

# Illinois

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

by the Children and Family Justice Center, Bluhm  
Legal Clinic, Northwestern University School of  
Law, and the National Juvenile Defender Center

**ModelsforChange**  
Systems Reform in Juvenile Justice

## Children and Family Justice Center

The Children and Family Justice Center (“CFJC”) of Northwestern University School of Law, Bluhm Legal Clinic, provides clinical and interdisciplinary training in children’s law to Northwestern law students through representation of children in juvenile courts. The CFJC offers effective, multidisciplinary, and comprehensive legal representation for indigent adolescents, serving the whole child in the context of their family and community. The CFJC advocates for justice for children and their families through legal practice, pedagogy, policy development, and improvements of the administration of justice.

## National Juvenile Defender Center

The mission of the National Juvenile Defender Center (“NJDC”) is to ensure excellence in juvenile defense and promote justice for all children. We believe that all youth have the right to zealous, well-resourced representation and that the juvenile defense bar must build its capacity to produce and support capable, well-trained defenders. We work to create an environment in which defenders have access to sufficient resources, including investigative and expert assistance, as well as specialized training, adequate, equitable compensation, and manageable caseloads.

NJDC provides training, technical assistance, resource development and policy reform support to juvenile defenders across the country. NJDC disseminates relevant and timely information in research reports, advocacy guides and fact sheets. Nine affiliated Regional Defender Centers provide similar services within their member states. NJDC, in conjunction with its Regional Centers and local partners, conducts state-based juvenile indigent defense assessments, examining critical issues related to access to counsel and quality of representation in delinquency proceedings.

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## Models for Change

Models for Change is an effort to create successful and replicable models of juvenile justice reform through targeted investments in key states, with core support from the John D. and Catherine T. MacArthur Foundation. Models for Change seeks to accelerate progress toward a more effective, fair, and developmentally sound juvenile justice system that holds young people accountable for their actions, provides for their rehabilitation, protects them from harm, increases their life chances, and manages the risk they pose to themselves and to the public. The initiative is underway in Illinois, Pennsylvania, Louisiana and Washington.



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# ADVISORY BOARD

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# PREFACE

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Illinois lays claim to a unique role in the creation of a humane and fair system of justice for children in conflict with the law. One hundred and eight years ago, Chicago was the site of the first juvenile court in the United States, a separate court established to recognize and address the specialized needs of children. The Juvenile Court was founded on the premise that children are fundamentally unique human beings who are not simply “little adults.” Youth advocates, and ultimately legislators, recognized that children who committed delinquent acts needed guidance and rehabilitation rather than punishment. The creation of the Juvenile Court in Chicago transformed the nation’s thinking about children.

The concept of a distinctive court for children spread like a prairie fire across the country and around the world. By 1925, 46 states, 3 territories and the District of Columbia had created separate juvenile courts.<sup>1</sup> Since its inception, the juvenile court has been a dynamic work in progress with the twin goals of holding youth accountable when they commit delinquent acts, without criminalizing them, while simultaneously providing services to help youth overcome their transgressions and develop skills.

For the first half of the twentieth century, juvenile courts attempted to serve these dual goals in an informal setting in which the “best interests” of a child were deemed paramount to due process. Forty years ago, the U.S. Supreme Court issued a landmark decision that rejected that informal construct. In *In re Gault*, the Court ruled that children accused of delinquent acts are entitled to the protections of due process of law, including the right to counsel. In the ensuing years, juvenile courts have struggled in their efforts to meet the mandates of *Gault*.

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In anticipation of the fortieth anniversary of *In re Gault*, the Children and Family Justice Center (CFJC) of the Bluhm Legal Clinic of Northwestern School of Law, in partnership with the National Juvenile Defender Center (NJDC), supported by the MacArthur Foundation's Models for Change program, agreed to conduct an assessment of access to counsel in Illinois' juvenile justice system. The goal of the Assessment is to examine the scope and quality of legal representation of accused children in juvenile courts throughout Illinois and to provide recommendations aimed at strengthening the quality of defender services for these children. The Assessment is intended to stimulate discussion of the strengths and deficiencies in Illinois' juvenile indigent defense systems and to serve as a tool for change.

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# EXECUTIVE SUMMARY

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From the inception of the world’s first juvenile court over 100 years ago, the State of Illinois has long led the way in the creation of a fair and equitable juvenile justice system for children. Illinois has historically been a place where new ideas and strategies that impact children and families have been born, tested and refined, restorative justice and detention reform among them. Jurisdictions across Illinois have frequently been selected as research and demonstration sites for a broad range of federal and foundation-based initiatives. The Children and Family Justice Center and the National Juvenile Defender Center hope that this assessment, the most comprehensive of its kind ever undertaken in Illinois, will raise the quality of legal representation for children by fostering an environment in which accused children are routinely represented by highly skilled, well-resourced, dedicated and effective children’s attorneys.

In the course of conducting this assessment, the investigative team encountered many devoted and talented lawyers who provide remarkable legal service in spite of the numerous obstacles that they face. But despite this work, the assessment team also concluded that the overall quality of the representation of children in Illinois falls well short of national standards.

The findings and recommendations embodied in this Assessment can be used as a tool to help to improve Illinois’ juvenile indigent defense system by eliminating some of the systemic barriers to effective representation that too many children’s defense attorneys face on a daily basis.

# I. Major Findings

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The following is a summary of the Assessment Team's major findings.

## Untimely Appointment of Counsel

Attorneys for children are usually appointed at the moment of the child's first appearance (as the child stands before the judge at the first court appearance) or at the conclusion of the first appearance. The failure to appoint an attorney as soon as possible, before the child first appears in court, means that there is no communication between the child and his<sup>2</sup> lawyer prior to stepping up before the judge. This shortcoming is particularly damaging to the rights of detained children.

## Inappropriate Use of Plea Bargaining

More than 70% of cases heard in Illinois juvenile courts are resolved by pleas. Many of these pleas are entered at the first appearance before the judge, so that no meaningful investigation of the case has yet taken place and that children and their lawyers (and the families of accused children) have had little opportunity to confer and to make reasoned judgments about how the case should proceed. In accepting pleas, judges use age-inappropriate legalese that glosses over important concepts, including the rights to go to trial, to be represented by counsel, to remain silent and to put on a defense. Members of the Assessment Team reported that in numerous counties children feel pressured to plead guilty. This pressure usually comes from the attorneys or parents and, in some instances, the judge, who imposes a "trial tax" for not pleading guilty.

When children enter admissions during the initial hearings, it is almost always true that the attorney and the child lacked the opportunity to engage in a meaningful discussion about the case and the consequences of pleading guilty.

## Confusion over Role of Counsel

Children charged with delinquent acts are entitled to effective assistance of counsel in proceedings under the Illinois Juvenile Court Act.<sup>3</sup> The role that the attorney must play in these

proceedings is critical, complex and multifaceted. Ethical and other practice standards dictate that the lawyer's duty in delinquency proceedings is the representation of the client's expressed interests, that is, the objectives identified by the client. Yet, many defenders express confusion as to their ethical obligations and responsibilities to their clients. Many of the defense attorneys interviewed understood their role as that of advancing what they determined to be the "best interest" of their client as opposed to their client's "expressed interest." In numerous cases, this confusion was exacerbated when the attorney was appointed as both attorney and guardian *ad litem*. Team interviews and observations made clear that in a majority of the Illinois counties surveyed, juvenile defenders are operating under the "best interest" model, substituting their judgment for that of their client. In these counties, there seems to be an expectation among all concerned (defense lawyers, prosecutors, judges, and probation officers) that the role of defense counsel is to do what is "best" for her client. This expectation places severe and unwarranted constraints upon the independence of defense counsel and improperly limits zealous advocacy on behalf of children who appear in Illinois' juvenile courts. In a minority of counties visited, lawyers and judges agreed that the defense role is to act as a zealous advocate for the child in challenging the prosecutor's evidence and that the child defendant should direct the litigation. The confusion over the appropriate role of the attorney appears to have significant effect on the nature of the proceedings and the protections afforded a minor.

### Lack of Zealous Advocacy

Although the investigative team saw outstanding examples of juvenile defense attorneys providing stellar and innovative representation for their clients, the level of advocacy was not consistent across the state. Given the timing of appointment of counsel (at, or after the first court appearance) few attorneys are able to provide meaningful representation at detention hearings, perhaps the most critical stage of juvenile court proceedings for those children the prosecutor seeks to detain.

Moreover, due to excessive caseloads, juvenile defense attorneys do not have regular contact with their clients during the course of representation, and for most children contact with their attorneys is limited to the days on which their cases are in court. Thus, there is little opportunity for children's lawyers and their clients to identify the clients' needs and the objectives of the representation. The setting of a courthouse minutes before a case is about to be called is not the optimal environment for considered discussion, reflection, and decision-making.

Motion practice is critical to the effective representation of children. All defense counsel should file motions for discovery (requests to be given the prosecution's evidence) prior to trial. Only

by filing a written discovery motion and thereby learning the strengths and weaknesses of the State's case will defense counsel be able to make intelligent decisions, in consultation with the client, about appropriate steps to be undertaken to defend the case.

The Assessment Team found that few attorneys for children in Illinois (outside major metropolitan areas) file written pre-trial motions, including written motions for discovery. When asked why they do not file discovery motions, some of the lawyers said that they trusted the police and prosecutors not to file "bogus charges" and, on their own initiative, to turn over pertinent information without a motion or court order. Some said that judges actively discouraged the filing of motions.

As noted above, the vast majority of cases in Illinois' juvenile courts are resolved through a plea bargaining process. This means that defense attorneys rarely demand that a case go to trial. In close to half of the counties surveyed, judges reported few or no trials. Although there are cases that should in fact be resolved without a trial, trials in appropriate cases are an important means of keeping the system honest. Defense lawyers must be willing to put the prosecution to the test in appropriate cases.

In the few cases that are tried in juvenile courts throughout the state, the Assessment Team found that advocacy was informal and not what one would expect in a contested hearing or trial in a civil or criminal court addressing the claims and defenses of adults. For example, in trials in juvenile courts, defense lawyers and prosecutors typically waive opening statements. This lack of formality carries with it the premise that advocacy in a juvenile court hearing or trial is less important than it is in other judicial proceedings, a frame of mind that undercuts a child's 14th and 6th Amendment rights to counsel and a child's right to a fair trial.

A child is also guaranteed the right to effective and zealous advocacy during the sentencing phase of a juvenile case. The Assessment Team found the quality of advocacy at this critical stage lacking, again due to the fact that most dispositions are agreed upon as the result of plea bargaining.

The pervasiveness of plea bargaining as the means of resolving children's cases tends to focus defense counsel on a negotiation process in which the interests of present (and future) clients are disposed of through agreement rather than by adversarial testing of the allegations. As a consequence, many lawyers for children have little trial experience. A defender without trial experience will be understandably reluctant to insist upon a trial. The Assessment Team found that "trial avoidance" on the part of children's lawyers diminishes the effectiveness of legal representation of children in Illinois.

## Inadequate Resources

Without adequate time, support, and resources, it is not surprising that juvenile defense attorneys in the majority of Illinois jurisdictions are overwhelmed and therefore unable to provide the kind of representation necessary to make sure that juvenile courts make reasoned and just decisions. High caseloads, especially in large metropolitan areas (coupled with recent budget cuts), force children’s lawyers to tread water, responding to high volume court calls rather than focusing on the needs of their individual clients. A defense lawyer who is in court all day dealing with a high volume court call has little time to consult with clients and to conduct investigations.

Defenders across Illinois need investigators, social workers, and administrative staff to assist them in their representation of children. Without the assistance of investigators and social workers, defense counsel lack critical information concerning the circumstances of their clients and their clients’ family, social, educational and mental health situations. Investigative and social work services are equally critical to defenders in rural jurisdictions. Few defenders reported having access to investigators, and no defenders reported having social workers on staff or readily available.

## Incomplete Data & Information

Data related to juvenile justice in Illinois is not readily accessible in a single information system. Instead, juvenile justice data in Illinois is housed in numerous, disparate local and state agencies, creating a barrier to a comprehensive understanding of how youth are served by Illinois’ juvenile justice system.

## **II. Core Recommendations**

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The role of defense counsel is critically important to the juvenile court’s adjudicative process and to the futures of the children and families who appear in juvenile court. Without well-trained and well-resourced juvenile defense attorneys, there is no due process and no accountability. Across Illinois there are dedicated attorneys working on behalf of children in the justice system, but they are struggling in a system that is overburdened and under-funded. Juvenile defenders struggle

mightily every day to remain zealous advocates; some, however, succumb to the notion that the juvenile defense attorney plays an insignificant role in juvenile court.

This Assessment makes a number of recommendations that will support reform of an inadequate system for providing effective representation to the scores of children who appear every day in Illinois juvenile courts, most of whom are poor and children of color. Reform of the system of legal representation of children is a critical element in efforts to improve the quality of juvenile justice in Illinois and necessary to return Illinois to the leadership position in juvenile justice that it assumed in 1899.

Key recommendations include:

1. The quality of representation, and a child's meaningful opportunity to be heard in delinquency proceedings, can be dramatically enhanced through the early and timely appointment of counsel. Appointment of counsel should occur as far as possible in advance of the first court appearance in order to allow meaningful consultation between counsel, the child, and the child's family.
2. Children lack the capacity to pay attorneys' fees. The Illinois Legislature should establish a presumption of indigency for children in juvenile court proceedings. This presumption should be rebuttable upon a showing that a child has the financial resources to retain an attorney. Juvenile defense attorneys should play a significant role in opposing inappropriate assessment of attorneys' fees by judges who do not make sufficient allowance for the parties' inability to pay.
3. Children's lawyers must provide zealous advocacy during detention hearings. Special attention should be paid to challenging probable cause when appropriate, as well as providing information to the court as to why it is "not a matter of immediate and urgent necessity for the protection of the minor or of the person, or property of another that the minor be detained..."<sup>4</sup>
4. Judicial admonitions and colloquies must be delivered in developmentally appropriate, clear and easily understandable language.
5. A child cannot be given a meaningful opportunity to be heard without the opportunity to develop a full-fledged attorney/client relationship and without having a clear understanding of the proceedings. Defenders must institute procedures that allow the lawyer and the child to establish rapport and common understanding.

6. Children’s lawyers must themselves become experienced in representing children and adolescents, and have access to and support from professionals with expertise in adolescent behavior, development and needs.
7. The role of probation officers assigned to juvenile courts should be to provide the necessary support and guidance to children involved in the juvenile justice system, but not to dispense legal advice. Lawyers for children should recognize the importance and complexity of the role of probation officers and should work closely with them to advance the interests of their clients.
8. Juvenile defense attorneys must be actively engaged in the discovery and investigation process. It is the obligation of defense counsel to see to it that an adequate investigation is completed before important decisions are made regarding the filing of pre-trial motions, whether or not to take the case to trial, and how to counsel the client and the client’s family regarding the juvenile court proceeding.
9. Continuity of representation should be encouraged in order to ensure that a child’s attorney is thoroughly familiar with the facts of the case and with the child’s background at each stage of the case. In defender systems in which it is impossible to guarantee such continuity because of high caseloads and turnover of personnel, systems should be in place to rigorously ensure that information is transmitted from one attorney to the next.
10. Procedures to expunge a juvenile record should be readily accessible to juvenile defense attorneys and children involved in the juvenile justice system.
11. No child should be brought into the courtroom in shackles except under extraordinary circumstances and with a strong evidentiary showing of immediate risk of harm.
12. This Assessment notes the ambiguity in Illinois law and practice concerning the role of defense counsel in a juvenile delinquency proceeding. This ambiguity centers on whether defense counsel must advocate for the expressed interest of her client or whether defense counsel may advocate for what she believes to be the “best interest” of the child even if that is contrary to the objective sought by the child client. National standards clearly require that lawyers for children must advocate for the expressed interest of their clients. Minors prosecuted under the Juvenile Court Act face significant consequences, ranging from incarceration, broad dissemination of their juvenile court

files, possible registration as sex offenders, and sentencing enhancements. Accordingly, they are entitled to zealous representation by a lawyer who will follow their directions.

13. Pay and resource parity must exist between juvenile defense attorneys and their counterparts in criminal court as well as with the juvenile state's attorneys. Juvenile defense attorneys need access to investigators, experts and social workers and should be given the same resources that are available to the prosecution.
14. Juvenile defense attorneys must receive appropriate periodic training on a variety of topics on juvenile law, including detention advocacy, adolescent development, trial and litigation skills, dispositional planning, and post-dispositional advocacy, including appellate advocacy. Additionally, juvenile defense attorneys should receive training in various substantive issues that affect their clients, including but not limited to police interrogation of children, special education, competency, health and mental health, youth gangs, the special needs of girls, conditions of confinement, immigration and asylum law, and children's human rights.
15. Few defenders have access to state-of-the-art training on recent legal developments or in advocacy techniques. The State Legislature should establish and appropriate sufficient funds to support the creation of an Illinois Juvenile Defender Resource Center to provide legal training, skills training, education in adolescent development, and other specialized resources to support the preparation and practice of juvenile defense attorneys throughout Illinois.<sup>5</sup>
16. Data related to juvenile justice in Illinois must be "readily accessible in a single information system" that is regularly analyzed and available to those in the field and to the general public.<sup>6</sup> Identifying emerging trends, evaluating system functions, and assessing effectiveness are critical to "a comprehensive understanding of how youth are served by Illinois' juvenile justice system."<sup>7</sup>

# INTRODUCTION

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Beginning 40 years ago, almost 70 years after the creation of the world's first Juvenile Court in Cook County, Illinois, the United States Supreme Court issued a series of landmark decisions in which it held that youth in delinquency proceedings must be accorded due process guarantees comparable to those provided to adult criminal defendants.<sup>8</sup> In *In re Gault*,<sup>9</sup> the Court held that youth charged in delinquency courts who face "the awesome prospect of incarceration" have a constitutional right to counsel.<sup>10</sup> Noting that the "absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment," the Court held that a child's constitutional rights are not adequately protected without adherence to the core principles of due process.<sup>11</sup> In addition to the right to counsel, *Gault* also extended to children the right to notice of the charges against them, the privilege against self-incrimination, the right to confront and cross-examine witnesses against them, and the right to appeal.

The Supreme Court later held that a youth cannot be adjudicated delinquent unless his guilt is proven beyond a reasonable doubt,<sup>12</sup> that a delinquency proceeding constitutes being placed "in jeopardy" and bars further prosecution,<sup>13</sup> and that youth have the right to a hearing and an attorney before being transferred to adult court.<sup>14</sup> In sum, the Supreme Court made it clear that "civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile court."<sup>15</sup>

In the wake of these decisions, children accused of delinquent acts were to become participants rather than spectators in court proceedings. Perhaps even more than adults, youth need defenders' assistance to "cope with problems of law, to make skilled inquiry into the facts, to insist upon the regularity of the proceedings, and to ascertain whether [the client] has a defense and to

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The adversarial nature of delinquency court demands that defenders represent the legitimate “expressed interests” voiced by child clients, not their abstract “best interests” as determined by the judge, probation officer or attorney.<sup>17</sup>

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prepare and submit it.”<sup>16</sup> The adversarial nature of delinquency court demands that defenders represent the legitimate “expressed interests” voiced by child clients, not their abstract “best interests” as determined by the judge, probation officer or attorney.<sup>17</sup>

With varying degrees of enthusiasm, states began to address the requirements imposed by the Court’s decisions. Evincing concerns about the rights of children, Congress passed the Juvenile Justice and Delinquency Prevention Act (JJDP Act) in 1974.<sup>18</sup> The JJDP Act created a National Advisory Committee for Juvenile Justice and Delinquency Prevention, charged with developing national juvenile justice standards

and guidelines. The National Advisory Committee Standards, issued in 1980, require that counsel represent children at all stages of delinquency proceedings.<sup>19</sup>

At the same time, leading non-governmental organizations also acknowledged the importance and necessity of special protections for youth in delinquency courts. Beginning in 1971, and continuing over a ten-year period, the Institute for Judicial Administration and the American Bar Association collaborated to produce 23 volumes of comprehensive juvenile justice standards.<sup>20</sup> The final standards, adopted by the ABA in 1982, were designed to establish a juvenile justice system of lasting excellence, one that would not fluctuate in response to transitory headlines or controversies. Moreover, the standards made it clear that juvenile defense must be client-directed. They specifically state that “[c]ounsel for the respondent in a delinquency or in need of supervision proceeding should ordinarily be bound by the client’s definition of his or her interests with respect to admission or denial of the facts or conditions alleged” and by the client’s decision about how to plead.<sup>21</sup>

Upon reauthorizing the Juvenile Justice and Delinquency Prevention Act in 1992, Congress emphasized the importance of lawyers in juvenile delinquency proceedings, specifically noting the inadequacies of the prosecutorial offices and defense delivery systems tasked with providing individualized justice. Congress recognized the need for more information about the functioning of delinquency courts across the country, and called upon the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) to take note of the issue.

In 1993, the American Bar Association Juvenile Justice Center, together with the Youth Law Center and Juvenile Law Center, received funding from the OJJDP to initiate the Due Process Advocacy Project. The purpose of the project was to build the capacity and effectiveness of the juvenile defense bar to ensure that children had access to qualified counsel in delinquency proceedings. One result of this collaborative project was the 1995 release of *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, the first national examination of access to counsel in delinquency proceedings, the quality of legal services provided, and the training and resource needs of juvenile defenders.<sup>22</sup> The report documented the inconsistencies and gaps in legal representation for our country's indigent children, finding that while some attorneys represent youth with the utmost vigor and skill, quality advocacy was uncommon and was impeded by pernicious systemic barriers.

Another result of this collaboration was the creation of the National Juvenile Defender Center (NJDC). The NJDC was created to address the widespread shortcomings revealed in *A Call for Justice* and to develop a permanent capacity to provide training and technical support to juvenile defenders on the front lines across the country. The mission of the NJDC is to ensure excellence in juvenile defense and promote justice for all children.

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**“Youth charged in the formal juvenile delinquency court must have qualified and adequately compensated legal representation” throughout the duration of the delinquency process, including at disposition and post-disposition proceedings.<sup>24</sup>**

**- NCJFCJ's *Juvenile Delinquency Court Guidelines***

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While implementing the recommendations in *A Call for Justice* at the national level, and working closely with judges and lawyers at the state level, the need for state-specific assessments to guide legislative and legal reform was voiced by policy makers and others. In response to this feedback, the NJDC developed new state-specific tools and strategies and refined the overall assessment methodology in order to conduct comprehensive examinations of access to counsel and quality of representation in individual states, regions, counties and local jurisdictions.<sup>23</sup>

Other professional organizations have also begun to recognize the importance and specialized nature of defense advocacy in delinquency proceedings. In 2005, the National Council of Juvenile and Family Court Judges released the extremely comprehensive *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases*. These *Guidelines* state that “youth charged

in the formal juvenile delinquency court must have qualified and adequately compensated legal representation” throughout the duration of the delinquency process, including at disposition and post-disposition proceedings.<sup>24</sup> That same year, the American Council of Chief Defenders of the National Legal Aid and Defender Association, in partnership with the NJDC, released *Ten Core Principles for Providing Quality Delinquency Representation through Indigent Defense Delivery Systems*, underscoring the fundamental importance of counsel in delinquency court.<sup>25</sup>

Building on this momentum, the Children and Family Justice Center received a grant from the John D. and Catherine T. MacArthur Foundation and launched the Illinois Juvenile Defense Assessment Project. This project is part of the MacArthur Models for Change initiative<sup>26</sup> which is currently engaged in four states: Illinois, Louisiana, Pennsylvania and Washington. The project set out to conduct an independent assessment of juvenile defense practices across Illinois as a predicate for improving and enhancing the legal representation received by children in conflict with the law. The Assessment examined systemic and institutional barriers that impede a lawyer’s ability to provide effective legal representation to indigent children within the Illinois juvenile justice system, while also documenting strengths and promising juvenile defense practices.

This report contains both findings and recommendations. The report is intended to provide useful information to policy makers and leaders in juvenile justice, as well as to lawyers for children, to enable them to make more informed decisions regarding the nature and structure of juvenile indigent defense systems across Illinois.

## I. Methodology

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The methodology utilized to create this report has been proven successful in 15 other states. However, the assessment process and protocols were tailored to focus on Illinois-specific policies and practices. As an initial step, the project coordinators convened an expert advisory board to oversee the project. The Advisory Board, comprised of professionally and geographically diverse individuals, represented distinct perspectives on Illinois’ juvenile justice system. The Advisory Board members’ input was invaluable in identifying key stakeholders across Illinois, developing an effective approach for gaining access to and collaboration with the courts and courtroom participants, and selecting counties to ensure that the counties visited were representative of the entire state. The Advisory Board not only provided critical information and ongoing advice, but also helped obtain essential Illinois sponsorship, endorsement and support.

To garner statewide participation, meetings were conducted across the state and telephone outreach with various stakeholders was extensive. Eight state and national organizations collaborated on the project.<sup>27</sup> In addition, the following organizations, representing the key participants in juvenile delinquency proceedings, provided letters in support of the project: the Illinois Judges Association; the Illinois Public Defender's Association, the Illinois State's Attorney Association, and the Illinois Probation and Court Services Association.

The project collected statewide census data (e.g. population, racial composition and income); statistical data related to the number of petitions filed, adjudications, youth in detention, youth transferred to adult criminal court and youth committed to IDOC, and jurisdictions with and without juvenile justice reform projects; and numerous reports, summaries, and articles written on the juvenile justice system in Illinois. With advice and support from colleagues at the University of Chicago's Chapin Hall and the Advisory Board, the project made the selection of representative jurisdictions for site visits.

Using NJDC's standardized interview protocols, which were specifically tailored for Illinois, two assessment team members<sup>28</sup> conducted structured interviews with all juvenile court professionals<sup>29</sup> and as many youth and family members as possible in each of the selected counties. The teams observed judicial proceedings and toured detention centers. To the extent possible, they collected additional statistical and documentary evidence while on site.

All counties visited, courtrooms observed, and people interviewed will remain confidential. By promising anonymity, the project sought to ensure that interviewees felt comfortable speaking frankly to the team members. The focus of this project is not on specific counties or individuals, but on the Illinois juvenile indigent defense system as a whole.

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## II. Geographical Considerations

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In approaching the assessment, the board members and investigators were cognizant of the differences that exist between the rural/small counties (population of 4,000 to 60,000); mid-sized counties (populations of 60,001 to 180,000); and large counties (populations over 180,001) in terms of size, demographics, needs, resources, types of offenses, available resources, etc. Many of the interviewees in the rural and mid-sized counties commented that they were not like Cook County and cautioned assessment team members not to attempt to force Cook County practices or expectations on them. However, we also found that many of the challenges facing Illinois defenders and child clients crossed geographical lines and juvenile court participants in small and large counties have more in common than they might guess. In addition, some of the best practices can easily be replicated in different sized counties. Most, if not all, of the findings and recommendations apply with equal force to all counties, regardless of size and demographics.

# CHAPTER ONE:

## Structure of the Illinois Juvenile Justice System

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### I. Structure of the Illinois Court System

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Illinois consists of 102 counties covering 55,584 square miles.<sup>30</sup> Using data described in the methodology section, a representative sample of 16 counties were selected for site visits. The counties visited represented 63% of all youth under the age of 18 living in Illinois<sup>31</sup> and vary in size, location and demographics. The selected counties allowed for the collection of data reflective of juvenile indigent defense practices across Illinois.

The state is divided into 22 judicial circuits. Three circuits have one county each,<sup>32</sup> while the remaining circuits consist of 2 – 12 counties. The circuit courts of Illinois are courts of original jurisdiction. Generally, each county has its own circuit court authorized to hear a wide variety of civil and criminal cases.<sup>33</sup> Both circuit judges and associate judges hear cases in circuit courts. The more populous counties may have a designated juvenile court or designated juvenile courtrooms. However, in the majority of Illinois circuits, no one courtroom is designated exclusively as juvenile court; rather, judges may either be assigned to hear juvenile cases for a set period of time or judges may be assigned juvenile cases on a rotating basis.<sup>34</sup>

The Illinois Appellate Court is divided into five judicial districts. The First Judicial District is comprised solely of Cook County; the other four districts consist of the remaining counties. The Office of the State Appellate Defender, which handles most of the direct appeals of juvenile cases, has five regional offices located in each of the appellate judicial districts. The State of Illinois funds the Office of State Appellate Defender.

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## II. Relevant Juvenile Justice Data & Statistics

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“Created in 1983, the Illinois Criminal Justice Information Authority is a state agency dedicated to improving the administration of criminal justice. The Authority works to identify critical issues facing the criminal justice system in Illinois, and to propose and evaluate policies, programs, and legislation that address those issues.”<sup>35</sup> The Illinois Criminal Justice Information Authority received a grant from the Illinois Juvenile Justice Commission to create the Juvenile Justice System and Risk Factor Data for Illinois: 2004 Annual Report, which provides the most comprehensive report of juvenile justice data across Illinois.<sup>36</sup> It is important to note that data related to juvenile

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“...juvenile justice data in Illinois is housed in numerous and disparate local and state agencies creating a barrier to a comprehensive understanding of how youth are served by Illinois’ juvenile justice system.”<sup>37</sup>

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justice in Illinois “is not readily accessible in a single information system. Instead, juvenile justice data in Illinois is housed in numerous and disparate local and state agencies creating a barrier to a comprehensive understanding of how youth are served by Illinois’ juvenile justice system.”<sup>37</sup> The following are statistics from that report that bear particular relevance to the background and context in which this Assessment was conducted.

### Arrests<sup>38</sup>

The Illinois Criminal Justice Information Authority utilizes the Illinois State Police’s Computerized Criminal History (CCH) system to obtain their arrest data. The Criminal Identification Act (20 ILCS 2630/5) mandates that an arrest fingerprint card be submitted for all children 10 and over who are arrested for an offense that would be a felony if committed by an adult or any motor vehicle offense.

