

The Children Left Behind

*A Review of the Status of
Defense for Louisiana's
Children and Youth in
Delinquency Proceedings*

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Juvenile Justice Center*

with

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Youth Advocacy Project



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This publication is supported by a grant from the *ABA Gideon Initiative*, a grant of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants. The *ABA Gideon Initiative* is supported by an award that the ABA has received from the Program on Law & Society of the Open Society Institute.

Youth depicted in the photographs are used for illustrative purposes only.

Layout and photos by Nadine Batya, except photos on p.7 (Brice White) and p. 19 (Megan Hougard).

The Children Left Behind: Annual Update 2002

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Children and Youth in Delinquency Proceedings**

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Preface and Acknowledgements

Many people have come together over the course of the last year to take bold steps toward improving the system of defense for young people in Louisiana. Realizing the vision of an improved juvenile justice system, so eloquently described by Louisiana Supreme Court Chief Justice Pascal Calogero Jr., is a challenge toward which we must continue to strive.

“[A] reformed juvenile justice system that is not blind but knowledgeable in its application of services and sanctions, a system that is tough but not mindless, and a system whose cost effectiveness can be measured accurately and whose expectations are firmly and unrelentingly in favor of the rehabilitation of children.”

- Chief Justice Calogero, 2001 public address to the joint session of the Louisiana Legislature

Members of both the House and Senate of the Louisiana Legislature, as well as the Governor’s Office, are to be commended for coming together to create a joint legislative Juvenile Justice Commission (Commission) in order to seriously address juvenile justice reform. Individual members of the Commission traveled extensively throughout the state to hear the concerns of Louisiana’s citizens at public hearings regarding the juvenile justice and defense systems, and plan to do so again during a second round of public hearings tentatively scheduled toward the end of the year. The Louisiana Supreme Court and the Governor’s Office have continued to play a vital role in this effort through its work with the JJC and key members of the Legislature have reaffirmed their commitment to reform during the most recent legislative session.

Many district, family and city court judges have vigorously sought to be more informed and involved in the process of working toward reform of the juvenile justice and defense systems. Both the Louisiana Council of Family and Juvenile Court Judges and the Louisiana City Judges Association have taken extra measures toward supporting the work of the Commission and improving the level of advocacy and representation for children by recently passing Resolutions in support of juvenile justice reform. Given the judge’s role at the front line of the delivery of justice, their connection to this work is especially critical.

Several defense organizations and individual members of the Bar must also be recognized for their valuable contributions toward improving defense for children and youth. Recognizing the distinct role of the juvenile defender, the Louisiana

Association of Public Defenders had the vision a few years ago to begin sponsoring a separate professional development track for juvenile defense lawyers at its annual seminar. Similarly, the Louisiana Association of Criminal Defense Lawyers has incorporated juvenile specific training into several of its seminars. Both juvenile public defenders and private defense lawyers from around the state are active in efforts to improve advocacy for youth and many of them testified at the Commission public hearings to voice their concerns. The Louisiana Indigent Defense Assistance Board is also actively involved in ensuring that the issue of improving juvenile defense is appropriately addressed by the Commission.

None of these seeds for reform would have an opportunity to take root without the consistent and expressive calls for change by the people directly affected by the juvenile justice system. Parents, grandparents, young people, concerned community members, service providers, police officers, counselors, teachers, detention center administrators, correctional staff, prosecutors, court personnel and many others spoke with candor and conviction at Commission hearings throughout the state. Their thoughtful comments and experiences will hopefully help to shape Louisiana's path for reform.

Finally, we gratefully acknowledge the *Gideon Initiative* of the ABA Standing Committee on Legal Aid and Indigent Defendants and the Open Society Institute for their support of this project and ongoing coalition-building to ensure young people have dedicated defense advocates by their side as they make their way through the juvenile justice system.

The Editors
June 2002

The American Bar Association's commitment to improving the nation's juvenile justice system spans over three decades. Beginning in the early 1970's with the creation of twenty-three volumes of comprehensive juvenile justice standards, the ABA has been a central voice in promoting balanced and thoughtful juvenile justice system reform. The Juvenile Justice Center provides training, technical assistance, research, policy development, and advocacy to the field. For the last several years, the Center has placed particular emphasis on devising strategies to ensure that children have adequate access to comprehensive legal services. This work is carried out by the ABA's National Juvenile Defender Center in partnership with nine regional affiliate centers across the country. This network works closely together to improve the quality of juvenile indigent defense services nationwide. The Juvenile Justice Center, Juvenile Justice Committee and National Juvenile Defender Center are based with the Criminal Justice Section of the American Bar Association. For more information please contact Patricia Puritz, Director.

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The Juvenile Justice Project of Louisiana (JJPL) is a non-profit youth law office dedicated to transforming the juvenile justice system into one that builds on the strengths of young people, families and communities in order to instill hope and to ensure children are given the greatest opportunities to grow and thrive. Founded in 1997 with support from the Southern Poverty Law Center, JJPL works on a number of fronts to demonstrate that rehabilitation and education are more cost-effective and humane ways to not only prevent recidivism but save the lives of our children. JJPL focuses on challenging unconstitutional and abusive conditions of confinement for youth, improving the level of legal representation and advocacy for young people, and increasing the availability of community-based alternatives to incarceration for children. For more information please contact Gabriella Celeste, Associate Director.

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Annual Update 2002: A Summary of *The Children Left Behind*

In June 2001 the American Bar Association (ABA) Juvenile Justice Center, with support from the Juvenile Justice Project of Louisiana (JJPL), released *The Children Left Behind: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Louisiana*. This comprehensive report was the consummation of a six-month investigation by the ABA and a host of national and local experts on Louisiana's juvenile indigent defense system.

The major findings and recommendations of the original report are summarized in this annual update. In addition, this report describes the state's response to this crisis and includes more recent stories and comments concerning people's experiences in Louisiana's juvenile courts. Some of the more disturbing findings originally identified include the following:

- An extremely high incidence of waiver of counsel among children, many of whom waive without speaking to a lawyer or understanding the critical consequences of their decision.
- An extremely high use of pleas to handle cases of juvenile delinquency, even those of a serious nature, and frequently without counsel.
- An alarming lack of advocacy on the part of many juvenile defenders due to crushing caseloads, lack of a full-time practice, inadequate resources, lack of training and supervision, and a juvenile justice culture that presumes guilt and places little value on zealous representation.
- A total lack of reliable, uniform case tracking information by the local indigent defender in order to monitor juvenile case outcomes, provide supervision, assess needs and set priorities for ongoing defense practices.
- A great disparity between the salaries and resources for juvenile prosecutors compared to juvenile public defenders.
- An over-reliance on juvenile probation officers by the juvenile justice system to handle often conflicting roles, such as conducting initial interviews of youth and seeking their waiver of counsel, preparing petitions for the prosecuting attorneys, advising the court on sentencing and monitoring youths' compliance with disposition.

