

# Kentucky

## Advancing Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings

The American Bar Association  
Juvenile Justice Center  
National Juvenile Defender Center

and the

Children's Law Center, Inc.  
Central Juvenile Defender Center

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## INTRODUCTION

This reassessment of access to counsel and quality of representation in Kentucky delinquency proceedings is part of a local and national movement to continually review indigent defense delivery systems and evaluate how effectively attorneys in juvenile court are fulfilling constitutional and statutory obligations to their clients. This study is designed to provide broad information about the role of defense counsel, identify structural or systemic barriers to more effective representation, identify and highlight promising practices within the system, and make viable recommendations for ways in which to improve the delivery of defender services for youth in the justice system.

### A. Due Process and Delinquency Proceedings

The bedrock elements of due process were recognized as essential to delinquency proceedings by the United States Supreme Court in a series of cases.<sup>1</sup> Through the most sweeping of these cases, *Beyond In re Gault*, the Court focused attention on the treatment of youth in the juvenile justice system, spurring the states in varying degrees to begin addressing the concerns noted in the Court's decision. Evincing concerns over safeguarding the rights of children, Congress enacted the Juvenile Justice and Delinquency Prevention Act in 1974. This Act created the National Advisory Committee for Juvenile Justice and Delinquency Prevention. The National Advisory Committee was charged with developing national juvenile justice standards and guidelines. Published in 1974, these standards require that children be represented by counsel in all proceedings arising from a delinquency action from the earliest stage of the process.<sup>2</sup>

Beginning in 1971, and ensuing over a ten-year period, the Institute for Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards promulgated twenty-three volumes of comprehensive juvenile justice standards.<sup>3</sup> The structure of the project was as intricate as the volumes of standards it produced: the Joint Commission consisted of twenty-nine members and four drafting committees and supervised the work of thirty scholars who were assigned as reporters to draft individual volumes. The draft standards were circulated widely to individuals and organizations throughout the country for comments and suggestions before final revision and submission to the ABA House of Delegates. Adopted in full by 1981, these standards were designed to establish the best possible juvenile justice system for our society, not to fluctuate in response to transitory headlines or controversies.

Upon reauthorizing the Act in 1992, Congress re-emphasized the importance of lawyers in juvenile delinquency proceedings, specifically noting the inadequacies of prosecutorial and public defender offices to provide individualized justice. Also embedded in the reauthorization were the seeds of a nationwide assessment strategy.

In the fall of 1993, the American Bar Association Juvenile Justice Center, in partnership with the Youth Law Center and Juvenile Law Center, received funding from the federal Office of Juvenile Justice and Delinquency Prevention to initiate the Due Process Advocacy Project. The intent of the project was to build the capacity and effectiveness of juvenile defenders through increasing access to lawyers for young people in delinquency proceedings and enhancing the quality of representation those lawyers provide. In 1995, as part of the Due Process Advocacy Project, the collaboration produced *A Call For Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*.<sup>4</sup> This was the first national assessment of its kind examining

the state of representation of youth in delinquency proceedings and evaluating the training, support, and resource needs of practitioners. Since that time, juvenile defender assessments have been published covering the states of Texas, Louisiana and Georgia, with investigations ongoing and reports being prepared in an additional six states.

## **B. Methodology**

The Department of Public Advocacy requested that its indigent juvenile defense system be re-assessed five years after the release of "*In re Gault: The Status of Juvenile Defense in Kentucky.*" The goal of this study was to ensure excellence in juvenile defense and promote justice for youth in Kentucky's juvenile justice system. Specific objectives identified by the Department of Public Advocacy include:

- To assess the ability of youth in Kentucky to have access to counsel in delinquency and status offender proceedings (trial and post-disposition);
- To assess the quality of indigent representation being provided to youth in Kentucky (trial and post-disposition);
- To evaluate the capacity of the juvenile defense bar to address cultural competencies in its representation of youth;
- To determine significant substantive issues affecting the juvenile defense bar that impact upon resource allocation, funding and other barriers to effective representation (i.e. capital, transfer, sex offenders, etc.);
- To assess the progress made through strategic planning and implementation over the last five years in improving juvenile indigent defense; and,
- To highlight promising practices in Kentucky among the indigent defense bar.

The information in this report was obtained through a number of sources, including surveys with judges and attorneys, interviews with youth and parents, observation of juvenile court proceedings, and interviews with local practitioners and other "key stakeholders" working in the juvenile justice field. A more detailed description of these sources follows.

### **1. Surveys of Judges and Attorneys**

Surveys were sent to each of the 23 full-time offices of the Department of Public Advocacy, as well as the full-time independent offices located in Jefferson, Boyd and Fayette Counties, even though not directly managed by the DPA. Surveys were received back from 18 offices, a 70% return rate. The offices responding represent 56% of the counties in the state.

Surveys were also sent to more than 40 attorneys under contract with the Department of Public Advocacy. These attorneys were either under contract for a certain county because there was no DPA field office for that county or the attorney was a conflict attorney. Despite multiple mailings and follow-up telephone calls, only about seven percent of those attorneys receiving surveys responded. These lawyers represented an additional nine counties. When combined with the full-time offices, however, the results reflect practices in 63 of the counties in Kentucky.



Surveys were mailed to all 125 District Court Judges. Eighteen judges responded, representing only a 14% response rate. These judges, however, represent 16 of the 59 total districts, or 27% of the districts throughout the state.

## **2. Interviews with Incarcerated Youth in Detention and Treatment Facilities**

Surveys were conducted in-person with 164 juveniles by project staff and volunteer attorneys. The juvenile respondents represent 41 counties or about 34% of Kentucky's 120 counties. The interviews with juveniles were conducted at four treatment centers: Northern Kentucky Youth Development Center, Cardinal Treatment Center, Morehead Youth Development Center, and Bluegrass Assessment Center. In addition, juveniles were also interviewed at four juvenile detention centers: Campbell Regional Juvenile Detention Center, Breathitt County Juvenile Detention Center, Jefferson County Youth Center, and McCracken Regional Detention Center.

The average age of the youth was 16 years. About 69% interviewed were Caucasian, 28% were African-American, and roughly two percent were of other racial origins. Of those interviewed, 84% were male, and 16% were female. Offenses against persons were the most commonly noted offense for which juveniles interviewed were incarcerated in one of these facilities, with 49% reporting this. Only 27% were confined for offenses against property. Nearly 75% of those interviewed were public offenders. In addition, 74% reported being in a post-dispositional stage. Thus, the typical juvenile interviewed was a public offender (74%) in a post-dispositional stage.

## **3. Site Visits to Juvenile Courts**

Finally site visits were conducted in seven separate areas of the state: Mason, Breathitt, Campbell, Grant, Fayette, Jefferson, and Taylor Counties. These locations also included a review of practices in Lewis, Fleming and Bracken, Carroll and Owen, Powell and Wolfe, Green, Marion and Washington Counties. Site visits included observation of juvenile court proceedings and interviewing the key stakeholders. A total of 63 interviews were conducted among professionals in these counties, including judges, court designated workers, Department of Juvenile Justice workers, public defender and private defense attorneys, prosecutors, school personnel, detention personnel, Cabinet for Families and Children social workers, and county probation staff. Investigators for this process also interviewed 57 youth and parents, and observed 104 juvenile court hearings.

## **4. Key Stakeholder Surveys**

A final step in the assessment methodology was interviewing key juvenile justice stakeholders across the state which could provide historical perspective about the status of Kentucky's juvenile justice system, the role of the indigent defense system in this system, and emerging challenges for defenders. A total of 20 in-depth interviews were conducted with individuals both inside and outside of the defender system with long term involvement in juvenile justice. This included a mix of judges, defenders, prosecutors, child advocates, juvenile justice and policy experts, and other state agency representatives. For a list of these individuals, see Appendix 1. Information from this process is included throughout the report's findings and recommendations.

Chapter 1 provides a brief overview of Kentucky's juvenile justice system leading up to the initial study of the indigent defense system, some of the changes that were instituted in the 1990's and the events leading up to this reassessment.

Chapter 2 describes the history of Kentucky indigent defense problems as they pertain to juveniles and the release of the Children's Law Center's first report on indigent juvenile defense in 1996. The chapter also describes the systemic changes made by the Department of Public Advocacy after that report, including organizational structure, funding resources, and the shifting of priorities regarding indigent defense resources.

Chapter 3 of this report provides readers with an overview of the juvenile court process in Kentucky, as well as the structure of the court system and the administrative agencies mandated to provide services to juveniles.

Chapters 4, 5 and 6 contain a summary of information obtained through the assessment. The results of survey data from judges and attorneys across the state are combined with the information obtained from site visits to local juvenile courts in various jurisdictions, and are found in Chapter 4. The other two chapters contain specific information and insight from two other groups of interviewees: a group of 20 "key stakeholders," with long term involvement in juvenile justice in Kentucky, and interviews with youth in treatment facilities and detention centers.

During the assessment process, investigators found several promising indigent defense practices and programs worth noting. Some of these are highlighted and found in Chapter 7.

Finally, Chapter 8 details a series of recommendations for the Department of Public Advocacy and other entities to sustain and/or improve upon the quality of indigent juvenile defense.

## EXECUTIVE SUMMARY

The juvenile justice system in Kentucky has endured a substantial history of problems concerning its treatment of juvenile offenders and the lack of systemic advocacy and focused reform efforts. After years of public criticism, media attention, litigation challenging the conditions in Kentucky's juvenile facilities, lack of access to the effective assistance of counsel and to the courts, and failure to provide adequate treatment, Kentucky officials began the long road to institutional change by the second half of the 1990's. The creation of the Department of Juvenile Justice, the commitment of Governor Patton to help fix a broken juvenile justice system, and the Kentucky legislature's move to invest millions of new dollars into these initiatives were the beginning.

In 1996, the Children's Law Center, Inc. released its report entitled "Beyond *In re Gault*: The Status of Juvenile Defense in Kentucky," launching a series of criticisms against the Department of Public Advocacy's (DPA) indigent defense system for juveniles. Among its findings were:

- Caseloads among full-time DPA attorneys handling juvenile cases far exceeded IJA/ABA caseload standards and somewhat or severely hampered the attorneys' ability to represent juveniles effectively.
- Caseloads among contract attorneys for DPA, most of whom were newer attorneys, were even higher, and resulted in even more severe limitations on their ability to effectively provide representation to youth.
- Significant numbers of youth were unrepresented at detention hearings and throughout various stages of juvenile court proceedings.
- Inadequate time was spent meeting with clients, and youth reported in significant numbers that they were rushed through the process and felt forced to enter plea agreements without understanding their options.
- Trial practice and preparation for disposition hearings in juvenile court were weak and showed an overall lack of advocacy efforts.
- Post-dispositional advocacy was nearly non-existent, including appellate practice, writs and other civil actions.
- Representation of youth appeared weakest in areas covered by contract counties, as evidenced by higher caseloads, confusion of the role of the attorney, and higher incidents of waiver of counsel.

The report made numerous recommendations to the Department of Public Advocacy, including measures to reduce caseloads in full-time offices and in contract counties, increasing defender resources, equity in DPA resources to ensure adequate representation for juvenile defendants, the adoption of standards, and ensuring adequate support services and data collection capabilities.

### **A. Responding to the Findings**

The Kentucky Department of Public Advocacy (DPA), in response to criticisms launched in the 1996 report, undertook its own extensive needs assessment regarding its indigent juvenile defense system in order to determine training needs, funding and other neces-

sary resources, and to examine the need for other internal structural changes. Named "The *Gault* Initiative," this initiative included plans not only to increase educational programs for attorneys practicing juvenile law, but also to provide a mechanism for using technology for defenders through a ListServe, mentoring new attorneys, and improving materials and other resources for juvenile defenders. DPA requested and received additional resources to implement these reforms in the 1998 legislative session, including funds for six new trial attorneys in full-time field offices to focus on juvenile representation, two juvenile appellate lawyers, and two Masters level social workers.

In late 1998, the Department also created the "Kentucky Blue Ribbon Group on Improving Indigent Defense in the 21st Century," a 20-member group organized to promote an agenda for public defender reform. Among the Blue Ribbon Group outcomes are the following:

- The 2000 General Assembly passed the Governor's budget with the stated increases for DPA, including \$4 million in FY 2001 and \$6 million in FY 2002 in order to open offices in 21 counties, reduce defender caseloads, expand appellate capacity, and increase salaries for DPA attorneys.
- 2001 starting salaries were raised to \$35,000, increased from \$23,388 for entry level attorneys, while experienced attorneys were raised 8% for 2000 and 9% for 2001. Attorney Manager salaries were increased from a starting point of \$62,985, with the average being \$78,684.
- Staff turnover rates were reduced from 14% in 1999 to 11.8% in 2001.
- Cost-per-capita increased 45%, from \$4.90 in FY 1998 to \$7.14 by FY 2002.
- Caseloads for individual full-time trial lawyers have been reduced by 11.5% since 1999, from an average of 475 to an average of 420.
- Caseloads for Louisville have been reduced from an average of 603 per full-time attorney to 405.

In May of 1996, the Juvenile Post-Disposition Branch was created to provide legal defense services to juvenile offenders incarcerated in residential treatment facilities operated at that time by the Cabinet for Families and Children. This program is part of the implementation of a consent decree on behalf of juveniles in state operated residential treatment programs. Attorneys provide access to the courts regarding the fact of, duration of, or conditions of confinement that may violate the federal statutory or constitutional rights of juveniles in these facilities.

A second significant structural change since 1996 within DPA has been the creation of several new trial offices, replacing the contract system in many parts of the state. In 1996, the Department of Public Advocacy covered 47 counties with a total of 17 field offices. By December of 2001, this number grew to 23 field offices covering 102 counties. Three other full-time offices, located in Boyd, Fayette and Jefferson Counties, are operated by separate non-profit entities, bringing the total number of counties covered by full-time offices to 105. The remaining 15 counties continue to work through a contract arrangement with private attorneys.

## **B. Reassessing Indigent Juvenile Defense**

In the summer of 2001, the Department once again sought to have an assessment of its indigent juvenile defense services in order to determine its progress and consider any

additional steps necessary to enhance services. Specifically, the study's objectives were to:

- Assess the ability of youth in Kentucky to have access to counsel in delinquency and status offender proceedings (trial and post-disposition);
- Assess the quality of indigent representation being provided to youth in Kentucky (trial and post-disposition);
- Evaluate the capacity of the juvenile defense bar to address cultural competencies in its representation of youth, including African-American and Hispanic youth;
- Determine significant substantive issues affecting the juvenile defense bar that impact upon resource allocation, funding and other barriers to effective representation (i.e. capital, transfer, status offenders, female offenders, etc.);
- Assess the progress made through strategic planning and implementation over the last five years in improving juvenile indigent defense; and,
- Highlight promising practices in Kentucky among the indigent juvenile defense bar.

The assessment, completed by the Central Juvenile Defender Center through the Children's Law Center, Inc., was done in partnership with the Juvenile Justice Center of the American Bar Association through its National Juvenile Defender Center, and included the assistance of numerous attorneys, law students and others. In addition to extensive surveying of judges and indigent defense counsel across the state, nearly 170 youth were interviewed in juvenile detention and treatment facilities about their experiences in the juvenile court system, and more specifically, their experiences with attorneys. Site visits were conducted in a number of juvenile courts where investigators observed the performance of attorneys in court, conducted interviews with parents, youth, judges, juvenile justice workers, social workers, attorneys and others, and explored the overall judicial climate and handling of juvenile cases among differing jurisdictions. Finally, since Kentucky's historical background regarding juvenile justice is important in considering its current status, numerous interviews were conducted with "key stakeholders," that is, individuals with long term involvement and perspective on juvenile justice issues throughout the state, and those who were instrumental in reform initiatives over the years.

### **C. Significant Findings**

While the report is comprehensive in its findings and recommendations concerning indigent defense and systemic barriers to effective representation, some of the most significant findings include the following:

- While average caseloads have been reduced for trial attorneys statewide, some counties report juvenile cases far in excess of the IJA/ABA Standards and the NLADA Standards.
- Interviews with youth in facilities indicate that, with few exceptions, most were represented by counsel for the charges leading to their incarceration. Interviews with youth and families in the community during site visits, however, revealed

that waiver of counsel was more prevalent among those non-detained youth. In spite of legislation and case law to the contrary, it is clear that large numbers of youth are still waiving counsel without the appropriate procedural safeguards.

- Insufficient procedures are in place in many if not most parts of the state to provide early access to counsel, including at meetings with Court Designated Workers or for police questioning. Most attorneys still appear to conduct their first client meeting while at the courthouse when the youth and parents are present for hearings, with inadequate time to meet with the client for the first time, as well as inadequate time to speak with parents.
- The most frequent disposition of cases in juvenile courts in Kentucky is by informal adjustment and/or plea agreements. Most defender offices indicated that they try less than a quarter of the cases in juvenile court.
- Motion practice appears to have improved significantly, particularly the use of motions for discovery, motions raising competency issues, motions *in limine* and motions to suppress. It seemed apparent that in many areas of the state this has become an expected and routine practice.
- It appears that limited dispositional advocacy is being done with juvenile clients, other than occasionally raising an objection to the contents of the DOJJ pre-dispositional report. Although some exceptions were found, disposition hearings tended to be “rubber-stamping” recommendations by DOJJ, with little advocacy effort on the part of the attorney with any supplemental evidence.
- Post-disposition advocacy for youth in treatment facilities and other residential settings, as done by the Juvenile Post-Disposition Branch, appears to be highly effective in addressing individual client’s needs as well as systemic change. More post-disposition advocacy services should be available through trial offices, however, particularly when youth are not incarcerated.
- There has been a significant rise in the number of appeals filed on behalf of juveniles, as well as other forms of extraordinary relief such as writs of *habeas corpus*.