The reporting of misdemeanors (including station adjustments for misdemeanors) is not mandated. All station adjustments for felonies must be reported.<sup>39</sup> Thus, data on the number of youth arrests should be viewed “as a conservative estimate, and not an absolute measure of juvenile crime in Illinois.”<sup>40</sup> From 2000 to 2004, there was an increase in the number of juvenile arrests from 38,246 to 45,731.<sup>41</sup> Though African American youth make up 15.1% of the population of children in Illinois, they constituted approximately 59% of the children arrested.<sup>42</sup> About 22% of those arrested in 2004 were girls.<sup>43</sup> The breakdown of types of arrests was as follows: 32%

for property offenses; 26% for violent or person offenses; 13% for drug offenses and 0.9% for sex offenses.<sup>44</sup>

### Delinquency Petitions<sup>45</sup>

The number of petitions filed from 1994 to 2004 decreased from 31,161 to 21,859.<sup>46</sup> However, this decline was partly due to a 45% decline of filings in Cook County from 1994 to 2004.<sup>47</sup> It is important to note that prosecutors in almost 50% of all Illinois counties filed more petitions in 2003 than in 1994.<sup>48</sup>

### Adjudications<sup>49</sup>

Adjudications across the state have fluctuated from 1993 to 2004. Adjudications statewide increased from 1993 to 1998.<sup>50</sup> However, adjudications decreased from 13,137 in 1998 to 6,619 in 2003.<sup>51</sup> Although in 2004 adjudications increased to 8,535, this is still a 28% decrease from the number of adjudications occurring in 1999 (11,872).<sup>52</sup> Even with the overall decrease in petitions filed since 1998, 45 counties experienced an increase in adjudications from 1998 to 2003.<sup>53</sup>

### Detention<sup>54</sup>

Admissions to secure detention decreased 9% from 18,425 in 1994 to 16,618 in 2004.<sup>55</sup> However, in 2003 there were only 10,360 admissions to secure detention.<sup>56</sup> This marks approximately a 62% increase in the number of secure detentions from 2003 to 2004.<sup>57</sup> Of the youth who were in secure detention in 2004, 57% were African American (or identified as African American), 30% were Caucasian, and 11% were Hispanic. Twenty-five percent of the admissions were due to a violent offense, 23% were due to warrants, and 22% were due to property offenses.<sup>58</sup>

### Transfer

Until 2000, transfer data was reported to the Administrative Office of the Illinois Courts. Currently, the Juvenile Monitoring Information System (JMIS) is the only agency that keeps statewide transfer data and their information is based on which youth admitted to detention had their cases transferred to adult court.<sup>60</sup>

According to the data collected in 2004 by JMIS and reported by the Illinois Criminal Information Authority, there were a total of 42 transfers to adult court (15 for discretionary transfers and 27 for automatic transfer), and Cook County data was not available for this time period.<sup>61</sup>

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**“...over 90% of the youth affected under the mandatory transfer laws were youth of color...”**

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From October of 1999 to September of 2001, the Law Office of the Cook County Public Defender developed a Juvenile Transfer Advocacy Unit (JTAU) which was designed to investigate automatic transfer. JTAU found that from 2000 to 2001, there were 438 transfers in Cook county to adult court and “over 90% of the youth affected under the mandatory transfer laws were youth of color.” Sixty-six percent were drug offenders, 45% had no “previous referrals to the juvenile court prior to the automatic transfer,” and “68% had no previous services in the juvenile court prior to the automatic transfer.”<sup>62</sup> The data demonstrates that transfer to “to adult court is generally found in counties with large, urban populations.”<sup>63</sup>

### Illinois Department of Corrections<sup>64</sup>

Children can be committed to the Department of Corrections (currently the Department of Juvenile Justice) either for an indeterminate commitment<sup>65</sup> due to their adjudication or for a court evaluation.<sup>66</sup> In 2004, 1,691 children were committed to the Department of Corrections, which is about 19% more than the number of children committed in 2003.<sup>67</sup> Furthermore in 2003, 15 counties did not commit any of their children to the Department of Corrections;<sup>68</sup> whereas in 2004, only 7 counties reported that they did not commit any children to the Department of Corrections.<sup>69</sup> Of the number of children committed to the Department of Corrections in 2004, 798 were for delinquency commitments, 821 were for court evaluations, and 72 were for recommitments.<sup>70</sup>

## III. Structure of the Illinois Indigent Defense System

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In general, states across the country organize indigent defense systems either at the state level or at the county/regional level. If organized at the state level, the state will have some degree of responsibility and oversight as to the delivery of indigent defense services thereby creating some degree of uniformity across the state. A county/regional based indigent defense system delegates the responsibility of organizing and operating an indigent defense system to an individual county or group of counties.<sup>71</sup> The Illinois indigent defense system does not fit neatly into either of these categories. Rather, the structure of the indigent defense system is based on the county’s size and population; funding for the indigent defense system comes from the County treasury, with the salary of the Chief Public Defender coming from both the State and County treasury.<sup>72</sup>

There are three basic types of juvenile indigent defense systems in Illinois:

- (1) A full-time Chief Public Defender with full time attorneys (i.e. assistant public defenders);

- (2) A full-time Chief Public Defender with (a) full or part-time attorneys (i.e. Assistant Public Defenders) and/or (b) full or part-time contract attorneys who may refer to themselves as assistant public defenders; and,
- (3) A part-time Chief Public Defender and possibly part/full-time contract attorneys. Although there is no set formula for appointing contract attorneys, it appears that these attorneys need either the approval of the local County Board or the Chief Judge before they are given contracts to handle juvenile delinquency cases.<sup>73</sup>

Counties in Illinois with populations over 35,000 must have an Office of the Public Defender. In counties with populations over 35,000 but under 1,000,000, the judges of the circuit court of the circuit where the county is located appoint a qualified person to the position of Public Defender.<sup>74</sup> In counties over 1,000,000,<sup>75</sup> the President of the county board, with the advice and consent of the board, appoints the Public Defender. In counties with populations under 35,000 (over 50% of the counties in Illinois), the county board, by resolution, may create the Office of the Public Defender.<sup>76</sup> The majority of these smaller counties have at least a part-time Public Defender.<sup>77</sup>

Public defenders in counties with a population under 1,000,000 have the power to appoint assistants that the judges deem necessary for the proper discharge of the duties of the office.<sup>78</sup> The Public Defender in counties with a population over 1,000,000 appoints assistant Public Defenders. The judges' approval is unnecessary for the appointment of assistants in these counties.<sup>79</sup> Counties with populations under 35,000 utilize part-time contract defenders or assigned counsel who are often referred to as assistant public defenders.<sup>80</sup> The compensation for the assistants in these smaller counties is fixed by the County Board and paid from the County Treasury.<sup>81</sup>

Since 2002, the State treasury has been required to pay 66 2/3 % of the chief public defender's annual salary.<sup>82</sup> If the chief public defender is employed full-time, his or her salary must be at least 90% of that county's state's attorney's annual salary.<sup>83</sup> Although this rule went into effect on July 1, 2002, no state funding was provided until the current appropriations bill (P.A. 094-0798), which went into effect on July 1, 2006. Through this appropriations bill, funding was made available for the State's share of county public defenders' salaries. This new funding gives full-time public defenders an opportunity to receive an increase in salary, as many are paid below the 90-100% range of their county's state's attorney's salary.<sup>84</sup>

County boards are responsible for providing office space for the public defender and for paying for travel and other expenses incurred in the defense of cases. Counties with a population of

less than 500,000 must have all expenses approved by the circuit court before seeking funds from the County.<sup>85</sup>

Attorneys appointed by the court to represent indigent children in juvenile court may be compensated by a reasonable rate set by a local rule, but the rate cannot be less than \$75 per hour for in court work and \$50 per hour for out-of-court work.<sup>86</sup> The statute sets the maximum amount of \$750 if the case is a misdemeanor; and if the client is charged with more than one felony, the attorney can receive up to \$5,000 in fees.<sup>87</sup> Although the statute is not specific to juvenile clients it references indigent parties thereby making this law applicable to attorneys appointed to represent indigent children in juvenile court.

The Illinois Assessment team recruited David Olson, an experienced researcher and academic with substantial experience in researching funding mechanisms for legal representation of youth involved with the juvenile justice system,<sup>88</sup> to analyze the data from the annual county financial reports submitted to the Illinois Comptroller's Office by each individual county in this study. Based on his review of the data, Mr. Olson found that expenditures for the State's Attorneys office exceeded those of the Public Defender's Office in all 14 counties. On average the expenditures from each of the county's State's Attorney's Office exceeded those of the Public Defender's Office by a ratio of 2.6:1, meaning that for every dollar spent on public defense, 2.6 dollars were spent on prosecution. This inequality is reflected in attorney salaries, as well as in litigation support, such as investigators, experts, and staff administrators.

# CHAPTER TWO:

## Background on the Juvenile Justice System in Illinois

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### I. Right to Counsel in Delinquency Proceedings in Illinois

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Although *Gault* established that children in delinquency proceedings have the right to counsel, the application of this law varies across states. In some states, children receive attorneys only in certain proceedings, while in other states children are allowed to waive their right to counsel.<sup>89</sup> Illinois has taken a strict approach to the right to counsel. Under the Illinois Juvenile Court Act, all children have the right to an attorney at every stage of juvenile court proceedings, including detention hearings.<sup>90</sup> Illinois law prohibits children under the age of 17 from waiving their right to counsel in any judicial proceeding.<sup>91</sup> Minors under the age of 13 suspected of committing certain homicide and sexual offenses are guaranteed the right to counsel during custodial interrogations.<sup>92</sup> In addition, the court will appoint a Guardian *Ad Litem* (“GAL”) for a child in delinquency proceedings when it finds that there is a conflict of interest between the child and his parent or that it is in the child’s best interest to have a GAL appointed. But in some courts, judges appoint a single person to serve as the child’s attorney and GAL.<sup>93</sup>

### II. Role of Counsel in Delinquency Proceedings in Illinois

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Children charged with delinquent acts are entitled to effective assistance of counsel in proceedings under the Illinois Juvenile Court Act.<sup>94</sup> The role that the attorney must play in these proceedings is critical, complex and multifaceted. Yet, many juvenile defenders expressed

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confusion as to their ethical obligations and responsibilities to their clients. It can be difficult in a juvenile court structure that relies on a judge-driven, best interest style of justice for a defender to effectively do her job. Lawyers often felt that the unique nature of delinquency proceedings required them to focus on what they perceived to be in their client's best interest. Under the "best interest" model of representation, a lawyer may forgo challenging the State's evidence, even when the case is weak or there is a viable defense, if she believes that the only way she can access "treatment or services" for her client is by having the client adjudicated delinquent. This

in turn leaves the court-involved child, who may be facing lifelong negative consequences, legally vulnerable.

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**"Best Interests" Model of Representation:**

The lawyer focuses on what he/she perceives to be in his/her client's best interest.

**"Client Directed" Model of Representation:**

The lawyer allows the competent client to decide the objectives of representation.<sup>95</sup>

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Conversely, under the expressed interest or "client directed" model of representation, the lawyer allows the competent client to decide the objectives of representation.<sup>95</sup> Although the attorney may disagree with the client's position, and may believe that pursuing the client's stated objective is not in his "best

interest," the lawyer will nevertheless follow the client's direction.<sup>96</sup> To be sure, the attorney will counsel the client and identify what she perceives as the disadvantages and dangers of the client's choice, but will ultimately follow the client's instructions.

Both the Illinois Professional Rules of Conduct and the IJA/ABA Juvenile Justice Standards call for the client-directed model of representation.<sup>97</sup> Accordingly, if the attorney believes that the minor is not capable of making an informed judgment or is compromised in some way, she can request that the court appoint a guardian *ad litem* specifically for the purpose of representing the client's "best interest."<sup>98</sup> Under Illinois Professional Conduct Rule 1.2 (a), the lawyer is required to abide by the client's decisions regarding the objectives of representation.<sup>99</sup> Rule 1.14 provides that, when a client's ability to adequately make considered decisions regarding representation is impaired, due to "minority, mental disability, or some other reason" the attorney is required to maintain, as far as reasonably possible, a normal attorney-client relationship.<sup>100</sup> The rule allows the attorney to seek the appointment of a guardian or to take other protective action if she believes that the minor cannot adequately protect his own interests.<sup>101</sup>

Nevertheless, there is still some debate on the question of which model of representation an attorney is required to follow. Illinois case law does not provide a clear answer. The only case that directly addresses the question of the role of the attorney is a Fourth District case decided over 20 years ago, before the 1987 and 1998 revisions to the Juvenile Court Act. In *In the Interest of K.M.B.*,<sup>102</sup> the Illinois Appellate Court held that at the *dispositional* stage of the proceedings, a lawyer has a duty to make recommendations to the court as to what is in the child's best interest, even when the recommendations are in conflict with the child's wishes.<sup>103</sup> *K.M.B.* is silent on the role of the attorney throughout other proceedings in juvenile court. Consequently, some Illinois attorneys follow the expressed interest model pre-adjudication and allow the minor to direct the litigation, but switch to a best-interest model after the child has been adjudicated delinquent. Others believe that their clients direct the litigation at all stages, while some adopt a best interest approach throughout.<sup>104</sup>

### III. Changes to the Illinois Juvenile Court Act

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A child's right to counsel is even more important in light of the 1998 revisions made to the Illinois Juvenile Court Act, which in some ways made the Act more punitive. Approximately 90 years after the creation of the first Juvenile Court in Illinois, the nation once again began viewing children as mini-criminals. The portrayal of children as violent creatures, lurking behind bushes, cars and buildings ready to attack, spread rapidly. The term 'super-predator' emerged as a label for what some saw as a generation of young people who were more cold-hearted and violent than their predecessors.<sup>105</sup> During the 1990s, certain noted criminologists began forecasting a wave of super-predators spreading across the U.S. Representative Bill McCollum warned a Congressional subcommittee in April 1996 to "brace yourself for the coming generation of 'super-predators.'"<sup>106</sup> This led to more policies aimed at getting tough on juvenile offenders.

The Illinois General Assembly passed the Juvenile Justice Reform Provisions of 1998 which "represented a fundamental shift from the singular goal of rehabilitation to include the overriding concerns of protecting the public and holding juvenile offenders accountable for violations of the law."<sup>107</sup> The Act also includes language promoting the Balanced and Restorative Juvenile Justice Model which focuses on accountability of the offender; development of competencies (educational, vocational, life skills); and protection of the community. The Juvenile Justice Reform Provisions of 1998 tend to be interpreted in one of two ways: (1) it created an Act that was more punitive and harsh toward children<sup>108</sup> or (2) it created an Act that that established a balanced and restorative approach to juvenile justice thereby meeting the needs of the offenders, the victims

and the community.<sup>109</sup> Those who view the 1998 Juvenile Court Act as more punitive point to the fact that it expands the conditions under which a minor can be transferred to adult court, shifts the focus from the needs of the child to the nature of the alleged offense,<sup>110</sup> mandates that children who are adjudicated delinquent of certain offenses or with particular adjudicatory backgrounds be committed to the Department of Juvenile Justice until the age of 21,<sup>111</sup> expands access to and sharing of a child's school and court records between law enforcement, schools and other agencies,<sup>112</sup> and lengthens the amount of time a child may be held at a police station.<sup>113</sup>

Those who view the Act as addressing more comprehensively the needs of the child and the community point to provisions that encourage counties to develop community mediation programs and teen courts in order to allow the child to be "dealt with" in the community rather than juvenile court, to create diversion and intervention programs,<sup>114</sup> to create informal and formal station and probation adjustments<sup>115</sup> (which allows a child to accept responsibility while avoiding delinquency court), and to create the Extended Juvenile Jurisdiction Prosecution provision, which was intended to serve as an alternative to transfer to adult court.<sup>116</sup>

Regardless of interpretation, it has now become clear that the stakes for youth in delinquency court proceedings are higher than ever before, making quality legal representation for youth even more critical.<sup>117</sup>

# CHAPTER THREE:

## The Juvenile Justice Process in Illinois

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### I. Purpose of the Illinois Juvenile Court Act

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The goal of the Illinois Juvenile Court Act is to “protect the community, impose accountability for violations of law and equip juvenile offenders with competencies to live responsibly and productively.”<sup>118</sup> The Illinois Juvenile Court Act defines “competency” as the “development of educational, vocational, social, emotional and basic life skills which enable a minor to mature into a productive member of society.”<sup>119</sup>

### II. Jurisdiction

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The Illinois statutes define a delinquent minor as any child under 17 who violates or attempts to violate any federal or state law, county or municipal ordinance.<sup>120</sup> With notable exceptions that exclude minors from juvenile court jurisdiction,<sup>121</sup> circuit courts have exclusive jurisdiction over any child under the age of 17 who violates or attempts to violate the law.<sup>122</sup> The circuit court can retain jurisdiction over the child until the child turns 21.<sup>123</sup>

For the past two years, Illinois legislators have made attempts to raise the age of juvenile court jurisdiction to age 17, to join the majority of states recognizing that a child is a person under the age of 18. House Bill 1517 was an attempt to raise the age of juvenile court jurisdiction to 17 for

any child who commits a misdemeanor. It passed the House on April 25, 2007 and the Senate on May 25, 2007; however, on June 20, 2007, the Bill did not receive a concurrence vote in the House.<sup>124</sup>

### III. Venue

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Venue for a child charged with a delinquent act may be (1) where the child lives, (2) where the alleged violation or attempted violation occurred, or (3) in the county where the order of the court was made.<sup>125</sup> If court proceedings commence in a county where the child does not reside, the court can transfer the case to the court in the county where the child resides.<sup>126</sup>

### IV. Confidential Proceedings

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All delinquency proceedings are confidential and closed to the public, although not to the media.<sup>127</sup> Keeping the court proceedings confidential prevents children from being stigmatized by the public and their communities, and without the ignominy, children may have greater potential for rehabilitation.

### V. Custody & Detention

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Detention is the “temporary care of a minor who is alleged to be or has been adjudicated and requires secure custody for the minor’s own protection or the community’s protection.”<sup>128</sup> A child who is taken into custody and detained must be brought in front of a hearing officer within 40 hours.<sup>129</sup> A child can only be detained beyond the initial 40 hours if the judge finds (1) that probable cause exists to believe the minor committed the delinquent act<sup>130</sup> and (2) it is of immediate and urgent necessity for the protection of the child, others or property to keep the child detained.<sup>131</sup> For the purposes of the detention hearing the determination of probable cause can be based on testimony or proffer.<sup>132</sup>

If probable cause exists, the court must decide whether there is an urgent and immediate necessity for the protection of the child or of the person or property of another to detain the child pre-adjudication.<sup>133</sup> The court considers four factors when making this determination: (1) nature and seriousness of the alleged offense; (2) minor's record of delinquency offenses; (3) minor's record of failing to appear in court; and (4) the availability of non-custodial alternatives.<sup>134</sup>

## VI. Diversion

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The Illinois General Assembly has recognized the importance of implementing intervention programs to redirect youth and thus created different interventions to help "treat" the child within the community as a means of delinquency prevention and intervention.<sup>135</sup> Diversion options include, formal and informal "station adjustments",<sup>136</sup> probation adjustments<sup>137</sup> and community-based mediation or restorative justice programs.<sup>138</sup> The child always has the option to refuse diversion and go to court.

## VII. Petition & Answer

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Proceedings against a minor are instituted by a Petition.<sup>139</sup> A child must be informed of the charges against him at his first appearance (arraignment), at which time the child must either plead guilty, guilty but mentally ill, or not guilty.<sup>140</sup>

## VIII. Competence to Stand Trial

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In Illinois, the defendant is presumed competent to stand trial. The Illinois Code of Criminal Procedure governs the procedure in juvenile court for assessing fitness when there is a bona fide doubt regarding fitness.<sup>141</sup>

## IX. Adjudication

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If the minor is in detention, with limited exceptions, his trial must take place within 30 days or the earliest possible date, but cannot exceed 45 days from the date of the detention order.<sup>142</sup> While compliance with this statutory time limit is mandatory, its application is inconsistent. Any party may enter a written demand for a trial within 120 days.<sup>143</sup>

The State must prove the child is guilty beyond a reasonable doubt. The child has the right to confront witnesses, present witnesses in his own defense, and to testify. Except in circumstances where the right to a jury trial is set forth in the statute, a child in delinquency court does not have a right to a jury trial.<sup>144</sup>

## X. Sentencing/Disposition Hearing

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The goal of the sentencing hearing is to determine if the child should become a ward of the court and if so what the proper disposition is for “serving the interests of the minor and the public.”<sup>145</sup> The court can order a social investigation report to help determine the appropriate services for the child.<sup>146</sup> The rules of evidence are relaxed during the sentencing hearing and therefore all evidence that can help the court make their decision and determination is admissible.<sup>147</sup> Sentencing options range from a community based placement<sup>148</sup> to commitment in the Department of Juvenile Justice for a determinate or indeterminate period of time.<sup>149</sup>

## XI. Department of Juvenile Justice

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On November 17, 2005, Illinois Governor Blagojevich signed into law Senate Bill 92 which created a new Illinois Department of Juvenile Justice, effective on July 1, 2006. The passing of this law separates the juvenile justice division from the Department of Corrections into its own agency. The goal in creating a separate Department of Juvenile Justice is to enable the Department of Juvenile Justice to provide more therapeutic and rehabilitative services to children involved with the juvenile justice system. It is hoped that the new Department

of Juvenile Justice will help reduce the number of children who re-offend and return to the juvenile justice system,<sup>150</sup> and improve conditions of confinement for those children deprived of their liberty in Illinois.

## XII. Duration of Wardship & Discharge Proceedings

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All proceedings under the Illinois Juvenile Court Act terminate upon the child reaching the age of 21, unless the child was prosecuted under the Extended Jurisdiction Juvenile Prosecution and violated the terms (thereby receiving the adult sentence)<sup>151</sup> or was transferred to the adult criminal court system under one of the transfer laws. However, if it is in the best interests of the child and the public, the court may terminate the wardship of the child and discharge and close the child's case before the child turns 21.<sup>152</sup>

## XIII. Appeals

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A child has the right to appeal the ruling from the final judgment in a delinquency proceeding. Rules applicable to criminal cases govern the appeal process for appealing a juvenile's case.<sup>153</sup> Pursuant to Illinois Supreme Court Rule 605(c) the judge must inform the child of his right to an appeal. If the child is found to be indigent and wants to appeal his case, the court will appoint counsel and provide transcripts of the adjudicatory and dispositional hearings at no cost to the child.<sup>154</sup> A post-admission or post-disposition motion pursuant to Illinois Supreme Court Rule 604(d) must be filed when a juvenile wishes to appeal a guilty plea.

The Office of the State Appellate Defender is a state agency created by the State Appellate Defender Act.<sup>155</sup> The principal function of the Office of the State Appellate Defender is to represent indigent persons on appeal in criminal and juvenile delinquency cases when appointed by the Illinois Supreme Court, the Appellate Court or the Circuit Court. From June of 2005 to June of 2006 the Office of the State Appellate Defender handled 96 appeals arising out of juvenile delinquency cases.<sup>156</sup>

## XIV. Children Tried as Adults

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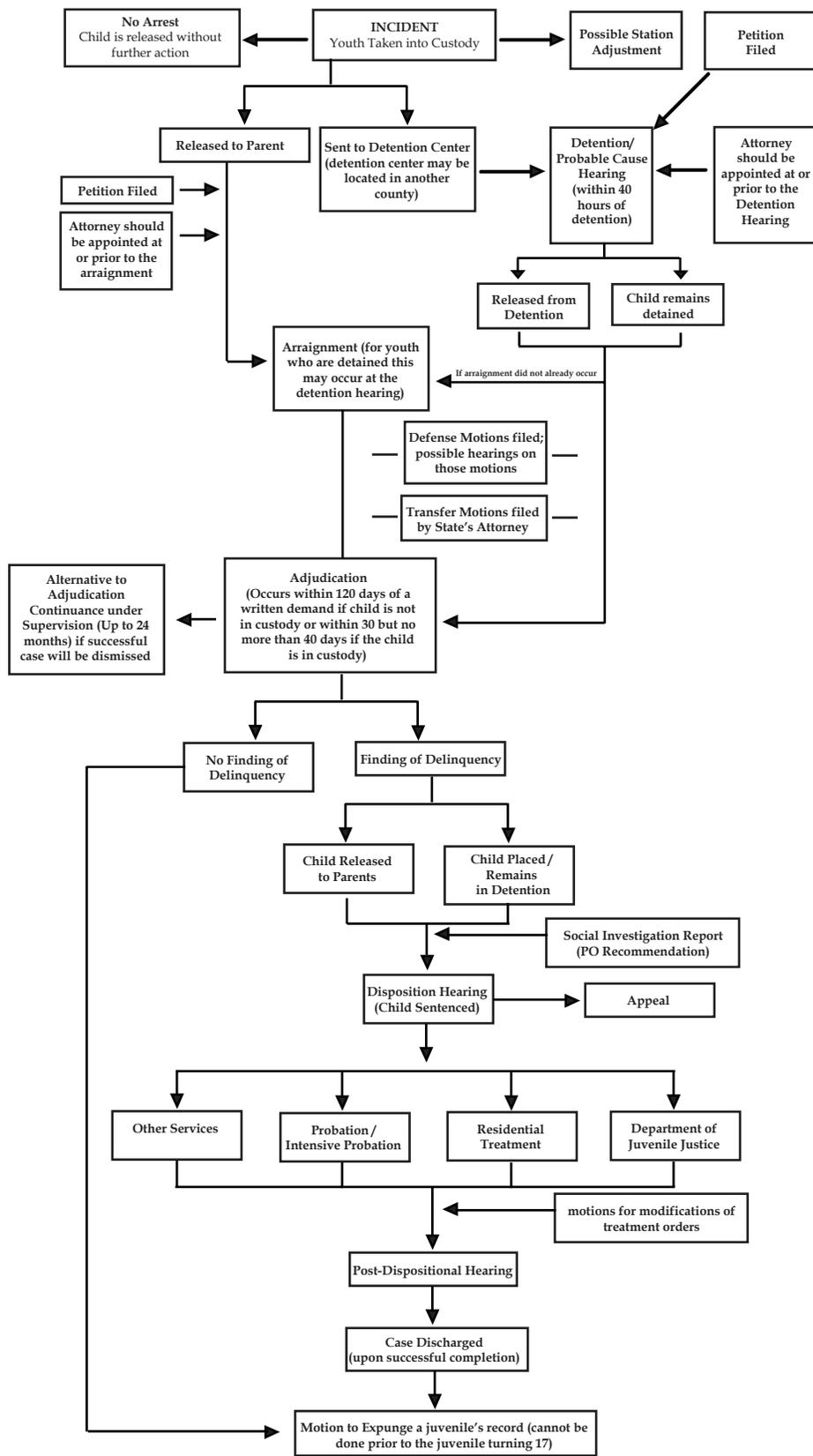
Not all arrested children receive the benefits of the Illinois Juvenile Court Act. Depending on the alleged offense and the child's age, his case may be tried in the adult criminal court system. For some 15 and 16 year olds their cases may be excluded from the jurisdiction of juvenile court (i.e. automatic transfer)<sup>157</sup> or fall under the mandatory transfer laws<sup>158</sup> that give the prosecutor almost absolute discretion in deciding to transfer a case to adult court. The charging decision of the prosecutor dictates whether the minor is prosecuted in juvenile or adult court. Judges do not have the discretion to keep these cases in juvenile court.<sup>159</sup>

A minor may also be transferred to adult court under the presumptive or discretionary transfer provisions. The presumptive transfer provision creates a rebuttable presumption that the juvenile is not fit and proper for treatment under the Juvenile Court Act. In order to avoid transfer, a minor must prove, by clear and convincing evidence, that he would be amenable to care, treatment, and training offered through the juvenile court.<sup>160</sup> Under the discretionary transfer provision, the state may file a motion to transfer a child's case to adult criminal court, regardless of the alleged offense, if the child is at least thirteen years old, and probable cause exists to believe the minor committed the offense.<sup>161</sup> However, the juvenile court has the discretion to reject the transfer if it finds that it is in the best interests of the child to proceed under the Juvenile Court Act.

Any child who is convicted in adult criminal court will have any subsequent cases filed in adult criminal court.<sup>162</sup>

Under the Extended Jurisdiction Juvenile (EJJ) Prosecution provision of the Juvenile Court Act, the State's Attorney may file a motion to designate a proceeding as an EJJ prosecution, which is intended to be an alternative to transfer.<sup>163</sup> A minor whose case is designated an EJJ prosecution is entitled to a jury trial. Upon a finding of guilty, the child receives a "blended" sentence which permits the court to impose two sentences on the child, a juvenile and an adult sentence. The adult sentence is stayed pending the successful completion of the juvenile sentence. If the child violates any provisions of the juvenile sentence, the State can file a motion to lift the stay of the adult sentence.<sup>164</sup>

# XV. Juvenile Justice Process Chart





# CHAPTER FOUR:

## Assessment Findings

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In Illinois there are wide variations in the quality of representation that children who face delinquency proceedings receive. While many juvenile defenders share a genuine concern for the children they serve and provide excellent legal representation, zealous legal advocacy at all stages of the court proceedings on behalf of children is not widespread. This report is not an attempt to cast blame on any individual juvenile defender but rather an attempt to recognize that even the most skilled defender sometimes finds the institutional and systemic barriers to quality representation insurmountable.

The discussion that follows is an attempt to offer a glimpse of the juvenile justice system in Illinois. As discussed in the methodology section, the findings are a report of the observations and interviews made by our investigators in 16 representative counties visited as part of the Assessment.

### I. Access to Counsel

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#### A. Timing & Appointment of Counsel

Pursuant to 705 ILCS 405/1-5, an attorney must represent a minor in delinquency proceedings. However, in almost one-third of the counties visited, minors who were not in custody were not appointed an attorney until the conclusion of the first appearance. It is at this time that the judge informs the minor of the allegations contained in the Petition. In some counties, it was observed that during the first appearance the judge placed the minor and his parents

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**In almost one-third of the counties visited, minors who were not in custody were not appointed an attorney until the conclusion of the first appearance.**

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under oath in order to obtain information such as dates of birth and addresses. However, at least one judge asked more extensive questions at this time about the minor's grades and disciplinary records, activities, etc. While these questions may not bear directly on the allegations in the Petition, the youth is at risk of making disclosures that could later impact the disposition phase of the case. Consequently, a minor would benefit from having an attorney present to assist him in answering questions posed by the court.

In Illinois, a child is not permitted to waive the right to counsel.<sup>165</sup> With limited exception, judges in Illinois strictly adhered to the requirements of this statute and did not allow minors to waive counsel. However, in one small county, a judge estimated that children are unrepresented in approximately one third of the cases, typically for first-time alcohol offenses. In this county, the State's Attorney routinely approaches the minor's family immediately prior to the child's first appearance and secures a guilty plea in exchange for an order continuing the case under supervision. This bargaining is done without the benefit of counsel. When the site investigator reviewed case files, she found that minors waived counsel at the first appearance in 7 of 15 cases (ranging from unlawful consumption of alcohol to theft). Four of these cases resulted in admissions with sentences of probation, while two resulted in orders continuing the case under supervision.<sup>166</sup> In five of these cases, including the ones that resulted in supervision, the prosecutor subsequently filed petitions to revoke probation, thereby subjecting the unrepresented minor to more serious sanctions.

## **B. Indigency Determinations**

There are no standardized written procedures or consistent practices for making indigency determinations for children involved with the juvenile justice system. The majority of counties visited engaged in some sort of indigency assessment of the child's family to determine whether appointment of counsel was warranted. As outlined below, significant differences existed between counties in terms of which children received a court-appointed lawyer and under what circumstances.

In close to one-third of the counties visited, children were automatically appointed counsel at the first court appearance, without an indigency assessment. Of those counties that automatically provided counsel, judges may assess attorney's fees, DNA extraction fees, probation costs, and other surcharges, on the child or the parents with little or no consideration given to indigency status. Attorney's fees ranged from \$30-\$100.<sup>167</sup> One judge levies fees of \$300 plus probation costs in 80% of all cases.<sup>168</sup> Depending on the judge and the jurisdiction, the fees may or may not be pursued prior to closing the case. In some counties visited, judges refuse to close a case if there are outstanding fees, while in other counties cases are closed despite the fact that the minor owes outstanding court costs.

Some of the judges who applied the federal poverty guidelines in assessing indigency require parents to fill out a written form, while others conduct an oral assessment. In a county in which the judge conducts an oral indigency assessment, it is estimated that 30-40% of the children are represented by private counsel. In a county in which a written form is used, the public defender makes the determination as to whether to accept the appointment. One public defender in that county estimated that she declines appointment in at least 30% of all cases. In that county, if the parents refuse to hire a lawyer, the judge will appoint the Public Defender and order the parents to reimburse the court at \$75 an hour; the usual bill is \$500.

