

The Children Left Behind

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

Investigated and Prepared by:

American Bar Association
Juvenile Justice Center

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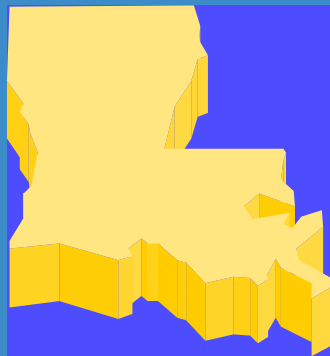
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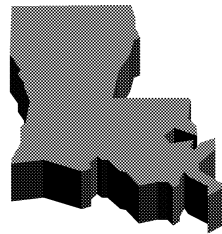
Youth Advocacy Project

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EXECUTIVE SUMMARY

In 1995 the American Bar Association (ABA) Juvenile Justice Center, in conjunction with the Youth Law Center and Juvenile Law Center, conducted a national assessment of the state of representation of youth in delinquency proceedings and an evaluation of the training, support and other needs of juvenile defenders. These findings were published in *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*. Although not alone, Louisiana was identified as having one of the most beleaguered juvenile court and juvenile defense systems in the nation.¹

As a result, Louisiana youth advocates and others concerned with the care and treatment of children and the societal repercussions of a broken juvenile justice system sought the assistance of the ABA Juvenile Justice Center. With national experts and support from the Juvenile Justice Project of Louisiana, the ABA investigated the system for delivery of juvenile indigent defense services in Louisiana and whether efforts at improvement had made a difference in the lives of young children and the safety of its citizens. This report is the consummation of that effort.

This assessment begins with a discussion of the factors which place children at risk of delinquent behavior, reviews the roles of defense counsel and others in the juvenile justice system, articulates the results of the policies, procedures, and culture of the present system, identifies promising practices and programs, and offers recommendations for further improvement.

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

A. FACTORS CONTRIBUTING TO AT-RISK BEHAVIOR

Children are not born delinquent. They are, however, exposed to a host of social, environmental and economic challenges specific to the communities in which they live. Researchers and scientists have identified a number of factors that make young people more vulnerable to criminal activity, and subsequent institutionalization, including: poverty, inadequate medical and

mental health care, poor education, and childhood trauma. While risk factors do not excuse delinquent behavior, they can assist us in understanding and mapping pathways to delinquency, designing defense practices best aimed at protecting due process and ensuring outcomes which are in the best interests of troubled youth, and reshaping policy to deal with children through a continuum of services that increase successful outcomes, decrease recidivism and promote public safety.

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

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

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

B. THE ROLE OF DEFENSE COUNSEL IN DELINQUENCY PROCEEDINGS

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

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

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

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

The intent of this report is not to blame the many dedicated attorneys who labor under enormous systemic barriers, but rather to highlight their needs and issues and build their capacity to provide improved legal services to

young people and their families. By fighting to keep youth out of the system and advocating for appropriate interventions when necessary, zealous advocates ensure that children have the best opportunities for successful life outcomes, the overall effectiveness of the juvenile justice system is bolstered, and communities are strengthened.

C. SYSTEMIC BARRIERS TO EFFECTIVE REPRESENTATION

By working to keep youth out of the system and advocating for appropriate interventions when necessary, lawyers can ensure that children have the best opportunities for success. In the end, capable lawyers not only bolster the effectiveness of the juvenile justice system but strengthen the communities serving and affected by these youth. While there were instances of vigorous advocacy by lawyers genuinely interested and concerned about their young clients, this level of representation was the exception rather than the rule. Often the image defense attorneys relayed of themselves, their practice, and their efficacy was severely undermined by what was personally observed in juvenile courtrooms, waiting areas, detention centers and training schools throughout the state. Indeed, the investigators noted serious concerns that the interests of many young people in the justice system are being significantly compromised, and that many children are left, literally, defenseless.

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

1. Funding and Structural Deficiencies

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

2. Breakdown of Due Process

Despite the fact that the Louisiana Children’s Code ensures that children have a right to counsel “*at every stage of proceedings,*” many courts routinely permit, and seemingly encourage, children to waive counsel in the early stages of the process. Reported estimates of children waiving

counsel in delinquency proceedings are as high as 90% to 95% in some jurisdictions and often these waivers occur without youth ever talking to a juvenile defender.

3. The Absent Advocate

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

4. Zealous Advocacy Jeopardized

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

5. Over-Reliance on Probation Officers

Probation officers juggle a number of responsibilities, including: law enforcement functions; intake, investigation and diversion; charging decisions and plea negotiations; serving as expert witness and court liaison; making programming decisions; and providing ongoing supervision. While probation officers are tremendous resources for the court, their overly expansive role can compromise meaningful opportunities for intervention, effective supervision, and successful outcomes.

6. Lack of a Uniformity in the Court System

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

7. Lack of Consolidation of Juvenile Docket

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

8. Other Noted Barriers to Effective Advocacy

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

D. THE CONSEQUENCES OF SYSTEM FAILURES

Central to this report is whether youth are receiving adequate counsel in the justice system and, concomitantly, whether the lack of defense services has a substantive, harmful impact on these children and their families. The data collected, comments from children, families, and professionals working within the system all suggest that the fallout from inadequate defense advocacy is indeed devastating.

One of the primary goals of the juvenile defender, particularly post-adjudication, is to ensure appropriate and humane outcomes for youth. Ineffective advocacy often results in children being subjected to inappropriate interventions, while effective advocacy strengthens the core values of the juvenile justice system and promotes public safety. In failing to render effective advocacy a system cannot protect individual rights, provide rehabilitation, or effectively hold youth accountable for their actions. These failures extend beyond the individual child to the families, social institutions, and communities and result in real and measurable losses of youth and missed opportunities for change. Some consequences of system failures include:

“Most kids do stuff because they’re having problems in their family, to get attention — not all of them, but most of them.”

- Detained boy in Calcasieu Parish

1. Criminalizing Adolescence

Many behaviors that were once addressed within communities, schools and families, are now being brought to the courts for intervention. In addition to police, parents and schools are increasingly approaching the justice system for assistance. With the re-criminalization of status offenders, children are winding up in a system that lacks the capacity to properly handle them,

lacks accountability, and does not provide routine, objective assessments of its programs. The end result has been an influx of children into a system not designed for and ill-prepared to offer appropriate and effective treatment. As has happened in many jurisdictions across the country, the failure of prevention, diversion and treatment programs leads to an increase in the number of children subsequently incarcerated.

"I worry about losing the love in him, his heart for people. Now where he's at, nobody cares about him."

- Mother with a son in LTI

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

Involvement in the delinquency system has tremendous and lasting affects on the development of a child. Once adjudicated, a child's life is open to numerous professionals who may impose additional supervision without necessarily providing meaningful intervention. In Louisiana, the absence of accountability on the part of the programs designed to help children and families is disturbing; there is no mechanism in place to ensure that interventions and programs are in fact effective.²

2. The Over-Incarceration of Youth and Lack of Effective Accountability

Spending inordinate amounts of time in detention facilities meant only for short-term placement or being inappropriately and needlessly placed in a secure institution are two very real consequences of an ineffective defense system.

"Locking us up just makes us more hard."

- Detained youth

Detention centers are typically designed for short-term (no more than 30 days) placement of youth who cannot be returned home pending the outcome of the case or awaiting transfer following disposition. In reality, however, youth may spend much longer periods of times in detention locked away from their families and homes.³ Detention centers generally do not separate children who are being detained for status offenses from those charged with delinquent offenses, nor do they separate, as a matter of course, children who have been adjudicated delinquent and awaiting placement in a secure correctional facility from youth serving time for probation violations. In some cases, this intermingling of classes of youth has led to dangerous conditions, including, for example, the rape of an eleven-year-old youth in detention.⁴ Furthermore, where the facility is also used as a dispositional option for children violating probation, there is some question whether youth being detained pre-adjudication are being subjected to inappropriate programmatic requirements reserved for adjudicated youth. One

detention center administrator complains that, too often “*detention beds are just for the convenience of the judges so they don’t have to be too creative.*”

Louisiana’s extensive history of problems with the secure correctional facilities are well known.⁵ In 1995, Human Rights Watch investigated each of the Louisiana Training Institutes (LTI) and found numerous incidents of abuse and neglect.⁶ As a result, the United States Department of Justice conducted its own investigation which substantiated a pattern of abusive and neglectful conditions of confinement. Despite efforts to work with the state to improve conditions, evidence of violence and abuse continued to be found. Based on the unconstitutional conditions, a series of class action lawsuits were filed by private plaintiffs and the Department of Justice,⁷ which resulted in a series of settlement negotiations. During the course of these negotiations, the newest, privately-owned correctional facility in Jena was closed due to the deplorable conditions of confinement for youth held there. Declaring it an end to the experimentation with privatization, Governor Foster promised “*we won’t be having any more private prisons in Louisiana as long as I’m governor.*”⁸

A settlement regarding the treatment and conditions at the four remaining correctional facilities was reached in September 2000. While parties are monitoring the implementation of the settlement agreement at each of the facilities, the problems are of such a serious and entrenched nature that they cannot reasonably be expected to be resolved overnight. Consequently, the lack of rehabilitative programming continues to be a problem in some facilities, as well as persistent abuse allegations and complaints about guards allowing, or even encouraging, youth to fight one another. Many children talked about having to learn how to be “*better fighters*” in order to protect themselves while in the LTI. Others candidly admitted to learning more about committing crime from other incarcerated youth. “*They think sending us to LTI will make us better,*” says one youth about his public defender and probation officer, “*but they need to know that it doesn’t.*”

Being locked up is particularly painful and difficult for children. When asked what they miss most being away from home, almost every child mentions a parent, a sibling or a child. “*I can’t wait to hug and kiss my little niece,*” says one youth. “*I just miss going to the fridge in the middle of the night,*” says another. “*A hot bath*” says one boy; “*sleeping in my own bed,*” says a girl. “*When I’m in here,*” says one boy who is in his third month of detention, “*I worry about my family being safe.*”

Parents also find it difficult to constantly worry about the safety of their children while incarcerated. “*The hardest part is not being able to give him the love and care that I’m used to giving,*” says one mother with a child at the LTI in Monroe. “*I can’t see about him, make sure he’s eating right.... He*

tells me 'don't cry mama' so I try not to and wait until I'm driving home." Another parent describes how hard it is to be strong for her child during her visits to Tallulah, *"it's depressing just to be in the physical place; you have this sense of helplessness. You can barely touch him and feel like you can't do anything to help him."*

3. Recidivism and Public Safety

Further harm to an institutionalized child can result from the failure of confinement to make a positive difference in that child's life. This harm extends beyond the child because communities are at greater risk of crime when young people come home with little or no skills and few options to succeed. Juvenile advocates are failing to articulate this consequence of incarceration in their efforts to obtain dispositions tailored to the best interests of their clients. In essence, recidivism becomes a self-fulfilling prophecy for the majority of youth sent to prison.⁹ Based on a 1994 Department of Public Safety and Corrections (DPSC), Office of Youth Development Recidivism Report, the recidivism rate for youth in non-secure care was about 36%, with the recidivism rate for youth in secure care at about 61%. Other reports estimate the recidivism rate as high as 70% for youth in secure custody.¹⁰ And, an earlier independent study that followed 852 Jetson Correctional Center for Youth graduates for twelve years revealed a recidivism rate of 89.1%.¹¹

The effectiveness of incarceration as a rehabilitative measure is further challenged in a more recent study conducted by the Metropolitan Crime Commission (MCC). Using recidivism data for Orleans and Jefferson parishes, the MCC found that youth sent to correctional facilities are more likely to re-offend than youth for whom some other intervention is used. Even for the more serious *"chronic offenders,"* recidivism rates are lower for youth placed in non-secure custody rather than secure custody.¹² Youth from both parishes serving their entire sentence in a correctional facility re-offended at about the same rate: 73% in Orleans and 72% in Jefferson.¹³ In contrast, paroled youth from correctional facilities have a significantly lower recidivism rate for both parishes (42% in Jefferson and 63% in Orleans), further supporting the use of aftercare services to assist youth in successfully transitioning back into the community.¹⁴

Despite the high recidivism rates for youth graduating from Louisiana's secure care facilities, the DPSC's budget priorities indicate that Louisiana continues to rely on juvenile incarceration as primarily a punitive, rather than rehabilitative tool. This seems to be the case despite DPSC's declared policy that *"commitment of a juvenile to the care of the [DPSC] is not punitive nor in anywise to be construed as a penal sentence, but as a step in the*

"I do wrong but this is all I know. I've been to jail too many times. I need help. Jail only helps you talk to others who did the same thing and learn how to do it better."

- 16 year-old incarcerated boy

total treatment process toward rehabilitation of the juvenile...."¹⁵ According to DPSC, Corrections Services, Fiscal Year 1999-2000 Budget Data, the total DPSC juvenile corrections budget was \$103,142,315. Of that, less than 5% was spent on non-residential programs. The secure institutions spend on average only 2.7 % of their institutional budgets on rehabilitation.¹⁶

The budget priorities of the DPSC have not changed in recent years, despite the overall decrease in juvenile crime and research demonstrating that community-based placements, as part of a graduated sanctions program, are less costly and more effective at reducing recidivism rates among youth in the delinquency system.¹⁷ Indeed, the DPSC cites, as its primary performance indicator for its Office of Youth Development, "*to increase the number of secure beds in juvenile institutions.*"¹⁸

4. Stifling Children's Growth and Development

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

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

"People need to know that we can change our lives. We can be rehabilitated. We can seek the answers to our problems."

- Detained youth

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

Lost opportunities for personal enrichment and growth are a demoralizing consequence of incarceration. Adolescence is naturally a time of exploration and experimentation, an essential part of healthy adolescent development and the formation of identity and self-worth.¹⁹ Involvement in sports, music, art, and the responsible participation in the community are the kinds of life experiences that help shape who we are; without them, youth are deprived of opportunities for self-expression and self-growth.

While these consequences may not be as severe for youth briefly detained, the interruption in their lives nevertheless can make it difficult to transition back into the community, and the longer children are kept from their communities, the harder it is to successfully reintegrate. It is critically important that defenders convey to the court the debilitating impact of incarceration and vigorously advocate for alternatives. Where alternatives do not exist, defense advocates must join the efforts of others in demanding more resources for the creation of appropriate treatment alternatives.²⁰

5. The Burden On Louisiana's Families and Communities

Having an advocate who keeps parents informed and is responsive to their requests can ultimately benefit children in the justice system and assist them in maintaining ties with parents and communities. Several parents interviewed talked about the difficulty in advancing their child's best interest when they themselves had no understanding of what was happening and no assistance from the child's attorney. *"I object to all the lingo,"* said one mother who waived counsel for her child, *"It's not in English and they use that against us for not understanding."* Parents also expressed frustration with the negative assumptions they frequently encountered from probation officers, judges, prosecutors, and even defense counsel. *"Don't make judgments about my child or his family,"* cautioned one parent, *"The lawyer shouldn't assume all children come from bad families or from bad environments."* Parents and children knew when they were being treated without compassion, or worse with contempt, but said they found it difficult to confront.

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

"You just have to persevere but sometimes your child holds it [being locked up] against you."

- Mother with a mentally ill child

of distance that inevitably grows between incarcerated youth and their families and communities.

E. PROMISING PRACTICES AND PROGRAMS

There are several universal elements of good practice that exist among model juvenile defender programs. The ABA's national assessment of access to counsel and quality of representation in delinquency proceedings identified at least six systemic characteristics of high quality defender programs: (1) limited caseloads; (2) support for entering cases early and the flexibility to represent clients in related collateral matters; (3) comprehensive initial and ongoing training and available resource materials; (4) adequate non-lawyer support and resources; (5) hands-on supervision of attorneys; and, (6) a work environment that values and nurtures juvenile court practice.²¹

“For the first time since getting involved with the juvenile courts my son and I had someone who actually listened to us, advised my son about his rights and really fought for him to get what he needed in court.”

- Mother with a private juvenile defender

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

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

F. CONCLUSION AND RECOMMENDATIONS

While Louisiana has made strides in improving its juvenile justice system, additional steps must be taken to strengthen its juvenile indigent defense system. This report describes the state of indigent defense services for children in Louisiana and details the institutional and systemic barriers that

impede effective representation. Hopefully, this report and its recommendations will provide some direction for moving the juvenile justice system toward the vision eloquently described by Louisiana Supreme Court Chief Justice Pascal Calogero Jr. in his recent public address to the joint session of the Louisiana Legislature:

“[I] envision a reformed juvenile justice system that is not blind but knowledgeable in its application of services and sanctions, a system that is tough but not mindless, and a system whose cost effectiveness can be measured accurately and whose expectations are firmly and unrelentingly in favor of the rehabilitation of children.”²²

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

1. Increase the resources available to support representation of juveniles in delinquency proceedings.

- local jurisdictions should ensure that sufficient resources are available to increase the number of attorneys representing juveniles in delinquency proceedings and increase the availability of non-lawyers with special expertise to assist in representation;
- agencies responsible for funding defender programs should ensure that a fair and equitable share of available resources is allocated to juvenile representation; and,
- courts and others responsible for the allocation of defender funding should ensure that strategic decisions in juvenile court are made on the basis of sound legal practice rather than funding incentives.

2. Improve the quality of representation of juveniles in delinquency proceedings in order to ensure effective assistance of counsel.

- attorneys representing youth in delinquency proceedings should receive comprehensive and ongoing training opportunities;
- caseloads should be low enough to permit every attorney to provide quality representation in delinquency proceedings;
- courts, bar associations and agencies with authority to certify or appoint counsel should adopt minimum standards for

representation in juvenile court and discontinue the practice of permitting waiver of counsel by youth;

- continuity of representation should be encouraged where feasible and appropriate, particularly in order to assist youth in modification of dispositions;
- attorneys should have effective access to independent, qualified investigators, experts and other support;
- the legal profession should professionalize the status of juvenile defense attorneys; and,
- the legal community should encourage a culture of juvenile defense that values zealous advocacy and due process.

3. Establish independent oversight and monitoring of the juvenile indigent defense system to ensure greater accountability.

- jurisdictions should regularly collect data on the representation of juveniles in delinquency proceedings, including information concerning disproportionate minority confinement;
- conduct local attorney workload assessments in order to determine the appropriate caseload and staffing needs for each jurisdiction;
- review attorney compensation structures for each jurisdiction and explore alternative funding sources; and,
- encourage meaningful systemic collaboration among state youth-serving agencies in the development of a comprehensive juvenile justice policy.

4. Increase the number and quality of community-based treatment alternatives that both hold youth accountable and provide effective rehabilitation.

- courts and custodial agencies should explore supervision and rehabilitative programs as alternatives to detention and correctional incarceration for appropriate youth;
- resources should be re-allocated to support more effective, community-based programming, particularly in the areas of youth with special mental health needs, substance abuse addictions, sexual victimization and perpetration, services for girls; and,
- work with schools to re-examine “zero tolerance” policies that may inappropriately divert youth with special education needs to the delinquency system.

5. Explore innovative advocacy practices and support pilot projects that incorporate some of the most effective elements of these practices.

- investigate some of the nationally recognized juvenile defender programs to serve as potential models for Louisiana;
- identify the key characteristics that make these programs successful and assess whether those can be effectively replicated in Louisiana; and,
- share information regarding the overall findings of this research with members of the defense community, as well as other stakeholders in the juvenile justice system.

This report and its recommendations and implementation strategies set forth in detail in Chapter Six, are intended to contribute to the dialogue for reform in Louisiana’s juvenile justice system — a system in which zealous counsel plays a vital role.

INTRODUCTION

PURPOSE OF THE ASSESSMENT AND THE METHODOLOGY

This report was prepared to share information about Louisiana’s juvenile defense and delinquency systems in a manner that contributes to the public discourse surrounding indigent defense reform and the qualitative assessment of how well children in the justice system are being represented. Embedded in the Louisiana Children’s Code are the legal strictures and philosophical underpinnings of a system dedicated to ensuring “*due process to each child*” accused of a delinquent act while guaranteeing “*the care, guidance, and control that will be conducive to his welfare and the best interests of the state ...*”²⁴

One aim of this report, therefore, is to articulate the role played by attorneys representing indigent youth, define that role as it relates to each individual involved in the juvenile justice process, and review this role within the context of Louisiana’s delinquency system. Another aim is to identify structural or systemic barriers to more effective representation of youth, discuss the consequences of such barriers, and make recommendations, where appropriate, for systemic reform.

The intent is not to evaluate specific courts or individuals and none are identified unless promising models or practices are cited for further reference.

A. METHODOLOGY

The American Bar Association (ABA) Juvenile Justice Center, in collaboration with the Juvenile Justice Project of Louisiana, convened a team of national experts to conduct an investigation of access to counsel and quality of representation in Louisiana’s juvenile indigent defense system. The investigative team consisted of practitioners, academics, former public defenders, advocates, managers of defender organizations and a former juvenile court judge.

Several studies regarding indigent defense have been conducted around the country but few have focused specifically on the unique characteristics and challenges of representing juveniles in delinquency matters. Moreover, national studies rarely reflect a state’s social, economic or political climates. This study examines Louisiana’s culture of juvenile defense by focusing on a select cross-section of parishes throughout the state, conducting on-site interviews with a variety of people involved in the juvenile justice system, observing juvenile delinquency proceedings, collecting and

analyzing parish data, and convening focus groups with detained youth. In addition, statistical data regarding the status of Louisiana’s children were compiled and a comprehensive review of relevant literature was undertaken.

B. SELECTION OF STATEWIDE SAMPLE OF PARISHES

Members of the investigative team visited eight parishes across the state, representing more than one-third of the state’s population, well over one-third of the youth committed to the custody of the Department of Public Safety and Corrections, and almost half the youth held in detention centers. The sample was constructed to include a cross-section of urban and rural areas (68% of Louisiana’s population lives in urban settings),²⁵ the state’s geographic regions and the varied juvenile court structures. The sample was also designed to cover parishes where critical issues regarding juvenile indigent defense were identified by defenders in a prior ABA survey and subsequent interviews conducted by the Southern Juvenile Defender Center. The following table provides demographic data for each of the eight parishes included in the assessment.

Chart 1: United States Census Data by Parish²⁵

Parish	Total Pop	% pop rural	% h.s. grad or higher ed	% of total pop under 18 years	% of total pop African-American
Avoyelles	39,159	66.4	50.5	29.4	27.0
Bossier	86,088	28.2	78.9	29.3	20.2
Caddo	243,253	16.4	73.4	28.6	40.1
Calcasieu	168,134	21.5	70.3	29.2	22.9
East Baton Rouge	380,105	9.4	80.5	27.5	34.8
Orleans	496,938	0.0	68.1	27.5	61.9
St. John the Baptist	39,996	2.7	71.5	34.1	36.1
St. Mary	37,579	35.3	58.1	32.2	31.6
State Totals	4,219,973	31.9	68.3	29.1	30.8

C. CONDUCTING SITE VISITS AND COMPILING DATA

A pair of investigators visited with court personnel and others involved in the juvenile justice system in each of the eight parishes. In addition to speaking with defense attorneys, investigators also met with juvenile judges, district attorneys and their assistants, probation officers and administrators, court administrators, case managers, clerks, court assistants, mental health advocates, school board liaisons, detention center personnel, members of the judicial district indigent defender boards, service providers, children, and parents. The investigative teams observed juvenile delinquency proceedings, toured facilities and, to the extent possible, collected relevant statistics and other materials. In some instances, follow up phone calls were conducted to gather additional information or clarify previous responses.