#### **D. Barriers to Effective Representation**

The assessment also identified a number of systemic barriers faced by defenders, local courts and others in assuring access to counsel and quality representation for youth in the juvenile justice system. Among these findings are the following:

- Although the overall results of data collected and observations made shows that DPA has taken some significant steps in improving the quality of representation, this is not consistent across the state. The advances in creating full-time offices appears to have significantly improved representation and the availability of counsel, while some of the poorest examples noted were in some areas still using contract attorneys.
- There are significant inconsistencies in the representation of status offenders, both as to appointment of counsel and quality of representation. In some areas, for example, public defenders are not appointed at all, but rather the courts utilize guardians *ad litem*.

- Effective representation is adversely effected in some parts of the state due to crushing caseloads, court docketing, and geographic challenges in multi-county offices.
- While Kentucky's juvenile detention facilities are not generally overcrowded beyond capacity (and indeed are often under capacity), the assessment concluded that detention is over-utilized in some cases for youth who could be effectively served in less restrictive and more effective settings. This was particularly true for status offenders and youth being held in contempt of court.
- The erosion of confidentiality for youth in the juvenile justice system is a significant concern, both in juvenile court proceedings as well as the improper flow of information between courts, juvenile justice workers and schools. It appears that schools have a direct line to judges in some areas without any concern for the due process rights of students and other procedural safeguards afforded through the Kentucky Juvenile Code.
- Defenders are challenged by a system where youth with significant mental health and disability needs are prevalent, yet comprehensive community based mental health, substance abuse and other treatment options are often scarce and "cookie cutter" in their approach.
- Minority youth are over-represented in nearly every aspect of Kentucky's juvenile justice system, from arrest to transfer to incarceration. Defenders in some parts of the state face particular challenges in securing this data, identifying possible disparities, and advocating for policies and practices that may reduce these disparities.
- Likewise, the growing number of Hispanic youth and families in Kentucky present challenges to the defender community that must be effectively addressed through programs of cultural awareness, diversity in defender staff, and access to translators and Spanish-speaking personnel.
- The availability of the death penalty for youth who commit certain offenses in Kentucky continues to have a crushing effect on resources for those attorneys handling such cases, and such penalty continues to exist in spite of legislative attempts to abolish the practice.
- The emergence of "zero tolerance" policies and the criminalization of school-based conduct are widespread in Kentucky courts in spite of the continued decline in problematic school behavior. This is particularly troublesome in that minority children and youth with disabilities tend to suffer the most severe consequences in school disciplinary actions.
- The number of females in the juvenile justice system has increased markedly. This population presents certain unique problems. Advocates are unsure as to whether such growth is due in part to an increase in violent behaviors, or whether it is due to the re-labeling of girls' family conflicts as violent offenses, changes in police practices regarding domestic violence and aggressive behavior, gender bias in the processing of misdemeanor cases, or perhaps a fundamental systemic failure to understand the unique developmental issues facing female offenders.

## **E. Recommendations**

Over the last five years, the Commonwealth of Kentucky has made some significant changes in its indigent defense structure including funding and overall performance over the last five years as it pertains to access and quality of indigent juvenile defense. This assessment makes a number of recommendations, however, to ensure continued improvement, to sustain existing reforms, and to assure that youth in the juvenile justice system are guaranteed their constitutional right to effective assistance of counsel.

### **The Kentucky Department of Public Advocacy and its Local Defender Offices should ensure that:**

- Sufficient resources are consistently made available in local trial offices to provide effective assistance of counsel including appropriate training and the availability of support staff with special expertise to assist in representation;
- Caseloads are reduced in all areas of the Commonwealth where they currently exceed the IJA/ABA Standards, with special consideration given to areas with offices covering multiple counties and urban counties with a high number of felony and/or juvenile transfer cases;
- Consistency in the quality of representation is achieved and maintained;
- Equity in the allocation of resources to juvenile defense is achieved and maintained as compared to adult defense resources;
- Availability of counsel at early stages is consistently provided, including provisions for police questioning and preliminary inquiries with Court Designated Workers. Availability of counsel is provided to 18-year-old youthful offenders returning to sentencing court for release consideration;
- The continued use of contract attorneys to cover juvenile dockets is closely monitored to ensure that the attorneys are providing effective assistance of counsel and receiving adequate training and oversight;
- Its program of strong post-dispositional representation is sustained, and the agency continues to utilize the expertise of the Juvenile Post-Disposition Branch as a resource to trial offices and in effecting state policies concerning juvenile justice;
- Status offenders are provided with access to counsel in all parts of the state and that such counsel, not a guardian *ad litem*, is provided to represent their express wishes;
- Strong disposition advocacy for status, public and youthful offenders becomes a priority within field offices and that adequate resources are available to attorneys to assist in preparation for these hearings;
- Adequate resources are available within trial offices to effectively address cultural and language barriers with Hispanic clients, including availability of Spanish-speaking staff and/or interpreters, and training on legal and cultural issues which may affect representation;



- Defenders play a critical role in shaping local policies and practices with the creation of specialty courts, as well as with school based or mental health initiatives;
- Continued work is done on creating accurate data on caseloads, outcomes and other juvenile justice information essential to planning and evaluating indigent juvenile defense services; and,
- Participation in juvenile and criminal justice initiatives, policy work, and legislative advocacy is achieved without compromise to the Department's essential independent advocacy role for poor children.

**State and local agencies, including defenders, should work collaboratively to address issues in the juvenile justice system facing Kentucky's youth, including:**

- Further examination of disproportionality of minority youth in the juvenile justice system as it relates to arrest, detention, transfer and incarceration, particularly in urban areas of the state, and the development of appropriate strategies and services to reduce disparities;
- Further examination of gender based issues involving female offenders, with appropriate development of strategies and services to this population;
- Development of data regarding school based complaints to juvenile courts to critically examine the need for alternatives to criminalization of youth with emotional, behavioral, and/or other mental health needs;
- Improvement in the availability and quality of services to status offenders, including youth who are truant and/or beyond control to reduce the likelihood of further involvement in the juvenile justice system;
- Improvement in the quality and availability of re-entry programs for youth completing incarceration and in need of services back in their local communities; and,
- Critical analysis of mental health and substance abuse programs for youth in the juvenile justice system to ensure intervention and treatment options proven to be effective are readily available.

This assessment contains numerous other recommendations for Kentucky Courts of Justice, law schools, media, and state and local bar associations.



## **CHAPTER 1 KENTUCKY'S HISTORICALLY TROUBLED JUVENILE JUSTICE SYSTEM**

A ten year look back at Kentucky's juvenile justice system would make many recall a troubled system with few resources, little advocacy, and a lack of leadership among the state agencies charged with caring for youth. During the 1980's and for much of the 1990's, Kentucky's residential facilities for youth were under fire for their poor conditions and treatment of youth. Litigation against local jail facilities that housed juvenile offenders was initiated against a number of county operated facilities. Few alternatives to detention were available across the state, and even fewer resources for treatment and prevention services. Lack of funding was pervasive, not only for treatment and rehabilitation efforts, but also for advocacy on behalf of youth in the system. As one key state official remarked recently, "Kentucky lacked a clear vision for what its juvenile justice system should be accomplishing."

During the early to mid-1990's, Kentucky's juvenile justice system experienced its final stages of deterioration. Even worse, its substandard treatment of juveniles was drawing national attention. Kentucky was a long time participant in the federal Juvenile Justice and Delinquency Prevention Act<sup>5</sup> formula grant program. The state's years of non-compliance with that Act's mandates regarding the housing of juveniles in adult jails and the incarceration of status offenders, however, forced it to be placed on "nonparticipating status" from 1992-1996. Conditions in individual jail facilities brought about a rash of class action lawsuits, including suits against facilities in Kenton,<sup>6</sup> Daviess and Franklin Counties.<sup>7</sup> Those suits successfully challenged conditions of confinement regarding improper supervision, inadequately trained staff, poor environmental conditions, lack of education and other programming. Indeed, even organizations such as Amnesty International were drawn to stories from Kentucky regarding abuses in local jail facilities against juveniles, including the alleged use of a stun gun against a 17 year old in the Kenton County Detention Center while hogtied in a cell.<sup>8</sup>

The fact that youth in the Commonwealth had little advocacy through the public defender system during that same time further exacerbated the situation. A 1996 report, "*In re Gault: The Status of Juvenile Defense in Kentucky*"<sup>9</sup> made sweeping criticisms of Kentucky's overall failure to provide constitutionally adequate juvenile defense services to youth in the juvenile justice system. The report revealed that attorneys were inadequately trained and paid to represent children, that significant numbers of youth were adjudicated and often incarcerated with no access to a lawyer, and that little or no advocacy was being done at the post-dispositional level.

In 1995, two other lawsuits against the Commonwealth were settled, and ultimately brought about significant changes in the treatment of youth incarcerated in Kentucky's secure facilities. The United States Department of Justice, through its Civil Rights Division, made findings in their 1995 investigation that Kentucky's system of housing and treating juvenile offenders violated the civil rights of youth. Among the concerns it raised in its federal complaint<sup>10</sup> were allegations of abuse and maltreatment, misuse of isolation cells, lack of adequate medical and psychiatric care, and poorly paid and trained staff. Likewise, the Children's Law Center, Inc. filed suit against the Commonwealth for its failure to provide access to the courts for youth incarcerated in these facilities in order to challenge the fact, duration or conditions of their confinement.<sup>11</sup> Both cases ended in consent decrees, and both brought about dramatic changes for incarcerated youth.

By 1996, the stage was set for other changes as well. The Kentucky legislature created the Department of Juvenile Justice (DOJJ), and removed responsibility for the care and treatment of public and youthful offenders from the Cabinet for Human Resources and placed it with the Justice Cabinet. Under the direction of Dr. Ralph Kelly, the newly formed DOJJ embarked on developing a state-operated system of detention programs, including secure and non-secure alternatives, and sought to bring the Commonwealth back into the Juvenile Justice and Delinquency Prevention Act. Dr. Kelly was also charged with the implementation of both consent decrees, forcing major changes in the programming and staffing of Kentucky's residential treatment centers, and requiring a system of legal services for youth incarcerated in those facilities.

Also set to change was Kentucky's system of indigent defense. At a time when Kentucky's legislature began to increase penalties for youth and pump money into juvenile justice reform initiatives, the Kentucky Department of Public Advocacy was also challenged to enhance its indigent defense system to balance the scales.

## CHAPTER 2 HISTORY OF INDIGENT JUVENILE DEFENSE PROBLEMS AND THE RELEASE OF *BEYOND IN RE GAULT (1996)*

*The indispensable elements of due process are first, a tribunal with jurisdiction; second, notice of a hearing to the proper parties; and finally, a fair hearing. All three must be present if we are to treat the child as an individual human being and not to revert, in spite of good intentions, to the more primitive days when he was treated as a chattel.*

- *In re Gault*, 387 U.S. 1, 19 (1967)

### **A. Purpose and Findings of the Initial Report**

In 1996, the Children's Law Center, Inc. released its first study regarding indigent juvenile defense, entitled "Beyond *In re Gault*: The Status of Juvenile Defense in Kentucky."<sup>12</sup> At that time, the juvenile justice system in Kentucky, as well as in many parts of the country, was under serious attack for its inability to effectively address juvenile crime, particularly violent crime. With the passage of House Bill #117 in the 1996 legislative session, provisions were made to increase the courts' authority to incarcerate youth in juvenile detention centers and juvenile holding facilities for longer periods of time,<sup>13</sup> and to permit the transfer of youth to adult court more readily.<sup>14</sup> The movement toward harsher treatment of youth in the juvenile justice system prompted the Children's Law Center to initiate an assessment of Kentucky's indigent defense system and its response to youth in the juvenile justice system in light of these factors.

The report made several critical findings regarding representation of youth in Kentucky. Among these were:

- Caseloads among full-time DPA attorneys handling juvenile cases often exceeded IJA/ABA caseload standards, and somewhat or severely hampered the attorneys' ability to represent juveniles effectively;
- Caseloads among contract attorneys for DPA, most of whom were newer attorneys, were even higher, and resulted in even more severe limitations on their ability to effectively provide representation to youth;
- Significant numbers of youth were unrepresented at detention hearings and throughout various stages of juvenile court proceedings. Waiver of counsel at the detention hearing stage occurred often or very often in nearly ¼ of the jurisdictions responding, and nearly 60% of jurisdictions noted waiver of counsel occurred often or very often at other stages;
- Nearly 75% of attorneys noted that the time they had to meet with youth clients was inadequate, and youth reported in significant numbers that they were rushed through the process or felt forced to enter plea agreements without understanding their options;
- Trial practice and preparation for disposition hearings in juvenile court were weak and showed an overall lack of advocacy efforts;
- Post-dispositional advocacy was nearly non-existent, including appellate practice, writs and other civil actions; and,

- Representation of youth appeared weakest in areas covered by contract counties, as evidenced by higher caseloads, confusion of the role of the attorney, and higher incidents of waiver of counsel.

The overall picture of indigent defense in 1996 for juveniles in Kentucky was bleak at best. With some exceptions, youth interviewed for the study reported that they felt their attorneys either did not care about them, did not represent their wishes, or in the words of one young man, "all they want to say is 'guilty plea'." Sadly, many youth reported having no lawyer, while others felt that even if represented, they did not feel the attorney who represented them was effective in representing their needs or their wishes. In general, the system of indigent defense did not appear to afford youth in Kentucky with the constitutional protections concerning right to counsel at any consistent level.

## **B. Recommendations for Improvement**

The report made several recommendations for improvement and restructuring of defense services for youth in Kentucky. Most notably, these included:

- Reducing caseloads for attorneys in DPA offices and in contract counties to comport with recognized standards for caseload maximums;
- Increasing the availability of non-lawyers with special expertise to assist attorneys in case planning, treatment issues, and mobilizing other resources;
- Reassessment by DPA of resources to ensure fair and equitable funding for juvenile representation as compared with adult offenders;
- Continued emphasis on training of attorneys handling juvenile defense matters, including the requirement of such training for contract attorneys;
- The adoption of minimum standards for representation of juveniles that guarantee the availability of counsel at every stage of the proceedings, ensure adequate training for attorneys, provide expectations for representation for interviewing and counseling, adequate investigations, pretrial motion practice, communication with young clients, disposition planning, and post-dispositional advocacy;
- Ensure adequate support systems, including access to research, and support staff including secretaries, investigators and social workers;
- Development of evaluation processes to ensure the accountability of attorneys; and,
- Development and maintenance of thorough and accurate systems for data collection on juvenile representation, and effective use of such data for accountability, education, and the enhancement and coordination of resources.

## **C. Kentucky's Response to Indigent Juvenile Defense Criticism**

The Kentucky Department of Public Advocacy, in response to criticisms launched in the 1996 report, undertook its own extensive needs assessment regarding its indigent juvenile defense system in order to determine training needs, funding and other necessary resources, and to examine the need for other internal structural changes. Appropriately named the "Gault Initiative," this initiative included plans not only to increase education-

al programs for attorneys practicing juvenile law, but to change attitudes regarding juvenile practice and provide the support structure to effectively serve clients. DPA requested additional resources to implement these reforms in the 1998 legislative session and received funds for six new trial attorneys in full-time field offices to focus on juvenile representation, two juvenile appellate lawyers, and two Masters level social workers. Additionally, the DPA received funds for an Assistant Director of Education and Development whose primary responsibility is to increase education in juvenile representation at the trial level.

### **1. Elements of the "Gault Initiative"**

The "Gault Initiative" was established with the mission of "providing individualized, effective, and caring representation to Kentucky's indigent youth through comprehensive education, systematic support, and innovative use of technology." The needs assessment completed by the DPA identified three primary areas for focus: 1) providing the court with dispositional alternatives (i.e. answering the question of "what can we do to help these kids?"); 2) providing attorneys with education on particularly difficult areas of juvenile practice such as sex offenders, transfer hearings, and special education; and 3) teaching attorneys the skills needed to better communicate with their juvenile clients. To address these issues, several strategies were developed.

*Co-Counseling Cases.* Attorneys responding to the needs assessment rated working with an experienced attorney as one of the most effective learning methods. The Branch Manager of Education and Strategic Planning provides this one-on-one assistance to attorneys and assist as co-counsel on several cases.

*Case Reviews.* Case reviews with other juvenile attorneys, including experienced trial attorneys and members of the Juvenile Post-Disposition Branch, are held on a routine basis for complex juvenile cases. Case reviews also provide a learning experience for the other attorneys involved as they share ideas for strategy, motion practice and disposition.

*Regional Juvenile Summits.* DPA has established an annual summit of juvenile practitioners held in each of the five trial division regions. Before each summit, a needs assessment is conducted for that region and seminars are offered on subjects most requested by members of the region. The summits are led by the Regional Manager and the region's Juvenile Specialists working with the Branch Manager of Education and Strategic Planning.

*Knowledge Management.* Technology has been identified as a significant resource to provide information, seek assistance from others quickly, and review recent case law and changes to the Juvenile Code. The DPA established an e-mail discussion group in December of 1998 to facilitate discussion of juvenile issues and sharing of motions and articles. The ListServe has nearly 150 members, and has generated lively discussions with more than 1500 postings since its inception on various juvenile issues, including sex offenders, status offenders, detention, special education, and emancipation, to name a few.

In addition to the ListServe, DPA has developed the Juvenile Law Manual, a Dispositional Alternatives Bank, and a Motions Bank created through DPA's Intranet. A three day training program is available for newly hired attorneys handling juvenile cases, and a special track for juvenile practitioners has been created at the DPA's Litigation Practice Institute and the annual seminar.