While most judges make their determination applying the federal poverty guidelines,<sup>169</sup> others utilized more arbitrary and unwritten criteria. For example, one judge reported that he bases his indigency determination on where the minor lives and how he is dressed. He estimated that he finds 75-80% of the children in his courtroom indigent.

The requirement that poor parents pay legal fees may put undue pressure on a child to enter an early admission in a case and compromise his attorney's ability to fully explore a defense and/or dispositional alternatives.<sup>170</sup> A parent who is seeking to avoid legal fees (including costs for experts or investigators) may not fully appreciate the long-term consequences of an adjudication and therefore may pressure his child to enter an admission or forego a hearing. In addition, where parents are bearing the cost of the representation, attorneys may feel conflicted with respect to who directs the litigation – the child, who is subject to the proceedings and will endure the consequences, or the parent, who is paying the legal fees. This confusion may be exacerbated by

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**Significant differences  
existed between  
counties in terms of  
which children receive  
a court-appointed  
lawyer and under  
what circumstances.**

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the role confusion under which many attorneys labor,<sup>171</sup> thus further compromising the child's right to independent, conflict-free, client directed representation.

### C. Detention

Each year in Illinois thousands of children are charged with delinquent acts and many of these children are held in detention facilities. The Juvenile Detention Alternatives Initiative (JDAI) of the Annie E. Casey Foundation concludes that nationwide, children should be detained pre-trial only based on their immediate risk of harm to self or others, or their strong likelihood of failing to

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**Illinois still has significant challenges in its efforts to limit detention to those instances where it truly is "a matter of immediate and urgent necessity for the protection of the minor or the person or property of another."<sup>176</sup>**

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appear for court.<sup>172</sup> In 1992, the Casey Foundation launched JDAI, the goal of which was to teach communities that they could improve detention systems and limit the use of detention without creating a safety risk.<sup>173</sup> Through policy reforms and the creation of alternatives to detention based within the youth's community, the Initiative has documented results of decreased juvenile crime and less reliance on secure detention.<sup>174</sup>

The JDAI program can be found in 11 counties across the state of Illinois. As part of JDAI, the Juvenile Justice Commission gave grants to three sites to provide enhanced defense capacity at the detention hearing. These grants created the capacity to have a social worker interview detained youth prior to their detention hearing. The juvenile defense attorney would then collaborate with the social worker to present information gained from

the hearing at the detention hearing. This resulted in increased advocacy by defenders at the detention hearing and in one of the sites helped to drastically decrease the number of children being detained. However, Illinois still has significant challenges in its efforts to limit detention to those instances where it truly is "a matter of immediate and urgent necessity for the protection of the minor or the person or property of another."<sup>175</sup>

### **Initial Detention Screenings**

In most counties, police officers either take minors who they believe “qualify” for detention directly to the detention center or call a probation officer to assess the case. Typically, detention center staff or probation officers have a screening process by which they decide whether to detain or release the child to his parents.

However, there is a lack of continuity across the state regarding detention assessments. Some jurisdictions use a standardized instrument, while others invent their own.<sup>176</sup> During site visits it was noted that some counties are considering implementing some sort of written detention risk assessment instrument. This may be attributable to the influence of JDAI reform efforts throughout Illinois.

In one regional detention facility, police or probation officers make the initial detention decision during business hours, while detention center staff made the decisions during “off hours” and on weekends. One probation officer complained that the detention center staff has a tendency to “over-detain” and suggested that the decisions were based on financial gain, because the detention center is paid for each child in custody. It was reported that over 90% of the youth who were initially detained in this facility are released after the detention hearing, suggesting that the detention center should re-examine its screening process.

In another county, the head of the detention center found that the police, who used to make the initial detention decision, seemed to be “using the detention center as a babysitting service” rather than taking the time to find where the child lived and if the parents would allow the child to come home. Consequently, he instituted policies refusing to accept minors charged with misdemeanors, requiring police to provide a written narrative justifying the detention of the child, and developing a screening procedure. These changes led to a reduction in the detention population.

### **Detention Hearing and Detaining Youth**

Any youth in detention must have a hearing within 40 hours of being taken into custody.<sup>177</sup> It was uniformly reported that courts generally adhere to this rule. However, in the majority of counties visited, lawyers are not given notice of their representation of a detained child until moments before the detention hearing begins. Although some public defenders asked the court

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**This lack of advocacy may be attributable in part to the atmosphere in the courtrooms, where the judges make it clear that they do not want a detention hearing to turn into a ‘mini trial’ and discourage advocacy at the hearing.**

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for time to interview their clients, these interviews are still extremely limited. Lawyers use the few minutes they have with the child to provide him with a summary of what to expect, rather than obtaining helpful information that is relevant to the detention determination. This practice has led to children being denied their right to present evidence to the court that would weigh in favor of release.

At the detention hearing, the prosecutor may present evidence through live testimony or by proffer.<sup>178</sup> In the latter instances, the prosecutor can submit the police report as long as it is “relevant and reliable regardless of whether it would be admissible under the rules of evidence applicable at trial.”<sup>179</sup> Defenders thus do not have an opportunity to cross-examine the police officer who is providing the basis of probable cause. Defense counsel may also proceed by proffer or call witnesses to testify on the issue of probable cause

and/or whether there is an urgent and immediate necessity to detain the youth.<sup>180</sup> However, the ability for defense counsel to effectively represent the child at this hearing, particularly when the prosecutor proceeds by proffer, is significantly compromised if the defenders only meet with their clients moments before the hearing. Moreover, the attorney does not have an opportunity to collect information about the client that may be critical to convince the court not to detain a child.

Many children gave accounts of attorneys speaking to them just before the hearing, during which time they were unable to give the attorney any information that may have helped with their immediate release from detention. One child said that her attorney came to speak with her about three minutes before the detention hearing and talked about release, telling her that she would try to get her placed on home detention. However, this attorney failed to take the opportunity to learn about the girl’s life and the fact that she was working towards reunification with her two daughters.

Although in two counties it was reported that public defenders regularly challenge detention and will call/cross examine a witness during the detention hearing, most Illinois defenders do

not call witnesses and many do not make more than cursory arguments on behalf of their clients at the detention hearing. One probation officer reported that, despite the fact that she testifies in 95% of all detention hearings, a public defender never questions her at any of the hearings. In contrast, private counsel in that county always put on evidence and actively participate in the hearings.

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**Two counties visited instituted new initiatives that have helped lawyers actively participate in the detention hearing.**

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In many of the counties visited, most defenders did not engage in detention advocacy. In one county, the public defender stood mute at the detention hearing, never attempting to persuade the judge to release the child or presenting an alternative to the court. Investigators noted in one site that the public defender made the same argument for every child he represented, never tailoring her arguments to the individual circumstances of the case or the child. In another county it was the prosecutor rather than the public defender who advocated for the child's release due to the start of school. This lack of advocacy may be attributable in part to the atmosphere in the courtrooms, where the judges make it clear that they do not want a detention hearing to turn into a 'mini trial' and discourage advocacy at the hearing. It may also be attributable to the fact that many attorneys act in what they perceive to be the child's best interest rather than their client's expressed interest.

In one county, the judge made detention determinations without the benefit of any real evidence and instead simply entered a finding that detention was "necessary to ensure the safety of the child and the community." After a parent unsuccessfully advocated for her child to remain out of custody, the judge interrupted her, saying, "these people don't care about you, I do...I do care about him - that is why I am going to detain him."<sup>181</sup>

Two counties visited instituted new initiatives that have helped lawyers actively participate in the detention hearing. One county not only has one judge and specific attorneys assigned to handle detention hearings but also changed the time of the detention hearings to the afternoon and began assigning attorneys solely to represent children in detention hearings. As a result, attorneys are able to interview their clients in the morning prior to the afternoon hearing. Not only has this time change given the attorneys a chance to learn more about their clients and to provide critical information to the court, it has given them the opportunity to secure the attendance of witnesses and or parents for the detention hearing.<sup>182</sup> Another county received a grant to institute a detention pilot program that allows for early appointment of an attorney. The attorneys receive comprehensive information about their clients and families prior to the

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In a county where the detention center is usually at 100% capacity, defenders reported that the judge “loves” the detention center because it is “therapeutic” and that he uses detention to “scare” kids, especially those who are acting out at home.

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detention hearing. Access to this information has given the attorneys the necessary tools to aggressively represent their client at the detention hearing. Detention Center staff in this county reported that the program has resulted in better dialogue between lawyers, children, families and detention staff, thereby leading to more consistency in recommendations for both detention and release, as well as dispositional planning.

Geographical differences are especially evident when reviewing detention populations across the State. A child who is a low safety risk and has been charged with a non-violent offense may be detained in one county but would be released if he lived in another county. Community norms and perceptions appear to influence the perceived necessity to detain a youth prior to adjudication.

Judges gave varying reasons for detaining youth. Some reported that they reserved detention for the “most serious offenses”, for children who have failed to appear in court or are flight risks, or as a graduated sanction. Others said that they may base their decision on whether the parent has a good reason for not wanting the youth to come home. In a county where the detention center is usually at 100% capacity, defenders reported that the judge “loves” the detention center because it is “therapeutic” and that he uses detention to “scare” kids, especially those who are acting out at home. The judge “commits a couple of kids a day or week like this and also commits kids who are mentally ill and kids without a home.”

Judges in some counties commented that the costs of detaining a child and the distance of the detention center from their courthouse frequently influence their decision of whether or not to detain a child. For example, a judge in a small county reported he rarely detains minors simply because the detention center is an hour and a half away. Judges in small counties that rely on a regional detention center stated that they do not like to detain children because the county is charged a daily per diem for each child placed in the detention facility. In one of these counties, it was reported that only two youth had been detained in 2 ½ years. One judge reported that the mere prospect of detention is more effective than detention itself and therefore rather than

detain youth pre-adjudication, he often will impose a sentence of probation which includes 30 days detention which is stayed if the youth stays out of trouble. When these stays are lifted, it is generally for a day or two. He uses detention “very sparingly” – “if for no other reason than the expense.”

### **Reviews of Detention Decision**

A child’s lawyer may ask the court to revisit the detention decision. In a county where one designated judge presides over all initial detention hearings, the judge who subsequently receives the cases for adjudication reported that if he is presented with new information that the detention hearing judge did not hear, he will consider releasing the child. However, this does not happen often. In another county, a judge performed detention reviews utilizing reports written by detention center staff. Some of the staff in this county expressed frustration with the fact that the judge only appeared to look at the negative aspects of the report, which are often written by the nighttime staff who have had much less interaction with the children. Detention staff believed that many children were in custody that did not belong there. In one county, defenders have recently begun filing written motions for release, as well as habeas petitions when the child is being illegally detained.

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**“The county used to spend a ton of money on detention. Now the court has alternatives to detention, and the costs have gone down quite a bit.”**

**- An Interviewee**

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In a majority of counties visited, judges and defenders reported that they make a concentrated effort to ensure that youth do not stay in detention in excess of the statutory maximum.<sup>183</sup> Reported lengths of stays in detention ranged from 10 days to 6 weeks. In one county the typical stay was four to six weeks, and one of the children in this county was detained for 95 days before he was finally adjudicated and sentenced to probation. A minority of defenders asked for pre-adjudication release of their detained clients through oral or written motions. In one county, the judge has a firm policy that if the State is not ready after a child has spent 30 days in custody, he is released to home confinement or electronic monitoring.

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**“My attorney never wants to go to trial. She told me to plead guilty and I could go home. I think I could have beat some of my cases if I had gone to trial.”**

**- Youth**

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Counties have made varying efforts at using alternatives to detention. As discussed earlier, 11 Illinois counties serve as sites for the Anne E. Casey Foundation Juvenile Detention Alternatives Program. In one of these sites it was reported that detention is considered a “last resort” due to the increase in alternatives. Staff at a detention facility in another JDAI site attributed a decrease in detention in part to the JDAI program.<sup>184</sup>

Alternatives to detention include home confinement, electronic monitoring,<sup>185</sup> evening reporting centers, and day or evening therapeutic/family-based programs. Most of the system participants interviewed were

in favor of detention alternatives. One judge opined that one of the reasons the alternatives to detention program works was because they are able to get the juveniles’ mental health assessments immediately. Defenders in that county worked out an agreement under which anything said in the mental health evaluations may not be used against the youth.

Detention alternatives can save counties considerable costs. One interviewee commented, “The county used to spend a ton of money on detention. Now the court has alternatives to detention, and the costs have gone down quite a bit.” However, much of the funding for alternative programs has begun to run out. Many are concerned that the programs will not survive without funding and as alternatives dwindle, judges will increasingly turn to more costly detention. For example, in one county, rates of detentions went up after electronic monitoring was discontinued because the county could not afford to replace lost or broken equipment.

One detention center chief resists all community alternatives to detention because she firmly believes that the children are better off in her facility. The juvenile court judge in the county served by this facility appeared to take the same position, as he frequently detains youth who were not initially sent to detention prior to arraignment. The facility, which was in danger of being closed by the county board due to low population, is now at almost 100% capacity on a daily basis, despite the fact that there does not appear to have been an increase in serious offenses (although the chief of detention suggests otherwise).<sup>186</sup> It appeared that the court is complicit in efforts to keep the facility open to the detriment of the youth in the community.

## D. Admissions & Pleas

The majority of delinquency cases are resolved by an admission or plea. Reported estimates of cases resolved by pleas range from 70-100%. In most counties visited, children entered negotiated pleas; in a negotiated plea, the child agrees to admit the allegations in the petition in exchange for a reduction in charges or a specified sentence. However, in at least two counties visited the child entered an “open” or “blind” plea, in which he admitted to the allegations in the petition but did not obtain an agreement as to the disposition.

Timing regarding the acceptance of pleas varied across and within counties. While most judges stated that they did not accept pleas at detention hearings, 10-30% of youth entered admissions at their detention hearings in at least two counties visited. Typically, this occurred when the prosecutor filed a supplemental petition and the youth wanted to “get things going.” Similarly, in at least four counties, the plea is usually accepted at the first appearance, immediately after the appointment of the public defender. One public defender estimated that 90% of his cases result in pleas at the first appearance. A public defender in another county explained that on the first day of court, the petition is read out loud during which time the youth can admit or deny the claim. When they deny the claim, she offers to go to trial. “I tell them if they have a good case or not.” She suggests they admit the allegations in the petition, “if they are not going to win anyway.”

Entering admissions at this early stage almost guarantees that the attorney and the child lacked the opportunity to engage in a meaningful discussion about the case and the consequences of pleading guilty. In many instances, investigators observed children entering admissions without a full understanding of the rights they were waiving or the long term consequences of their decision. Many of the children looked bewildered or disengaged during the plea colloquy. Interviews with children and parents revealed that many did not understand what had occurred. Some youth were unaware that they had entered an admission while others did not know the conditions of their probation. As one child explained, “My PD kept mentioning S.W.A.<sup>187</sup>

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**“Parents and kids want to come in, plead guilty and get it over with. Most parents don’t have the information they need and don’t get how important it is to fight.”**

**- Juvenile Court Judge**

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**“Approximately 90% of the kids plead guilty at the detention hearing.”**

**- Public Defender**

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and I had no idea what it was....next thing I know, I am cleaning highways for eight hours.” Probation officers reported that many times a child leaves the courthouse unaware that he had just pled guilty and the probation officer has to explain what occurred to the child.

Entering admissions may have severe consequences beyond juvenile court. For example, youth adjudicated for drug offenses may be ineligible for federal financial student aid.<sup>188</sup> Children who are not citizens of the United States may be subject to deportation.<sup>189</sup> Others may be subject to placement on lifetime sexual offender registries.<sup>190</sup> In addition, law enforcement records can be obtained by law enforcement officers, probation officers, prosecutors, and authorized military personnel.<sup>191</sup> Many of these long-term consequences are not explained prior to the child pleading guilty.

In counseling youth to enter an admission at the first appearance, defenders may be missing the opportunity to have cases dismissed outright. In two counties where pleas are generally not entered on the first appearance, Public Defenders reported that 10-25% of the cases resulted in dismissal due to a pre-trial motion resulting in the suppression of the prosecutor’s primary evidence, the prosecutor’s recognition that the government cannot meet its burden of proof, the failure of the complaining witness to appear, or other factors. In some counties, the prosecutor typically made an offer before or at the second court date, thereby giving the defender time to investigate the case and fully discuss the plea with the client. In at least three counties, plea offers were made on the day the matter was set for trial. Public defenders in two counties reported that they fully investigated the case prior to accepting a plea offer; however in the majority of counties visited the “investigation” was limited to the attorney speaking with his client about the circumstances of the alleged offense.

## **E. Pressure to Plead**

It appeared that in many counties children felt pressure to plead guilty. This pressure usually came from the attorneys or parents and, in some instances, the judge.

In a number of counties, youth and probation officers reported that defenders frequently pressure kids to plead guilty; they attributed this to the lack of time the attorney spent with

the child, the attorney's failure to explore or understand the child's wishes, and the absence of an investigation into the child's case. Many of the youth interviewed commented that their attorneys told them to plead guilty without explaining the consequences of such a plea or even allowing the child to consider other options. One youth explained that the prosecutor has tried to commit him to the Department of Juvenile Justice on multiple occasions and his public defender generally ignores him until it is time to accept a plea, at which time she tries to convince him to plead to the charges. One child said that in his previous cases, his first conversations with his lawyer were just prior to his entering his guilty plea. "My lawyer would show up with a deal. He would tell the judge [the deal]. I would plead guilty and sign a paper. This time though," he said earnestly, "I want to talk to him before the deal is set."

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**"They [PD's] just try to get you to take a plea. They don't warn you of how the charge will hurt you next time around."**

**- Youth**

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Pressure to plead also comes from parents who do not want to come back to court and do not fully understand the consequences of the plea or the state's burden. One lawyer reported that, because of the pressure placed on children by their parents, he does not allow his clients to enter an admission at the first appearance. "I purposely make them wait. I won't let them admit on the first date when the pressure from their parents is huge."

Judges sometimes also pressure children to plead guilty through the imposition of a "trial tax." A judge in one large county explained that, some of her colleagues impose a harsher sentence if a child takes his case to trial rather than plead guilty. She justified this practice by explaining that a lower sentence for entering a plea is in essence a reward to the child for admitting wrongdoing. "Taking responsibility is the first step to changing behavior."

## **F. Admonitions**

Prior to a child entering a plea, the attorney has an obligation to ensure that his client does not enter an admission without a full understanding of the rights that he is waiving and the consequences of that waiver. Similarly, judges are required to advise the child of his rights and to ensure that the waiver of those rights is made knowingly and voluntarily.<sup>192</sup> Prior to

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**“They always say they understand, but they rarely ever do.”**

**- Police Officer**

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accepting a guilty plea, the court must inform the minor of the consequences of his or her plea and the maximum penalty that may be imposed upon the acceptance of the plea. The court also must determine the factual basis of the plea.<sup>193</sup>

While some judges made a noticeable effort to ensure that the youth (and his parents) had a full understanding of the nature of the proceedings, the consequences, and the rights the child waived by entering an admission, many judges simply issued a brief, scripted admonition that, in many cases, was incomplete. Investigators reported that during the admonitions judges did not adequately cover topics such as: (1) the nature of the delinquency proceedings; (2) the nature of the allegations of the petition; (3) the privilege against self incrimination; (4) the range of possible answers to a petition; (5) the right to an adjudication hearing; (6) the right to cross examine witnesses; (7) the right to call witnesses; (8) the possible consequences of admitting to the charges; (9) the right to be represented by an attorney; (10) the right to a social investigation; (11) the maximum and the minimum possible dispositions; (12) the right to vacate pleas; and (13) the right to appeal.

Judges across the state were inconsistent in delivering admonitions to the child. While several of the judges asked youth if they understood the rights they were waiving, few actually made an effort to explore the youths' comprehension. In one county, the judge did not issue any admonitions, but merely read the charges out loud and confirmed that the minor was entering an admission.

Many other judges were observed using form admonitions that often were not in “child friendly” language or, in some case, were inaccurate. For example, prior to accepting an admission from a 15 year old charged with a misdemeanor, the judge informed him that his possible penalty included incarceration in the Department of Juvenile Justice until the age of 21. This statement was incorrect. The Juvenile Court Act states that “[I]n no event shall a guilty minor be committed to the Department of Juvenile Justice for a period of time in excess of that period for which an adult could be committed for the same act.”<sup>194</sup> In criminal court a sentence of imprisonment for any misdemeanor is less than a year period;<sup>195</sup> therefore commitment to the Department of Juvenile Justice until his 21<sup>st</sup> birthday was not possible.

In using the form admonitions, judges are abdicating their responsibility to ensure that each minor is making a knowing waiver of his rights before entering an admission. In one county, a private attorney asked that the judge explain the terms that he used in the admonition. The

judge seemed perplexed by this request, but tried to explain the terms. The attorney then spoke to the child and after he finished speaking with his client, the judge continued in the same legal jargon without attempting to rephrase the admonitions in language that the child could understand.

In another county, the public defender, prosecutor, and probation officer admitted that it was likely that most children do not understand the admonitions issued by the judge or the proceedings. Many opined that the fact that the minors do not understand the process or the admonitions was immaterial, because the charges are usually relatively minor and the lawyers are looking out for their clients' best interests.

In a few counties, judges used developmentally appropriate language and asked questions to both test the youth's understanding of his rights and to ensure that the child was aware of the charges contained in the petition. One judge engaged in a thorough colloquy, defining "beyond a reasonable doubt," "testify," "witnesses," and "cross-examination." When explaining the possible sanctions, including conditions that she did not intend to impose, but that could be added later, the judge said, "I know this does not mean anything to you right now, but I want you to understand what you might have to go and do."

Some judges took greater steps to ensure that a youth understood what was happening in court when represented by private counsel rather than the public defender. For example, in a county where the youth is not appointed a lawyer until the conclusion of the first appearance, investigators noted that the judge simply read the charges to the unrepresented minor, quickly explained the possible sanctions, and then gave the youth a paper entitled, "Notice of Rights." When a youth appeared with private counsel, the judge took additional steps to ensure that the child was aware of what was occurring by probing the attorney to be certain that they had explained the nature of the charges and the possible penalties with the client. In exploring the child's understanding of the process and the plea, the judge checks that the attorney has met his obligation to his client to explain the plea and the consequences of entering into one.

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**"There is a trust  
issue...Kids believe  
that the Public  
Defender is working  
with the State."**

**- Juvenile Court Judge**

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## II. Quality of Representation

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### A. Client Contact & Communication

Throughout the court observations and the interviews with the parents and children, the investigators noted that several of the parents and children did not know what to expect in court and were frustrated that the lawyer had not spoken to them between court appearances. Parents and children reported that they received most of their information from the probation officers. Many of the observers noted that in some jurisdictions attorneys rarely spoke in court and the judge would receive most of the information about the child from the child's parent.

In some counties, attorneys made a concerted effort to meet with their clients out of court and before their trial date. Attorneys who are able to secure face-to-face meetings with their clients attributed this to the fact that they sent follow-up letters and called their clients. They explained

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**“My PD does not spend enough time getting to know about me as a person; they only see the negative things about the person. They only look on the paper at what I have done.”**

**- Youth**

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that out of court contact enabled them to develop good relationships with their clients and their client's families. Some attorneys tried to provide the client and his family with information before they walked into court for the first time. One attorney interviewed first meets with parents and children together before court to explain the general function of juvenile court and then asks the parents to step out so that she can talk to her client about the charge.

Another attorney sent her potential client a letter informing him that she had not yet been appointed but would be at the first hearing. On the day of the first appearance, she talked to the youth and his family in the hallway before the hearing to explain the process and charges. She then suggests that the youth plead not guilty in order to give her

time to obtain discovery. However, her next meeting with the child does not take place until the next court date. She did not feel the need to meet her client outside of court stating, “I can get as much done with 10 minutes in the hallway as with 45 minutes in my office.”

Some attorneys engaged in best practices in terms of client contact. One attorney explained the steps she generally takes with each client: at the first court appearance, she meets privately with the client in an interview room and goes over the allegations of the petition. She tries to get as much information as possible at the first meeting so she can begin brainstorming about defense theories and identify possible motions. She also asks the client if defense witnesses are available. This attorney uses this meeting to gather information, to explain the process and what is likely to happen, and to answer the client's questions. She also gives the client a full-page explanatory letter (instead of a business card) containing her direct phone number. She reported that she responds to phone calls from clients and may call them herself in preparation for cases. She visits her clients in detention at least once. If the child is troubled, she will visit more often.

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**“Recently the judge started requiring that I speak with the kids before their detention hearing. I just give them the State’s offer. I don’t have time to ask them about the incident or what happened. I just ask them whether they want to take it (the offer) or not.”**

**- Juvenile Public Defender**

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A lawyer in another county took a similar approach and begins each meeting with the client by “who I am, confidentiality and what I do.” She explains the difference between a misdemeanor and a felony, the consequences of an admission or finding of guilt and the differences between a bench and jury trial (and the fact that there are not juries in juvenile court). She reviews the police reports with the client, gets the client’s version of events, gives the client her initial impression of the case and asks the client about his background. The lawyer also explains the process to the minor’s parents and clarifies the confidential relationship she has with the client and the fact that her representation extends only to the minor.

Attorneys who conduct in-person meetings with their clients noted that these meetings are beneficial to the representation of their clients. One attorney remarked that the in-person meetings allow her to get information about the case, give her client information about the case, and gain a better understanding of her client’s family life, which in turn gives her a better understanding of what is going on in that child’s life. She reported that this information, even

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“I talked to the PD before my court date, but not for very long and the focus was on my case — she did not ask me any questions to learn more about me.”

- Youth

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if not shared with the court, helps her tremendously in thinking about trial and appropriate dispositions for her clients.

In a slight majority of counties, attorneys reported that their client contact is limited to court appearances and phone calls. Reasons given for this limited amount of contact included: attorneys’ placing the burden on their clients and their client’s families to schedule a meeting; attorneys’ feeling it was not feasible to have meetings with their clients outside of court; attorneys’ belief that out of court meetings were unnecessary; and high caseloads. One attorney interviewed does not give her clients the option of a meeting, but instead tells them that she will send a letter

informing them of the State’s “offer.” She never explains what an offer is or the plea process. When a child’s mother responded to this statement with a question about the charges, the public defender responded, “When I get an offer, I will put it in a letter and explain it to you.” Another attorney noted that client contact is often dependent upon the stability of the child’s home life – she has better contact with clients who have stable homes. Many times she cannot locate the client and consequently, ends up doing a lot of preparation in court when she finally has the opportunity to meet with her client.

Some attorneys rely solely on their investigators to conduct the client interviews and then will follow-up with the children by phone or in court. One lawyer remarked that she wished her caseload was lower so that she could conduct the interview with the client and the investigation. This attorney explained that when her investigator does all of the work, it makes it harder for her to adequately prepare the case.

Depending on the county, judges had differing opinions regarding whether the attorneys in their courtroom had contact with their clients. One judge commented that he can tell when the lawyers have had client contact and opined that the client contact was deficient. Another judge took steps to help the attorneys meet with their clients by scheduling hearings in the afternoon. However, he did not think that this led attorneys to make more of an effort to meet with their clients. Judges can, and should, ask the minors if they have had an opportunity to speak with their attorneys.

Although several public defenders agreed that face-to-face meetings with clients were necessary and important to effective representation, many reported that their caseloads prevent them from having an appropriate amount of client contact. In one of the larger counties, the chief of the juvenile division of the Public Defender’s office has instructed her lawyers that client contact should be a priority, and that in-person contact is a critical component to quality representation and should be supplemented by letters and phone calls. She has also encouraged the attorneys to visit their detained clients once a week. However, compliance with these directives is inconsistent.

Numerous youth commented that they wished their lawyer would take the time to get to know more about them than simply their case and their charges. Youth believed that, had their attorney known more about them, they may have received a better outcome or sentence in their case.

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**“One defender used to interview kids at the detention center, but now usually no one goes.”**

**- Probation Officer**

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## **B. Contact with Detained Clients**

Lawyer visitation and phone contact<sup>196</sup> with detained clients was inconsistent across Illinois. It was suggested that private attorneys have significantly greater contact with their detained clients. Detention center staff in only two counties reported that public defenders routinely met with their detained clients. One chief public defender asked her attorneys to visit their detained clients once a week, but meeting that goal has proven difficult, in part due to caseloads and detention center policies that make visitation difficult and cumbersome.

Most attorneys interviewed agreed that it is important to meet with detained clients at least once pre-adjudication, but several stated that they were not able to do so due to not having time (one attorney commented, “I don’t have time to visit the kids since I am at work from 7:45 until 5:00 every day”) or the significant distance of the detention center from the attorney’s office (in some cases, the detention center is in a different town). One attorney reported that she had visited only one client in detention in 5 ½ years. She explained that she did not talk to her clients on the phone, because she worried that the lines were not secure; consequently all of her client contact was in the hallway before court hearings.

## C. Lack of Confidential Places

Many of the courthouses visited were not equipped with private rooms for attorney-client consultation. Children and their attorneys have conversations in crowded hallways or in other public areas. One child reported that he wished he could meet with his attorney in private without anyone around so that he could be more open and honest with his attorney regarding his case and what he wanted to happen. This child did not realize he had the right to speak with his attorney alone.

Defenders in courthouses with private meeting rooms reported longer and more productive conversations with clients. While out-of-court consultation cannot be substituted by conversations at the courthouse, defenders frequently need to discuss developments on the day of court.

## D. Role of Probation Officers

Probation officers in several counties reported that children and their parents often complained about their lack of access to the lawyers and information about the court process. Many probation officers reported that many attorneys do not have a full understanding of their clients' cases and needs. Probation officers stated that they end up giving children information about the

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**“Go talk to your Probation Officer, so he can explain what is happening.”**

**- Juvenile Defender to Client after court hearing**

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court process and advice about their cases and therefore believe that they are acting more like the child's lawyer than the child's actual lawyer.

Several probation officers complained that attorneys do not return calls to children and parents. One probation officer gave the example of a client's mother who complained that she had repeatedly called her son's lawyer, only to be told that he was unavailable. She said that she had just tried calling the lawyer moments before.

When the probation officer called a few minutes later, the attorney accepted his call. Another probation officer commented that the length and quality of the contact varies by attorney. Some lawyers take time with the clients and their parents and offer good explanations, others provide very short explanations and do not make themselves available to answer questions.

## E. Consultation in Court

Communication with the client during the court proceeding is also critical. Lawyers often serve as interpreters for their clients, breaking down legal terms into developmentally appropriate language. It is the lawyer's duty to ensure that her client understands the proceedings and is able to participate in them. Lawyers need to explain the process to their clients before the court appearance. It is equally important that an attorney consults with her client in court. In several counties visited, attorneys were observed speaking with their clients during the court hearing; however, in some counties the attorneys were completely disconnected from their clients and never seemed to explain what was occurring. While it is difficult to explain things while court is in session, issues sometimes arise that the attorney has not had the opportunity to discuss with the client.

In several counties, court observations revealed that many attorneys do not greet their clients when they entered the courtroom. Nor did they ask their clients questions during the hearing or offer any explanations regarding what was occurring. Several attorneys allowed their client to leave the courtroom without any follow-up, and instead merely handed them a piece of paper with their next court date. In one county, the public defender stood by silently and never uttered a word to her client, even though it was clear to the observer that the child did not understand what was occurring during the proceeding. In another county, the public defender remained seated at defense table while the child appeared with the probation officer at the bench.

