MISSISSIPPI

AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN YOUTH COURT PROCEEDINGS

WRITTEN BY

Patricia Puritz
Robin Walker
National Juvenile Defender Center

Jennifer Riley-Collins • Sheila A. Bedi
Mississippi Youth Justice Project
A Project of the Southern Poverty Law Center

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This assessment highlights the critical importance of and serious need for zealous advocacy on behalf of Mississippi's youth. It focuses on access to counsel and the quality of representation for indigent children in youth court proceedings; however, it should be noted that the problems discussed in this report are often entangled with issues of race and socioeconomic status that are beyond the scope of this assessment. Our sincere hope is that this assessment will be a vehicle for improving the provision of justice to all of Mississippi's youth.

We are grateful to the juvenile defenders across Mississippi who took time out of their very busy schedules to meet with our assessment team members and share the problems and issues that juvenile defenders face as they represent indigent children in youth courts. We would also like to thank the judges, prosecutors, and youth court counselors who allowed us into their courtrooms, took part in interviews, and offered candid remarks about their views of the state of juvenile indigent defense in their counties.

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Lisa Thurau-Gray, *Juvenile Justice Center, Suffolk University Law School*
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Eric Zogry, *State of North Carolina Office of the Juvenile Defender*

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EXECUTIVE SUMMARY

In 1995, a national assessment of the legal representation of children in delinquency proceedings was conducted by the American Bar Association's Juvenile Justice Center, in collaboration with the Juvenile Law Center and the Youth Law Center. The findings were published in *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings.* The report was the first national assessment of its kind and laid the foundation for a closer examination of the juvenile indigent defense systems in each individual state.

The Mississippi assessment of access to counsel and quality of representation in youth court proceedings is part of a national effort to address deficiencies and highlight strengths in juvenile indigent defense practices. Forty years after the United States Supreme Court ruled in *In re Gault* that children in the delinquency system have a right to counsel, the promise of this decision remains largely unfulfilled. The goal of this assessment is to evaluate juvenile defense practices in Mississippi, reveal systemic obstacles that impede just and balanced outcomes for children in Mississippi's youth court system, and offer recommendations for change.

The information in this report was collected from a variety of sources. In April 2004, the Mississippi Coalition for the Prevention of Schoolhouse to Jailhouse, the Southern Poverty Law Center, the Mississippi Center for Justice, and the National Juvenile Defender Center began a thorough assessment of Mississippi's juvenile indigent defense system. With the support of Chief Justice James W. Smith, Jr., of the Supreme Court of Mississippi, a team of highly-trained local advocates and national experts observed youth court proceedings and visited juvenile detention centers in counties across Mississippi during the summer of 2005, before the arrival of Hurricane Katrina. The investigative assessment team of 18 members conducted site visits and court observations in 15 representative counties across Mississippi. At each site, investigators interviewed juvenile justice system stakeholders, observed juvenile court proceedings, and gathered documentary evidence. The teams also visited detention centers and interviewed detention center staff. The data gathered from these observations and interviews were supplemented by survey results received from more than 150 youth court personnel across the state. The National Juvenile Defender Center and its partners also reviewed research and reports relevant to the Mississippi juvenile justice system.

I. SIGNIFICANT FINDINGS

The assessment team investigators encountered many devoted and talented lawyers for children throughout Mississippi. Despite serious challenges, a few of these advocates were able to provide remarkable legal services to children; their professionalism, commitment, and dedication were unmistakable. But sadly, vigorous representation was the exception, not the rule.

As discussed in greater detail in the pages that follow, this assessment identifies serious shortcomings in the juvenile indigent defense system that should be remedied as soon as possible. While this report is comprehensive in its findings and recommendations concerning the quality of indigent defense representation and systemic barriers to effective representation, some of the most significant findings include:

Untimely Appointment of Counsel

Although Mississippi's youth court statute requires that, in juvenile cases, "the child shall be represented by counsel at all critical stages" of the proceedings,[1] juvenile defense counsel is often appointed too late in the process to have a meaningful impact at critical stages of the case. Many Mississippi youth courts do not appoint counsel at important early stages of the proceedings, including interrogation, intake, and even detention hearings. In many counties, even when counsel is appointed at the detention hearing, the appointment comes too late. The fact that counsel is appointed at the hearing, and not *before* the hearing, when counsel might have time to adequately prepare, robs the majority of youth of meaningful representation at this very important stage. A detained child faces serious consequences. In the short term, a detained client cannot assist as well in preparing for adjudication, and does not make as good an impression on the court as a client who has been released.[2] In the long-term, studies show that time spent in detention increases the likelihood that a child will recidivate,[3] in part because the child is likely to make negative peer connections,[4] and because positive, community-based relationships (in particular, with the child's family) are interrupted. The belated appointment of counsel is effectively denying Mississippi's children adequate access to counsel.

Excessive Caseloads and Inadequate Resources

The quality of youth court representation in Mississippi is severely compromised by defenders' staggering caseloads and sparse resources. Mississippi's court-appointed juvenile defenders struggle with high caseloads. One juvenile defender reported having as many as 500 cases each year, making it impossible for him to deliver the individualized and zealous representation each child deserves. Defenders also struggle with inadequate resources, as illustrated by the uniform lack of access to support staff, technology, investigators, social workers, and experts. In county after county, Mississippi juvenile defenders contended that they do not receive adequate compensation for their critically important work. Judges, attorneys, and youth court personnel all agree that low fees prevent court-appointed defenders from investing the necessary time on youth court cases. In addition, the courts have no system for tracking the number of cases handled by each court-appointed defender, thereby depriving judges and policy makers of an important measure of indigent defense systems—because court-appointed defenders with limitless caseloads cannot provide adequate representation.

Lack of Zealous Advocacy

Across the state, investigators observed that the level of advocacy provided for indigent youth in Mississippi was less than zealous. Investigators saw few defenders meeting with their clients before hearings, and in many hearings, defenders stood silent as their clients were detained, adjudicated guilty, or sentenced to inappropriate dispositions. There is little to no pre-adjudication advocacy, little to no appellate advocacy, and very little investigation of youth's cases. While the assessment team did see some examples of dedicated and creative advocacy, such advocacy was neither widespread nor common.