## **2. Budget Increases and Use of Funds**

In the fall of 1997, in response to continued criticisms of DPA, the Public Advocate called upon the Spangenberg Group to seek assistance in reviewing the operation of DPA and its budget plans for the future. One of the suggestions that the Spangenberg Group made was the creation of a statewide blue ribbon commission in Kentucky to develop a plan for the 2000-2002 biennium. In late 1998, the "Kentucky Blue Ribbon Group on Improving Indigent Defense in the 21st Century" was created with more than twenty members representing all the branches of government, the bar and the community. The Blue Ribbon Group adopted the following mission statement:

*To address the chronic problems of the Kentucky public defender system and propose solutions in light of national information and standards, in order to create a strategy for ensuring an appropriately funded indigent defense system for the 21st century.*

The report concluded with twelve recommendations, noted as follows:

1. Indigent defense is a necessary function of government and an essential and co-equal partner in the criminal justice system.
2. The Kentucky Department of Public Advocacy cannot play its necessary role for courts, clients, and the public in this criminal justice system without significant increases in funding.
3. The full-time system should be completed.
4. Higher salaries should be paid to defenders and prosecutors; salary parity is the goal.
5. Loan forgiveness programs should be made available to prosecutors and defenders.
6. Full-time trial staff should be increased to bring caseloads per attorney closer to the national standards. The figure should be no more than 350 in rural areas and 450 in urban areas.
7. The Department of Public Advocacy and the Court of Justice must increase their efforts to collect reasonable fees from public defender clients, including considering the use of private collection organizations.
8. Prosecutor and defender increases should be considered when a judicial position is added.
9. It is important that public defender counsel be available to children in juvenile court proceedings.
10. It is imperative that Kentucky reasonably fund indigent capital defense both at the trial and post-trial levels.
11. Public defender services are constitutionally mandated while resources are scarce. It is important for all eligible persons who want to be represented by a



lawyer to be appointed a public defender. The Court of Justice, and especially AOC and DPA, are encouraged to work cooperatively to ensure appropriate public defender appointments.

12. The \$11.7 million additional funding for each of the 2 years is reasonable and necessary to meet DPA's documented funding needs.

Without action, the Blue Ribbon Group (BRG) noted that the full-time plan would fail, lawyers and support staff were likely to leave DPA, caseloads would rise "to breaking points, especially in cities such as Louisville," and DPA would stop serving some defendants and/or some courts. The group's recommendations were highly endorsed by the Governor's Criminal Justice Council and have continued to be a priority for the Patton administration. For example, the 2000-2002 budget response to the BRG report included \$4 million in FY 2001 and \$6 million in FY 2002 in order to open offices in 21 counties, reduce defender caseloads, expand appellate capacity, and increase salaries for DPA attorneys.

Among the BRG outcomes are the following:

- The 2000 General Assembly passed the Governor's budget with the stated increases for DPA;
- 2001 starting salaries were raised to \$35,000, increased from \$23,388 for entry level attorneys, while experienced attorneys were raised 8% for 2000 and 9% for 2001. Attorney Managers' salaries were increased from a starting point of \$62,985, with the average being \$78,684;
- Staff turnover rates were reduced from 14% in 1999 to 11.8% in 2001;
- Cost-per-capita increased 45%, from \$4.90 in FY 98 to \$7.14 by FY 02;
- Caseloads for individual full-time trial lawyers have been reduced by 11.5% since 1999, from an average of 475 to an average of 420; and,
- Caseloads for Louisville have been reduced from an average of 603 per full-time attorney to 405.

A number of items of "unfinished business" from the Blue Ribbon Group continue to create challenges for DPA in the 2002 legislative session and beyond. Identified continued needs include:

- Annual increases of \$5.7 million over the next two years to complete the recommendations of the BRG;
- Completion of the full-time system adding four new offices: 1) Cynthiana, Harrison, Robertson, Pendleton, Bourbon and Nicholas Counties; 2) Boone, Grant and Gallatin Counties; 3) Glasgow, Barren, Metcalfe, and Monroe Counties; and 4) Greenup, Carter and Lewis Counties. Additionally, Campbell County would be added to the Kenton County office;
- Further reduction of average caseloads for full-time attorneys to bring caseloads to no more than 350 in rural areas and 450 in urban areas. It was noted that

301 mixed cases per lawyer (misdemeanor, juvenile and felony) would be consistent with national standards. An additional 19 caseload reduction lawyers are needed to bring caseload averages to within recommended limits;

- Full funding for capital defense, including increased staffing for each region, and an additional post-conviction and capital appellate attorney;
- Increased levels of support staff and equipment; and,
- Post-conviction attorneys and paralegals, as well as juvenile post-dispositional lawyers to serve children in new treatment and detention centers.

### **3. Structural Changes within DPA**

Effective May 14, 1996 the DPA established by Administrative Order a Juvenile Post-Disposition Program to “provide legal defense services to juvenile offenders incarcerated in thirteen residential treatment facilities currently operated by the Cabinet for Families and Children.”<sup>15</sup> This program was established under the Post-Trial Services Branch of DPA and was part of the implementation of a consent decree on behalf of juveniles in state operated residential treatment programs. Attorneys provide access to the courts regarding the fact of, nature of, or conditions of confinement that may violate the federal statutory or constitutional rights of juveniles in these facilities.<sup>16</sup>

The Juvenile Post-Disposition Branch also now includes the two appellate attorneys provided by increased funding in 1998, and works jointly with the Assistant Director of Education and Development on the “Gault Initiative.” It has become, in many ways, the “hub” of juvenile expertise for the DPA, including trial offices.

A second significant structural change since 1996 within the DPA has been the creation of several new trial offices, replacing the contract system in several parts of the state. In 1996, the Department of Public Advocacy covered 47 counties with a total of 17 field offices. By December of 2001, this number grew to 23 field offices covering 102 counties. Three other full-time offices, located in Boyd, Fayette and Jefferson Counties, are operated by separate non-profit entities, bringing the total number of counties covered by full-time offices to 105. The remaining 15 counties continue to work through a contract arrangement with private attorneys.<sup>17</sup>

## **CHAPTER 3 OVERVIEW OF KENTUCKY'S JUVENILE JUSTICE SYSTEM**

To better understand Kentucky's system of handling cases involving juveniles accused of public or status offenses, this chapter provides an overview of the judicial and administrative agencies that play a role in juvenile justice, including the Department of Public Advocacy. In addition, a summary of the key stages of juvenile court involvement are outlined, as are statutory provisions under Kentucky law regarding right to counsel.

### **A. Structure of Kentucky's Juvenile Court System**

The District Courts have exclusive jurisdiction over proceedings involving juveniles under the age of eighteen years who have been accused of committing a public or status offense, and who have not yet been transferred to Circuit Court for treatment as an adult.<sup>18</sup> This section describes jurisdiction and basic procedures for cases in both courts.

#### **1. District Court's Jurisdiction and Procedures**

District Courts have jurisdiction over juvenile matters in the majority of appearances. Pursuant to K.R.S. §610.010: "the juvenile session of the District Court of each county shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his eighteenth birthday or of any person who at the time of committing a public offense was under the age of eighteen (18) years[.]"<sup>19</sup> This statute allows for concurrent jurisdiction among three possible districts, where the child is living, where the child is found, and where the crime was committed.<sup>20</sup>

The District Court has formal procedures that must be followed when handling juvenile cases. These procedures will change depending on whether the child is being adjudicated as a status or public offender. Juveniles charged with public offenses or with contempt for underlying public offense may be detained, upon an order of the judge, in a non-secure setting, in a secure juvenile detention facility, or juvenile holding facility, for up to 48 hours, excluding holidays and weekends, before the Court must conduct a detention hearing.<sup>21</sup> On the other hand, if the juvenile is being charged with a status offense, the juvenile can be held in a secure setting for up to 24 hours excluding holidays and weekends.<sup>22</sup>

At the detention hearing (held within either 24 hours or 48 hours, depending on the nature of the offense charged) the District Judge has two options. The District Judge can release the juvenile to a parent or guardian, or the Judge can make probable cause findings and determine if further detention of the juvenile is necessary.<sup>23</sup> This decision is based on the seriousness of the offense, the juvenile's prior record, the possibility that the juvenile would commit a dangerous offense if released, and whether other charges are pending.<sup>24</sup>

After a juvenile is arraigned, the District Courts hold an adjudication hearing. The adjudication is the equivalent to an adult trial in many respects. There are, however, major distinctions between the two. Juveniles in Kentucky have no right to a jury trial, except for 16-18 year olds in non-felony motor vehicle offense cases.<sup>25</sup> Unlike adult trials, juvenile adjudication hearings are closed to the general public.<sup>26</sup>

Juvenile dispositions hearings cannot be held on the same day as the adjudicatory hearing, unless waived by the youth. "Juvenile proceedings shall consist of two distinct hear-

ings, adjudication and a disposition, which shall be held on separate days unless the child, after consultation with an attorney, waives the right to a formal pre-disposition investigation report and moves that the hearing be held the same day."<sup>27</sup> The dispositional report is to be completed three days prior to the child's dispositional hearing<sup>28</sup> and will become part of the record.<sup>29</sup>

When dealing with status offenders, the District Judge has several alternatives available for disposition.<sup>30</sup> The court must consider all appropriate local remedies to aid the child and the child's family, subject to two conditions, (a) residential and non-residential treatment programs for status offenders shall be community-based and non-secure; and (b) with the approval of the education agency, the court may place the child in a non-secure public or private education agency accredited by the Department of Education.<sup>31</sup> The Court must also determine that all appropriate remedies have been considered and exhausted to assure that the least restrictive alternative method of treatment is utilized.<sup>32</sup> After this, the Court may order the child and the child's family to participate in any programs necessary to effectuate change in the child and the family.<sup>33</sup> Finally, when all appropriate resources have been reviewed and considered insufficient, the Court may commit the child to the Cabinet for Families and Children for such services as may be necessary.<sup>34</sup>

Juvenile courts likewise have several alternatives when it comes to the disposition of a public offender.<sup>35</sup> With some limitations, a judge may order either the child or guardian to pay restitution to the injured person to the extent, in the sum and conditions as the Court determines.<sup>36</sup> The court may place the juvenile on probation, home incarceration, or under the supervision of the child's home. This option subjects the juvenile to the Court's jurisdiction until the child reaches the age of 18 or until the Court discharges the child from its jurisdiction.<sup>37</sup> The District Judge can also commit (or recommit) the child to the custody of the Department of Juvenile Justice, up to the age of 18, or, if before the age of 18 the Court may discharge the child. Upon motion by the child and with the concurrence of the Department of Juvenile Justice, a juvenile court may authorize an extension of commitment up to the age of 21 to permit the Department of Juvenile Justice to assist the child in establishing independent living arrangements.<sup>38</sup> A final dispositional alternative available for public offender dispositions is confinement in a juvenile detention facility, juvenile holding facility, or approved detention program, however, this is limited to only 45 days if the child is 14 years of age but less than 16 years of age, and 90 days if the child is 16 years of age or older.<sup>39</sup> The court may order any combination of these as well.<sup>40</sup>

## **2. Circuit Court's Jurisdiction through Transfer**

The Circuit Court of each county has jurisdiction when dealing with juvenile offenders who are transferred as youth offenders.<sup>41</sup> Jurisdiction of a juvenile is only automatically set in the Circuit Court if the juvenile is between the ages of 16-18 and accused of committing a non-felony motor vehicle offense, pursuant to KRS §610.010. All other cases from District Court must transfer jurisdiction through a "transfer" hearing.

These hearings involve one of two types of transfer, automatic or discretionary. Automatic transfers are filed against juveniles that are age 14-18, who commit a felony in which a firearm was used in the commission of the offense.<sup>42</sup> At the hearing, the District Judge must find probable cause that the youth committed a felony, that a firearm was used in the commission of the felony, and that the youth is between the ages of 14 and 18.<sup>43</sup>

Discretionary transfer requires two distinct phases. The first phase is the probable cause phase, similar to the automatic transfer probable cause phase. The court must find probable cause that: the youth committed the offense and that the child was of requisite age at the time of the offense. Depending upon the criteria being used, the court may also need a finding that the youth has the required number of prior adjudications.<sup>44</sup> The second phase requires the court to hear evidence and consider eight factors as they relate to transfer.<sup>45</sup> The District Judge must address all eight factors on the record, but the Judge only needs to make affirmative findings that two (2) of the factors support transfer to adult court.<sup>46</sup>

## **B. Administrative Agencies Involved with the Juvenile Justice System**

### **1. Court Designated Worker Program**

The Court Designated Worker (CDW) program was established by enacted legislation from the Kentucky General Assembly in 1986, and is under the direction of the Administrative Office of the Court's (AOC) Office of Juvenile Services.<sup>47</sup> In relation, K.R.S. §605.010 provides that in each judicial district there shall be a CDW. CDW's provide intake and diversion services, and process public and status complaints on juveniles outside of the formal court system.<sup>48</sup> The CDW has specific duties that are enumerated in statutory form and include receiving complaints, reviewing complaints taken by peace officers, and disposing of complaints (limited to three status and non-felony complaints per child).<sup>49</sup> The CDW cannot issue arrest or search warrants and more importantly, the CDW cannot investigate child abuse, neglect, or dependency allegations; these matters are to be referred to the Cabinet for Families and Children.<sup>50</sup>

When a juvenile is taken into custody by a peace officer, unless the juvenile is subject to trial as an adult or the nature of the offense or other circumstances warrant retaining the juvenile in custody, the officer may release the juvenile to a parent, guardian, or other responsible person or agency approved by the Court.<sup>51</sup> Unless the juvenile is subject to trial as an adult, if the juvenile is not released, the peace officer must contact the CDW, who, upon consulting with the Court, informs the peace officer of the juvenile's immediate placement.<sup>52</sup> The youth may be released to his parents, released to another person or organization as authorized by law without conditions, or taken into custody for a maximum of an additional 12 hours so that the peace officer may transport the juvenile to a secure juvenile detention facility or holding facility. The CDW must notify the juvenile's parents or guardian regarding the juvenile's detention.<sup>53</sup>

As such, the CDW plays a critical role at this early stage in assisting Courts in making the decision as to whether a juvenile should be detained.

### **2. Cabinet for Families and Children (Statutory Duties)**

The statutory duties of the Cabinet for Families and Children (CFC) related to juveniles in the court process not only involve dependency, neglect, and abuse, but also status offenders.<sup>54</sup> These duties somewhat parallel the Department of Juvenile Justice (DOJJ) duties in relation to public offenders. As part of the disposition of the status offender, and after all other resources have been reviewed, the court may commit the child to the CFC for such services as may be necessary.<sup>55</sup> The CFC must consider all appropriate local remedies to aid the youth and his family.

### **3. Department of Juvenile Justice**

The Department of Juvenile Justice (DOJJ) was established in 1996.<sup>56</sup> Juvenile court judges may, at a disposition hearing of a public offender, probate a child to the Department of Juvenile Justice for supervision, or commit the child to the custody or guardianship of DOJJ.<sup>57</sup> DOJJ not only provides for supervision of youth in the community, but also operates a system of juvenile detention services and residential treatment for offenders committed to its care.

DOJJ has been charged with the responsibility for developing and maintaining a statewide juvenile detention system.<sup>58</sup> Under Kentucky law, there are three types of facilities that are specifically authorized to securely detain juveniles. Those facilities include secure juvenile detention facilities, juvenile holding facilities, and intermittent holding facilities.<sup>59</sup> For regulatory and monitoring purposes, secure juvenile detention and juvenile holding facilities are comparable as they both may hold juveniles for an extended period of time, and must have a full range of programs.<sup>60</sup> The theory and philosophy behind the DOJJ detention plan has been to develop detention as a process rather than a secure custody environment

The goal of a good detention system is to create a continuum of detention services in which the juvenile is matched with an appropriate level of supervision and restriction.<sup>61</sup> Accordingly, DOJJ's plan for the development of statewide detention services includes both secure detention and non-secure detention alternatives. The objectives of this custody continuum include: (a) to provide community-based programming for non-violent, at risk juveniles that will effectively protect the community and reserve secure detention resources for violent, serious offenders; (b) to ensure the juvenile's crime-free return to Court using a less restrictive form of community supervision that is comparably as effective as secure detention; (c) to prevent unnecessary disruptions of the juvenile's school and family life; and (d) to prevent non-violent juveniles from exposure to more sophisticated, delinquent juveniles.<sup>62</sup>

For FY 2001, DOJJ served 7,667 adjudicated youths.<sup>63</sup> Of these, nearly 74% were served in the community. DOJJ uses two types of placement for children in its custody: treatment in the community and treatment out of the community. Treatment in the community involves supervised community placement, typically with a relative, or foster care/therapeutic foster care, primarily used for children that do not present a risk to the public, but need to be removed from their own homes.<sup>64</sup>

Out-of-community placement involves private child care, group homes, and residential treatment. Youth Development Centers and Residential Treatment Centers provide monitoring of the youth's activities 24 hours a day, seven days a week. Youth in these programs attend school on site but may have some contact with the local community. DOJJ operates nine Youth Development Centers and two Treatment Centers housing youths who have been committed to the DOJJ as public offenders or sentenced as youthful offenders.<sup>65</sup> Group homes are community based residential programs, and DOJJ operates 11 group homes and contracts with a private provider for four others. These small treatment programs each serve 8-10 youth at any given time.<sup>66</sup> Private child care providers "offer a wide range of residential programs for specialized populations of committed youth including younger children, sex offenders, mentally handicapped youth, and youth with mental health disorders."<sup>67</sup>

Of the 7,667 children that were served by DOJJ during FY 2001, 1,896 youths were served out of community. This represents about 26% of the youths served by DOJJ. Of these youth, 723, or 38% were placed in residential treatment facilities care, 522 were in private child care facilities (28.0% of the out-of-community care), and 385 were in group homes (20.0% of the out-of-community care).<sup>68</sup>

### **C. Structure of the Indigent Defense System**

The Department of Public Advocacy is charged pursuant to Kentucky Revised Statutes, Chapter 31 with providing counsel to "needy persons." According to KRS 31.110, the definition of "needy person" encompasses juveniles;<sup>69</sup> however, if a court finds that the parent of that child is not indigent, it may assess the cost of providing counsel against that parent.<sup>70</sup>

The Department of Public Advocacy operates a Trial Division and a Post-Trial Division. The Trial Division has five separate regions, each directed by a Regional Manager. In each region, DPA also contracts with "conflict attorneys" who handle cases the local office cannot handle due to conflicts of interest. In some regions, primarily the Central, Western and Northern Regions, some counties are still covered by contract lawyers rather than by a full-time office. This is most prevalent in the Northern Region, where eight counties remain covered by contract.