"Where's the Justice? Report: In Louisiana, Juveniles Generally Don't Get Any; They're 'Children Left Behind'"

~ Burdeau, Cain "Where's the justice? Report: In Louisiana, juveniles, generally don't get any, they're 'Children Left Behind,'" *The Associated Press*, June 8, 2001.

"A child facing incarceration should have a right to know what his options are and how to access those options. Having a well-trained and caring legal advocate is critical... Perhaps many parents think they know and understand what may lie ahead, we did and we were mistaken. Our son and our family are still paying for that mistake."

~ Grace Bauer, parent, Lake Charles JJC Public Hearing, 1/23/02

Blueprint For Change: 3-Step Action Plan For Louisiana

Members of the Juvenile Justice Commission:

Hon. Mitchell J. Landrieu,
Chair, State Representative

Hon. Donald R. Cravins,
Vice Chair, State Senator

Hon. Diana E. Bajoie

Hon. Willie Hunter, Jr.

Hon. Charles D. Jones

Hon. Arthur J. Lentini

Hon. Daniel R. Martiny

Hon. Michael J. Michot

Hon. Billy Montgomery

Hon. Willie Landry Mount

Hon. Charles A. Riddle, III

Hon. Diane G. Winston

As the Juvenile Justice Commission (JJC) focuses its efforts on building a consensus for systemic reform, it will develop a series of recommendations for the Legislature. This Blueprint is offered as a guide for creating the necessary foundation in order to improve advocacy and representation for children and youth.

- 1. Acknowledge that the system of defense for youth is broken and needs repair.** The findings and recommendations of the JJC should acknowledge that systemic dysfunction exists and demand that things cannot continue on the present course. Children and youth are being denied basic protections with devastating consequences.
- 2. Set fundamental principles to guide the transformation of the juvenile system of defense.** At a minimum, create a set of principles that reflect the findings and conclusions of the JJC as part of its overall recommendations. General principles should minimally include the following:
 - Youth defenders should have the resources, training, supervision and support in order to build and maintain their capacity to provide improved, effective advocacy and representation to young people accused of crimes.
 - Youth defenders should have mandatory standards of practice that ensure young people are adequately represented at each stage of delinquency proceedings.
 - Systemic barriers to quality juvenile defense should be removed and independent oversight should be established to ensure greater accountability.
 - Louisiana should invest in quality juvenile defense and ensure fairness among all participants in the juvenile court process in order to protect children's best interests and society's well-being.
- 3. Invest in juvenile defender services.** Approve increased state supplemental funding for juvenile defense and tie it to the set of guiding principles in order to encourage real and sustainable change. Consider investigating and supporting a statewide juvenile defender system that brings quality assurance and accountability to the profession and, ultimately, ensures that children have an effective advocate to navigate the juvenile justice system in order to provide the greatest opportunity for safe passage through adolescence.

The Status of Juvenile Defense One Year Later: Louisiana's Children Still Left Behind While State Studies Juvenile Justice Challenges & Builds a Consensus for Change

After a fervent speech to the joint session of the Legislature by Louisiana Supreme Court Chief Justice Pascal Calogero Jr. regarding the need to reform the juvenile justice system and reinvest in rehabilitation, and on the heels of the release of *The Children Left Behind*, the Legislature created a joint Legislative Juvenile Justice Commission (JJC). The 12-member JJC, chaired by Representative Mitchell Landrieu and vice-chaired by Senator Donald Cravins, and the over 40-member Ad Hoc Advisory Board to the JJC were created "to study and make recommendations on the feasibility of reforming and restructuring the juvenile justice system." "Representation and advocacy services" were among the list of specific items included in the JJC's charge and will likely be addressed in its formal report and recommendations to the Legislature in March 2003.

Louisiana juvenile and family court judges, as well as city judges, also went on record this year supporting the JJC's efforts to reform the juvenile justice system. Resolutions passed by both judge's associations include, among a host of other items pertaining to the juvenile justice system, an acknowledgement of *The Children Left Behind* findings and recommendations and a recognition of "a youth's right to counsel within the juvenile justice system." Moreover, they urge "all judges with juvenile jurisdiction to, first, ensure that youth are adequately represented at every critical stage of the process and, second, prohibit the routine waiver of counsel."² The Resolutions also called for "the creation and adoption of uniform standards and best practices" for administration and the "implementation of the judicial, prosecutorial and defense functions in juvenile and family courts."



Despite these potentially promising steps, since last year's release of *The Children Left Behind*, there have not yet been any significant changes in the way juvenile defense is funded, administered or practiced throughout Louisiana. Many children, parents, attorneys and other people involved in the juvenile justice system continue to criticize the

failings of the indigent defense system for young people. In fact, during recent public hearings conducted across the state by the JJC, a variety of spokespeople testified about the lack of legal advocacy for young people and the troubling barriers to adequate representation that still exist.

"The role of the juvenile defender is poorly defined. I often have an ethical conflict between what I think is in the best interest of the child, what the child thinks, what the judge thinks and what the parents think. We have no standards of practice for juvenile defenders. We should have mandatory training and be required to receive continuing legal education so that we are really equipped to represent our clients. Given my time constraints, I must confess that I almost never meet with the children I represent ahead of time... there should be standards addressing these concerns, like caseloads, client contact, investigation, and so forth."

~ Susan Ford Fiser, IDB Contract Attorney
in Rapides Parish (9th JJC), Alexandria
JJC Public Hearing, 1/24/02

A Snapshot of *The Children Left Behind* Assessment

The purpose of the annual update of this report is to continue to inform the public about – and promote change in – the plight of children and families in juvenile court who often face serious, life-changing consequences without the support and assistance of a trained and committed legal advocate.

Our daily caseload can be overwhelming. We need time and resources to build relationships with these children and their parents...Often we do not have enough time to spend with them to find out very basic information, such as whether they can read or write."

~ Michelle Dufour-Brown, Caddo Juvenile Public Defender, Caddo/Bossier JC

This report summarizes the original assessment's methodology, findings and conclusions in a condensed version. It begins with a discussion of the factors which place children at risk of delinquent behavior, reviews the roles of defense counsel, discusses the difference a lawyer can make for positive outcomes, describes the policies, procedures, and culture of the present juvenile indigent defense system which contribute to its failings, and identifies some promising practices with recommendations for further improvement.

