

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.

The preparation of this document was supported by John D. and Catherine T. MacArthur Foundation.



EXECUTIVE SUMMARY

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

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 his² 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.³ 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

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..."⁴
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.

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An initiative supported by the John D.
and Catherine T. MacArthur Foundation
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