

Innovation Brief

Raising the Standards of Juvenile Indigent Defense

Pennsylvania’s county-based approach to juvenile defense created a patchwork system in which children in some counties received excellent representation while those in other locations did not, often resulting in inappropriate dispositions and harmful outcomes. **The Juvenile Defenders Association of Pennsylvania was established to promote improvements in indigent juvenile defense, and made several important innovations.** The organization developed a set of recommendations for reform (some of which have been adopted as new Rules of Juvenile Court Procedure and recommended legislation), produced guidelines and a training manual for juvenile defense attorneys, expanded training programs to reach defenders across the state, created a model expungement protocol, and is helping to develop model juvenile defense units in diverse counties.

The Issue

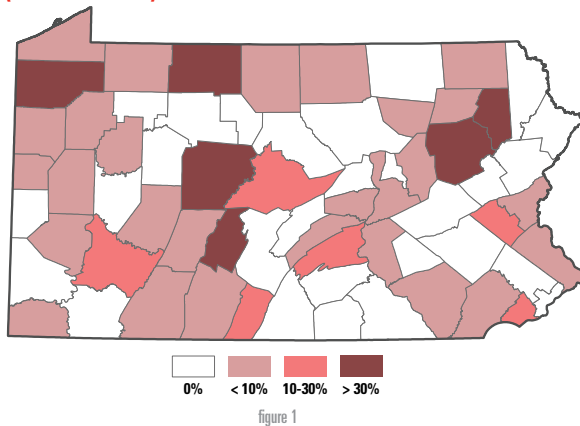
Every child accused of a crime deserves a highly competent defense attorney with good access to resources. Yet across the country, such attorneys and resources are often in short supply—and in some areas, virtually nonexistent. Even Pennsylvania, which has often led the way in juvenile justice reforms, provides no dedicated state funding for juvenile defense. What resources exist are almost exclusively county-based, and decisions about training requirements, compensation, and support services such as investigators and social workers are left to county discretion. Defense services also vary in structure; some counties support large, well-resourced offices, some have smaller public defender offices, and others rely on part-time contract attorneys for indigent juvenile defense.

The result has been what some call “justice by geography” (figure 1). A 2003 assessment by the Juvenile Law Center and the Juvenile Justice Center of the American Bar

Association (now the National Juvenile Defender Center) concluded that children who were arrested in counties with well resourced, well trained indigent juvenile defense attorneys received high quality representation, while children in other counties often did not. Too many youths were represented by overburdened lawyers with scant knowledge of juvenile law; many others appeared in court without counsel. Attorneys often failed to follow cases after the court’s ruling, and sometimes didn’t even keep basic paperwork on clients. There was no community forum available to juvenile defenders who needed support and advice, and few training opportunities relevant to representing children.

This dysfunctional system had dire consequences for many children. Problems in preparation and representation at early stages in the adjudicatory process often resulted in harmful or less favorable outcomes for children, at disposition and afterwards. At its worst, the situation led to

Percent of Cases in Which Counsel Was Waived (2005-2007)



Luzerne County’s “cash for kids” scandal, in which youths were routinely induced to waive their right to counsel and, as a result, were often sent to out-of-home placements for trivial offenses. For these egregious violations of due process, which included receiving kickbacks from placement facilities, two judges were ultimately indicted and convicted in federal court.

Innovations

With support from Models for Change and the Pennsylvania Commission on Crime and Delinquency (PCCD), Pennsylvania undertook a series of important initiatives.

• Basic training and support

In 2004-2005, the Defender Association of Philadelphia began to organize regular trainings for juvenile defenders throughout Pennsylvania, focusing on issues from the first court appearance to sentencing and beyond. Defenders who did not have the resources to attend the centralized trainings were given scholarships that allowed them to participate. A listserv was created to link juvenile defenders and allow them to share concerns about placement facilities and ask for advice on cases.