## F. Discovery & Investigation

Most defenders do not have access to investigators and thus it is incumbent upon them to conduct their own investigations.<sup>197</sup> A startling number of attorneys reported that they rarely, if ever, conduct pre-trial investigations in their cases. The most typical reasons given were: (1) the cases are not serious enough to warrant investigation; (2) police reports and client interviews<sup>198</sup> provided sufficient information to evaluate a case; and (3) guilt is not often at issue. Even in the counties where the defenders have access to investigators, the use of investigators varied considerably among the attorneys within those counties. Some defenders reported that they frequently used investigators to visit scenes and to locate and interview witnesses, whereas others reported that they rarely, if ever used investigative services. One mother reported that she conducted her own investigation into her son's case and shared her results with the public defender, who reportedly found the information "very helpful."

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**“We have access to an investigator, but rarely have a chance to use him.”**

**- Juvenile Defender**

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In most of the counties visited, few defenders file formal discovery motions. However, in another county, defenders made an oral motion for discovery at each first appearance and then followed up with a written motion for discovery. In another county, the public defender reported that she always files a written discovery request in felony cases, but not in misdemeanor cases. Most defenders interviewed merely rely upon the prosecutor to tender all relevant documents

at the initial or second appearance. In many counties, this means that the prosecutor tenders the police reports and any other documents they deem material to the defense. In some counties, the prosecutor has an “open file policy” meaning that the defense attorney may examine the prosecutor’s file upon request.

In all but two counties, it was reported that defenders rarely, if ever, issue subpoenas for documents that may be helpful throughout the life of a case. In one of the counties where filing subpoenas was the norm, one defender reported that he routinely obtains his client’s school and mental health records, which have proven to be helpful in challenging a child’s ability to waive his *Miranda* rights or consent to a search, determining whether a child had the *mens rea* to commit the offense in question, and making arguments at disposition. Another defender who also regularly files subpoenas reported that, in appropriate cases, she will request that the judge issue an order requiring the police department to preserve 911 calls, radio transmissions and police video surveillance tapes. She further reported that in cases where her client alleges that the police engaged in improper conduct, she requests records of similar complaints against the officer in question, as well as police protocols governing police conduct.

## G. Motions Practice

Motions practice varied across the state. Typically, Illinois juvenile defense attorneys do not file pre-trial motions, although there are some exceptions. Interviewees in one county could not remember the last time an attorney filed a motion. In another county, a public defender reported that she “threatens to file motions in about 10% of the cases” but never actually files them. In a county in which the prosecutor could not remember a case ever going to trial,

the only motion participants could remember was filed by a private attorney. In this case, the prosecutor did not contest the motion and the attorney succeeded in obtaining a reduction in charges – a sex offense charge was reduced to a simple battery and his client avoided having to register as a sex offender.

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**“If we litigated motions,  
it would take time away  
from other things.”**

**- Juvenile Court Judge**

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It was reported that defenders will occasionally make an oral motion challenging competency or fitness. In many of these cases, the parties agree to a fitness examination and will commonly accept the findings of the evaluator. One judge reported that “every once in a while,” a defender will make an oral motion to reconsider detention.

Reasons given for not filing motions varied. In at least three counties, the defenders stated their belief that the prosecutor would not pursue cases where the evidence was suspect or where the guilt of the child was not absolutely certain, and thus it was unnecessary to file pre-trial motions. In another county, a defender reported that the judge penalized him for filing a Motion to Suppress. In at least two counties, defenders and judges said that Motions to Suppress Statements are never filed because the police “consistently honor the minor’s rights” or statements are taken by school officials or security guards, “so there aren’t any constitutional issues.”

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**In close to half  
of the counties  
surveyed, judges  
reported few or  
no trials.**

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Some judges and prosecutors were hostile to motion practice, calling it a “waste of time” and saying that it interfered with the spirit of cooperation in the court. One prosecutor commented, “the adversarial approach is discouraged...we would do a disservice by motions and advocating.” A judge in a county where private attorneys typically file motions felt that motions were fruitless and opined that the main reason that attorneys filed them was to “make their clients feel like they are getting their money’s worth.” A prosecutor in another county complained that “Some PDs file *Miranda* motions all the time” even though the kids “are very sophisticated” and there is “a lot of incriminating evidence”. His chief complaint, however was with private attorneys who “only have one juvenile case and they want to file a motion for everything.” Nevertheless, defenders (public and private) in this county have prevailed on some of these motions, resulting in dismissal or reduction of charges.

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**“We have had a motion to suppress this year, the second one since 2003. It was brought in by the same attorney for the same kid both times. We have no other motions.”**

**- Juvenile Court Judge**

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Inconsistency in motion practice existed within individual counties. One defender reported that she files some type of motion in the majority of her cases and that 40% of the motions go to argument or hearing. These motions include motions to suppress and motions related to competency. However, her colleague never files motions. Supervisors in one public defender office reported that they have been encouraging the attorneys to file more written motions, but there is still significant disparity amongst the defenders with respect to motions practice. A judge in one courtroom reported that defenders rarely file motions, whereas another judge in the same courthouse reported that motion practice

was fairly common. In another county, the judge reported that some attorneys are very diligent about filing motions, others are “lazy and don’t file motions” and others file frivolous motions because the number of motions they file affects their pay scale.

In these jurisdictions where motions are filed, the most common motions include motions to suppress statements or evidence. In addition, Illinois defenders have increasingly been filing motions challenging competency or fitness.<sup>199</sup> Other motions some defenders have filed include motion to quash arrest, motion to suppress identification, motion for disclosure of identity of confidential informant; motion to sever; motion for sanctions due to discovery violations, motion to release from detention,<sup>200</sup> and habeas corpus petitions (for minors who have been held in custody for more than 30 days).<sup>201</sup> Defenders in two counties reported that they have begun incorporating evidence regarding adolescent brain development into their motions practice.

## H. Adjudication

Some counties have not had any adjudicatory hearings in over a year, while adjudicatory hearings occur with more frequency in other counties. For example, in one large county, attorneys and judges consistently reported that there are usually one to two trials per week in each courtroom. In another large county, the public defender reported that she tried about 42 cases (10-15% of

all her cases) in the previous year. She attributed this in part to the fact that the prosecutor in this county is “too harsh” and will typically refuse to reduce charges or offer probation. A public defender in a mid-sized county estimated that she takes 20-30% of her cases to trial; in the month preceding her interview, nine of her cases ended with admissions, six proceeded to adjudicatory hearings, and four were dismissed. She stated that, unlike adult clients who can negotiate for a reduction of the charges of a specified sentence, the options for children are much more limited – probation or an indeterminate time in the Department of Juvenile Justice. Therefore, “the kids have nothing to lose by going to trial,” especially when “the evidence is weak.” While she does not always win outright, the judge often finds a minor guilty on only one of several counts or on a lesser-included offense.

In close to half of the counties surveyed, judges reported few or no trials. One judge stated that he had presided only over two trials in fourteen years. Another judge reported that less than 1% of the cases go to a full evidentiary hearing. In two mid-size counties, judges reported that only a handful of cases went to trial in the past year. The reason one judge offered for the lack of trials was “if the public defender has trust with the prosecutor, they know where a case should go.” He also said there was not as much to fight about because the state’s attorney is not into punishing kids. One public defender attributed the lack of trials in her county to the fact that the “judge never finds the kids not guilty.”

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**In one courtroom, defenders expected their *clients* to “bring their witnesses in on the day of trial” and the judge instructs the child to do so.**

**- Investigator**

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In most of the counties where adjudicatory hearings occur, it was reported that defenders and prosecutors typically waived opening statements, but always made closing arguments. Although a supervisor in one county reported that the attorneys in her office always made an opening statement, the trial attorneys from that office reported that they typically waived opening statements. One defense attorney in another county stated that she used to waive opening statements, but after attending a trial advocacy program presented by the Office of the State Appellate Defender, she now makes an opening statement in the majority of her cases. She also stated that she frequently uses case law to argue for directed findings at the close of the prosecutor’s case.

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“My attorney did a good job, she tried her best and even told me that I could appeal the case. I am not mad at her [even though I was sent to the Department of Corrections.]”

- Youth

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Attorneys stated that the amount of time they spend preparing a case for trial depends upon the complexity of the case and the severity of the charges. One attorney said that she spends two to eight hours preparing for a trial. Another reported that he spends 3 (battery) to 25 (sex offense) hours in trial preparation. In some of the counties observed, a significant amount of trial preparation is done on the morning of trial.

The length of time it takes for a full adjudicatory hearing ranges from one hour to several days, depending on the severity of the charges and the complexity of the case. Some attorneys reported that they focus on cross-

examining the prosecutor’s witnesses and rarely call their own. A minority of the defenders interviewed reported that they often issue subpoenas and call witnesses. In one courtroom, defenders expected their clients to “bring their witnesses in on the day of trial” and the judge instructs the child to do so. This practice requires witnesses to voluntarily come to court. Unless the witness has an interest in the child (which reduces his credibility), he is not likely to attend the proceedings without a subpoena. This practice also means that the defender does not interview the witnesses until just before the adjudicatory hearing, making it almost impossible to gather corroborating evidence or to follow up on information provided by the witness. Most do not call expert witnesses.<sup>202</sup>

## I. Disposition

In most of the counties visited, there is minimal dispositional advocacy. The lack of dispositional advocacy may be attributable to the high number of early plea rates during which time the disposition is already decided. In one county, the judge called the system participants (prosecutor, defender and probation officer) into his chambers before court to discuss the case and to inform the parties what he intended to order for the disposition. Observers who sat in on these discussions noted that the defender did not provide the court with any information about the child, nor make any effort to suggest a disposition or argue for lesser sanctions. This

is problematic, as this judge accepted an “open plea,” where the parties have not agreed to a disposition.

In addition, many interviewees reported that defenders and judges often relied solely on the probation officer’s recommendations when sentencing a child, “because they seem to know more about what is appropriate.” Lawyers frequently reported that advocating for a particular disposition for their clients was not in their area of expertise and felt it was more appropriate for the probation department to handle the child’s disposition. Even when incarceration was an option, investigators observed that defense attorneys relied solely on the probation officer’s report and did not call their own witnesses.

Some lawyers interviewed believed that advocating at the dispositional phase is fruitless. In one county, the judge utilized standardized dispositional orders that are offense based. In that county, if the child commits an aggravated battery at school, he is almost certain to be sentenced to the Department of Juvenile Justice. One judge boasted that he had sent 34 youth to the Department of Juvenile Justice in the first six months of the year, as compared to his predecessor, who had committed only 26 youth in the entire previous year. In another county, there is a freeze on residential placements, the consequences of which are commitments to the Department of Juvenile Justice or released home without appropriate services.

In the few instances where researchers observed contested dispositional hearings, attorneys called and cross examined witnesses and made arguments to the court. One hearing conducted by a private attorney lasted 45 minutes, in contrast to another conducted by appointed counsel, which ended after 7 minutes. In one county it was reported that there is a contested dispositional hearing any time the prosecutor is seeking commitment to the Department of Juvenile Justice - parties call witnesses and the court orders a psychological assessment, which is presented to the court. Contested dispositional hearings result in judges having much more information on which to base sentences and enable them to focus on the individual child.

## **J. Post Disposition Advocacy/Review Hearings**

Although not statutorily mandated, review hearings allow the court the opportunity to reassess the necessity for continued commitment, probation conditions or other services. They also afford the child an opportunity to share his successes with the court. In a few counties visited, review hearings were routinely held and a child subject to review was represented by the same attorney who represented him on the underlying charge.

If the child violates his probation the prosecutor may file a petition charging a violation of a condition of probation.<sup>203</sup> A child is entitled to a hearing on the alleged violation of probation.<sup>204</sup> During the probation revocation hearing, the burden is on the state to prove the violation of probation by a preponderance of the evidence which is lower than the normal beyond a reasonable doubt standard utilized in delinquency hearings.<sup>205</sup> The child has the right of confrontation, cross-examination, and representation by counsel.<sup>206</sup> If the court finds that the child violated a condition of his probation the court can continue the probation with no changes, modify the probation or revoke the probation and impose a new sentence.<sup>207</sup> Many attorneys reported that, due to the low burden of proof in violations of probation, they typically do not contest the charges.

The need for advocacy at probation revocations is not limited to the question of whether the violation occurred. Lawyers have the opportunity to argue against commitment to the Department of Juvenile Justice or in favor of increased services or case closure. Consequently, knowledge of the client's individual needs and history is critical to effective advocacy during these hearings.

In many counties, the attorney's representation effectively terminates after disposition. There is no guarantee that the child will receive the same lawyer who previously represented him when he is alleged to have violated probation or to have committed a new offense. In counties where there is a single, long term defender assigned to juvenile cases, the original lawyer who represented the child is reappointed. In counties where there are multiple defenders or frequent rotation of defenders, new counsel, who is not familiar with the client's history, is normally appointed.

Many of the youth interviewed reported that they had had several different lawyers, sometimes within a single case. Failure to have continuity in representation impairs the attorney's ability to develop and maintain the attorney-client relationship. It also causes attorneys to engage in duplicative efforts in terms of investigating a child's background in preparation for motions or disposition.

## K. Expungement

Pursuant to 705 ILCS 405/5-915, in some cases, a child may file a petition to expunge his juvenile arrest and court records if certain conditions are met.<sup>208</sup> Most lawyers reported that they do not file petitions to expunge and some admitted that they were unfamiliar with the law governing expungements. Most attorneys confirmed that they do not discuss this right with their clients. Several system participants reported that they had never seen a petition to expunge. One clerk

reported that she had seen five to six in her career. One judge reported that expungements in juvenile court are rare, although she had been presented with one the prior week. She attributed the lack of such petitions to the fact that most youth who appear in her court “are not too worried about getting jobs or going to college.” She doubted that the public defender informed her clients of their right to expunge their records.

Very few attorneys reported that they file post-dispositional motions, such as motions to modify commitment orders or probation.

### III. Other Barriers to Just & Balanced Outcomes

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#### A. Shackling Minors

In half of the counties visited children entered the court wearing ankle shackles and handcuffs or belly chains. In most instances, shackling was not based on any individualized determination that the child posed a security risk, but instead was standard policy. Many of the shackled children were charged with non-violent offenses. In one county, when an investigator asked the judge why the children were shackled the judge explained that it was sheriff’s policy that pre-existed her tenure and that she had no jurisdiction. The next day, the judge issued an order requiring shackles and handcuffs to be removed prior to the children’s appearance in the courtroom. In another county, judges have instructed the sheriffs to remove hand and leg cuffs from children before they are brought into court. This has not resulted in any security breaches.

In *People v. Boose*<sup>209</sup> the Illinois Supreme Court held that in certain circumstances a defendant may need to be restrained during their trial. The factors considered by the court to determine if the defendant needs to be restrained may include “(1) the seriousness of the present charge against the defendant, (2) the defendant’s temperament and character, (3) the defendant’s age and physical characteristics, (4) the defendant’s past record, (5) any past escapes or attempted escapes by

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**Shackling all children  
regardless of their age,  
offense, background, and  
emotional development is not  
only inhumane but can also be  
detrimental to the child.**

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the defendant, (6) evidence of a present plan of escape by the defendant, (7) any threats by the defendant to harm others or create a disturbance, (8) evidence of self-destructive tendencies on the part of the defendant, (9) the risk of mob violence or of attempted revenge by others, (10) the possibility of rescue attempts by other offenders still at large, (11) the size and mood of the audience, (12) the nature and physical security of the courtroom, and (13) the adequacy and availability of alternative remedies.”<sup>210</sup>

Automatically shackling children when they enter the courtroom is in direct violation of the standards laid out by the Illinois Supreme Court. Shackling all children regardless of their age, offense, background, and emotional development is not only inhumane but can also be detrimental to the child. Judges are supposed to be unbiased neutral parties in the case, but if a child enters the courtroom in shackles, how can that judge possibly not view that child differently from a child who enters the room free from shackles? “The presumption of innocence is central to our administration of criminal justice. In the absence of exceptional circumstances, an accused has the right to stand trial ‘with the appearance, dignity, and self-respect of a free and innocent man.’”<sup>211</sup>

## B. Role Confusion

While client-directed representation is the standard, most attorneys admittedly fell short of the mark. Interviews and observations made clear that in a majority of the Illinois counties surveyed, juvenile defenders are operating under the “best interest” model, substituting their

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**“A Public Defender has to turn around a bad situation, there is always something good to say. The attorney has to find this good.”**

- Youth

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judgment for that of their client. In a minority of counties visited, lawyers and judges agreed that the defense role was to act as a zealous advocate for the minor in challenging the prosecutor’s evidence and that the minor should direct the litigation.

Many attorneys interviewed as part of the assessment expressed confusion over their roles, which they attributed to the fact that they are often appointed as “Attorney-Guardians *Ad Litem*.” One public defender discussed the

dual role she played in juvenile court and saw her primary role as that of a criminal defense attorney whose job is to force the State to either meet its burden at trial or give plea concessions.

Nonetheless, she also felt obligated to fulfill her appointed role as GAL and pursue the best interest of the child. She tries to satisfy both these roles “as best as possible,” but it leaves her ill at ease. “Really, it’s presumptuous of me to say after 20 minutes [of talking to the child] that I know what’s in his best interest.” When a conflict arises between best and expressed interest, she brings the conflict to the judge’s attention and lets the judge decide which disposition to adopt.<sup>212</sup>

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**“The Public Defender’s  
role is to represent the  
minor, not the family.”**

**- Juvenile Court Judge**

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In some counties, lawyers in a single courtroom took opposite positions with respect to whether they represented best or expressed interests. Many judges contribute to the muddled perception of the role of counsel in delinquency court. Judges often had differing perspectives on the appropriate role of attorneys. A judge in a large county complained that the public defenders who appear in his courtroom “focus too much on defense but not enough on best interests.” However, another judge in that same county stated that while the court used to be principally best interest focused, judges now understand that minors’ due process rights deserve protection.

It was not uncommon to hear sentiments similar to ones expressed by a judge in a rural/small county, who noted, “we are lucky that the attorneys have not been defense zealots in juvenile cases,” and “recognize that getting a kid off is not in the best interest” of the minor. He noted that defense counsel can be in a “difficult position” at times because parents want to “beat the rap” rather than do what is in the “best interest” of the child.

The confusion over the appropriate role of the attorney appears to have significant effect on the nature of the proceedings and the protections afforded a minor. Many public defenders and prosecutors commented that their roles were not adversarial, but instead required cooperation to do what is best for the minor. This may mean entering an admission to charges that the prosecutor cannot prove, or agreeing to continued detention, even though the minor has a basis for arguing for release.

### **C. Juvenile Court as a Training Ground**

The level of experience of the attorneys in juvenile court varied across Illinois. While some courts have experienced attorneys who remain in juvenile court for several years, juvenile court

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**“You can practice your skills with lower stakes to the clients.”**

**- Juvenile Defender regarding why he likes working in juvenile court**

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is often used as a training ground for attorneys who wish to work in felony courtrooms. Some public defender and prosecutor offices have pay parity between juvenile and adult felony lawyers, which enables attorneys to develop juvenile law as their specialty and remain in juvenile courts, but that does not appear to be the norm.

A number of juvenile defenders interviewed viewed juvenile court as a safe stepping stone to felony work. One defender commented that a lot of people like juvenile court because the youth have

rights to protect but the consequences are not as severe as criminal court. Some attorneys stated a preference for juvenile court, but explained that the pay is better in felony courts, and therefore viewed juvenile court as a training ground for felony work. It appeared that more defenders stay in delinquency court than prosecutors.

## **D. Pay Parity**

Due to the fact that juvenile defenders have traditionally been paid less than prosecutors, the Illinois General Assembly passed legislation to equalize the pay of Chief Public Defenders and State’s Attorneys. A new appropriations bill that went into effect in July 2006 required that Chief Public Defenders be paid at least 90% of the salary of the State’s Attorney.<sup>213</sup> This is a major step toward balancing pay. Prior to this legislation, the burden of these costs were entirely on the counties. However, as noted earlier, prosecutor expenditures are significantly higher than those of public defenders.<sup>214</sup> In addition, there does appear to be disparity within both defender and prosecutors’ offices - lawyers who are assigned to adult felony courtrooms typically received higher salaries than their counterparts in juvenile court.

## **E. Inadequate Resources & Training**

Juvenile defenders did not appear to have the same amount of, or access to, resources as the prosecutors in their counties. Although defenders in some of the larger counties reported that they are provided with computers, on-line research accounts, and regular trainings, public defenders in most of the counties visited had limited or no access to these resources. For

example, in one mid-sized county, while the state's attorneys and probation officers receive yearly training, the public defenders do not have a training budget. Nor do they have access to on-line research. Instead, public defenders in that county share a juvenile court bench book that usually sits on the judge's bench.

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**"I have no resources for investigation, evaluations, or evidence development."**

**- Juvenile Defender**

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Many public defenders reported that they had received no training prior to representing children in delinquency court. One defender, who had no prior juvenile experience, reported that she had not received any training, but instead "showed up one day and started representing children." Another reported that her training consisted of meeting with the judge and having another public defender tell her what to do. A public defender reported that she had not received juvenile specific training in over six years. Another public defender stated that she last attended a juvenile seminar 15 years earlier, when she was a prosecutor. In three counties, public defenders reported that they did not have access to trainings, although one lawyer speculated that this may change because Illinois recently instituted a mandatory Continuing Legal Education requirement for all licensed attorneys. In three other counties, public defenders stated that while there was a limited training budget (ranging from \$800 - \$1000 for five to six attorneys), they rarely get to access the funds.

In stark contrast, a public defender office in a large county reported that the attorneys in her office have frequent access to juvenile specific trainings. The chief of the juvenile unit instituted a weekly brown bag lunch in which lawyers bring cases or issues to brainstorm. These lunches are mandatory for supervisors and attorneys assigned to the detention calendar and open to "any other defenders who are available that day." These lunches also help to identify larger training needs for the office. Additionally, the staff sends out an office newsletter and e-mails which provide updates on appellate cases and advocacy tips. Attorneys also attend local and national trainings. There are also several in-house training opportunities for members of the office, although they are not necessarily juvenile specific. While the defenders did not appear to have significant training prior to assuming their duties in juvenile court, the lawyers are provided with numerous training opportunities during their tenure as juvenile defenders. Additionally, defenders in four separate counties stated that they attended juvenile trainings sponsored by the Office of the State Appellate Defender.

In a mid-sized county, the Public Defender hosts monthly meetings in which juvenile issues are sometimes discussed. In one large county, prosecutors assigned to juvenile court receive

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**In most counties, juvenile defenders did not appear to have access to the same resources as their counterparts in adult court.**

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weekly trainings and the “first chair” (more experienced attorney) provides training and supervision for second and third chairs. Most of the training is on the job. Initial training may include training on BARJ, guidelines for pleas, and adolescent brain development. In addition, some prosecutors in that office have attended state and national trainings on juvenile issues and find these trainings helpful. A prosecutor in a small county took a different view. While he acknowledged that training in

juvenile issues is available, he finds that it typically is not effective. “I don’t think we like pie-in-the-sky solutions,” and “there is very little training geared to rural environments.”

Several prosecutors, defenders and judges in small and mid-sized counties believe that trainings should be more geographically based both in terms of content and location. Several of these individuals expressed frustration over trainings that took a “Chicago/Big City approach”, stating a preference for trainings that are “reflective of where you practice.” System participants also expressed a preference for more regionally localized seminars.<sup>215</sup>

## **F. Inadequate Access to Investigators, Experts & Social Workers**

Prosecutors routinely rely on police officers to perform investigations relevant to their cases. In addition, many prosecutors’ offices employ part and full time investigators. While some public defender offices have investigators on staff, they generally have fewer investigators than the prosecutors in the same county. Moreover, juvenile defenders may share the investigators with lawyers from other divisions in their office, with preference given to adult cases. Attorneys in the four largest counties in the study reported that they had access to investigators, whereas attorneys in mid-sized and smaller counties had little or no access to investigators.

Use of investigators may vary within an office. A public defender in a large county reported that her office shared six investigators with the lawyers who represent adults (as compared to 15 in the prosecutor’s office). She estimated that she uses an investigator in 25% of her cases and does not conduct her own investigations. A second lawyer in the office said that she usually accompanies the investigator to the scene and uses the investigator to track down and interview all witnesses including complaining witnesses. Another lawyer in that same office commented

that she rarely uses an investigator because she likes to conduct her own investigations.

In another large county, public defenders in the delinquency unit share seven investigators with attorneys in the child protection division. The chief of the delinquency division receives and reviews about one to two investigative requests per week and has never denied a request for an investigator.<sup>216</sup> Investigators canvass neighborhoods, serve subpoenas, locate witnesses, accompany defenders on witness interviews, and take photographs of the scene. One attorney in that office stated that she sends investigators out on her cases about three to four times a month and will go out on her own to investigate if she has the time. Another lawyer says that he rarely, if ever, uses an investigator.

In most counties, juvenile defenders did not appear to have access to the same resources as their counterparts in adult court. For example, in one public defender office that employs investigators, the chief public defender stated that she does not provide an investigator for juvenile public defenders because “there are important rapes and murders in adult court”. In three mid-sized counties, the public defender office employs part-time investigators. However, attorneys in the juvenile unit essentially do not have access to these investigators – in two of these counties, the investigators work exclusively on adult cases; in the other county, largely as a consequence of the limited hours the investigators work, investigators are primarily used to serve summons. An attorney in that county opined that it would be impossible for these investigators to keep up with juvenile caseloads.

In the several counties in which the public defenders do not have investigators on staff, attorneys report that they generally forgo investigations except in the more serious cases – in which they conduct the investigations themselves. Judges consistently said that they had never received a request for an investigator but did not rule out the possibility of granting such a request, “if the case warranted it.” Attorneys in that county stated that they do not make such requests because they believe such requests would be denied.

### **Experts**

Under Illinois case law, a child is entitled to reasonable fees for necessary expert witnesses.<sup>217</sup> Experts may be invaluable to challenging the State’s evidence. For example, doctors may offer opinions as to the cause and extent of injuries in aggravated battery or attempted murder cases.

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**In close to one third of the counties studied, the defense had never presented an expert in a delinquency case.**

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Fingerprint experts can rebut testimony offered by the State's expert. Psychologists can testify on the issue of whether a minor has the capacity to make a knowing and intelligent waiver of his *Miranda* warnings, or on the issue of the reliability of a confession or identification. Psychologists can also testify on issues of competency, state of mind at the time of the alleged offense, and on issues relevant to disposition.

As with investigators, lawyers in larger counties appeared to have much greater access to experts than those in small to mid-size counties. Lawyers in the two largest counties visited stated that they routinely have internal requests for experts granted. However, in the overwhelming majority of the counties, defenders reported that they had never used an expert in a juvenile case, nor had they ever requested that the court appoint one. In close to one third of the counties studied, the defense had never presented an expert in a delinquency case. In the few instances where competency was an issue, the defender relied on the expert assigned by the court. Similarly, in those counties where minors are routinely subject to mental health evaluations for dispositional purposes, defenders did not seek appointment of their own expert, but instead relied upon the one used by the State.

As in the case of investigators, experts are generally reserved for adult cases. One defender commented, "Let's put it this way - we are not encouraged to get experts for our cases." In addition, defenders believed that any request for an independent expert would be denied. However, a defender in one small county reported that she had successfully petitioned the court to appoint an expert for competency determinations, as well as to raise an insanity defense.

### **Social Workers**

None of the public defenders have a full time social worker on staff and many defenders stated that they and their clients would benefit from one. One commented, "I feel like I am doing a lot of social work but I do not really know what I am doing...it would be great to have a social worker in the office even if it was just part time."

# CHAPTER FIVE:

## Principles for Effective Practice

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It has been reported that the overarching elements that lay the foundation for comprehensive, developmentally appropriate defense services for children and youth include strong leadership that recognizes juvenile defense as a specialty; a commitment to high ethical standards in the defense of children; implementation and adaptation of best practices; comprehensive representation; and the effective utilization of technology. In order to support these foundational elements, the National Juvenile Defender Center and the American Council of Chief Defenders have articulated a set of principles designed to assist public defender systems in reevaluating their programs for children. The *Ten Core Principles for Quality Delinquency Representation* (“Principles”) recognize that children and adolescents are at crucial stages of development and that their legal representation requires specialized skills and knowledge. The Principles can be an important touchstone in the development of comprehensive and effective juvenile indigent defense delivery systems and should serve as a guide in Illinois. In sum, they focus on:

1. **Zealous Representation:** The indigent defense delivery system upholds juveniles’ right to counsel throughout the delinquency process and recognizes the need for zealous representation to protect children.
  2. **Specialized Skill:** The indigent defense delivery system recognizes that legal representation of children is a specialized area of the law.
  3. **Personnel and Resource Parity:** The indigent defense delivery system supports quality juvenile delinquency representation through personnel and resource parity.
  4. **Expert and Ancillary Services:** The indigent defense delivery system utilizes expert and ancillary services to provide quality juvenile defense services.
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5. **Supervision and Workload:** The indigent defense delivery system supervises attorneys and staff and monitors work and caseloads.
6. **Professional Accountability:** The indigent defense delivery system supervises and systematically reviews juvenile defense staff for quality according to national, state and/or local performance guidelines or standards.
7. **Continuous Training:** The indigent defense delivery system provides and supports comprehensive, ongoing training and education for all attorneys and support staff involved in the representation of children.
8. **Right to Treatment:** The indigent defense delivery system has an obligation to present independent treatment and disposition alternatives to the court.
9. **Educational Advocacy:** The indigent defense delivery system advocates for the educational needs of clients.
10. **Systematic Advocacy:** The indigent defense delivery system must promote fairness and equality for children.

# CHAPTER SIX:

## Conclusion & Recommendations

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Despite the good work of many dedicated juvenile defense attorneys and others working with the juvenile courts throughout Illinois, there is much work to be done to bring the provision of defense services for Illinois children up to national standards. Illinois' juvenile indigent defense system is in urgent need of attention and repair.

This Assessment calls for collaborative action to address systemic deficiencies at the state, regional and local levels and urges a renewed commitment to ensuring that children have a meaningful opportunity to be heard in delinquency proceedings. The Core Recommendations that are set forth below are followed by Implementation Strategies. These Implementation Strategies must have the full support of all branches of state government and local communities in order to succeed.

1. The quality of representation, and a child's meaningful opportunity to be heard in delinquency proceedings, can be dramatically enhanced through the early and timely appointment of counsel. Appointment of counsel should occur as far as possible in advance of the first court appearance in order to allow meaningful consultation between counsel, the child, and the child's family.
2. Children lack the capacity to pay attorneys' fees. The Illinois Legislature should establish a presumption of indigency for children in juvenile court proceedings. This presumption should be rebuttable upon a showing that a child has the financial resources to retain an attorney. In the majority of cases, such a showing will focus on the financial status of the child's parents. Judges should be sensitive to the fact that in many cases, the child and his parents may be at odds concerning the retention of counsel. Therefore, the financial

resources of the parents should not always be the determining factor in a decision as to whether to appoint counsel. In making indigency determinations, standardized forms should be developed utilizing federal poverty guidelines. Juvenile defense attorneys should play a significant role in opposing inappropriate assessment of attorneys' fees by judges who do not make sufficient allowance for the parties' inability to pay.

