



# Indiana Public Defender Council Juvenile Defense Project

*Improving Juvenile Defense Services in Indiana*

## JUVENILE DELINQUENCY NEWS AND UPDATES

Week of August 20, 2018



### THE IMPORTANCE OF PUBLIC DEFENDER SELF-CARE

It's Wednesday morning. If you slept like a baby last night, went for a run, meditated, and are drinking your healthy breakfast smoothie while you eagerly contemplate your organized, anxiety free work day ahead, then skip to page 3, you glorious weirdo. If, on the other hand, you are

like most attorneys, especially public defenders, you may feel stressed and overwhelmed as you start another day.

It is no secret that lawyers have higher rates of depression, anxiety and substance use than other professions. In a Johns Hopkins University study of more than 100 occupations, researchers found that lawyers lead the nation with the highest incidence of depression.<sup>1</sup> A newer study showed that the levels of depression, anxiety and stress in the legal profession have increased.<sup>2</sup> In response, the ABA along with several national organizations, created a National Task Force on Lawyer Well-Being, which issued a report in August 2017. The report offers actionable recommendations on how to fix problems with lawyer well-being. The full report can be downloaded from the dedicated website <http://lawyerwellbeing.net/>

For public defenders, caseloads and exposure to other people's trauma are related to symptoms of compassion fatigue. A study of the Wisconsin State Public Defender found factors such as years on the job, age, office size, gender, and personal history of trauma made no significant differences in compassion fatigue levels.<sup>3</sup>

#### Public Defender Self-Care

You may not be able to change the circumstances of your practice, but lawyers can relieve the symptoms of stress and anxiety through the practice of self-care. A recent ABA article details many of the positive steps attorneys can take to alleviate the effects of stress in the profession.

[http://www.abajournal.com/magazine/article/how\\_lawyers\\_can\\_avoid\\_burnout\\_and\\_debilitating\\_anxiety](http://www.abajournal.com/magazine/article/how_lawyers_can_avoid_burnout_and_debilitating_anxiety)

1 Eaton, W.W. Occupations and the prevalence of major depressive disorder. *Journal of Occupational Medicine*, (1990). 32 (11), 1079-1087.

2 Krill, Patrick R. JD, LLM; Johnson, Ryan MA; Albert, Linda MSSW, The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys, *Journal of Addiction Medicine*: January/February 2016 - Volume 10 - Issue 1 - p 46-52.

3 Molvig, Dianne, The Toll of Trauma, *Wisconsin Lawyer* – December 2011 [http://www.hebiofeedback.co.uk/wp-content/uploads/2012/08/fatigue\\_final.pdf](http://www.hebiofeedback.co.uk/wp-content/uploads/2012/08/fatigue_final.pdf)

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# self-care

Some of the self-care practices are common sense, and all are free. Devoting even a few minutes a day to these practices can provide results.

**Meditate and practice mindfulness** – you may envision this:



But in reality, this



can be just as effective.

There are free meditation apps and download galore, and some specifically for lawyers. For example here's a series of short meditations for lawyers

<http://theanxiouslawyer.com/6-minute-meditation-for-lawyers/>

You can start with the basics right now. Take just two minutes – set a timer- and try the following:

Find a comfortable seated position

Close your eyes

Bring your attention to your breath — feel the inhale and the exhale

When your mind wanders, bring it back to the breath

**Sleep more.** You know you need to. Sacrificing sleep for work is a bad bargain. Getting enough sleep helps your well being and your work. Less sleep can make you more vulnerable to stress and anxiety and to making mistakes and poor judgment.

**Exercise regularly.** You wouldn't skip taking your heart meds because your schedule is busy. Exercise benefits both physical and mental health and acts as a natural anti-depressant. If going to the gym is not your thing or takes too much time, a walk, run, or online yoga at home are free and quick and don't require special equipment or athletic skills.

**Healthy and mindful eating.** Skipping meals, or eating hunched over a laptop is the opposite of healthy and mindful. And eating good food makes you feel good. It's not rocket science.

**Stay connected.** Pulling away from friends, family, and colleagues can be a response to depression and anxiety, but losing connections actually increases the effects of the problem. This one is especially important for public defenders who aren't in a firm or office with other lawyers to talk to. Remember that Wisconsin study? Public defenders surveyed identified other factors contributing to compassion fatigue. The top three were lack of respect, lack of control in one's work life, and lack of enough time to process issues and give or get support. Remember, there are lots of others experiencing the same highs and low and challenges of working with kids. Use the jdlaw listserv, "network" at trainings, call IPDC's juvenile project staff, or other ways to connect with colleagues.