Three other full-time offices exist in the state, and are operated independently of full-time DPA Offices. These offices are in Fayette, Jefferson and Boyd Counties. A combination of these offices and the other 23 field offices of DPA cover representation in 105 of Kentucky's 120 counties.

The Department also operates two post-conviction offices, one at Eddyville, and one at LaGrange. Its Post-Trial Division also handles appeals, post-conviction actions, and houses the Juvenile Post-Disposition Branch. The Department has a separate Capital Trial Branch, and handles capital appeals through its Post-Trial Division.

The Juvenile Post-Disposition Branch (JPDB) had a budget of \$652,423 for FY 2001, and handled 1895 cases during that time frame. Cases included 197 clients served through a JAIBG grant (Juvenile Accountability Incentive Block Grant). Claims involve an alleged violation of a child's statutory or constitutional right pertaining to the fact of, duration of, or conditions on confinement. Representation was provided regarding claims for youth in 31 facilities across the state, including state operated residential treatment facilities and detention centers, private child care facilities, and group homes.

JPDB handled 46 juvenile appeals, 195 post-disposition documents, including agreed orders, R.Cr.11.42 motions, motions to terminate commitment, and sentencing motions.

DPA's budget for FY 2000-2001 totaled \$25,476,667, of which more than \$23,000,000 came from the legislature as state dollars. The remaining funds were generated from local government and recoupment fees. Funding per case is calculated at \$250.15 overall, however, this includes capital cases as well. Juvenile post-disposition cases were higher than trial level cases, with an average of \$344.29 compared to \$169.98 for full-time offices and \$188.64 in part-time contract counties.

From FY 1996 to FY 2001, DPA's caseload grew approximately 10%, rising from 91,574 cases to 101,947. Of this total, approximately 16%, or 16,631, were juvenile cases. For FY 2001, DPA's average caseload fell from 429 cases per full-time attorney to 421, a 2% decrease. Per case funding increased by 15.5%, rising from \$216.66 to \$250.15 per case. Only about 3000 cases of this total were handled by contract conflict counsel.



## **CHAPTER 4 RESULTS FROM SURVEY DATA AND SITE VISITS**

This section of the report is based upon information obtained through survey data from judges and defense attorneys, as well as extensive interviews, site visits, and courtroom observations. It begins with an analysis of caseload data and office assignments and notes some of the changes since the initial report in 1996. It examines the role of defense counsel in each of the major stages of delinquency cases from arrest and detention to post-dispositional advocacy. The data also suggests the existence of a number of organizational and institutional barriers to effective representation and details how these barriers affect the quality of representation for juveniles. Each of these will be examined below.

### **A. Attorney Caseloads and Office Assignments**

The IJA/ABA Standards recommend that defender offices should not accept more assignments than the attorneys can handle, and that it is the responsibility of each office to ensure that its personnel can offer prompt, full and effective counsel to each client.<sup>71</sup> The Standards recommend a maximum annual caseload for juvenile defender programs near that for felonies in the adult system, which is roughly 150 per year.<sup>72</sup> For misdemeanor cases involving juveniles, the acceptable caseload ranges between 295—1000 per year, and may fluctuate given the strength and quantity of various factors such as staffing turnover, percentage of cases tried, extent of support services available to staff attorneys, court delays, complex and special litigation, and experience of counsel.<sup>73</sup> An additional factor not explicitly listed in the IJA/ABA Standards, but relevant in rural parts of Kentucky, is travel time and scheduling in offices representing multiple counties.

In developing the 1996 report, attorney caseloads were somewhat difficult to determine statistically, as data collection within the Department of Public Advocacy was inaccurate and, in some jurisdictions, missing altogether. The report did reveal, however, that more than 80% percent of attorney respondents believed that their caseload size limited or severely limited their ability to represent juveniles effectively. Panel attorneys tended to have even more significant limitations as a result of high caseloads, and interviews with youth clearly showed widespread concerns related to high caseloads.

The surveys among attorneys compiled for this report indicate that among attorney respondents, although not separated by felony and misdemeanor categories, caseloads falling between 200-500 per year were only found in less than 1/3 of the jurisdictions. About 2/3 of the jurisdictions reported caseloads of between 500-1000 per year, or even higher. Most respondents felt caseloads still “severely limited” or at least “somewhat limiting” their ability to effectively represent juvenile clients.

Judges, on the other hand, minimized the effect that high caseloads have on attorneys to provide effective representation. While about half felt there was some effect, as many other judge respondents believed that caseloads had little or no effect on quality or representation. This finding is similar to the 1996 report in that judges tended to view high attorney caseloads with less concern than the attorneys themselves, or the clients.

The Department reports that average caseloads have been reduced for trial attorneys from 429 in FY 00 to 421 in FY 02, a 2% decrease.<sup>74</sup> Felony versus misdemeanor cases are not reflected in this total. While some counties appear to have very manageable

caseloads, others report juvenile cases far in excess of the IJA/ABA Standards. Of particular concern are counties such as Fayette, reporting 1,694 juvenile cases in 2001 with only two full-time attorneys who regularly handle the juvenile docket, and Campbell County, with 826 cases and only two part-time contract attorneys. Likewise, some counties are grossly underreported on statistics, such as Grant County, where only 32 cases for the year are noted in the Department's 2001 statistics, yet Investigators observed at least half of that number in a single afternoon docket.

## **B. The Role of Juvenile Defense Counsel in Critical Proceedings**

### **1. Waiver of Counsel**

The Kentucky Revised Statutes require that "if a formal proceeding is required in the interest of the child or to determine the truth or falsity of the allegations against the child, . . . the court shall, when the child is brought before the court (a) Explain to the child and his parents, guardian or person exercising custodial control their respective rights to counsel, and if the child and his parents, guardian or person exercising custodial control are unable to obtain counsel, shall appoint counsel for the child . . . ."75

*In short, appellant was not informed of a single consequence of his decision to enter an admission of guilty. Appellant was a fifteen-year-old child who had no previous experience with the court system. . . . [W]e are convinced that appellant's admission of guilt was not made knowingly and intelligently.*

*Judge Miller,  
D.R. v Commonwealth*

The Kentucky Court of Appeals has recognized that a juvenile must be informed of the consequences of an admission of guilt, including constitutional rights waived by admitting guilt on the range of punishments. Otherwise, an admission by a juvenile may not be knowingly and intelligently made.<sup>76</sup> District courts are also mandated to initially appoint counsel, and the child may then waive the right to counsel only if that child has first consulted with counsel concerning the waiver.<sup>77</sup>

The IJA/ABA Juvenile Justice Standards support the position that a juvenile's right to counsel may not be waived.<sup>78</sup> Juveniles may waive other state, federal or local rights, if they are "mature respondents," but only after they have consulted with counsel, and a parent has consulted with counsel.<sup>79</sup> Thus, under these standards, waiver should take place only under very limited circumstances and only after discussion with an attorney.

Interviews with youth in facilities indicate that with few exceptions, most were represented by counsel for the charges leading to their incarceration. Of those who reported they did not have an attorney, some were from Jefferson County and were being detained pending appointment of counsel at a detention hearing. Interviews with youth and families in the community during site visits, however, revealed that waiver of counsel was more prevalent among those non-detained youth. In fact, nearly 2/3 of defender respondents indicated that juveniles often or very often waive counsel at detention hearings within their districts. There were similar findings among other types of hearings where the youth was not being detained. Judges responses to this question indicate a lower average, whereby about 20% of youth waive counsel at the detention hearing phase often or very often, but nearly 50% waive counsel at other proceedings often or very often. Interestingly, judges indicate that lower numbers of youth now waive

counsel since the 1996 assessment report, while defenders note higher numbers than in 1996. Either way, it is clear that large numbers of youth are still waiving counsel, although considerably fewer youth were found in residential treatment facilities without the benefit of counsel.

The most common reasons given for waiver of counsel by a youth, according to defender respondents, was that the youth did not believe anything severe would happen to them, and/or that no counsel was present to be assigned at the time. A few respondents indicated that they believe youth waive counsel because of intimidation to do so, or that their right to counsel was not really explained.

Equally disturbing, however, is that most defender respondents reported that although judges in most jurisdictions engage in a colloquy with the juvenile regarding the waiver of rights prior to entering a plea, this colloquy is more often than not lacking thoroughness. This was frequently noted by Investigators doing site visits, and it was noted that judges often did not advise youth entering pleas as to their full constitutional rights and the possible consequences of pleading guilty. In light of *D.R. v. Commonwealth*, the recent Kentucky Court of Appeals case affirming the right to counsel and reversing the inappropriate waiver of counsel of a status offender, it appears in actuality that many youth do not enjoy the right to counsel that Kentucky laws afford them.

## **2. Initial Representation**

The IJA/ABA Standards recognize that many important rights of clients can only be protected by advice and action early in the proceedings.<sup>80</sup> To provide ethical, competent representation, attorneys must necessarily confer with their clients without delay and as often as necessary to ascertain all of the facts.<sup>81</sup> Formal juvenile proceedings begin either by an arrest and detention hearing, if the juvenile is detained, or at an arraignment.

Most defender respondents indicated that they are not appointed to represent youth until the detention hearing if the youth is being detained, and generally do not meet with the youth until they are brought to the courthouse. Many, if not most, offices had not set procedures for being "on-call" to police departments in cases where a youth had been arrested and requested counsel during an interview. In most cases, however, public defenders indicated that they did have access to police reports and charging documents before meeting with the client. Likewise, more than half of the defenders indicated they are available at the preliminary inquiry stage conducted by Court Designated Workers.

For those youth not detained, only about 20% meet with lawyers between their first appearance in court and the day of adjudication. Nearly 1/3 of attorney respondents indicated that they usually meet with the client on the day of adjudication, and about half indicated they do not meet with the client until the disposition hearing. More than half of the attorneys indicated, however, that they use other office staff, presumably, paralegals, investigators or social workers, to interview the juvenile client before the attorney meets with them.

Most attorneys still appear to conduct their first client meeting while at the courthouse when the youth and parents are present for hearings. Most believe they have inadequate time to meet with the client for the first time, as well as inadequate time to speak

with parents. Almost half also indicated concern that the time after the hearing was inadequate to discuss with the client what occurred. Investigators noted this problem with some regularity in counties where only one or two public defenders were covering a heavy docket.

### **3. Trial Preparation, Adjudication and Plea Negotiations**

Prompt action by counsel is often the only way to protect the important rights of a juvenile. Counsel should advise the client and undertake any procedural steps necessary to protect the client's interest.<sup>82</sup> Only after thorough investigation and preparation, counsel may conclude that, under the law and considering the evidence, the charges against the client will probably be sustained. Counsel should inform the client, and if the client agrees, seek a negotiated plea if allowed under the law.

The most frequent disposition of cases in juvenile courts in Kentucky is by informal adjustment and/or plea agreements. Offices provided a broad range, however, of the percentages of cases going to trial, as opposed to those disposed of in other ways. About half of the defender respondents indicated that up to a quarter of their cases were informally adjusted and/or diverted back the Court Designated Workers. Most defender offices indicated that they try less than a quarter of the cases in juvenile court. Cases resulting in plea agreements represent approximately 10-25% of the cases, according the majority of defender respondents.

Motion practice appears to have improved somewhat from the initial study in 1996, with nearly 2/3 of offices indicating that they routinely engage in motions practice in juvenile court. Investigators noted many instances during site visits where this was indeed true and being done well. The filing of discovery motions and motions regarding competency issues were the most commonly noted, as well as motions in limine and motions to suppress. It seemed apparent that in many areas of the state this has become an expected and routine practice.

In a more limited number of counties, however, motions practice was essentially non-existent, and respondents and/or those interviewed noted lack of experience or knowledge as the primary reason. In addition, respondents noted that their caseload created time constraints, and that the informality of the juvenile court process discouraged such practices.

### **4. Disposition Hearings**

The lawyer has a duty to inform the client as to the nature of the disposition hearing, the issues involved and alternatives available to the court. The lawyer should explain the possible consequences and obligations of the dispositional hearing. The lawyer may not agree to specific recommendations without the client's consent.<sup>83</sup>

Investigators noted little dispositional advocacy being done with juvenile clients during site visits, other than occasionally raising an objection to the contents of the DOJJ pre-dispositional report. Although some exceptions were found, disposition hearings tended to be "rubber-stamping" recommendations made by DOJJ, with little advocacy effort in the way of supplemental evidence.

### **5. Transfer to Adult Court**

Between January 1997 and January 2000, Kentucky's juvenile courts referred 336 juvenile offenders to criminal (adult) court for prosecution and possible commitment to

prison.<sup>84</sup> This number represents only those youth actually transferred, and not those who are considered by courts for transfer. In Jefferson County alone, it is estimated that up to 300 transfer cases are filed per year, although many are not actually transferred. Most offices responded that they handle fewer than 5 transfers a year in their jurisdiction.

A majority of attorney respondents indicated that the attorney in the office who handles the transfer case also handles the adult criminal case if there is one. Nearly all indicated that they used experts often in transfer hearings. When asked about what they believed to be the most significant factor in the decision to transfer, the most common response was the seriousness of the offense, with strong consideration given to the assessment of the child's maturity and the policies and philosophy of the local jurisdiction.

## **6. Post-Disposition Advocacy**

Post-disposition advocacy for youth in treatment facilities is primarily done by the Juvenile Post-Disposition Branch. This part of the assessment is focused on other forms of post-disposition work done by trial offices such as appeals, hearings on 18-year-old offenders and dispositional reviews. A lengthy discussion of the Juvenile Post-Disposition Branch is found in Chapter 3.

The lawyer who represents the client through trial should be ready to continue representation if the client chooses to appeal and retain the attorney.<sup>85</sup> The trial attorney has the duty to inform the client of any right to appeal.<sup>86</sup>

Other than those appeals being handled by the Juvenile Post-Disposition Branch, trial offices indicated that they are generally authorized to appeal cases from their office, and appear to be doing this much more frequently than indicated in the 1996 assessment. While about half of the respondents indicated that they did not file any appeals during the last year, 1/3 filed between 7-10, and two offices filed more than 10. More extraordinary writs were also filed by field offices, as well as motions to terminate commitment.

Defender responses to surveys indicate that most youth are represented at disposition review hearings, although nearly 14% indicate that this representation is only occasional or "rare." Attorneys generally indicated that youth and parents were present for such hearings, and that they had interviewed both. Attorneys also appeared to be doing a good job of conducting fact finding interviews with probation or other treatment staff for these hearings and investigating other placement options as necessary.

## **C. Barriers to Effective Representation**

### **1. Part-Time Practice by Contract Attorneys**

While Investigators noted instances where contract attorneys did an excellent job of representing youth in the juvenile justice system, they more frequently noted problems with counties still under this system of providing counsel. Because these individuals are generally private practitioners with other areas of practice, they handle the juvenile docket on a part-time basis. Investigators noted in one contract county that the majority of youth were unrepresented by counsel, even though the contract attorney was physically present in the courthouse.

Investigators specifically looked for systemic changes in jurisdictions where new full-time offices had been created since the 1996 report, and obtained information through interviews about differences in the two systems. Key stakeholders in these jurisdictions generally noted significant improvements in overall advocacy by the attorneys, including preparedness in court, the number of trials being conducted, and dispositional advocacy.

In other instances, however, Investigators noted the use of private attorneys on a contract basis worked well in a given jurisdiction with small caseloads. Examples were found of experienced attorneys assigned in rural areas that not only provided excellent representation in the courtroom, but were also instrumental in changing local policies.

DPA's plan for full-time offices throughout the state appears to be an effective strategy for improving the quality of representation for juveniles, and should be completed. If this is not possible, the Department should look critically at its existing contract counties, to ensure that consistency in the appointment of counsel and the quality of representation is addressed.

## **2. Inconsistency in Quality of Representation**

Although the overall results of data collected and observations made show that DPA has taken some significant steps in improving the quality of representation, this is not consistent across the state. The advances in creating full-time offices appears to have significantly improved access to counsel and the quality of representation, while some of the poorest examples noted were in areas still using contract attorneys.

For example, Investigators noted in one jurisdiction that there was an "overriding concern by everyone interviewed that their goal was to serve the best interest of the children involved in the court system...and that the defense attorneys should be part of the 'team'." While every youth was represented, there appeared to be little, if any, motion practice or trial preparation, and indeed, few trials ever held. While examples noted often pertained to the observation of a particular attorney or attorneys serving the jurisdiction, practices seemed just as likely to be the product of an overall climate which fostered and discouraged strong advocacy efforts.

*I was surprised at the public defenders' lack of complaints about the system and that they felt their caseload was too large. It was clear they did not believe the nature of the delinquency offenses in their jurisdiction warranted the use of investigators and experts....It is difficult to believe that the system works so well that there is, never any lack of services and never an injustice done to an individual child.*

*Investigator*

In contrast, other counties visited provided investigators with the opportunity to observe strong trial advocacy on behalf of clients, excellent and well trained defenders and proactive involvement in the local community on juvenile justice issues.

## **3. Lack of Advocacy for Status Offenders**

Perhaps one of the most significant inconsistencies in representation noted by Investigators was seen in the appointment of counsel to status offenders and the qual-

ity of representation provided to this population. There were significant discrepancies regarding attorneys appointed for status offenders as to whether or not the attorneys were actually part of the public defender system. For example, in some counties, assigned counsel were actually considered a "guardian *ad litem*" and assigned from the court's roster of attorneys used in dependency, neglect and abuse cases. In other counties, no counsel was assigned to represent status offenders at all.