3. Children's lawyers must provide zealous advocacy during detention hearings. Special attention should be paid to challenging probable cause when appropriate, as well as providing information to the court as to why it is "not a matter of immediate and urgent necessity for the protection of the minor or of the person, or property of another that the minor be detained..."<sup>218</sup> Effective advocacy at the detention hearing can reduce the number of children detained, thus advancing the liberty interests of children and reducing overcrowding in detention centers while saving counties the costs to support unnecessary pre-trial incarcerations. Effective advocacy at the detention stage must begin with a thorough investigation of the child's ties to community and family, as well as any psycho-social factors that may be relevant to the judge's ruling. This can only occur if the attorney meets with and interviews the client prior to the detention hearing or if the defender system in the county has a program for conducting a thorough interview of children before the detention hearing.
4. Judicial admonitions and colloquies must be delivered in developmentally appropriate, clear and easily understandable language. Judges must test children's understanding before the child waives any rights or enters into a plea agreement. Judges must also ensure that the child and the child's family have had an adequate opportunity to confer with counsel before entering an admission. Juvenile defense attorneys must discuss the meaning and effect of entering an admission with their clients to make sure the child understands that they are entering an admission and the consequences of entering the admission.
5. A child cannot be given a meaningful opportunity to be heard without the opportunity to develop a full-fledged attorney/client relationship and without having a clear understanding of the proceedings. Defenders must institute procedures that allow the lawyer and the child to establish rapport and common understanding. No client—child or adult—will share crucial information outside of the context of a trusting relationship. It is difficult, if not impossible, to establish trusting relationships in a series of brief meetings just before the case is called before the judge.

6. Children's lawyers must themselves become experienced in representing children and adolescents, and have access to and support from professionals with expertise in adolescent behavior, development and needs. The Supreme Court of the United States has stated that children are "categorically less culpable" than adults and are developmentally different.<sup>219</sup> To provide zealous and outstanding legal representation for children in conflict with the law, attorneys must be both good litigators and experts in adolescent development. This is challenging without the consistent practice of attorneys experienced in child/juvenile defense. Defenders in smaller jurisdictions, who might be assigned to a juvenile justice calendar just one or two days per week, must have access to and support from juvenile defenders with expertise in adolescent development, brain research, and effective remedies, programs, and pathways to child rehabilitation and reintegration. In this regard, Illinois needs an indigent juvenile defender system, and the back-up of a vibrant juvenile defender resource center.
7. The role of probation officers assigned to juvenile courts should be to provide the necessary support and guidance to children involved in the juvenile justice system. Probation officers have the difficult job of providing support to their probationers while, at the same time, being obligated to provide full information to the juvenile court judge regarding the conduct of the children for whom they are responsible. Lawyers for children should recognize the importance and complexity of the role of probation officers and should work closely with them to advance the interests of their clients. Lawyers should work with probation officers to make sure that probation officers do not dispense legal advice. This can best be accomplished by lawyers regularly consulting with their clients, thereby reducing the need of clients to ask probation officers for legal advice.
8. Juvenile defense attorneys must be actively engaged in the discovery and investigation process. It is impossible to provide effective representation unless the attorney is fully aware of all of the facts of the case. It is impossible for an attorney to be aware of all of the relevant facts absent a thorough investigation. It is the obligation of defense counsel to see to it that an adequate investigation is completed before important decisions are made regarding the filing of pre-trial motions, whether or not to take the case to trial, and how to counsel the client and the client's family regarding the juvenile court proceeding.
9. Continuity of representation should be encouraged in order to ensure that a child's attorney is thoroughly familiar with the facts of the case and with the child's background at each stage of the case. In defender systems in which it is impossible to guarantee such continuity because of high caseloads and turnover of personnel, systems should be in place

to ensure that information is transmitted from one attorney to the next. Juvenile defense attorneys should represent a child throughout the entire case: from the first hearing until the child is “discharged” from the jurisdiction of the juvenile court. Furthermore, if the child is brought in on a probation violation or a new charge wherever possible the same attorney or public defender office should be appointed to represent the child.

10. Procedures to expunge a juvenile record should be readily accessible to juvenile defense attorneys and children involved in the juvenile justice system. The limits of the effectiveness of such procedures in this day of computerized record keeping should be explained to parents and children. Juvenile defenders should take the lead in developing procedures statewide and in their counties to ensure that the confidentiality provisions of the Illinois Juvenile Court Act are fully recognized and implemented.
11. Shackling children in juvenile court chills the fair administration of justice. No child should be brought into the courtroom in shackles except under extraordinary circumstances and with a strong evidentiary showing of immediate risk of harm.
12. This Assessment notes the ambiguity in Illinois law and practice concerning the role of defense counsel in a juvenile delinquency proceeding. This ambiguity centers on whether defense counsel must advocate for the expressed interest of her client or whether defense counsel may advocate for what she believes to be the “best interest” of the child even if that is contrary to the objective sought by the child client. National standards clearly require that lawyers for children must advocate for the expressed interest of their clients. While it is understandable to want to do what is in the best interest of the child, that is the responsibility of the court, not the juvenile defense attorney.<sup>220</sup> If a lawyer concludes that a child is not capable of forming and maintaining a meaningful lawyer-client relationship, a guardian should be appointed to assist with decision making. This Assessment recognizes that the lawyer-client relationship in juvenile proceedings is complex and difficult. However, with proper attention and training, lawyers for children should allow the child to control the objectives of the representation. Minors prosecuted under the Juvenile Court Act face significant consequences, ranging from incarceration, broad dissemination of their juvenile court files, possible registration as sex offenders, and sentencing enhancements. Accordingly, they are entitled to zealous representation by a lawyer who will follow their directions.

13. Pay and resource parity must exist between juvenile defense attorneys and their counterparts in criminal court as well as with the juvenile state's attorneys. Juvenile defense attorneys need access to investigators, experts and social workers and should be given the same resources that are available to the prosecution.
14. Juvenile defense attorneys must receive appropriate periodic training on a variety of topics on juvenile law, including detention advocacy, adolescent development, trial and litigation skills, dispositional planning, and post-dispositional advocacy, including appellate advocacy. Additionally, juvenile defense attorneys should receive training in various other substantive issues that affect their clients, including but not limited to police interrogation of children, special education, competency, health and mental health, youth gangs, the special needs of girls, conditions of confinement, immigration and asylum law, and children's human rights.
15. The training of juvenile defenders in Illinois is haphazard at best. Few defenders have access to state-of-the-art training on recent legal developments or in advocacy technique. Lawyers for the children who appear in juvenile court also lack familiarity with the latest research on adolescent development. This body of research is critical to the provision of effective representation from the detention stage through disposition. Lawyers representing children should have the basic knowledge to know when to make a referral for expert advice concerning a client's mental or emotional status. The State Legislature should establish and appropriate sufficient funds to support the creation of an Illinois Juvenile Defender Resource Center to provide legal training, skills training, education in adolescent development, and other specialized resources to support juvenile defense attorneys throughout Illinois.<sup>221</sup>
16. Data related to juvenile justice in Illinois must be "readily accessible in a single information system" that is regularly analyzed and available to those in the field and to the general public.<sup>222</sup> Identifying emerging trends, evaluating system functions, and assessing effectiveness are critical to "a comprehensive understanding of how youth are served by Illinois' juvenile justice system."<sup>223</sup>

# Implementation Strategies

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Putting these recommendations into action in Illinois will require the participation and support of many groups. Governmental and non-governmental agencies must work together to increase resources for juvenile defense attorneys and improve the quality of representation.

In order to make the core recommendations a reality,

## The Illinois State Legislature should:

- Establish and fund a Juvenile Defender Resource Center.
- Enact legislation clarifying the obligation of juvenile defenders to provide representation to children in post-dispositional matters including, where necessary, advocacy within the school setting, advocacy with government and private agencies for services, and the provision of services to the client's family.
- Clarify and standardize the eligibility for defense services, noting that all children should be presumed to be indigent for purposes of appointment of counsel.
- Enact legislation allowing for the automatic expungement for cases that were: (1) station adjusted; (2) diverted; (3) not charged; (4) dismissed; or (5) when the child is found not delinquent.

## The Judiciary should:

- Establish procedures that enable attorneys to be appointed prior to the child's first hearing<sup>224</sup> and to obtain comprehensive information about the youth before their first appearance in court.
- Not allow any child to waive her right to counsel or proceed at any hearing (even the first appearance) without the presence of an attorney.
- Ensure the use of developmentally appropriate language when issuing admonitions and colloquies to youth.
- Insist that no judge impose a "trial tax" as a means of pressuring children to enter an admission.
- Refuse to accept un-counseled admissions, as required by Illinois law.<sup>225</sup>
- Conduct detention hearings in the afternoon so that juvenile defense attorneys will have the time to interview and prepare properly for the detention hearing.

- Tailor dispositional orders to the individual child, rather than utilize standardized dispositional orders based on the offense.
- Make every effort to re-appoint the same attorney if a child comes back in on a probation violation or a new charge.
- Explain to all children in their courtroom the option of expunging their juvenile record.
- Prohibit any policy that allows children to appear in the courtroom in shackles or handcuffs unless extenuating circumstances warrant such a restraint in individual cases.
- Promulgate and adopt standards for defense attorneys representing children in delinquency proceedings that establish guidelines for maximum caseloads.

## The Executive Branch should:

- Take a leadership role in increasing public awareness of the importance of juvenile defender services.
- Take a leadership role in providing sufficient budgets for juvenile defender services in Illinois including funds for adequate numbers of lawyers, sufficient staff to support the lawyers, funds for investigative services and expert witnesses, funding for social workers, and adequate provision for the funding of juvenile defenders.
- Work with judges, prosecutors, defense lawyers, and probation officers to create uniform detention/risk assessment and other screening instruments that can be customized by local jurisdictions.
- Work with the defense bar, with prosecutors, and with probation departments to reduce reliance on secure confinement.

## Juvenile Defense Attorneys should:

- Participate with other leaders in the juvenile justice system, the legislature, and the executive branch to make sure that juvenile courts operate fairly and efficiently in the pursuit of justice for children.
- Work with public defenders throughout the state to establish rules of professional conduct that will set standards for the representation of children in Illinois.
- Consult with clients (detained and non-detained) as far in advance of court hearings as possible in order to ensure that the child has a full understanding of the juvenile court process so he can make informed decisions about his case. These meetings

should occur in private settings, not just in juvenile court hallways or in the courtroom.

- Represent the expressed interest of their clients as opposed to what the defense attorney believes to be in the “best interest” of the child.
- Ensure continuity of representation.
- Be knowledgeable about the legal and collateral consequences of juvenile plea agreements and records.
- Consult with clients regarding court fees and object to the imposition of any fees that their clients are unable to pay.
- Be adequately prepared for taking a case to trial which includes: subpoenaing witnesses, preparing opening and closing statements, speaking to witnesses prior to the trial, and preparing witnesses and their own client for testifying.
- Engage in dispositional planning, offering alternatives to the court, and actively participating in the dispositional hearing, including cross examining the prosecutor’s witnesses and calling defense and mitigation witnesses.
- Be familiar with the procedures for expunging a child’s juvenile record and inform their clients of this right and file expungement petitions in the appropriate cases.
- Request that all handcuffs and shackles be removed from their client when they are in the courtroom.

## Citizens, parents, and youth advocates should:

- Encourage the adoption of the recommendations set forth in this assessment.
- Provide information to children and families regarding their due process rights in delinquency proceedings.

## County Boards should:

- Learn about juvenile indigent defense issues and acknowledge the differences between representing children and adults.
- Promote best practices in the representation of children involved in juvenile delinquency proceedings.

## Detention Centers should:

- Remove the institutional barriers that keep attorneys from meeting with clients and greatly increase visiting opportunities for attorneys.
- Utilize standardized risk assessment tools to determine when a child should be detained after an arrest.

## Probation Officers should:

- Refer children who have legal questions to their attorneys and follow up to ensure that the attorney is addressing the child's questions.

## State and local bar associations should:

- Promote best practices in juvenile court and recognize delinquency defense as a specialized practice of law.

## Law schools and universities should:

- Collaborate with public defenders' offices and other indigent defense delivery systems to provide law clerks, interns, experts, investigators, social workers, education specialists and the like.
- Conduct needed research to support the defense function on long and short term issues.
- Allow juvenile defense attorneys to utilize their schools for conducting trainings.



# APPENDIX A

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American Council of Chief Defenders  
National Juvenile Defender Center

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

January 2005

### Preamble<sup>1</sup>

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#### A. Goal of These Principles

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

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

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

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

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

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

## **B. The Representation of Children and Adolescents is a Specialty**

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

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

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

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

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

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

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

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

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

# Ten Principles

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

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

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

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

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

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

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

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

## **3 The Indigent Defense Delivery System Supports Quality Juvenile Delinquency Representation Through Personnel and Resource Parity<sup>8</sup>**

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

B. The indigent defense delivery system provides a professional work environment and adequate operational resources such as office space, furnishings, technology, confidential client interview areas<sup>9</sup> and current legal research tools. The system includes juvenile representation resources in budgetary planning to ensure parity in the allocation of equipment and resources.

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

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

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

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

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

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

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

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

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

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

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

A. The indigent defense delivery system supports and encourages juvenile defense team members through internal and external comprehensive training<sup>13</sup> on topics including, but not limited to, detention advocacy, litigation and trial skills, dispositional planning, post-dispositional practice, educational rights, appellate advocacy and administrative hearing representation.

B. The indigent defense delivery system recognizes juvenile delinquency defense as a specialty that requires continuous training in unique areas of the law.<sup>14</sup> In addition to understanding the juvenile court process and systems, juvenile team members should be competent in juvenile law, the collateral consequences of adjudication and conviction, and other disciplines that uniquely impact juvenile cases, such as, but not limited to:

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

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

- A. Indigent defense delivery system counsel have an obligation to consult with clients and, independent from court or probation staff, to actively seek out and advocate for treatment and placement alternatives that best serve the unique needs and dispositional requests of each child.
- B. The leadership and staff of the indigent defense delivery system work in partnership with other juvenile justice agencies and community leaders to minimize custodial detention and the incarceration of children and to support the creation of a continuum of community-based, culturally sensitive and gender-specific treatment alternatives.
- C. The indigent defense delivery system provides independent post-conviction monitoring of each child's treatment, placement or program to ensure that rehabilitative needs are met. If clients' expressed needs are not effectively addressed, attorneys are responsible for intervention and advocacy before the appropriate authority.

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

- A. The indigent defense delivery system recognizes that access to education and to an appropriate educational curriculum is of paramount importance to juveniles facing delinquency adjudication and disposition.
- B. The indigent defense delivery system advocates, either through direct representation or through collaborations with community-based partners, for the appropriate provision of the individualized educational needs of clients.
- C. The leadership and staff of the indigent defense delivery system work with community leaders and relevant agencies to advocate for and support an educational system that recognizes the behavioral manifestations and unique needs of special education students.
- D. The leadership and staff of the indigent defense delivery system work with juvenile court personnel, school officials and others to find alternatives to prosecutions based on zero tolerance or school-related incidents.

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

- A. The indigent defense delivery system should demonstrate strong support for the right to counsel and due process in delinquency courts to safeguard a juvenile justice system that is fair, non-discriminatory and rehabilitative.
- B. The leadership of the indigent defense delivery system should advocate for positive change through legal advocacy, legislative improvements and systems reform on behalf of the children whom they serve.
- C. The leadership and staff of the indigent defense delivery system are active participants in the community to improve school, mental health and other treatment services and opportunities available to children and families involved in the juvenile justice system.

### Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# APPENDIX B

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

### PART I. GENERAL STANDARDS

#### **Standard 1.1. Counsel in Juvenile Proceedings, Generally.**

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

#### **Standard 1.2. Standards in Juvenile Proceedings, Generally.**

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

#### **Standard 1.3. Misrepresentation of Factual Propositions or Legal Authority.**

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

#### **Standard 1.4. Relations with Probation and Social Work Personnel.**

A lawyer engaged in juvenile court practice typically deals with social work and probation department personnel throughout the course of handling a case. In general, the lawyer should cooperate with these agencies and should instruct the client to do so, except to the extent such cooperation is or will likely become inconsistent with protection of the client’s legitimate interests in the proceeding or of any other rights of the client under the law.

### **Standard 1.5. Punctuality.**

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

### **Standard 1.6. Public Statements.**

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

### **Standard 1.7. Improvement in The Juvenile Justice System.**

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

## **PART II. PROVISIONS AND ORGANIZATION OF LEGAL SERVICES**

### **Standard 2.1. General Principles.**

- (a) Responsibility for provision of legal services.

Provision of satisfactory legal representation in juvenile and family court cases is the proper concern of all segments of the legal community. It is, accordingly, the responsibility of courts, defender agencies, legal professional groups, individual practitioners and educational institutions to ensure that competent counsel and adequate supporting services are available for representation of all persons with business before juvenile and family courts.

  - (i) Lawyers active in practice should be encouraged to qualify themselves for participation in juvenile and family court cases through formal training, association with experienced juvenile counsel or by other means. To this end, law firms should encourage members to represent parties involved in such matters.
  - (ii) Suitable undergraduate and postgraduate educational curricula concerning legal and nonlegal subjects relevant to representation in juvenile and family courts should regularly be available.

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

(b) Compensation for services.

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

(c) Supporting services.

Competent representation cannot be assured unless adequate supporting services are available. Representation in cases involving juveniles typically requires investigatory,

expert and other nonlegal services. These should be available to lawyers and to their clients at all stages of juvenile and family court proceedings.

- (i) Where lawyers are assigned, they should have regular access to all reasonably necessary supporting services.
- (ii) Where a defender system is involved, adequate supporting services should be available within the organization itself.

(d) Independence.

Any plan for providing counsel to private parties in juvenile court proceedings must be designed to guarantee the professional independence of counsel and the integrity of the lawyer-client relationship.

**Standard 2.2. Organization of Services.**

(a) In general.

Counsel should be provided in a systematic manner and in accordance with a widely publicized plan. Where possible, a coordinated plan for representation which combines defender and assigned counsel systems should be adopted.

(b) Defender systems.

(i) Application of general defender standards.

A defender system responsible for representation in some or all juvenile court proceedings generally should apply to staff and offices engaged in juvenile court matters its usual standards for selection, supervision, assignment and tenure of lawyers, restrictions on private practice, provision of facilities and other organizational procedures.

(ii) Facilities.

If local circumstances require, the defender system should maintain a separate office for juvenile court legal and supporting staff, located in a place convenient to the courts and equipped with adequate library, interviewing and other facilities. A supervising attorney experienced in juvenile court representation should be assigned to and responsible for the operation of that office.

(iii) Specialization.

While rotation of defender staff from one duty to another is an appropriate training device, there should be opportunity for staff to specialize in juvenile court representation to the extent local circumstances permit.

(iv) Caseload.

It is the responsibility of every defender office to ensure that its personnel can offer prompt, full and effective counseling and representation to each client. A defender office should not accept more assignments than its staff can adequately discharge.

(c) Assigned counsel systems.

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

**Standard 2.3. Types of Proceedings.**

(a) Delinquency and in need of supervision proceedings.

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

(b) Child protective, custody and adoption proceedings.

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

**Standard 2.4. Stages of Proceedings.**

(a) Initial provision of counsel.

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

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

## PART III. THE LAWYER-CLIENT RELATIONSHIP

### Standard 3.1. The Nature Of The Relationship.

- (a) Client's interests paramount.  
However engaged, the lawyer's principal duty is the representation of the client's legitimate interests. Considerations of personal and professional advantage or convenience should not influence counsel's advice or performance.
- (b) Determination of client's interests.
  - (i) Generally.  
In general, determination of the client's interests in the proceedings, and hence the plea to be entered, is ultimately the responsibility of the client after full consultation with the attorney.
  - (ii) Counsel for the juvenile.

[a] Counsel for the respondent in a delinquency or in need of supervision proceeding should ordinarily be bound by the

client's definition of his or her interests with respect to admission or denial of the facts or conditions alleged. It is appropriate and desirable for counsel to advise the client concerning the probable success and consequences of adopting any posture with respect to those proceedings.

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

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

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

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

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

(iii) Counsel for the parent.

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

### **Standard 3.2 Adversity of Interests.**

(a) Adversity of interests defined.

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

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

(b) Resolution of adversity.

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

### **Standard 3.3. Confidentiality.**

(a) Establishment of confidential relationship.

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

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

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

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

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

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

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

(d) Disclosure of confidential communications.

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

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

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

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

### **Standard 3.5. Duty to Keep Client Informed.**

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

## **PART IV. INITIAL STAGES OF REPRESENTATION**

### **Standard 4.1. Prompt Action to Protect the Client.**

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

### **Standard 4.2. Interviewing the Client.**

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

### **Standard 4.3. Investigation and Preparation.**

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

- (b) Where circumstances appear to warrant it, the lawyer should also investigate resources and services available in the community and, if appropriate, recommend them to the client and the client's family. The lawyer's responsibility in this regard is independent of the posture taken with respect to any proceeding in which the client is involved.
- (c) It is unprofessional conduct for a lawyer to use illegal means to obtain evidence or information or to employ, instruct or encourage others to do so.

**Standard 4.4. Relations with Prospective Witnesses.**

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

**PART V. ADVISING AND COUNSELING THE CLIENT**

**Standard 5.1. Advising the Client Concerning the Case.**

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

**Standard 5.2. Control and Direction of the Case.**

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

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

### **Standard 5.3. Counseling.**

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

## **PART VI. INTAKE, EARLY DISPOSITION AND DETENTION**

### **Standard 6.1. Intake and Early Disposition Generally.**

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

### **Standard 6.2. Intake Hearings.**

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

### **Standard 6.3. Early Disposition.**

- (a) When the client admits the acts or conditions alleged in the juvenile court proceeding and, after investigation, the lawyer is satisfied that the admission is factually supported and that the court would have jurisdiction to act, the lawyer should, with the client's consent, consider developing or cooperating in the development of a plan for informal or voluntary adjustment of the case.
- (b) A lawyer should not participate in an admission of responsibility by the client for purposes of securing informal or early disposition when the client denies responsibility for the acts or conditions alleged.

### **Standard 6.4. Detention.**

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

## **PART VII. ADJUDICATION**

### **Standard 7.1. Adjudication without Trial.**

- (a) Counsel may conclude, after full investigation and preparation, that under the evidence and the law the charges involving the client will probably be sustained. Counsel should so advise the client and, if negotiated pleas are allowed under prevailing law, may seek the client's consent to engage in plea discussions with the prosecuting agency. Where the client denies guilt, the lawyer cannot properly participate in submitting a plea of involvement when the prevailing law requires that such a plea be supported by an admission of responsibility in fact.
- (b) The lawyer should keep the client advised of all developments during plea discussions with the prosecuting agency and should communicate to the client all proposals

made by the prosecuting agency. Where it appears that the client's participation in a psychiatric, medical, social or other diagnostic or treatment regime would be significant in obtaining a desired result, the lawyer should so advise the client and, when circumstances warrant, seek the client's consent to participation in such a program.

### **Standard 7.2. Formality, In General.**

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

### **Standard 7.3. Discovery and Motion Practice.**

#### (a) Discovery.

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

#### (b) Other motions.

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

#### **Standard 7.4. Compliance with Orders.**

- (a) Control of proceedings is principally the responsibility of the court, and the lawyer should comply promptly with all rules, orders and decisions of the judge. Counsel has the right to make respectful requests for reconsideration of adverse rulings and has the duty to set forth on the record adverse rulings or judicial conduct which counsel considers prejudicial to the client's legitimate interests.
- (b) The lawyer should be prepared to object to the introduction of any evidence damaging to the client's interest if counsel has any legitimate doubt concerning its admissibility under constitutional or local rules of evidence.

#### **Standard 7.5. Relations with Court and Participants.**

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

#### **Standard 7.7. Presentation of Evidence.**

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

#### **Standard 7.8. Examination of Witnesses.**

- (a) The lawyer in juvenile court proceedings should be prepared to examine fully any witness whose testimony is damaging to the client's interests. It is unprofessional conduct for counsel knowingly to forego or limit examination of a witness when it is obvious that failure to examine fully will prejudice the client's legitimate interests.

- (b) The lawyer's knowledge that a witness is telling the truth does not preclude cross-examination in all circumstances, but may affect the method and scope of cross-examination. Counsel should not misuse the power of cross-examination or impeachment by employing it to discredit the honesty or general character of a witness known to be testifying truthfully.
- (c) The examination of all witnesses should be conducted fairly and with due regard for the dignity and, to the extent allowed by the circumstances of the case, the privacy of the witness. In general, and particularly when a youthful witness is testifying, the lawyer should avoid unnecessary intimidation or humiliation of the witness.
- (d) A lawyer should not knowingly call as a witness one who will claim a valid privilege not to testify for the sole purpose of impressing that claim on the fact-finder. In some instances, as defined in the ABA Code of Professional Responsibility, doing so will constitute unprofessional conduct.
- (e) It is unprofessional conduct to ask a question that implies the existence of a factual predicate which the examiner knows cannot be supported by evidence.

**Standard 7.9. Testimony by the Respondent.**

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

### **Standard 7.10. Argument.**

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

## **PART VIII. TRANSFER PROCEEDINGS**

### **Standard 8.1. In General.**

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

### **Standard 8.2. Investigation and Preparation.**

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

### **Standard 8.3. Advising and Counseling the Client Concerning Transfer.**

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

### **Standard 8.4. Transfer Hearings.**

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

### **Standard 8.5. Post-Hearing Remedies.**

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

## PART IX. DISPOSITION

### **Standard 9.1. In General.**

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

### **Standard 9.2. Investigation and Preparation.**

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

### **Standard 9.3. Counseling Prior to Disposition.**

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

procedure to the client and encourage the client's cooperation with the person or persons administering the diagnostic procedure.

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

#### **Standard 9.4. Disposition Hearing.**

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

#### **Standard 9.5. Counseling After Disposition.**

When a dispositional decision has been reached, it is the lawyer's duty to explain the nature, obligations and consequences of the disposition to the client and his or her family and to urge upon the client the need for accepting and cooperating with the dispositional order. If appeal

from either the adjudicative or dispositional decree is contemplated, the client should be advised of that possibility, but the attorney must counsel compliance with the court's decision during the interim.

## **PART X. REPRESENTATION AFTER DISPOSITION**

### **Standard 10.1. Relations with the Client After Disposition.**

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

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

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

### **Standard 10.3. Counsel on Appeal.**

- (a) Trial counsel, whether retained or appointed by the court, should conduct the appeal unless new counsel is substituted by the client or by the appropriate court. Where there exists an adequate pool of competent counsel available for assignment to appeals from juvenile court orders and substitution will not work substantial disadvantage to the client's interests, new counsel may be appointed in place of trial counsel.
- (b) Whether or not trial counsel expects to conduct the appeal, he or she should promptly inform the client, and where the client is a minor and the parents' interests are not adverse, the client's parents of the right to appeal and take all steps necessary to protect that right until appellate counsel is substituted or the client decides not to exercise this privilege.
- (c) Counsel on appeal, after reviewing the record below and undertaking any other appropriate investigation, should candidly inform the client as to whether there are meritorious grounds for appeal and the probable results of any such appeal, and should further explain the potential advantages and disadvantages associated with appeal. However, appellate counsel should not seek to withdraw from a case solely because his or her own analysis indicates that the appeal lacks merit.

### **Standard 10.4. Conduct of the Appeal.**

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

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

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

**Standard 10.6. Probation Revocation; Parole Revocation.**

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

**Standard 10.7. Challenges to the Effectiveness of Counsel.**

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

## NATIONAL JUVENILE DEFENDER CENTER

Summer 2006

### Encouraging Judges to Support Zealous Defense Advocacy from Detention to Post-Disposition

#### An Overview of the *Juvenile Delinquency Guidelines* of the National Council of Juvenile and Family Court Judges

The *Juvenile Delinquency Guidelines (Guidelines)* issued in 2005 by the National Council of Juvenile and Family Court Judges (NCJFCJ) set forth essential elements of effective practice in juvenile delinquency courts. In addition to creating a mandate for juvenile court judges, the *Guidelines* provide standards and support for improving juvenile indigent defense systems and daily court practice. The National Juvenile Defender Center has summarized NCJFCJ's recommendations regarding the role of the juvenile defender and has extracted key quotations from the *Guidelines*, organized topically, to assist defenders in navigating and citing this extensive resource. Please feel free to use and adapt these materials for your own purposes.

#### Background

The *Juvenile Delinquency Guidelines* of the National Council of Juvenile and Family Court Judges ("*Guidelines*") is a comprehensive benchbook of best practices developed by a committee of judges, prosecutors, defense attorneys, and other key juvenile justice stakeholders. Released in July 2005, the *Guidelines* volume can assist juvenile court systems nationwide in planning for improvement and change.

In the *Guidelines*, the nation's leading professional organization of juvenile court judges promotes the active participation of defense counsel in creating fair and efficient delinquency courts. The *Guidelines* identify 16 core principles that characterize a juvenile court of excellence. The seventh principle states that "*youth charged in the formal juvenile delinquency court must have qualified and adequately compensated legal representation.*"<sup>1</sup>

The *Guidelines* recognize zealous defense advocacy as a necessity for children in delinquency proceedings. To this end, the *Guidelines* support policies such as appointment of counsel prior to the detention hearing, adequate training and resources for defenders, and continuity of representation through post-disposition and reentry.

Juvenile defenders can use the best practices endorsed in the *Guidelines* to advance systemic changes in their jurisdictions and outstanding defense practice in every court appearance.



*ensuring excellence in juvenile defense and promoting justice for all children*

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## Access to Qualified Counsel

In its core principles and throughout the *Guidelines*, NCJFCJ unequivocally supports the need for qualified defense counsel in establishing a delinquency court of excellence. The *Guidelines* acknowledge that accused children’s right to counsel is frequently underutilized and youth who waive the right are less likely to secure other elements of a fair trial.<sup>2</sup> Although courts often subscribe to the misperception that defense advocacy slows down court processing, the *Guidelines* suggest that early access to counsel leads to early case resolution.<sup>3</sup>

NCJFCJ therefore holds delinquency judges responsible for providing children with access to counsel at every stage of the proceedings, from before the initial hearing through post-disposition and reentry.<sup>4</sup> The *Guidelines* advise judges to be “extremely reluctant” to permit waiver of counsel by youth.<sup>5</sup> Judges should accept waivers from children only on “rare occasion[s]” and should do so only after the child has consulted with an attorney about the decision and persists in desiring to waive the right.<sup>6</sup> The court should always take independent steps to ensure that the child understands the waiver decision and its possible consequences.<sup>7</sup>

Moreover, the court process should be sensitive to the individual characteristics of each child. Judges are also expected to ensure that all courtroom professionals, including defense attorneys, receive adequate training.<sup>8</sup> Youth should have access to defenders who are culturally competent, and to foreign language interpreters if

necessary for conversing with the court and counsel.<sup>9</sup> NCJFCJ repeatedly states that defenders must also have manageable caseloads in order to represent child clients effectively.<sup>10</sup>

In addition, NCJFCJ notes that youth must have access to experienced attorneys who can provide effective assistance.<sup>11</sup> Thus, “representation of youth in juvenile delinquency court should not be an entry-level position that eventually graduates attorneys to other areas of defense work.”<sup>12</sup> Defenders should be “selected on the basis of their skill and competence” and should have both an interest and training in juvenile law, adolescent development, education, substance abuse, and mental health issues.<sup>13</sup> In short, the *Guidelines* acknowledge that juvenile delinquency defense is a specialized area of law requiring highly skilled lawyering.