D. INTERVIEWS WITH YOUTH INVOLVED IN THE JUVENILE JUSTICE SYSTEM

Information was gathered from children in the system through confidential interviews conducted during site visits, focus groups held in detention facilities, and a brief survey conducted with over one hundred randomly selected youth incarcerated in the four state juvenile correctional facilities.

One-on-one interviews were kept informal and took place in private areas of the courthouses and waiting rooms; where possible, the investigators also engaged the parents or guardians of children in the system.

The focus groups were conducted in six detention centers: Baton Rouge Juvenile Detention Center, Bossier City Juvenile Detention Home, Caddo Juvenile Detention Home, Calcasieu Parish Juvenile Detention Home, St. James Youth Center and the Youth Study Center. Detention center administrators selected a representative group of seven to ten youth between the ages of ten and seventeen. In total, fifty-five children participated: forty were male and forty-five were African-American. These youth had charges ranging from technical probation violations and minor theft to armed robbery. These groups discussed the youths' experiences in the juvenile justice system as well as their understanding of the legal process and the role of various key personnel.

Brief — seven question — surveys were conducted with a total of one hundred and twelve youth from across the state that were confined at one of the four state juvenile correctional facilities between November, 2000 and January, 2001. While the majority of those surveyed were African-American boys, youth with a wide range of backgrounds (including ages, home parishes, lengths of commitment, adjudicated offenses, mental health issues, and educational levels) were surveyed about their experiences in the juvenile justice system.

E. ORGANIZATION OF THE REPORT

This report is organized into three main sections. Chapters One through Three provide statistical and background information on children, the juvenile justice system, and the role of the juvenile defender. Chapter Four presents the assessment findings. Chapters Five and Six identify promising models and practices and present recommendations for systemic improvement. Gender is referenced interchangeably throughout this document.

CHAPTER ONE

RISK FACTORS FOR CHILDREN IN LOUISIANA

Growing up in Louisiana offers its own unique challenges and opportunities. The state has a rich cultural and political heritage that permeates the current landscape and contributes to the kinds of challenges and opportunities faced by young people. There are several studies and reports that provide comprehensive data regarding the status of children in Louisiana and thoughtful strategies for legislative and community action.²⁶ Therefore, the following is merely a summary of some of the more critical statistics regarding youth. The intention is not for this information to excuse delinquent behavior but rather to help flesh out the picture of the adolescent experience in Louisiana and to provide some understanding about how young people become caught up in Louisiana's juvenile justice system.

In order to put the following information in perspective, it is helpful to have a sense of the size and makeup of Louisiana's youth compared to the rest of the nation. Children under the age of eighteen make up nearly 30% of Louisiana's total population.²⁷ Of the total youth population, 58% of the children are White, 40% are African-American, and 2% are other ethnicities, including Asian, Hispanic and American Indian. Louisiana has an especially large African-American population of youth compared to the national average, which is only 15%.²⁸

A. POVERTY

Perhaps more than any other condition, poverty is at the root of many risk factors for youth, including health, academic success and delinquency. The poverty rate in Louisiana is 19.2%, the second highest in the nation (national average 11.8%) and the highest in the South (southern average 13.7%).²⁹ While no one is necessarily immune to poverty, given their dependence on adults for nourishment and support, children are one of the groups hardest hit by its effects. For Louisiana's children, poverty³⁰ is particularly devastating: Louisiana ranks 48th in the nation for number of children in poverty,³¹ with a child poverty rate of 31.3%.³² This is the highest child poverty rate in the south. Children of color are grossly over-represented among youth in poverty. The poverty rate of African-Americans is 56.5%, compared to 15.4% for White children in Louisiana: that is, one in two African-American children are poor.³³ As Chart 2 illustrates, in the eight parishes visited as part of this assessment, the percentage of children living in poverty ranged from 21.3% in Bossier to 51.6% in Orleans.³⁴

Chart 2: Numbers & Percentage of Children in Poverty by Parish³⁴

Parish	% kids <18 in poverty	# of kids <18 in poverty
Avoyelles	41.1%	4,682
Bossier	21.3%	5,627
Caddo	35.4%	24,264
Calcasieu	24.5%	12,399
EBR	26.2%	27,980
Orleans	51.6%	66,565
St. John	25.6%	3,605
St. Mary	34.6%	6,250
LA Total	31.3%	388,182

B. PUBLIC HEALTH, NUTRITION AND ENVIRONMENTAL ISSUES

Poverty and health are intimately connected and children are particularly vulnerable to the effects of poor health.³⁵ Louisiana ranks 50th, worst in the nation, in health indicators.³⁶ Research shows us that poor children are much more likely to have vision and hearing deficiencies, dental problems, speech defects, anemia, sickle cell disease, elevated blood lead levels, and behavioral problems; and poor children are more likely to suffer more serious health consequences than non-poor children when they do become sick.³⁷ Clearly, increased health problems can affect a child’s ability to learn and develop, both of which can lead to impaired judgment and an increased likelihood of engaging in more risk-taking behavior.

Low birthweight (a child born weighing less than 5.5 pounds) is one of the more significant indicators of poor health and is linked to numerous physical and neuro-developmental problems.³⁸ Low birthweight children tend to score significantly lower on intelligence tests, have more difficulty in social skill development and have an increased risk of learning and behavioral problems, such as conduct disorders, hyperactivity and attention weaknesses, than do children of normal birthweight.³⁹ Louisiana ranks 50th in the nation with the highest rate of low birthweight among infants:⁴⁰ of all babies born in Louisiana, 10.2% are low birthweight babies.⁴¹ Once again, African-American children are more at risk than White children. The low birthweight is double among African-American babies (14.6%), compared to White babies (7%).⁴² Infants at very low birthweight (less than 3lbs, 5oz) are at even greater risk of mortality and long-term disability; very low birthweight infants were three times more likely to be African-American (3.5%) than White (1.2%).⁴³ Similarly, the infant mortality rate among African-American babies is double that of White babies.⁴⁴

Lack of access to health care is one of the primary reasons for the alarming numbers of infants with low birthweight, as well as infant mortality, in Louisiana. According to the Louisiana Department of Health and

Hospitals (DHH), Louisiana ranks last in terms of access to primary health care—nearly a quarter (24.1%) of the state’s population live in areas that are underserved by primary care practitioners.⁴⁵ Louisiana’s uninsured rate was 22.5% in 1999 with an even higher percentage for low-income children.⁴⁶ Despite great strides being made in gaining health care coverage for children through the Child Health Insurance Program (CHIP), Louisiana was at risk of forfeiting \$63.7 million dollars of federal funding for failing to use the allotted funds.⁴⁷ Moreover, the expansion of children’s health insurance is coming when the state is implementing budget cuts that decrease the money paid to pediatricians and other doctors who provide care for the very children the program was designed to help.⁴⁸ The DHH announced that the agency will cut \$11.6 million in state funds from the Medicaid health-care program for the poor in 2001, which will result in a loss of an additional \$27.8 million in federal matching funds.⁴⁹

One promising approach to the problem of access to healthcare for adolescents is the creation of school-based health centers in Louisiana’s public schools, although they need to be greatly expanded. As of January 1999, there were 36 school-based health centers around the state (27 full-time and 9 part-time).⁵⁰ Chart 3 presents a break-down of the number of various health care providers and school-based health centers available in the parishes included in the assessment.⁵¹

Chart 3: Number of Health Care Providers & School Clinics by Parish⁵¹

Parish	Family Dr.	Gen. Dr.	OB GYN	Peds	Psych. Dr.	Social Worker	School Health Ctr.
Avoyelles	7	6	0	0	0	10	1FT
Bossier	19	3	9	10	2	30	0
Caddo	72	8	57	71	41	151	1FT, 2PT
Calcasieu	45	8	28	24	14	86	1FT, 2PT
EBR	87	48	80	87	51	541	6FT, 2PT
Orleans	60	25	107	193	180	719	4 FT
St. John	6	1	4	3	0	11	0
St. Mary	12	3	6	4	2	8	0
LA Total	746	323	584	778	490	2879	36

Another serious health risk for children is malnutrition. In 1998, 12.1% of Louisiana’s population received food stamps; this is the second highest rate in the nation and almost double the national average of 6.9%.⁵² During the 1998-1999 school year, over half (58%) of the students participated in the free and reduced-priced lunch program.⁵³ Among the eight parishes in the site assessment, the percentage of public school children applying for reduced or free lunch in 1996 ranged from 44.3% in Bossier to 93.6% in Orleans.⁵⁴ When children are very young, malnutrition can have especially debilitating long-term effects. Studies show that undernourished children are more likely to receive special education and counseling and exhibit greater aggressiveness, irritability and anxiety than other children.⁵⁵

Finally, the impact of environmental hazards cannot be ignored when considering health risks for children. Louisiana is a national leader in the per capita production of hazardous wastes and in the amount of chemicals released into its water, air, and soil.⁵⁶ According to the Department of Environmental Quality's 1998 Annual Report, there were 128 confirmed and 342 potential inactive and abandoned hazardous waste sites in Louisiana.⁵⁷ Six of the eight parishes in the assessment, all except Avoyelles and St. John, have active hazardous waste sites currently under EPA investigation. One of the major contaminants of concern in these sites is lead. Exposure to lead can be particularly harmful to the developing brain and nervous system of a young child and some studies report decreases in IQ among children exposed to lead.⁵⁸

C. MENTAL HEALTH

Mental health is another significant indicator of the well-being of Louisiana's children and the extent to which they may be at risk of entering the juvenile justice system. Depression is one of the most common underdiagnosed conditions found in young people and can lead to serious problems with families and social development. Other emotional and behavioral conditions that can affect a child's ability to function effectively include temporary impairments of their social, academic and personal care skills. These impairments may be exhibited by confused thinking, hyperactivity, anxiety, aggressiveness, sleep disturbances or eating disorders, among other symptoms.⁵⁹ Based on 1998 figures, it is estimated that 110,450 children and adolescents in Louisiana (nearly 10%) suffer with a serious emotional disorder (which includes severe mental and conduct disorders).⁶⁰

While the Louisiana DHH Office of Mental Health (OMH) does provide mental health services through 43 mental health centers and 31 mental health outreach clinics throughout the state, access to quality mental health care is still a problem for many poor families. In fiscal year 1997-1998 approximately 4,733 youth received out-patient services; Attention Deficit Hyperactivity Disorder, Major Affective Disorders, Depressive Disorders and Adjustment Disorders comprised the top four diagnoses for these youth.⁶¹ There are only three state hospitals that provide in-patient treatment to adolescents: New Orleans Adolescent Hospital, Southeast Louisiana State Hospital and Central Louisiana State Hospital. Approximately 1,071 youth received inpatient services in fiscal year 1997-1998.⁶² Limited funding has resulted in decreased lengths of stay in hospitals and fewer opportunities for community-based treatment. Further anticipated cuts in DHH's budget, including closing mental health clinics and ending in-patient mental health services for children, can only make matters worse for youth and their families.⁶³

D. EDUCATION AND AFTER-SCHOOL ACTIVITIES

Getting an education is one of the strongest indicators of success for youth; young people who are academically successful are more likely to avoid the juvenile justice system, go on to higher education and attain gainful employment.⁶⁴ While new accountability goals and measures have been institutionalized and are beginning to show some improvement in Louisiana, the public education system still trails the nation in many areas.

In 1996, the most recent year of U.S. Department of Education statistics, Louisiana was 42nd in the country in per pupil expenditures, spending an average of \$4,724 per child compared to a national average of \$5,925.⁶⁵ Louisiana was also among the bottom states (ranked 48th) for teacher salaries; the average salary in Louisiana was \$28,347 compared to a national average of \$38,436.⁶⁶ Chart 4 lists these figures for each parish in the assessment for the 1998-1999 school year; comparable national data is not yet available for this time period.

Even more troubling are the academic performance indicators. While 91.4% of youth completing high school in 1996 nationally received regular diplomas, only 78.8% of those in Louisiana did so; 21.2% of Louisiana's youth received a GED compared to 5.3% nationally.⁶⁷ Achievement levels in math and science are especially troublesome. In Louisiana, 61.5% of students tested below the basic level for math, compared to a national average of 39.1% and only 7.9% of Louisiana's students tested at or above a proficient level compared to 26.2% nationally.⁶⁸ Looking at American College Test (ACT) scores in 2000, Louisiana ranked 47th in the country and 10th in the South.⁶⁹

In Louisiana's 66 school districts, there were 1,507 public schools in 1999. Of these, 1,188 public schools were part of Louisiana's statewide internal accountability assessment.⁷⁰ While there was a decrease in the drop-out rate from 1997 to 1998, Louisiana still ranks 34th nationally in the drop-out rate.⁷¹ Education data shows that more than the equivalent of two classrooms drop out each day.⁷² In the 1997-1998 school year, approximately 26,000 (7.9%) students dropped out of grades 7-12; 21,000 of those youth dropped out of high school.⁷³ In 1998-1999, there were approximately 97,019 students with special needs and 21,245 "gifted" students.⁷⁴

Other indicators of student participation are equally disturbing. On average, about 50,000 students (6.5% of the student population) are absent from school on any given school day.⁷⁵ In 1998-99, 10.5% of the student population had at least one out-of school suspension and 8.1% had at least one in-school suspension.⁸⁴ Surprisingly, middle schools, not high schools, sus-

pended the highest percentage of their students (16.4% in-school and 19.4% out-of-school) as well as expelling the highest percentage of students.⁸⁵ Some reports indicate that the presence of alternative schools have increased the use of expulsions, raising a concern among some school boards.⁸⁶

Chart 4: 1998-1999 Education-Related Data By Parish in the Assessment

Parish	# of schools / # of faculty ⁷⁶	# public school students (# Af-Am) ⁷⁷	\$ per pupil 1998-1999 ⁷⁸	Avg. \$ teacher salary 1998-1999 ⁷⁹	Special needs youth ⁸⁰	Drop-outs 9-12 th ⁸¹	% suspension/ % expulsion ⁸²	% of ed. budget for after-school prgms ⁸³
Avoyelles	13 / 426	7479 (3013)	\$4,980	\$28,747	710	257	29.12% / 1.23%	.69%
Bossier	34 / 1205	18674 (5494)	\$5,371	\$29,693	2038	320	28.18% / .73%	3.73%
Caddo	74 / 3088	47234 (29178)	\$5,829	\$35,022	6104	1806	29.48% / .3%	3.42%
Calcasieu	60 / 2330	33138 (10698)	\$5,341	\$31,553	4296	607	10.26% / 1.03%	.22%
EBR	105 / 3611	56537 (37206)	\$5,919	\$31,203	6730	2642	17.19% / 1.33%	3.06%
Orleans	127 / 4909	82187 (75392)	\$5,453	\$38,167	7306	2927	14.36% / .53%	1.13%
St. John	12 / 388	6626 (4878)	\$6,056	\$30,026	1267	264	27.34% / 2.27%	2.81%
St. Mary	26 / 686	11324 (5197)	\$5,806	\$33,042	1544	262	13.51% / .03%	1.13%
LA Total	1,507 / 49,298	764,939 (360,414)	\$5,562	\$32,404	97,019	21,367	18.68% / .69%	1.77%

Providing after-school programming can encourage young peoples' strengths as well as help them avoid high-risk behavior. Research shows that youth are most likely to engage in health and life-threatening risk behaviors during the hours after school, between 3:00 and 6:00 p.m.⁸⁷ Recent crime data similarly suggests that after-school programs have more crime reduction potential than juvenile curfews because the rate of juvenile serious violent crime peaks around 3:00 p.m., and the majority (57%) of such crimes occur on school days.⁸⁸ However, Louisiana's spending for after school programming has steadily declined. Across the state, school spending on "*other instructional programs*," which includes activities like driver's education, band, athletics, summer school and extended day programs, amounted to an average of 1.77% of total school costs (the total instructional budget for schools ranged from 54% to 59% of total school costs).⁸⁹ Chart 4 presents the percentage of each district's educational budget that is devoted to after-school programming in each of the eight parishes included in the assessment.

E. EXPOSURE TO VIOLENCE AND CRIME

Feeling safe and protected in one's home and community helps to create a sense of well-being and confidence. Tragically, youth are too often exposed to abuse, violence, crime and other traumatic events that have profound and lasting psychological, emotional and even physical scars. Based on 1997 figures, Louisiana ranked 45th for the child death rate — 34 out of every 100,000 children ages 1 to 14 die every year from accidents and other causes.⁹⁰

Many people interviewed in the juvenile justice system spoke of seeing the vast majority of the delinquent youth in the child abuse and neglect system first. Every day, approximately 40 children are abused or neglected in Louisiana — this represents only those cases that are reported, investigated and found valid by the state.⁹¹ Statewide, according to 1998 figures, 14,791 children were abused and/or neglected and 5,911 children were placed in foster care,⁹² with African-American children being more likely to be removed from their homes than White children (50% versus 30%). Chart 5 shows the number of reported instances of abuse and the number of youth in foster care in each of the parishes included in the assessment.

Children and adolescents make up about 12% (nearly 1800) of the murder victims nationwide.⁹³ About 600 (or 33%) of children murdered in 1999 were under the age of five.⁹⁴ The risk of violent death among youth who have been incarcerated previously is 76 times greater than that of the general population.⁹⁵ Guns play a large role in the death of adolescents: 81% of murdered juveniles age 13 or older were killed with a firearm.⁹⁶ African-American youth are about three times more likely to be victims of murder than White youth; most disparate among juveniles is the murder risk for 17 year-old African-Americans, which is seven times the rate for Whites.⁹⁷ Louisiana ranks 47th in the nation for the rate of teen deaths by accident, homicide or suicide (84 deaths per 100,000 teens aged 15-19).⁹⁸

Despite the decrease in juvenile crime for the sixth straight year, the perception that young people are more involved in crime persists.⁹⁹ In fact, arrests of juveniles accounted for only 12% of all violent crimes and 13% of all drug abuse violations in the country; moreover, the juvenile arrest rate for violent crime overall dropped by more than one-third in the last six years (36% from 1994 to 1999) and is at its lowest since 1988.¹⁰⁰ Although the decrease in juvenile crime is consistent with an overall decrease in crime nationally, in the last six years the decline in the number of violent crime arrests was greater for juveniles than adults in most categories. Louisiana has experienced a marked decrease in the crime rate that is consistent with the rest of the country; however, the overall crime rate in Louisiana was still the fourth highest in the nation and second worst in the South in 1999.¹⁰¹

Even with the decrease in juvenile violent crime and a growing body of research that shows the relative ineffectiveness of secure confinement for youth, Louisiana has the highest incarceration rate for juveniles in the country (582 per 100,000 in the population), second only to the District of Columbia.¹⁰² The Department of Public Safety and Corrections reported that 15,113 youth were in the custody or under the supervision of the Office of Youth Development in 1998; more than two-thirds of the crimes involved non-violent offenses and approximately two-thirds (10,186) of these youth were African-American.¹⁰³ Chart 5 provides a breakdown of the numbers of youth and the types of crimes for each of the parishes included in the assessment.

Chart 5: 1998 Abuse and Crime-related Data by Parish in the Assessment¹⁰⁴

Parish	Valid Abuse & Neglect Cases (# of African-Am youth in the total)	Youth in Foster Care (# of African-Am youth in the total)	Youth in OYD custody or supervision in 1998 (# of African-Am youth in the total)	Youth crimes against property	Youth crimes against persons
Avoyelles	128 (47)	34 (23)	174 (101)	86	47
Bossier	355 (166)	75 (54)	306 (145)	138	79
Caddo	1030 (769)	529 (417)	526 (436)	360	160
Calcasieu	726 (294)	145 (78)	297 (191)	208	89
EBR	970 (721)	398 (336)	407 (343)	271	107
Orleans	1517 (1398)	970 (891)	3025 (2906)	1843	1175
St. John	230 (162)	69 (59)	48 (34)	25	23
St. Mary	286 (127)	47 (20)	375 (230)	275	100
LA Total	14,791 (7,984)	5,911 (3,927)	15,113 (10,816)	9,429	4,348

F. ADOLESCENT DEVELOPMENT

When based on sound principles of child and adolescent development, juvenile interventions can be more effective both in terms of accountability and rehabilitative impact. Using these principles can help one to understand how a child may have gotten into trouble, in assessing his amenability to services, and clarifying his needs in order to design an effective dispositional plan. Moreover, understanding the basic tenets of adolescent development and the impact on issues of competency, culpability and the ability to assist in their own defense is particularly critical to effectively representing youth facing adjudication or transfer to adult court.¹⁰⁵

Adolescence is a time of critical physical, social, psychological and cognitive development. Part of what makes understanding adolescent behavior so difficult is that youth develop at different rates; consequently, chronological age and physical maturity are not reliable indicators of development.¹⁰⁶ Adolescents think differently from adults.¹⁰⁷ In fact, recent research shows that the adolescent brain is still growing and, among other things, undergoes major reorganization in the area associated with social behavior and impulse control.¹⁰⁸ There

are four areas of normal adolescent development in particular that can assist practitioners in assessing a youth's overall developmental well-being: cognition, identity, moral development, and the effects of unresolved trauma.

Cognitively, young people can have immature thought processes. Because adolescents tend not to plan, they often get caught up in unanticipated events and react in the moment, viewing as “*accidental*” what most adults would have foreseen as likely consequences;¹⁰⁹ moreover, under stress, even the more cognitively developed adolescents typically cannot effectively use their most advanced judgment and decision-making skills.¹¹⁰ Finally, adolescents often feel they have only one choice in situations where adults will see several options; feeling cornered and defensive clearly can lead to poor judgment.¹¹¹

Developing a stable self-definition is the central task of identity development. A normal part of this developmental process for adolescents is experimenting with behaviors in order to try to gain a sense of their self-identity.¹¹² Many young people have not experienced success; years of school failure and feeling incapable of learning can create a sense of hopelessness about their future. Compensating for feelings of inadequacy by trying to take control over some aspect of their lives is a particularly important developmental task and survival skill for victims of child abuse; however, such youth can be misconstrued as having problems with authority or being labeled “*oppositional*.”¹¹³ Having a sense of belonging is another aspect of identity development for youth; and while peer and cultural influences are quite strong, the family continues to be a powerful foundation for adolescent identity.¹¹⁴

Moral development is the formation of a value system. Typically, adolescents are idealistic in nature and value loyalty and fairness, often to the extent of being intolerant of what seems unfair.¹¹⁵ This rigid moralistic attitude, combined with cognitive limitations, can lead to them becoming “*stuck*” in their thinking. Sometimes young people genuinely believe that their misbehavior, although wrong in some contexts, is a response to these higher moral principles of loyalty and fairness.¹¹⁶ It is important to recognize this particularly as it may relate to a young person's ability to show empathy. For example, a child's tendency to see unintended consequences as an “*accident*” does not necessarily mean she has no remorse, rather, it usually means she wishes it had not happened.¹¹⁷ Shame can also make young people incapable of expressing sorrow, leading some people to misinterpret silence as lack of remorse.¹¹⁸

Finally, unresolved childhood trauma can have a profound impact on a child's development. Delinquency is frequently related to physical, sexual and emotional abuse, neglect, loss and/or exposure to violence that interferes with cognitive, identity and moral development.¹¹⁹ Depression is a common reaction to trauma but often goes undiagnosed in teenagers, with irritability and aggression being the most frequent symptoms of depression in young people.¹²⁰ Victimized children are often emotionally childish and may turn to drugs and alcohol to numb the pain of childhood experiences.