Information obtained from numerous persons throughout the site visit showed concern about the level and types of services available to status offenders. Defenders often expressed frustration, particularly on school related issues, about having limited resources for this population. Where family courts exist, these concerns were somewhat lessened.

Defenders have a challenge facing them to make consistent the availability of counsel to status offenders in all parts of the state and to ensure that community based services can be utilized or developed to serve this population. Likewise, defenders should strive to effect local and statewide policies that may adversely effect this population, including unnecessary use of detention, truancy prevention programs, family centered counseling and support services.

#### **4. The Impact of Court Structure, Caseloads and Docketing**

Not surprisingly, jurisdictions varied significantly in their handling of cases based upon the demands brought about by high caseloads and/or limited resources. Investigators noted that in some counties, large volumes of cases were heard in a given day with little time for defenders to speak with juvenile clients between cases. Interviews with youth and parents coming out of court suggest that often they were unsure of what had actually happened in the courtroom and had insufficient time to speak with the attorney.

It was not necessarily true, however, that this was more problematic in larger counties. In Jefferson County, for instance, Investigators noted that attorneys did speak with clients both before and after court hearings. The courtroom environment did not appear rushed, and while there was no lack of cases docketed for a given day, adequate time was noted by Investigators for each hearing. In other jurisdictions, however, the public defender, especially if only one was handling the docket, never left the courtroom, and could scarcely locate the file in time for the next case to be called.

It was noted that some jurisdictions tended to make heavy use of review hearings and continue to bring back youth frequently to check on their progress. In some rural counties, Investigators noted a pattern of detaining youth on school or home matters when a review hearing was conducted and the youth was found to be in violation of prior court orders. As one mother explained to an Investigator, *"she misses one day of school every 2 weeks just to come down here and sit in court all day."*

One further observation made regarding the effect of judicial case processing has to do with the use of detention. In some counties, where judges rotate and follow the same cases through, judicial docketing created longer stays in detention than would otherwise be necessary. In one county, with rotating juvenile court judges, youth who are detained may typically wait four weeks between scheduled hearings until the judge hearing the case has his or her next juvenile rotation.

As a critical part of the juvenile justice system, defense attorneys should examine judicial policies regarding docketing and case management and should advocate for more effective practices.

## **5. Over-Reliance on the Use of Detention**

Kentucky's legislative scheme regarding juveniles permits the detention of youth at the pre-trial stage, pending adjudication, and after disposition in some cases. Kentucky currently has a total of 497 detention beds, with four state operated regional centers, a unit at Adai Youth Development Center, three county operated detention centers, and seven juvenile holding facilities.<sup>87</sup>

Investigators noted instances in some counties where the use of detention was frequently relied upon for status offenders (i.e. truants and beyond control cases) who violated court orders. Judges and others interviewed noted frustration with these cases, and some expressed the view that there were no other resources available for them to use. Larger jurisdictions such as Fayette and Jefferson tended not to use detention as an alternative for status offenders who violate orders.

The most effective services for status offenders are through community and family based support services. These involve working with children in their homes, and focusing heavily on family environment.<sup>88</sup> Prevention programs that have proven effective in schools include social competency skills training, coaching skills using behavior modification techniques, and school wide initiatives that clarify and communicate norms about behavior through the establishment of rules and the reinforcement of positive behaviors.<sup>89</sup>

Defenders in counties that frequently use detention for status offender behaviors, or that over-utilize detention in other cases where alternatives may be available, defenders should examine these practices. In addition, while providing aggressive advocacy in the courtroom, should also work toward proactive strategies that can provide effective alternatives.

## **6. The Erosion of Confidentiality**

Numerous individuals reported that the erosion of confidentiality for youth in the juvenile justice system was a significant concern. Investigators noted courtrooms full of individuals who had no connection with the case, and in one jurisdiction, the general public sat in throughout the entire juvenile docket.

The most significant concern raised by respondents, however, was the lack of confidentiality afforded youth in school related matters. It appeared to be commonplace in some courtrooms that a "school liaison" sat through all hearings, and in one case, could actually access school records on any child in the district on demand from an office in the back of the courtroom. Investigators were made aware of several instances where information was provided inappropriately to school staff regarding youth in court, and likewise, school records being submitted to court without proper procedural safeguards in place. In some instances, schools appear to have a direct line to judges. This presents a concern to defenders as well as many other professionals interviewed in light of the apparent growing number of school based complaints to juvenile courts.

Defenders need to rigorously address confidentiality issues for their clients, both in and outside the courtroom as it pertains to local policies and practices that contribute to improper and/or illegal flow of information about youth in the juvenile justice system.



## 7. Limited Resources for Special Needs Youth and Families

A frequent concern was expressed regarding the lack of community services available for youth with special needs. Many of these youth suffer from mental health disorders, educational disabilities, and/or drug and alcohol problems.

Youth in the juvenile justice system are much more likely to have both identified and undiscovered disabilities. For example, consider the following:

- Youth with learning disabilities and/or an emotional disability are arrested at higher rates than their non-disabled peers<sup>90</sup>;
- It is estimated that 18% of mentally retarded, 31% of learning disabled, and 57% of emotionally disturbed youth will be arrested within five years of leaving high school<sup>91</sup>; and,
- Studies of incarcerated youth suggest that as many as 70% suffer from disabling conditions.<sup>92</sup>

A number of common traits found among many disabled youth make them more susceptible to involvement in the juvenile justice system. More specifically, youth with suspected or identified disabilities are often prone, depending upon the nature of the disability, to:

- Make poor decisions and social judgments that lead to involvement in crime;
- Have weak or no avoidance techniques that lead to detention and eventual arrest (i.e. they are more likely to get caught);
- Have social skill deficits that result in harsher treatment once in the justice system; and,
- Have learning difficulties that almost ensure increased recidivism (i.e. it is more difficult to them to “learn their lesson” and reform their ways).<sup>93</sup>

There appear to be significant differences among jurisdictions in Kentucky as to how these youth are handled, and whether or not appropriate resources are available. For instance, some Court Designated Workers interviewed seemed to be able to stop such cases at the courthouse door from being handled as a criminal matter, and instead secured appropriate educational and/or mental health services provided the offenses are able to be diverted. In other instances, however, the lack of community based services for youth with mental health problems may result in more restrictive options being used. This was identified in a number of instances, including alternative to detention programs, individual or family counseling programs, drug and alcohol services, and programs to meet the needs of female offenders. Also noted was the fact that there is little aftercare being provided for youth returning to the community, and that mental health facilities for youth were almost non-existent across the state.

The ongoing need for defenders to become stronger advocates for youth with mental health needs was apparent. Not only does this mean providing aggressive advocacy in the courtroom, but also taking a more visible role in guiding policies concerning mental health for youth outside of the courtroom.

## 8. Disproportionate Confinement of Minority Youth

Minority youth are typically over-represented at every stage in the juvenile justice process.<sup>94</sup> In 1999, minorities made up approximately 37% of the juvenile population in the United States, yet 63% were held in juvenile detention facilities before their adjudication or were committed to state juvenile correctional facilities.<sup>95</sup> Disproportionate minority confinement occurs when the ratio of minorities in detention, correctional facilities, and jails exceeds the percentage of the minority population in the general population, according to the Juvenile Justice and Delinquency Prevention Act (JJDP A).<sup>96</sup> The Juvenile Justice Delinquency Prevention Act provides funds to states to improve their juvenile justice systems and services to youths who are delinquent and at risk. States participating achieve compliance with several mandates, including addressing the problem the disproportionate confinement of minority youth in secure detention and correction facilities."<sup>97</sup>

The Department of Juvenile Justice and the Juvenile Justice Advisory Committee (JJAC) set aside funds in 1997 to explore the nature and extent of minority overrepresentation in Kentucky's juvenile justice system. A DMC subcommittee was formed to conduct an assessment and make recommendations. This resulted in the development of the Subcommittee on Equity and Justice for All Youth (SEJAY). Data has been collected from a number of sources in Kentucky, including the Department of Juvenile Justice, Administrative Offices of the Courts, the Kentucky Criminal Justice Council, U.S. Census data, and Kentucky KIDS COUNT. However, since data is not reported consistently among agencies, it is difficult to accurately measure the extent of disproportionality of minority youth in the Kentucky juvenile justice system.

Kentucky's minority population in 1999 totaled roughly 10% of the total juvenile population in the state.<sup>98</sup> According to the Kentucky Disproportionate Minority Confinement Interim Report, Jefferson and Fayette Counties hold over half the minority population for the state. Minorities make up about 1/5 of Jefferson County's population and about 16% of Fayette County's population, but the study found that Christian County has a minority population of 27%, the highest proportion in the state.<sup>99</sup>

In Kentucky, more than 7,300 juveniles were admitted to detention in 1999. Of those, minority youth made up 41% of the detention population.<sup>100</sup> This rate is four times greater than their proportion of the general Kentucky juvenile population. Of the juveniles committed to the custody of DJJ for supervision and treatment, either in the community or in a secure corrections program, approximately a quarter were minorities.<sup>101</sup> Additionally, between 1997 and 2000, African-American youth made up more than half of the youths transferred to adult court.<sup>102</sup> The proportion of black females in commitment was more representative of the general population of black female juveniles in the state.<sup>103</sup> While these numbers do not consider such factors as the offense committed or number of prior referrals, they do provide evidence of disproportionate minority confinement.

About 15 percent of the youth interviewed in facilities expressed concern that the system showed evidence of minority youth being treated differently than their white counterparts, while only a handful of youth noted differences based on gender and/or handicapping conditions. While limited information was obtained regarding the specifics of these allegations, it is clear that the perception of some youth in the system regarding disparate treatment is present.

The Department of Public Advocacy should remain actively involved in a leadership role with statewide initiatives to identify and eliminate disparities in treatment of minority youth in the juvenile justice system. Defenders should identify any such disparities in their own communities and determine appropriate steps to addressing local needs for this population.

### **9. Addressing the Needs of Hispanic Youth and Families**

The growing numbers of Hispanic youth and families in local communities across Kentucky has created challenges for the defender community, as well as for local courts and other state agencies. Addressing the needs of this population requires the juvenile justice system to gain a better understanding of cultural issues and language and other social barriers.

Few DPA offices throughout Kentucky noted that they had individuals fluent in Spanish or other languages, and most indicated that they had little training in cultural diversity issues concerning the Hispanic population. Nearly all defender respondents indicated that these cultural and language barriers often or very often affected their work with Hispanic youth and their families.

DPA has taken a number of measures to ensure that interpreters are available internally on cases involving Hispanic defendants, has provided training at the annual seminar on immigration and other cultural issues concerning Hispanics, and recently devoted an entire edition of the Advocate to such issues. The Department needs to continue to be sensitive to the needs of this population, and the challenges presented to ensure that equitable services and treatment is provided.

### **10. Availability of the Death Penalty for Youth**

Kentucky remains one of only twenty-two states that permits the execution of juvenile offenders under age 18 at the time of the crime. Kentucky permits the execution of individuals as young as 16 at the time of the offense.<sup>104</sup> In addition to the United States, only seven other countries in the world have executed juvenile offenders since 1990; this list includes the Democratic Republic of Congo, Iran, Nigeria, Pakistan, Saudi Arabia and Yemen.<sup>105</sup>

Significant state legislative activity concerning the juvenile death penalty has occurred in recent years. In 1999, Montana abolished the death penalty for juvenile offenders, and the Florida State Supreme Court raised the age of eligibility from 16 to 17. In March of 2002, Indiana abolished the juvenile death penalty. In 2002 alone, in addition to Kentucky, legislatures in Alabama, Arizona, Florida, Indiana, Missouri, Mississippi, and Pennsylvania considered legislation to ban the juvenile death penalty.<sup>106</sup>

On February 5, 1997, the American Bar Association House of Delegates issued a resolution calling for a moratorium on the imposition of capital punishment until jurisdictions assure that its imposition is fair and impartial, in accordance with due process, including competency in defense counsel. While this ABA resolution took no official position on the death penalty in general, it did reiterate its previous position against the death penalty for individuals who are mentally retarded and persons under the age of 18 at the time of the offense.

While few such cases arise in Kentucky, the effect on defender offices that handle juvenile death penalty cases is crushing. About 40% of the offices surveyed indicated they have had at least one capital juvenile case within the last five years. Such cases significantly hamper field offices, not only in terms of attorney resources, but that of investigators, paralegals and other support staff.

The Department of Public Advocacy should continue to work on successful sponsorship of legislation that would abolish the juvenile death penalty. For those cases currently pending in Kentucky, and until such time as legislation may be enacted, Kentucky defenders should continue to work with national and state resources on juvenile capital defense issues.

### **11. Over-Reliance by Schools on Judicial Intervention**

*We see these kids on relatively minor behavior infractions coming from the school system, and then they are subjected to an infinite series of reviews back in court.*

*Rural Juvenile Defender*

In a climate where student conduct is scrutinized more and more, national attention has been increasingly drawn to strategies to enhance safety in schools and to reduce the likelihood of violence against students and school personnel. The emergence of “zero tolerance” policies and the criminalization of school-based conduct are seen in Kentucky courts, as well as across the country. As one author from the Harvard Civil Rights Project explains:

The Kentucky Center for School Safety, now in its third year of reporting school based information on law and policy violations, and subsequent out-of-school suspension and expulsion data, reveals continued decreases in problematic student behavior for the 2000-2001 school year, and that prevention services and activities are now provided by more than 80% of Kentucky’s school districts.<sup>108</sup> The report expresses concern, however, that there has been a significant increase in drug abuse violations, and an increase in out-of-school suspensions. The report also raises questions regarding whether school, cultural and societal influences contribute to the continued overrepresentation of males and African-Americans in disciplinary actions.<sup>109</sup>

*The increase in criminal charges filed against children for in-school behavior has been one of the most detrimental effects of Zero Tolerance Policies. Students are often subjected to criminal or juvenile delinquency charges for conduct that poses no serious danger to the safety of others.*

No national data system exists to track the number of school related delinquency petitions filed against students, or the number of crime reports filed on school based conduct, making it difficult to gauge the breadth of this problem in Kentucky and elsewhere. The responses of attorneys and judges, however, as well as the comments and observations of investigators for this study, suggest that these numbers are increasing in Kentucky, and cause concern

*What was once considered a schoolyard scuffle can now land a student in juvenile court or, even worse, in prison. In some instances this occurs regardless of age, intent, circumstances, severity of the act, or harm caused. In many instances, school districts are simply transferring their disciplinary authority to law enforcement officials.<sup>107</sup>*

among those individuals in the juvenile court system faced with determining how to handle such cases.

In one county it was noted that of the 26 cases on the juvenile court docket for the day, nearly half were school-related charges, none of which were felony offenses, and many which appeared to be brought back repeatedly for review. Investigators noted on several instances that youth were sent to detention for violations of school policies, and it was clear that in some counties, the courts were readily accessible to school personnel who wished to punish a student quickly for misconduct. The infractions ranged from "mouthing off" to a teacher to missing school after having been warned about truant behavior.

*We get an extremely high number of these school related charges, usually without merit. They are shipped to an alternative school where they get little education, and then get the philosophy, "We'll charge you until you drop out."*

*Juvenile Public Defender*

Even more disturbing was the finding that many of these youth had disabilities that qualified them for special education services, and the concerns that they were unidentified and/or simply not receiving appropriate services. Investigators noted in one county a profoundly mentally disabled student was brought to court charged with truancy where a prior finding of dependency had been made on his behalf and that of his siblings. In

*I regularly meet with the schools regarding placement and programming, but I get frustrated with the way the schools treat probated juveniles. They call the probation officer before they try any interventions.*

*Probation Officer*

another case, Investigators noted an eight-year-old child was brought before the court with a request by the prosecuting attorney to detain him for school-related conduct perceived to be threatening. While these instances were more blatant in nature, the increase in school-related charges poses significant challenges to juvenile defenders.

Creative legal and policy challenges need to be aggressively pursued to change local practices that over-criminalize school conduct, and to encourage the use of effective prevention and intervention programs with youth having school-related difficulties. This is particularly true since it is apparent that children of color appear to be more likely to be subjected to disciplinary actions for less serious offenses.

## **12. Females in the Juvenile Justice System**

Girls are the fastest growing segment of the juvenile justice population, in spite of an overall national drop in juvenile crime.<sup>110</sup> The number of male offenders, particularly those charged with violent crimes, has declined steadily since 1994, while the arrest, detention and dispositional custody of females have increased in number and percentage. Between 1988 and 1997, delinquency cases involving girls increased by 83%, with the highest percentages being for drug abuse violations, curfew and loitering, simple assault and aggravated assault.<sup>111</sup> In a recent national report on this phenomenon, the American Bar Association raises the question as to whether such growth is due in part to an increase in violent behaviors, or whether it is due to the re-labeling of girls' family conflicts as violent offenses, changes in police practices regarding domestic violence and aggressive behavior, gender bias in the processing of misdemeanor cases, and, perhaps a fundamental systemic failure to understand the unique developmental issues facing female offenders.<sup>112</sup>

The combined results from judges and attorneys in Kentucky indicate that the most significant characteristics in female offenders tend to be criminal activity within the family, history of sexual abuse and victimization, and school failure, with nearly 90% of respondents noting these issues were significant. Nearly as many indicated mental illness, health issues and co-dependency issues were significant and at least half indicated gang involvement, and drug and/or alcohol involvement were problematic. Judges noted these concerns more frequently than attorneys did.

When asked about whether the frequency of girls being detained for contempt issues stemmed from status offenses, about 20% of respondents indicated that this was occurring with some regularity, but at least half felt it was more frequently occurring with females than with their male counterparts. Few respondents noted that girls were being charged with misdemeanor offenses in order to "get services," although 40% indicated girls were often charged with assault for violence against family members. In both cases, at least 1/3 of respondents felt this was more common with females than males. Again, judges tended to rate these problems as more significant than defenders.