Methodology

Taking a wide-ranging approach to data collection, the ABA investigative team conducted a mail survey of juvenile public defenders, visited sites in eight parishes across the state, interviewed people working in the juvenile court systems, observed court proceedings, spoke with detained and incarcerated youth, and researched and collated data concerning the status of children. While the assessment methodology focused primarily on the juvenile indigent defense system and the critical role of juvenile defenders, the information collected necessarily covered many components of Louisiana's juvenile justice system.

Summary of Assessment Methodology and Issues

Data Collection Methods

- Juvenile indigent defense mail survey completed by juvenile defenders
- On-site investigation of 8 sample parishes* including a cross-section of urban and rural areas, the state's geographic regions and varied juvenile court systems
- Structured interviews with scores of juvenile justice personnel, including IDB and private defense attorneys, judges, prosecutors, probation officers, court administrators, case managers, clerks, mental health advocates, school liaisons, detention center staff and service providers
- Court observation of delinquency proceedings, tours of courtrooms and juvenile facilities
- Informal interviews with parents and children at courthouses
- Focus groups with youth in 6 detention centers and a focus group of parents with incarcerated youth
- Brief survey of over 100 randomly selected youth incarcerated in correctional facilities
- Compilation of youth-specific data and comprehensive literature review

Juvenile Issues Examined

- Caseload, supervision, resources, salaries, non-legal support, experience and training
- Administrative and structural characteristics of indigent defense delivery systems
- Substance of juvenile defense advocacy (client contact, motions, trials, appeals, etc.)
- Roles and relationships among key players in juvenile court
- Timing of appointment and waiver of counsel
- Characteristics of youth served, cases, special needs youth and minority overrepresentation
- Availability or absence of rehabilitative treatment and court diversion services
- Overall juvenile justice and defense system challenges and opportunities

* Avoyelles, Bossier, Caddo, Calcasieu, East Baton Rouge, Orleans, St. John the Baptist and St. Mary.

A Glimpse at Louisiana's Children & Youth: Factors Leading to Risk-Taking

Children are not born delinquent. They are, however, exposed to a host of social, environmental and economic challenges specific to the communities in which they live. Researchers and scientists have identified a number of factors that make young people more vulnerable to criminal activity, and subsequent institutionalization, including: poverty, inadequate medical and mental health care, poor education, and childhood trauma. While risk factors do not excuse delinquent behavior, they can assist us in understanding and mapping pathways to delinquency, designing defense practices best aimed at protecting due process and ensuring outcomes which are in the best interests of troubled youth, and reshaping policy to deal with children through a continuum of services that increase successful outcomes, decrease recidivism and promote public safety.

National research demonstrates that Louisiana leads the nation in many of the risk factors identified as contributing elements of delinquent behavior. In fact, Louisiana ranks last or very near the bottom in each of the categories measuring the well-being of children.³ Louisiana's poverty rate is the second highest in the nation, and the highest in the south; it ranks last in national health indicators; it ranks near the bottom in the provision of mental health care to children; its educational system falls well below average in all major indicators of educational excellence; and the state features prominently in each of the national indicators assaying children's exposure to trauma. And in every category, African-American youth are disproportionately represented.

Louisiana's state standing is 49th on a national composite of 10 measures concerning the condition of children, including: percent low-birth weight babies, infant mortality rate, child and teen death rate, teen birthrate, teen dropout rate, percent of teens not in school or working, percent of children in families where no parent has full-time year-round employment, percent of children in poverty and percent of single parent households.

~ The Annie E. Casey Foundation, 2002
Kids Count Data Book: State Profiles
of Child Well-Being, p.46.



Louisiana ranks 49th in the nation for children in poverty. 26% of Louisiana's children live in poverty, compared to a national average of 19%. More strikingly, 12% of Louisiana's children live in *extreme* poverty, that is with a family income below 50% of the poverty level.

~ The Annie E. Casey Foundation, 2002
Kids Count Data Book: State Profiles
of Child Well-Being, p.94-95.

Poverty, in particular, is at the root of many risk factors for youth, including health, academic success and delinquency. Increased health problems can affect a child's ability to learn and develop normally. Louisiana's youth are at serious risk of malnutrition, which studies show can lead to increased aggressiveness, irritability, anxiety, and the likelihood they will require special education. Despite recent efforts in education reform, numerous deficiencies remain to be addressed. The lack of after-school programming is especially improvident as research shows that youth are most likely to engage in health and life-threatening risk behaviors during the hours after school. Perhaps most telling, Louisiana has extremely high rates of child neglect and abuse and child death. One of the few hopeful changes is the remarkable decline in violent juvenile crime over the last six years; nevertheless, Louisiana continues to incarcerate youth at a higher rate than almost any other state.



The combination of Louisiana's failures in raising its children makes the need for strong advocates in the juvenile justice system particularly compelling. Each of these factors – poverty, inadequate physical and mental health care, poor education and childhood trauma – can seriously interfere with a young person's healthy cognitive and emotional development. Understanding the basic tenets of adolescent development and their impact on issues of competency, culpability and the ability to assist in their own defense is particularly critical to fostering a justice system whose goals are treatment of troubled children and the protection of society.

Lawyers Make a Difference for Children & Youth

One of the primary goals of the juvenile defender, particularly after a child is found guilty or admits to an offense, is to ensure appropriate and humane outcomes for the youth. Ineffective advocacy often results in children being subjected to inappropriate sanctions, while effective advocacy strengthens the core values of the juvenile justice system and promotes public safety. In failing to render effective advocacy, a system cannot protect individual rights, provide rehabilitation, or effectively hold youth accountable for their actions. These failures extend beyond the individual child to the families, social institutions, and communities and result in real and measurable losses of youth and missed opportunities for change. Effective legal advocates play a critical role in countering the consequences of system failures described below.

1. Challenging the Criminalizing of Adolescence

Many common adolescent behaviors that were once addressed within communities, schools and families, are now being brought to the courts for intervention. In addition to police, parents and schools are increasingly approaching the justice system for assistance. The end result has been an influx of children into a system not designed for and ill-prepared to offer appropriate and effective treatment. As has happened in many jurisdictions across the country, the failure of prevention, early intervention, diversion and treatment programs leads to an increase in the number of children subsequently incarcerated.