CHAPTER TWO

LOUISIANA'S JUVENILE JUSTICE SYSTEM

Data and experience indicate that children are not born delinquent. Herein we discuss how youth become involved in the delinquency system, how that system generally operates, and what kinds of youth are in the system. What is clear from the structure of the delinquency system is that there are a series of points of potentially critical intervention by juvenile defenders. The presence of zealous advocacy at each stage broadens the array of alternative outcomes for youth, ultimately serving the best interest of both the youth and society.

A. LOUISIANA'S CHILDREN'S CODE

The Louisiana Children's Code is the statutory authority that spells out the ways in which young people may be brought under the umbrella of the "juvenile justice system." The three primary ways of entering the system are: (1) if the child is a victim of abuse or neglect she will likely be assisted through the "Children in Need of Care" (CINC) system; (2) if the child is a runaway or a truant or shows other signs of "ungovernable" behavior, she will likely be brought into the "Families in Need of Services" (FINS) system; and (3) if the child is at least ten and under seventeen years of age and commits an offense that would be illegal if she were an adult, she will likely be handled in the delinquency system.

B. HOW CHILDREN WIND UP IN THE DELINQUENCY SYSTEM

Apart from police arrests for illegal offenses, schools and parents are the most common sources of referrals. Several years ago the Louisiana school system embraced what many states were doing at the time: PZT (Project Zero Tolerance) policies that essentially criminalized inappropriate behavior in schools. Children with mental disabilities are especially at risk of court referrals for misbehavior.

Parents are also turning to juvenile courts for help with their troubled children as community-based family support resources have been cut or eliminated entirely in many areas. What has happened in Louisiana, however, is that children brought into the justice system frequently end up in the delinquency area.

The story of one parent and her son illustrates this point: A parent in Louisiana took her fifteen year old son, who had never been in trouble

Ten years ago, what might have simply been a schoolyard fight that resulted in a week of detention, or at worst a couple days of suspension, is now frequently referred to law enforcement, charged as a battery and prosecuted in juvenile court.

KEY PLAYERS IN JUVENILE COURT

Juvenile Court Judges

Depending on the parish, family court, city court or district court judges may have jurisdiction over a delinquency case. Regardless of the kind of judge, her role is to hear the evidence, make a judgment of guilt or innocence and determine the length and conditions of a youth's disposition. In essence, the judge is the sole trier of fact and sentencer, deciding the issue of guilt and designing a disposition that is in the best interest of the child and society and is in the least restrictive setting.

Juvenile Defenders

A child is entitled to defense counsel at every stage of the delinquency process. The juvenile defense attorney is typically a part-time, contract public defender; however, in some cases, private attorneys may be retained. As an overarching principle, counsel is charged with zealously advocating on behalf of his client in all phases of the delinquency process.

Prosecutors

The district attorney ("DA") or assistant district attorney ("ADA") conducts the prosecution for the state and is charged with pursuing the fair administration of justice. In addition to deciding what offenses to charge a child, Louisiana law gives DAs considerable discretion in several regards, including the authority to transfer a child to the adult system and using informal, discretionary procedures.

Mental Health Advocates

Mental health advocates are attorneys with the state Mental Health Advocacy Service. They are typically appointed when a child's capacity to proceed is raised. These attorneys are specially trained to advocate for people with mental illnesses and to represent them should the state seek to have them committed. There are only a handful of these advocates and, although it is not exclusive, they most frequently work with FINS rather than delinquent youth.

Probation and Parole Officers

Generally there are two kinds of probation and parole officers ("PO"): those employed by the parish (often through the juvenile court) and those employed by the state through the Department of Public Safety and Correction's (DPSC) Office of Youth Development (OYD). In parishes in which there are both types of POs, the parish POs generally handle youth in FINS and delinquency under probation supervision and the state POs generally handle youth in custody with the state and youth on parole.

Traditionally, the PO serves two distinct roles: one as an investigator and advisor to the court on dispositional options and recommendations and one as to the youth placed in their care. In both capacities the court relies heavily on the opinion and involvement of the PO. If a child is placed under probation or parole supervision the PO is required to maintain regular contact with the child and her parents, assist the child in getting treatment ordered by the court, and in pursuing educational goals.

before, to juvenile court because he was acting “out of control at times” at home and she thought she could get help. After waiving legal counsel, the judge adjudicated her son under FINS and sent him to a group home in northern Louisiana. Within a few weeks, he and another child got into a fight — in which neither child was seriously injured — and was charged with simple battery under the delinquency system. At the delinquency hearing, the child was represented by substitute counsel because his attorney was unable to attend. The judge adjudicated him delinquent and sentenced him to LTI.¹²¹ The child was housed in a secure facility more than four hours away from his mother in New Orleans and had numerous problems there. *“I went to the court because I needed help,”* explained his mother. *“I had no idea how bad things would get.”* Her advice to other parents was *“at any and all costs, handle the problems with your children outside the system; it just doesn’t work.”*

Any child fourteen years old or older may be transferred to adult court for any number of charges including: aggravated battery, armed robbery, kidnapping, murder, rape and other kinds of sexual batteries. Fifteen and sixteen-year-olds are automatically transferred to adult court for charges of kidnapping, murder or rape (and the prosecutor has the option of prosecuting them in adult court for another fourteen crimes, including a second aggravated battery, felony drug offense or burglary).¹²² The most violent youth are generally handled within the adult system, with most of the young people in the juvenile system being charged with non-violent offenses.

C. STRUCTURE OF THE JUVENILE COURT SYSTEMS

Like all states, Louisiana has created distinct juvenile court jurisdiction and procedures for juveniles accused of crimes.¹²³ There is no single system of juvenile courts, however, with each parish dictating the process for hearing juvenile cases. Therefore, while there are 41 judicial district courts (JDC’s) that handle adult crimes in all parishes, juvenile delinquency matters are handled by a variety of courts, depending on the parish.

There are special *“family courts”* that handle all youth-related matters (CINC, FINS and delinquency) in four parishes: Caddo, East Baton Rouge, Jefferson and Orleans. For the remaining parishes, the Children’s Code grants concurrent juvenile court jurisdiction to the district and city courts in each parish. In some parishes, such as Calcasieu, there is a quasi-family court where certain district court judges are assigned to only hear juvenile matters; several other parishes rotate district court judges for juvenile matters; and some parishes have several city courts that hear all juvenile matters except transfer cases, which are handled in district court.

UNDERSTANDING THE DELINQUENCY PROCESS

One of the primary distinguishing characteristics between the juvenile and adult systems is the strict time constraints for juvenile proceedings. The following is a simplified sketch of the court process involving a child who is arrested or referred to juvenile court on a delinquency matter.¹²⁴

1st A child, who must be at least 10 years old, is arrested or otherwise referred to juvenile court because it is believed that she has committed a delinquent act. If the child is not immediately released from detention with a summons to appear at a later date, the authorities must bring her before a judge no later than 3 days from her initial arrest.

2nd At the “continued custody hearing,” the judge decides whether there is probable cause to believe the child has committed the delinquent act and whether the child should stay in detention until adjudication (trial). If detained, bond may be set. In serious cases, the finding of probable cause means the youth is moved to an adult jail and held there pending further proceedings in adult court.

3rd If the child is charged with a first offense or minor offense, the District Attorney may offer an “informal adjustment agreement” (IAA) that would divert the case from court and place the child under probation for 6 months. If the child does well, the case is dismissed; if she misbehaves, the case can be reset for adjudication.

4th If the child is detained following the continued custody hearing, the state within 2 days must file a “petition” detailing the offenses the child allegedly committed. Another hearing is conducted so the child may enter a plea. If the child is being held in detention, this hearing must occur within 5 days of the detention hearing (15 days if she was released). Often the process ends here if the child agrees to enter a guilty plea.

5th If the child denies guilt and is held in detention, she must go to adjudication within 30 days (90 days if not detained), with the time period extended only for good cause. Prior to adjudication, defense counsel can file necessary motions and legal documents and pre-trial hearings may be held.

6th At adjudication, the state has the burden of proving guilt beyond a reasonable doubt. Delinquency proceedings are decided by a judge, as children do not have a right to a jury trial in Louisiana. If a child is adjudicated delinquent or pleads guilty at this stage, the matter should be set for a disposition hearing within 30 days. A child may agree to proceed directly with disposition (sentencing) or may be allowed to enter into a “deferred disposition agreement” that is similar to the IAA discussed above. If the disposition hearing is scheduled for a later date (must be within 30 days), the probation department is responsible for completing a pre-disposition investigation (PDI) report prior to the disposition.

7th If the matter goes to disposition, the judge hears the probation officer’s PDI findings and recommendations for sentencing. The defense can also put on witnesses and advocate for a specific kind of treatment and placement. The judge then determines disposition and may place the child under supervision of the state either at home or outside the home.

D. PLACEMENT OPTIONS

Once adjudicated delinquent, the judge then determines a child's disposition. The Children's Code directs the judge to, "*impose the least restrictive disposition...which the court finds is consistent with the circumstances of the case, the needs of the child, and the best interest of society.*"¹²⁵

The reality of economics and resources limits the availability of options for impoverished children and families who cannot afford the cost of private care and treatment. Once adjudicated delinquent, most eligible children are placed under the supervision of DPSC Office of Youth Development (OYD), although some youth are sentenced to attend certain private programs or to serve time in a local detention center. In addition to providing probation and parole supervision, OYD contracts with providers for services and placements. DPSC also operates four secure correctional facilities for youth.

OYD placement options for adjudicated youth range from non-custody OYD supervision to non-residential day programs to residential group home type placements (often referred to as "*non-secure state custody*") to secure custody correctional facilities (commonly referred to as "LTI" for Louisiana Training Institute). Although an adjudicated youth can remain under juvenile court jurisdiction until he is twenty one years of age, none of the current non-secure placements, with one exception, can admit a youth once he is eighteen making it nearly impossible to place such a youth anywhere except a secure correctional facility.

Once a child is placed in state custody, whether secure or non-secure, the child has to complete whatever the program entails before she may be recommended for release to home or some other less secure placement. For example, youth from LTI may eventually receive an early release into a group home and youth placed in a group home may be released to their parents under OYD parole supervision. While the juvenile court ultimately retains the authority (for the length of the original sentence) to determine whether a child's disposition may be modified to a less secure placement or release, courts generally do not consider a modification without the recommendation of the DPSC or a request from defense counsel.

PLACEMENT OPTIONS FOR DISPOSITION

Probation Supervision

The vast majority of first time offenders and youth adjudicated for misdemeanors receive a suspended sentence and are placed under probation supervision, often for the length of the original sentence. For example, a youth may receive one year DPSC secure custody, suspended with probation. The youth on probation is required to meet regularly with her probation officer and abide by specific conditions, such as school attendance, curfew, random drug screens, and community service. If the youth violates any conditions, her probation may be revoked and the entirety of her original sentence imposed.

Day Programs

The non-residential day programs often replace or supplement school, such as an alternative school curriculum or after-school tutoring. The Marine Institute in Baton Rouge and Impact in New Orleans are examples of day programs. A child will generally spend the equivalent of a school day at the program and return home in the evening. Some of these programs integrate behavior-management techniques and social skill development into their educational programming. Generally these programs are used in conjunction with probation supervision.

Group Homes and Other Residential Placements

The residential group home options vary considerably depending on program size and community resources. Residential placements may be group homes as small as eight to ten children or larger residential facilities with multiple living units, depending on the youth's custodial agent, his progress and his needs. These placements usually include an education curriculum, in addition to more structured behavior-management programs, and group counseling sessions.

Detention Centers

Detention centers are the youth equivalent to parish jails. They are usually parish funded and operated and generally used only to detain youth pre-adjudication or for short periods of time for probation or contempt violations. Occasionally, some parishes use detention centers for short-term dispositional placements. Since most detention centers are intended for short-term placements they usually do not offer the level of education, medical care and programming required by law for youth adjudicated delinquent.

Juvenile Prisons

The most restrictive placement is in DPSC secure custody. A child is first sent to the Juvenile Reception and Diagnostic Center (JRDC) in Baton Rouge for intake, evaluation and testing. He is then assigned to one of four Louisiana Training Institutes: Bridge-City Correctional Center for Youth (BCCCY) in Bridge-City, Jetson Correctional Center for Youth (JCCY) in Baton Rouge, Swanson Correctional Center for Youth (SCCY) in Monroe or Swanson Correctional Center for Youth - Madison Parish Unit (SCCY-MPU) in Tallulah.

BCCCY has the smallest campus, holding approximately 165 of the youngest, smallest and more vulnerable youth. JCCY is the only facility that has girls and holds a total of approximately 555 youth. SCCY holds approximately 330 youth and has a reputation for offering some of the more comprehensive vocational training programs. SCCY-MPU is the starkest of the facilities and has the largest number of maximum-security cellblocks; it holds approximately 440 youth (with a 700-youth capacity).

E. SNAPSHOT OF YOUTH IN LOUISIANA’S JUVENILE JUSTICE SYSTEM

The following is a brief overview of the kinds of young people currently involved in Louisiana’s delinquency system. This population includes only those youth who are detained in parish detention centers or adjudicated delinquent and under state supervision or custody.

1. Youth in Detention

Many youth are held in detention centers while awaiting adjudication or placement. Detention centers are secure facilities and are not designed to hold youth for extended periods of time.¹²⁶ There are seventeen juvenile detention centers across the state with a total capacity of approximately 628 beds.

There is no comprehensive published data describing the characteristics of the youth detained in Louisiana’s detention centers; however, several detention centers provided various kinds of admission statistics as part of this assessment. All of the detention data provided indicate that African-American youth make up the vast majority of the detained population. For instance, a detention center in a metropolitan area reported that 83% of the total number of youth detained in 2000 were African-American.¹²⁷

A detention center located in a different metropolitan area provided comprehensive data concerning its population in a status report. At the time the detention status report was generated in October 2000, there were 45 youth detained: 38 were male and 38 were African-American. The average time in detention at the time of the report was approximately 42 days.¹²⁸ Over a third of the youth (16) were awaiting secure placement in DPSC custody; the average time in detention for such youth was approximately 34 days.¹²⁹ This can be a costly burden on the parish because the state only reimburses up to \$21.00 per day for each child awaiting DPSC placement;¹³⁰ in some detention centers the daily cost of care is as much as \$85.00 a day and the parish must make up the difference.

2. Youth in DPSC Custody and Supervision

“*Custody*” means a child is under the care of DPSC and is physically placed within a juvenile facility, whereas “*supervision*” denotes that a child is assigned to a probation or parole officer with certain conditions but is not under the physical control of the state. According to the DPSC, there were a total of 8,181 youth under DPSC custody and supervision in June 2000 (this total does not include the number of youth under the supervision of

parish probation departments or youth held in secure detention centers across the state).¹³¹ About 1,743 of these 8,181 youth are in *secure* custody; the highest per capita in the nation. Another 1,038 of these youth are in *non-secure* DPSC custody.¹³² The remaining 5,400 youth are under DPSC supervision (probation or parole); it is unclear from the data, however, what portion of these youth receive treatment services beyond probation supervision.

The profile of a child under state custody or supervision can be summed up as young, male, African-American, adjudicated for a non-violent offense, and having special mental health and educational needs.

a. Majority of Youth Adjudicated for Non-Violent Offenses

Sixty percent of the 1,743 confined youth are incarcerated for non-violent offenses.¹³³ This number actually increases significantly when one considers that “violent” offenses include 298 youth incarcerated for assault and battery; the data collection is not designed to distinguish misdemeanors (for example, threatening to hit someone as opposed to getting into a fight at school) and is thus misleading in terms of the seriousness of the reported offense category. In fact, when the United States Department of Justice more closely analyzed similar data from 1996, it found that “*fewer than a quarter of the youth in these facilities committed violent offenses.*”¹³⁴

Of the 5,400 youth under DPSC Office of Youth Development (OYD) supervision, 15% are under supervision for status offenses; the majority of youth (59.5%) are under supervision for non-violent offenses.¹³⁵ About the same number of youth adjudicated for “violent” offenses are under OYD supervision (25.5%) or placed in non-secure custody, such as group homes (26%). Of the 1,038 youth in non-secure custody, over a quarter (27.4%) are in custody for status offenses, such as truancy and running away. Forty-five percent of youth are in non-secure custody for non-violent offenses.¹³⁶ The following Chart 6 provides a breakdown of the percentage of youth in DPSC custody or supervision.

Chart 6: Comparison of Type of Offenses by Type of DPSC Custody/Supervision¹³⁶

Offense Category	Secure Custody	Non-Secure Custody	Non-Custody Supervision
Violent offenses	40%	26%	25.5%
Non-violent offenses	60%	45%	59.5%
Status offenses	0%	27.4%	15%

b. Over-representation of Minority Youth in Secure Custody

Looking only at children in secure custody, the data show that 81.8% (1,425) are African-American, 90.8% (1,582) are male and almost one-third (548) are 15 years old or younger. Nearly 25% (406) are serving sentences of four or more years in secure custody. In comparison, African-American youth make up 67.1% of the youth in non-secure custody (group homes); 77% are male and over half (54.5%) are 15 years old or younger. African-American youth make up 63.8% of the supervised population, 77.1% are male and 43.2% are 15 years old or younger.¹³⁷

National studies confirm that African-American youth are over-represented among both detained and incarcerated youth. In 1997, minority youth represented almost two-thirds (63%) of detained or committed youth although they represented only about one-third of the total adolescent population in the country.¹³⁸ Nationally, custody rates for African-American youth are 5 times as high as for White youth.¹³⁹ Moreover, admissions to state correctional facilities were much higher for African-American youth with no prior admissions than White youth, in all offense categories.¹⁴⁰ African-American youth were also on average in custody longer than White youth in all offense categories; this was especially true among drug offenses where African-American youth in custody for drug offenses were held nearly 100 days longer on average than White youth (235 days vs. 144).¹⁴¹ In sum, African-American youth who have never been incarcerated before are much more likely than their White counterparts to be placed in jail and, on average, end up serving more time than White youth for the same offenses.

c. Special Needs of Confined Youth

A large percentage of Louisiana's incarcerated youth suffer from mental illness or a form of learning disability. Federal studies suggest that as many as 60-75% of the incarcerated youth have a mental health disorder and 20% have a severe disorder. As many as half have substance abuse problems.¹⁴² The National Mental Health Association, based on national prevalence data, found that nearly 73% of the children held in juvenile facilities reported mental health problems during a screening; and some studies have shown that as many as 77% of detained youth would meet diagnostic criteria for a mental disorder.¹⁴³ Investigations conducted by the Department of Justice in Louisiana's secure care facilities suggest comparable numbers of youth with mental health problems.¹⁴⁴

CHAPTER THREE

THE ROLE OF JUVENILE DEFENSE COUNSEL¹⁴⁵

This section of the report presents an overview of the role of defense counsel at each major stage of a delinquency case. While not covering in depth every aspect of representation of juveniles charged with delinquency,¹⁴⁶ it does illustrate the processes and complexities of representation in juvenile court and demonstrates the ways in which high caseloads, inadequate resources, and substandard practice deprive young people of effective representation. The job of the juvenile defense attorney is enormous because competency in the context of juvenile defense requires effective advocacy at all phases of the case. In addition to all of the responsibilities involved in defending the criminal case, juvenile defenders must prepare social cases in order to assist courts in making appropriate dispositions.

A. LEGAL AND ETHICAL REQUIREMENTS OF THE RIGHT TO COUNSEL

The Louisiana Constitution provides that “[a]t each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment.”¹⁴⁷ The Sixth Amendment to the United States Constitution similarly provides that “[i]n all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense.”¹⁴⁸

In the landmark 1963 case *Gideon v. Wainwright* the United States Supreme Court held that the constitutional right to counsel requires the appointment of an attorney to represent a poor person charged with a felony offense.¹⁴⁹ A few years after *Gideon*, the Supreme Court recognized the constitutional nature of the juvenile court’s delinquency process in *In re Gault* when it specifically stated that juveniles facing delinquency proceedings have the right to counsel under the Due Process Clause of the United States Constitution.¹⁵⁰ *Gault* found that juveniles facing “*the awesome prospect of incarceration*” need counsel for the same reasons that adults facing criminal charges need counsel.¹⁵¹ *Gault* recognized that a system in which the children’s interests are not protected is a system that violates due process. These principles were reaffirmed a few years later when the Supreme Court declared, “[w]e made clear in [*Gault*] that civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile court...,”¹⁵² and held that juveniles were constitutionally entitled to proof “*beyond reasonable doubt*” during an adjudication for a crime.

Louisiana incorporated these constitutional requirements of due process and the right to counsel for juveniles accused of crimes in the Children's Code. The Code explicitly requires: "*At every stage of proceedings under [delinquency], the accused child shall be entitled to counsel.*"¹⁵³ Moreover, the right to representation necessarily requires that counsel be competent. The first rule under Louisiana's Rules of Professional Conduct provides: "*A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.*"¹⁵⁴

B. THE ATTORNEY-CLIENT RELATIONSHIP

In order to be effective, both in meeting charges against clients and in dealing with social and family issues, juvenile defenders must establish trusting relationships with their clients, which takes time and effort. The importance of maintaining confidentiality with adolescents cannot be overstated; counsel must patiently explain and emphasize what clients tell them is confidential.¹⁵⁵ Because arrested children are often distrustful of adults, defense attorneys must build relationships with clients that will enable them to share deeply personal information.¹⁵⁶

It is also vital that defenders take time to keep clients and their families informed before and after court appearances and other significant legal events.¹⁵⁷ Clients and their families should be told exactly how to get in touch with counsel and when their attorney will next be in contact. Clients and their families should also be advised of what to do if re-arrested and what their responsibilities are between court appearances.

C. ARREST, DETENTION AND CONTINUED CUSTODY

Arrest is the point of entrance into the juvenile justice system, although approximately a quarter of the juveniles arrested nationally are warned and released by police and never referred to juvenile court.¹⁵⁸ If a child is detained, a continued custody hearing must occur within 72 hours of the detention,¹⁵⁹ where youth have a right to counsel. If a child is not detained, her first meeting with an attorney may be her initial court appearance.