Finally, seek professional intervention and treatment if needed. JLAP is confidential and offers help to Indiana attorneys who are experiencing substance use, mental health, and even age related problems. Help can range from information and referral to assistance with organization of an intervention. <https://www.in.gov/judiciary/ijlap/2361.htm>

# JD CASELAW UPDATE



## Court of Appeals holds *Baum* standard applies to ineffective assistance claim in juvenile modification hearing.

*A.M. v. State*, 18A-JV-618 (08/20/18)

<https://www.in.gov/judiciary/opinions/pdf/08201801tac.pdf>

AFFIRMED. A.M. appealed following a modification and disposition ordering him to DOC. A.M. was a 15-year-old with an emotional disability, a long history of trouble in school, and a first delinquency finding at age 10. While on probation for battery, A.M. was a suspect in a burglary of a classmate's home, was arrested for B misdemeanor battery if committed by an adult, was suspected of drinking, was expelled from school, and was "wanted by police for theft of a firearm." The State sought a modification. The parties stipulated to the redaction of the burglary and alcohol allegations, and A.M. admitted to the remaining allegations.

On appeal, A.M. argued on appeal the trial court abused its discretion by relying on insufficient information and by failing to explain the reasons for modifying his placement to DOC, the most restrictive placement possible. The Court of Appeals affirmed and held the trial court acted within its discretion in modifying A.M.'s placement.

A.M. also argued he received ineffective assistance of counsel in his modification hearing. The Court of Appeals held A.M. had not been denied the effective assistance of counsel, but held for the first time, that the less stringent *Baum v. State*, 533 N.E.2d 1200 (Ind. 1989) standard and not *Strickland v. Washington*, 466 U.S. 668 (1984), should apply to the analysis of effectiveness of a juvenile's counsel during the modification proceedings. Under *Baum*, the analysis used in claims of ineffective assistance of counsel in post-conviction and adult probation violation proceedings, the question is whether counsel appeared and represented the person in a procedurally fair setting. The Court stated *Strickland* is rooted in the Sixth Amendment and the Supreme Court, in *In re Gault*, 387 US 1 (1967) held a juvenile's right to counsel during delinquency proceedings is rooted in the Due Process Clause of the Fourteenth Amendment rather than the Sixth Amendment.

The Court of Appeals encouraged the Indiana Supreme Court to address "whether the two-pronged *Strickland* test or the due process test is the proper test to be used in analyzing the effectiveness of juvenile's counsel during the various phases of delinquency proceedings."

The Court also rejected A.M.'s argument that he essentially received no assistance from counsel where his attorney conceded that A.M. should be committed to the DOC at the disposition hearing. Although the attorney argued the dismissed allegations involving the burglary and alcohol use as reasons for A.M. to go to DOC, the Court of Appeals found the fact that counsel negotiated a stipulation redacting the allegations supported a finding of effective performance.

IPDC Juvenile Project's 2nd

## Free Lunchtime CLE



### Developing and Preserving the Delinquency Record for Appeal

This live 1 hour webinar will discuss preserving the juvenile record for appeal. Public defenders will learn about the law and mechanics of interlocutory and final appeals; the importance of preserving the record at the fact-finding and disposition phase; and the importance of communicating with and counseling clients about the consequences of an adjudication, their right to appeal and their legal status pending their appeal. Training will cover statutes, case law, and court rules governing the procedure for juvenile delinquency appeals in Indiana and some unique issues that may come up in local jurisdictions.

**Presenters:** Joel Wieneke and Amy Karozos

**1 hour CLE credit**

**Cost:** Free to public defenders

**September 18th 12:00-1:00 p.m. EST**

**Register at:**

<http://bit.ly/JTIPwebinar2018>

Log on instructions will be e-mailed prior to the webinar.

For more information, please contact

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# Indiana Public Defender Council (IPDC) Free Regional Juvenile Trainings

## 2018 Training Schedule

The 2018 IPDC JTIP regional training schedule and registration links can be found on IPDC's website at [www.in.gov/ipdc/](http://www.in.gov/ipdc/) Registration will open approximately 6 weeks prior to each training. All IPDC JTIP trainings are free to public defenders handling delinquency cases.



## Register for a September Regional JTIP training:

### Disposition Advocacy

This 3 hour interactive training will focus on skills to advocate effectively for clients at the disposition hearing, consistent with the clients' stated interests. Defenders will understand statutory, common and constitutional law governing disposition; understand the range of disposition options available in their local jurisdictions, and learn to identify and develop creative disposition alternatives. Defenders will explore ways to write effective and compelling memoranda in aid of disposition; and to conduct effective evidentiary disposition hearings, including cross-examination of probation and other government witnesses and presentation of defense witnesses.

September 14th **Marion County** 1:00-4:30 p.m. EST  
Ivy Tech Lawrence Campus.

Registration Link: <http://bit.ly/JTIPSept14>

September 21<sup>st</sup> **Tippecanoe County** 1:00-4:30 EST  
Tippecanoe County Government Center

Registration Link: <http://bit.ly/JTIPsept21>

September 28<sup>th</sup> **Lawrence County** 1:00-4:30 EST  
Lawrence County Public Defender's Office

Registration Link: <http://bit.ly/JTIPSept28>