## Zealous Representation

Juvenile defenders may find that their active representation of child clients is sometimes resisted by other courtroom participants. However, the diverse stakeholders who framed the *Guidelines* recognize that zealous defense advocacy helps resolve cases efficiently and benefits all courtroom participants.<sup>14</sup>

Managers and front-line defenders can use the *Guidelines*, as well as other professional standards, to educate their jurisdictions about the role of counsel for the child. According to NCJFCJ, juvenile defenders must:

- Represent the position expressed by the child client,
- Appear in all hearings as for an adult client accused of the same act,
- Advocate to prevent the child from being inappropriately detained,
- Promptly investigate and actively pursue discovery,
- File all appropriate pre-trial motions,
- Know about disposition options and inform the court of the child’s needs.<sup>15</sup>

By articulating these duties, the *Guidelines* make clear that no court should frown upon a defender’s pursuit of these core responsibilities. Defenders can refer to the *Guidelines* in individual cases or when influencing policy debates to explain why limitations on legitimate advocacy efforts are inappropriate and inefficient.

### Quick Reference:

### NCJFCJ *Juvenile Delinquency Guidelines* Related to the Role of Counsel

References to the Role of Counsel can be found on the following pages of the *Guidelines*:

Access to counsel: 25  
Early appointment of counsel: 77-79, 90-91  
Waiver of counsel: 25  
Primary responsibility to child client: 30, 122, 137, 161  
Detention alternatives: 81-84  
Detention advocacy: 90  
Adjudication: 122, 126  
Disposition: 137  
Appeals: 161-62  
Post-disposition: 169, 181  
Reentry: 187  
Probation/parole violations: 196-97

## Practice Recommendations on Elements of Zealous Defense

- Meet with the child prior to the detention or initial hearing
- Have the opportunity, in every hearing, to cross-examine prosecution witnesses, present evidence, and make arguments
- Inform the court of each youth's special needs
- Zealously represent each child client's expressed interests
- File appropriate pre-trial motions
- Actively pursue discovery
- Appear in all hearings where the attorney would appear for an adult accused of the same crime
- Know the available disposition resources
- Secure the child's appeal rights and explain them to the child

### Expressed Interests of the Child

Many juvenile justice practitioners mistakenly believe that juvenile defenders are obliged to argue for a child's "best interests" in court. The *Guidelines* join other professional standards in recognizing that a juvenile defender's primary responsibility is to the child client.<sup>16</sup> At every stage of court proceedings, a defender is ethically bound to advocate for the legitimate interests and goals expressed by the child.<sup>17</sup> Defenders may not substitute their own judgment, or that of the client's caretakers, for the preferences of the child.<sup>18</sup>

Although parents also have important interests and can play a significant role in delinquency proceedings, at times their position may be adverse to the child's. In such cases, the *Guidelines* make clear that defense counsel's primary duty is to the child. Under the *Guidelines*, where there are conflicts of interest or opinions between a child client and his or her caretaker, defenders need not discuss the case with parents<sup>19</sup> or represent the views of a parent that are contrary to the child's wishes.<sup>20</sup>

### Courtroom Culture

Assessments of state juvenile indigent defense systems conducted by the National Juvenile Defender Center and their partners routinely find that juvenile courts across the country are chaotic, extremely informal, and perceived as less important than adult criminal courts.<sup>21</sup> One juvenile court clerk in Louisiana summed up the issue: "Families and children have no meaningful idea what is going on here. They move through the system quickly and are humiliated and demeaned in the process."<sup>22</sup> NCJFCJ recognizes that substandard proceedings in delinquency courts are unacceptable. The judge "must

explain and maintain strict courtroom decorum and behavioral expectations for all participants ... [and] ensure that the juvenile delinquency court is a place where all ... participants are treated with respect, dignity, and courtesy."<sup>23</sup> Courtroom facilities should be secure and offer separate supervised waiting areas for witnesses and family members, with defense and prosecution witnesses waiting separately. The *Guidelines* repeatedly stress the need for delinquency courts to treat all participants, including defenders and youth, with politeness and cultural understanding.<sup>24</sup> These provisions are a resource for defenders to combat common misperceptions of juvenile court and to insist upon appropriate decorum in the proceedings.

### Detention Advocacy

Early appointment of defense counsel is critical to resolving cases fairly and efficiently. The *Guidelines* specify that in a delinquency court of excellence, counsel is appointed *before* any initial or detention hearing and has enough time to prepare.<sup>25</sup> Only if unavoidable should children meet with counsel for the first time on the day of the hearing, and only if they are then afforded time to discuss the case outside the courtroom.<sup>26</sup> Zealous and prepared detention advocacy is so important that NCJFCJ advises judges and public defenders to take a leadership role in promoting systemic reforms that will redirect resources toward early appointment of counsel, for example by diverting less serious cases from formal processing.<sup>27</sup>

The *Guidelines* discuss several compelling reasons for early appointment of counsel, especially courtroom organization and quality of representation. NCJFCJ

recognizes that early appointment of counsel conserves judicial resources by preventing delays and minimizing additional hearings.<sup>28</sup> Moreover, timely appointment helps defenders meet their ethical obligations and secure due process for children. Defenders are expected to:

- Spend time with the child before the hearing to review the delinquency petition, explain the child's rights, and discuss whether the child wants to admit or deny the allegations;<sup>29</sup> and
- Based on these early interactions, help the court recognize when there are competency issues that require further assessment.<sup>30</sup>

Defenders can invoke these arguments to encourage reforms that will enable courts to appoint counsel earlier or to gain additional time to talk with each child client before a detention hearing. Given the critical importance of attorney-client interaction, the *Guidelines* also stress that juvenile court facilities should provide private spaces where attorneys can meet with clients and families.<sup>31</sup>

The harmful effects of secure detention on children's case outcomes and life chances are well documented. Youth placed in secure detention are more likely than non-detained youth to be formally processed and to receive more punitive sanctions at disposition, controlling for demographic and offense characteristics.<sup>32</sup> Secure detention is far more costly than community-based alternatives, and jurisdictions that have pioneered reforms find that these alternatives do not harm public safety and may lower recidivism rates.<sup>33</sup> The *Guidelines* acknowledge the ruinous consequences of overcrowding in detention centers, which endangers youth and prevents services from being delivered.<sup>34</sup> The burdens of detention fall disproportionately on African American youth and other racial minorities, who are locked up at higher rates than white youth accused of comparable offenses.<sup>35</sup>

The *Guidelines* discuss at length the desirability and availability of alternatives to secure detention, including temporary shelters for children whose guardians cannot be located but for whom secure detention is unnecessary.<sup>36</sup> One of the key functions of juvenile defenders is drawing the court's attention to appropriate alternatives for each

child, and the *Guidelines* emphasize that overuse of secure detention wastes public funds.<sup>37</sup> These arguments have long been raised by defenders, but have added persuasion when seconded by NCJFCJ.

The *Guidelines* note that a police affidavit in support of a request to detain a child should specify the reasons why a youth should be securely confined.<sup>38</sup> Defenders should urge courts to hold police to this standard. Moreover, defenders should ensure that children are detained only when statutory criteria are met and that judges enter written findings regarding the detention decision.<sup>39</sup>

Throughout the *Guidelines*, NCJFCJ encourages early and effective defense advocacy as a means of conserving public resources and streamlining court processing. Defenders can use these principles, propounded by judges and for judges, to expand their jurisdiction's acceptance of a vigorous defense role in delinquency court. This expansion is especially needed in detention hearings, which are too often dismissed as merely a prelude to the main show.

## Plea Agreements

Youth may have many misconceptions about the process of entering a plea agreement. The *Guidelines* recommend that all courtroom participants, including defenders, ensure that plea negotiations do not give the child the impression that he or she will be able to manipulate the system or avoid consequences by taking a plea offer.<sup>40</sup> Based on this principle, judges are expected to conduct a thorough colloquy in understandable language any time a youth is entering a plea.<sup>41</sup> The *Guidelines* state that judges should determine whether a child's plea is knowing and voluntary in light of the child's age, educational attainment, literacy level, and trauma history.<sup>42</sup>

## Policy Recommendations for Juvenile Defense

- Limitation of waiver of counsel to rare occasions, only following a colloquy and consultation with an attorney
- Appointment of counsel prior to the detention or initial hearing
- Diversion of less serious cases from the formal delinquency system
- Continuity of representation, including availability of counsel for appeals and post-disposition reviews
- Manageable caseloads for defense counsel and other participants

The *Guidelines* hold defenders responsible for telling each youth that the plea agreement is not a way to achieve gain and that the court makes a final decision about whether to accept an agreement.<sup>43</sup> The *Guidelines* thereby imply that defenders need adequate time to counsel child clients regarding the momentous direct and collateral consequences of admitting delinquency charges. Defenders can refer to these portions of the *Guidelines* to request additional reasonable time from the court to fulfill all of these responsibilities for each child client.

The *Guidelines* emphasize that it is “unacceptable practice” for prosecutor or counsel to begin plea discussions for the first time on the day of adjudication or as a result of inadequate preparation for adjudication.<sup>44</sup> The court should receive any proposed plea agreement, with a plea petition signed by the child, at least one week ahead of the scheduled adjudication date.<sup>45</sup> However, the *Guidelines* also recognize that untimely plea discussions may be “caused by unmanageable caseloads.”<sup>46</sup> These *Guidelines* provisions provide defenders with policy arguments in favor of caseload reductions. The *Guidelines* recommend diverting less serious cases from the formal delinquency system in order to conserve resources.<sup>47</sup>

## Adjudication

The *Guidelines* expect juvenile defenders to be qualified and to prepare thoroughly for each child’s adjudication.<sup>48</sup> Diligent preparation includes factual investigation, discovery, requests for experts if needed, and communication with the child.<sup>49</sup> Remaining conscious of the need to minimize a child’s time in detention, defenders can cite this provision when urging the court to set an adjudication date that will provide adequate time to prepare a client’s defense. The *Guidelines’* expectations for defenders also provide grounds for policy reforms to fund defense investigators or experts and to set reasonable caseload standards.

The *Guidelines* specify that defenders should have the opportunity to cross-examine all witnesses presented at adjudication or to present contrary evidence on the child’s behalf.<sup>50</sup> Statements made by children during intake or detention processing should not be admissible against them at adjudication.<sup>51</sup> Defenders, like prosecutors, must be afforded the opportunity to present closing arguments.<sup>52</sup> The *Guidelines* also note that in delinquency adjudications, like criminal trials, the state has the burden

## Using the NCJFCJ *Guidelines* in Court

Invoking the *Guidelines* in a courtroom presentation could feel awkward. A defender does not want to appear to be telling the judge how to do his or her job. With a little forethought, there are ways to raise the *Guidelines* with finesse and respect.

For example:

- *Your Honor, as you are probably aware, the National Council of Juvenile and Family Court Judges encourages courts to ....*
- *Your Honor, I would appreciate the opportunity to present [argument on a motion, defense witness, defense evidence, etc.], in accordance with the guidelines for excellence set out by your National Council of Juvenile and Family Court Judges.*

of proof.<sup>53</sup> It is clear from the *Guidelines* that defenders should never be inhibited from conducting vigorous cross-examination, challenging admissibility of evidence, demanding that the state prove every element of the crime beyond a reasonable doubt, or otherwise engaging in a zealous defense. The process that is due to a child in delinquency court demands an effort comparable to the process that would be provided in adult criminal court. It is not acceptable for courts to conduct informal adjudications that compromise the protections required in an adversarial delinquency system.

## Disposition

NCJFCJ recognizes the importance of thorough preparation and advocacy at disposition. Defenders should notify the court at the time of adjudication if additional evaluations or expert witnesses will be needed for disposition.<sup>54</sup> The *Guidelines* recommend that a pre-disposition investigator should contact defense counsel for information, and should give a copy of his or her report and recommendations to defense counsel *at least three days before* the disposition hearing.<sup>55</sup> In addition, defenders are responsible to consult with the child client regarding options and preferences.<sup>56</sup> Defenders can use these best practices as a benchmark to argue that the court should not proceed with a rushed disposition hearing. In particular, the *Guidelines* provide that a case

should not proceed from adjudication immediately to disposition unless all necessary preparation has been completed beforehand.<sup>57</sup>

At the disposition hearing, defenders inform the court about each child's needs and preferences regarding services and providers.<sup>58</sup> As in other hearings, defense counsel must have the opportunity to represent the child actively by cross-examining prosecution evidence and presenting evidence on the child's behalf.<sup>59</sup> The *Guidelines* show that these are necessary steps for which courts should provide adequate time in every case. Moreover, the *Guidelines* offer a basis for policy reforms to help give defenders the resources and time to prepare for the comprehensive preparation that is expected of them at the disposition stage.

Although the *Guidelines* acknowledge that parents' views may be relevant, they state that defense counsel has no obligation to present to the court the disposition preference of a parent that is contrary to the child's wishes.<sup>60</sup> NCJFCJ thus reinforces other professional standards in concluding that, at any stage of delinquency proceedings, defense counsel's primary allegiance is to the child client and to the representation of his or her legitimate expressed interests.

## Appeals

As in other stages of the proceedings, defenders' responsibility at the appellate stage is to the child client.<sup>61</sup> NCJFCJ recognizes that it is part of defense counsel's role to take appeals when necessary to protect a client's rights or clarify legal rules.<sup>62</sup> However, judicial performance affects the likelihood of appeal. Delinquency judges can help to avoid the necessity of an appeal by ensuring that there are correct procedures and clear communication throughout the proceedings.<sup>63</sup>

The *Guidelines* expect defenders to consult with a child client about the possibility of appeal, to obtain and review critically the adjudication transcripts, and to take the procedural steps necessary to safeguard the client's right to appeal.<sup>64</sup> Juvenile defenders can invoke these principles to advocate for systemic reforms that will secure more resources for appellate representation in juvenile cases.

## Post-Disposition, Reentry, and Probation/Parole Violations

NCJFCJ urges judges to ensure that counsel is available to children at every stage of delinquency proceedings, specifically including post-disposition and reentry hearings.<sup>65</sup> Indeed, the *Guidelines* state that a court of excellence will ensure that the *same lawyer* remains assigned to the case and appears for progress reports, hearings, and conferences.<sup>66</sup>

Whether children remain in the home or are placed outside the home, defense counsel should not rely on probation reports but should actively seek information about the child's progress through independent interviews.<sup>67</sup> At progress review hearings, defenders state the child's agreement or disagreement with the progress report, have the opportunity to challenge prosecution evidence, and present any additional information or testimony needed.<sup>68</sup> Presenting the child's perspective during post-disposition should not be an unusual event, but a routine step of any progress review. When a child is placed outside the home, the *Guidelines* state that defense counsel should be invited to participate in planning for reentry to the community.<sup>69</sup>

Likewise, children should be represented at hearings on probation or parole violations by the *same lawyer* who represented the youth on the original law violation.<sup>70</sup> This defender should be afforded time to question and present evidence on whether the child violated probation or parole.<sup>71</sup> The defender should have the opportunity to respond to reports about the child's progress.<sup>72</sup>

The *Guidelines* anticipate that defense representation will be as vigorous during the post-disposition phases of a case as in earlier stages. NCJFCJ further envisions that delinquency systems will need to receive and allocate sufficient resources to ensure that children have continuity of representation throughout their involvement with the delinquency system. These recommendations are a clear condemnation of current practice in many jurisdictions, in which defenders of indigent children are expected or required to abandon the case after disposition.

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# Role of the Juvenile Defender

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## Counsel's Ethical Obligations

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- “Whether performed by a public defender or the private bar, counsel for youth is responsible to be an advocate, zealously asserting the client’s position under the rules of the adversary system[.]” (page 30)
- “[C]ounsel for the youth’s primary responsibility is to the youth client[.]” (page 122)
- At disposition, “[c]ounsel for the youth is not obligated to present the view of the parent, if this view is in opposition to the view of counsel’s client.” (page 137)

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## Counsel's Specific Responsibilities

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“Counsel for youth must be able to explain the juvenile delinquency court process in terms the youth can understand.” (page 30)

“Whether performed by a public defender or the private bar, counsel for youth is responsible to:

- Promptly and thoroughly investigate the client’s case in order to be an effective advocate;
- Ensure the juvenile delinquency court has been informed of the youth’s special needs;
- Be knowledgeable of all the disposition resources available in the jurisdiction;
- Appear as an attorney for the youth in all hearings concerning a juvenile accused of an act where the defense attorney would appear if an adult committed the same act. This includes, but is not limited to, hearings for detention, speedy trial, motions, dismissal, entry of pleas, trial, waiver, disposition, post-disposition reviews, probation or parole violation hearings, and any appeal from or collateral attacks upon the decisions in each of these proceedings;
- Before the trial and adjudication hearing, file all appropriate pre-trial motions in order to protect the youth’s rights and preserve the fairness of the trial and adjudication hearing. Such motions may include efforts to obtain discovery materials, to suppress physical evidence and confessions, or to challenge the circumstances of a pretrial identification, etc; and
- Actively pursue discovery from the prosecutor under informal procedures, court rule, and motions practice as appropriate. Effective representation of the client’s interests is frustrated when counsel for the youth is ignorant of information contained in discovery materials. Where the jurisdiction requires reciprocal discovery, counsel for youth should provide such materials as promptly as possible.” (page 30-31)

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## Defender's Relationship to Client's Parents

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“Although counsel for the youth’s primary responsibility is to the youth client, in most instances it is in the youth’s best interest that his or her parents also be informed. Consequently, in most cases, in order to serve the client’s needs, counsel must include the parent. In some instances, such as when a parent is the victim, it may not be appropriate for counsel for the youth to engage the parent. In this instance, the prosecutor would be the most appropriate person to inform the parents of the proceedings, their rights, the youth’s rights, and the consequences if the youth is adjudicated on the petition, since the parent will probably be a prosecution witness.” (page 122)

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## Counsel's Qualifications

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*Experience:*

- Counsel for youth should be “an experienced attorney in order to provide effective legal assistance. The representation of youth in juvenile delinquency court should not be an entry-level position that eventually graduates attorneys to other areas of defense work.” (page 30)
- “They should be selected on the basis of their skill and competence[.]” (page 30)

### *Specialized knowledge and interests:*

- “Counsel for youth should have a particular interest in youth and family systems, focus on juvenile law, and be trained in the development, education, substance abuse and mental health of youth.” (page 30)
- “Qualified counsel has an understanding of child development principles, cultural differences, mental health, trauma, mental retardation, and maturity issues that relate to juvenile competency to stand trial issues; treatment options that could serve as effective alternatives to detention; and special needs issues including prior victimization and educational needs.” (page 78)
- “Qualified counsel understands juvenile delinquency court process and knows enough about disposition resources to advocate for a disposition response that will meet the youth’s needs.” (page 78)

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## Juvenile Defense Policy

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### Access to Counsel

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- “Alleged and adjudicated delinquent youth must be represented by well trained attorneys with cultural understanding and manageable caseloads.” (page 25)
- “Juvenile delinquency court administrative judges are responsible to ensure that counsel is available to every youth at every hearing, including post-disposition reviews and reentry hearings.” (page 25)

### Waiver of Counsel

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- Judges “should be extremely reluctant to allow a youth to waive the right to counsel.” (page 25)
- “A waiver of counsel should only be accepted after the youth has consulted with an attorney about the decision and continues to desire to waive the right.” (page 25)
- “On the rare occasion when the court accepts a waiver of the right to counsel, the court should take steps to ensure that the youth is fully informed of the consequences of the decision.” (page 25)
- “Juveniles who are not represented by counsel are not likely to effectively exercise their other due process rights.” (page 78)

### Leadership Role of Delinquency Judges

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- Judges “are responsible to ensure that counsel is available to every youth at every hearing, including post-disposition reviews and reentry hearings.” (page 25)
- If the system does not permit the provision of qualified and effective counsel for youth in formal delinquency proceedings, delinquency judges “should work with the public defender, private bar, funding sources, and the legislature to overcome the barriers to creating [an adequate] system.” (page 79)
- An important principle of timeliness in case management and docketing is “to respect and efficiently use the time of ... counsel for youth” and all other court participants. (page 44)

### Court Capacity

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- “Juvenile delinquency systems must have sufficient numbers of ... public defenders [and other personnel]... to create manageable caseloads and timely process.” (page 24)
- “Juvenile delinquency systems ... must have private meeting space for youth and counsel[.]” (page 24)

### Juvenile Court Jurisdiction

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- “The *Delinquency Guidelines* recommend that all juveniles who have not yet turned 18 should be under the original jurisdiction of the juvenile delinquency court.” (page 37 (citing *Roper v. Simmons*))
- Key Principle 6 states that “Juvenile delinquency court judges should ensure their systems divert cases to alternative systems whenever possible and appropriate.” (page 25)

- “Juvenile delinquency courts should encourage law enforcement and prosecutors to consider diversion for every status offender, every first-time, non-violent misdemeanor offender, and other offenders as appropriate.” (page 38)
- NCJFCJ takes the policy position: “The determination as to whether a juvenile charged with a serious crime should be handled in juvenile delinquency court or transferred to criminal court is best made by a juvenile judge in a judicial hearing with the youth represented by qualified counsel.” “Accordingly, prosecutorial waiver, mandatory transfers, and automatic exclusions are not recommended.” (page 39)

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## Case Processing: Confidentiality, Timeliness, Minority Youth

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- “The *Delinquency Guidelines*-recommended practice regarding openness of juvenile delinquency hearings is that hearings should be presumed to be open to the general public, unless sufficient evidence supports a finding that an open hearing will harm the juvenile and that the juvenile’s interests outweigh the public’s interest.” (page 40)
- “Because of [adolescent] developmental dynamics, timeliness throughout the juvenile justice process is critical[.]” Timeliness reinforces the lesson of accountability and protects youth from experiencing a period of prolonged uncertainty and anxiety. (pages 43-44) “Delays in the response of the juvenile justice system lessen the impact of an intervention.” (page 66)
- “Although it remains true that societal issues may subject minority youth to risk factors for delinquency, ongoing work in many juvenile delinquency court jurisdictions shows that the practices of individual justice agencies can exacerbate or alleviate the disparity at each decision point.” (page 50)

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## Appointment of Counsel Prior to Detention or Initial Hearing

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- “In a juvenile delinquency court of excellence, counsel is appointed prior to the detention or initial hearing, and has time to prepare for the hearing.” (page 90)
- “Delays in the appointment of counsel create less effective juvenile delinquency court systems.” (page 90)
- “Effective counsel becomes involved in the case prior to the first hearing, has a manageable caseload, and is present at all juvenile delinquency court hearings.” (page 78)

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## Providing Early Access to Counsel

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- When the child is served with a summons, “information should also be provided to the youth and family that describes ... why counsel for the youth is important, and options to obtain legal representation for the youth prior to the hearing.” (page 74)
- “The *Delinquency Guidelines* recommends that the youth, parent, and counsel for the youth meet prior to the initial hearing to determine the position they will take at the hearing.” (page 74, 90)
- “The better the preparation prior to the hearing, the more timely and efficient the process will be.” (page 74)
- If meeting before the hearing is “not possible[.]” then “the second preference is to provide access [to counsel] on the day of the first hearing with sufficient time for the youth, family, and counsel to discuss the case before entering the courtroom.” (page 90)

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## Consequences of Untimely Appointment of Counsel

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- “Juvenile delinquency courts that do not create systems that enable counsel to be obtained in advance of the initial hearing, and as a consequence, allow counsel to be absent or unprepared at the first hearing, make it difficult for time-specific hearings to be set and adhered to, cause additional unnecessary hearings to be set which wastes juvenile delinquency court resources, and delay timely justice. Such systems end up with unnecessary continuances, waste expensive resources due to extensive waiting times, and are disrespectful to its citizens.” (page 74)
- “When juvenile delinquency courts do not create systems that enable counsel to be appointed and engaged in advance of the initial hearing, they cause additional unnecessary hearings to be set. Families who can afford private counsel do not have these barriers and rarely appear at the first juvenile delinquency court hearing without prior consultation with counsel.” (page 222)

## Need for Systemic Change to Allow Early Appointment of Counsel

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- “This [Principle 7] recommendation is anticipated to be one of the more controversial recommendations of the *Delinquency Guidelines* because juvenile delinquency systems may believe they simply do not have the resources to comply. In addition, juvenile delinquency court personnel have sometimes perceived that when counsel represents youth, the court process is delayed and made more cumbersome. In contrast to this perception, juvenile delinquency courts have found that providing qualified counsel facilitates earlier resolution of summoned cases.” (page 221-22)
- NCJFCJ suggests systemic reforms that will allow for earlier appointment of counsel (pages 78-79, 222):
  - Change relevant rules or statutes
  - Develop Memorandum of Understanding between the court and public defender
  - Provide interim legal services
- “When a juvenile delinquency court improves its system in these ways, there is a strong likelihood that existing resources for appointment for counsel for youth can handle a greater percentage of formal cases with reduced caseloads that allow a higher degree of quality.” (page 222)

## Practice of Juvenile Defense at Each Stage of a Case

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### Initiating the Court Process

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- “*Key Principle 7: Youth Charged in the Formal Juvenile Delinquency Court Must Have Qualified and Adequately Compensated Legal Representation* applies regardless of whether the youth is released or detained.” (page 77)
- “In some instances, the youth does not need to be detained but a parent or custodian or relative cannot be located. When this occurs, intake should arrange the release of the youth to an appropriate shelter care or non-secure holdover facility until the parent, custodian, or a relative can be located.” (page 77)

### Detention or Initial Hearing

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#### *Preparation for the Hearing:*

- “In a juvenile delinquency court of excellence, counsel is appointed prior to the detention or initial hearing, and has time to prepare for the hearing.” (page 90)
- “When qualified counsel represent youth and have prepared before the hearing, counsel will have also carefully reviewed the petition and rights with the youth and family. Counsel will have significant information from these interactions to assist in identifying whether there are questions of competency to stand trial that need to be addressed.” (page 92)
- “Consultation between the youth, parent or guardian, and counsel regarding whether the youth wishes to admit or deny the charge should have occurred before entering the courtroom.” (page 94)

#### *Competency:*

- “[W]hen counsel, prosecutor, or the juvenile delinquency court judge observe indicators that competency to stand trial may be an issue, each is obligated to pursue the question further.” (page 93)
- “Counsel for the youth is obligated to request a clinical assessment of decisional capacity if the youth’s competency to stand trial is in question.” (page 93)

#### *Conduct of the Hearing:*

- Present at the hearing (page 91):
    - Youth
    - Counsel for the youth
    - Certified interpreters if youth or parent does not speak English or is hearing impaired
  - “If the youth is on probation or involved in services, it may not be necessary for the probation officer or other worker to be present as long as there is a system to ensure that all necessary information is available to the judge, prosecutor, and counsel[.]” (page 91)
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- “[I]f the youth in consultation with the parent or guardian and counsel chooses to waive any right, the youth, parent or guardian, and counsel should sign a written waiver.” (page 92)
- “Both prosecutor and counsel for the youth should turn over all discovery materials according to juvenile delinquency court rule and as properly requested as soon as possible as well as pursue discovery under informal procedures as appropriate[.]” (page 95)
- Among the questions that must be answered at this hearing: “Has the youth had access to, and been appointed qualified legal counsel?” (page 96)
- Written findings and orders should include: “If counsel was not present, the plan to ensure the presence of counsel at the next hearing[.]” (page 97)

## Waiver & Transfer Hearing

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### *Counsel’s Qualifications and Duties:*

- “Counsel for the youth must become sufficiently knowledgeable of the alleged incident and of the youth’s circumstances in order to be properly prepared for cross-examination and to determine whether or not to call witnesses for the defense. In order to complete these critical steps, prosecutors and counsel for youth must have reasonable caseloads, with resources to investigate all necessary aspects of the case, and counsel for youth must have been appointed prior to the detention hearing[.]” (page 103)
- “Counsel must understand child and adolescent development, developmental disabilities, victimization and trauma, mental health, mental retardation and maturity issues, and the treatment services that are available in the juvenile justice system. Counsel must also understand the criminal court system in order to determine whether counsel believes the youth will be better served in juvenile delinquency court or criminal court.” (page 105)
- “If... an attorney does not represent the youth at the detention or initial hearing, the court must appoint legal representation for the alleged offender prior to the probable cause hearing on a waiver motion.” (page 105)

### *Preparation for the Hearing:*

- “Because of the very serious potential consequences if the juvenile delinquency court decides to waive jurisdiction and transfer the youth to the criminal court, including lengthy incarceration, and possible abuse in adult prison of immature or special needs youth, it is critical that counsel has the time and resources to prepare for the probable cause hearing.” (page 105)
- “Prior to the probable cause hearing on a motion to waive juvenile delinquency court jurisdiction and transfer a case to criminal court, counsel should investigate all circumstances of the case relevant to the appropriateness of transfer. Counsel should also seek disclosure of any reports or other evidence that will be submitted to, or may be considered by the court, in the course of transfer proceedings. If circumstances warrant, counsel should have requested appointment of an investigator or expert witness to aid in the preparation of the defense, and any other order necessary to protect the youth’s rights, during pre-trial proceedings. Counsel should also fully explain the nature of the proceedings and the consequences of transfer to the youth and the youth’s parent or legal custodian.” (page 105)

### *Conduct of the Probable Cause Phase:*

- Present at the hearing (page 105):
  - Youth
  - Counsel for the youth
  - Certified interpreters if youth or parent does not speak English or is hearing impaired
- “The burden of proof is on the state, and consequently, the youth is not required to present any witnesses or to prove that he or she did not commit the offense. Counsel may choose, however, to present evidence that challenges the evidence of the prosecutor.” (page 106)
- “As with the prosecutor’s evidence, any evidence presented by counsel should be under oath and subject to cross-examination.” (page 106)

- After the prosecutor’s rebuttal, “the prosecutor and counsel for the youth may present closing arguments regarding the probable cause phase.”