If counsel is not waived, counsel must take the time to explain their role as advocate to the child. In addition to asking for information, it is vital that counsel take the time to discuss with clients what is likely to happen in court and the potential consequences of taking a plea or handling the matter informally. The IJA/ABA Juvenile Justice Standards provide that during the initial stages of representation:

*“Many important rights of clients involved in juvenile court proceedings can be protected only by prompt advice and action. The lawyers should immediately inform clients of their rights and pursue any investigatory or procedural steps necessary to protect their clients’ interests.”*¹⁶⁰

At the continued custody hearing, counsel should advocate that detention is to be used only for young people who are dangerous or demonstrably unlikely to appear in court. Also, a minister, teacher, relative, or other mentor can provide the court with helpful information concerning the release of the child into the community.

Youth have a right to bail in Louisiana,¹⁶¹ therefore, attorneys have a vital role in advocating for their clients’ release. If continued custody is ordered, attorneys should consider arguing for a personal bail requiring no financial security¹⁶² or for a level of bail and form of security based on the child and family’s ability to post bond, the lack of danger in releasing the child, the harm caused by missing school or other responsibilities, and the assurance that the child will appear for the next court hearing.¹⁶³ The alternatives to secure detention may be quite varied and diverse, including group homes, residential treatment facilities, house arrest, electronic monitoring or other non-secure community-based programs.

Many juveniles waive counsel at the detention hearing and admit the allegations. Waiver of counsel by juveniles has been widely criticized, particularly given the questionable competency of a child to understand the consequences of a waiver. The IJA/ABA Juvenile Justice Standards specifically state that *“a juvenile’s right to counsel may not be waived.”*¹⁶⁴ Nevertheless, Louisiana permits waiver but only where the court determines that the child consulted with an attorney or other adult interested in his welfare, the child and adult have been instructed by the court about the child’s rights and possible consequences of a waiver, and the waiver was voluntarily given.¹⁶⁵

D. PRE-TRIAL ADVOCACY AND PROCEEDINGS

An attorney’s work during the pretrial period of juvenile cases is critical to obtaining favorable outcomes for his clients. Attorneys must investigate the facts, obtain discovery from prosecutors, acquire additional information about a client’s personal history, file motions, and advocate at other pretrial hearings. This stage of the case sets the foundation for strategies at adjudication hearings, negotiations with prosecutors, and the development of appropriate dispositions.

At this stage, lawyers must confer with a client “*without delay and as often as necessary to ascertain relevant facts and matters of defense known to the client.*”¹⁶⁶ Early on, clients have the freshest memories and, similarly, witnesses are easier to locate and have clearer recollections of the events in question. The IJA/ABA Juvenile Justice Standards stress the duty of lawyers to conduct a prompt investigation of the facts and circumstances of the case, and to obtain information in the possession of prosecutors, police, school authorities, probation officers, and child welfare personnel.¹⁶⁷ Lawyers should also explore social or legal dispositional alternatives and investigate resources and services available in the community.¹⁶⁸

Pre-adjudication motions may include requests for discovery, expert evaluations, suppression of illegally seized evidence, competency determinations or dismissal of the petition for cause.¹⁶⁹

There may also be collateral proceedings related to a client’s delinquency case, such as school suspension hearings or probation revocations due to the conduct charged in the petitions. If possible, counsel should represent their clients at collateral hearings.¹⁷⁰ Such representation may be useful in gathering information about the delinquency matter and can strengthen attorney-client relationships.

School-related issues may be especially relevant to a pending delinquency matter, particularly given the increasing number of delinquency arrests and referrals from school administrators. Therefore, juvenile defenders should have at least some understanding of young people’s educational rights and legal responsibilities. Children eligible for special education are protected by the federal Individuals with Disabilities Education Act (“IDEA”) and Louisiana’s Exceptional Children Act. While the juvenile court is not the proper venue to challenge violations under the IDEA, federal and state regulations do require due process,¹⁷¹ and often what has been filed as a delinquency charge or probation violation may in fact be more appropriately addressed by the administrative process provided by these statutes. Moreover, with high caseloads and increasing dockets, juvenile courts may be interested in these opportunities for appropriate diversion. Even where diversion may not be appropriate, understanding a client’s educational challenges and needs can help defenders in negotiating with the prosecution, challenging the specific intent elements of a charge and developing appropriate disposition plans.

The challenge for overburdened defenders is maintaining their oath of zealous advocacy while balancing the realities of limited resources and time; to be sure, however, investigative efforts at the outset of a case may do more to ensure a good outcome than anything else.

E. TRANSFER, DIRECT FILE AND AUTOMATIC WAIVER TO ADULT CRIMINAL COURT

In certain circumstances, juveniles may be prosecuted in adult criminal court, although, traditionally, this was reserved for extraordinary cases. Recently, however, Louisiana has instituted statutory changes, giving district attorneys authority to directly file in adult court for certain offenses,¹⁷² lowering the age at which a child may be transferred to fourteen,¹⁷³ and increasing the crimes for which a youth may be prosecuted in adult court to nineteen offenses.¹⁷⁴ Once a child has been transferred or waived into adult court there is no transfer back, regardless of the circumstances.

If transferred, a child is moved to an adult jail to await further proceedings;¹⁷⁵ if convicted, a child may be sentenced to prison and housed with adult inmates. Studies show that youth in adult prisons are less likely to have access to rehabilitation opportunities, are more likely to re-offend when released, and are at much greater risk of physical abuse and suicide than youth in juvenile correctional facilities.¹⁷⁶

The traditional means to effect such prosecutions has been through “*transfer*” hearings in juvenile court; however, with the automatic waiver and district attorney direct file statutes in place, transfer hearings are now rare in Louisiana.¹⁷⁷ At a transfer hearing, the prosecution must show “*probable cause*” that the youth committed a crime that warrants transfer, and must present “*clear and convincing proof there is no substantial opportunity for the child’s rehabilitation through facilities available to the court.*”¹⁷⁸ The latter determination is based upon criteria initially articulated by the United States Supreme Court in *U.S. v. Kent* when it required that transfer hearings “*must measure up to the essentials of due process and fair treatment.*”¹⁷⁹ These criteria were subsequently incorporated by the Louisiana Supreme Court in *State v. Everfield* when it articulated specific factors that should be taken into account in support of a finding of non-amenable to rehabilitation.¹⁸⁰

At transfer hearings, counsel should argue that although the offense is serious, the young person is still a child, would benefit from services in the juvenile system, has not had sufficient opportunity to be rehabilitated, would likely be harmed in the adult system, and that the community could be protected from the child during treatment as a juvenile.¹⁸¹ In those circumstances where the state can automatically transfer a child to the adult system, there is no independent judicial hearing to oversee the transfer. In such direct file cases, counsel must challenge probable cause at the continued custody hearing when the youth is eligible for a waiver.

F. ADJUDICATION AND PLEA NEGOTIATION

At adjudication hearings prosecutors must prove “*beyond a reasonable doubt*” that a child committed the offenses charged. Adjudication is before a judge alone, and many defense attorneys believe that it is more difficult to get an acquittal from a judge than a jury, particularly given that judges routinely have access to much more confidential information than juries typically do. It is therefore critical that counsel investigate cases thoroughly, meet and prepare witnesses, utilize experts and other necessary resources at trial, and emphasize the heavy burden that the prosecution bears to prove guilt beyond a reasonable doubt. Even where an adjudication ends in a finding of delinquency, properly presented evidence on the child’s circumstances can affect the case at its dispositional phase; thus, defenders should realize that every proceeding is an opportunity to advocate for and humanize the child for the court.

The vast majority of juvenile cases result in plea bargains. Young people often feel pressure to get some fast resolution to the matter; counsel must ensure that clients understand what it means to plead guilty and fully appreciate the collateral consequences and multiple offender laws of the jurisdiction.¹⁸² The issue of understanding on this level is exacerbated in Louisiana, however, because many pleas are handled before a child has an opportunity to consult with counsel.

At the plea hearing, judges should address youth in age-appropriate language concerning their mental capacity, whether the plea is voluntary, whether they understand the constitutional rights they are forfeiting, and whether the admission has a factual foundation. Legally, juvenile courts should not accept pleas without determining that youth have the mental capacity to understand their legal rights and the significance of their pleas, including the maximum and minimum possible disposition;¹⁸³ without proper questioning, this cannot be done.

When a child does have an opportunity to consult with counsel, the attorney must take the time to fully explore the nature of the plea agreement and possible alternatives to entering the plea. This conversation should take place in a private area where clients have the opportunity to ask questions and express their concerns.

G. DISPOSITION

The dispositional phase of juvenile proceedings is the primary distinguishing feature between the juvenile and adult systems:

*“The ‘hallmark’ of the juvenile system ‘was disposition, individually tailored to address the needs and abilities of the juvenile in question.’ Indeed, our own state’s system was founded upon this premise as is reflected in the stated purpose of our Children’s Code [art. 102].”*¹⁸⁴

The purpose of the dispositional process is to develop plans for juveniles that meet their educational, emotional and physical needs, while protecting the public from future offending. The disposition hearing is an opportunity for the trial judge to receive evidence from the state, the defense, the probation department, and other individuals concerned with the child’s care and custody. Courts also have the authority to order psychiatric, psychological, educational or neurological evaluations.¹⁸⁵

Youth may be sentenced up until their twenty-first birthday.¹⁸⁶ Courts usually have very broad discretion in ordering dispositions, except where youth are adjudicated delinquent for any of six enumerated crimes (such as murder, aggravated kidnapping and armed robbery), in which case, the law requires a sentence of secure custody.¹⁸⁷ For all other crimes, potential dispositions include fines, restitution, community service, unsupervised probation while living at home, closely supervised probation at home, participation in treatment programs, placement in a group home, or confinement to a secure correctional facility.

The authority a Court has over a child is greatly restricted once a youth is placed in the custody of the DPSC; whether secure or non-secure, Louisiana law does not grant judges the authority to place a child in a particular type of facility or program. Instead, the Court may only recommend placement in a particular type of program or facility, with the DPSC having sole discretion to make the final placement determination.¹⁸⁸ Once given over to the custody of the state, crucial placement decisions are made by the DPSC rather than the judge.

The Louisiana Children’s Code and the IJA/ABA Juvenile Justice Standards provide that courts should order the “*least restrictive*” dispositions that satisfy the needs of both youth and society.¹⁸⁹ The IJA/ABA Juvenile Justice Standards further provide that courts should consider the individual needs and desires of youth in determining appropriate dispositions.¹⁹⁰ Louisiana courts may suspend all or part of a sentence based on numerous considerations, such as whether the delinquent act neither caused nor threatened serious harm, the victim played a role in the delinquent act, the child has no prior delinquency history and is unlikely to reoffend, or that the commitment would entail excessive hardship to the child or his family.¹⁹¹

Probation officers are required to prepare predisposition reports for the court that state the circumstances of offenses; discuss youths' social and educational histories, family and home environment, and mental and behavioral background; review previous adjudications; describe the impact on any victims; and, present other relevant information, including recommendations for disposition.¹⁹² Probation officers usually interview the child and, if possible, family members and others who know her. Attitude appears to be a critical factor in the interviews: clients who are cooperative, concerned, remorseful, and responsible typically fare much better than those who are not.

Juvenile defenders have a unique opportunity at disposition to advocate for their clients; active participation of counsel is essential.¹⁹³ Working with the client and family and reviewing the predisposition investigation report ahead of time can shape the entire strategy for disposition. At disposition hearings, counsel should present evidence and witnesses, such as family members, teachers, or ministers, and should present other evidence, such as letters of support, education or medical records, or evidence of participation in community or church activities. Counsel should be prepared to discuss the specific individual needs of their client, what services would meet those needs, what placements would not meet those needs and whether those needs can be met by the disposition proposed by probation.¹⁹⁴

More than at any other stage, counsel should explore every possible resource during the dispositional process. In addition, the IJA/ABA Juvenile Justice Standards recognize counsel's continuing duty to "*maintain contact with both the client and the agency or institution involved in the dispositional plan in order to ensure that the client's rights are respected and, where necessary, to counsel the client and the client's family concerning the dispositional plan.*"¹⁹⁵

In cases where the court does order assessments, the evaluations can be enhanced if counsel contacts the evaluator in advance to ask him to specifically identify the young person's emotional, educational and other needs and to request additional information to individualize dispositional planning.¹⁹⁶ Counsel must seek to ensure that clients understand the evaluation process, are not frightened, and are encouraged to cooperate.

H. APPELLATE REVIEW AND MODIFICATION

Following disposition, a child may have several avenues available to test the validity of his adjudication, the appropriateness of his disposition, and the conditions of his custody or supervision. A child can take a direct appeal on issues arising from the process through disposition, have the

court conduct periodic reviews and modifications of a disposition; seek discretionary collateral review of an adjudication, request specific services or treatment, invoke grievance procedures concerning a child's care, and/or challenge dangerous or unlawful conditions of confinement. The IJA/ABA Juvenile Justice Standards recognize the responsibility of counsel to continue representation in appropriate circumstances: "*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.*"¹⁹⁷

The IJA/ABA Juvenile Justice Standards provide that counsel should file appropriate notices of appeal and provide or arrange for representation perfecting appeals.¹⁹⁸ Children have the right to an appeal, although appeals in juvenile cases are rarely taken in Louisiana.¹⁹⁹ Many defender offices are not organized to take appeals and high caseloads prevent trial attorneys who know the record from pursuing appeals. In many of these cases, custodial and supervisory commitments are relatively short, which limits the time to appeal. These systemic factors serve as disincentives for appointed counsel to proceed on appeal on behalf of youthful clients.

The IJA/ABA Juvenile Justice Standards additionally provide that lawyers who represent juveniles at trial or on appeal ordinarily should be prepared to assist clients in post-disposition actions to challenge the proceedings leading to placements or the appropriateness of treatment services.²⁰⁰ "*Legal representation should also be provided to the juvenile in all proceedings arising from or related to a delinquency [action], including...other administrative proceedings related to the treatment process which may substantially affect the juvenile's custody, status or course of treatment.*"²⁰¹

There are important and vital reasons to pursue appeals in appropriate cases. Felony adjudications, for example, may have important implications for plea bargaining or sentencing if the youth gets in trouble in the future, either in juvenile court or adult criminal court.

Louisiana's juvenile courts retain the power to modify or even terminate a disposition at any time.²⁰² Consequently, counsel should seek periodic review of dispositions and, in some cases, modifications.²⁰³ These hearings can be opportunities to both inform the court of problems affecting the care and treatment of youth and to demonstrate to the youth that genuine efforts at rehabilitation may be rewarded. If there are grounds for release from confinement — such as clients not receiving needed services, clients are in jeopardy due to lack of security or other dangerous conditions in institutions, home conditions having changed or community programs now available — counsel should file a motion and seek a modification of the child's

conditions of custody or supervision. Counsel should prepare for modification hearings as they would a disposition, gathering supporting documentation and working with the client and his family, as well as other witnesses, to make a case for early release or modification.

Youth may require particular services following dispositional hearings for reasons independent of the issues discussed above. Some dispositions make release from confinement contingent upon completion of specific institutional programs, schooling, or counseling. Because treatment programs are often over-subscribed and youth must wait until there are openings, delays in receiving the court-ordered treatment may prevent youth from being considered for early release despite the child's good behavior and overall progress. Such circumstances require vigorous advocacy by counsel to gain access to the programs or modify the disposition accordingly. Also, the nature of offenses, probation officers' reports, or independent evaluations prepared by the defense may reveal special needs — such as an emotional disturbance or suicidal behavior — that require particular treatment during custody or supervision. Lastly, some youth will require representation in related non-delinquency proceedings, such as school suspensions or proceedings to provide special education services while in placement.

I. EXTRAORDINARY WRITS, CONDITIONS OF CONFINEMENT AND OTHER POST-DISPOSITIONAL REPRESENTATION

Extraordinary writs such as habeas corpus are available to challenge a youth's confinement as illegal, either because the confinement itself is unlawful, because a juvenile has been held beyond the time permitted by statute or court order, or the conditions of confinement are unlawful.²⁰⁴

For over 30 years, federal civil rights litigation has revealed dangerous and unlawful conditions of confinement for young people detained in local detention facilities or committed to state correctional institutions.²⁰⁵ In Louisiana, there has been ongoing civil rights litigation challenging the conditions of confinement for youth held in the DPSC juvenile correctional facilities.²⁰⁶ This litigation has produced a body of case law that protects youth from harmful conditions and practices and guarantees them certain necessary services. Thus, youth have the right to protection from violent inmates, abusive staff, unsanitary living quarters, excessive isolation, and unreasonable restraints. Youth are also entitled to adequate medical and mental health care; access to counsel and to family; education, including special education for youth with disabilities; and recreation, exercise, and other programming.²⁰⁷

When youth are held under dangerous or unlawful conditions, counsel should argue for release from the institution, special protection for clients or for the provision of necessary services within the institution. Recognizing the importance of having counsel monitor conditions of confinement, the IJA/ABA Juvenile Justice Standards state that such legal representation should include litigation regarding the appropriateness of treatment provided under an original commitment order, the right to treatment, the non-statutory basis for reviewing the treatment provided, and, perhaps most importantly, conditions of confinement in violation of the due process clause.²⁰⁸

CHAPTER FOUR ASSESSMENT FINDINGS

*“[T]he condition of being a [child] does not justify a kangaroo court.”
- In re Gault²⁰⁹*

People involved in Louisiana’s juvenile courts share a real concern for the youth and the families that they serve and recognize the tremendous responsibilities placed on the shoulders of juvenile defenders. Despite the most well-intentioned and caring individuals present in the juvenile justice system, however, investigators found that overall, Louisiana’s young people bear the brunt of misguided policies and practices that compromise their futures. This chapter discusses the findings and barriers that impede the effective representation of delinquent youth.

A. STRUCTURE OF DEFENSE AND INSTITUTIONAL CHALLENGES TO PROVIDING DEFENDER SERVICES

The Louisiana Constitution provides that “[t]he legislature shall provide for a uniform system for securing and compensating qualified counsel.”²¹⁰ Louisiana provides public defender services through Indigent Defender Boards (IDB) located within each of the 41 judicial districts, although adequate funding has been an ongoing problem since these institutions were created in 1975.²¹¹ These district IDBs are funded primarily by fees assessed by the courts and some state supplemental funding provided through the Louisiana Indigent Defense Assistance Board (LIDAB).²¹² The LIDAB, however, has experienced a stand-still budget of \$7.5 million since 1995 and must use its budget to supplement the entire statewide indigent defender system. Depending on the policy of the sitting judges of a judicial district, assessed costs for the indigent defender fund can be between \$17.50 and \$30.00 per criminal case resulting in a conviction or plea.²¹³ However, the lack of adequate funding remains a dire reality facing the entire indigent defense community. Numerous other structural deficiencies within the juvenile defense system create real obstacles to effective advocacy for children.

“There is a collusion by silence from the leadership in the State Bar because everyone knows that the public defenders are getting dumped on but nothing is changing.”

- Private Attorney

1. Part Time Practice

Each IDB contracts with or hires lawyers to provide defense services for indigents; in most instances the lawyers are permitted to have a private practice as well. With the exception of juvenile defenders assigned to the family courts, most of the juvenile defenders carry an adult public defense caseload in addition and a private practice. One public defender, who is the only defender for juveniles in her parish, describes her hectic schedule as

follows: juvenile court on Monday and Friday, and sometimes on Wednesday; city court on Wednesday; District Court on Tuesday and Thursday and she squeezes her private practice in where she can. In another example, a public defender who provides representation to juveniles, as well as adults, in two parishes handles FINS, delinquencies, removals, adult criminal, capital cases and has a civil practice.

2. Inadequate Resources and Support Services

"I'm aware that most kids confess prior to having representation and this is a real problem," shares one frustrated public defender, "but given the fee structure I'm in no position to try and interject myself into cases prior to the [arraignment]."

- Public Defender

With very few exceptions, everyone — judges, prosecutors, probation officers, defenders — agrees that increased funding for indigent defense is essential to improving the system. Many people agree that the current funding mechanisms are not adequate and suggest new sources of revenue be explored. Particularly in the non-family court jurisdictions, judges are reluctant to appoint lawyers to a majority of the cases in part because of the critical funding condition. While acknowledging some discomfort with the situation, a city court judge confesses that he *"just doesn't want to unnecessarily add to [the juvenile defender's] caseload given the resource issues."*

Among the parishes included in the assessment, juvenile defender salaries (which includes the salary for representing adults if it is part of an IDB contract) range from approximately \$22,000 to \$30,000 a year, usually without any health, retirement, sick or vacation benefits. One supervising juvenile defender who has been practicing in juvenile court for ten years earns only \$30,000 without benefits. Staff turnover is very high due to the poor pay; in fact, several defenders candidly admit that, if offered, they would readily take a job as a defender in adult court or as a prosecutor in order to get a pay raise.

In addition to low salaries, most juvenile defenders working on a part-time basis have to supply their own resources, including any office space, telephones, computers, files and clerical support. *"It is a de facto way of ensuring that the defenders maintain a private practice,"* remarked a family court judge. Defenders practicing in family courts usually have some sort of space at the courthouse but generally this is no more than a shared room with a table and a telephone; an actual office is rare. One investigator's description of the public defenders' office is typical of the best case scenario: *"There is one, modestly compensated, clerical support person; the office has only one computer with no private fax machine (they must use a court fax machine which compromises confidentiality) and no long distance access on their own phones (must use another court phone for long distance calls)."* In one parish, the judges acknowledge that they permit oral motions in recognition of the lack of computers and limited secretarial support available to juvenile defenders.

Most public defender offices do not have investigators, paralegals or social workers to assist in independent fact investigation or dispositional planning. Only two offices have a full-time investigator but they spend a significant amount of their time in court responding to judicial requests, rather than in the field. Where resources are set aside for contracting investigators or experts, the funding is inadequate. For example, one IDB budget indicates that, for the entire district, only \$4,200 is allotted annually for all investigation, including both adult and juvenile cases, and only \$2,400 is allotted annually for experts for all cases. An IDB administrator in another district estimates that no more than \$2,000 a year is spent on experts for all adult and juvenile cases. This is especially problematic in the delinquency practice where mental health experts, in particular, could provide information to assist the courts in crafting effective dispositions. In addition to the defenders, judges and probation officers frequently speak of the potential benefits of having a well-staffed juvenile defender office.

Increasing the capacity of the juvenile defenders would enable them "to assess and provide services to their clients on a wide array of legal and social issues [as well as] assist the child and the court in handling educational and mental health issues in a way that is not happening now."