Confusion over the Role of Defense Counsel

Ethical standards mandate that the juvenile defender's duty is to represent the client's legitimate expressed interests. Investigators found a pervasive youth court culture in which juvenile defenders are expected, and even pressured, to adopt a "best interest" model of defense representation. Most disturbingly, defenders themselves are confused about their ethical obligations. Defenders across the state reported to investigators that their role was to safeguard their clients' best interests, and admitted to substituting their own judgment for their clients' legitimate expressed interests.

Overflow of School Referrals

Mississippi youth courts are overrun with referrals from local schools where children are arrested for mostly minor offenses, like not wearing the school uniform properly, disobeying the teacher, or schoolyard fights. These cases comprise a measurable percentage of the juvenile justice docket. They drain juvenile justice system resources, clog youth court dockets, and fill detention center beds. The juvenile justice system is simply no substitute for effective school discipline practices.

II. CONCLUSIONS & CORE RECOMMENDATIONS

The State Legislature should:

• Establish and fund an indigent defense system that can ensure caseloads within national standards, adequate support systems, and ongoing training for juvenile defenders.

• Increase the resources available to the youth court defenders — including access to independent experts, social workers, and investigators.

• Fund a continuum of community-based dispositions, so judges have meaningful alternatives to secure care.

• Prohibit secure detention for children who are detained only because their parents/guardians are unable or unwilling to care for them.

Bar associations should:

• Create standards for juvenile defenders who represent children in youth court proceedings.

Mississippi Youth Court Judges should:

• Appoint attorneys at the earliest possible stage in all juvenile cases — ideally as soon as a child is determined indigent, but always prior to initial hearings.

• Ensure that counsel has a meaningful opportunity to meet with the client and prepare for the hearings.

• Ensure all youth fully understand their rights, including their right to appeal, before all proceedings.

• Provide private facilities at the courthouse to defense counsel for client consultation, and ensure that the physical arrangement of the courtroom reinforces the roles and relationships of the parties, so that children are seated next to and can consult freely with their attorneys.

• Ensure attorneys are compensated for all reasonable work including client meetings, investigations, legal research, motions practice, dispositional planning, and appeals.

• Provide attorneys with meaningful access to independent investigators, experts, and other support when necessary.

• Provide leadership in working with school officials and mental health providers to ensure that youth court is not the dumping ground for those systems.

Juvenile defenders should:

• Always represent the expressed legitimate interests of their clients.

• Regularly meet with clients before the day of court, investigate cases, actively represent youth at initial and detention hearings, and have regular post-hearing debriefings to ensure that clients understand the proceedings and their right to appeal.

• Ensure that effective representation happens at the earliest possible stage in juvenile court proceedings and remains zealous throughout the process.

• Develop expertise through ongoing training on juvenile justice related issues.

Mississippi law schools should:

• Provide increased opportunities for law students' involvement in youth court through internships, clinics, and fellowships.

• Offer continuing legal education courses to improve the quality of representation in youth court.

Law enforcement should:

• Mandate training on developmental differences between youth and adults to help officers understand adolescents' decision-making abilities.

• Track juvenile arrest data according to race to develop a baseline concerning the over-representation of African Americans in the juvenile justice system.

Public schools should:

• Reduce the number of school-based referrals to the juvenile justice system by entering into agreements with law enforcement, youth courts, and mental health providers to specify objective criteria for school-based youth court referrals and ensuring that school discipline policies are evidenced-based best practices.

INTRODUCTION

This assessment of access to counsel and quality of representation in youth court proceedings is part of a national effort to review juvenile indigent defense delivery systems throughout the country, and to evaluate whether juvenile defenders are fulfilling their constitutional and ethical obligations in representing their young clients. It aims to provide information about the role of defense counsel, to identify structural or systemic barriers to more effective representation of youth who stand accused of offenses, and to make recommendations for ways to improve the delivery of juvenile defender services in each state across the nation.

The job of juvenile defense counsel is complex and challenging. Juvenile defense attorneys must have all the legal knowledge and courtroom skills of a criminal defense attorney representing adult defendants. In addition, juvenile defenders must be aware of the strengths and needs of their juvenile clients and of their clients' families, communities, and other social structures. Juvenile defenders must be able to:

- Understand child and adolescent development to communicate effectively with their clients;
- Evaluate the client's level of maturity and competency and its relevancy to the delinquency case;
- Have knowledge of and contacts at community-based programs to compose an individualized disposition plan;
- Enlist the client's parent or guardian as an ally without compromising the attorney-client relationship;
- Know the intricacies of mental health and special education law, as well as the network of schools that may or may not be appropriate placements for the client; and
- Communicate the long- and short-term collateral consequences of a juvenile adjudication, including the possible impact on public housing, school and job applications, eligibility for financial aid, and participation in the armed forces.

For all of these reasons and more, it is critical that juvenile indigent defense systems be comprehensively assessed to ensure that resources are allocated wisely and that children are receiving the legal protections that they are constitutionally guaranteed.

I. DUE PROCESS AND THE JUVENILE JUSTICE SYSTEM

The first specialized juvenile court in the United States was created on July 3, 1899, as part of an Illinois legislative act establishing the juvenile court division of the circuit court for Cook County.[5] Supporters of this reform sought to shield youth from the harsh conditions in prisons, and to improve children's chances at becoming productive citizens.[6] Because the intent of the 1899 Illinois legislation aimed to help youth rather than to punish them, the state law required only cursory legal proceedings.[7] There were no defense attorneys. Social workers and behavioral scientists assisted the court in carrying out the most appropriate disposition of the cases. Detained youths were separated from adult offenders and placed in training and industrial schools, as well as in private foster homes and institutions.[8] Probation officers were hired to facilitate children's adjustment. This type of specialized juvenile court was quickly duplicated in the larger cities of the East and

Midwest, so that by 1925, some form of juvenile court existed in all but two states.[9]

Until the 1960s, constitutional challenges to juvenile court practices and procedures were consistently overruled. Children were denied the right to counsel. They did not have any immunity against self-incrimination. They could be convicted on hearsay testimony.[10] They could also be convicted by only a preponderance of the evidence. Rulings found that juvenile proceedings were civil in nature and that their purpose was to rehabilitate rather than punish.[11] Research on the juvenile justice system had begun to show that juvenile court judges often lacked legal training;[12] that probation officers were undertrained and that their heavy caseloads often prohibited meaningful social intervention; that children were still regularly housed in jails; that juvenile correctional institutions were often, in reality, little more than breeding grounds for further criminal activity; and that juvenile recidivist rates were high.