#### *Conduct of the Waiver/Transfer Phase:*

- Present at the hearing (page 112-13):
  - Youth
  - Counsel for the youth
  - Certified interpreters if youth or parent does not speak English or is hearing impaired
- “The evaluation reports should be provided to the prosecutor and counsel for the youth not less than three days before the hearing. It is recommended that the social and physical evaluations be provided to the prosecutor and counsel for youth prior to the forensic evaluation in order to provide as much review and preparation time as possible.” (page 113)
- “It is important that the prosecutor and youth’s counsel have sufficient time to determine whether ... they wish to challenge the conclusions by either questioning the evaluator or presenting additional information through written reports or testimony.” (page 113)
- “If additional written reports are to be presented by the prosecutor or youth’s counsel, they should similarly have been provided to all parties prior to the hearing.” (page 113)
- If the probation officer or other person who prepared the evaluations testifies, then “the prosecutor and counsel for the youth should have the opportunity to question the preparer.” (page 113)
- “After each [prosecution] witness’ testimony, the defense should have the opportunity to cross-examine.” (page 113)
- “If there is evidence that counsel for the youth can present to defend his or her client against waiver, or to challenge the information in the evaluations, it should be presented at this time [after the prosecution’s case].” (page 113)
- “Counsel should present an alternative plan for the court to consider that would continue juvenile delinquency court jurisdiction.” (page 113)
- “The prosecutor and counsel for the youth may present closing arguments.” (page 114)

#### *Interlocutory Appeals Should Be Allowed:*

- “[B]ecause of the potentially serious consequences of a juvenile’s charges being transferred to criminal court, counsel for the youth should have the opportunity to request expedited interlocutory appellate review of the juvenile delinquency court’s decision if counsel believes that the juvenile delinquency court judge has made an error in process or judgment.” (page 107)
- “[A]ppellate courts should work with juvenile delinquency courts, prosecutors, and public defenders to design an expedited appellate review of interlocutory orders to waive juvenile delinquency court jurisdiction and transfer a youth to criminal court. This should be a streamlined and speedy memorandum review process that would allow counsel for the youth’s memoranda to be reviewed within two weeks.” (page 163)

## Trial or Adjudication Hearing

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#### *Preparing for the Hearing:*

- “A case should not go to trial in the juvenile delinquency court without a prosecutor and counsel for the youth who are qualified and who have exercised due diligence in preparing for the proceeding.” (page 122)
- “Prior to the trial, counsel completed all of the following responsibilities:
  - Investigated all circumstances of the allegations;
  - Sought discovery of any reports or other evidence to be submitted to or considered by the juvenile delinquency court at the trial;
  - If circumstances warrant, requested appointment of an investigator or expert witness to aid in the preparation of the defense and for any other order necessary to protect the youth’s rights; and
  - Informed the youth of the nature of the proceedings, the youth’s rights, and the consequences if the youth is adjudicated on the petition.” (page 122)

### *Conduct of the Hearing:*

- Present at the hearing (page 124):
  - Youth
  - Counsel for the youth
  - Certified interpreters if youth or parent does not speak English or is hearing impaired
- “Unless waived by counsel, the statements of a juvenile or other information or evidence derived directly or indirectly from statements made during the juvenile delinquency court intake or detention processing of the case should not be admissible at the trial.” (page 125)
- “After each [prosecution] witness’ testimony, counsel for the youth should have the opportunity to cross-examine.” (page 125)
- “The burden of proof is on the prosecutor and consequently the youth is not required to present any witnesses or to prove that he or she did not commit the alleged offense. Counsel for the youth may choose to present evidence that challenges the evidence of the prosecutor or proves the youth’s innocence.” (page 126)
- “All evidence presented at the trial should be under oath and subject to cross-examination.” (page 125)
- After the prosecutor’s rebuttal, “the prosecutor and counsel for the youth may present closing arguments.” (page 126)

### *Plea Agreements*

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- “Part of the role of counsel for the youth is to tell the youth that he or she should not expect gain in exchange for a plea agreement. Counsel must also advise the youth that the juvenile delinquency court has the final determination over whether to accept the plea agreement.” (page 123)
- “When a plea agreement is appropriate, the prosecutor and counsel for the youth should negotiate plea agreements prior to the time the trial is set. ... It is unacceptable practice for last minute plea agreements to occur because the prosecutor or counsel for the youth has not adequately prepared in advance of the trial. It is also unacceptable practice to wait routinely to first address the question of a plea agreement until the day of the trial.” (page 123)
- “If a plea agreement has been proposed, the prosecutor and counsel for youth should submit to the juvenile delinquency court judge, at least one week before the scheduled trial, a proposed plea agreement and a signed plea petition that, in addition to listing rights waived, has a section completed by the youth that describes what occurred, that has a statement of admission, and that is signed by the youth. The juvenile delinquency court judge should immediately review the plea petition and proposed plea agreement[.]” (page 124)

### *Disposition Hearing*

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#### *Role of Defense Counsel:*

- “Counsel for the youth plays an important role in the disposition hearing with the responsibility to ensure that all significant needs relating to the delinquent behavior of the adjudicated delinquent youth have been brought to the attention of the juvenile delinquency court.” (page 137)
- “[C]ounsel for the youth is not obligated to present the view of the parent, if this view is in opposition to the view of counsel’s client.” (137)

#### *Preparing for the Hearing:*

- “If additional evaluations or expert witnesses are needed to aid in the preparation of the disposition hearing, counsel is responsible to request this assistance at the end of the adjudication hearing.” (page 137)
- Prior to the hearing, counsel should:
  - “[F]ully explain the possible disposition options to the youth and the youth’s parents or legal custodian.” (page 137)
  - “[A]sk them what options they feel would be appropriate and which service providers the youth and family will feel most comfortable working with.” (page 137)
  - “[Determine] whether to agree with the recommendation [of the pre-disposition report] or to present a different recommended disposition.” (page 142)

- “[Determine] whether to call witnesses to testify as to the appropriateness of her or his recommendation or to challenge the conclusions or recommendations of the pre-disposition report.” (page 142)
- “Whenever a juvenile delinquency court can obtain the “buy-in” of youth and family by considering their opinions, needs, recommendations, and preferences, and give them options to choose from, the court enhances the youth’s chances of a successful outcome.” (page 135)
- “Pre-disposition investigations should include ... [c]ontacting the prosecutor and counsel for the youth for additional information, and their perspectives and recommendations[.]” (page 138)
- “The pre-disposition investigator should provide the pre-disposition report, recommendations, and proposed probation or initial reentry plan to the prosecutor and counsel for the youth *not less than three days before the disposition hearing.*” (page 140, emphasis added)

### *Conduct of the Hearing:*

- Present at the hearing (page 141):
  - Youth
  - Counsel for the youth
  - Certified interpreters if youth or parent does not speak English or is hearing impaired
- “The prosecutor and counsel for youth have the opportunity to ask the [pre-disposition] investigator questions.” (page 142)
- “Counsel for the youth has the opportunity to cross-examine evidence or testimony presented by the prosecutor” (page 142)
- “Counsel for the youth indicates agreement or disagreement with the recommendation and presents any evidence or testimony accordingly.” (page 142)
- “The juvenile delinquency court judge gives the ... youth [and other participants] ... the opportunity to address the court.” (page 142)

## Appeals Process

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### *Process and Procedure:*

- “[T]he juvenile delinquency judge should do everything possible to ensure that the juvenile delinquency court does not err in process nor create circumstances due to lack of clear communication that would create the necessity of counsel filing an appeal. It is important to clarify that this statement is not intended to discourage appeals where they are needed for counsel to adequately represent her or his client, protect the client’s rights, or refine points of law.” (page 145)
- “If the juvenile delinquency court accepted waiver of counsel, the youth and parents should be informed of their right to counsel to assist in the filing of the appeal.” (page 161)
- “If inadequate representation by counsel is an issue on appeal, procedures should be in place to avoid further delay in appointing new counsel.” (page 161)

### *Role of Counsel:*

- “In order to shorten the time [for appeals] as much as possible, counsel for youth should file the appeal as soon as possible and in no case, more than 30 days from disposition.” (page 160)
- “Counsel for the youth is responsible to review the juvenile delinquency court’s orders of adjudication and disposition critically. Counsel must explain the orders to the youth, doing everything possible to help the youth understand the nature and impact of each component of the juvenile delinquency court’s orders. It is counsel’s responsibility to explain to the youth the right to appeal, the pros and cons of filing an appeal, and counsel’s opinion as to the likely outcome of an appeal.” (page 161)

### *Counsel’s Interaction with Client’s Parents:*

- “Although counsel is not required to explain appeal issues to the youth’s parents, in most instances it will be helpful to the youth if the parents also understand all of these issues. Consequently, in order to best represent the client, counsel should, unless contraindicated, include the parents in explanations and recommendations regarding the appellate process.” (page 161-62)

## Post-Disposition Review

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“All parties and key participants who were involved in hearings prior to and including the disposition hearing should be involved in post-disposition review, including the prosecutor and counsel for the youth.” (pages 167, 178)

### Youth Remains at Home

#### *Preparing for the Review:*

- “The prosecutor and counsel for the youth are always invited to negotiation interventions; however, they would be notified of, but not invited to family conferencing, unless the youth or family asked them to attend.” (page 168)
- “*Key Principle 7: Youth Charged in the Formal Juvenile Delinquency Court Must Have Qualified and Adequately Compensated Legal Representation*, not only states that all youth must be represented by counsel in the formal juvenile delinquency court but that counsel should be involved in every juvenile delinquency court hearing. A juvenile delinquency court that has incorporated this *Key Principle* ensures that counsel stays assigned to a case when a progress report due date, progress conference, or progress hearing is set at disposition” (page 169).
- “The probation officer should provide copies of the [progress] report to the juvenile delinquency court two weeks prior to the juvenile delinquency court’s scheduled review of the report. The juvenile delinquency court should immediately forward the report to the prosecutor, counsel for the youth, parent, legal custodian, service provider, and tribal council representative, if applicable. Each legal party and key participant should have the opportunity to prepare a response to the report if they choose to do so, and to submit the response for the juvenile delinquency court judge’s consideration at the same time the judge reviews the progress report.” (page 170)
- “When the juvenile delinquency court has set any of these methods [specifically progress review conferences, case staffings and dispute resolution alternatives] for post-disposition review, the probation officer should ensure that the youth, parents, legal custodian, prosecutor, counsel for the youth, tribal representative, if applicable, and primary service providers are included.” (page 170)

#### *Role of Counsel:*

- “In order for counsel to be effective at this [post-disposition] stage of the juvenile delinquency court process, counsel must not only rely on the information provided by the probation officer, but should also independently speak with the youth, the youth’s parent or legal custodian, and the service provider.” (page 169)
- Prior to the progress hearing, “[c]ounsel has discussed the reports with the youth, parent, and legal custodian.... The prosecutor and counsel have determined whether they agree with the reports or will present other information either by report or through testimony.” (page 171)

#### *Conduct of the Review:*

- Present at the review (page 170):
  - Youth
  - Counsel for the youth
  - Certified interpreters if youth or parent does not speak English or is hearing impaired
- “The prosecutor and counsel for youth have the opportunity to question the probation officer or caseworker.” (page 171)
- “Counsel for the youth indicates agreement or disagreement with the report and present any additional information or testimony, if needed.” (page 171)
- “The juvenile delinquency court judge gives the ... youth the opportunity to address the court.” (page 171)
- “The juvenile delinquency court’s findings and orders should be set out in writing and made available to all legal parties and key participants at the conclusion of the hearing.” (page 172)

## Youth Placed Outside the Home

### *Preparing for the Review:*

- “For the first 30 days following the youth’s release, the juvenile delinquency court judge should calendar the case for weekly progress hearings with mandatory attendance by the youth and family (if reunification has or will occur), and participants of the reentry team, including prosecutor and counsel for the youth.” (page 183)
- “[T]he juvenile delinquency court should immediately provide copies of the [progress] report to the prosecutor, counsel for the youth, parent or legal custodian, future custodian, and tribal council representative, if applicable. Each of these individuals should have the opportunity to prepare a response to the report if they choose to do so, and to submit the response to the juvenile delinquency court. The juvenile delinquency court should give two weeks for submission of responses[.]” (page 184)

### *Role of Counsel:*

- “A juvenile delinquency court should ensure that counsel remains active when a youth is placed out of the home under the continuing jurisdiction of the juvenile delinquency court.” (page 181)
- “In order for counsel to be effective at this [post-disposition] stage of the juvenile delinquency court process, counsel must not only be informed by the case manager, but should independently speak in-depth with the youth, the youth’s parent, legal custodian, future physical custodian, probation officer, child protection worker, and placement staff.” (page 181)
- Prior to the progress hearing, “[c]ounsel has discussed the reports with the case manager, probation officer, child protection worker, or corrections authority staff, and with the youth and parents. .... The prosecutor and counsel have determined whether they agree with the reports or will present other information, either by report or through testimony.” (page 185)

### *Conduct of the Hearing:*

- Present at the hearing (page 184):
  - Youth
  - Counsel for the youth
  - Certified interpreters if youth or parent does not speak English or is hearing impaired
- “The prosecutor and counsel for youth have the opportunity to question the case manager.” (page 185)
- “Counsel for the youth has the opportunity to cross-examine any witnesses or challenge any reports presented by the prosecutor.” (page 185)
- “Counsel for the youth indicates agreement or disagreement with the report and present any additional information or testimony, if needed.” (page 185)
- “The juvenile delinquency court judge gives the ... youth ... the opportunity to address the court.” (page 185)
- “The juvenile delinquency court’s findings and orders should be set out in writing and made available to all legal parties and key participants at the conclusion of the hearing.” (page 186)

### *Reentry Planning:*

“[C]ounsel for the youth should also be invited to participate [in the final reentry planning process].” (page 187)

The *Delinquency Guidelines* have separate recommendations for youth at low and high risk to reoffend.

For youth at low risk to reoffend, there may or may not be a hearing:

- “For youth who are low risk to reoffend at the time of reentry, if the juvenile delinquency court judge or any legal parties or key participants have concerns regarding the reentry plan, the juvenile delinquency court judge should determine whether to set a hearing, case staffing, progress conference, or dispute resolution alternative to address the concerns.” (page 188)
- If there is a hearing, “[a]t the end of the hearing, the juvenile delinquency court judge generates written findings and orders that approve a final reentry plan, either as proposed or as modified, and distributes the findings and orders immediately to all legal parties and key participants.” (page 188)
- “If the plan is acceptable to everyone when distributed and no hearing is required, the juvenile delinquency

court judge should generate a copy of the written findings and orders that approve the proposed final reentry plan and immediately provide the findings and orders to all legal parties and key participants.” (page 188)

For youth at high risk to reoffend, there should always be a hearing:

- “At the time of plan approval, the juvenile delinquency court should set a hearing not later than the date of release to review the plan with all participants, to ensure that all components of the plan are in place and ready to begin, and to ensure that all persons involved in the reentry plan are aware of their responsibilities.” (page 189)

## Probation & Parole Violations

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### *Role of Counsel:*

- “[C]ounsel should be involved at every hearing. The same attorney who represented the youth on the petition that resulted in the court order of probation or parole should represent the youth on a probation or parole violation.” (page 196)

### *Conduct of the Hearing:*

- Present at the hearing (pages 196-97):
  - Youth
  - Counsel who represented the youth on the law violation that resulted in the order of probation or parole
  - Certified interpreters if youth or parent does not speak English or is hearing impaired
- “The juvenile delinquency court’s findings and orders should be set out in writing and made available to all legal parties and key participants at the conclusion of the hearing.” (page 198)

### *Information on the Alleged Violation:*

- During the prosecution case:
  - “Sworn testimony is not required unless requested by counsel for the youth.” (page 197)
  - “Counsel for the youth has the opportunity to ask questions related to the information presented.” (page 197)
- “The youth’s counsel, if desired, should call on individuals to provide information that supports a finding that the youth did not commit the alleged violation.” (page 197)

### *Information on Progress and/or Sanction Recommendations:*

- “The prosecutor and counsel for the youth have the opportunity to ask questions and present their recommendations if different from the probation or parole officer’s recommendation.” (page 197)
- “The juvenile delinquency court judge gives ... the youth [and other participants]... the opportunity to address the court with information, recommendations, and questions.” (page 197)

## Resources

### *Juvenile Delinquency Guidelines*

- Download in sections, for free, from <http://www.ncjfcj.org/content/view/411/411/>.
- Purchase a printed copy for \$20:  
Contact NCJFCJ at [JDG@ncjfcj.org](mailto:JDG@ncjfcj.org) or by phone at (775) 784-6012.  
Order from the NCJFCJ online store at <http://www.ncjfcj.org/store/index.php>.

Many of the *Guidelines* recommendations are supported by other bodies of professional standards. You may also want:

American Council of Chief Defenders & National Juvenile Defender Center, *Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems* (2005), available at [www.njdc.info/pdf/10\\_Principles.pdf](http://www.njdc.info/pdf/10_Principles.pdf).

Institute of Judicial Administration & American Bar Association, *Juvenile Justice Standards* (1979). The text of the original 24 volumes of standards is available from online legal databases, and a condensed and annotated single-volume version can be purchased from the American Bar Association website at [www.ababooks.org](http://www.ababooks.org).

## Endnotes

- 1 National Council of Juvenile and Family Court Judges, *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases* 25 (2005) [hereinafter *Guidelines*].
- 2 *Id.* at 78.
- 3 *Id.*
- 4 *Id.* at 25.
- 5 *Id.*
- 6 *Id.*
- 7 *Id.* at 25, 78.
- 8 *Id.* at 28.
- 9 *Id.* at 25.
- 10 *Id.* at 25, 78.
- 11 *Id.* at 30.
- 12 *Id.*
- 13 *Id.*
- 14 *Id.*
- 15 *Id.* at 30-31 (listing the duties of defense counsel), 122 (counsel's primary responsibility is to the child client); see also IJA-ABA *Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 3.1.
- 16 *Guidelines*, *supra* note 1, at 30 (describing the role of counsel); see also Institute of Judicial Administration & American Bar Association, *Juvenile Justice Standards, Standards Relating to Counsel for Private Parties* 3.1 (1980), Kristin Henning, *Loyalty, Paternalism and Rights: Client Counseling Theory and the Role of Child's Counsel in Delinquency Cases*, 81 *Notre Dame L. Rev.* 255-59 (2005) (charting the emergence of a professional consensus regarding the role of counsel for the child and the persistence of contrary practice).
- 17 *Guidelines*, *supra* note 1, at 122 (duty to represent child's expressed interests at adjudication), 137 (duty to represent child's expressed interests at disposition), 161 (duty to represent child's expressed interests during appeals).
- 18 See also Henning, *supra* note 16, at 245 (considering competing models of attorney-client interaction and ultimately advocating for a collaborative approach to client counseling).
- 19 *Guidelines*, *supra* note 1, at 122.
- 20 *Id.* at 137.
- 21 See, e.g., National Juvenile Defender Center, *Maine: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* 27-28 (2003); National Juvenile Defender Center, *Montana: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* 41 (2003); National Juvenile Defender Center, *Pennsylvania: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* 58-59 (2003); National Juvenile Defender Center, *Virginia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* 31-32 (2001).

- 22 National Juvenile Defender Center, *The Children Left Behind: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Louisiana* 62 (2001).
- 23 *Guidelines*, *supra* note 1, at 123.
- 24 *See, e.g., id.* at 25 (a core principle is that all members of the court shall treat participants with respect, dignity, courtesy and cultural understanding).
- 25 *Id.* at 77, 90.
- 26 *Id.* at 90.
- 27 *Id.* at 67, 78-79, 222.
- 28 *Id.* at 78, 90-91.
- 29 *Id.* at 78, 92.
- 30 *Id.* at 92.
- 31 *Id.* at 91.
- 32 C.E. Frazier & J.C. Cochran, *Detention of Juveniles: Its Effects on Subsequent Juvenile Court Processing Decisions*, 17 *Youth & Soc'y* 286-305 (1986); C.E. Frazier & D.M. Bishop, *The Pretrial Detention of Juveniles and its Impact on Case Disposition*, 76(4) *J. Crim. L. & Criminology* 1132-1152 (1985).
- 33 Elizabeth Calvin, *Legal Strategies to Reduce the Unnecessary Detention of Children* 56-58, 62-64 (2004) (summarizing research on the costs and effects of detention).
- 34 *Guidelines*, *supra* note 1, at 83.
- 35 Calvin, *supra* note 19, at 67 (analyzing data from the Office of Juvenile Justice and Delinquency Prevention, *Easy Access to Juvenile Court Statistics* data package, 1999).
- 36 *Guidelines*, *supra* note 1, at 81-84.
- 37 *Id.* at 81.
- 38 *Id.* at 75.
- 39 *Id.* at 97 (judges should make written findings about the need for detention).
- 40 *Id.* at 123.
- 41 *Id.* at 125.
- 42 *Id.*
- 43 *Id.* at 123.
- 44 *Id.*
- 45 *Id.* at 124.
- 46 *Id.* at 123.
- 47 *Id.* at 122.
- 48 *Id.*
- 49 *Id.*
- 50 *Id.* at 125.
- 51 *Id.* at 125-26.
- 52 *Id.* at 126.
- 53 *Id.*
- 54 *Guidelines*, *supra* note 1, at 137.
- 55 *Id.* at 138, 140.
- 56 *Id.* at 137, 142.
- 57 *Id.* at 137.
- 58 *Id.*
- 59 *Id.* at 142.
- 60 *Id.* at 137.
- 61 *Id.* at 161-62 (explaining the counsel is not required to explain appeal issues to parents, but should do so if necessary to represent the child).
- 62 *Id.* at 145.
- 63 *Id.*
- 64 *Id.* at 160-61.
- 65 *Id.* at 169, 181, 196.
- 66 *Id.* at 169 (in the home), 181 (outside the home).
- 67 *Id.* at 169 (in the home), 181 (outside the home).
- 68 *Id.* at 171 (in the home), 185 (outside the home).
- 69 *Id.* at 187.
- 70 *Id.* at 196.
- 71 *Id.* at 197.
- 72 *Id.*

*The National Juvenile Defender Center (NJDC) is a non-profit organization that is dedicated to ensuring excellence in juvenile defense and promoting justice for all children. NJDC provides support to public defenders, appointed counsel, law school clinical programs and non-profit law centers to ensure quality representation in urban, suburban, rural and tribal areas. NJDC also offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination. To learn more about NJDC, please visit [www.njdc.info](http://www.njdc.info).*

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# ENDNOTES

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## Preface

- 1 [http://www.buildingblocksforyouth.org/juvenile\\_court.htm](http://www.buildingblocksforyouth.org/juvenile_court.htm) (last visited June 18, 2007).

## Executive Summary

- 2 In order to preserve the confidentiality, we do not identify the gender of the interviewees. Instead, all juvenile defenders are referred to as “she,” while all judges, prosecutors, child defendants and others are referred to as “he.”
- 3 Effectiveness of counsel appointed under Juvenile Court Act is to be evaluated under constitutional standards applied in criminal cases; *In the interest of D.M.* 258 Ill.App.3d 669, 197 Ill.Dec. 338: (1994 ). The right to effective assistance of counsel applies in juvenile, as well as adult proceedings, and in probation hearings as well as criminal trials. *In re F.N.*, 253 Ill. App.3d 483, 491, 191 Ill.Dec. 665, 671, 624 N.E.2d 853, 859 (1993). To prove ineffective assistance of counsel a defendant must show that (1) counsel’s performance fell below an objective standard of reasonableness, and (2) but for counsel’s performance there is a reasonable probability that the result of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 686, 80 L.Ed.2d 674, 693, 104 S.Ct. 2052, 2063 (1984).
- 4 705 ILCS 405/5-501.
- 5 Senate Bill 521 “[A]mends the State Appellate Defender Act. Provides that the State Appellate Defender may develop a Juvenile Defender Resource Center to: (i) study, design, develop, and implement model systems for the delivery of trial level defender services for juveniles in the justice system; (ii) in cases in which a sentence of incarceration or an adult sentence, or both, is an authorized disposition, provide trial counsel with legal advice and the assistance of expert witnesses and investigators from funds appropriated to the Office of the State Appellate Defender by the General Assembly specifically for that purpose; (iii) develop and provide training to public defenders on juvenile justice issues, utilizing resources including the State and local bar associations, the Illinois Public Defender Association, law schools, the Midwest Juvenile Defender Center, and pro bono efforts by law firms, and (iv) make an annual report to the General Assembly.” The Senate added an amendment that adds a Juvenile Justice Resource Center to the State’s Attorneys Appellate Prosecutor’s Act. This bill passed the Senate on 3/29/07 and the House on 5/29/07 and currently “awaits action by the Governor.” [http://www.jjustice.org/template.cfm?page\\_id=4](http://www.jjustice.org/template.cfm?page_id=4) (last visited June 18, 2007).
- 6 Juvenile Justice Systems and Risk Factor Data for Illinois: 2004 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 1-2 (January 2007).
- 7 *Id.*

## Introduction

- 8 *Kent v. United States*, 383 U.S. 541 (1966); *In re Gault*, 387 U.S. 1 (1967); *In re Winship*, 397 U.S. 358 (1970); *Breed v. Jones*, 421 U.S. 519 (1975); *Fare v. Michael C.*, 442 U.S. 707 (1979).
- 9 *In re Gault*, 387 U.S. 1 (1967).
- 10 *In re Gault*, 387 U.S. at 20, 36.
- 11 *Id.* at 18.

12 *In re Winship*, 397 U.S. 358 (1970).  
13 *Breed v. Jones*, 421 U.S. 519 (1975).  
14 *Kent v. United States*, 383 U.S. 541 (1966).  
15 *In re Winship*, 397 U.S. at 365-66. However, it is important to note that the Supreme Court did not  
extend the right to a jury trial (or the right to bail) to children charged with delinquent acts. See  
*McKeiver v. Pennsylvania*, 403 U.S. 528, (1971); *Schall v. Martin* 467 U.S. 253 (1984).  
16 *In re Gault*, 387 U.S. 1, 36 (1967); (Randy Hertz, Martin Guggenheim & Anthony Amsterdam, Trial  
Manual for Defense Attorneys in Juvenile Court 36 (1991); IJA-ABA Juvenile Justice Standards,  
Standards Relating to Counsel for Private Parties.  
17 *Id.*  
18 Pub. L. 93-415 (1974).  
19 *Standards for the Administration of Juvenile Justice*. 3.132 Representation by Counsel-For the Juvenile  
(National Advisory Committee for Juvenile Justice and Delinquency Prevention; Washington,  
DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and  
Delinquency Prevention July 1980).  
20 For a description of the project, see *IJA-ABA Juvenile Justice Standards Annotated: A Balanced*  
*Approach* xvi-xviii (Robert E. Shepherd, ed., 1996).  
21 *IJA-ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 3.1(b).  
22 ABA Juvenile Justice Center, Juvenile Law Center, & Youth Law Center, *A Call for Justice: An*  
*Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (1995),  
*available at* <http://www.njdc.info/pdf/cfjfull.pdf> (last visited June 18, 2007).  
23 Since 1995, state assessments have been conducted in 15 states including: Florida, Georgia,  
Indiana, Kentucky, Louisiana, Maine, Maryland, Mississippi, Montana, North Carolina, Ohio,  
Pennsylvania, Texas, Virginia and Washington. Re-assessments have been conducted in  
Kentucky and Louisiana. Three county-based assessments have been conducted in Cook County,  
Illinois; Marion County, Indiana; and Caddo Parish, Louisiana. A statewide assessment is  
currently underway in West Virginia. The National Juvenile Defender Center works with state  
partners to undertake juvenile indigent defense assessments and to understand the unique issues  
that each state system presents. More information about juvenile indigent defense assessments  
can be found at <http://www.njdc.info/assessments.php> (last visited June 18, 2007).  
24 The *Guidelines* can be found at <http://www.ncjfcj.org/content/view/411/411> (last visited June  
18, 2007).  
25 The *Ten Core Principles for Providing Quality Delinquency Representation through Indigent Defense*  
*Delivery Systems* are reprinted in Appendix A.  
26 <http://www.macfound.org> (last visited June 18, 2007).  
27 Chapin Hall Center for Children at the University of Chicago, the Children and Family Justice  
Center of Northwestern University School of Law, Edwin F. Mandel Legal Aid Clinic at the  
University of Chicago, the Illinois State Bar Association, the Juvenile Justice Initiative, Loyola  
University's ChildLaw Center, the National Association of Criminal Defense Lawyers and the  
National Juvenile Defender Center.  
28 Each team member has a strong background in juvenile justice and several have participated  
in other state assessments. No team member conducted a site visit in a county in which she  
practiced.  
29 Public defenders, private attorneys, prosecutors, judges, court reporters, court clerks, probation  
officers and detention center staff.

## Chapter One

30 <http://www.infoplease.com/ipa/A0108209.html> (last visited June 18, 2007).  
31 The data is collected from the US census bureau from 2004 which is the most recent data  
available. <http://quickfacts.census.gov/qfd/states/17000.html> (last visited June 18, 2007).

Although Juvenile Court currently only has jurisdiction until the child is 17 years of age, no data was available documenting the population of youth under 17.

32 Cook, DuPage and Will County.

33 ILCS Const. Art. 6, § 9.

34 <http://www.state.il.us/court/General/CourtsInIL.asp> and <http://www.state.il.us/court/CircuitCourt/CCInfoDefault.asp> (last visited June 18, 2007).

35 <http://www.icjia.state.il.us/public/index.cfm?metaSection=About&metapage=AuthMission> (last visited June 18, 2007).

36 The most recent data collected from the Illinois Criminal Justice Information Authority was from 2004 and is available by going to: <http://www.icjia.state.il.us/> (last visited June 18, 2007). It should be noted that the authors acknowledge that, while the data collected is as comprehensive as possible, “in Illinois juvenile justice data is reported and compiled in a manner that places significant limits on its utility.” For example some data is reported in aggregate form, some data is not mandated to be reported or collected, few mandates to collect data are universally enforced; and some of the people collecting data “do not see the relevance or benefit of collecting data accurately which leads to poor reporting.” Juvenile Justice Systems and Risk Factor Data for Illinois: 2004 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 1 (January 2007).

37 Juvenile Justice Systems and Risk Factor Data for Illinois: 2004 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 1-2 (January 2007).

38 The Illinois Juvenile Justice Commission defines an arrest as: “...the taking of a juvenile into custody by a law enforcement officer (1) who has probable cause to believe the minor is delinquent; (2) or that the minor is a ward of the court who has escaped from a court-ordered commitment; or (3) whom the officer reasonably believes has violated the conditions of probation or supervision ordered by the court.”

39 Juvenile Justice Systems and Risk Factor Data for Illinois: 2004 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 26 (January 2007).

40 Juvenile Justice Systems and Risk Factor Data for Illinois: 2004 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 26 (January 2007).

41 Juvenile Justice Systems and Risk Factor Data for Illinois: 2004 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 26 (January 2007). It is important to note that the increase in arrests may not be the result of more children being arrested but rather an improvement in the data collection.

42 Juvenile Justice Systems and Risk Factor Data for Illinois: 2004 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 27 (January 2007); <http://quickfacts.census.gov/qfd/states/17000.html> (last visited June 18, 2007).

43 Juvenile Justice Systems and Risk Factor Data for Illinois: 2004 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 27 (January 2007).

44 Juvenile Justice Systems and Risk Factor Data for Illinois: 2003 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, pp. 23 and 24 (March 2006).

45 The Illinois Juvenile Justice Commission defines delinquency petitions as: “Documents filed in delinquency cases with the juvenile court through the state’s attorney alleging that a juvenile is a delinquent. Supplemental petitions may be filed alleging new offenses or alleging new violations of orders entered by the court in the delinquency proceeding.” It is unclear if the data counts supplemental petitions in the numbers.