Defenders in Kentucky need to ensure that they are sensitive to the special needs presented by the growing number of female offenders, particularly as it relates to any possible gender bias in charging, custody decisions and treatment issues.

## CHAPTER 5 THOUGHTS FROM INCARCERATED YOUTH

*I don't think I have been treated very fairly. My right to a lawyer was waived without me knowing. I have been here for almost five years on a misdemeanor.*

*Youth in Treatment Facility*

A critical part of this study included information obtained from youth who were incarcerated throughout Kentucky in detention centers and state operated facilities regarding their experiences in juvenile and adult courts, as well as their views on attorney representation. This portion of the assessment was done to determine what these youth thought about the representation they received and what factors had significant bearing on their perceptions. Their responses are discussed below:

### **A. Access to Counsel**

The Kentucky Unified Juvenile Code requires that the juvenile court judge explain to a juvenile before the court that he has a right to counsel, and that this right cannot be waived by a parent or custodian. In this assessment, most of the juveniles surveyed reported having an attorney. Only 20 juveniles surveyed reported not having an attorney. When questioned about waiving that right, only three reported actually having waived the right. According to this assessment, the remaining unrepresented youth did not recall waiving that right, although some were interviewed in detention facilities and had been held only a brief amount of time.

### **B. Quality of Representation and Attorney Performance**

When juveniles were asked about their attorneys' performance, several factors were found to be instrumental in determining overall client satisfaction. The most important things to the youth interviewed were whether (1) the attorney was hired or appointed, (2) the attorney was prepared, (3) the attorney told them of their rights and available options, and (4) the attorney gave the child the opportunity to share other information the youth felt was important to receiving effective representation.

*He wasn't a public defender....He was a public againster.*

*Youth in Treatment Facility*

Characteristics that significantly affected perceptions included (1) the type of juvenile offender, (2) seriousness of the offense with which the youth was charged, and (3) the youth's county of origin. Demographic factors, such as age, race and gender, generally did not have a significant impact on the juveniles' perceptions of the representation they received. While overall, young men felt they received better representation than young women, the statistical difference in their perceptions was insignificant. Some general trends were found by the study to be prevalent.

- With few exceptions, youth who were represented generally had appointed counsel. Only 15% of those interviewed had private counsel, and these attorneys rated much higher in most areas of performance based upon the responses of the youth interviewed. This indicates that juveniles believe privately paid counsel provided them better representation than appointed counsel.

- Most juveniles surveyed reported seeing their attorneys for the first time in court. About half of all the juveniles felt they had enough time to meet with their attorneys, although overall communication between the attorney and client was a concern consistently articulated by youth interviewed.
- Only about half of the youth interviewed knew the names of the attorneys representing them.
- Less than half of the juveniles surveyed reported having discussions with their attorneys about their arrest or disposition, and even fewer recall having any discussion regarding defense strategies.
- Youth generally seemed to feel that the attorneys adequately explained the charges against them, their options, and the consequences of admission.
- Of great concern to the interviewees, though, was the attorneys' ability to follow through with what they said they would do, including talking to the prosecuting attorney on the youth's behalf, and tasks related to investigation, obtaining reports from other professionals, securing experts, and/or interviewing witnesses. A majority of youth reported instances where promised action in these areas was not taken.
- Only about half of the juveniles reported that they were told what was happening during court appearances. Less than half indicated that their views were presented during the disposition hearing, and less than 1/3 reported that their right to appeal was explained to them.
- More than 1/3 of the youth interviewed disagreed with the way their cases were handled. In some cases, however, regardless of the youth's displeasure with the performance of the attorney, the young person still responded that overall the system treated them fairly.
- The seriousness of the offense was a significant factor in the overall satisfaction youth had with their attorneys. Attorneys representing youth charged with misdemeanors typically received much lower scores than those representing youth charged with felonies.
- The status of the offender was also a significant factor in determining client satisfaction. Juveniles were divided into two types of offenders: public offenders and youthful offenders. The result was that attorneys representing youthful offenders scored much higher on average than those representing public offenders. This shows that youthful offenders generally believe they receive better representation than public offenders.
- The geographical background of the youth was the final significant factor for measuring client satisfaction. Attorneys representing urban youth generally rated significantly higher than their rural counterparts.
- When the juvenile's county of origin and the seriousness of the offense were combined, it appears that juveniles from urban areas who committed felony offenses were much more likely to feel that their attorneys provided effective representation than youth from rural counties who had committed misdemeanors.



### C. Other Thoughts from Juvenile Clients

*I don't like the courtroom . . . everybody stares right through me like I am not there.*

*Youth in Treatment Facility*

Juveniles surveyed responded to several open-ended questions, including questions about their treatment within the juvenile justice system, perceptions of race and gender differences, the role of attorneys and probation officers with youth, and what challenges they face upon leaving incarceration. Finally, juveniles were asked about their relationships with their attorneys and what they would like to have changed, as well as what advice they would give attorneys generally who represent youth in the juvenile justice system. Although individual answers varied, certain themes emerged when the answers were evaluated as a whole.

Overall, a small majority of juveniles felt that the juvenile justice system treated them fairly, and most felt that they deserved the punishment they received. Those

***Many young people felt the juvenile justice system treated them fairly, while others felt family history or other factors were unjustly considered.***

who did not feel they were treated fairly generally felt that whether or not they were guilty was determined before they went into the courtroom. These juveniles also believed that they received punishment inappropriate for the crime committed.

Additionally, there were kids who felt that they should have received treatment rather than punishment. *"It wasn't fair. I asked for drug rehabilitation – no one would listen and I'm not getting any help."* Youth

***Many young people felt anxious and scared when the judges spoke to them.***

did not tend to think of being "sent away" as rehabilitative in nature, and clearly viewed this as punishment or a threat to scare them.

Some youth felt being sent off happened because the court and others did not know what else to do with them, and workers were tired of dealing with them.

When asked about how they felt when addressed by the judges, juveniles typically reported feeling nervous, angry, and scared. Others felt that the judges patronized them by talking down to them or talking above their level of understanding. In several cases, juveniles felt the judge had already made up his or

*The court is just like cops on the outside, if you're black or have gold teeth, the judge thinks you are a drug dealer.*

*Youth in Treatment Facility*

*I was only in there for five seconds, so I did not ever get a sense of what was going on except for handcuffs and shackles.*

*Youth in Treatment Facility*

her mind before they came into the courtroom based on the prior record of the youth, a parent's conduct in court, or the family history. Confusion and anxiety seems to be common, however, particularly in

combination with lack of communication with their attorney.

Youth were quick to point out the demeanor of the judge as well. Many youth described their judges as respectful, nice, and/or concerned about them. *"The judge was very nice*

*to me and very helpful explaining things." "I feel very comfortable when the judge speaks to me." "The judge wasn't mean. I get scared – afraid I will be sent off. This judge likes kids."*

Others, however, described a less favorable experience regarding the judge's demeanor in court. Some felt the judge clearly did not like them and was angry with them in court. Others described their judge as "fed up," "disrespectful," or in one case, "insulting to me and my family." A few youth mentioned the fact that the judge never once looked at them while they were in court, and/or did not speak directly to them, but rather to their attorney or others in the courtroom about them.

Close to half of the young people who were surveyed either knew of instances where a young person had been treated differently because of race or felt that they had been treated differently themselves because

*I was really afraid of the judge when I walked in there, but I still feel like he respected me.*

*Youth in Treatment Facility*

of their race. In general, those who reported that they thought minorities were treated differently were apt to believe that race was a factor in treatment and in punishment and that African-Americans received harsher sentences. Differential treatment was not limited to race alone, however. Interviewees also noted that

**Many juveniles felt that minority youth or others were treated unequally.**

cultural, economic and gender differences also resulted in differing treatment. According to those surveyed, youth from lower socioeconomic backgrounds were perceived as being treated less favorably than those from families with higher incomes. Likewise, young people with disabilities were perceived as being treated better than those without disabilities.

**Some youth did not know the difference between their attorneys and their probation officers.**

Comments of this nature referred primarily to contact with police, the courts, probation officers, and facility staff. None of the youth interviewed mentioned being aware of defense attorneys treating youth differently as a result of race, gender or disability.

When asked to explain the difference between their probation officer and their attorney, the most common response was that the probation officers were with the juvenile throughout the juvenile justice system experience, while the attorneys were just around for court. *"I see my PO a lot and he comes to talk to me. I see my attorney only in court."*

Some youth did not know the difference between the probation officer and the attorney at all, or could not articulate a particular task common to either profession, without an understanding of the specific role played by these individuals. One youth said, *"One helps with my case, and one keeps me on probation. I have no clue what my PO is supposed to do except to keep me out of trouble."* Another youth commented that *"An attorney can get you out and a DOJJ worker can raise your curfew."* And another youth expressed role confusion in the following way: *"I think they are both on the same side and they are both trying to have me locked up."*

Still others tended to differentiate the roles between the attorney and the probation officer through a perception of whether the person was there to help them, or had some

other motivation. *"A lawyer tries to help and a DOJJ worker tries to lock you up to make sure you don't commit crimes."* Several youth explained this in terms of whether they believed the attorney or probation officer liked them or was nice to them. *"My lawyer understands me better than my P.O. But my DOJJ worker has more power than my attorney."* *"My attorney is more available than my DOJJ worker, and he cares more about listening to me."*

***Many responses reflected positive experiences with attorneys although juveniles advise lawyers to "listen to your clients."***

When asked what they would have changed about the way their lawyers handled their cases, many of the young people who were surveyed reported that they would not change anything. As one young person put it, *"for a public defender, he did a pretty good job."* Many juveniles did not feel that their attorneys communicated well with them or represented their interests. In numerous instances, young people reported that if they could change anything about the way their attorneys represented them, they would like attorneys to talk to them more about their cases and provide them with information about what was going on. The fact that attorneys failed to communicate with these young people was a common complaint with remarks such as *"talk to me and explain what [you're] going to do,"* and *"keep in contact."* These young people wanted to know what was happening, and often felt that they were left out of important decisions that greatly affected them.

Another concern of interviewees was the tendency for attorneys to fail to keep their word. In order to effectively represent a client, there must be trust. Many did not feel that they could trust their attorneys because they felt they had been lied to. When attorneys told their clients that things would happen a certain way, young people reported feeling deceived if things did not work out that way. *"Don't lie about the sentence"* was the most prevalent advice young people had for the attorneys representing them.

When asked what advice they would give to lawyers to better help juveniles in trouble, the most common response was simply "listen." Many youth felt that those representing them do not take the time to listen to what they feel may be important, and as such, they are left feeling that their attorneys may not have been interested in really representing their interests. *"Listen to our side of the story," "ask us how we feel," "listen to what they have to say and don't look over and just sum up something," "go through step by step, talk to them about their feelings."* The importance of being listened to cannot properly be summed up in a few comments. This was a prevailing theme throughout all of the open-ended questions.

*[My] attorney would not call me back; would not set up an appointment for me even though I went to their office; they didn't seem to care about my case; seemed like they wanted a "quickie" deal; none of my options were discussed.*

*Youth in Detention Center*

*The attorneys should be visiting these kids when they are here (in detention). They want us to have a crystal ball to predict what will happen to them. They hang on the words of a youth worker to tell them anything – usually one who has never been to court.*

*Detention Center Supervisor*

In addition to listening, young people surveyed advised attorneys to be open and honest with kids they are representing. *"Be honest about what will happen,*

*don't sugarcoat the truth.*" Lack of trust was a major theme with these young people, who often felt that being honest with them was one of the keys to achieving quality client representation.

The interviewees also suggested that lawyers speak to kids in terms they understand. *"Help them understand what is going on; most kids aren't even sure what they're charged with."* *"Sit down and talk to the kids that are in trouble and help the kids realize that it's not a game."*

Various other pieces of advice were offered by those surveyed: *"Take my case seriously."* *"Be yourself."* *"Come see them where they're placed."* While there were many other words of wisdom offered by the juveniles interviewed, one piece of advice summed it all up: *"Just don't give up....Try."*

**Juveniles face more battles after incarceration.**

The battles faced by these youth are not over once their period of incarceration has ended. Rather, most interviewees revealed that the hardest thing for them to deal with when they are released is being put back into the same environment from which they were removed. When asked to discuss the toughest things to deal with after detention, one interviewee responded, *"life itself."* Juveniles typically reported that being around old friends, having access to drugs, going back to school, and dealing with their communities were the hardest situations they faced.

*The hardest thing for me will just be going home because it has been so long. I don't feel comfortable, and different adults are telling me different things. Some say I am going with my dad, some say my mom, some say a foster home, and this is giving me a big headache.*

*Youth in Treatment Facility*

Interviewers noted that many youth wanted to talk about these re-entry issues, and had legitimate and substantial fears about the circumstances they face upon release back to the community. For some, return home means back to family, while others were faced with the reality of living on their own and securing housing and jobs because of their age and family circumstances. Still others faced the uncertainty of not knowing where they would be living.

Youth described feeling isolated by these circumstances, especially when they were estranged from family members. Some described a sense of impending doom knowing they were going back to poor environments where it would be expected that they were the one variable that had changed. One young man noted that *"I know the whole community knows what I did. It will be hard to be back there."* A young female noted her concern about returning back to the community because she felt she would be scrutinized closely. *"I have to make sure I have evidence of everything I do, because police officers have said they are watching."*

*The judge keeps telling me he expects me back. I have to live up to my expectations and not his.*

*Youth in Treatment Facility*

Clearly, these youth have significant fears and anxiety about what comes next in their lives, and how they will deal with life back in the community. Many expressed both a need and desire for help once released. Advocacy efforts in these instances seem particularly important to ensure their successful re-entry.

## **CHAPTER 6 SYSTEMIC REFLECTIONS FROM KEY STAKEHOLDERS**

This part of the report reflects the comments from professionals across the state with significant juvenile justice experience in order to obtain a historical perspective about the evolution of the indigent defense system in Kentucky, as well as the future challenges the system will face. These interviews were conducted with judges, advocates, prosecutors, juvenile justice officials, and others who have witnessed the long-term changes in Kentucky's juvenile justice system.

### **A. Historical Problems**

When asked about the most significant problems prevalent in Kentucky's juvenile justice system ten years ago, respondents consistently noted trends regarding the treatment of juveniles in facilities, the lack of treatment and other appropriate resources for youth, and the overall lack of strong legal advocacy. Of particular significance were the poor conditions that existed in Kentucky's treatment facilities, the housing of youth in adult jails, the lack of alternatives to detention, and adequate prevention programs. While a variety of reasons were cited for these conditions, it was generally thought that they were exacerbated by the lack of strong systemic legal advocacy for juveniles.

Systemic problems were fueled by a lack of adequate financing in the juvenile justice arena, and the failure of legislators and other advocates to agree upon clear, systemic goals for the juvenile justice system. Systemic problems were also heightened by the lack of resources extended to DPA, that historically provided legal services in many counties under inadequate contract system. As the "war on kids" (as one commentator put it) began during the 1990's, so too did the need commence for increased advocacy from the legal community.

### **B. Initial Steps Toward Improvement**

While respondents varied somewhat in their perceptions about this issue, overall a few significant points were made consistently. Independent advocacy groups such as Kentucky Youth Advocates and the Children's Law Center were seen in the forefront of reform efforts in the early to mid 1990's. While DPA was not seen as a driving force in systemic reform efforts, some exceptions were noted, including the Louisville Public Defender office, and a few specific individuals within DPA in Frankfort. To a lesser degree, respondents noted other individuals within state government, the judiciary, and the legislature. At least a few respondents also noted the role of the media in exposing certain systemic issues involving youth, particularly regarding conditions of confinement

### **C. A Decade of Change**

While there have been numerous changes over the last decade, they have not all been positive. However, the most positive changes include:

- Creation of the Department of Juvenile Justice and the significant increase in funding enabling a statewide detention system, alternatives to detention, compliance with JJDP, and improvements in the conditions of confinement in state operated treatment facilities.

- DPA's emphasis on juvenile representation increased significantly at the trial and top management levels with the establishment of the post-dispositional branch, juvenile specialists in field offices, training emphasis, and data and technology improvements. This created a mechanism to address the lack of access many youth had to attorneys and the quality of representation of attorneys handling juvenile cases.
- Effective use of litigation to promote improvements in conditions for youth, the use of adult jails, and access to counsel, combined with effective leadership present in state government to carry out those changes.

*Since there are so few advocates working on progressive reform, the culture in juvenile justice is widely skewed toward punishment. Public defenders have a difficult time competing with this.*

*Juvenile Justice Stakeholder*

The most significant negative changes, however, created additional challenges for Kentucky's state agencies, including DOJJ and DPA, and include:

- Increased emphasis on punishment and "get tough" policies and legislation such as the automatic transfer law, and the 1996 amendments to the Unified Juvenile Code regarding transfer and detention. While some counties saw little change in philoso-

phy of practice, others, like Jefferson County saw dramatic increases in the number of youth being tried as adults.

- Like many parts of the country, the "fear factor" coming from the public drove the development of policy rather than sound data and economic realities.

#### **D. The Evolution of Leadership**

The leadership in systemic reform efforts of the 1990's, whether seen as positive or negative, shifted by the middle of the decade. Overwhelmingly, respondents saw this shift taking place at the direction of Governor Patton and Ralph Kelly, Commissioner of the newly created Department of Juvenile Justice. As dramatic changes began to take shape legislatively and through executive branch policies, the Department of Public Advocacy also began to emerge with increased capacity to deal with many of the new challenges posed. Respondents were mixed on this role, with some feeling the Department's new "collaborative" efforts were positive, and others noting that DPA does not play a strong enough independent role with the legislature. Respondents, however, still felt there was very much of a role for independent advocates, although perhaps not the same role they played in the early 1990's.