In 1963, the United States Supreme Court held that the Sixth Amendment requires that indigent adults charged with a felony offense be appointed an attorney at public expense. In that landmark case, *Gideon v. Wainwright*,[13] Justice Hugo Black wrote for a unanimous court that "any person ... too poor to hire a lawyer cannot be assured a fair adjudication unless counsel is provided for him," explaining that "lawyers in criminal court are necessities, not luxuries."[14]

In the wake of *Gideon*, in a series of cases starting in 1966, the Supreme Court extended this and other bedrock elements of due process to youth charged in delinquency proceedings. Arguably the most important of these cases, *In re Gault*[15] held that juveniles facing delinquency proceedings have the right to counsel under the Due Process Clause of the United States Constitution, applied to the states through the Fourteenth Amendment. The Court expressed concern that youth in juvenile court were getting "the worst of both worlds ... neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."[16] The Court continued: "[t]he probation officer cannot act as counsel for the child. His role ... is as arresting officer and witness against the child. Nor can the judge represent the child."[17] The Court concluded that no matter how many court personnel were charged with looking after the accused child's interests, any child facing "the awesome prospect of incarceration" needed "the guiding hand of counsel at every step in the proceedings against him" for the same reasons that adults facing criminal charges need counsel.[18]

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The introduction of advocates to the juvenile court system was meant to infuse the informal juvenile court process with more of the zealously-guarded constitutional protections of adult criminal court and their attendant adversarial tenor. Noting that the "absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized

treatment,"[19] the Court determined that a child's interests in delinquency proceedings are not adequately protected without adherence to due process principles. In addition to the right to counsel, *Gault* also extended to youth the right to notice of the charges against them, the privilege against self-incrimination,[20] and the right to confront and cross-examine adverse witnesses.[21] In later cases, the Court held that a youth cannot be adjudicated delinquent unless the state proves his guilt beyond a reasonable doubt,[22] that a delinquency proceeding constitutes being placed "in jeopardy" and bars future prosecution for the same allegations,[23] and that youth have the right to a formal hearing and an attorney before being transferred to adult court for criminal prosecution.[24] In each of these cases, the Court reaffirmed, that "civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile court[.]"[25] As the President's 1967 Commission on Law Enforcement and the Administration of Justice stated, "No single action holds more potential for achieving procedural justice for the child in juvenile court than the provision of counsel. The presence of an independent legal representative of the child, or his parent, is the keystone to the whole structure of guarantees that a minimum system of procedural justice requires."[26]

Perhaps most importantly, through this line of due process cases, juveniles accused of delinquent acts were to become participants, rather than spectators, in their court proceedings. The Court observed specifically that juvenile respondents needed defenders to enable them "to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether [the client] has a defense and to prepare and submit it."[27] By the early 1980s, there was professional consensus that defense attorneys owe their juvenile clients the same duty of loyalty as adult clients.[28] That coextensive duty of loyalty requires defenders to represent the legitimate "expressed interests" of their juvenile clients, and not the "best interests" as determined by the attorney.[29]

With its decisions in *Gault* and other cases, the Court moved the treatment of youth in juvenile justice systems into the national spotlight. In 1974, with a goal of protecting the rights of children, Congress enacted the Juvenile Justice and Delinquency Prevention Act (JJDPA).[30] The JJDPA created the National Advisory Committee for Juvenile Justice and Delinquency Prevention, which was charged with developing national juvenile justice standards and guidelines. The National Advisory Committee standards, published in 1980, require that children be represented by counsel in delinquency matters from the earliest stage of the process.[31]

At the same time, several non-governmental organizations also recognized the necessity of protections for youth in delinquency courts. Beginning in 1971, and continuing over a ten-year period, the Institute of Judicial Administration (IJA) and the American Bar Association (ABA) researched, developed, and produced 23 volumes of comprehensive juvenile justice standards, annotated with explicit policies and substantive commentary.[32] The IJA/ABA Joint Commission on Juvenile Standards relied upon the work of approximately 300 dedicated professionals across the country with expertise in many disciplines relevant to juvenile justice practice, including the law, the judiciary, social work, corrections, law enforcement, and education. The Commission circulated draft standards to individuals and organizations throughout the country for comments. The final standards, which were adopted by the ABA by 1982, were crafted to establish a model juvenile justice system, one that would not fluctuate in response to transitory headlines or controversies.

Congress reauthorized the JJDPA in 1992, reaffirming the importance of the role of defense counsel in delinquency proceedings, specifically noting the inadequacies of prosecutorial and indigent defense delivery systems charged with providing individualized justice. Recognizing the need for more information about the functioning of delinquency courts across the country, Congress asked the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) to address the issue.

One year later, in 1993, OJJDP responded to Congress' request by funding the Due Process Advocacy Project, led by the ABA Juvenile Justice Center, together with the Youth Law Center

and the Juvenile Law Center. The purpose of the project was to build the capacity and effectiveness of the juvenile defense bar to ensure that children have meaningful access to qualified counsel in delinquency proceedings. One result of this collaboration was the 1995 release of *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, a national review of the legal representation of children in delinquency proceedings.[33] The first systemic national assessment of its kind, the report laid the foundation for a closer examination of access to counsel, the training and resource needs of juvenile defenders, and the quality of legal representation provided by each state's juvenile indigent defense system. The report highlighted the gaps in the quality of legal representation for indigent children across the country. While many juvenile defenders represent their clients with inspiring skill and zeal, the report reached the disturbing conclusion that instances of model advocacy are found few and far between, and that effective juvenile representation is impeded by insidious systemic barriers. Forty years after *Gault's* recognition of the importance of the right to counsel for youth, the promise of effective delinquency representation remains elusive for many poor children.