• Organization of juvenile defenders

As the juvenile defense community developed, the need for an organization to promote improvements in juvenile defense became clear. In 2006 Pennsylvania indigent juvenile defense leaders created a non-profit corporation,

the Juvenile Defenders Association of Pennsylvania (JDAP). Its mission is to promote high professional standards for juvenile defense, to organize defenders and give them a voice in policy and reform efforts, and to support professional development.

With membership and a Board representing counties of varying size, JDAP worked to respond to the different training and support needs of defenders across the state. As the abuses in Luzerne County came to light, JDAP was able to support the local public defenders by coordinating a series of juvenile-specific trainings for defenders in Luzerne and surrounding counties.

• Participation in policymaking

Shortly after the investigation into the Luzerne County scandal began, JDAP helped bring together a group of stakeholders that included leaders from local and state juvenile justice agencies; associations representing juvenile judges, defenders, and probation officers; state legislators, county commissioners, and other policymakers; national policy organizations, and others with an interest in juvenile defense. It was an extraordinary accomplishment, reaching professionals with many different roles in the system and from very different geographic and professional environments.

The group wrote a set of recommendations, addressing funding and compensation for juvenile defense, professional standards and training, the rights of juvenile defendants, procedures for juvenile appeals, and the establishment of an independent organization to enhance all these efforts. They brought these recommendations to the Pennsylvania Interbranch Commission on Juvenile Justice, which was investigating the circumstances that led to the Luzerne scandal, and the recommendations were adopted in the Commission’s final report. They were also brought to the state legislature, and several have now been adopted as Rules of Juvenile Court Procedure (see “Results,” below).

• Publications

JDAP developed the *Pennsylvania Performance Guidelines for Quality and Effective Defense Representation* to provide clear

standards regarding the ethical duties and responsibilities of juvenile defense counsel. The Guidelines incorporate the principles of Pennsylvania's Rules of Professional Conduct, Rules of Juvenile Court Procedure, and the Juvenile Act, as well as national standards for professional conduct. They emphasize the duty to continue representation at every stage of juvenile proceeding, including post-disposition hearings. The Guidelines have been incorporated into training for new and experienced attorneys and serve as the foundation for indigent defense reform in Pennsylvania.

JDAP and the stakeholders group also created the *Pennsylvania Juvenile Defense Notebook*, a comprehensive resource designed to offer practical guidance to juvenile defenders in their day-to-day practice. The Notebook covers all aspects of juvenile defense representation, including ethical and strategic considerations. It also includes a CD with case law relevant to juvenile defense practice, model forms and motions, and a database of community-based programs and placement facilities categorized by county and by type of treatment.

The *Collateral Consequences Checklist* gives attorneys, judges, and others who work with youths an up-to-date summary of the short- and long-term consequences of juvenile adjudications of delinquency, from restrictions on housing and careers to effects on immigration status and adult sentencing. The Checklist is a valuable tool for attorneys when they advise their clients about the decision to enter an admission or to proceed to an adjudicatory hearing. The Checklist has proven to have broad appeal among placement facilities, probation offices, and schools, as well as defense attorneys.

• Expanded training

The publications are supplemented by expanded training programs that include a two-day program on Defending Children Accused of Sexual Assault, a program on the Juvenile Act and Rules of Criminal Procedure, and programs related to the Notebook, the Guidelines, and the Checklist. In September of 2011, a group of 16 experienced juvenile defenders and trainers participated in a two-day workshop that provided them with tools to conduct

ongoing trainings for juvenile defenders in their regions. A requirement that all defense attorneys complete juvenile-specific training before they are permitted to represent indigent children would help to ensure that all children in Pennsylvania are represented by informed counsel.

• Expungement initiative

Juvenile defenders, prosecutors, probation officers, and policy experts collaborated to create a model protocol to streamline the process for expunging juvenile records. The protocol can help ensure that children who are in the juvenile justice system have an opportunity to move forward without the stigma and collateral consequences of a juvenile record. It is being piloted throughout Pennsylvania.

