lost track of them. One such incident was reported this year when more than 10 children were lost by the system and left in the detention center for as long as 43 days. See Martz, R. "Children Held 'Inappropriately' in Jail," *The Atlanta Journal-Constitution*, March 3, 2001, p. H-1.

⁴⁷ The Detention Assessment Instrument is part of a detention reform initiative organized by the Department of Juvenile Justice to change detention practices in Georgia. The Department of Juvenile Justice is party to a Memorandum of Agreement with the U.S. Department of Justice to improve the conditions of Georgia's detention centers and long-term youth facilities, and con-

comitantly, to lower the populations of children confined in the detention centers. In its 1998 investigation of Georgia's system, the Department of Justice found large numbers of children who were inappropriately held in detention centers for status offenses (running away, truancy, curfew violation), unruliness charges, and non-violent misdemeanor offenses.

⁴⁸ Wagner, D, Wiebush, R. and Lunning, S., *Evaluation of the Georgia Department of Justice Detention Assessment Instrument*, (February 2001), p. 29.

⁴⁹ Wagner, D, Wiebush, R. and Lunning, S., *Evaluation of the Georgia Department of Justice Detention Assessment Instrument*, (February 2001), p. 28.

⁵⁰ Martinez, O. "A Vision for the Future: Providing for the Mental Health Needs of Youth in DJJ Care," 2001 Rosalynn Carter Georgia Mental Health Forum, May 17, 2001.

⁵¹ AMERICAN BAR ASSOCIATION, CRIMINAL JUSTICE SECTION, SECTION OF FAMILY LAW, STEERING COMMITTEE ON THE UNMET LEGAL NEEDS OF CHILDREN, COMMISSION ON MENTAL AND PHYSICAL DISABILITY, YOUNG LAWYERS DIVISION, REPORT TO HOUSE OF DELEGATES, "Zero Tolerance Report," (February 2000).

⁵² O.C.G.A. §20-2-1181 (West 2001).

⁵³ Salzer, J. "Old materials, bad facilities: An Alternative," *Atlanta Journal-Constitution*, December 4, 1999, p. H-4.

⁵⁴ Poe-Yamagata, E. and Jones, M.A. Building Blocks for Youth, *And Justice for Some: Differential Treatment of Minority Youth in the Justice System*, (April 2000), p. 29.

⁵⁵ Georgia Department of Juvenile Justice, Statistics for Detention Populations, 2000.

⁵⁶ Applied Research Services, Inc. *Projecting Confined Juvenile Populations in Georgia*, (September 2000), p. 16.

⁵⁷ Poe-Yamagata, E. and Jones, M.A. Building Blocks for Youth, *And Justice for Some: Differential Treatment of Minority Youth in the Justice System*, (April 2000), p. 29.

⁵⁸ Dorfman, L. and Schiraldi, Vincent. Building Blocks for Youth, "*Off Balance: Youth, Race & Crime in the News*," (April 2001), pp. 5-8.

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