- 46 Juvenile Justice Systems and Risk Factor Data for Illinois: 2003 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 26 (March 2006); Juvenile Justice Systems and Risk Factor Data for Illinois: 2004 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 30 (January 2007).
- 47 *Id*
- 48 Juvenile Justice Systems and Risk Factor Data for Illinois: 2003 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 26 (March 2006).
- 49 The Illinois Juvenile Justice Commission defines adjudication as: “A finding of guilt.” It does not mean that an adjudication hearing actually took place but also reflects pleas.
- 50 Juvenile Justice Systems and Risk Factor Data for Illinois: 2003 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 27 (March 2006).
- 51 Juvenile Justice Systems and Risk Factor Data for Illinois: 2003 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 27 (March 2006).
- 52 Juvenile Justice Systems and Risk Factor Data for Illinois: 2004 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 32 (January 2007).
- 53 Juvenile Justice Systems and Risk Factor Data for Illinois: 2003 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 27 (March 2006).
- 54 The Illinois Juvenile Justice Commission defines detention as: “The temporary care of a minor alleged or adjudicated as delinquent who requires secure custody for his or her own or the community’s protection in a facility designed to physically restrict his or her movements, pending disposition by the court or execution of an order of the court for placement or commitment.” Therefore the numbers account for youth who are detained pre and post-adjudication.
- 55 Juvenile Justice Systems and Risk Factor Data for Illinois: 2004 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 35 (January 2007).
- 56 Juvenile Justice Systems and Risk Factor Data for Illinois: 2003 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 36 (March 2006).
- 57 This evidences the strong need for zealous advocacy during the detention stage of the juvenile court process.
- 58 Juvenile Justice Systems and Risk Factor Data for Illinois: 2004 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 36 (January 2007).
- 59 Juvenile Justice Systems and Risk Factor Data for Illinois: 2004 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 36 (January 2007).
- 60 Juvenile Justice Systems and Risk Factor Data for Illinois: 2003 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, pp. 41-41 (March 2006) and Juvenile Justice Systems and Risk Factor Data for Illinois: 2004 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, pp. 38 (January 2007).
- 61 Juvenile Justice Systems and Risk Factor Data for Illinois: 2004 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 39 (January 2007).

62 No Turning Back: Promising Approaches to Reducing Racial and Ethnic Disparities Affecting  
Youth of Color in the Justice System: Challenging the Automatic Transfer law in Illinois:  
Research and Advocacy Working Together for Change, A Project of the Building Blocks for  
Youth Initiative, p. 36 (October 2005).

63 Juvenile Justice Systems and Risk Factor Data for Illinois: 2003 Annual Report. Prepared for  
the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information  
Authority, pp. 41-42 (March 2006).

64 Effective on July 1, 2006, a new Illinois Department of Juvenile Justice, separate from the adult  
division of the Department of Corrections, was created.

65 If the child is 13 years old and is adjudicated delinquent for first degree murder, the child must  
be committed to the Department of Juvenile Justice until the age of 21. 705 ILCS 405/5-745.

66 The authority to send a youth to the Department of Corrections for a court evaluation is not  
in the Juvenile Court Act, but appears to come from 730 ILCS 5/5-3-3 ("Corrections"), which  
allows a judge to commit a person to a court clinic or DOC prior to sentencing in order to  
assess whether DOC is an appropriate sentence. During the evaluation, pursuant to the court's  
request the evaluation may include information on past delinquent behavior, mental and social  
background and rehabilitative services. Some judges reported that the quality of the evaluations  
has diminished and so they rarely order them. In a small number of counties, judges reported  
that they used this provision to allow for short commitment to DOC to "give the youth 'a taste of  
what prison is like.'" The legality of this is questionable and should be reviewed.

67 In 2003, 1,423 children were committed to the Illinois Department of Correction. Juvenile Justice  
Systems and Risk Factor Data for Illinois: 2003 Annual Report. Prepared for the Illinois Juvenile  
Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 59  
(March 2006).

68 Juvenile Justice Systems and Risk Factor Data for Illinois: 2003 Annual Report. Prepared for  
the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information  
Authority, p. 59 (March 2006).

69 Juvenile Justice Systems and Risk Factor Data for Illinois: 2004 Annual Report. Prepared for  
the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information  
Authority, p. 48 (January 2007).

70 Juvenile Justice Systems and Risk Factor Data for Illinois: 2004 Annual Report. Prepared for  
the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information  
Authority, p. 50 (January 2007).

71 <http://www.ncsconline.org/wc/CourTopics/FaQs.asp?topic=IndDef> (last visited June 18, 2007).

72 <http://www.ncsconline.org/wc/CourTopics/FaQs.asp?topic=IndDef> and [http://www/aba.org/  
legalservices/sclaid/defender/downloads/FINAL\\_REPORT\\_FY\\_2005\\_Expenditure\\_Report.pdf](http://www/aba.org/legalservices/sclaid/defender/downloads/FINAL_REPORT_FY_2005_Expenditure_Report.pdf)  
(last visited June 18, 2007).

73 Information on the types of juvenile indigent defense systems operating in Illinois obtained  
from speaking with public defenders across the state and attorneys working at the Office of the  
State Appellate Defender.

74 55 ILCS 5/3-4001 and 55 ILCS 5/3-4004.

75 Currently only Cook County fits in this category.

76 55 ILCS 5/3-4002.

77 Two or more adjoining counties may by joint resolution create a common office of Public  
Defender. (55 ILCS 5/3-4003).

78 55 ILCS 5/3-4008.

79 55 ILCS 5/3-4008.1.

80 *State and County Expenditures for Indigent Defense Services in Fiscal Year 2002*, prepared by The  
Spangenberg Group p. 10.

81 55 ILCS 5/3-4008 and 5/3-4008.1.

82 55 ILCS 5/3-400. It is important to note that this only refers to Chief Public Defenders, not  
assistant public defenders.

- 83 55 ILCS 5/3-4007.  
84 The burden is on the public defenders to seek this pay increase. During the past fiscal year the State only provided funding for nine months because they failed to allocate enough funds for the entire year.  
85 55 ILCS 5/3-4009.  
86 ILCS S. Ct. Rule 299, effective July 1, 2006.  
87 ILCS S. Ct. Rule 299, effective July 1, 2006.  
88 David Olson is a former and continuing researcher with the Illinois Criminal Justice Authority and a tenured faculty member at DePaul University in Chicago.

## Chapter Two

- 89 In Washington, children have the right to be represented by counsel at all critical stages of the proceedings Wash. Rev. Stat. § 13.40.140(2); in Oregon, counsel will be appointed to represent the youth in a delinquency case in which would be entitled to appointed counsel if the youth were an adult charged with the same offense Or. Rev. Stat. § 419C.200; in Arizona, children are only appointed counsel if it is an offense that may result in detention Ariz. Rev. Stat. § 8-221(A) and (H); counsel must be appointed within five days of when a delinquency petition is filed or at the conclusion of the detention hearing, whichever occurs first in New Mexico. N.M. Child. Ct. R. 10-205(A); in Delaware, the child has the right to counsel but the child can elect to proceed without counsel Del. Fam. Ct. R. of Crim. P. 44(a); in New Hampshire, absent a valid waiver the court shall appoint counsel at the time of arraignment of an indigent minor, provided that an indigent minor securely detained pending adjudication shall have counsel appointed upon the issuance of the detention order. N.H. Rev. Stat. § 169-B:12.; in New Jersey, juvenile shall have the right to be represented by counsel at every critical stage in the proceeding which, in the opinion of the court may result in the institutional commitment of the juvenile. N.J. Stat. § 2A:4A-39.  
90 705 ILCS 405/1-5 (1). Parents are also entitled to representation under this provision.  
91 705 ILCS 405/5-170(b) and 725 ILCS 5/115-1.5. However, if the case involves a violation of a municipal ordinance or if the penalty is only a fine or if it is a violation of the certain provisions of the Illinois Vehicle Code an attorney is not required to represent the child. *See City of Urbana v. Andrew N.B. v. Montrell D.H.*, 813 N.E.2d 132 (2004).  
92 705 ILCS 405/5-170. In the spring of 2007 the Illinois House passed HB 1380, which would require counsel during a custodial interrogation for any child under the age of 17 (rather than the current age of 13) who is suspected of committing certain homicide or sexual offenses. As of July 28, 2007 HB 1380 was currently being held in the senate judiciary. <http://www.ilga.gov/legislation/BillStatus.asp?DocTypeID=HB&DocNum=1380&GAID=9&SessionID=51&LegID=30165>  
93 705 ILCS 405/5-610. The dual appointment of an attorney/GAL may lead to role confusion, which may adversely impact the minor's representation. This is discussed more fully in the next section.  
94 Effectiveness of counsel appointed under Juvenile Court Act is to be evaluated under constitutional standards applied in criminal cases; In Interest of D.M. 258 Ill.App.3d 669, 197 Ill. Dec. 338: (1994). The right to effective assistance of counsel applies in juvenile, as well as adult proceedings, and in probation hearings as well as criminal trials. *In re F.N.*, 253 Ill.App.3d 483, 491, 191 Ill.Dec. 665, 671, 624 N.E.2d 853, 859 (1993). To prove ineffective assistance of counsel a defendant must show that (1) counsel's performance fell below an objective standard of reasonableness, and (2) but for counsel's performance there is a reasonable probability that the result of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 686, 80 L.Ed.2d 674, 693, 104 S.Ct. 2052, 2063 (1984).

95 Bruce A. Green and Bernardine Dohrn, *Ethical Issues in the Representation of Children*,  
Forward: *Children and the Ethical Practice of Law*, 64 *Fordham L. Rev.* 1281 (1996); *see infra* notes  
97-99.

96 Bruce A. Green and Bernardine Dohrn, *Ethical Issues in the Representation of Children*,  
Forward: *Children and the Ethical Practice of Law*, 64 *Fordham L. Rev.* 1281 (1996).

97 IJA-ABA *Juv.Just.Stand.* 3.1; 5.2.

98 IJA-ABA *Juv.Just.Stand.* 3.1(b) (ii) (c) (2).

99 IL.Prof.R.Cond.1.2 (a). The objectives of representation include the decision to plead guilty, go to  
trial, accept an offer, and to testify.

100 IL.Prof.R.Cond.1.14 (a).

101 IL.Prof.R.Cond.1.14 (b).

102 *In the Interest of K.M.B.*, 123 Ill.App.3d 645 (4<sup>th</sup> dist. 1984).

103 *In the Interest of K.M.B.*, 123 Ill.App.3d 645, 647-648.

104 One of the authors of this report made two presentations on the question of models of  
representation as part of a juvenile training sponsored by the Illinois Institute of Continuing  
Legal Education (IICLE) in Illinois in fall 2006. The majority of those surveyed at the conferences  
stated that they followed an expressed interest model at all stages; however a significant  
minority followed the KMB approach- they represent the minor's expressed interest pre-  
adjudication and then switch to the best interest model at disposition. A very small minority  
reported that they follow the best interest model of representation at all stages.

105 <http://www.education.pitt.edu/ocd/publications/backgrounds/32.pdf> (last visited June 18,  
2007).

106 House Committee on Economic and Educational Opportunities, Subcommittee on Early  
Childhood, Youth and Families, *Hearings on the Juvenile Justice and Delinquency Prevention Act*,  
Serial No. 104-68, 104th Cong., 2d sess., 1996, p. 90 (statement of Rep. Bill McCollum, chairman,  
Subcommittee on Crime, House Judiciary Committee).

107 *In re Jaime P* 861 N.E.2d 958 at 964 (citations omitted).

108 For example, it is argued that changes in the terminology reflect a more punitive approach and  
weakened the difference between juvenile and adult court. Adjudicatory hearings are now  
called trials; dispositional hearings are now termed sentencing hearings.

109 [http://www.icjia.state.il.us/public/index.cfm?metasection=publications&metapage=compiler02\\_  
reform](http://www.icjia.state.il.us/public/index.cfm?metasection=publications&metapage=compiler02_reform) (last visited June 18, 2007).

110 *See* 705 ILCS 405/5-130; 705 ILCS 405/5-805.

111 *See* 705 ILCS 405/5-815; 705 ILCS 405/5-820; 705 ILCS 405/5-750 (2).

112 *See generally* 705 ILCS 405/5-901, *et. seq.* "Confidentiality of Records and Expungements".

113 705 ILCS 405/5-410.

114 An Implementation Evaluation of the Juvenile Justice Reform Provisions of 1998, Part 1: Surveys  
of Juvenile Justice Professionals, Prepared for the Illinois Juvenile Justice Commission Prepared  
by the Research and Analysis Unit Illinois Criminal Justice Information Authority, p. 8 (March  
2002).

115 705 ILCS 405/5-301; 705 ILCS 405/5-305.

116 705 ILCS 405/5-810. A minor whose case is designated an EJJ prosecution remains in juvenile  
court, but is given both a juvenile and adult sentence; the latter is stayed pending the youth's  
successful completion of the juvenile sentence. "The purpose of EJJ is to give minors who  
have committed serious crimes a second chance to remain out of the adult system, while  
using the potential adult sentence as a deterrent to future criminal act." (*An Implementation  
Evaluation of the Juvenile Justice Reform Provisions of 1998*, [http://www.icjia.state.il.us/public/pdf/  
ResearchReports/Juvenile%20Justice%20Reform%20Provisions\\_Part%201.pdf](http://www.icjia.state.il.us/public/pdf/ResearchReports/Juvenile%20Justice%20Reform%20Provisions_Part%201.pdf) at p. 15 (last visited  
June 25, 2007).

117 *See In re Jaime P* 861 N.E.2d 958 at 964, *citing People v. Taylor*, 221 Ill.2d 157 (2006) (both discussing  
more 1998 amendments and punitive focus of revisions).

## Chapter Three

- 118 705 ILCS 405/5-101(c).
- 119 705 ILCS 405/5-101(c).
- 120 705 ILCS 405/5-105(3).
- 121 *See* section on Children Tried as Adults, p. 30; *See infra* notes 157-162.
- 122 705 ILCS 405/5-120.
- 123 705 ILCS 405/5-755.
- 124 [http://www.jjustice.org/template.cfm?page\\_id=4](http://www.jjustice.org/template.cfm?page_id=4) or <http://12.43.67.2/legislation/BillStatus.asp?GA=95&DocTypeID=HB&DocNum=1517&GAID=9&SessionID=51&LegID=30321> (last visited June 25, 2007). 46 members voted in favor of the Bill and 58 members voted against it. [http://12.43.67.2/legislation/votehistory/95/house/09500HB1517\\_06202007.pdf](http://12.43.67.2/legislation/votehistory/95/house/09500HB1517_06202007.pdf) (last visited June 25, 2007).
- 125 705 ILCS 405/5-135 (1).
- 126 705 ILCS 405/5-135 (2).
- 127 705 ILCS 405/1-5(6); 705 ILCS 405/1-8. In Illinois, a Gentleman's agreement exists with the media to withhold the name of a child accused of a delinquent act from media accounts of the incident.
- 128 705 ILCS 405/5-105 (2).
- 129 705 ILCS 405/5-415(1).
- 130 705 ILCS 405/5-501(2).
- 131 705 ILCS 405/5-501(2).
- 132 705 ILCS 405/5-501. This may prevent defense counsel from effectively challenging probable cause. *See* section on Detention in the Findings Section, p. 36.
- 133 705 ILCS 405/5-501 (2).
- 134 705 ILCS 405/5-501(2).
- 135 705 ILCS 405/5-300.
- 136 An informal adjustment is when a police officer will make the determination that probable cause exists that the minor committed an offense. The police officer can offer an informal adjustment which includes imposing reasonable conditions on the minor. An informal adjustment does not require an admission. If the minor refuses or fails to abide by the conditions the police officer may impose a formal station adjustment or refer the matter to the State's Attorney's Office. 705 ILCS 405/5-301. A formal adjustment is when a police officer will make a determination that probable cause exists that the minor has committed an offense. Upon offering a formal station adjustment the minor must make an admission of involvement in the offense which can be used in future court hearings. As part of the formal adjustment certain conditions will be placed on the minor. If the minor fails to follow the conditions the police officer can warn the juvenile, extend the period of formal adjustment, terminate the formal adjustment, or terminate the formal adjustment as unsatisfactory and refer the case to juvenile court. 705 ILCS 405/5-301.
- 137 Under a probation adjustment, the probation officer may hold a preliminary conference with the alleged delinquent minor and any interested parties with a view of adjusting suitable cases without filing a petition. This type of adjustment is contingent upon the State's Attorney declining to prosecute the case. Statements made during the conference cannot be used in any future hearings or proceedings against the minor. 705 ILCS 405/5-305.
- 138 705 ILCS 405/5-310. These programs allow the minor's community to deal with the minor in a speedy and informal manner through mediation or restorative justice principles. For example, some communities have instituted peer jury programs for first time offenders. In Cook County, Community Panels for Youth is a diversion program that brings the offender, the victim and the community together to address delinquent behavior.
- 139 705 ILCS 405/5-520; 705 ILCS 405/5-330 (giving the State's Attorney the discretion to prosecute a case).
- 140 725 ILCS 5/113-1 and 725 ILCS 5/113-3.1.

141 725 ILCS 5/104-1, *et seq.*  
142 705 ILCS 405/5-601 (4). The minor is permitted to waive the time limits.  
143 705 ILCS 405/5-601 (1).  
144 705 405 ILCS 405/5-601. *Mckeiver v. Pennsylvania* held that children in the juvenile justice system  
have no federal constitutional right of trial by jury. 403 U.S. 528 (1971).  
145 705 ILCS 405/5-705.  
146 705 ILCS 405/5-701.  
147 705 ILCS 405/5-705.  
148 The court has a wide range of requirements it may impose as conditions of probation, including  
following curfew, attending school, attending counseling, making restitution, and performing  
community service. 705 ILCS 405/5-715 (2).  
149 705 ILCS 405/5-710; 705 ILCS 405/5-750.  
150 Press Release, Governor Rod R. Blagojevich, Law creates separate agency to provide juvenile  
offenders treatment and services they need (Nov. 17, 2005).  
151 705 ILCS 405/5-810(6).  
152 705 ILCS 405/5-755.  
153 Illinois Supreme Court Rule 660.  
154 Illinois Supreme Court Rule 607 and 662.  
155 725 ILCS 105/3.  
156 Information obtained from the Office of the State Appellate Defender.  
157 705 ILCS 405/5-130.  
158 705 ILCS 405/5-805.  
159 It is important to note that the Illinois legislature has amended the automatic drug transfer  
provisions twice since 1998, allowing for more judicial discretion when determining if a case  
should be tried in adult or juvenile court. The amendments were in response to data that showed  
that the majority of the youth that were automatically transferred to adult court for drug offenses  
were first time offenders, who had not had the benefit of juvenile court intervention and were  
disproportionately minorities. (No Turning Back: Promising Approaches to Reducing Racial and  
Ethnic Disparities Affecting Youth of Color in the Justice System: Challenging the Automatic  
Transfer law in Illinois: Research and Advocacy Working Together for Change, A Project of the  
Building Blocks for Youth Initiative (October 2005)). In 2002, House Bill 4129 passed that allowed  
for a “non-class X drug offenders to petition the adult court judge for a reverse waiver hearing  
to go back to juvenile court for trial and sentencing.” (No Turning Back: Promising Approaches  
to Reducing Racial and Ethnic Disparities Affecting Youth of Color in the Justice System:  
Challenging the Automatic Transfer law in Illinois: Research and Advocacy Working Together  
for Change, A Project of the Building Blocks for Youth Initiative, p. 39 (October 2005)). In 2005,  
due to the strong advocacy around the issue Senate Bill 283 was enacted which gave judges  
the discretion “to determine whether or not to try youth involved with drug cases as adults.”  
Press Release, Juvenile Justice Initiative, Illinois Law Gives Judges More Discretion Over Youth  
Charged As Adults; New Law Allows Individualized Review of Juveniles Transferred to Adult  
Court; Recognizes Developmental Differences Between Juveniles and Adults (August 2005)  
(available at <http://www.jjustice.org/pdf/Final%20Transfer%20Press%20Release%20Aug%2005.pdf>  
pdf (last visited June 18, 2007)) and Illinois Senate Bill 283.  
160 705 ILCS 405/5-805(2).  
161 705 ILCS 405/5-805(3).  
162 705 ILCS 405/5-130(6).  
163 705 ILCS 405/5-810.  
164 *Id.*

## Chapter Four

- 165 725 ILCS 5/115-1.5 and 705 ILCS 405/5-170(b).
- 166 After the petition has been filed, but before a formal adjudication, the minor stipulates either to the conduct itself or what the State's evidence would be. The court may then impose a variety of conditions similar to those which may be imposed under an order of probation and continue the case for a period of time not to exceed twenty-four months. 705 ILCS 405/5-615. If the minor successfully completes the conditions, the petition is dismissed. If not, the case proceeds to adjudication. The statute is silent on if minor's stipulation can then be used against him.
- 167 This is in addition to probation fees, ranging from \$10-25 a month, as well as a DNA extraction fee, which usually runs around \$200. Counties that do not assess attorney's fees also routinely assess probation and other fees pursuant to 730 ILCS 5/5-6-3.
- 168 \$100 for attorney's fees and \$200 for DNA extraction.
- 169 The federal poverty guidelines are version of the federal poverty measure. The guidelines are often used for administrative purposes – for instance, determining financial eligibility for certain federal programs.<http://aspe.hh.gov/poverty/07poverty.shtml> (last visited June 18, 2007).
- 170 Many parents believe that if their child engaged in the alleged conduct, he should not contest the charges. However, a minor may have an affirmative defense or may be guilty of a lesser charge than that which is contained in the petition.
- 171 See section on Role Confusion, p. 62.
- 172 Annie E. Casey Foundation, "Juvenile Jailhouse Rocked: Reforming Detention in Chicago, Portland and Sacramento," *AdvoCasey: Documenting Programs that Work for Kids and Families* (Fall/Winter 1999.)
- 173 *Id.*; <http://www.aecf.org/Home/MajorInitiatives/JuvenileDetentionAlternativesInitiative.aspx> (last visited June 18, 2007).
- 174 For example, Cook County, through the JDAI program, reduced its average daily population in locked detention from 682 to 441 (1995 to 2005).  
<http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative/JDAIResults.aspx> (last visited June 18, 2007).
- 175 705 ILCS 405/5-501.
- 176 Probation departments in 21 counties have adopted the Youth Assessment Screening Instrument (YASI) to determine levels of probation supervision. YASI is a questionnaire that assesses the youth's risk and protective factors, such as family problems, potential signs of mental illness, troubles at school and other situations that may lead to delinquency and other problem behaviors. <http://www.ncjj.org/stateprofiles/profiles/IL07.asp?state=%2Fstateprofiles%2Fprofiles%2FIL07.asp&topic> (last visited June 18, 2007).
- 177 705 ILCS 405/5-415 (1); the 40 hour rule is not imposed on weekends and court holidays. This in turn makes it possible that a child can be detained for 122 hours or almost five days prior to a court hearing.
- 178 705 ILCS 405/5-501.
- 179 705 ICLS 405/5-501.
- 180 705 ILCS 405/5-501.
- 181 Interestingly, the case for which the child was being detained was over a year old. The case had never been adjudicated, but basically had been treated as "just information that is tucked in" in case something else came up.
- 182 After the site visit was completed, the investigative team learned that not only did the dedicated detention calendar close, but attorneys are no longer able to interview youth in the detention center. Instead, they conduct short interviews in the lock-up behind the courtrooms surrounded by other youth. This change has also resulted in a change to the attorney-client relationship: lack of time and incomplete interviews negatively impact the relationship between the young client and his/her attorney. Because this change has recently occurred, it is unclear whether attorneys will routinely be allowed to conduct full and complete interviews prior to the detention hearing.

183 Due to the strict statutory timelines there is a concern that defenders and judges may justify quickly disposing of a case at the expense of a thorough investigation and / or launching a vigorous defense.

184 They also attributed the reduction to the fact that counties which used to send minors to their detention now have their own facilities.

185 In at least one county, it was reported that while there was a preference for electronic monitoring, it was infrequently used due to the fact that most families use cell phones rather than land lines, making it more difficult to confirm that the child was home.

186 However, this increase has caused a different type of problem; because the detention center operates at almost 100% capacity with minors from the host county means that the center cannot rent the beds to other counties.

187 Sheriff's Work Alternative Program ("S.W.A.P") was developed as an alternative to secure detention. Children charged with non-violent offenses who are facing a period of detention can be referred to this program where they will be spending time doing community service in their area. Children can be sentenced to this program for up to 30 days. All of the children are supervised by Sheriff Deputies and are generally organized in small groups for doing their community work. ([www.dupageco.org/sheriff/info.htm](http://www.dupageco.org/sheriff/info.htm); <http://www.ipp.org/nlipp398.html>; [http://www.cookcountycourt.org/publications/pdf/juvenile\\_book.pdf](http://www.cookcountycourt.org/publications/pdf/juvenile_book.pdf) (last visited June 18, 2007)).

188 Federal law suspends eligibility for federal student aid, if the person has been convicted for the possession or sale of illegal drugs for an offense that occurred during a period of enrollment for which you were receiving federal student aid (grants, loans, and/or work-study). If the person has been convicted in the past, this does not automatically mean that they will be ineligible for federal student aid. <http://www.fafsa.ed.gov/before013.htm> (last visited June 18, 2007).

189 "Although the precedent on juvenile delinquency adjudications is sound in the contest of removal proceedings where an actual conviction is required to support a finding of either inadmissibility or deportability, the effect of a delinquency adjudication is not so clear in the context of immigration provisions where a final conviction is not required." Mary E. Kramer, *Immigration Consequences of Criminal Activity A Guide to Representing Foreign-Born Defendants* 60 (Stephanie L. Browning ed., American Immigration Lawyers Association 2005).

190 730 ILCS 150/2 (A)(5).

191 705 ICLS 405/5-905.

192 705 ILCS 405/5-605; Il.S.Ct.Rule 401; *See, e.g. In re Shawn Beasley*, 362 N.E.2d 1024 (1977); *In the interest of Starks*, 377 N.E. 2d 287 (1978); *In the interests of D.S. and S.K.* 461 N.E. 2d 527 (1984); *In re M.W.*, 616 N.E.2d 710 (1993).

193 705 ILCS 405/5-605.

194 705 ILCS 405/5-710(7).

195 730 ILCS 5/5-8-3. (The following is the term of imprisonment for the various types of misdemeanors: Class A, for any term less than a year; Class B, for not more than six months; Class C, for not more than 30 days).

196 In all detention centers visited, it was reported that children are given phone access to attorneys.

197 *See* section on Inadequate Resources and Training, p. 64.

198 It is questionable how much information defenders who only meet their clients in court can get to properly assess a case. *See* section on Client Contact and Communication, p. 47.

199 725 ILCS 5/104-10, *et seq.*

200 In one county, these are typically in writing, whereas in another county, the motion is generally made orally. The prosecutor in the latter county said that she finds it disturbing that the attorneys never cite case law.

201 735 ILCS 5/10-101 *et seq.*

202 *See* section on Inadequate Access to Investigators, Experts and Social Workers, p.66.

203 705 ILCS 405/5-720(1). According to at least one Illinois appellate court, only the State's Attorney has the authority to initiate a probation revocation hearing; the court has no authority to order

a state's attorney's office to file a petition to revoke a juvenile's probation. See *In re J.K.*, 229 Ill. App.3d 569, 585 (2<sup>nd</sup> Dist. 1992). felonies must be reported. T; change "al and closed to the public. inor has teh sions, in whcih ts moments before the hearing

204 705 ILCS 405/5-720(2). If the child is detained due to the probation violation he may not be detained longer than 15 days pending the determination of the alleged violation.

205 705 ILCS 405/5-720(3).

206 705 ILCS 405/5-720(3).

207 705 ILCS 405/5-720(4).

208 A juvenile record can be expunged under two categories. In the first category a juvenile record can be expunged if the child is at least seventeen years and was never charged with the crime; if the child was found not delinquent; if the child was placed on supervision and it was successfully terminated; if the child was adjudicated delinquent for a Class B misdemeanor, Class C misdemeanor or a petty or business offense. If the incidents do not fall under the first category a juvenile record can be expunged if the child has had no convictions since their 17<sup>th</sup> birthday; the child is at least 21 years old; it has been at least five years since their juvenile court case was terminated; and it has been five years since their commitment to the Department of Juvenile Justice. A person who is found delinquent for first degree murder or a felony sex offense can not have their record expunged. 705 ILCS 405/5-915 and [http://www.state.il.us/defender/juv\\_exp\\_qualify.html](http://www.state.il.us/defender/juv_exp_qualify.html) (last visited June 18, 2007).

209 66 Ill.2d 261 (1977).

210 *Boose*, 66 Ill.2d at 266-67.

211 *In re Staley*, 67 Ill.2d 33, 37 (1977) (internal cites omitted).

212 The Illinois Appellate Court recently recognized the potential conflict for a lawyer who is dually appointed as an attorney guardian ad litem. *In re B.K.*, 358 Ill.App.3d 1166 (5<sup>th</sup> Dist. 2005). Attorneys who believe that they labor under such a conflict have a duty to request that the court appoint a separate guardian ad litem.

213 P.A. 094-0798.

214 See section on the Structure of the Illinois Juvenile Indigent Defense System, p. 18.

215 Based on the findings of the Assessment, trainings will be planned across the state in order to give all juvenile defense attorneys the ability to attend the trainings.

216 This equates to an investigative request occurring in less than 5% of the cases in this county.

217 See *People v. Lawson*, 163 Ill.2d 187, 219-20, 644 N.E.2d 1172, 1187-88 (1994) (trial court abused its discretion in denying defendant's motion for funds to hire a shoeprints expert where the expert's opinion was to be used in proving crucial issue); *People v. Kinion*, 97 Ill.2d 322, 334, 454 N.E.2d 625, 630 (1983). ("An indigent defendant is entitled to payment of reasonable fees to obtain the services of an expert on an issue which is crucial to [her] defense."); and *Ake v. Oklahoma*, 470 U.S. 68 (1985).

## Chapter Six

218 705 ILCS 405/5-501.

219 *Roper v. Simmons*, 543 U.S. 551, 578 (2005).

220 Moreover, given the changes in the purpose and policy section of the Juvenile Court Act as reflected in the 1998 revisions, it appears that the focus has shifted from "best interests" to accountability and punishment.

221 Senate Bill 521 "[A]mends the State Appellate Defender Act. Provides that the State Appellate Defender may develop a Juvenile Defender Resource Center to: (i) study, design, develop, and implement model systems for the delivery of trial level defender services for juveniles in the justice system; (ii) in cases in which a sentence of incarceration or an adult sentence, or both, is an authorized disposition, provide trial counsel with legal advice and the assistance of

expert witnesses and investigators from funds appropriated to the Office of the State Appellate Defender by the General Assembly specifically for that purpose; (iii) develop and provide training to public defenders on juvenile justice issues, utilizing resources including the State and local bar associations, the Illinois Public Defender Association, law schools, the Midwest Juvenile Defender Center, and pro bono efforts by law firms, and (iv) make an annual report to the General Assembly." The Senate added an amendment that adds a Juvenile Justice Resource Center to the State's Attorneys Appellate Prosecutor's Act. This bill passed the Senate on 3/29/07 and the House on 5/29/07 and currently "awaits action by the Governor." [http://www.jjustice.org/template.cfm?page\\_id=4](http://www.jjustice.org/template.cfm?page_id=4) (last visited June 18, 2007).

222 Juvenile Justice Systems and Risk Factor Data for Illinois: 2004 Annual Report. Prepared for the Illinois Juvenile Justice Commission prepared by the Illinois Criminal Justice Information Authority, p. 1-2 (January 2007).

223 *Id.*

224 In most jurisdictions visited, public defenders were present in the courtroom at the initial hearing; therefore appointing an attorney prior to any action taking place should not result in any additional resource burden.

225 See 705 ILCS 405/5-170(b) and 725 ILCS 5/115-1.5, prohibiting waiver of counsel by youth under the age of 17.





# ModelsforChange

Systems Reform in Juvenile Justice

[www.modelsforchange.net](http://www.modelsforchange.net)

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