"I spend too much time in juvenile court representing young people on inappropriate cases. The misuse of the zero tolerance policies in schools is burdening the juvenile court system. Some of my recent cases include a girl who back-talked her teacher, a boy who walked out of gym class without permission, a kid who was arrested for having nail clippers in school, a child who shared an aspirin with another classmate and a youth charged with battery for throwing spitballs. These show the lack of common sense being exercised."

~ Harold DuCloux, private attorney,
Orleans JJC Public Hearing, 2/5/02

Access to trained qualified counsel during the early stages of the process can slow the momentum toward incarceration and ensure that alternative, more appropriate interventions are used. What begins as a request for assistance from parents or community institutions too often results in the downward spiral of increasingly harsher supervision and custody, an escalation of involvement in the delinquency system, and recidivism.

Involvement in the delinquency system has tremendous and lasting affects on the development of a child. In Louisiana, the absence of accountability on the part of the programs designed to help children and families is disturbing; there is no mechanism in place to ensure that interventions and programs are in fact effective.⁴ Advocates, therefore, are essential in holding the system accountable and keeping inappropriate youth out of the criminal justice system.

"My son's recent entry into the juvenile justice system happened after he got suspended for horse playing with another youth in school. While he was at home, a probation officer showed up and took him to the detention center for second degree battery charges. We didn't have any lawyer; my son was just sent to the detention center for four days 'to teach him a lesson,' even though he had never been in trouble before. Four days of his life were taken from him and he can never get that back. Please don't let this happen to other kids."

~ Anonymous Iberville parent
Baton Rouge JJC Public Hearing,
1/17/02



2. Discouraging the Over-Use of Incarceration for Youth

Spending inordinate amounts of time in detention facilities meant only for short-term placement or being inappropriately and needlessly placed in a secure institution are two very real consequences of an ineffective defense system. Even the Department of Public Safety and Corrections (DPSC) recently acknowledged at JJC public hearings across the state that there is an “over-reliance on incarceration” for youth.

“Lawyers almost never come to visit with youth at my center and appropriate legal representation seems to be lacking. These children have a myriad of other problems — like emotional, behavioral, education and poverty issues — that are other factors in their lives which need to be addressed along with any criminal act they may have committed.”

~ Richard Winder, Director of the Youth Study detention center, Orleans JJC Public Hearing, 2/5/02



Detention centers are typically designed for short-term (no more than 30 days) placement of youth who cannot be returned home pending the outcome of the case or awaiting transfer following disposition. In reality, however, youth may spend much longer periods of time in detention locked away from their families and homes. Detention centers generally do not separate children who are being detained for status offenses (non-criminal offenses such as truancy and ungovernable behavior) from those charged with delinquent offenses, nor do they separate, as a matter of course, children who have been adjudicated delinquent and awaiting placement in a secure correctional facility from youth serving time for probation violations. In some cases, this intermingling of classes of youth has led to dangerous conditions, including, for example, the rape of an eleven-year-old youth in detention.⁵ Furthermore, where the facility is also used as a dispositional option for children violating probation, there is some question whether youth being detained pre-adjudication are being subjected to inappropriate programmatic requirements reserved for adjudicated youth. One detention center administrator complains that, too often “detention beds are just for the convenience of the judges so they don’t have to be too creative.”

Detention centers are typically designed for short-term (no more than 30 days) placement of youth who cannot be returned home pending the outcome of the case or awaiting transfer following disposition. In reality, however, youth may spend much longer periods of time in detention locked away from their families and homes. Detention centers generally do not separate

“He didn’t talk about anything that went on in there (youth prison) for six months after he was released...he was so upset that he kept having night sweats and the shakes for months.”

~ Tony Price, Lake Charles parent with son who was held at a state correctional center and a local detention center

Louisiana's extensive history of problems with the secure correctional facilities are well known. In 1995, Human Rights Watch investigated each of the Louisiana Training Institutes (LTI) and found numerous incidents of abuse and neglect.⁶ As a result, the United States Department of Justice (DOJ) conducted its own investigation which substantiated a pattern of abusive and neglectful conditions of confinement. Despite DOJ's efforts to work with the state to improve conditions, evidence of violence and abuse continue to be found. Based on the unconstitutional conditions, a series of class action lawsuits were filed by private plaintiffs and the DOJ, which resulted in a series of settlement negotiations. During the course of these negotiations, the newest, privately-owned correctional facility in Jena was closed due to the deplorable conditions of confinement for youth held there. Declaring it an end to the experimentation with privatization, Governor Foster promised "we won't be having any more private prisons in Louisiana as long as I'm governor."⁷

A settlement regarding the treatment and conditions at the four remaining correctional facilities was reached in September 2000. Nevertheless, the lack of rehabilitative programming continues to be a problem in some facilities, as well as persistent abuse allegations and complaints about guards allowing, or even encouraging, youth to fight one another. Many children talk about having to learn how to be "better fighters" in order to protect themselves while in the LTI. Others candidly admit to learning more about committing crime from other incarcerated youth. "They think sending us to LTI will make us better," says one youth about his public defender and probation officer, "but they need to know that it doesn't."

Being locked up is particularly painful and difficult for children. When asked what they miss most being away from home, almost every child mentions a parent, a sibling or a child. "When I'm in here," says one boy who is in his third month of detention, "I worry about my family being safe."

Parents also find it difficult to constantly worry about the safety of their children while incarcerated. "The hardest part is not being able to give him the love and care that I'm used to giving," says one mother with a child at the youth prison in Monroe. Another parent describes how hard it is to be strong for her child during her visits to Tallulah, "it's depressing just to be in the physical place; you have this sense of helplessness. You can barely touch him and feel like you can't do anything to help him."

"My son had been sexually molested and had his teeth broken by guards at [the youth prison]... the long distance [more than four hours] prevented me from being able to visit my son for two years but when I was finally able to get the resources together to visit him, I was denied visiting privileges because my son was on lockdown. Without attorneys fighting for our children no one is going to hold the system accountable for these kinds of injustices."

~ David Williams, Lafayette father,
Lafayette JJC Public Hearing, 1/22/02

"We need to address the violence toward our kids done by the systems and how lawyers can bring these injustices to a judge's attention. I have represented several adult capital clients who were in the juvenile system; when some of these kids are released from the [youth prisons] their anger is palpable...it has to be addressed to prevent more violence in the future."

~ Tom Lorenzi, private attorney,
Lake Charles JJC Public Hearing,
1/23/02

3. Working to Ensure Accountability and Public Safety

"Advocates are needed to make sure the facilities holding youth and the agents in charge of youth, such as probation officers and social workers, are held accountable for what they are doing...if parents treated kids the same way as some of these agencies, the state would remove them."

