

# Juvenile Defense Subcommittee: Report and Recommendations

Indiana Task Force on Public Defense

February 9, 2017

Judge Vickie Carmichael, Subcommittee Chair

# Juvenile Defense as a Specialization

Ten Principles for an Effective Juvenile Defense System - NJDC and NLADA

Juvenile Defense Standards - NJDC

Right to Counsel - Ethical Considerations - NJDC



# Juvenile Defense: Right to Counsel

## Federal Constitutional Basis:

*In re Gault*, 387 U.S. 1 (1967), was a landmark U.S. Supreme Court decision that held that juveniles accused of crimes in a delinquency proceeding must be afforded many of the same due process rights as adults, such as the right to timely notification of the charges, the right to confront witnesses, the right against self-incrimination, and the right to counsel.

## Indiana Right to Counsel Provisions:

Ind. Code 31-32-2-2, 31-32-4-1; *D.H. v. State*, 688 N.E. 2d 221, 223 (Ind. Ct. App. 1997)

## Indiana Crim Rule 25:

Enacted by Supreme Court rule and effective January 1, 2015

# Assessment of Juvenile Defense in Indiana

- Indiana: Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings, National Juvenile Defender Center, Central Juvenile Defender Center (2006)
- OJJDP Planning Grant (2015-16)
- OJJDP Implementation Grant (2016-18)



# Key Attributes for Effective Juvenile Defense Representation - 10 Principles

## Same as Adults

- Independence from judicial and/or political influence
- Caseload/workload standards
- Pay and resource parity
- Supervision and review of staff performance
- Quality assurance measures for effective representation

## Different from Adults

- Specialized training to work with children and youth at given stages of development
- Highly focused on both trial and appellate skills as well as aspects of developmental differences
- Recognition of need for specialists from other disciplines as key to defense
- Sensitivity to special populations and other practice challenges (i.e. ethical considerations, competency, role of parents, communication, transfer to adult court, school related issues)

# Key Findings from Assessments

- 1) Early Appointment of Counsel and Reduction in Waiver of Counsel Remains a Priority
- 2) Indigency Determinations Should be Consistently Applied
- 3) Post-Disposition Advocacy Needs to be Strengthened



# Key Findings from Assessments

- D) Juvenile Defense as a Specialization is Lacking
  - Training
  - Enforcement of Standards
  - Access to Expert and Ancillary Services Needed for Holistic Representation and Effective Assistance of Counsel

# Key Findings from Assessments

- E) Oversight and accountability measures are inadequate
  - Lack of oversight and enforcement in Commission's role
  - State performance measures are inadequate
  - Lack of data collection on key defense indicators



# OJJDP Implementation Priorities

## Goals:

- i. Access to counsel in delinquency and status cases at all critical stages,;
- ii. Post-dispositional representation
- iii. Create a system which recognizes juvenile defense as a specialization; and,
- iv. Enhance current juvenile data collection systems

# OJJDP Grant Limitations

Statutory limitations  
on post-disp and  
other direct service  
work

Limited in duration  
and in need of  
sustainability

Voluntary  
participation by  
lawyers in training  
and consultation

Limitations on Data  
collection

Project cannot  
sustain long term  
salaried staff as  
grant funded



# Other State Models Examined - Lessons Learned

- Colorado Alternative Defense System - separate state office which administers, funds and oversees all juvenile and adult conflict cases
- North Carolina Indigent Defense Board - Juvenile Public Defender has quality control responsibilities and does monitoring and reporting out
- Office of the Ohio Public Defender - Juvenile Unit is contained within a state appellate office (Ohio is primarily county based)
- Wisconsin Public Defender Office - Juvenile unit is one of several offices of specialized practice at the state level

# Other State Models - Key Themes to Ensure Effectiveness

- a) Trial level support from juvenile defense experts is critical
- b) State appellate services provided better oversight and quality control of trial practices
- c) Oversight of quality of representation in juvenile defense can be accomplished in a number of ways depending upon the service delivery model.
- d) Specific performance indicators and data collection can be effective ways to document outcome and achieve quality results.



# Subcommittee Recommendations

- a) Centralize the support and oversight for an Office of Juvenile Defense Services in Indiana through a separate office, or one within an existing entity.
- b) Provide legislative authority for the Office of Juvenile Defense Services to
  - 1) Adopt trial and post-trial practice standards for juvenile defense with oversight and enforcement mechanisms.
  - 2) Provide relevant, accessible training for juvenile defense lawyers and develop a mentoring program for new attorneys wishing to do juvenile defense work.
  - 3) Improve juvenile defender access to experts, investigators, social workers, and paralegals, and provide other forms of litigation support including a motions and brief bank, listserve and resource library.

# Subcommittee Recommendations

4) Oversee the recruitment and retention of high quality juvenile defense counsel, support services, and resources for juvenile defense in rural districts.

5) Provide appellate and other post-trial representation to youth who are incarcerated or at risk for incarceration.

6) Require the collection and annual reporting of data and specific juvenile defense performance indicators developed in the five areas above