• Models for reform

Because of the county-based structure of Pennsylvania's indigent defense system, there is no single solution to improving representation of children. Instead, PCCD has supported the Model Juvenile Units initiative. The initiative allows participating counties to develop their own strategies to meet the requirements for effective representation; these model counties then become examples for other jurisdictions of similar size or with similar needs. In the first year of the program, Luzerne County and Dauphin County have received funding under the program. The goal is for additional counties—of different sizes and with different structures—to join the program in the second year of funding so that counties of different sizes will have examples of best practices to emulate.

Results and Lessons

Pennsylvania has recently adopted Rules of Juvenile Court Procedure in response to the recommendations described above. For example:

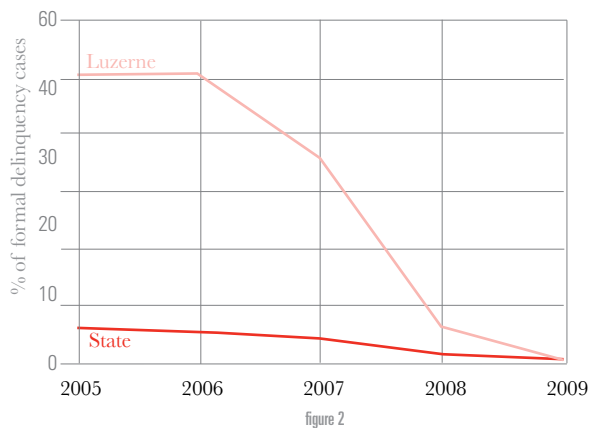
- All juveniles are now deemed indigent for the purposes of appointment of counsel.
- Juveniles must have someone to advocate for their educational rights.
- *Ex parte* (unilateral) communication with the judge is prohibited.
- Juveniles in court may not be shackled unless they present a flight risk or danger.

- Judges must explain their dispositions and the reasoning behind them on the record; before ordering youth into out-of-home placements, they must explain why there are no less restrictive alternatives available.

In addition, the legislature is considering a rule restricting waiver of counsel as well as rules that will give more juveniles access to appeals.

As for Luzerne County, its Juvenile Public Defender Unit has become a success story for indigent juvenile defense reform. Where the office once had a single part-time attorney assigned to juvenile practice, it now has three specialized attorneys with training in delinquency representation. They have access to trained social service advocates and investigators, and are zealously advocating for youth in the court system. And they continue to work aggressively on improving their representation of youth in the delinquency system (figure 2).

Changes in Waiver of Counsel



Perhaps the most important lesson to take from these results is the critical role of defenders in protecting children's rights, ensuring fairness throughout the system, and

achieving positive outcomes. Defenders can accomplish a great deal when they are organized, focused, and have a seat at the policy table.

Looking forward

Pennsylvania's indigent juvenile defense reform efforts did not begin with Luzerne County and they have not ended with that county's improvements. Many of the conditions that were present in Luzerne County prior to the scandal—high caseloads, inexperienced attorneys, lack of training and resources—persist in jurisdictions throughout Pennsylvania. Improving conditions throughout the state requires uniform standards and access to adequate funding and specialized training; it requires that juvenile defense be viewed as a career, not a training ground. Efforts continue to secure dedicated state funding and support services for indigent juvenile defense, to ensure effective representation for children in every jurisdiction.

Resources

Pennsylvania Performance Guidelines for Quality and Effective Defense Representation (2010)

<http://www.modelsforchange.net/PADefenseGuidelines>

Collateral Consequences Checklist (2010)

<http://www.modelsforchange.net/PAConsequences>

Interbranch Commission Report on Luzerne County (2010)

<http://www.modelsforchange.net/PALuzerne>

Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Pennsylvania (2003)

<http://www.modelsforchange.net/PACounselAccess>

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This brief is one in a series describing new knowledge and innovations emerging from Models for Change, a multi-state juvenile justice initiative. Models for Change is accelerating movement toward a more effective, fair, and developmentally sound juvenile justice system by creating replicable models that protect community safety, use resources wisely, and improve outcomes for youths. The briefs are intended to inform professionals in juvenile justice and related fields, and to contribute to a new national wave of juvenile justice reform.