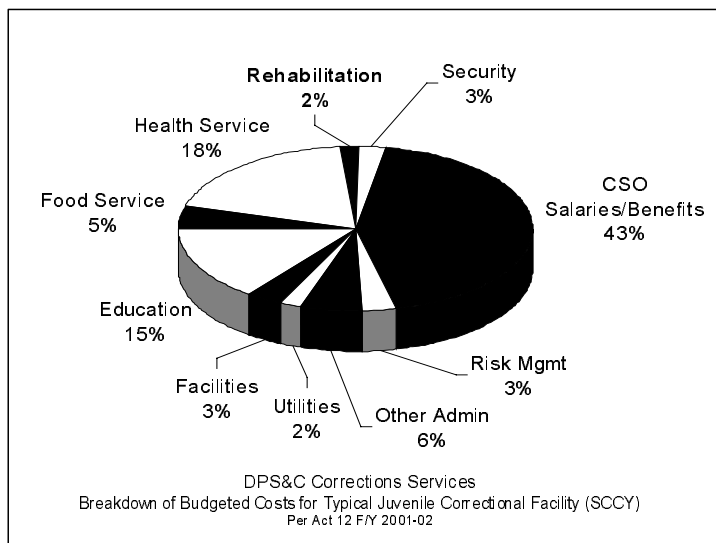
~ Barbara Washington, Advocacy Center, Caddo/Bossier JJC Public Hearing, 1/28/02

Further harm to an institutionalized child can result from the failure of confinement to make a positive difference in that child's life or help the child understand the real consequences of his actions. This harm extends beyond the child because communities are at greater risk of crime when young people come home with little or no skills and few options to succeed. In essence, recidivism becomes a self-fulfilling prophecy for the majority of youth sent to prison.⁸ Effective juvenile advocates can articulate this consequence of incarceration in their efforts to obtain more appropriate dispositions tailored to the best interests of their clients.

Despite the high recidivism rates for youth graduating from Louisiana's secure care facilities, the DPSC's budget priorities indicate that Louisiana continues to rely on juvenile incarceration as primarily a punitive, rather than rehabilitative tool. This seems to be the case despite DPSC's declared policy that "commitment of a juvenile to the care of the [DPSC] is not punitive nor in anyway to be construed as a penal sentence, but as a step in the total treatment process toward rehabilitation of the juvenile..."⁹ According to DPSC, Corrections Services, Fiscal Year 2001-2002 Budget Data, the total DPSC juvenile corrections budget was \$118,931,573. Of that, less than 4% was spent on non-residential programs. The secure institutions spend on average only 2% of their institutional budgets on rehabilitation.¹⁰

"We need less incarceration and more rehabilitation. We need policies that support families, train and support the people – including their lawyers – employed to help us help our kids, and invest in successful treatment programs close to home."

~ Avis Brock and Mary Matthews, Orleans parents, Orleans JJC Public Hearing, 2/5/02



The budget priorities of the DPSC have not changed in recent years, despite the overall decrease in juvenile crime and research demonstrating that community-based placements, as part of a graduated sanctions program, are less costly and more effective at reducing recidivism rates among youth in the delinquency system. Indeed, the DPSC cites as its primary performance indicator for its Office of Youth Development, "to increase the number of secure beds in juvenile institutions."¹¹

4. Promoting Opportunities for Children's Growth and Development

Detention and incarceration harms the growth and development of Louisiana's children. Investigators unanimously noted that attorneys failed to effectively argue for alternative placements, treatments, and services. The failure to advocate for alternatives to detention and incarceration, such as community placement, electronic monitoring or less restrictive supervision, facilitates the prolonged detention and eventual incarceration of youth and sets them up for loss on almost every level of future growth and development. Pretrial detention is especially harmful because research demonstrates that youth detained pretrial are more likely to be incarcerated after adjudication, thus ensuring the loss of educational and employment opportunities.

Lost education is one particularly damaging consequence of incarceration. Not only do youth miss the opportunity to attend school, they are then unable to maintain or catch up on their studies since the sole curriculum offered to the vast majority of incarcerated youth is GED preparation. Some youth return to their communities after being released from LTI intending to attend public school, only to be deterred by school personnel from re-entering.



Lost employment opportunities are another consequence of incarceration. Because incarcerated youth are unable to work and develop the basic job skills that accompany typical adolescent employment, it is harder for them to build a record of experience and referrals for future opportunities. While some facilities offer limited vocational programs, these are not the same as having the responsibility and benefit of actual employment.

Lost opportunities for personal enrichment and growth are a demoralizing consequence of incarceration. Adolescence is naturally a time of exploration and experimentation, an essential part of healthy adolescent development. Involvement in sports, music, art, and active participation in the community are the kinds of life experiences that help shape who we are; without them, youth are deprived of opportunities for self-expression, self-control and self-growth.

"I'm ashamed that as a community we haven't done more to make sure we have the money for programs and lawyers to work with kids. Locking them up will not deal with the problem."

~ Sidney Rosteet, private attorney, Lake Charles JJC Public Hearing, 1/23/02

"There is a total lack of privacy in juvenile court when lawyers and probation officers and others talk to the families in that small waiting area. It makes me feel uncomfortable to overhear other family's situations and to feel like my child is also being publicly humiliated."

~ Anonymous Lake Charles parent, Lake Charles JJC Public Hearing, 1/23/02

"My son became a different person in there (youth prison)."

~ Grace Bauer, Lake Charles parent, 4/14/02

"My son was separated from me and any familiar community...the cost on our family was too much. I didn't have money to get all of those collect calls and drive so far to see him."

*~ Mary Ann Roach, Lake Charles parent
4/14/02*

"There's violence going on between the guards and those kids, and among the kids... [the youth] are scared to talk about what's happening."

*~ Rachel Martin, Lafayette parent
4/13/02*

"My grandson told me that 'you gotta be a man in there (youth prison).'"

~ Celestine Hudson, Lafayette grandparent, 4/13/02

While these consequences may not be as severe for youth briefly detained, the interruption in their lives can still make it difficult to transition back into the community, and the longer children are kept from their communities, the harder it is to successfully reintegrate. It is critically important that defenders convey to the court the debilitating impact of incarceration and vigorously advocate for alternatives. Where alternatives do not exist, defense advocates can join the efforts of others in demanding more resources for the creation of appropriate treatment alternatives.