In the ten years since the publication of *A Call for Justice*, several reports have indicated serious problems with Mississippi's juvenile indigent defense system. In 1995, 1997, and 1998, the Mississippi Bar Association consistently found that "funding for indigent defense in Mississippi is totally inadequate," and "results in poor quality service and representation."[34] A 2000 study by the Mississippi Administrative Office of Courts documented a broken and vastly under-resourced system in which youth court-appointed defenders almost never spoke to children or witnesses prior to court appearances.[35] Defenders rarely investigated alternative sanctions and hardly ever spoke to family members. A 2003 report by the National Association for the Advancement of Colored People Legal Defense and Educational Fund found that "the state of Mississippi ignores its constitutional obligation to provide adequate counsel for the poor," resulting in children as young as 14 years old being held in adult jails, where they wait for months to speak with an attorney.[36] The report further found that "[h]undreds of juvenile defendants in youth court proceedings are represented by lawyers who never file motions, interview witnesses, or challenge the state's evidence in any way."[37]

The deficiencies highlighted in *A Call for Justice* led to the founding, in 1998, of the National Juvenile Defender Center, to provide a permanent capacity to support front-line juvenile defenders across the country. Since 2005, the National Juvenile Defender Center has been an independent, non-partisan organization devoted to ensuring excellence in juvenile defense and promoting justice for all children.

The findings of *A Call for Justice* prompted an outpouring of concern from judges and lawyers across the country, and pointed to the need for state-specific assessments to guide and inform legislative reforms. In response, a methodology was developed to conduct comprehensive assessments of access to counsel and quality of representation in individual states. Since 1995, state-specific juvenile defense assessments have been conducted in 15 states: Florida, Georgia, Indiana, Illinois, Kentucky, Louisiana, Maine, Maryland, Montana, North Carolina, Ohio, Pennsylvania, Texas, Virginia, and Washington. Re-assessments have been conducted in Kentucky and Louisiana. County-based assessments were conducted in Cook County, Illinois, Marion County, Indiana and Caddo Parish, Louisiana. A new assessment is underway in West Virginia, and the National Juvenile Defender Center is continuously working with leaders in states who are interested in conducting juvenile indigent defense assessments.

II. THIS ASSESSMENT AND ITS METHODOLOGY

In April 2004, the Mississippi Coalition for the Prevention of Schoolhouse to Jailhouse, the Southern Poverty Law Center , and the Mississippi Center for Justice united with the National Juvenile Defender Center to launch a thorough assessment of Mississippi's juvenile indigent defense system. With the support of Chief Justice James W. Smith, Jr., of the Supreme Court of Mississippi, a team of highly-trained local advocates and national experts observed youth

The primary goal of this assessment is to encourage excellence in juvenile defense and to promote justice for youth in Mississippi's juvenile justice system. Assessments also provide policy makers and leaders with accurate baseline data so that they can make informed decisions as they proceed with reform efforts.

court proceedings and visited juvenile detention centers in fifteen Mississippi counties during the summer of 2005, before the arrival of Hurricane Katrina. The primary goal of this assessment is to encourage excellence in juvenile defense and to promote justice for youth in Mississippi's juvenile justice system. Assessments also provide policy makers and leaders with accurate baseline data so that they can make informed decisions as they proceed with reform efforts. The assessment evaluates whether Mississippi youth have meaningful access to counsel in delinquency proceedings, highlights the significant, systemic barriers to quality representation, including resource allocation, funding, and other challenges, and provides recommendations for improving Mississippi's juvenile indigent defense delivery system.

The information in this report was gleaned from a variety of sources. An investigative assessment team of 18 members conducted site visits and court observations in 15 representative counties across Mississippi. These counties were selected based on a comprehensive analysis of state demographics, crime trends, and indigent defense delivery systems. The assessment team included private practitioners, academics, current and former public defenders, defender managers, and juvenile justice advocates; all the investigators were very familiar with the role of defenders in youth court. Investigators visited each site to conduct interviews, observe juvenile court proceedings, and gather documentary evidence. Using interview protocols developed by the American Bar Association Juvenile Justice Center and the National Juvenile Defender Center, the team conducted extensive interviews at each site with youth court judges, defenders, prosecutors, counselors, parents, and court-involved youth. The teams also visited detention centers and interviewed detention center staff. Demonstrative and anecdotal data gathered from these observations and interviews were supplemented by survey results received from more than 150 youth court personnel across the state. The National Juvenile Defender Center and its partners also reviewed research and reports relevant to the Mississippi juvenile justice system.

Chapter One contains a discussion of the background for the legal representation of youth in Mississippi. Chapter Two includes a review of relevant Mississippi law. The data resulting from the research and site visits are summarized in Chapter Three, Assessment Findings, which includes the findings regarding meaningful access to counsel, ethical and role confusion, the culture of juvenile court, and other barriers that affect the quality of representation of Mississippi youth. Chapter Four contains a description of the effect of Hurricane Katrina on Mississippi's juvenile indigent defense delivery system. Chapter Five includes recommendations to propel reform initiatives to improve the quality of representation for indigent youth in Mississippi's juvenile justice system.

THE BACKGROUND FOR THE LEGAL REPRESENTATION OF YOUTH

I. POVERTY, DELINQUENCY, AND JUSTICE STATISTICS

It is not easy to be a child in Mississippi. Abysmal rankings in overall child well-being are common to all Deep South states, but Mississippi has ranked as the worst of the worst since 1999. According to the Annie E. Casey Foundation's 2006 *KIDS COUNT Data Book*, the state of Mississippi holds the lowest rank in the country for percentage of low-weight babies, percentage of children living in poverty, and infant mortality rates.[38] Mississippi ranks only slightly higher for child death rates, teen death rates, teen pregnancies, and high school dropout rates.[39] Mississippi's youth court involved children, who are disproportionately African American[40] and desperate for mental health services, are among the most vulnerable youth in the country. A study commissioned by the state of Mississippi found that up to 80% of incarcerated juveniles live with some form of mental illness.[41] Approximately 80% of the children locked up in Mississippi are African-American.[42] Yet African Americans comprise only 36% of Mississippi's overall population.[43]

According to state data, Mississippi's court-involved youth are also overwhelmingly non-violent offenders. Mississippi law provides that serious offenders over the age of 13 are tried as adults, [44] and if convicted, serve time in the Department of Corrections.[45] Children often find themselves under youth court jurisdiction for school related offenses: truancy, schoolyard fights, and disruptive classroom behavior. [46] If adjudicated delinquent, these children are ordered into the Department of Human Services' programs.