#### **E. The Role of DPA in Reform**

By far, respondents noted that the creation of the Juvenile Post-Disposition Branch has been the most significant change in DPA's ability to take a leadership role in addressing juvenile justice issues. One respondent noted that the branch has a "chilling effect" on DOJJ, although more often than not, the Branch has been credited with focusing on "problems" rather than just "cases," thus enabling DPA to take a stronger role in the development of effective policies in the juvenile justice arena.

Respondents noted several examples of what appears to be a “changed culture of juvenile practice” in Kentucky. Generally, DPA attorneys appear to be better prepared to practice juvenile law and that there was an emerging “network” of “hardcore people devoted to juvenile practice.” The system appears to be more systemized, with stronger emphasis on good trial practice focused on constitutional protections and the development of appellate practice.

In addition to its line level work, respondents also noted positive changes in DPA’s ability to work more effectively with the legislature and to take part in policy development with other state agencies.

Since the release of the 1996 report “Beyond *In re Gault*,” a number of significant changes were noted that directly responded to the report’s criticisms. Among the most significant improvements were:

- The creation of the Juvenile Post-Disposition Branch as a “hub” of expertise on juvenile issues. One respondent noted that it provided “a sense of unity, and singleness of purpose” on juvenile issues.
- Better training and support of defenders through the “Gault Initiative,” focused on training, improved technology, and case support.
- Development of additional full time offices to replace contract counties.
- Additional financial resources for the defender system, allowing increased pay for defenders, social workers in offices to assist on cases, appellate attorneys, and a training coordinator.
- Improvement in providing access to counsel for youth statewide, including those youth in detention centers and treatment facilities.
- Increased collaboration with other state agencies involved with juvenile justice issues.
- Improved data collection systems to better track juvenile cases and outcomes.

## **F. Collaboration Versus Advocacy**

Clearly, the emerging leadership role of DPA has been intricately linked to its increased emphasis on collaboration with other agencies and/or groups where a common purpose can be established.

Several individuals noted that DPA has had a positive role on various boards and commissions, including the Governor’s Criminal Justice Council, the state advisory group (SAG) for the Department of Juvenile Justice, and juvenile justice prevention councils. The precise nature of this role, however, brought diverse views. Several respondents stressed the need for “partnerships” with other state agencies, including those already named, but also including independent advocacy groups, the non-profit sector, and Department of Juvenile Justice initiatives. Several others, however, stressed “collaboration” rather than “partnership,” noting the “dynamic tension in DPA’s role” as described by one individual, and the need to ensure that collaboration does not compromise the agency’s independent advocacy values.

A frequent response regarding collaborative efforts was the need for DPA to expand its emphasis on greater local involvement of its field offices. For example, it was noted that DPA attorneys should be involved on local juvenile justice prevention councils and boards, local school initiatives, and other efforts that may impact juvenile court practice. Several respondents noted that DPA needs a stronger role in the legislature, and needs to continue to look for “natural allies” in a variety of sectors to advance its objectives. Reliance on government funding, however, requires political sensitivity to a wide variety of factors.

## **G. Ongoing Challenges**

Respondents were asked to discuss ongoing challenges for DPA in its advocacy role for youth in the juvenile justice system. They had strong and diverse opinions on this issue and several common themes emerged:

### **1. Criminalization of Youth**

*Defenders work in a culture widely skewed toward punishment of kids.*

The most common issue noted is the need for DPA to continue the fight against criminalization of juvenile offenders, and ongoing legislative attempts to create harsher penalties for youth. Respondents noted that the current culture is “widely skewed toward punishment of kids,” and that DPA should work diligently to change public perception on juvenile crime. A variety of strategies were suggested, including increased legislative advocacy (including the elimination of the death penalty for youth under the age of 18), increased services in the areas of mental health, alternatives to secure confinement and ensuring that the judiciary protects the due process rights of youth.

### **2. Sustaining Reform Efforts**

Respondents also felt strongly that the reform efforts of the late 1990’s needs strong leadership for sustainability. Institutional reform efforts which were the result of years of advocacy, efforts to change practices and attitudes, and an influx of funding, can easily be undone by new leadership, changes in state policy, or significant budget cuts. It is critical that a focused effort to sustain current advances is made on an ongoing basis, particularly when a new governor is elected, or when new heads of state agencies are brought into office.

### **3. Striving for Consistency in Quality Representation and Access to Counsel**

While this report has recognized in other sections that there have been improvements both in access to counsel and the quality of representation, respondents have been quick to note that there is still inconsistency across the state in both areas. Some respondents note a lack of resources for defenders as being a key issue, particularly in parts of the state where contract counties still exist. Others noted that some local offices have not made juvenile representation a priority, and that an “internal conflict” within the agency seems to exist regarding priorities and where juvenile representation falls in the pecking order. Clearly, it was felt that more consistency in the field offices was necessary in parts of the state where representation remains weak. As one respondent noted, local offices must continue to strive to increase the stature of juvenile defense so it is not perceived as a “dumping ground.”



#### **4. Continuation of the Plan for Full Time Offices Should be a Priority**

While several factors apparently play into improvements in DPA's juvenile representation efforts, the priority of establishing full time offices throughout the state is clearly recognized as a significant factor in this progress. Respondents noted this change positively and stressed the need for the full time plan to be completed in areas still using only contract attorneys.

#### **5. Status Offender Representation is Inconsistent and Other Resources are Needed for this Population**

Finally, several respondents noted that DPA should increase its focus on status offender representation and provide a consistent system of services throughout the state. It was noted that in some areas, status offenders are unrepresented, while in others, it is the guardian *ad litem* system that is appointed to represent these youth, and not the public defenders. Respondents recognized a cross-over between status and dependent children, and status and delinquent children, and noted the need for more resources and interventions for these youth. The lack of mental health services was also noted.



## **CHAPTER 7 PROMISING PRACTICES**

### **A. Jefferson County Juvenile Defense Team and TeamChild**

Jefferson County has the largest volume of juvenile court cases in the Commonwealth, and provides an excellent example of strong advocacy at each stage of juvenile court involvement. Directed by Pete Schuler, a team of twelve defense attorneys cover the Jefferson County docket of between 4500-5000 cases per year and by far the largest volume of transfers conducted anywhere in the state.

The juvenile unit in Jefferson County provides a one week training for new juvenile defenders in addition to the training provided by DPA. The office conducts weekly case rounds on Fridays, and regularly holds moot court for younger attorneys in the office. An attorney is on call 24 hours a day, seven days a week. Detained clients are regularly visited by attorneys, and other clients receive communication by letter, by phone, and by regular visits to the office regarding upcoming trials.

Motion practice by this unit is routine and aggressive, including competency hearings and suppression hearings. Investigators were particularly impressed with the advocacy they witnessed by younger, newer attorneys in the courtroom. The unit generates significant appellate work on behalf of juveniles (although typically not handled by that unit), and is involved pro-actively on a number of policy issues both at the state and local levels.

Also impressive about the Jefferson County system is the TeamChild program, a model created in Washington State that teams a civil attorney with public defenders to address more holistically the needs of youth in the juvenile justice system. TeamChild is a partnership between the Legal Aid Society and the Public Defender's Office intended to address the underlying causes of a child's delinquency. TeamChild works with schools, social workers, probation officers, juvenile court and family court judges, and others to help young people get the help they need to succeed in the face of often immense obstacles. By providing legal assistance and advocacy to young people and their families, this program helps them receive their basic rights to education, health care and other social services.

TeamChild provides education for young people in the juvenile justice system who are experiencing difficulties in school, have dropped out, have disciplinary problems, or are failing because they have special needs. This program assists juveniles in obtaining access to appropriate educational programs so they can get the most out of school.

Because most children in the juvenile justice system have complex and multiple social service needs, TeamChild also provides access to social services and aids these young people in accessing needed social services to help them achieve stability. In addition to assisting children in obtaining necessary social services, TeamChild helps youth in the juvenile justice system that have mental or physical health problems or drug/alcohol addictions obtain public benefits to which they are entitled in order to receive proper health care. Finally, this program advocates for appropriate placements for youth who are homeless or who reside in a dangerous or unstable home to aid in deterring inappropriate behavior that might arise.

It is also important to note that DPA has implemented the TeamChild program in Hazard, Kentucky, and as such, has adopted this model for exploration in other parts of the state.

### **B. Juvenile Post-Dispositional Branch**

The Juvenile Post-Disposition Branch, created in 1996 through a federal consent decree, has earned its reputation nationally as one of the most successful models of post-disposition advocacy in existence. This Branch has been recognized at the American Bar Association National Juvenile Defender Center's annual leadership summits, where staff have presented on best practices and the concept of post-dispositional advocacy.

The recognition by defense attorneys and other advocates across the state of the excellent work by this unit was apparent. This team was seen by many as the "hub" of expertise on juvenile defense matters, providing assistance to trial offices as well as their work in treatment and detention facilities.

The Juvenile Post-Disposition Branch utilizes 5-6 attorneys, with additional assistance from paralegal and social work staff, to provide legal services concerning conditions of confinement for youth in treatment facilities and private child care facilities across the state. In addition, two attorneys handle juvenile appeals, a supervising attorney provides team direction and also carries handling a small caseload.

The results of this team are significant in many aspects, both tangible and intangible. Clearly, it has enhanced the number of appeals, writs and motions to terminate commitment on behalf of incarcerated youth dramatically in the last five years. The team actively pursued education remedies for youth, as well as other aftercare and release options. Since most of its work has been during the period of time that DOJJ was subject to a federal consent decree concerning civil right violations for conditions in its facilities, the presence of these attorneys has no doubt helped successful implementation of the terms of this decree.

Study results indicate that the number of youth incarcerated in DOJJ facilities without counsel has dropped significantly since 1996. The Juvenile Post-Disposition Branch deserves credit for reducing this number through its successful use of writs and for developing a process with DOJJ to better identify these youth once they come into the system.

### **C. Use of JAIBG Funds for Enhancing Representation**

*Additional Resources.* The agency has made use of Juvenile Accountability Incentive Block Grant (JAIBG) funds to secure attorneys who provided representation to unrepresented children confined in the state's detention centers. This work led to the release of many juveniles on habeas petitions from 1999 to 2002. DPA then shifted the program for 2002 to focus more strategically on three areas of the state with high juvenile attorney caseloads to identify best practices, strategize solutions with all stakeholders and provide mentoring and co-counseling. The creative use of federal funds and the efforts required to secure these monies is to be applauded.

### **D. Gault Initiative: Regional Training Summits and ListServe**

*Regional Summits.* Recognizing that training occurs at several levels for attorneys, DPA has established, through the Gault Initiative, a process of conducting regional training

summits throughout the state for its attorneys and other staff. These seminars exclusively focus on juvenile issues and are based upon the assessment of local training needs. Rather than reliance on the once a year annual seminar, which generally provides a juvenile track, these summits bring a clear and dedicated training focus to participants.

*ListServe for Juvenile Defenders.* Also significant in the Gault Initiative is the Juvenile Defender ListServe, with nearly 150 members. The ListServe is used to increase information flow to juvenile defenders, as well as provide a mechanism for problem solving, resources and discussion on a variety of juvenile topics. Both the summits and the ListServe provide more immediate, relevant and "hands-on" assistance to attorneys providing indigent juvenile defense.

*Practice Manual.* The agency published an extensive Juvenile Law Manual in 1991. The manual was replete with form motions and chapters covering the representation of status and public offenders. Each year the manual is updated with new legislation and new litigation strategies. The manual is used during new attorney training and updates are provided to all DPA field offices and to contract attorneys.

*On-Going Training.* The Department of Public Advocacy's Annual Seminar has sessions exclusively devoted to juvenile law. National and state experts present on a plethora of issues from special education law to the application of new constitutional law principles in the juvenile arena. Mental health experts pair with defense counsel in presentations. All full time staff and all contract attorneys attend this valuable, nationally-recognized event.



## **CHAPTER 8 RECOMMENDATIONS**

The Commonwealth of Kentucky has made some significant changes in its indigent defense structure, funding and overall performance over the last five years regarding access to counsel and quality of indigent juvenile defense. The following recommendations are made, however, to ensure continued improvement, to sustain existing reforms, and to assure that youth in Kentucky's juvenile justice system are guaranteed their constitutional right to effective assistance of counsel.

### **The Kentucky Department of Public Advocacy and Local Public Defender Offices should ensure that:**

- Sufficient resources are consistently made available in local field offices to provide effective assistance of counsel including appropriate training and the availability of support staff with special expertise to assist in representation;
- Caseloads are reduced in all areas of the Commonwealth where they currently exceed the IJA/ABA Juvenile Justice Standards, with special consideration given to areas with offices covering multiple counties whereby travel is difficult, and urban counties with a high number of felony and/or juvenile transfer cases;
- Consistency in the quality of representation is achieved and maintained across the state;
- Equity in the allocation of resources to juvenile defense is achieved and maintained as compared to adult defense resources;
- Availability of counsel at early stages is consistently provided, including provisions for police questioning and preliminary inquiries with Court Designated Workers, including strong advocacy for 18 year old youthful offenders returning to sentencing court for release consideration;
- The continued use of contract attorneys to cover juvenile dockets is closely monitored to ensure that attorneys are providing effective assistance of counsel, receive adequate training and oversight, and that accurate data is collected from these counties on public defender representation;
- Its program of strong post-dispositional representation is sustained and continues to utilize the expertise of the Juvenile Post-Disposition Branch as a resource to trial offices and in policy development;
- Status offenders are provided with access to counsel in all parts of the state and that such counsel is provided to represent their express wishes, and that guardian's *ad litem* are not as substantive;
- Strong disposition advocacy for status, public and youthful offenders becomes a priority within field offices and that adequate resources are available to attorneys to assist in preparation for these hearings;
- Adequate resources are available within trial offices to effectively address cultural and language barriers with Hispanic clients, including availability of Spanish

speaking staff or interpreters, and training on legal and cultural issues which may affect representation;

- Defenders play a critical role in shaping local policies and practices with the creation of special courts such as drug court and family courts, as well as school based and mental health initiatives;
- Opportunities exist for experienced defenders to remain in juvenile court practice with the same opportunities for pay advances and other benefits;
- Continued work is done on creating accurate data on caseloads, outcomes and other juvenile justice information essential to effective planning and evaluation of services;
- Develop additional opportunities for leadership among attorneys and provide additional internal support for this area of practice; and,
- Participation in juvenile and criminal justice initiatives, policy work, and legislative advocacy is achieved without compromise to the Department's essential independent advocacy role for poor children.

**The Kentucky Legislature should ensure that:**

- Adequate funding is in place for the Kentucky Department of Public Advocacy to ensure that quality representation is consistently available across Kentucky, including funds for training, non-attorney support and resources, manageable caseloads and adequate compensation; and,
- The principles of due process are protected in juvenile court proceedings, particularly when a child's liberty interests are at stake.

**Kentucky Courts of Justice should ensure that:**

- No juvenile subject to the jurisdiction of the juvenile and/or criminal justice system goes unrepresented at any critical stage of proceedings;
- Waiver of counsel does not occur in juvenile proceedings without a child's prior consultation with counsel, and only after an appropriate colloquy on the record, to ensure the youth understands all rights being waived, and the potential consequences to which he or she is subject; and,
- Opportunities for training of judges on matters pertaining to juvenile court practice are available and accessible for district court judges handling juvenile matters.

**Law Schools in Kentucky should:**

- Promote and encourage interest in juvenile justice issues through academic courses and clinical programs; and,



- Collaborate with other disciplines such as social work, education, psychology, medicine and criminal justice to develop opportunities for internships, fellowships and volunteer work on behalf of youth in the juvenile justice system.

**State and Local Bar Associations in Kentucky should:**

- Establish juvenile rights committees that can provide training and other resources for indigent defense services;
- Create and support activities that can elevate the status of indigent juvenile defense practice;
- Encourage law firms and private attorneys to provide *pro bono* representation of youth in the juvenile justice system; and,
- Provide financial resources to assist in strengthening access to counsel and quality of representation initiatives.

**Media in Kentucky should:**

- Ensure that fair and balanced reporting of juvenile justice issues is achieved and that context is sought to accurately reflect current research on juvenile crime trends;
- Examine race and gender issues as they pertain to reporting on juvenile crime;
- Focus attention on systemic problems and solutions in the juvenile justice system where appropriate to better inform the public of critical issues; and,
- Actively work with defenders in gaining perspective of the complexity of juvenile crime issues and effective solutions to prevention, intervention and treatment.

**State and local agencies, including defenders, should work collaboratively to address issues in the juvenile justice system facing Kentucky's youth, including:**

- Further examination of disproportionality of minority youth in the juvenile justice system as it relates to arrest, detention, transfer and incarceration, particularly in urban areas of the state, and the development of appropriate strategies and services to reduce disparities;
- Further examination of gender based issues involving the increase in female offenders, with appropriate development of strategies and services to this population;
- Development of data regarding school based complaints to juvenile courts to critically examine the need for alternatives to criminalization of youth with emotional, behavioral, and/or other mental health needs;

- Improvement in the availability and quality of services to status offenders, including youth who are truant and/or beyond control to reduce the likelihood of further involvement in the juvenile justice system;
- Improvement in the quality and availability of re-entry programs for youth completing incarceration and in need of services back in their local communities; and,
- Critical analysis of mental health and substance abuse programs for youth in the juvenile justice system to ensure intervention and treatment options that have proven to be effective are readily available.