5. Supporting Louisiana's Families and Communities

Having an advocate who keeps parents informed and is responsive to their requests can ultimately benefit children in the justice system and assist them in maintaining ties with parents and communities. Several parents interviewed talked about the difficulty in advancing their child's best interest when they themselves had no understanding of what was happening and no assistance from the child's attorney. "I object to all the lingo," said one mother who waived counsel for her child, "It's not in English and they use that against us for not understanding."

Parents also expressed frustration with the negative assumptions they frequently encountered from probation officers, judges, prosecutors, and even defense counsel. "Don't make judgments about my child or his family," cautioned one parent, "the lawyer shouldn't assume all children come from bad families or from bad environments." Parents and children knew when they were being treated without compassion, or worse with contempt, but said they found it difficult to confront.

Incarceration can significantly disrupt family relationships. Children are placed in secure correctional facilities that are frequently far from home, making it very difficult for parents and family members to visit and stay in touch. This is especially destructive for poor families that may not have reliable transportation and cannot necessarily afford the expense of traveling long distances. Many children go for months, even years, without seeing a family member. Phone calls from the facilities are expensive, placing an added burden on impoverished families. While children may still write, assuming they have the capacity to do so, letters do not make up for the kind of distance that inevitably grows between incarcerated youth and their families and communities.

"Children are affected by families' background and the system. Why send them so far away? I've gone [to the youth prison] and been told that I can't see him because he lost visiting privileges. We drive five hours to see him only to be turned away—someone should have told us."

~ Dyan Dupas, Lafayette parent, 4/13/02

The Critical Role of Defenders in Delinquency Proceedings

The United States Supreme Court in its landmark 1967 decision, *In re Gault*, established a constitutional right to counsel for children in delinquency proceedings. These constitutional requirements are reflected in the Louisiana Children's Code as derived from the Louisiana Constitution providing that:

"At each stage of proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment. The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents."

Each child alleged to have committed a delinquent act is constitutionally entitled to be represented by counsel. Given the complexity of the issues involved in dealing with children – as opposed to adults – the job of the juvenile defense attorney is a tremendous one. In addition to the responsibilities involved in presenting a defense to criminal charges, juvenile defenders must gather information regarding their clients' individual histories, families, schooling, and communities in order to assist courts in diverting or dismissing cases where appropriate; they must strive to prevent unnecessary pre-trial detention, excessive bail, and unnecessary transfers to adult court; they must ensure individualized dispositions and present viable alternatives to incarceration; and, they must craft and request suitable modifications of dispositions. Juvenile defenders are legally and ethically bound to protect their clients' interests at every stage of the proceedings – from arrest and detention to pretrial proceedings, from adjudication to disposition, and from appeals and collateral review to other post-dispositional matters.



By fighting to keep youth out of the system and advocating for appropriate interventions only when necessary, zealous advocates ensure that children have the best opportunities for success. In the end, capable lawyers not only bolster the effectiveness of the juvenile justice system but strengthen the communities serving and affected by these youth.

"I think it's terrible that so few of my clients could even tell you my name. My typical docket is so totally unmanageable that it inevitably leads to assembly line justice." He related how difficult it was to hire a new juvenile attorney given that they could only pay her \$21,000 for the full-time position (one of the few full-time defender positions in the state). "Better training, better pay and more support is necessary to improve the public defense system for children... Good legal advocates help to ensure public safety by seeking appropriate treatment for their clients as well as monitoring the placements and facilities where children may be sent; good treatment helps fight crime." He ended his testimony by asking the Commission members "If your child had the prospect of going to Tallulah, I wonder whether any of you would entrust the case to a public defender?"

~ Stephen Dixon, Baton Rouge Juvenile Public Defender, Baton Rouge JJC Public Hearing, 1/17/02

Roadmap of Juvenile Defender Responsibilities

Arrest	If a child is at least 10 years of age, he may be arrested and charged as a delinquent. He has a right to a lawyer and, if requested, must be permitted to talk with a lawyer about the charges and how to proceed.
Court Diversion	Many jurisdictions use court diversion programs, particularly with first-time offenders, in order to give a child another chance with supervision, but without incurring a formal record. A lawyer can work with the prosecutor to consider diversion as well as explain the process to the child.
Detention	In many cases a child is placed in a detention center while awaiting formal charges. If this occurs, a child must have a “continued custody” hearing no later than 3 days from the arrest. A lawyer argues to the judge why the child should be permitted to go home until the next hearing. If the judge orders the child to remain in detention, the lawyer can also argue for a reasonable bail.
Arraignment	At this hearing a child may admit or deny the charges. A lawyer should explain the charges to the child as well as any consequences for taking a plea and foregoing trial (adjudication).
Investigation & Pretrial Motions	Prior to any plea, the lawyer is responsible for investigating the case, obtaining discovery, talking to witnesses and preparing for trial. Often there will be legal issues for the lawyer to raise in separate motions before trial (mental competency, suppression of illegally seized evidence, etc.).
Pleas & Trials	Trial is called “adjudication” in juvenile court and the same standard of beyond a reasonable doubt applies as in criminal court. At this hearing the lawyer is responsible for cross-examining witnesses, presenting any evidence and witnesses, and making arguments on the child’s behalf. Based upon thorough investigation and preparation of a case, and after discussing the consequences with a lawyer, a child may choose to plead guilty instead of going to trial.
Sentence	Sentencing is called “disposition” in juvenile court and is one of the unique aspects of the juvenile system because a child has a right to rehabilitation. The lawyer may put on witnesses, present any relevant information about the client’s situation and request specific rehabilitative treatment (substance abuse therapy, mental health care, etc.). The lawyer must ensure that every effort is made to place the child in the least restrictive environment with appropriate services.
Appeals & Sentence Modification	If a child is adjudicated delinquent, he has a right to appeal or to seek to change the sentence in the future. The lawyer is responsible for explaining the right of appeal and pursuing it should the child choose to do so. The lawyer has a duty to remain in contact with the child during the disposition and make sure the child is getting what the court ordered. The lawyer can also bring the case back to court at a future time and request the court to modify it to a lesser sentence and/or change its terms.
Revocation	In some cases, a probation officer will seek to have the sentence revoked for a child placed on probation who subsequently violates a condition of probation. The lawyer should investigate the allegations and challenge the revocation.

Findings: Systemic Barriers to Effective Representation

Investigators found that in many instances, basic obligations of legal representation were unmet. These failures appear to be due, in large part, not to individual unwillingness or lack of concern, but to substantial systemic barriers that impede effective representation. From the lack of funding, training and oversight to the lack of organizational capacity, a review of Louisiana's juvenile justice system shows that it suffers from a lack of concerted focus on and concern for the necessary and productive role to be played by defense counsel.