Experts agree that more community-based sanctions and fewer jail cells are the only proven ways to reduce juvenile delinquency.[47] Without these community-based programs, youth with behavioral, mental health, and substance abuse problems who pose no threat to public safety may end up behind bars. [48]

The law related to Mississippi's juvenile justice system has gained national attention. In 1979, the National Council of Juvenile and Family Court Judges recognized the Mississippi youth court law as a national model for juvenile justice legislation. And in May 2005, the Center for Policy Alternatives named Representative George Flaggs, the architect of the Juvenile Justice Reform Act of 2005, "Legislator of the Month" for his juvenile justice reform efforts. Several recent lawsuits over conditions in Mississippi's juvenile facilities and reports issued by the state and federal governments indicate that Mississippi has faced some profound challenges protecting the rights of at-risk youth.[49]

II. THE IMPACT OF HURRICANE KATRINA

On August 28 and 29, 2005, Hurricane Katrina cut a two-day path of destruction through Mississippi. Many of Mississippi's coastal towns were literally leveled overnight. Hurricane-force winds reached coastal Mississippi by 2 a.m.

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and lasted over 17 hours, producing 11 tornadoes[50] and a 28-foot storm surge that flooded 6-12 miles inland.[51] The pictures of those who were unable to evacuate, trapped on their rooftops, scrambling to climb trees, or swimming through the flood waters have been seared into the national consciousness. Afterward, over 231 people died in Mississippi,[52] and forty-nine counties were declared disaster areas for federal assistance.[53]

Almost two years later, the extent of the devastation in Mississippi is still staggering. Approximately 61,400 homes and apartments sustained severe or major damage from the storms.[54] More than 3,300 businesses were damaged throughout the state.[55] In a state of just 2.9 million residents, more than one in six Mississippians have sought help.[56] More than 97,000 people are still living in FEMA trailers and mobile homes.[57] Many neighborhoods are still piled high with storm debris. For the poorest Mississippians, the hurricane dealt a "disproportionate, catastrophic blow."[58]

III. STRUCTURE OF THE JUVENILE INDIGENT DEFENSE SYSTEM

Mississippi has 82 counties. In some counties, Chancery Courts exercise jurisdiction over delinquency proceedings. In other counties, youth court divisions of county courts exercise delinquency jurisdiction.[59] There are also two municipal youth courts. Chancery Courts are courts of general jurisdiction. Youth court divisions of county courts are limited jurisdiction courts.

Except for death penalty trials,[60] death penalty post-conviction proceedings,[61] and felony appeals[62] the state of Mississippi does not fund a statewide indigent defense system.[63] Instead, each individual county appropriates monies to support its indigent defense services. Unfortunately, many counties place a very low priority on their obligation to contribute to the defense of their poor citizens.[64] As of 2003, only three Mississippi counties had an office staffed by one or more full-time public defenders.[65] Most counties either contract with part-time defenders who split their time with private practice, or appoint private attorneys to represent indigent defendants on an as-needed basis. The rates paid to appointed counsel vary from county to county. But as of 2003, only one state — North Dakota — spends less on indigent defense.[66] And, as limited as resources for adult criminal defense are, funds for juvenile indigent defense are even more scarce.[67]

Nonetheless, there has been a groundswell of support for a statewide indigent defense system. In 1996 and again in 1999, two overworked public defenders sued the state and their counties, on the grounds that insufficient funding and resources forced them to provide constitutionally deficient representation.[68] The Mississippi Bar Association has consistently found that "funding for indigent defense in Mississippi is totally inadequate," and "results in poor quality service and representation."[69] In 1998, the Mississippi legislature passed the Statewide Public Defender System Act, [70] but failed to allocate funds to implement this legislation. In 1999, three counties sued the state to force it to share the cost of providing indigent defense services.[71] In 2000, the Statewide Public Defender System Act was repealed; legislators faulted budget constraints.[72] In 2001, the Mississippi Supreme Court ruled that Quitman County had made enough of a *prima facie* showing to proceed to adjudication.[73] In that case, several district attorneys, the Mississippi Association of Supervisors, and the sheriffs of 11 counties filed *amicus* briefs in support of Quitman county, calling for reform of Mississippi's indigent defense delivery system.[74]

ROLE OF COUNSEL IN DELINQUENCY PROCEEDINGS

I. MISSISSIPPI YOUTH COURT'S POLICY, PURPOSE, AND PROCEEDINGS

The policy statement of Mississippi's youth court statute promises that children under youth court jurisdiction will receive "care, guidance and control, preferably in such child's own home as is conducive toward that end and is in the state's and the child's best interest" to become "a responsible, accountable and productive citizen." The "public policy" of the state is that "the parents of each child shall be primarily responsible for the care, support, education, and welfare of [their] children[.]" When it is necessary that a child be removed from the control of his or her parents, the youth court is legally bound to secure "proper care" for that child.[75]

The youth court policy statement reveals three foundational principals of Mississippi's youth court system. The first bedrock principle is that children are fundamentally different than adults. The second principle is that the primary goal of every youth court is to mold each child before it into "a responsible, accountable and productive citizen."[76] The third fundamental principle is a strong preference for community-based placements. Based on these principles, the architects of the Mississippi Youth Court Act designed a system in which the judge's role extends far beyond determining whether or not a child has committed a "delinquent" act.[77] Mississippi youth court judges must also explore the underlying causes of the child's behavior and ensure that the child receives the "care, guidance and control" necessary to prevent similar conduct in the future.[78] The intent in the statute was reaffirmed with the passage of the Juvenile Justice Reform Act of 2005 and the Mississippi Juvenile Delinquency Prevention Act of 2006, relatively new laws that establish sentencing restrictions and dispositional requirements meant to encourage more community-based placements.