- City Court Judge

3. Lack of Parity with Prosecutors

Several investigators describe in detail the glaring differences between resources for public defenders and the prosecutors practicing in the same jurisdiction. *"The district attorneys have an entire suite of secured office space and all the public defenders are expected to share one tiny, closet-like room that adjoins the loud reception area. It is presumed that that space is 'reserved' for the chief of the juvenile unit, although he is seldom there...The PDs have no business cards, no private space for mail, and no main phone number for the juvenile section. When clients walk in off the street for help, they come to the DAs office and the DAs have nowhere to send them. There are six juvenile DAs, two screeners, two investigators and two secretaries, all of whom are full-time."* This compares to six part-time juvenile defenders and one full-time investigator for that jurisdiction. In another district there are eight prosecutors to three public defenders; the city judges in that district said that the system only works because less than ten percent of the children ask to have an attorney appointed and the vast majority plea guilty prior to any appointment of counsel.

The lack of resources and support staff for public defenders is particularly unreasonable given the disparity between them and prosecutors. State funding for district attorneys is significantly greater than funding for defense services. District attorneys are routinely paid better salaries. In one parish, IDB lawyers are paid at least \$1,000 less per month than prosecutors; another district pays its prosecutors a starting salary between \$38,000 and \$40,000. Prosecutors also usually receive numerous benefits, including health insurance, retirement and vacation time. In addition, they have considerable clerical and administrative support and have access to full-time investigative services through law enforcement. Except in the city court jurisdictions, most prosecutors are full-time and

many get extra benefits, such as the use of a state car and access to loan forgiveness programs.

"Let me go on the record right now to say that I'm all for full defense funding and parity in terms of office space and salaries, etcetera, between the district attorneys and public defenders."

- Prosecutor

Virtually everyone involved in the juvenile court system interviewed agrees that a significant inequity exists between juvenile defenders and prosecutors and, with the exception of certain district attorney offices, everyone believes there should be parity between prosecutors and defenders, at least on the issue of salary and support services. Despite the support of some district attorney offices for parity, public defenders describe a very different reality in at least one jurisdiction: *"The DA wants the public defenders to be part-time, inexperienced, young and to have low salaries. The DAs like it this way and work with the IDB to make sure that the pay stays low and the caseloads high. They want to keep the opposition weak. The DA has the ear of the chairman of the IDB Board. In the past, he even made arrangements for two public defenders to be fired."*

4. Lack of Accountability and Leadership

The lack of parity, according to several people interviewed, stems from a general lack of leadership, either among the public defenders or from the supervising IDB. Many people are either content with the system and do not want to upset the little funding they do receive or are frustrated but feel little hope in effecting change. For example, one chief defender says that while he prefers that the public defenders work full-time and visit with youth in detention on a regular basis, he simply does not have the political support to enforce this. Another supervising juvenile defender's comments regarding support services are indicative of the lack of leadership. He believes computers for juvenile defenders are unnecessary *"because all they would do is play computer games."* A fulltime investigator *"was half too many because defenders don't need investigators except for an occasional murder, to take an occasional photograph or to help track youth who move from juvenile to adult court."*

A few district attorneys and several judges in different jurisdictions openly describe the lack of leadership within the indigent defender system as a central source of their problems. As one investigator found, *"the leadership and experience that comes from the prosecutor's office versus that which comes from the public defender's office regarding juvenile court practice is informative: those in top leadership at the prosecutor's office evidence high commitment to the juvenile court's rehabilitative goals but it's not even on the radar screen of the Chief public defender in this district."*

Also evident is the lack of accountability measures. While the district attorneys and juvenile courts generally track some case-specific informa-

tion, public defenders appear to have few reporting requirements. Many juvenile defenders, when asked, can only give very rough estimates of their caseloads and none provide specific data regarding various information, such as numbers of juveniles served, number of juveniles diverted, proceedings attended, successful adjudications or dismissals, or appeals filed.

No quality assurance mechanisms are in place to evaluate effectiveness of the defense services provided. Where statistics are ostensibly maintained, the process is flawed. For example, when describing his statistics to the investigators, which he kept by hand using whatever information he gathered informally, one supervising juvenile defender *“proudly reported his trial rates and when we questioned him as to why they were so high, he responded that he counts plea agreements and trials together and can’t track the difference.”*

Amazingly, most public defenders do not maintain their own case files. They rely instead on the district attorney’s file or the court file, and therefore have no meaningful source from which to gather data or collect independent information.

5. Lack of Support and Training

There is no required training for defenders practicing in juvenile court, nor are there standards regarding best practices for juvenile defense. Furthermore, the juvenile defenders, unlike prosecutors, do not get funds for attending Continuing Legal Education classes. As a result, most juvenile defenders report that they must learn the ropes as they go. A family court judge says that in his district, *“all you have to have is a valid law license and one week of training with the outgoing public defender, unless that defender quit without advance notice. There is no in-house training.”* A chief public defender says there is a two-day training seminar provided by the Louisiana Public Defenders Association and thinks this could be a good avenue for furthering efforts to inform the defense bar about issues concerning juvenile practice, but he is unaware of any juvenile-specific training currently available.

While most defenders report they would like more training and professional support, a few indicate that they do not feel the need for more training. Nevertheless, investigators noted that several of these same defenders who felt sufficiently trained failed to accurately provide fairly basic information regarding juvenile practice. For example, one of them erroneously stated that children do not have a right to counsel at all delinquency proceedings. Another incorrectly described FINS offenses as *“not status offenses;”* yet another could not explain when a juvenile could be transferred to adult court.

“I wasn’t even given a Children’s Code or any materials or motions, I was simply told how the calendar worked and where to go for court and was immediately expected to represent children without any direction.”

*- Juvenile Defender
hired right out
of law school*

“Experienced lawyers are needed to represent children; this is not an entry level position for anyone....A juvenile defense lawyer must act as criminal defense lawyer, education law specialist, psychotherapist, counselor, the last hope for a hopeless child.”

- Private Attorney

A supervising juvenile defender stated that he did not believe his attorneys needed supervision or mentoring, he just periodically asked the judges if they were satisfied with their defenders, *“if they say ‘yes,’ that’s good enough for me.”* Part of the reason defenders do not receive effective training is this mindset, prevalent among some lawyers, that juvenile practice does not require any particular expertise. This is a significant hurdle to improving the level of advocacy.

Most children interviewed do not see their public defender as an ally, let alone someone who might give them *“hope.”* One 17 year-old boy who was adjudicated delinquent for unauthorized entry of an inhabited dwelling and sentenced to 18 months in LTI gives his account of what happened when he first met his public defender: Chad’s²¹⁴ public defender only visited him in detention after his family *“called her off the hook.”* The first thing she said to him when she came in was, *“I would like to see you locked up but I’ll fight for you anyway.”* They only met for a few minutes during which she told him how much time he was likely to do. Before leaving she let Chad know she thought he was a criminal and would never change. When asked what he said or did in response, Chad stated that even though her comments seriously hurt and angered him he did not say anything to her because *“she was my public defender and I didn’t have anybody else to talk for me in court.”*

6. “Step-Child” Mentality of Juvenile Practice in the Defense Bar

A misguided perception continues to fester in the legal community that defending delinquent youth is for inexperienced and/or lazy lawyers who are not *“real”* criminal defense attorneys. Despite the clear inaccuracy of this opinion, the attitude is still pervasive among many defense lawyers, as well as judges and prosecutors, in both family and non-family court jurisdictions. There is no recognizable community of juvenile defenders and, therefore, little professional support or mentoring exists for new attorneys in the field. Most attorneys representing youth acknowledge that the turnover is high and that they would be hard-pressed to pass up an opportunity to *“move up the ladder”* into the adult defense arena or become a prosecutor. As one long-time Chief public defender admits, *“almost any public defender would take a job as an assistant district attorney if offered: the job pays better and has more prestige.”* Another defender describes how many lawyers actually go out of their way to avoid juvenile court: *“you won’t find an attorney in the parish with juvenile experience voluntarily.”* Several public defenders also down-play the consequences of high caseloads and compromised defense practices in juvenile court because of their perception that juveniles do not face the same kind of time or harsh prison sentences adults might suffer as a result of an inadequate defense.

“It appears that juvenile court work is simply an entrance-way into the public defender system. Young attorneys view it as the boot camp of their career and move out of it as quickly as possible. Currently the PD’s office is set up so that the last person hired is in juvenile court. That person is the low person on the totem pole. As soon as someone else leaves the office the juvenile person moves up. Therefore, the least experienced person represents juveniles, does not stay in that court long, and the attitude is that juvenile court is a stepping stone to bigger and better things.”

- Investigator

This step-child mentality is pervasive among many courts as well so that juvenile matters are frequently relegated to the lowest priority among cases. A result of this mind-set is that proceedings which are to be handled expeditiously are endlessly continued and delayed. For example, where juvenile matters are scheduled on a rotating basis in district courts, several investigators discovered that due to the large adult docket, juvenile delinquency matters are either continued en masse or delayed for hours. While investigators were told that this kind of delay was not unusual, some courts are exploring ways to reorganize the system in order to avoid such kinds of delays in the future. One investigator arrived at court around 1:00 in the afternoon, when the juvenile docket was scheduled to begin, and had to wait until 5:00 in the evening before any juvenile matters were heard. More disturbingly, juveniles seem to suffer the worst of both worlds in that while their cases are not taken as seriously as adult matters, they are treated more harshly by the court than adults accused of criminal offenses: *“The kids who were in custody were brought over for court around 12:30 pm. While the adult docket continued, the kids were taken to a little room down the hall and kept there in belly chains and leg shackles. In contrast, the adults in custody awaiting court were either on a handcuff chain or not in any restraints at all.”*

B. THE HIGH INCIDENCE OF WAIVER OF COUNSEL: BREAKDOWN OF DUE PROCESS

“The overall impression I had of the treatment of these cases was one of coercion. The judge’s chambers were very tight; often there were not enough chairs for the child’s parents to sit. The hearings were held in chambers around a rectangular table; at the table were the judge, ADA, children with their parent/guardian, clerk, court reporter, probation officer and a court officer. Prior to the hearing the ADA would speak with the parent about their child agreeing

to waive counsel. In chambers the judge would review the waiver form with the parent and ask the parent if the child wished to waive. The child and his or her parent were confronted in this room with six strangers. It was clear that the ADA and the judge wanted the children to waive counsel and admit the offenses. Children were never allowed to review police reports or speak to a defense attorney. Only one child protested strongly enough in chambers to escape the arraignment with an opportunity to contest her charge. The process of waiver and admission often took less than five minutes.”

- District Court Observer

Despite the fact that the Louisiana Children’s Code ensures that children have a right to counsel “*at every stage of proceedings,*”²¹⁵ many courts routinely not only permit but encourage — whether actively or passively — children to waive counsel in order to move the docket along. The district attorney in one parish estimates that approximately 90% of the children waive counsel and “*resolve*” the matter at arraignment; a probation officer in that district indicates that more than half of the youth on felony charges and at least three-quarters of those on misdemeanor charges waive counsel. The juvenile public defender in that jurisdiction estimates that the percentage of youth waiving counsel was more like 90%-95%.

A private attorney in another parish laments the fact that easily 80% of the youth waive counsel: “*We have a breakdown of the adversarial system in [this] parish. The kids are confessing to probation officers, they don’t know who their lawyer is and they are not being advised of the consequences of an admission to a petition. We need two sides to this system.*” An investigator in this district found that while many people in the juvenile court system believe that children understand what it means to waive counsel, the youth with whom she spoke in the court did not seem to know what their court date was for, let alone the significance of waiving counsel.

“*Probably the most notable aspect of [this parish],*” notes an investigator in another parish, “*was the astoundingly high percentage of children who never have a chance to consult with an attorney on their cases.*” Here, judges and defenders report that “*most children*” waive counsel. As one judge puts it, “*if children ask to have an attorney, we’re going to give them one; however, most of the time children do not choose to have one.*” And judges prefer it that way. This judge explains that he is quite content with this system because cases are handled more efficiently by probation “*without the interference of a lawyer*” and though he would like to see lawyers on felony cases, he rarely appoints them. Interestingly, this same judge also indicated that if public defenders had adequate resources he would be

“eager to have them represent more children.” He stated that effective child advocates provide the court with additional information that leads to fairer and more appropriate outcomes and said he sees value in well-resourced public defenders both for assuring fair trials, determining appropriate plea bargains and playing more of a post-disposition role.

Perhaps most troubling, many children waive counsel without ever having an opportunity to talk to an attorney about their rights. In several parishes, children are not represented at the continued custody hearing. If the child requests counsel at that hearing, he must still wait until arraignment before actually meeting an attorney. Therefore, children do not have representation at the continued custody hearing even when they have not actually *“waived”* counsel and have a legal right to be represented. Even prior to the continued custody hearing, probation officers routinely get children to waive counsel during their intake at the detention center. While a few judges indicate some discomfort with the waiver situation, very few think the waiver of counsel is a concern; as one district judge phrases it, *“having more attorneys may actually create more confusion”* since everyone is there *“just to help the kids.”*

Some parents report that they had not waived counsel but could not afford to hire an attorney. Despite continual requests for a lawyer, none was ever appointed to their case. In one disposition involving a 14 year-old African-American boy on a felony theft charge, the child had been awaiting disposition in detention and no lawyer was present at the hearing. The PDI was discussed by the probation officer, noting that the child had recently returned from LTI prior to the offense; the judge committed him to the DPSC secure custody until his 18th birthday. The investigator saw that the boy was extremely upset upon leaving court and kept saying he was going to *“escape or kill himself”* because he *“could not return to LTI.”* His mother said they *“repeatedly asked for a lawyer”* at arraignment and no one ever contacted her; she asked again at trial but did not get a lawyer. Her son, who was in special education for a learning disability, maintained his innocence; in fact, the mother stated that two of the prosecutor’s witnesses at trial actually testified that her son was not involved. The co-defendant in this case, another young boy, was also sentenced to LTI and his mother was equally distressed with the outcome, especially since she also requested a lawyer (and never got one) and because her son suffers from a mental disorder. Apparently her son was released from a psychiatric hospital days before the incident occurred. The investigator observed her son sitting in a corner, non-verbal the entire time and showing little understanding of the investigator’s questions.

Investigators observing court in one jurisdiction found that there is no explanation or inquiry of any kind by the court to make sure that the child understands what the right to counsel is or how a lawyer might help, nor is there any dis-

“We made a mistake by working with the system; we thought we were doing the right thing by having our child work with the DA but he ended up taking the fall for everyone. I’ve learned that working with the system just doesn’t work.”

- Mother of incarcerated child

cussion of apparent conflicts of interest between a child and parent waiving counsel. Where waiver of counsel is frequent, the waiver is not perceived as problematic even in cases where the child has obvious mental deficiencies. Court personnel acknowledge that waiver occurs regardless of whether the child exhibits mental illness or is clearly low functioning. Even in these cases, *“it’s rare when a child gets an attorney,”* states the local probation officer. Moreover, competency to waive counsel is never challenged by the public defender.

Family courts are generally an exception to the waiver problem. Family court judges infrequently permit children to waive counsel and usually require that the child talk to a public defender prior to accepting a waiver. However, a significant number of children still waive counsel, often without understanding the consequences of their waiver. For example, in one family court, every child is represented by a juvenile defender at the continued custody hearing, regardless of income and without being given an option of waiving counsel, but the appointment of the public defender is for the limited purpose of that hearing. If the child is to be represented beyond the detention hearing, the public defender must be reappointed by the court at arraignment. The public defender in this court estimates that *“at least half”* of the youth waive their right to counsel at the arraignment; *“most waivers are because parents and kids just want to get it over with as fast as they can, with as little time and trouble as possible.”*

“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.”

- Family Court Clerk

Even in the non-family courts, almost everyone — judges, probation officers, prosecutors, defenders — agrees that most children do not understand the system or the legal proceedings they are attending. While this should be the responsibility of juvenile defenders, accessibility to lawyers is limited, either due to waiver or perception. As one school liaison explains, *“some kids’ view of the public defenders is that they actually work for the DA’s office; they don’t understand what lawyers could do for them and seem at times afraid of the consequences of asking for a lawyer.”*

C. CONSEQUENCES OF CRUSHING CASELOADS: THE ABSENT ADVOCATE

“I wish my lawyer would really talk to me — not just out in the hallway....My lawyer never spoke to me. I had no idea what was going on. I’m not even sure who my attorney was.... No one came to see me since I’ve been in detention. My case just keeps getting reset so I’ve been here awhile. I’ve never talked to a lawyer yet....Just because we are little doesn’t mean we don’t have an opinion....”

- Excerpted from conversations with detained youth

Without exception, public defenders have very demanding caseloads. Juvenile defenders in family court jurisdictions have the most demanding caseloads, with some estimates of over 800 juvenile cases per year. While the average estimated juvenile caseload for most other defenders (all of whom were part-time) is generally between 150 and 300 cases per year, that number jumps to well over 1,000 cases per year in some districts when the adult docket and private practice caseload is taken into consideration.²¹⁶

Many defenders simply cannot accurately estimate the number of juvenile cases they handle in a given year and do not track the information: specific caseload figures are difficult to ascertain. Nevertheless, the public defenders' grueling caseloads are recognized by virtually everyone in the juvenile system. The public defenders are "*terribly over-burdened with cases; they don't have time to keep up with what they have, much less make time to write grant proposals and provide collateral legal representation,*" acknowledges a family court judge. Prosecutors also note the impact of high caseloads on public defenders. One assistant district attorney states that she wishes the public defenders in her district "*took a more active role*" like the private attorneys who "*call ahead of court and actually file motions.*" But she stresses that she thinks this is "*mainly due to caseload.*" Another prosecutor states that the common practice in his district for the first time a case comes to trial is "*an automatic 'refix' due to the PD not meeting with the client beforehand.*" While public defenders are reluctant to suggest that the caseload affects their quality of representation, many do perceive that it has some impact. A defender in another district candidly admits that due to his high caseload, he often "*relies on the DA being disorganized*" in order to be effective. Another defender says that he does not feel capable "*as a part time attorney to justify*" going to talk to witnesses or clients for continued custody purposes.

One of the most devastating consequences of the demanding caseload is the inability of most public defenders to have any meaningful contact with their clients. Probation officers in almost every district mention the high defender caseloads and the lack of client contact as a result. Most defenders agree that usually they simply do not have the time to meet with clients prior to court. One group of probation officers describe how they often "*feel in the middle of the relationship between the attorneys and their clients*" because the public defenders do not have the time to meet with clients in detention and often only see them "*for a few minutes*" at the courthouse. Parents frequently will call and complain to the probation officers as well because public defenders do not return their calls or meet with their children to discuss their case. Despite these reports of extreme caseloads, at least one investigator was dubious: "*everyone described the public defenders as so over-burdened, however they were hard to find after*

*At the detention facility
"the kids are starving
to see their lawyers,
but the public defend-
ers never come to see
them, even though the
facility director is
known to open the
facility both evenings
and weekends."*

- Private Attorney

2:00 p.m. and with what appeared to be about 90% of the cases entering into quick plea agreements, it was hard for me to see how they were dying under the weight of work.”

The case of Isaac is illustrative of the problem of incarcerated youth not having contact with their lawyers. Isaac is now 20 years-old and almost at the end of serving a five-year sentence for a series of offenses, none of which involved crimes against a person. Despite having been in the LTI honor dorm since 1997 and being recommended for early release five times, no lawyer has ever made contact with him or filed a motion to modify on his behalf. Since he is currently set to be released in a month, he says he has given up on any hope of an early release and just looks forward to coming home to help his mother with his younger siblings.

Of the youth interviewed in the six detention centers, only children at the East Baton Rouge Detention center consistently report that they had met with their lawyer or the investigator while being detained. At every other detention center, the children detained there say they have never met with their public defender in detention and only some of them recall talking to them in court. *“I talked to my lawyer as I was about to get my time. We never talked before that,”* says Devon,²¹⁷ a youth who has been detained for 46 days on a burglary charge, *“the judge told me to plea and my lawyer just told me all the rights I gave up.”* Another youth who has been detained for nearly six months on a simple burglary charge says, *“I saw my lawyer in court. He just said a couple of words to me, I didn’t know what was going on.”* One child who has been detained for 26 days on damage to a car, says that he remembers seeing his lawyer at the detention center and calling out *“lawyer, lawyer”* because he didn’t know his name, but the attorney just ignored him and walked away.

The vast majority of the 112 youth interviewed at LTI also report that they had little or no contact with their attorneys. Forty-five of the incarcerated youth interviewed (40%) state that they never met with a lawyer and another 29% only met with a lawyer for five minutes or less prior to their adjudication; only seventeen of the 112 youth (15%) recall meeting with their lawyer for at least thirty minutes sometime prior to their disposition.

The lack of contact with attorneys continues once children are incarcerated. Over 90% of the youth interviewed in LTI have not had any contact with their lawyer since being incarcerated and, despite the importance of review hearings, 85% of the youth had not been back to court for a review hearing. The lack of review hearings is particularly problematic for youth potentially eligible for early release;²¹⁸ only a quarter of the 39 youth who may have been eligible under DPSC criteria had an opportunity to go to court.

When asked what lawyers could do to better represent them, one of the repeated requests made by youth in detention centers and LTI is for their lawyer to at least meet with them and listen to their side of the story. *“Talk to me, get to know me,”* pleads one youth who has been detained for over two months. The overwhelming feeling that young people express is a lack of concern by their lawyer. Other suggestions by detained youth include: *“Listen to what I have to say, listen to what’s going on because people do change. ...When I first come to court ask me questions before we go in front of the judge. ...Get to know me better before they send me off to places and*

stuff. ...Try to come down to our level and give good advice. ...Spend time with me.”

D. ZEALOUS ADVOCACY JEOPARDIZED

“We were initially quite perplexed as to who the various parties were. We thought the probation officers were both the defense attorneys and the prosecutors. Once we were able to identify the correct parties, we observed the public defender going over the docket with the prosecutor. The public defender met several of her clients for the first time at the courthouse. She had not met with any of them outside of the courthouse to prepare for court. The probation officers, acting as social workers, either proceeded to prosecute or defend, apparently as they individually saw fit. There were no issues raised about the factual innocence of any juvenile who appeared before the court. The only time the public defender was vocal was when she tried to get off of a case because in her brief interview with the client in the hallway, she asserted that he would not cooperate with her. The probation officer stepped in and handled the case.”

- District Court Observer

“We should call them public pretenders, not public defenders,” sarcastically retorted one family court judge when asked about the level of advocacy seen in court. Virtually every level of juvenile court intervention is a missed opportunity for advocacy by the vast majority of public defenders, but especially those in the non-family court systems included in the assessment. Even where counsel is not waived, reports indicate that there is very little in the way of lawyering at every stage: pre-trial, adjudication, disposition, and post-disposition. Defense attorneys do not challenge routine waivers of counsel, even if children clearly fail to understand the concept of waiver. Many courts do not even have lawyers at the continued custody hearings and where they are present few argue aggressively for release or personal bond. One juvenile defender in family court stands out as a refreshing exception in that she attends court early during her *“duty week”* for detention hearings in order to review the court file, talk to the state’s probable cause witnesses, meet with the probation officer and interview children prior to the hearings.