In working to divert youth from the system and advocating for appropriate interventions when necessary, lawyers can ensure that children have the best opportunities for successful life outcomes, the overall effectiveness of the juvenile justice system is bolstered, and communities are strengthened. While there were instances of vigorous advocacy by lawyers genuinely interested and concerned about their young clients, this level of representation was the exception rather than the rule.



This report commends the many dedicated attorneys who labor under enormous systemic barriers, and aims to highlight their needs and build their capacity to provide improved legal services for young people and their families. Often the image defense attorneys relayed of themselves, their practice, and their efficacy was severely undermined by what was personally observed in juvenile courtrooms, waiting areas, detention centers and training schools throughout the state. Indeed, the investigators noted serious concerns that the interests of many young people in the justice system are being significantly compromised, and that many children are left, literally, defenseless.

"Juvenile court is the stepchild of the system...Juvenile defenders are paid less because they're told it's a kangaroo court. In some parishes inexperienced lawyers represent kids on felony charges but they don't even realize that when a kid pleads to these charges they can later be used against him to multiple bill him as an adult." She went on to say that juvenile defenders need more money "not because we're greedy but because we need to be able to afford to do it and we need the knowledge to do it well."

~ Anne Turissini, St. John the Baptist, Juvenile Defender, Jefferson JJC Public Hearing, 1/31/02

A series of systemic barriers to effective representation were identified during the assessment process:

1. Funding and Structural Deficiencies

"We had a nightmare situation with juvenile court. We were notified about court for our son only 20 minutes before the hearing was set and, despite repeated efforts, we were never able to find the defense lawyer until after our son plead to a juvenile life charge."

~ Sam Sheppard, family member, Lake Charles JJC Public Hearing, 1/23/02

The lack of adequate funding is a pervasive and dire reality of the entire indigent defense system in Louisiana. Beyond the issue of inadequate funding, however, the assessment found numerous structural deficiencies that create real obstacles to effective advocacy for children, including: inadequate meeting space in which to interview and meet with clients and their families; a disincentive to represent poor children full time; inadequate resources and support services for defenders; lack of resource and pay parity with prosecutors; lack of accountability and leadership; lack of support and training for defenders; and a demeaning "step-child" mentality that pervades the bar and limits professionalism.

"We really do need to do something to improve our public defender system for youth."

~ Ted Cox, Judicial Administrator, Caddo Juvenile Court, Caddo/Bossier JJC

2. Breakdown of Due Process

"The juvenile public defenders don't even have a file folder for the kids they represent."

~ Margot Hammond, MHAS Senior Attorney, Orleans JJC Public Hearing, 2/5/02

Despite the fact that the Louisiana Children's Code ensures that children have a right to counsel "at every stage of proceedings," many courts routinely permit and seemingly encourage children to waive counsel in the early stages of the process. Reported estimates of children waiving counsel in delinquency proceedings are as high as 90% to 95% in some jurisdictions and often these waivers occur without youth ever talking to a juvenile defender.

3. The Absent Advocate

"We need to supplement the meager state funds for representation."

~ Randy Fuerst, the Chair of the Louisiana State Bar Family Courts Section, Lake Charles JJC Public Hearing, 1/23/02

Caseload estimates for juvenile defenders are overwhelming, impeding both access to counsel and quality of representation. Some lawyers estimated handling over 800 juvenile cases a year – a number that jumps to well over 1,000 for lawyers responsible for both juvenile and adult dockets. As a result, children who do choose to have the assistance of counsel rarely see their attorneys before court.

4. Zealous Advocacy Jeopardized

While there are true heroes among the ranks of Louisiana's juvenile defenders, there were numerous missed opportunities for advocacy observed at virtually every level of juvenile court intervention, from arrest, detention, diversion, pretrial, adjudication, disposition to post-disposition. Pleas are by far the most common practice of "defense," with some jurisdictions estimating as many as 90% to 95% of the cases being resolved by uncontested pleas.

5. Over-Reliance on Probation Officers

Probation officers juggle a number of often conflicting responsibilities, including: law enforcement functions; intake, investigation and diversion; charging decisions

“Juvenile probation officers are often acting as counsel in juvenile court, which is just an unacceptable situation.”

~ Sidney Rosteet, private attorney, Lake Charles JJC Public Hearing, 1/23/02

and plea negotiations; serving as expert witness and court liaison; making programming decisions; and providing ongoing supervision. While probation officers are tremendous resources for the court, their overly expansive role can compromise opportunities for intervention, effective supervision, and successful outcomes.

6. Fragmented Juvenile Court System

There is no uniform family court system in Louisiana and the courts' philosophies vary considerably from the traditional *parens patriae* to a post-Gault due process orientation. As a result, it is difficult to implement consistent statewide policies or standards or collect comprehensive information about juvenile cases. In the non-family court jurisdictions, juvenile matters are frequently delayed as adult proceedings are given precedence; likewise in these jurisdictions, most judges rotate through juvenile duty. These disparities appear to have led to the unequal application of the law and result in inappropriate, extended periods of time in detention for some youth.

7. Lack of Consolidation of Juvenile Docket

The most effective family courts consolidate cases under one judge to provide greater accountability through consistent contact within the court system for each child. Where such consolidation did not occur, however, the process of handling juvenile cases was frenetic and failed to instill confidence in the administration of justice.

8. Additional Barriers to Effective Advocacy

Additional barriers observed, but needing further investigation, include: special needs youth and families without resources; the lack of treatment alternatives and early diversion efforts with an over-reliance on incarceration; the disparate treatment of African-American youth in the juvenile justice system; the negative impact of zero tolerance school policies; the lack of treatment programs and services, especially those specifically designed for sex offenders and girls; and, the failure of cooperation among state youth-serving agencies.

“There is a vast disparity in funding between district attorneys and defenders – the state pays 3 million for public defense services and 20 million for DA salaries alone... Without lawyers to defend kids, the whole system crashes. We are within months of crashing in some parishes.”

~ Henry Walker, Indigent Defense Board member, Caddo/Bossier JJC Public Hearing, 1/28/02

“We’ve got to do more to fund and support indigent defense services for kids in our state. If you have better advocacy for kids you have better outcomes for kids, and better outcomes for kids results in better outcomes for the community.”

~ Hon. Kathleen Richey, President Louisiana Council of Juvenile and Family Court Judges

Promising Practices and Programs

"The caseloads in juvenile court are staggering and we need more alternatives to prosecution in order to divert appropriate youth from juvenile court."