II. JURISDICTION AND VENUE

The youth court has exclusive jurisdiction in all proceedings concerning a delinquent child except: 1) when the act attempted or committed by the child would be punishable under state or federal law by life imprisonment or death if committed by an adult or 2) the act attempted or committed by the child involved the use of a deadly weapon or concealed weapon, and would constitute a felony if committed by an adult. In those cases, original jurisdiction will be in the circuit court.

When a child is expelled from school, the youth court is notified of the expulsion and "the act constituting the basis for expulsion."[79] This reporting does not automatically mean that a case is opened in youth court. Intake counselors have great discretion in determining whether to initiate the youth court process against a suspended student. In some courts, if a referral is made the court requires the school district to act as a complainant. In other jurisdictions the youth court counselor collects information about suspensions and records it in the youth's file. This information

may then be used against the child in later proceedings (i.e. to support allegations of a probation violation or contempt of court).

Jurisdiction over the child attaches at the time of the offense and continues — for that offense — until the child's 20th birthday, unless jurisdiction is terminated by order of the youth court. The youth court does not have jurisdiction over felony offenses committed after the child's 17th birthday,[80] or over any offenses committed after the child's 18th birthday.[81] The minimum age of prosecution in Mississippi is 13; in other words, no child under the age of 13 can be held criminally responsible or be criminally prosecuted for a misdemeanor or felony.[82] But children as young as 10 years old can be found delinquent and incarcerated in Mississippi's training schools and juvenile detention centers.[83]

Youth court judges are empowered to "issue all writs and processes including injunctions necessary to the exercise of jurisdiction and to carrying out the purpose of this chapter."[84] Any person who refuses to comply with an order of the youth court is in contempt of court and may be punished by a fine under $500 or imprisonment not to exceed 90 days.[85]

Delinquency proceedings should occur in the county where any of the charged acts are alleged to have occurred. But after adjudication, the court may, in the best interests of the child, transfer the case to the county where the child lives or where a youth court has previously had jurisdiction.[86]

In counties that do not have a youth court judge, the presiding circuit court judge may appoint a referee "who shall be [an attorney] at law and [member] of the bar in good standing to act in cases concerning children." However, only referees appointed after July 1, 1991 must be attorneys.[87] A referee "possess[es] all [the] powers and perform[s] all the duties of the youth court judge."[88]

III. TRANSFER OF JURISDICTION FOR ADJUDICATION AS ADULT

A child may be transferred to the circuit court for prosecution as an adult in two ways: 1) by discretionary waiver[89] or 2) by statutory exclusion from youth court when the child is charged with an offense that falls "in the original circuit court jurisdiction" rather than youth court jurisdiction.[90] The minimum age for transfer in Mississippi is 13 years old.[91]

Before a child can be transferred by discretionary waiver, the court must hold a transfer hearing. The judge may transfer jurisdiction upon finding: 1) probable cause to believe the youth committed the alleged offense; and 2) clear and convincing evidence that "there are no reasonable prospects of rehabilitation within the juvenile justice system."[92] The child may waive the probable cause phase of the transfer hearing.[93] As for the second inquiry, Mississippi law mandates that the court consider several factors in deciding whether reasonable prospects of rehabilitation exist, including, but not limited to, the characteristics of the alleged offense, the child's mental health, family circumstances, social history, and the dispositional options available in the juvenile and adult criminal justice systems.[94] The finding that the child's needs exceed the rehabilitative capabilities of juvenile court must be supported by clear and convincing evidence. By statute, children must be represented by counsel in all transfer hearings.[95]

A child is transferred by statutory exclusion if the child is at least 13 years old and that child commits or attempts to commit any one of a number of excludable offenses. An excludable offense is defined as an act committed with a deadly weapon, or an act which, if committed by an adult, is punishable by life imprisonment. Since the circuit court has original jurisdiction of these crimes, the child must be tried as an adult.[96]

A child not previously tried as an adult and facing charges in adult court still has some opportunity to have his case remanded to youth court. If a youth court transfers a child to circuit court, the child may move for a circuit court review of the transfer proceedings.[97] The circuit court must remand the case back to youth court if there is no substantial evidence to support the order of the youth court. [98] Similarly, a child under the original jurisdiction of the circuit

court because he is accused of a crime punishable by life in prison or committed with a deadly weapon, may ask the circuit court to move his case to youth court. This "reverse transfer" provision allows the circuit court to transfer the case to youth court upon finding that the transfer would be "in the best interest of such child and in the interest of justice."[99]

Once the child is transferred for prosecution as an adult, the circuit court has exclusive jurisdiction over the offense alleged in the original petition, as well as any lesser included offense.[100] Once the child has been convicted as an adult, the youth court permanently loses jurisdiction over the child.[101] The circuit court may not remand the case of a child who has previously been convicted as an adult, either for an excluded offense or following a waiver. If the juvenile is tried in adult court but not convicted, the youth court has jurisdiction over subsequent non-felony offenses, but the circuit court has automatic jurisdiction over any subsequent felony cases.[102]

The circuit judge must sentence a child transferred from youth court as if that child were an adult. The judge does not have the authority to commit a child transferred from youth court to the Division of Youth Services.[103]

IV. JUVENILES' RIGHT TO COUNSEL

Mississippi's Youth Court Code takes a strong stance on children's right to counsel, stating that, in juvenile cases, "the child shall be represented by counsel at all critical stages" of the proceedings "including, but not limited to, detention, adjudicatory and disposition hearings and parole or probation revocation proceedings."[104] By statute, children must be represented by counsel in all transfer hearings.[105]

The Mississippi Code provides that "[i]f indigent, the child shall have the right to have counsel appointed for him by the youth court."[106] All children are presumed indigent, whether or not their parents can afford to hire counsel.