The detention hearings are held one by one with all the kids lined up against the wall and all the parents for all of the kids sitting in the audience. One child — who is last in line — stands against the wall crying during all of the hearings. More than an hour passes before anyone ever addresses this

child, or even provides her with a tissue. The public defender doesn't attempt to find out what was wrong with her. Likewise, there is at least one parent who is crying off and on during the hearings. It is clear that folks do not understand the process and do not understand what is going to happen to them and their children. It is also obvious that the PD knows nothing about any of the kids before the cases are called. For instance, during one hearing, the PD turns to the child and asks in open court if he has ever been arrested before. The judge also poses a lot of personal questions to the parents in open court in front of all the other parents and children.

- Family Court Observer

Discovery motions are almost never filed. Defenders rely instead on open discovery by the prosecution, and other pretrial motions, such as motions for bill of particulars, suppression or dismissal are equally exceptional. One judge can only recall two public defenders in the fifteen years of her time in juvenile court (first as a prosecutor then a judge) who filed pretrial motions on behalf of children. The few motions that are filed “*are virtually all boilerplate*” reports one family court judge. Competency to stand trial or waive Miranda and criminal responsibility are rarely raised. Defense experts are uncommon, even where mental health issues are evident; “*people do not have the money for that*” says one district court judge from a district that makes up nearly ten percent of the youth under OYD custody or supervision. A public defender in that same district states that he “*could request an independent evaluation but hasn't had the right case to do so.*” Another juvenile defender is more abrupt in explaining why he never uses experts or independent evaluators, “*outsiders just lengthen our court day and are more trouble than it's worth.*”

Part of the reason defenders are not more active stems from the attitudes of supervising attorneys. A defender describes what happened when she filed a motion in a juvenile case, "I was told by the IDB Chief that this was not my job" and she has not filed a motion since.

Many defenders do not attempt to conduct investigations or find witnesses; in fact, one supervising juvenile defender says, “*we like to put the burden on the defendant's family to bring in the defense witnesses if there are any.*” Defenders, for the most part, do not maintain their own client files, working instead off of the district attorney and sometimes court files, nor do they seek other records relating to the child. “*We possess all kinds of records on the kids,*” states one probation officer, adding that if discovery motions were filed, they would release the records to the defense lawyers. A court clerk explains that the lawyer has to get a court order to see the court files but that those orders are rarely sought. A supervising public defender in another district says he tells his juvenile defenders, “*a defender's job is to handle their docket and keep the judge happy.*” Because many judges generally dislike handling motions, public defenders are loathe to do anything that might make the judge impatient or upset. Hence, the prevailing attitude is that motions are a frivolous practice.

Trials are practically nonexistent in non-family courts and uncommon in the family court districts as well. *“In four years as a judge I have never had a juvenile trial,”* states one district court judge. In another district the judge indicates that she has had only one or two trials this year. The assistant district attorneys in one family court jurisdiction agree that the public defenders rarely follow through on a trial: *“they don’t look at the evidence or request funding for stuff like DNA”* because they have no training or effective supervision. Perhaps even more troubling is the revelation by a city judge in one district — who hears maybe four juvenile trials a month — that children often represent themselves at trial.

In a trial for assault against another child at school, a court observer noted that neither the prosecutor nor the defender appeared to have talked to any of the witnesses before trial and, had it not been for the court’s intervention, the defender might have inadvertently made the state’s case. At the end of the state’s proof, rather than move for a dismissal, the public defender began to call a witness when the judge asked *“are you sure you want to call a witness because if you do, you might lose?”* and then, rather than wait for an answer, the judge dismissed the petition for insufficient proof.

The far more common practice is for most cases to be resolved by pleas, in many jurisdictions without the advice of counsel. In one case, the two co-defendants were White females charged with assaulting each other; they were brought into chambers together without counsel. The first girl waived her right to counsel and denied the offense. Then the judge led her through his take on the factual scenario and tried to talk her out of the denial; her parents also encouraged her to admit the charge. Eventually she decided to give up her self-defense argument and admitted to the assault. The second girl however was unwilling to give up her claim to self-defense. The court observer noted that only after some heated discussion between her parents and the judge was the denial finally accepted, an attorney appointed and the matter set for trial. In this district, as well as others, judges estimated that as many as 90% of the cases were resolved with pleas. One district judge reported that while about 50% of the cases settled at arraignment, in total *“almost 95% of the cases will settle on or before the trial date.”*

“What is missing is someone whose job it is to challenge the best interest perspective and to present to the court evidence of factual or actual innocence.”

- Juvenile Court Observer

Often pleas are made with little or no effort on the part of the defender to assess the facts of the case; children are simply presumed guilty. In one case, for example, had it not been for the honesty of the prosecutor the child would have been falsely adjudicated. The investigator observed that the public defender in the case had not sought the results of the lab test and had advised the child to enter a guilty plea to several charges, including one for

cocaine possession. After the guilty plea had been entered, the district attorney approached the bench with the defense attorney and advised the court that he had just realized that the lab report on the drug charge came back negative and asked that the child be allowed to withdraw the guilty plea to that charge.

“There were nine girl co-defendants, each charged for their respective roles in a schoolyard fight, and one defender. The public defender made no effort to meet with the respondents individually or to ascertain if there were any potential conflicts of interest, nor did she ask for appointment of new counsel when it became apparent that there would be conflicts. The public defender did not even attempt to mask her desire to resolve the case quickly through plea agreements as she gathered all of the girls and their families inside of the courtroom, lectured them on the need to take a plea, and severely reprimanded them for the trouble they had put their parents through. Equally disturbing was the presence of the judge in the courtroom during the lecture and reprimand. The judge never intervened to address the obvious conflicts or the PD’s behavior. The only advocacy came from some of the parents and the kids themselves. Many of the girls and their parents were emotional. They asked questions that were rebuffed and unanswered. At least four of them adamantly maintained their innocence and insisted on a trial date. The Public Defender — in open court — assured those last four respondents that they would be found guilty ‘in a minute’ if they went to trial and advised them that they would have to identify and locate their own witnesses. Many of the families clearly did not understand the process, as evident when one of the parties asked ‘what is a subpoena?’ and ‘what is a witness?’ The children were very clearly confused — some cried. If not for one persistent mother, the lawyer would have extracted pleas from them all in no time. When the mother questioned the PD’s approach, many other parents agreed and demanded individual meetings with her as well.”

- Family Court Observers

While many people interviewed are of the belief that pleas are the most efficient way of getting a child what he or she needs, this sentiment is not shared by everyone. A judge in one family court jurisdiction acknowledges that many youth plead guilty even when they still have issues to litigate and he believes this happens because the public defenders handling the docket are overburdened. Another family court judge says she repeatedly observes that

the public defenders “*know almost nothing about cases in which they were proposing plea-bargains.*” Some defense attorneys are just “*too eager*” to have their clients plea, confesses one probation officer from a rural parish. A probation officer in an urban district says that there are many children on the dockets who should not be pleading guilty but do “*because the PDs don’t help.*” A probation officer in one district points out that youth routinely get three years of probation for minor or first time offenses and the public defenders do nothing about it: “*if the standard is beyond a reasonable doubt then why aren’t they fighting?*”

Even in disposition, arguably the most significant phase of a delinquency matter, most public defenders are not providing effective, or even adequate advocacy for their clients. Among the instances of ineffective representation is a case involving a youth who had pled guilty and was adjudicated on first degree robbery but was subsequently sentenced on the more severe charge of armed robbery, a disposition that by law may not be modified in the future. This happened despite the presence of the court-appointed lawyer at disposition and was only recently discovered (more than two years later) when private attorneys representing the youth received copies of the adjudication and judgment for post-disposition representation. Several judges indicate that disposition hearings are frequently waived and sentences are given without any investigation or preparation by the defense attorney. In fact, attorneys were not even present for many dispositional hearings observed by the investigators. During five revocation for contempt cases (none were for new criminal violations), one court observer noted that in no case did the public defender present any proof or make any argument regarding the disposition. Rather, in each of the cases, the probation officer made a statement about the child’s violation and requested that the child be given some detention time as a consequence; the judge asked questions, admonished the child and imposed a detention sentence of anywhere between five and twenty days for each child.

A few judges think that the failure to develop alternative sentencing plans and to prepare sentencing memoranda is due to a lack of quality supervision and training. “*The PDs need to be more involved in the dispositional planning for kids to make sure their needs don’t fall through the cracks,*” comments a probation officer who believes that the juvenile court is failing to get to the “*root of the kids’ problems.*” In the course of the assessment, only one public defender spoke about the need for defense counsel to be an active part of the dispositional team “*in order to ensure that the child’s interests are safeguarded.*”

As for post-disposition advocacy, most public defenders have never filed an appeal or filed for a modification of disposition. One city judge, who has never seen motions, writs or appeals, is not even sure which court

“I heard they [public defenders] go to the judge’s chambers to make a deal — don’t sell me out.... Get me in a program to really help me.... Look into getting us into programs to help us change.... Try to put me with one of my grandparents instead of locking me up.... Talk to the judge and let him know I’m sorry.... Ask the judge to give me another chance.”

- Excerpts from conversations with detained youth

would review a juvenile appeal. *"That's a good question,"* he remarked when asked about appellate review. Referring to modifications for early release, one public defender makes clear *"that's what the POs do,"* even though the probation officers work for the DPSC and routinely defer to the institution for early release recommendations. A defender in another district concurs, noting that they do not handle post-disposition matters, including modifications — *"generally the kids write the judge about those."* In one jurisdiction the public defender mistakenly believes that children can have counsel appointed to represent them from the district where the child is being held in state custody. What is clear to her, however, is that they cannot get an appointed lawyer to represent them for review or reconsideration of sentence from the original sentencing district. Some family court judges are particularly concerned about the failure of juvenile defenders to actively follow the progress of clients committed to state facilities and think they should at least make an effort to occasionally visit those facilities.

While there are a few notable exceptions, judges, prosecutors, probation officers and even some defenders throughout the parishes visited during the assessment confirm that the role of defense counsel in juvenile proceedings is minimal at best. The public defenders are *"the weak link in the juvenile court chain,"* states one judge. The district attorney in that jurisdiction concurs, *"the other players in juvenile court compensate for a weak public defender."* One supervising probation officer is even more explicit; they *"don't want to buck the system, don't give a damn and don't know how to be a lawyer."* Defense services in this parish are *"very sketchy at best,"* admits a probation officer in a more rural parish, *"the lawyer needs to be more involved and spend more time with the kids."* One family court judge feels that the lack of even nominal defense services comes from the mistaken notion by juvenile defenders that they are supposed to be acting only in the best interest of the child; this judge also believes that *"the system needs public defenders who care and who are young, energetic and interested in changing the system, rather than political hires."*

"I was told when I was sentenced that if I did well in LTI I'd get a review and get a chance on early release but I haven't heard from a lawyer or my PO since being locked up. I've been doing real good in the program, not gotten any tickets...but it's like the court and everybody just forgot about me."

- Incarcerated youth

Apart from comments made by detained youth, only one parish had essentially no complaints about the defense attorneys, despite the fact that the attorneys there also had no motion practice and filed no appeals and the parish had an extremely high plea rate; over 90% of its cases resulted in pleas. A couple of particularly dedicated public defenders in other jurisdictions expressed rare points of view, at least among defenders interviewed. One defines success as *"limiting the level of intrusiveness, the level of penetration of the system"* for the child. Another says that he thinks an effective defense is *"vital in order to keep my clients out of the delinquency system because once a child is in that system, his future is significantly altered for the worse."*

E. OVER-RELIANCE ON PROBATION OFFICERS

“The Probation Officers are the main power in this parish. They intake the juveniles, advise them of their rights, draft the petitions, gather records, do home visits, make recommendations, and draft the final order. Some of what they do seems to border on practicing law without a license, but no one I spoke to seemed to be concerned about that.”

- Investigator

“*It is our show,*” remarks one of a group of probation officers about their position in the juvenile court system. The role of the probation officer is perhaps the most diverse and potent within Louisiana’s juvenile justice system. While the responsibilities and philosophies of the probation officers differ to some degree by jurisdiction and depending on whether they are employed by the parish or the state Office of Youth Development, as a collective group, they wield extraordinary influence in the ultimate outcome of a child’s case. Probation officers play a significant role in virtually every phase of a juvenile case, from arrest through sentencing, and everyone — judges, prosecutors, clerks, even defense attorneys — relies heavily upon them. Because of this, they can be a tremendous resource for the court, but they can also create serious barriers to effective legal advocacy. As one lawyer puts it, “*the probation officers are trying to do the right thing, but are really impinging on the due process rights of the kids.*”

1. Law Enforcement Function

Many probation officers describe public safety as their primary mission but others see their role as directed more toward rehabilitation of the child. The DPSC declares in statutory language:

“[T]he public policy of the state [is that] commitment of a juvenile to the care of the [DPSC] is not punitive nor in anywise to be construed as a penal sentence, but as a step in the total treatment process toward rehabilitation of the juvenile...”²²⁰

While probation officers may express differing opinions about their primary mission, recent policy changes assure a much larger public safety and correctional function. The DPSC Office of Youth Development recently changed its regulations to permit juvenile probation officers to carry firearms. They must receive training in order to do so and get a significant raise in salary once they are certified. In one parish, for example, the starting salary for a probation officer is approximately \$20,000. Once they are certified to carry a weapon they will earn between \$30,000 and \$35,000.

This firearm policy has received guarded reviews, at least among the officers interviewed during this assessment. One supervisor acknowledges that she is concerned about the probation officers now being certified to carry guns. Rather than being a deterrent to violence, she is afraid that there may actually be more incidents of trouble once teenagers learn that probation officers have weapons. Another seasoned probation officer also candidly admits that he is *“not excited about carrying a gun because it makes the work law enforcement, not rehabilitation and social work”* which he and many of his colleagues view as a turn in the wrong direction.

2. Intake, Investigation and Diversion

Probation officers routinely conduct intake of youth arrested on delinquency charges. When a child is initially arrested, police officers in some parishes will often contact the probation officer to determine whether or not to hold the youth in detention. In one of the parishes visited, the sheriff stated that all arrest reports go to the juvenile probation officer; the probation officer then interviews the child and makes the referral to the District Attorney with a recommendation. Investigators found that it is often common for the probation officer to give legal advice to the child and parent about the case. This includes discussions about guilt or innocence, possible defenses, and the wisdom of admitting guilt and accepting probation services as opposed to refusing to admit and taking the case to court. One probation officer stated that it was part of the job to explain the law to the accused youth. She gave as an example her explanation to children that although they may have thought that they were not guilty, in fact they were guilty of a joint venture. She went on to incorrectly define *“joint venture”* to the investigator.

The probation officers in another parish explain that their department screened all arrests and estimate that 75% of those arrests are diverted. That is, they do not ever go to court or face a delinquency petition. The majority are *“counseled, warned, and released.”* If the police do not detain the juvenile defendant, this interview and warning may take place months after the incident. It is extremely rare for a child to have an attorney present for this interview; *“only wealthy children have lawyers for this process”* concedes one probation officer. Defense attorneys play no role in the diversion process in most jurisdictions and District Attorneys will only sign off on the diversion if the probation officer recommends it.

Intake is not simply limited to the child’s personal background and home situation, but serves as an opportunity for probation officers in many parishes to conduct informal investigation into the circumstances of the case. *“The general purpose is to have the youth admit or deny the charges at intake,”* reports the probation officer. She has the youth waive Miranda

and the right to counsel for her interview and usually advises them to do the same for the rest of the case. Several defenders believe this practice makes it almost impossible for the youth to either advocate for himself or to be adequately represented by counsel. Probation is taught that this is an important part of their job and frequently the statements made to probation are the only real evidence against the child. For the most part, these statements are made by youth who have no understanding about the consequences of sharing any information about their case to probation officers. The majority of young people interviewed at the detention centers mistakenly believe that what they tell their probation officers is confidential — many realize only after being in court that this is not the case.

3. Charging Decisions and Plea Negotiations

Probation officers in some jurisdictions not only assess a case and make charging recommendations to the prosecuting attorney but they actually prepare the petitions to be filed against a child in court. In some cases, probation officers even prepare the final judgment for the court and attach it to the petition. The prosecutor reviews the petitions, which generally include disposition recommendations as well, and simply signs off on them before formally filing the charges against the child. Prosecutors determine whether probable cause exists to charge the child based on the probation officer's investigation. Often the probation officer will have discussed the charges with the child and his family and negotiated a plea prior to any involvement of the prosecutor or the public defender. The deal is then presented to the prosecutor and the court for final approval. Because youth often waive counsel, the public defender is not even aware of the case, let alone the outcome, and many judges prefer it this way because it enables them to handle many cases "efficiently" without the interference of defense counsel.

"The Court, probation, and the prosecutors take advantage of the children by using the probation officers to get statements from virtually every kid."

- Chief Public Defender

4. "Expert" Witness to the Court

Frequently the probation officer will be the only witness that the state puts on, or as discussed above, the state will introduce statements made by the youth to the probation officer in order to prove its case. However, probation officers are usually relied upon much more in the dispositional phase of the delinquency process. The probation officer is responsible for preparing a predisposition investigation (PDI) and making ultimate sentencing recommendations. In this capacity, the probation officer serves as the key witness to the court and their pre-disposition investigation report is the central, if not the only, piece of evidence that the court considers in sentencing a child. Most judges report that they frequently adopt the probation officer's disposition recommendations as a matter of course. "When a probation officer tells me 'I can do no more for this child' I'll send the kid off to the state," says one family court judge.

In many cases the court does not even have a PDI conducted but simply hears oral testimony from the probation officer. Because probation officers are generally the only persons in contact with the child and his family, they provide much of the version of the facts that everyone relies upon, including the public defenders. Where there is a PDI, the public defender is supposed to get a copy of it at least three days prior to the disposition hearing but many defenders stated that they rarely saw a PDI before coming to court. Moreover, because they have so few resources, public defenders rarely use their own witnesses or experts to build a case for some kind of alternative sentence at disposition. As one public defender puts it, *"I know the POs are the ones to negotiate with because they are the party with the power. I just try to get on their good side."* Clearly, the youth get the same message. *"Most of the time you don't need a judge because the PO can give you time,"* reports one young boy in detention, *"the judge won't even listen to you if your PO says you're messing up."*

Interestingly, while the probation officers recognize the authority that they wield in court, many protest that they spend too much time in court. Especially with the long waits, court time feels like *"dead time"* complain several probation officers, because they can otherwise be *"working with kids, finding programs, finding counseling, and making home visits."* One probation officer had to complete twelve PDI's during the week he was interviewed; *"how can I see my kids with any regularity?"* he asked rhetorically.

5. Programming Gatekeepers

Part of the probation officer's job is to investigate community programs and placement options for children under their supervision. They may visit vocational programs, group homes or other programs to ascertain whether a child may be appropriate and make recommendations accordingly. In some jurisdictions, the probation departments have taken a greater role by actually developing novel counseling and prevention programs. Virtually everyone in the juvenile justice system believes that access to rehabilitative programming is what makes the juvenile system uniquely suited for youth. In fact, most people are less concerned about youth waiving counsel and taking pleas because the ultimate goal of the system is *"to get the child help."*

The problem, however, is that everyone also agrees that for the most part local programming options are limited to non-existent for some youth and, again, the probation officers have full discretion regarding which children may receive certain services. One probation officer, for example, stated that she tended to channel girls into the JobCorps *"because it has a cosmetology program,"* regardless of whether the girls are actually interested in becoming beauticians. Where probation officers are employed by the OYD their discretion is particularly problematic because they may be more

reluctant to question the quality of placements that serve as contract programs for the DPSC.

Not only do courts rely on probation officers to identify appropriate programming for youth and to complete the necessary paperwork in order to place youth, but under certain circumstances, judges must actually defer to the OYD probation department for ultimate sentencing. While probation officers report that the general practice is to attempt to follow the judge's recommendations, this is not always the case.

6. Ongoing Supervision and Liaison to the Juvenile Justice System

The most traditional role of the probation officer is that of a kind of surrogate parent, meeting regularly with children, supervising their behavior in the community and reporting their progress to the court. According to one probation officer who has been working for several years at his job, *“the best POs are the one who are self-motivated to help the kids you are supposed to help; who are open-minded; flexible in the politics and in the street; dedicated to getting the job done; and who are ‘called’ to do the work.”* A supervising probation officer elaborates on this description: *“a good PO is one who has regular contact with their kids, provides services for the kids, makes sure the kids are in school, goes out in the field at least three times a week and goes the extra step with their kids by taking them to job interviews and developing a rapport with their families.”*

In reality, however, many detained youth report that they almost never hear from their probation officers while they are at home. Several youth nodded in agreement when one young girl said *“my PO never returned my calls or visited or did urine tests but when I went to court she blamed it all on me.”* Parents also agree that lack of follow-up by probation officers is a real problem and that the probation officers should be more of an advocate for the family. Rather than simply lecturing children, one parent wishes that their probation officer would have *“sat down with my child and asked him ‘is there something I can help you with?’.”*

While it is important for the probation officer to develop a good rapport with the child and family, the sense of trust they may gain in the probation officer can, and often does, influence them to make decisions that are not necessarily in the child's best interest. As one public defender says, *“the POs build a trust relationship with the client and get the client to admit to the charge before I even get to meet the client or become involved in the case.”* Several defenders state that parents will often open up to probation officers without realizing that the prosecutor can then use this as evidence against their child in court. Public

Currently, Louisiana's Children's Code limits a judge's ability to place a child committed to the custody of the DPSC at particular programs or to order specific kinds of treatment (i.e. psychological counseling, residential drug treatment, etc.); rather courts may only make recommendations. OYD makes the final decision about where a child may be placed and what treatment services he or she may receive.

The dual role of the probation officer as liaison to the court and support for the family can and often does create a real conflict for the child. Children are required to cooperate with the probation officer but at the same time, if they provide too much personal information it can be used against them.

defenders further report that probation officers routinely share information about their client with the prosecutors and judges without informing them. Probation officers, on the other hand, contend that public defenders seldom, if ever, call them ahead of time to discuss a client and that, because the defenders are so overloaded, they are often the only person parents and youth can turn to for information about the case. Either way, the end result is that the probation officer has almost supreme control over a child's future in the juvenile justice system.

F. COURT STRUCTURE, DOCKET CONSOLIDATION AND ITS IMPACT ON THE ADMINISTRATION OF JUSTICE

As described earlier in this report, there is no uniform family court system in Louisiana; rather, courts exercise juvenile court jurisdiction in myriad ways. The structure of the court generally has an impact on the kind of representation a child receives as well as the overall philosophy and practice of the court, which varies considerably from a traditional *parens patriae* to a more due process orientation. The five family courts have permanent family court judges and hold juvenile proceedings every week, including child in need of care (CINC), families in need of services (FINS) and delinquency. Juvenile defenders are assigned to a judge in each of these courts and represent children in all of these proceedings. The people working within these courts strongly support the need for a family court separate from the district court system. In general, these courts place a high value on the goals of rehabilitation and the maintenance of family and community ties. Family court judges only handle family and juvenile matters and therefore develop a background and expertise in juvenile law-related matters. Because they are involved in the range of cases, from abuse and neglect to ungovernable youth to delinquent behavior, they also often have a broad understanding of the issues affecting youth and families in the juvenile justice system.