~ Ralph Brandt, Chief Assistant District Attorney, Juvenile Division, Orleans Parish, Orleans JJC Public Hearing, 2/5/02

"A lot of kids have no idea what is going on in court and their parents have no clue either and lawyers don't have the time to educate them about what is going on. Many of the lawyers representing youth have no training and are unfamiliar with juvenile law and the Children's Code. Lawyers specialized in working with youth save the state money." Citing to the Mental Health Advocacy Service (MHAS) as an example of the difference a well-trained advocate can make. "Last year the MHAS represented about 500 youth with mental illnesses and only four ended up in a juvenile prison; without our zealous representation we estimate that about half would have gone to prison."

~ Joshua Joy Dara, MHAS attorney, Monroe JJC Public Hearing, 1/29/02

There are several universal elements of good practice that exist among model juvenile defender programs. The ABA's national assessment of access to counsel and quality of representation in delinquency proceedings identified at least six systemic characteristics of high quality defender programs:

1. Limited caseloads;
2. Support for entering cases early and the flexibility to represent clients in related collateral matters;
3. Comprehensive initial and ongoing training and access to resource materials;
4. Adequate non-lawyer support and resources;
5. Hands-on supervision of attorneys; and,
6. A work environment that values and nurtures juvenile court practice.

During the course of this assessment, investigators noted promising practices across the state that demonstrated the difference a zealous advocate can make and that incorporated some of these characteristics, including the following:

- Not permitting waiver as a matter of course;
- Requiring full-time practice by juvenile public defenders;
- Strategic use of court diversion programs;
- Aggressive gathering of background information and available community resources;
- Utilizing juvenile drug courts as alternatives to adjudications;
- Teaming mental health advocates with defenders on cases involving youth with special psychiatric or psychological needs;
- Collaborations between criminal and civil attorneys;
- Assigning aftercare/intensive parole officers to help eligible youth transition back into their communities; and,
- Believing that the child client has a right to a vigorous defense and recognizing the value of providing viable alternatives to the court.

Conclusion and Recommendations

The state of Louisiana has an obligation to ensure that a child's right to due process is honored and that a child has meaningful access to competent counsel at all stages of the justice process. Moreover, the citizens of Louisiana have a personal investment in a juvenile justice system that provides effective rehabilitative treatment and accountability while fulfilling the promise of fair and equal justice. To this end, the following recommendations are made:

1. Develop and adopt minimum standards for representation in juvenile court which include a full-time practice requirement and a reduced caseload in order to promote greater client contact and to provide quality representation.
2. Provide comprehensive training and professional development opportunities for juvenile defenders and ensure that the defense attorneys have effective access to independent, qualified investigators, experts and other support.
3. Presume the indigency of children for the purposes of appointing counsel and appoint attorneys as early as possible.
4. Discontinue the practice of permitting waiver of counsel by youth and encourage the legal community to embrace a culture of juvenile defense that values zealous advocacy and due process.
5. Establish and support independent oversight and monitoring of the juvenile indigent defense system to ensure greater accountability, data collection, resource allocation and collaboration among state youth-serving agencies.
6. Increase the resources available for the representation in delinquency proceedings while ensuring parity between defenders and prosecutors.
7. Collaborate with other youth-serving agencies to increase the number and quality of community-based treatment and diversion alternatives that both hold youth accountable and provide effective rehabilitation, particularly in the areas of mental health, substance abuse, sexual victimization and perpetration, and services for girls.
8. Adopt standards to ensure that probation officers serve as a neutral party and appropriately assist the court without assuming the duties of law enforcement, prosecutors or defense counsel.
9. Work with schools and communities to re-examine "zero tolerance" policies that may inappropriately divert youth to juvenile court.
10. Explore innovative advocacy practices and support pilot projects that incorporate some of the most effective elements of these practices. Investigate grant-based funding resources and reallocate current federal funding, such as OJJDP, to support these juvenile defense-based projects.



"Prosecutors, judges, and indigent defense are the three-legged stool of the juvenile justice system, without any leg it will fall over... The role of juvenile defenders is especially critical, however, because they are often the best-suited to identify youth who would most benefit from alternative services."

~ Edward Greenlee, Louisiana Indigent Defense Assistance Board Director, Orleans JJC Public Hearing, 2/5/02

Endnotes

1. House Concurrent Resolution No. 94, Hon. Representative Landrieu, Regular Session 2001.
2. *Louisiana Council of Juvenile and Family Court Judges*, "Resolution of Support for the Juvenile Justice Commission," unanimously adopted Jan. 10, 2002; *Louisiana City Judges Association*, "Resolution of Support for the Juvenile Justice Commission," unanimously adopted Jan. 10, 2002.
3. For specific data and cites to studies and reports, see, *The Children Left Behind: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Louisiana*, Chapter One "Risk Factors for Children in Louisiana", p.21-30 (June 2001).
4. The DPSC, for example, does not consider recidivism data in awarding contracts to the "treatment" programs it contracts with; in fact, it does not even require that those programs track recidivism or other outcome-based data (i.e. academic achievement, skills development, etc.) to measure effectiveness.
5. Benoit, M. "Police: 11-year-old raped while in detention center," *Lake Charles American Press*, January 21, 1998, A1.
6. Human Rights Watch Children's Rights Project, *Children in Confinement in Louisiana*, (October 1995).
7. Ritea, S. "Jena jail doomed from start, experts say; Profit motive blamed for poor conditions," *The Times-Picayune*, April 30, 2000, A1.
8. A 1999 study conducted by the Metropolitan Crime Commission (MCC) using recidivism data for Orleans and Jefferson parishes found that, even for the more serious "chronic offenders" recidivism rates are lower for youth placed in non-secure custody rather than secure custody. Youth serving their entire sentence in a correctional facility re-offended at about the same rate: 73% in Orleans and 72% in Jefferson. In contrast, paroled youth from correctional facilities have a significantly lower recidivism rate for both parishes (42% in Jefferson and 63% in Orleans). An earlier independent study that followed 852 Jetson Correctional Center for Youth graduates for twelve years revealed a recidivism rate of 89.1%.
9. La. R.S. 15:906(A)(2)(west 2001).
10. Department of Public Safety & Corrections, Corrections Services, Annual Budget, FY 2001-2002, <http://www.corrections.state.la.us/stats2.htm#OYD>
11. Department of Public Safety & Corrections, Corrections Services, Performance Indicator Quarter Information for Entire Agency, 2001, Office of Youth Development, Program A, Objective 1.