The judge has a specific duty to inform children of their right to counsel.[107] The judge must inform a child of his right to counsel once the child is in custody;[108] as an important corollary, when a child is taken into custody, the child must be allowed to call his attorney.[109] The judge must also inform the child of his right to counsel at the beginning of an adjudication hearing, as well as determine if the child is represented by counsel.[110] If the child is unrepresented, the court must make sure that the child understands the right to counsel and the right to have counsel appointed if the child cannot afford to hire an attorney.[111]

Enacted in April 2006, the Mississippi Juvenile Delinquency Prevention Act of 2006 establishes the framework for a model juvenile justice system. The bill includes special provisions specifying that a child's legal rights must be read to the child upon being taken into custody, and focusing on providing Mississippi's children with well-trained defense counsel at every critical stage. In part, the bill:

- specifies that under existing law, parties have the right to be represented by counsel at detention, adjudicatory, and disposition hearings;
- requires the youth court judge to appoint a court-appointed attorney to represent an indigent youth at all critical stages of the proceedings;
- requires all youth court appointed attorneys to receive juvenile justice training that is approved by the Mississippi Judicial College and/or the Mississippi Bar Association, and assigns both organizations the responsibility to determine the amount of juvenile justice training and continuing education required of juvenile attorneys;
- provides that a youth court appointed attorney will be disqualified to serve and will be immediately removed from the office of youth court appointed attorneys if he or she misses two consecutive juvenile justice training sessions or fails to attend a continuing education session within six months of his or designation as a youth court appointed attorney; and
- provides that the Administrative Office of Court must maintain a ledger of youth court appointed attorneys and their training records.

V. THE NATURE OF YOUTH COURT PROCEEDINGS

Mississippi's code characterizes youth court proceedings as "entirely of a civil nature."[112] The general public is excluded from youth court hearings.[113] All court records — including records

created by children and retained by law enforcement — are confidential.[114] However records are not confidential for children convicted as adults or children adjudicated delinquent for certain sexual offenses, and certain violent offenses.[115] All youth court hearings, even adjudications, are conducted without a jury.[116]

Except for detention and shelter hearings, a complete record of all evidence must be made.[117] Accordingly, all parties in a youth court proceeding have the right at any hearing where a report or investigation is admitted into evidence to 1) subpoena, confront and examine the person who prepared or furnished data for the report; and 2) introduce evidence to contest the report.[118] The court can consider only evidence that has been formally admitted at the adjudicatory hearing.[119] All testimony must be under oath and may be in narrative form.[120] An out of court admission by the child, even if otherwise admissible, is insufficient to support an adjudication of delinquency, unless the admission is corroborated by other competent evidence.[121]

VI. CUSTODY AND DETENTION

Where the youth court has jurisdiction, only the youth court can issue an arrest warrant or custody order for the child.[122] A detention hearing must be held within 48 hours to determine if continued custody is necessary.[123] Custody will be considered necessary: 1) when the child is in danger or would endanger others; 2) to ensure the child's presence in court; or 3) when the parent or guardian is not available to provide for the care and supervision of the child; and 4) when there is no reasonable alternative to custody.[124] All parties attending the detention hearing have the right to present evidence and cross-examine witnesses. The youth court statute presumes that a child should be released. In fact, the youth court must release the child to the custody of his or her parents or guardian, unless the youth court finds that there is probable cause that the youth court has jurisdiction and that custody is necessary.[125]

A child in custody must be informed immediately of: the reasons he or she is in custody; his right to counsel; the rules and regulations of the custodial facility; the conditions of his custody; and the time and place of the detention hearing. When a child is taken into custody, the child must be able to call both his or her other guardian and his or her counsel, and must be allowed to telephone his or her guardian at reasonable intervals.[126]

"All juveniles in custody must undergo a health screening within one hour of admission to any juvenile detention center, or as soon thereafter as reasonably possible."[127] If the screening indicates that a juvenile is in need of emergency medical or mental health services, the detention staff must refer the youth to the appropriate provider as soon as is reasonably possible.[128] All detention centers are legally obligated to provide, at a minimum, an educational program, visitation, counseling, supervision, medical service, recreation and exercise programs, and reading materials.[129]

VII. PETITION, SUMMONS, AND SERVICE

All delinquency cases begin with the filing of a petition.[130] Upon authorization of the youth court, the youth court prosecutor will draft and file the petition, unless the court has designated some other person to draft and file the petition.[131] While judges have discretion to determine whether a formal petition is filed in youth court, in practice they largely follow the recommendations of youth court counselors and prosecutors. When a child is detained, the petition must be filed within five days of the detention hearing.[132] In non-custodial cases, the petition must be filed within 10 days of the court order authorizing the filing of the petition.[133] The court has discretion to dismiss the case if the prosecution fails to comply with these filing deadlines.[134] The petition must identify the child and his or her parent or guardian. The petition must also provide a statement of the alleged facts that have brought the child under the youth court's jurisdiction, with the same particularity required in a criminal indictment.[135] It must also include, *inter alia*, a citation to the law that the child is alleged to have violated.[136]

When a petition has been filed and hearing date set, the judge must order the youth court clerk to issue a summons to the child, his or her parents or guardian, and any other person deemed necessary to appear personally at hearing.[137]

The summons must include the date and time of the hearing, and must inform the child of his or her right to be represented by an attorney. The summons must also state that if the child is indigent, the court will appoint an attorney.[138] The summons must be served personally. Generally, a child is properly served in the same manner as an adult.[139] In addition, service on a child under the age of 14 must be made with the child's parent, guardian, or guardian *ad litem*.[140] The summons must be served no fewer than three days before the date of the adjudicatory hearing.[141]

VIII. INFORMAL ADJUSTMENT

Informal adjustment is a voluntary, informal procedure in which the youth court staff interviews the child and the child's parent or guardian, and makes appropriate referrals to public and private agencies that provide services that may benefit that child. While the informal adjustment process is underway, no petition is filed.[142] Such referrals may include a temporary placement of the child, or court supervision with the consent of the child and the child's parent or guardian.[143] The informal adjustment conference is conducted by an adjustment counselor who is appointed by the court or the court's designee. The child has the right to be represented by counsel during the conference. During the conference, the parties discuss and agree upon recommendations to correct the child's behavior. These recommendations are reduced to a written agreement, which is signed by all parties. An agreement reached at an informal adjustment conference can not last longer than six months. Either the child or the counselor may chose to terminate the agreement and have the matter revert back to the formal adjudication procedure.[144]