Several non-family court judges readily admit that they have a limited knowledge of juvenile matters. A city court judge, who says he identifies potential delinquents in FINS by beginning to build a record of their misdeeds, is under the mistaken impression that he can send a child adjudicated only under FINS to a secure correctional facility, "*I don't like to do it,*" he assured the investigator, "*but sometimes I have no choice.*"

The most effective family courts consolidate cases under one judge so that a child has consistent contact within the court system, rather than going before several different judges on different charges and receiving conflicting orders. Where such consolidation does not occur, almost without fail every person indicates that this seriously detracts from the effective administration of the family court. The failure of docket consolidation is of much greater magnitude in those jurisdictions with multiple district judges rotat-

ing to serve as the juvenile court judge for the day. Such a rotating system is in fact the much more common practice in judicial districts that do not have family courts. Each judicial district has its own method of exercising juvenile court jurisdiction and, consequently, the level and type of defense provided for children differs by district as well. In some districts, a city court judge handles some of the cases and the district court judges divide the remaining caseload. In other districts, only district court judges hear the cases but they rotate months. In yet other districts, one or two judges are assigned to handle the juvenile court cases, often in addition to other adult cases. As a result, many cases are inappropriately delayed due to adult cases taking priority or in order for judges to get up to speed on the case. A few districts are exploring the possibility of assigning a single district judge to solely handle juvenile matters in an effort to increase expertise and avoid the sorts of problems described above.

While family courts generally do not exhibit the kinds of challenges found in the varying non-family court districts, there are still several problems identified by people that negatively impact how youth are represented. One of the issues voiced time again is the level of political infighting among some of the judges. *“Opportunities to collaborate or take judicial leadership are missed. In reality, it is common knowledge throughout the courthouse that the judges do not like each other at all. All business appears to be at arms-length,”* comments one court observer after interviewing numerous people in the family court system.

In some of the family courts, where the judges employ the parish probation officers and detention center personnel, a conflict may exist where the court is relying on the testimony of its own employees. For example, the probation officer assigned to prepare a pre-disposition investigation for a judge is ultimately making a sentencing recommendation to his or her employer. Some probation officers admit that their recommendations are influenced by their knowledge that the judge will only consider certain dispositional remedies. It is understandable that these officers would want to please their employer. Moreover, with detention, probation and even program staff all under the supervision of the juvenile court, one investigator concludes that children are likely to be subjected *“to more intervention, more scrutiny and more control by the court.”*

Another finding has to do with the impact that physical location and structure has on the tone of the juvenile court. Again, the courtroom itself varies considerably by district. Often cases are heard not in the courtroom but in the judge’s chambers behind the courtroom. In some parishes, this is no more than an office with a small desk. In others, more people sit around a larger conference type table. Juvenile matters are handled outside of the

“I’m really not familiar with the acronyms that probation staff and others throw around and given the relatively small caseload and the rotation system, it’s difficult to develop any expertise, either with particular kids or the system as a whole.”

- District Court Judge

“The design of the juvenile court reflects the problems it faces... [Our courthouse] is geographically isolated on the outskirts of the city and the sessions are closed to the public, making it easier for the public and public officials to ignore the court and the children it serves. Consequently, neither the DA nor the city government put sufficient thought or resources into the court.”

- Family Court
Judge

courtroom for privacy purposes, as many juvenile matters are still officially confidential. On the other hand, this can have the adverse effect of minimizing the significance of juvenile proceedings.

In another family court jurisdiction, the investigator found that *“the physical structure of the juvenile court was an abomination...the building is old, dilapidated and dirty. During the days we visited, this investigator noticed that the ladies room had not once been cleaned, that only one toilet was working and that there was never any paper towels or soap. The waiting area was routinely over-crowded, chaotic and lacked the decorum necessary to make people feel that they were in a place that mattered. Lawyer/client meeting and interview space was non-existent and judges, law clerks and support staff were piled up upon one another in the courtrooms and adjoining areas.”* Clearly, the lack of resources for the juvenile court contributes not only to a state of structural disrepair in some districts but an overall environment that implicitly discounts the people involved and the matters addressed there.

Parents and children alike talk about how stressful it is to be in juvenile court. *“Being in court,”* said a youth charged with damage to a car *“made me feel mad and I cried.”* *“Nervous and scared, ...Like there were butterflies in my stomach, ...Hoping the judge is in a good mood, ...Like a dog, ...Head hurtin’, everything hurtin’,”* are some of the ways other children describe how it feels being in court. Other children talk about how they try to cover their fear, *“I be stunting up there but really I’m scared.”* Parents also describe being afraid in court. *“My fear came from not knowing what would happen,”* says one mother. Often, parents have to wait for hours in packed waiting rooms, without anyone talking to them, before their child’s case is called; *“it’s like nobody cares about what’s happening,”* states one distraught parent.

G. ADDITIONAL SYSTEMIC BARRIERS TO EFFECTIVE ADVOCACY

In addition to many of the findings already discussed regarding larger systemic barriers to effective counsel for youth, the following issues were identified as concerns during the course of interviews with various juvenile justice individuals throughout the state.

1. Special Needs Youth and Families Without Resources

While there has been an overall decrease in juvenile crime, as well as the total number of incarcerated youth in Louisiana, the kinds of young people entering the juvenile justice system are increasingly troubled and require more effective means of treatment and rehabilitation. People in juvenile

courts across the state talk about many of the children in the delinquency system being “slow” or mentally retarded, but most people do not make the connection for more effective special education services. *“Almost every child I work with has a literacy problem,”* states one public defender.

Substance abuse is identified as another major problem, especially — though certainly not solely — in more rural parishes. Probation officers in one rural parish estimate that as many as 75% of the youth have some kind of substance abuse problem requiring treatment; in another parish the estimate ranges from 65-70%. Children with more serious mental health problems, beyond simple conduct disorders, are also more common in the delinquency system and many people express concern about not only a lack of programming but a general lack of institutional knowledge about how to handle these youth. As a mental health advocate puts it, *“most of these kids are really CINC (children in need of care) cases not delinquency.”*

“Most of these kids are really CINC (children in need of care) cases not delinquency.”

- Mental Health Advocate

Another issue affecting youth in the juvenile justice system is poverty and the lack of opportunities that stem from being poor. One judge talked about the failure of parents to ensure that their children have sufficient support as one consequence of being poor and that many people failed to take this into account when blaming parents for not being there for their child. Poverty not only makes it difficult, if not impossible, to access necessary support. In addition, poverty creates elevated stress in the home environment that leads to all kinds of problems for children. This judge, among others, says that all children should be presumed indigent for purposes of appointed counsel to at least avoid placing a further burden on the families and to ensure children receive effective and equal advocacy regardless of income.

2. Lack of Treatment Alternatives and Early Diversion Efforts

Practically everyone interviewed reported that they had little confidence in the effectiveness of the state secure correctional facilities and that the lack of alternative residential treatment options was a significant problem in the juvenile justice system. People consistently identified three prevalent treatment needs that are especially lacking in the state: sex offender and victimization treatment, mental health treatment, and treatment programs geared for girls. One public defender noted that he had nine youth charged with sex offenses on his current caseload and had no available therapeutic residential programs to offer to the court for sentencing. The failure to provide effective community-based treatment programs for youth with histories of sexual abuse and/or offending is especially troubling given the growing numbers of children in the delinquency system with these kinds of needs.

“Fifty percent of the children I see in juvenile court have a diagnosed mental health problem and another twenty-five percent have undiagnosed mental health issues.”

- Public Defender

“...anxious, stressed and depressed... that’s your child and they can just take him away; it’s horrible.”

- Mother’s comment on being in juvenile court

Similarly, as previously discussed, the system is dealing with an increasing number of youth with serious mental health problems and, again, there are very few programs that provide more than medication and informal counseling. While these programs may be well-intentioned, they often lack the level of trained mental health professionals who can provide therapeutic individual and group counseling as part of a treatment milieu. Several people mentioned that the Office of Community Services (OCS) has more options and services available to the neglected and abused children it serves and that those services ought to be more accessible to delinquent youth as well.

“I never thought my worst nightmare as a judge would be a fourteen year old White girl; it’s the bad attitude and complete lack of respect for authority,” said one rural judge in explaining his exasperation with the total lack of resources. The lack of community-based rehabilitative treatment options for girls has led to an overuse of detention and incarceration for girls charged with *“ungovernable”* behavior. There is only one correctional facility that admits girls, the Jetson Correctional Center for Youth in Baton Rouge, and many girls wind up serving time there for things like running away or being defiant with authority because the court simply has no other options. In addition to the dearth of community-based programs, the fact that there is only one correctional facility means that girls from around the state are sent to Jetson, regardless of how far it may be for their families. Moreover, as at least one assistant district attorney pointed out, short-term correctional programs, *“such as the LITE program²²² are not available to girls and, as a result, girls are sometimes incarcerated for up to a year while their male counterparts participate in these other programs”* and get the benefit of early release possibilities.

In addition to the three most commonly mentioned treatment needs, people interviewed identify several other needed services, including effective drug rehabilitation programs, *“intermediate”* residential programs (group homes that are in the community but provide more structure and accountability for delinquent youth), aftercare programs for youth transitioning from more restrictive to less restrictive settings (i.e. correctional facility or group home to home), program alternatives to detention, such as electronic monitoring coupled with day treatment, and transportation services for youth and their families. In describing why transportation services are so particularly critical in rural areas (often without public transportation), one probation officer points out how it is essentially a set-up to require parents and children to attend counseling as a condition of probation when it is only offered in a town several miles away, knowing that they have no car or any means of getting there.

A couple of juvenile courts do have a wider range of treatment and placement options available for use than other parishes but the overall effectiveness of these programs is not clear. What was articulated by judges, prosecutors, defenders and probation officers in these jurisdictions is a general dislike for the state secure facilities and a strong preference for keeping their youth in the community. As one investigator notes, *“the question that remains is whether these local programs are actually diverting youth who would otherwise be in danger of going to LTI or whether these programs are being filled by other children, thereby widening the net, rather than serving the existing LTI-bound population more appropriately in less restrictive and more benign (and perhaps more effective, but at least not any less effective) programs and placements.”*

Most everyone agrees that less crowded, smaller secure residential programs, closer to home and equipped with well-trained staff committed to rehabilitative care would better serve both the child and the public than the current LTIs.

Children and parents are, for the most part, critical of the secure care facilities and its effectiveness in rehabilitating youth. Juvenile justice personnel across-the-board tend to have the same opinion and say that they prefer not having to send youth to LTI, but given the shortage of treatment options feel compelled, in some cases, to do so. Even where secure confinement appears unavoidable, some people suggest that public defenders and judges should bear in mind that continued incarceration has a limited effect over time and children respond to incentives, such as early release from custody for good behavior, rather than purely punitive approaches.

3. Disparate Treatment of African-American Youth and Institutional Racism

Louisiana does not differ from the rest of the nation in that children of color *“receive different and harsher”* treatment throughout the juvenile justice system.²²³ However, the question of whether or not this is perceived to be a problem by people in Louisiana’s juvenile courts depends, for the most part, on whom you talk to. In one parish, for example, the only person who acknowledges that children of color are worse off in the juvenile justice system is a public defender. The probation officer in this parish, noted investigators, was adamant that race played no role in the criminal justice system and initially minimized the numbers of African-American youth arrested and adjudicated until the judge joined the conversation and was much more candid about the involvement and treatment of African-American children in the system. Overall, while a few people indicate that they do not think African-American children are treated any differently from White youth, the vast majority of people interviewed throughout the state acknowledge that not only is there an over-representation of African-American youth in the delinquency system but that these youth are frequently treated more severely than their White counterparts throughout the system. Attitudes and practices that disproportionately negatively impact

African-American youth inevitably make advocating on behalf of these youth more demanding.

“[T]he police arrest almost every Black kid they see.”

- Public Defender

The difficult reality about disparate treatment of minority youth in the juvenile courts is that it is generally not intentional or malicious but ingrained in a systematic way, making it much more challenging to address. Even before youth of color come into juvenile court they often face disparate treatment by law enforcement, probationary and prosecutorial personnel, whether consciously or not.²²⁴ One group of juvenile court employees, which included a judge, two public defenders and a probation officer from that parish, report that the *“the police are more likely to stop and overcharge minority children.”* In this parish, while the estimated juvenile court population is 80% African-American, they only make up about 60% of the general population. In another rural parish where approximately 90% of the cases involve African-American males, a public defender states, *“the police arrest almost every Black kid they see.”* This defender goes on to describe one case involving a four year-old African-American child who got picked up by the police *“for throwing stones.”* A detention center administrator in a different district states a similar belief, *“White kids are simply not being arrested as often and when they are, they are released to their parents.”* Another person who works in the schools talks about how *“more Black kids get referred [to court] for disciplinary matters such as disrespect than White males,”* and as a result, he says, at times he must do more investigation on referrals involving African-American youth because he knows *“they may be facing special challenges.”*

Once arrested, the decision about whether or not to detain a child is also often infected by race bias. Because, in some districts, there are no written criteria governing the detention or release decision, there is much room for discretion. One detention center administrator stated that *“the few White kids who do make it to detention have someone coming to get them out within two hours.”* His statistics show that in 1999, there were 638 African-American males and only 28 White males, and 685 African-American females compared to 27 White females at the detention center.

African-American youth as a whole appear to be given fewer diversion opportunities than White youth, which is part of the reason for the high numbers of detained youth. Judges in one family court district indicate that *“White children get preferential treatment from the police and probation,”* but neither suggest conscious racism. They articulate their concern with the diversion process as being a crucial point of discretion *“where White children are more likely to be diverted out of the system.”* The probation officers and prosecutors have sole authority in deciding which children will be diverted and which will be petitioned. Some public defenders feel that

prosecutors frequently over-charge minority youth, making it more difficult to secure the same kind of pleas for them as for White youth committing similar offenses. Several people point out that because this prosecutorial discretion exists without any guidelines for who gets screened out or what kind of informal adjustments (diversion) are arranged, there is no way to ensure that the process treats all youth fairly or provides similar opportunities. National studies confirm that African-American youth are more likely than White youth to be formally charged in juvenile court, even when referred for the same offense.²²⁶ This disparity is most pronounced among drug offense cases where three in four (78%) drug offense cases involving African-American youth are formally petitioned compared to about one-half of the cases involving White youth (56%) and youth of other races (55%).²²⁷

The disproportionate numbers of detained African-American youth is particularly disturbing given research that shows detained youth are much more likely to be sentenced to secure confinement than youth released to their home pending adjudication.²²⁸ A public defender notes that part of the reason children of color “do much worse in court than White children” is because they come from “families with less money and less political clout.” This appeared to be confirmed by various court observations. For example, in one family court, after observing a case involving several African-American females who were completely ignored by the judge and reprimanded by the public defender, investigators noted that during the subsequent hearing with a White female defendant, “the judge’s level of involvement was radically different from the previous hearing; the judge knew the child’s father and engaged the child in considerable conversation.”

Louisiana’s experience is consistent with the rest of the country in this regard. Studies show that among youth charged with similar crimes, in every offense category, minority youth are more likely to be placed out-of-home than White youth.²²⁹ A probation officer in another district says White youth are more likely to receive the lowest possible sanction and level of supervision because “White families had more resources and advocate better.” A probation officer in a more urban jurisdiction reports that she has had only two White children on her caseload in her six years on the job. She sees a disparity in sentencing most often when a child has private counsel because these children almost always receives better treatment than those who have to rely on the public defender.

Public defenders are not immune to institutionalized racism, even though they tend to be the most vocal about systemic bias. By failing to challenge unfair or discriminatory practices defenders may be complicit in the

National studies show that African-American youth are more likely than White youth to be detained pretrial, even when charged with the exact same offense. Statistics from virtually every detention center included in this assessment bear out the fact that the largest majority of youth held in detention are African-American.

inequities of the system. In one parish, for example, a public defender states that “*Blacks are more likely than Whites to get held in detention,*” but went on to say “*race issues are prominent but not overt here.*” Even knowing about the significant disparity between the rates of detained and incarcerated African-American youth versus White youth, one juvenile defender supervisor still describes himself as the “*law and order, lock ‘em up type*” of defender and expresses that the juvenile defenders in his court should handle their cases similarly.

Some people, while expressing concern about the disproportionate numbers of African-American youth in the juvenile justice system, believe that this disparity is a result of more African-American youth engaging in risk-taking behaviors involving violence and drug use than White youth. Contrary to popular opinion, however, national studies do not support this conclusion. For example, a recent study by the Centers for Disease Control and Prevention (CDC) that measured youth risk behavior found that while African-American males were slightly more likely to have engaged in a physical fight on school property than White males (19.0% versus 17.2%), White males were more than twice as likely (11.0%) than African-American males (5.3%) to carry a weapon on school property.²³⁰ White males are also almost twice as likely as African-American males (18.7% versus 10.6%) to drive after drinking alcohol.²³¹

According to the National Institute of Health, drug use is also more prevalent among White youth than African-American youth.²³² For example, among twelfth graders, White youth were roughly seven times more likely to have used cocaine (10.3% versus 1.5%) than African-American youth, eight times as likely to have used crack (4.7% versus .6%) than African-American youth, seven times more likely to have used heroin (2.1% versus .3%) than African-American youth, ten times more likely to have used LSD (14.2% versus 1.4%) than African-American youth, and sixteen times more likely to have used Ecstasy (8% versus .5%) than African-American youth.²³³ Marijuana is the only drug in which there was very little reported difference among use between African-American and White youth.

“The schools should be working to help troubled children instead of flooding courts with these kids.”

- Juvenile Court Judge

4. Zero Tolerance School Policies

“*Louisiana’s educational system,*” states one person, “*seems to be a factory for creating chronically court involved children and adults.*” Several people expressed that part of the reason African-American youth are disproportionately represented in court is because of the poor state of the public school system. Separate from the challenges of simply providing a

quality education, schools in many districts are adopting “zero tolerance” policies and increasingly looking to court intervention in matters involving student behavior that historically was handled by the school. “Zero tolerance” means that a school will automatically and severely punish a student for a variety of misbehaviors.²³⁴ Most everyone interviewed express serious concern about this trend and the impact of inappropriate school cases on the juvenile courts and public defenders. This concern is consistent with a recently adopted ABA resolution opposing zero tolerance policies.²³⁵ With the induction of progressively more punitive zero tolerance policies, students are being kicked out of school, prosecuted, and, in many cases, refused readmission following a period of incarceration. The problem with the schools, describes one probation officer, is that “*the educators lose interest in teaching children involved with the delinquency system, and schools look for reasons to expel them.*” Probation officers in a different district also state that the “*zero tolerance policy instituted in the school system following the Columbine shootings is just not working.*” A private attorney in another jurisdiction concurs, “*the new zero tolerance policy in the schools has led to an overrun of detained kids*” and, he says, has resulted in at least one child, who was being detained for school misbehavior, being beaten up in the detention facility. Schools just want to “*haul kids into court...[they’re] taking a real hands-off approach to simple matters like kids fighting,*” said one city judge.

“We get too many referrals from schools for playground fights. Zero Tolerance isn’t working, it’s clogging the system.”

- Juvenile Court Judge

Despite these concerns, juvenile courts routinely handle cases concerning school behavior. A public defender in one parish estimates that approximately 25% of his caseload was from school referrals; the prosecutor in another parish estimates that as many as 30% of the cases come from schools. Several of the court cases observed by investigators involved school incidents and because so many children are pressured, or at least encouraged, to waive counsel and plea, they soon become part of the juvenile system and acquire delinquency records which can then be used against them in the future without any advocacy by a defender. One judge estimates almost 60% of the youth in the system have special education needs that are not being met by the schools. An investigator gives one telling example of this with a battery case where the child waived counsel. “*The discussion generated between the judge and the parties (the youth respondent and another child complaining witness) revealed at least a viable defense of self-defense by the respondent, who was the real victim of school bullies who were tossing his glasses around and refusing to give them back. The respondent indicated a desire to ‘get this over with.’ The judge forced the respondent and the complainant to shake hands and then accepted the respondent’s plea to simple battery.*”

5. Misguided Priorities and A Failure of Cooperation Among State Agencies

People throughout the juvenile justice system, though public defenders in particular, feel that there is a great waste of resources in the system, starting with the misdirection of state funds to both incarcerate children and to encourage a duplication of services. Rather, *“we should be looking for ways to frontload the system”* to keep children from becoming further entrenched in the juvenile system, states one defender. The over-reliance on incarceration arises in part from a failure of state agencies to work together to confront problems of youth in the delinquency system. Some agencies, most notably the Office of Community Services, are perceived by the prosecutors, defenders and probation officers in many districts as having greater resources than the juvenile delinquency system and not wanting to make them accessible to youth who commit crimes. In one case, for example, in which the district attorney and the public defender agreed to place a child in OCS custody instead of DPSC in an effort to get a better placement, the investigator observed that they were both met with considerable hostility from OCS personnel.

Many people in the juvenile justice system lament the fact that collaborative working relationships among state agencies are practically non-existent.

Even where there is some collaboration, such as within the FINS (Families in Need of Services) system, public defenders have little or no role in actively assisting children. For example, in one district, where a school liaison says that FINS *“is the most exciting [program] because it offers a real opportunity to work with the families and keep the child from coming before the court,”* everyone — the district attorney, the school, social service agencies, OCS and the DPSC — is at the table except the public defender. Whether it is because of lack of time or desire on the part of the defender or because of a barrier to access by the other involved players, defenders are not active advocates for these children, many of whom eventually fall into the delinquency system. The FINS (and CINC) failures feeding into the delinquency system is another problem that several people believe requires a greater investment of resources early on in order to try to put an end to this continuing destructive cycle.

CHAPTER FIVE

PROMISING PRACTICES AND INTERVENTIONS

There are several universal elements of good practice that exist among model juvenile defender programs. These include things like internal structures and policies that ensure defenders have the time, ability and access to resources to provide good representation, individualized justice and a shared respect for the role of juvenile defenders. The ABA's national assessment of access to counsel and quality of representation in delinquency proceedings identified at least six systemic characteristics of high quality defender programs:²³⁶

- Limited caseloads;
- Support for entering the case early, and the flexibility to represent the client in related collateral matters (such as special education);
- Comprehensive initial and ongoing training and available resource materials;
- Adequate non-lawyer support and resources;
- Hands-on supervision of attorneys; and,
- A work environment that values and nurtures juvenile court practice.

During the course of the Louisiana assessment, investigators found promising and innovative practices that incorporated some pieces of these characteristics, as well as encouraging signs for potential change within the juvenile justice system in several parishes across the state. These are described below with the thought that they may provide some guidance to other Louisiana court districts that are seeking to improve their systems.