**APPENDIX  
KEY STAKEHOLDERS INTERVIEWED**

Rebecca Diloreto  
Director, Post-Trial Services  
Department of Public Advocacy

Judge Paul Isaacs  
14th Judicial Circuit  
Circuit Court Judge

Judge Julia Adams  
25th Judicial Circuit  
Circuit Court Judge

Deb Williamson  
Division of Youth, Families and  
Community Services  
Administrative Office of the Courts

Judge Maria Ransdell  
Fayette District Court

Dr. Ralph Kelly, Commissioner  
Department of Juvenile Justice

Susan Stokley Clary, Clerk  
Kentucky Supreme Court

Gail Robinson, Manager  
Juvenile Post-Disposition Branch  
Department of Public Advocacy

Ernie Lewis  
Public Advocate  
Department of Public Advocacy

Judge Dan Guidugli  
Kentucky Court of Appeals

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General Counsel  
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Manager of Education and Strategic  
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Harry Rothgerber  
First Assistant Commonwealth Attorney  
Jefferson County Commonwealth  
Attorney's Office

Dr. David Richart  
Executive Director  
Institute for Children, Youth and Families

Earl Dunlap  
Executive Director  
National Juvenile Detention Association

Pete Schuler  
Chief Juvenile Defender  
Louisville Jefferson County Public  
Defenders

**ENDNOTES**

<sup>1</sup> See, *Kent v. United States*, 383 U.S. 541 (1966) (due process attaches to hearings on transfer from juvenile to adult jurisdiction); *In re Gault*, 387 U.S. 1 (1967) (due process attaches to delinquency hearings); *In re Winship*, 397 U.S. 358 (1970) (standard of proof in delinquency proceedings is beyond a reasonable doubt); *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971) (right to a jury trial is not a fundamental due process right in delinquency proceedings); *Breed v. Jones*, 421 U.S. 519 (1975) (double jeopardy protections are part of delinquency proceedings); and *Schall v. Martin*, 467 U.S. 253 (1984) (preventive detention of children charged with delinquent acts is constitutional).

<sup>2</sup> National Advisory Committee for Juvenile Justice and Delinquency Prevention, July 1980, "3.312 Representation by Counsel – For the Juvenile," Standards for the Administration of Juvenile Justice (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, U.S. Dept. of Justice).

<sup>3</sup> *IJA/ABA Juvenile Justice Standards Annotated, Standards Relating to Counsel for Private Parties* (1996).

<sup>4</sup> Puritz, Burrell, Schwartz, Soler, Warboys. *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, American Bar Association Juvenile Justice Center (December 1995).

<sup>5</sup> 42 U.S.C. 5601 (a)(2).

<sup>6</sup> *John Doe, et al. v. Don Younger, et al.*, United States District Court, Eastern District at Covington, Case No. 91-187.

<sup>7</sup> *Jesse James, et al., v. Patton*, United States District Court, Western District of Kentucky, Case No. 5: 89CV-139-H.

<sup>8</sup> Amnesty International, United States of America, "Cruelty in Control? The Stun Belt and Other Electro-Shock Equipment in Law Enforcement," June 1999.

<sup>9</sup> Brooks, Crone, and Earl. "Beyond *In re Gault*: The Status of Juvenile Defense in Kentucky," *Kentucky Children's Rights Journal*, Vol. V, No. 1.

<sup>10</sup> *United States v. Kentucky*, United States District Court, Eastern District, Case No. 9:95-CV-757-S.

<sup>11</sup> *M.K. v. Wallace*, United States District Court, Eastern District at Covington, Case No. 93-213.

<sup>12</sup> Brooks, Crone, and Earl. "Beyond *In re Gault*: The Status of Juvenile Defense in Kentucky," *Kentucky Children's Rights Journal*, Vol. V, Number 1, Spring 1997.

<sup>13</sup> Ky. Rev. Stat. Ann. § 635.060(4)-(5) (Baldwin 1995 and Supp. 1996) (effective 7/1/97).

<sup>14</sup> Ky. Rev. Stat. Ann. § 635.020(3) (Baldwin 1995 and Supp. 1996) (effective 7/15/97).

<sup>15</sup> Administrative Order, No. 96-01, Public Protection and Regulation Cabinet, Department of Public Advocacy, (May 16, 1996).

<sup>16</sup> See, *M.K. v. Wallace*, No. 93-213 (E.D. Ky. 1995), Consent Decree dated August 13, 1995.

<sup>17</sup> These counties include Barren, Metcalfe, Bullitt, Ballard, Carlisle, Fulton, Hickman, Boone, Campbell, Carroll, Grant, Harrison, Nicholas, Pendleton, and Robertson.

<sup>18</sup> Ky. Rev. Stat. Ann. 510.010(1)-(3).

<sup>19</sup> Ky. Rev. Stat. Ann. 610.010.

<sup>20</sup> Ky. Rev. Stat. Ann. 610.010 (unlike adult jurisdiction which is only in the district where the crime was committed).

<sup>21</sup> Ky. Rev. Stat. Ann. § 610.280(1) (allowing for juveniles held in a nonsecure or secure to have a detention hearing within 48 hours).

<sup>22</sup> Ky. Rev. Stat. Ann. §630.080(limiting the detention for a status offender in a secure facility to 24 hours before a detention hearing must be held) (*see also* Ky. Rev. Stat. Ann. §610.280(1) (b)).

<sup>23</sup> Ky. Rev. Stat. Ann. §610.280(2).

<sup>24</sup> Ky. Rev. Stat. Ann. §610.280(2)(a-b), 610.265(2)(a).

<sup>25</sup> Ky. Rev. Stat. Ann. §610.070(1) and 610.010(1)(a)(granting the 16-18 year old, non-felony, motor vehicle offender the right to be treated as an adult, therefore granting a jury trial).

<sup>26</sup> Ky. Rev. Stat. Ann. §610.070(3).(in the same respects, juvenile cases that have gone to the Kentucky Court of Appeals will also be closed to the general public. *F.T.P. v. Courier-Journal and Louisville Times Co.*, 774 S.W.2d 444 (1989).

<sup>27</sup> Ky. Rev. Stat. Ann. §610.080.

<sup>28</sup> Ky. Rev. Stat. Ann. §610.100(1)

<sup>29</sup> Ky. Rev. Stat. Ann. §610.100(1).

<sup>30</sup> Ky. Rev. Stat. Ann. §630.120.

<sup>31</sup> Ky. Rev. Stat. Ann. §630.120(2)(a-b).

<sup>32</sup> Ky. Rev. Stat. Ann. §630.120(4).

<sup>33</sup> Ky. Rev. Stat. Ann. §630.120(5).

<sup>34</sup> Ky. Rev. Stat. Ann. §630.120(6) (the cabinet, however, is also limited in what can be done with status offenders, for further discussion see later sections).

<sup>35</sup> Ky. Rev. Stat. Ann. §635.060.

<sup>36</sup> Ky. Rev. Stat. Ann. §635.060(1)(the limitations are set out in the second sentence of the statute, which include notice of and holding a hearing, and making a finding that the person's failure to exercise reasonable control or supervision was a substantial factor in the child's delinquency).

<sup>37</sup> Ky. Rev. Stat. Ann. §635.060(2)(the Court's jurisdiction can be extended if a person is placed on probation after the person reaches seventeen (17) years and six (6) months, the probation shall be extended for a period not to exceed one year).

<sup>38</sup> Ky. Rev. Stat. Ann. §635.060(3) (with this extension of time, and with the independent living arrangements, the child may get college tuition paid for until the age of twenty-one (21)).

<sup>39</sup> Ky. Rev. Stat. Ann. §635.060(4-5).

<sup>40</sup> Ky. Rev. Stat. Ann. §635.060(6).

<sup>41</sup> Ky. Rev. Stat. Ann. §640.010(2).

<sup>42</sup> Ky. Rev. Stat. Ann. §635.020(4).

<sup>43</sup> Ky. Rev. Stat. Ann. §635.020(4).

<sup>44</sup> Ky. Rev. Stat. Ann. §640.010(2) (a) (referring back to Ky. Rev. Stat. Ann. §635.020 to find out if the child is of the requisite age, and if the child has the required number of prior adjudications for transfer).

<sup>45</sup> Ky. Rev. Stat. Ann. §640.010(2)(b)(If the District Court determines probable cause exists, the court shall consider the following factors before determining whether the child's case shall be transferred to the Circuit Court).

<sup>46</sup> Ky. Rev. Stat. Ann. §640.010(c).

<sup>47</sup> Kentucky Administrative Office of the Courts, Court Designated Worker Program, Making a Difference; available at [http://www.kycourts.net/administrative/yfc/AOC\\_YFC\\_Juv.asp](http://www.kycourts.net/administrative/yfc/AOC_YFC_Juv.asp).

<sup>48</sup> Deborah Williamson, "An Analysis of Juvenile Waiver in the Commonwealth of Kentucky," 10-11 (2000)(unpublished Ph.D. dissertation, University of Kentucky Department of Sociology)(on file with author)(citing generally J. O'Daniel & J. Birmingham, *Juvenile Service Officer Pilot Projects: Court Designated Worker Program Summary 1982-1984* (1984)).

<sup>49</sup> Ky. Rev. Stat. Ann. §605.030(1) (the provisions listed are not exclusive and the duties of the CDW include other demands).

<sup>50</sup> Ky. Rev. Stat. Ann. §605.040(1-4) (again, this list is not exclusive).

<sup>51</sup> Ky. Rev. Stat. Ann. §610.200(2).

<sup>52</sup> Ky. Rev. Stat. Ann. §610.200(5).

<sup>53</sup> Ky. Rev. Stat. Ann. §610.200(5)(a-d).

<sup>54</sup> Ky. Rev. Stat. Ann. §600.040(2)(Facilities, programs, and services relating to juveniles under other chapters of the code, including Ky. Rev. Stat. Ann. Chapter 630, shall be the responsibility of the Cabinet for Families and Children.)(Chapter 630 deals with status offenders).

<sup>55</sup> Ky. Rev. Stat. Ann. §630.120(5).

<sup>56</sup> Commonwealth of Kentucky, Department of Juvenile Justice, available at <http://djj.state.ky.us/aboutdjj1.htm>.

<sup>57</sup> Ky. Rev. Stat. Ann. §635.060(3).

<sup>58</sup> Ky. Rev. Stat. Ann. § 600.020 (30), (31) and (47).

<sup>59</sup> Ky. Rev. Stat. Ann. § 600.040.

<sup>60</sup> Ky. Rev. Stat. Ann. §15A.210.

<sup>61</sup> Department of Juvenile Justice, Kentucky Juvenile Detention System (2001).

<sup>62</sup> Department of Juvenile Justice, Kentucky Juvenile Detention System (2001) at 4.

<sup>63</sup> Commonwealth of Kentucky, Department of Juvenile Justice, Annual Report for FY 2001.

<sup>64</sup> Commonwealth of Kentucky, Department of Juvenile Justice, Continuum of Care, available at <http://djj.state.ky.us>.

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<sup>67</sup> Commonwealth of Kentucky, Department of Juvenile Justice, Continuum of Care, available at <http://djj.state.ky.us> at para. 11.

<sup>68</sup> *Supra*, at note 45.

<sup>69</sup> Ky. Rev. Stat. Ann. 31.110(3)(b)-(d) (2001).

- <sup>70</sup> Ky. Rev. Stat. Ann. §31.120 and 31.125 (2001).
- <sup>71</sup> IJA/ABA Juv. Just. Standards, Counsel to Private Parties, Standard 2.2(b)(iv)(1980).
- <sup>72</sup> IJA/ABA Juv. Just. Standards for Crim. Just. Standard 5-4.3 (1980).
- <sup>73</sup> IJA/ABA Juv. Just. Standards., *supra* note 22, at Standards 2.2(b)(19980).
- <sup>74</sup> A “case” defined by DPA consists of a single accused, having either under the same or different case number(2), one or more charges, allegations, or proceedings arising out of one event or a group of related contemporaneous events. These charges must be brought contemporaneously against the defendant, stemming from the same course of conduct and involving proof of the same facts.
- <sup>75</sup> Ky. Rev. Stat. Ann. §610.060(1)(a).
- <sup>76</sup> *D.R. v. Commonwealth*, Ky. Ct. App., 64 S.W. 3d 292 (2001).
- <sup>77</sup> *D.R. v. Commonwealth*, Ky. Ct. App., 64 S.W. 3d 292 (2001) at p. 296.
- <sup>78</sup> IJA/ABA Juv. Just. Standards, Pretrial, Court Proceedings, Standard 6.1(1) (1980).
- <sup>79</sup> IJA/ABA Juv. Just. Standards, Pretrial, Court Proceedings, Standard 6.1(1) (1980) at Standard 6.2(a)(1).
- <sup>80</sup> IJA/ABA Juv. Just. Standards, Pretrial Court Proceedings, Standard 6.1(a)(1980).
- <sup>81</sup> IJA/ABA Juv. Just. Standards, Pretrial Court Proceedings, at Standard 4.2(a) (1980).
- <sup>82</sup> IJA/ABA Counsel to Private Parties, Standard 2.2(b)(ii)(1980).
- <sup>83</sup> IJA/ABA Counsel to Private Parties, at Standard 9.3.
- <sup>84</sup> Thomas, Randy S. “Kentucky Disproportionate Minority Confinement Initiative, Interim Report, Community Research Associates, (March 2000).
- <sup>85</sup> IJA/ABA Counsel to Private Parties, at Standard 10.1(a)(i).
- <sup>86</sup> IJA/ABA Counsel to Private Parties, at Standard 10.3(b).
- <sup>87</sup> 2002 Summary Report, “Daily Average Number of Juveniles Held in Secure Detention,” Kentucky Department of Juvenile Justice.
- <sup>88</sup> Mendel, Richard. “Less Hype, More Help: Reducing Juvenile Crime, What Works and What Doesn’t,” American Youth Policy Forum, Washington D.C. (2000) p. 14.
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<sup>91</sup> Rosado, L. "Special Ed Kids in the Justice System: How to Recognize and Treat Young People with Disabilities that Compromise their Ability to Comprehend, Learn and Behave," In *Understanding Adolescents: A Juvenile Court Training Curriculum*, American Bar Association Juvenile Justice Center, Juvenile Law Center, Youth Law Center (2000).

<sup>92</sup> Leone, Zaremba, Chapin, and Iseli. "Understanding the Overrepresentation of Youth with Disabilities in Juvenile Detention," *District of Columbia Law Review* 3 (Fall 1995). 389-401.

<sup>93</sup> Rosado, L. "Special Ed Kids in the Justice System: How to Recognize and Treat Young People with Disabilities that Compromise their Ability to Comprehend, Learn and Behave," In *Understanding Adolescents: A Juvenile Court Training Curriculum*, American Bar Association Juvenile Justice Center, Juvenile Law Center, Youth Law Center (2000) at 12.

<sup>94</sup> Building Blocks for Youth. DMC Factsheet, Kentucky, (accessed April 9, 2002) <http://www.buildingblocksforyouth.org/statebystate/kydmc.html>.

<sup>95</sup> Building Blocks for Youth. *And Justice for Some*, (accessed April 9, 2002), <http://www.buildingblocksforyouth.org/justiceforsome/corrections.html> (hereinafter "Building Blocks").

<sup>96</sup> Building Blocks, *supra*, note 94.

<sup>97</sup> Thomas, Randy, Kentucky Disproportionate Minority Confinement Report, Community Research Associates, p. 4.

<sup>98</sup> *Id.* at p. 11.

<sup>99</sup> *Id.* at p. 28.

<sup>100</sup> Building Blocks for Youth, *Disproportionate Minority Confinement* <http://www.buildingblocksforyouth.org/statebystate/kydmc.html>.

<sup>101</sup> Thomas, *supra*, at note 97.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at p. 29.

<sup>104</sup> Coordinating Council of Juvenile Justice and Delinquency Prevention, "Juveniles and the Death Penalty," Office of Juvenile Justice and Delinquency Prevention, November 2000. Note that this number also reflects the recent legislative abolition of Indiana's death penalty for juveniles.

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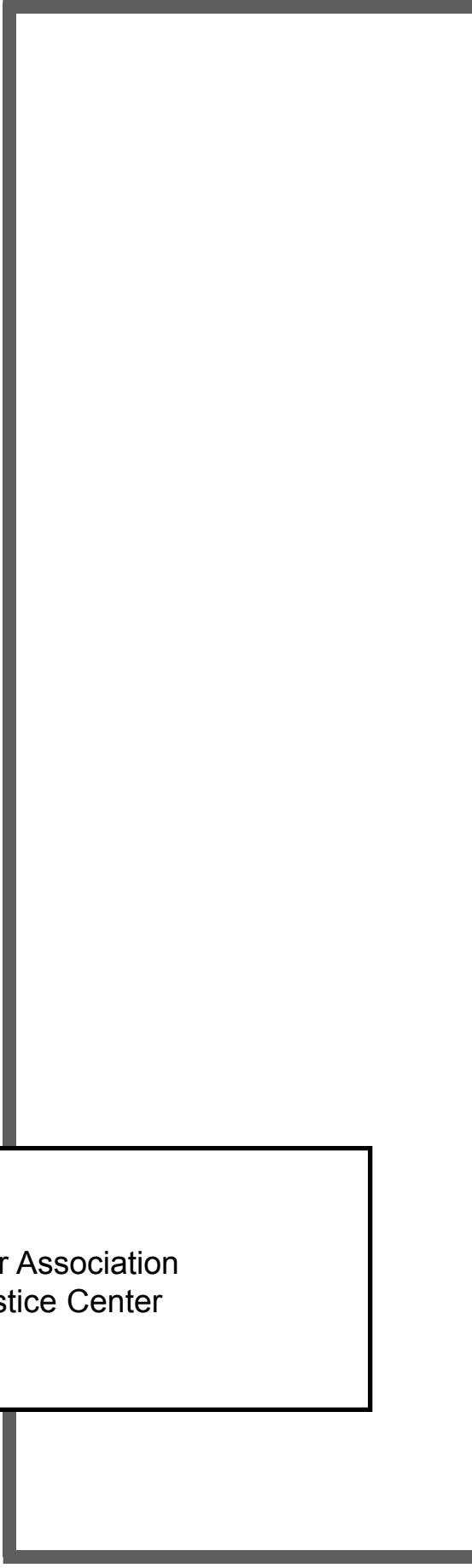
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