A. NOT PERMITTING WAIVER OF COUNSEL

Most of the family and juvenile courts do not permit waiver of counsel as a matter of course and, at a minimum, require that a juvenile defender consult with the youth prior to accepting any waiver. Judges in these courts also regularly advise youth of their right to counsel and many make a concerted effort, on the record, to ascertain whether a child actually understands the consequences to waiving counsel. This practice is not limited to family courts; several district court judges report that this is their personal practice as well due to concerns they have with children not being represented. In doing so, these courts avoid many of the problems discussed earlier that accompany waiver, particularly uncounseled waiver.

B. FULL TIME COUNSEL

Despite the findings that demonstrate the negative consequences of extremely high caseloads and the conflicts that arise with a part-time practice, Louisiana's Indigent Defense Boards on the whole do not require that juvenile defenders (or any public defenders for that matter) be full-time. Nevertheless, one of the parishes included in this assessment, Baton Rouge, does require juvenile defenders to make their juvenile practice full-time in order to more effectively serve the needs of their juvenile clients. While challenges still exist, this parish has an especially active juvenile defense division and the defenders express a high level of commitment to the practice. In addition to other benefits, this also is the only parish in the assessment where most of the detained youth not only report contact with their lawyer in detention but demonstrate some understanding of the legal process and their legal rights.

"Our philosophy and the practice of our division is to place experienced lawyers in juvenile court; [this kind of representation] is not for a new attorney because we do not want a prosecutor who has his or her ego highly invested in the work and who would see it as competition. I value the long term results obtained... [we] count success by how many youth are successfully reintegrated into the community as productive citizens versus how many convictions are obtained or how many youth are placed into state's custody."

- Prosecutor

C. COURT DIVERSION PROGRAMS AND FAIR PROSECUTION

The philosophy and tone of the district attorney's office has a considerable impact on the way youth are generally treated and how juvenile matters are conducted in the district. Although one judge's assessment of their district attorney's position ("*Justice to a prosecutor simply means a conviction*") is fairly common, not all prosecutors approach juvenile practice in this way. Though they appear to be the exception, there are district attorneys who are much more concerned with long-term success rather than a short-term victory and, as a result, accomplish their duty to serving the public with fair prosecution. In one district, for example, the assistant district attorney defines success as "*identifying those kids that have just made mistakes and can get back on track and distinguishing them from kids that are serious, repeat offenders. The goal is to get the kid's attention and give him an opportunity for a second chance.*"

In these parishes, investigators observed that the children were often treated with a less punitive approach in court. For example, in one case, the investigator observed an unrepresented child enter a guilty plea and the district attorney suggested to the court that rather than find him guilty they enter a differed dispositional agreement (DDA allows the child to have the charges dismissed if he successfully completes six months of probation). While the judge failed to properly advise the child of the consequences of a plea, he did in the end accept the prosecutor's suggestion and enter a DDA. This example, however, also illustrates the potential danger of this kind of situation where courts may be more comfortable with waiver of counsel because the sanctions against the child at least initially do not appear particularly severe.

Court diversion, through the use of informal adjustment agreements (IAA), is also much more common in the districts with prosecutors who define success more broadly than getting a conviction; everyone interviewed in these areas believes that the informal diversionary approaches are especially effective with youth, particularly youth charged with their first offense or a minor offense.

A prosecutor describes how the process usually works in his district. For certain minor offenses, probation does the “*counsel, warn and release*” on its own. There is no petition, nor any involvement by the district attorney at this point; this is based upon an informal understanding between the district attorney and the probation department authorizing this conduct. The probation officer may also enter into an IAA with a child and notify the district attorney. If there is a second arrest, the probation officer provides a memo about the arrest and the child’s progress on probation to the district attorney. The prosecutor can then choose whether to place the child on an existing IAA or file a petition. The prosecutor in this district prefers using IAAs where possible because it gives youth an opportunity to avoid getting completely involved in the system while still holding them accountable for their misbehavior. The question that remains is whether prosecutors are open to IAAs requested by defense counsel. Orleans appears to be the only district in the assessment where as a matter of general practice the District Attorney’s office does not allow the use of IAAs.

Some districts estimate that the vast majority of cases initially entering the system never reach juvenile court and are successfully handled through court diversion programs.

D. DRUG COURTS AS ALTERNATIVES TO ADJUDICATION

Recognizing the common relationship between delinquency and substance abuse, a growing number of courts are using “*drug courts*” as an alternative to traditional criminal courts for juveniles. Of the eight parishes included in the assessment, half of them have either been using or recently have begun a drug court program. St. Mary parish, under the direction of Judge William Hunter, was the first district that decided to take the adult drug court model and modify it for juveniles. People involved in the juvenile justice system in that area speak highly of the drug court program and the positive impact it has on children and their families, as well as court personnel. Working closely with drug treatment services in the community, these courts utilize a more informal but closely-monitored, child-specific approach for each case. The child’s participation is voluntary and, in most districts, if the child successfully completes the program, the charges may be dismissed at the judge’s discretion.

There are a few hurdles still facing these drug court programs. Resources, or the lack thereof, is one issue. Because the drug court generally involves rather intensive intervention, it can only be used in a restricted number of

cases. As a result, most programs currently do not accept youth charged with serious offenses, even where substance abuse was a major contributing factor. In addition, despite the collaborative nature of the drug courts, juvenile defenders in many districts play little, if any, role in the process. As a result, in cases where the youth may not be successful in drug court, their own lawyer is the only person unaware of the youth's level of participation in the program, making it difficult for him or her to effectively advocate on the youth's behalf in subsequent proceedings.

Finally, drug court can only be as effective as the drug treatment intervention offered. In some areas, access to quality treatment programs for youth is limited. Without more effective therapeutic interventions, success for the drug courts will be elusive. Nevertheless, the model is promising and offers a viable option to courts besieged by large juvenile dockets and families overwhelmed by their child's addictions.

E. MENTAL HEALTH ADVOCACY SERVICES

Louisiana's Children's Code expressly provides for the appointment of a mental health advocate in several situations, including cases "*when the question of the child's mental capacity to proceed is raised*"²³⁷ or where a child has been adjudicated delinquent and the court finds "*based on psychological or psychiatric evaluation, that the child has a mental disorder, other than mental retardation, which has a substantial adverse effect on his ability to function and requires care and treatment in an institution.*"²³⁸ Mental health advocates, employed by the Mental Health Advocacy Service, are lawyers with special knowledge in mental disorders and treatment options. Although the number of these attorneys is extremely limited, their experience and expertise is often invaluable in cases involving youths with a serious mental disorder.

The mental health advocate is trained to work on all juvenile-related cases (CINC, FINS and delinquency) and, in some districts, works closely in collaboration with the public defender when appointed to a case. The role of the mental health advocate is to ensure that the child's interests are protected when a mental commitment is under consideration. While they will represent the youth in all proceedings relating to a mental health commitment, they can also provide a wealth of information to defenders about experts for psychological or psychiatric evaluations as well as treatment options. They also play a critical role in the "*interagency service coordination*" (ISC) process. The ISC is another innovative intervention, which may be ordered by a court, that attempts to address a child's core problems in the community through a collaborative partnership among state agencies, including DHH, DSS (OCS), OYD, schools, mental health experts and any other providers. The mental health advocate brings a strong and

informed voice to the ISC table on the child's behalf. In some parishes, such as Orleans and Jefferson, the mental health advocate has a very active role but in many parishes, courts and defenders are not even aware of their existence. Finding opportunities to effectively utilize these advocates in the juvenile justice system is another area where courts may benefit from other districts' experiences.

F. THE AFTERCARE/INTENSIVE PAROLE OFFICER

The DPSC Office of Youth Development, realizing the importance of after-care transition services for youth,²³⁹ has created parole positions within each of its regional offices that are geared toward providing intensive services to particular paroled youth. These officers, referred to as aftercare or intensive parole officers, have a reduced caseload in order to meet more frequently with their young parolees and to provide more assistance in helping them pursue their academic, vocational and employment goals. In order to qualify for this kind of parole officer, a youth must be at least sixteen years old and have obtained a GED.

The purpose of the program is to provide more support to those youth returning to the community in order to prevent their falling back into a delinquent lifestyle. Even for those young people who have demonstrated a real desire to succeed, the transition home can be challenging at best, particularly given all the lost opportunities described earlier. The most effective intensive parole officers recognize the obstacles a child faces after being locked up for a period of time and strive to build an authentic rapport with the youth in order to help him overcome those obstacles and succeed. While investigators did speak with some probation officers in this program, they were not able to secure any data on the impact of this position. This program may benefit from further study in order to assess its effectiveness and possibly expand its reach in more districts.

CHAPTER SIX

RECOMMENDATIONS AND IMPLEMENTATION STRATEGIES

A. RECOMMENDATIONS

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

- 1. Increase the resources available to support representation of juveniles in delinquency proceedings.**
 - local jurisdictions should ensure that sufficient resources are available to increase the number of attorneys representing juveniles in delinquency proceedings and increase the availability of non-lawyers with special expertise to assist in representation;
 - agencies responsible for funding defender programs should ensure that a fair and equitable share of available resources is allocated to juvenile representation; and,
 - courts and others responsible for the allocation of defender funding should ensure that strategic decisions in juvenile court are made on the basis of sound legal practice rather than funding incentives.

- 2. Improve the quality of representation of juveniles in delinquency proceedings in order to ensure effective assistance of counsel.**
 - attorneys representing youth in delinquency proceedings should receive comprehensive training;
 - caseloads should be low enough to permit every attorney to provide quality representation in delinquency proceedings;
 - courts, bar associations and agencies with authority to certify or appoint counsel should adopt minimum standards for representation in juvenile court and discontinue the practice of permitting waiver of counsel by youth;
 - continuity of representation should be encouraged where feasible and appropriate, particularly in order to assist youth in modification of dispositions;

- attorneys should have effective access to independent, qualified investigators, experts and other support;
 - the legal profession should professionalize the status of juvenile defense attorneys; and,
 - the legal community should encourage a culture of juvenile defense that values zealous advocacy and due process.
- 3. Establish independent oversight and monitoring of the juvenile indigent defense system to ensure greater accountability.**
- jurisdictions should regularly collect data on the representation of juveniles in delinquency proceedings, including information concerning disproportionate minority confinement;
 - conduct local attorney workload assessments in order to determine the appropriate caseload and staffing needs for each jurisdiction;
 - review attorney compensation structures for each jurisdiction and explore alternative funding sources; and,
 - encourage meaningful systemic collaboration among state youth-serving agencies in the development of a comprehensive juvenile justice policy.
- 4. Increase the number and quality of community-based treatment alternatives that both hold youth accountable and provide effective rehabilitation.**
- courts and custodial agencies should explore supervision and rehabilitative programs as alternatives to detention and correctional incarceration for appropriate youth;
 - resources should be re-allocated to support more effective, community-based programming, particularly in the areas of youth with special mental health needs, substance abuse addictions, sexual victimization and perpetration, services for girls; and,
 - work with schools to re-examine “zero tolerance” policies that may inappropriately divert youth with special education needs to the delinquency system.

5. Explore innovative advocacy practices and support pilot projects that incorporate some of the most effective elements of these practices.

- investigate some of the nationally recognized juvenile defender programs to serve as potential models for Louisiana;
- identify the key characteristics that make these programs successful and assess whether those can be effectively replicated in Louisiana; and,
- share information regarding the overall findings of this research with members of the defense community, as well as other stakeholders in the juvenile justice system.

B. IMPLEMENTATION STRATEGIES

Activities by various stakeholders to implement these recommendations might include the following:

1. State Legislators Should...

- ensure that all relevant youth-serving state agencies cooperate in development and implementation of a comprehensive and effective juvenile justice policy for Louisiana;
- convene a commission to conduct hearings focusing on children's access to quality legal representation and systematic improvements in the delivery of defense services;
- regularly gather information from judges, attorneys, agencies and parents on issues relating to the representation of youth;
- ensure that adequate funding is available for the quality representation of children, including funds for training, support services, manageable caseloads and adequate compensation;
- explore the adoption of a uniform juvenile court system across the state; and,
- ensure that adequate funding is available to maintain juvenile courts systems and treatment programs serving youth in the juvenile justice system.

2. State and Local Bar Associations Should...

- establish a juvenile rights committee that assesses juvenile defender services;

- work with courts, the LIDAB and other agencies to develop and adopt minimum standards of representation for youth in delinquency proceedings;
- work with state legislators to advocate for increased defense resources, at least on par with prosecutorial resources, and improved juvenile defender services;
- conduct ongoing training for juvenile law practitioners that incorporates the ABA/IJA standards of practice; and,
- support and create activities that elevate the status of juvenile court practice throughout the state.

3. Juvenile Courts Should...

- safeguard principles of due process in juvenile court proceedings;
- ensure that no youth goes unrepresented at any critical stage of the process — including continued custody hearings, and prohibit the routine waiver of counsel;
- adopt a policy of presumption of indigence of all youth for purposes of the appointment of counsel;
- encourage the development and use of alternatives to detention and correctional placements for youth who meet appropriate Children's Code guidelines;
- encourage juvenile defenders to undergo comprehensive training and support their adequate compensation;
- ensure that probation officers are fulfilling their proper roles;
- encourage the ongoing professional development in areas of juvenile law among peers;
- conduct periodic on-site reviews of all facilities to which children in that jurisdiction are committed;
- consider the use of a full-time detention judge in jurisdictions where such hearings occur on a regular basis; and,
- routinely collect data regarding representation of juveniles to identify systemic weaknesses and provide a baseline for improvement.

4. Louisiana Indigent Defense Assistance Board and District Indigent Defense Boards Should...

- ensure that juvenile defenders have manageable caseloads and, where feasible, make juvenile defender positions full-time;
- provide juvenile defenders with the resources and support services necessary to provide effective representation, including clerical support, investigative support, social worker and other mental health expertise, and basic administrative services;
- investigate some of the nationally recognized juvenile defender programs and assess whether some of the key elements can be effectively replicated in Louisiana;
- work with courts, state bar association and other appropriate agencies to develop and adopt minimum standards of representation for youth in delinquency proceedings;
- ensure that all juvenile defenders receive regular, ongoing and comprehensive training, supervision and mentoring that incorporate the ABA/IJA Juvenile Justice Standards of practice;
- actively inform the Legislature about the state of indigent defense for youth and advocate for increased resources and support;
- collaborate with judges and district attorneys to ensure youth are represented at continued custody hearings and are not routinely permitted to waive counsel;
- encourage juvenile defenders to privately consult with clients prior to court hearings, in detention centers if possible, and throughout the juvenile court process; and,
- encourage and support attorneys to specialize in juvenile defender work and eliminate office policies that serve as disincentives to remaining in juvenile defense practice.

5. District Attorney Offices Should...

- support parity between juvenile assistant district attorneys and juvenile defenders, particularly in terms of comparable compensation, benefits, administrative and investigative support and professional development opportunities;
- encourage informal diversionary approaches, such as the Informal Adjustment Agreements and Deferred Dispositional Agreements, where appropriate;

- collaborate with judges and juvenile defenders to ensure youth are represented at continued custody hearings and are not routinely permitted to waive counsel;
- provide training and support, particularly regarding differences in juvenile and adult practice, to juvenile prosecutors; and,
- encourage and support attorneys to specialize in juvenile work and eliminate office policies that serve as disincentives to remaining in juvenile practice.

6. Office of Youth Development Should...

- adopt a comprehensive juvenile justice policy based on OJJDP research that encourages the development of community-based alternatives to incarceration for youth for contract services, (in particular for youth with special mental health needs, substance abuse addictions, sexual victimization and perpetration issues and for girls);
- develop and adopt standards and training to ensure probation officers work with youth and their families and serve as a neutral party providing information to the court;
- increase aftercare and intensive supervision services to assist youth in successfully transitioning back into their communities;
- encourage collaboration among probation officers and other officers of the court, including defense attorneys, in order to ensure a child's and the public's best interest are being served;
- continue to collect and make available to the public demographic and social data regarding juveniles under OYD supervision; and,
- coordinate with law schools and other academic disciplines to encourage an interest in juvenile justice issues and identify opportunities for internships or other volunteer opportunities.

7. Law Schools Should...

- encourage interest in juvenile justice issues through academic course offerings, clinical programs and extracurricular activities;

- coordinate with other academic disciplines (i.e. social work, education, psychology) and youth-serving agencies to develop internships and volunteer work with youth in detention centers, correctional facilities or under other forms of juvenile court supervision;
- work with courts, state bar association, the LIDAB and other agencies to develop minimum standards of representation for youth in delinquency proceedings; and,
- sponsor and coordinate continuing education and training programs with bar associations, the LIDAB, juvenile courts and juvenile defense advocacy groups to ensure that juvenile defenders receive comprehensive training.

8. Concerned Citizens and Parents Should...

- become familiar with organizations or individuals representing children in their community and resources available to learn more about legal rights for youth;
- enhance the capacity of parents and other concerned people to become advocates for children by inviting experts in juvenile law to present at schools, meetings and social events;
- request permission to attend juvenile court delinquency proceedings and to visit juvenile detention centers, correctional facilities and community-based programs;
- volunteer with youth-serving agencies to provide more community-based support and resources for troubled youth; and,
- inform legislators and other policy-makers of any concerns regarding the juvenile justice system and the need for improved juvenile defender services.

ENDNOTES

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- ² The DPSC, for example, does not consider recidivism data in awarding contracts to the "treatment" programs it contracts with; in fact, it does not even require these programs to track recidivism, or any other kind of outcome-based data (i.e. academic achievement, skills-development, etc.) to measure effectiveness.
- ³ For example, statistics provided for youth in detention interviewed as part of this assessment showed that the total number of days in detention ranged anywhere from two days to over twenty-two months and the average time in detention at the time of the report was approximately 42 days (as discussed in Chapter 4, "Youth in Detention").
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- ¹¹ Report to the Louisiana Legislature, SCR 60 Task Force on Correctional Education Needs in the State, 1995 Louisiana Legislative Session, p.6.
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- ¹⁴ Metropolitan Crime Commission, *Juvenile Recidivism in Metropolitan New Orleans*, (April 1999), p.16.
- ¹⁵ La. R.S. 15:906(A)(2) (West 2000).
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- 127 There was no corresponding arrest data to compare the race of arrested youth to that of detained youth.

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- 180 *State v. Everfield*, 342 So.2d 648 (La. 1977).
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- 198 *IJA/ABA Juvenile Justice Standards Annotated, Standards Relating to Counsel for Private Parties*, Standard 10.3(b) (1996). See also, U.S. Dept. of Justice, Compendium of Standards for Indigent Defense Systems, "Vol. V, Standards for Juvenile Justice Defense," citing ABA Std in section M-3 (December 2000).
- 199 For example, from November 1999 to October 2000, approximately 7 delinquency appeals were taken in Louisiana. While this number does not include supervisory writs or unpublished appeals, it is still a very low rate of appeals overall.
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- 209 *In re Gault*, 387 U.S. 1, 28 (1967).
- 210 La. Const. Art.1 § 13 (1974).
- 211 Created by 1974 La. Acts No. 401, sec.2; 1974 La. Acts No. 238, sec.1. See also La. R.S. 15:144 (West 2000).
- 212 Proposed in Senate Bill 1369 and created by 1997 La. Acts 1361. See also La. R.S. 15:151 et seq. (West 2000).
- 213 La. R.S. 15:146 (West 2000).
- 214 Names have been changed to maintain the confidentiality of youth interviewed.

- 215 La. Ch.C. art. 809 (West 2000).
- 216 These numbers are based solely on estimates by defenders and IDB staff; comprehensive caseload statistics were not provided.
- 217 Names have been changed to maintain the confidentiality of youth interviewed.
- 218 According to DPSC Regulations, eligibility for early release is based in part on a youth's custody level; youth achieving a "minimum" custody level for six consecutive months may be eligible for early release.
- 219 Names have been changed to maintain the confidentiality of youth interviewed.
- 220 La. R.S. 15:906(A)(2) (West 2000).
- 221 La. Ch.C. art.896(D) (West 2000).
- 222 LITE stands for "Louisiana Intensive Training Education", a boot-camp type of program in the LTI.
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- 225 U.S. Dept. of Justice, "Juvenile Justice Bulletin: Minorities in the Juvenile Justice System," Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, (December 1999), p. 9; Poe-Yamagata, E. and Jones, M.A. Building Blocks for Youth, *And Justice For Some: Differential Treatment of Minority Youth in the Justice System*, (April 2000), p. 9.
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- 228 ABA Juvenile Justice Center, *A Call For Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, (December 1995), p. 32, citing figures in U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, Jeffrey A. Butts, "Offenders in Juvenile Court 1992," (October 1994).
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- 230 U.S. Dept. of Health & Human Services, Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report: Youth Risk Behavior Surveillance - United States, 1999, Vol. 49 No. SS-5, (June 9, 2000), Table 10 p. 46.
- 231 U.S. Dept. of Health & Human Services, Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report: Youth Risk Behavior Surveillance - United States, 1999, Vol. 49 No. SS-5, (June 9, 2000), Table 4 p. 38.
- 232 U.S. Dept. on Health & Human Services, National Institutes on Health, National Institute on Drug Abuse, Lloyd Johnston, Patrick O'Malley, and Jerald G. Bachman (The University of Michigan Institute for Social Research), *Monitoring the Future: National Survey Results on Drug Use, 1975-1999. Volume I: Secondary School Students*, (2000), 76, Table 4-9 p. 101.
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- 234 AMERICAN BAR ASSOCIATION, CRIMINAL JUSTICE SECTION, SECTION OF FAMILY LAW, STEERING COMMITTEE ON THE UNMET LEGAL NEEDS OF CHILDREN, COMMISSION ON MENTAL AND PHYSICAL DISABILITY, YOUNG LAWYERS DIVISION, REPORT TO HOUSE OF DELEGATES, "Zero Tolerance Report," (February 2000).

- 235 The Resolution reads in full: “RESOLVED, that the American Bar Association supports the following principles concerning school discipline: 1) schools should have strong policies against gun possession and be safe places for students to learn and develop; 2) in cases involving alleged student misbehavior, school officials should exercise sound discretion that is consistent with principles of due process and considers the individual student and the particular circumstances of misconduct; and 3) alternatives to expulsion or referral for prosecution should be developed that will improve student behavior and school climate without making schools dangerous; and FURTHER RESOLVED, that the ABA opposes, in principle, “zero tolerance” policies that have a discriminatory effect, or mandate either expulsion or referral of students to juvenile or criminal court, without regard to the circumstances or nature of the offense or the student’s history.” American Bar Association, Criminal Justice Section, Section Of Family Law, Steering Committee On The Unmet Legal Needs Of Children, Commission On Mental And Physical Disability, Young Lawyers Division, Report To House Of Delegates, (February 2000).
- 236 ABA Juvenile Justice Center, *A Call for Justice*, (December 1995), p. 59.
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- 239 See e.g., Shuler, M., “Officials, Allies Seek Prison-Time Options,” *The Advocate*, Feb. 16, 2000, 9A; Minton, J. and Dunn, M. “Paying the Price,” *The Advocate*, March 12, 2000.
- 240 For more information about these and other programs, contact the ABA Juvenile Justice Center at 202/662-1506.

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