IX. ADJUDICATION

For non-custodial cases, the adjudicatory hearing must be held within 90 days of the filing of the petition. If the adjudicatory hearing is not held within the 90 days, the petition must be dismissed with prejudice.[145] If a child is detained, an adjudicatory hearing should be held "as soon as possible but not later than 21 days after the child is first detained," unless the hearing is postponed "upon the motion of the child, where process cannot be completed or upon a judicial finding that a material witness is not presently available."[146] If the hearing is postponed or not held for some other reason, the child may be released from detention.[147]

The adjudication hearing is analogous to an adult criminal trial, with opening statements, presentation of evidence, and closing arguments. Juvenile adjudications are tried before a judge; children in Mississippi youth court proceedings have no right to a jury trial. The same rules of evidence apply for both juvenile adjudications and criminal trials. The child's involvement in the alleged offense must be proven beyond a reasonable doubt, and the child must have fair opportunity to introduce evidence and cross-examine adverse witnesses.

While there is no plea bargaining in delinquency proceedings,[148] the accused child may appear before the judge to admit the allegations in the petition at any time after the petition has been filed.[149] The judge may accept the admission if the judge finds that 1) the child making the admission fully understands his or her rights and the consequences of the admission, 2) the child making the admission is doing so voluntarily, intelligently, and knowingly, 3) the child making the admission does not report facts that constitute a defense during the allocution, and 4) the child is "effectively represented by counsel."[150]

At the beginning of the plea hearing, the youth court must explain to the child that he or she has the right to counsel, to remain silent, to subpoena and cross examine witnesses, and to appeal.[151] The youth court must determine whether the child is represented by counsel.[152] If the child is not represented, the court must determine whether he or she understands the right to counsel and the right to have counsel appointed if the child cannot afford an attorney.

If the youth court finds beyond a reasonable doubt that the child is a delinquent child, the youth court must enter an order adjudicating the child delinquent.[153] Upon adjudication, the youth court must hold a hearing to determine the appropriate disposition, or sentence, for the child.[154]

X. DISPOSITION

The disposition hearing is "separate, distinct and subsequent to the adjudicatory hearing,"

but it may be held immediately following the adjudicatory hearing.[155] If the child is taken into custody, the disposition hearing must be held within 14 days unless postponed for good cause.[156] In practice, the disposition hearing is frequently held immediately after the adjudication hearing. But if a child is not detained, the statute does not require the court to hold a dispositional hearing within a specified time. After the adjudication hearing, the court must immediately set a time and place for the disposition hearing. Generally all disposition hearings are held within 30 days of the adjudication hearing.

Before entering a disposition order, the youth court must consider:
a) The nature of the offense;
b) The manner in which the offense was committed;
c) The nature and number of a child's prior adjudicated offenses;
d) The child's need for care and assistance;
e) The child's current medical history, including medication and diagnosis;
f) The child's mental health history, which may include, but not be limited to, the Massachusetts Youth Screening Instrument version 2 (MAYSI-2);
g) The child's cumulative record from the last school, including special education records, if applicable;
h) Recommendation from the child's school of record based on areas of remediation needed;
i) Disciplinary records from the child's school; and,
j) Records of disciplinary actions outside of the school setting.[157]

Upon written motion, the youth court must make written findings of fact and conclusions of law to document the findings underlying a disposition order.[158] If the court orders a child to a state-supported training school, an admission packet must be prepared for the child that contains the child's medical, mental health, and academic history.[159] If the Department of Human Services determines that a child is in need of treatment for a mental illness, it must file an affidavit with the youth court alleging such, and the youth court must then refer the child to a community mental health center for evaluation. If the evaluation recommends residential care, the youth court will proceed with civil commitment proceedings.[160]

When determining the appropriate disposition, or sentence, for a delinquent child, the youth court judge has several options:[161]
• release of the child without further action;
• placement of the child with parents, guardians, a relative, or other people subject to the court's conditions;
• probation;
• supervision, including participation in educational, service or treatment programs;
• civil fine not to exceed $500;
• suspension of child's driver's license for not more than 1 year;
• placement in DHS-run facility, wilderness training program, or state-supported training school;[162]
• placement in a public or private community-based organization that assumes responsibility for the education, care, and maintenance of child;
• placement in a juvenile detention center for not more than 90 days;[163]
• placement in a work program;
• referral to an A-team for system of care services.[164] An "A-team" is defined as a team of specialists working together to provide "system of care" services for non-violent juvenile offenders with serious behavioral or emotional disorders. Each team is comprised of a school counselor, a community mental health professional, a social services professional, a youth court counselor (who will ensure that the youth is appropriately supervised to protect public safety), and a parent of the child in the juvenile justice system.[165]
• Participation in the Adolescent Offender Program (AOP). The Mississippi Division of Youth Services describes the AOP program as "a community-based partnership among the Mississippi Department of Human Services/Division of Youth Services, mental health agencies, community agencies and local multi-agency councils. The AOP creates a mechanism within communities to coordinate services, share resources and reduce the number of young offenders being placed in state training schools. The program, which focuses on the family, seeks to assist local

Under the 2005 Reform Act, before the court can send a child to a training school or place a child in a juvenile detention center, the court must find the placement a) is the least restrictive environment, b) allows the child to be in reasonable proximity to the child's community, and c) can meet the child's medical, educational, vocational, and rehabilitative needs.

communities in coordinating and providing services to families at-risk."[166]

Under the 2005 Reform Act, before the court can send a child to a training school or place a child in a juvenile detention center, the court must find the placement a) is the least restrictive environment, b) allows the child to be in reasonable proximity to the child's community, and c) can meet the child's medical, educational, vocational, and rehabilitative needs.[167] The disposition order must further provide that the court has considered the medical, educational, vocational, and mental health needs of the child when ordering placement in a training school or juvenile detention center.[168] The time period for detention cannot exceed 90 days.[169]

No first time non-violent offender may be placed in training school or in detention for a period of 90 days or more, unless the court has used all other dispositional options and makes specific findings of fact that training school commitment is appropriate.

Any detention over 45 days must be reviewed by the youth court no later than 45 days after the entry of the order.[170]

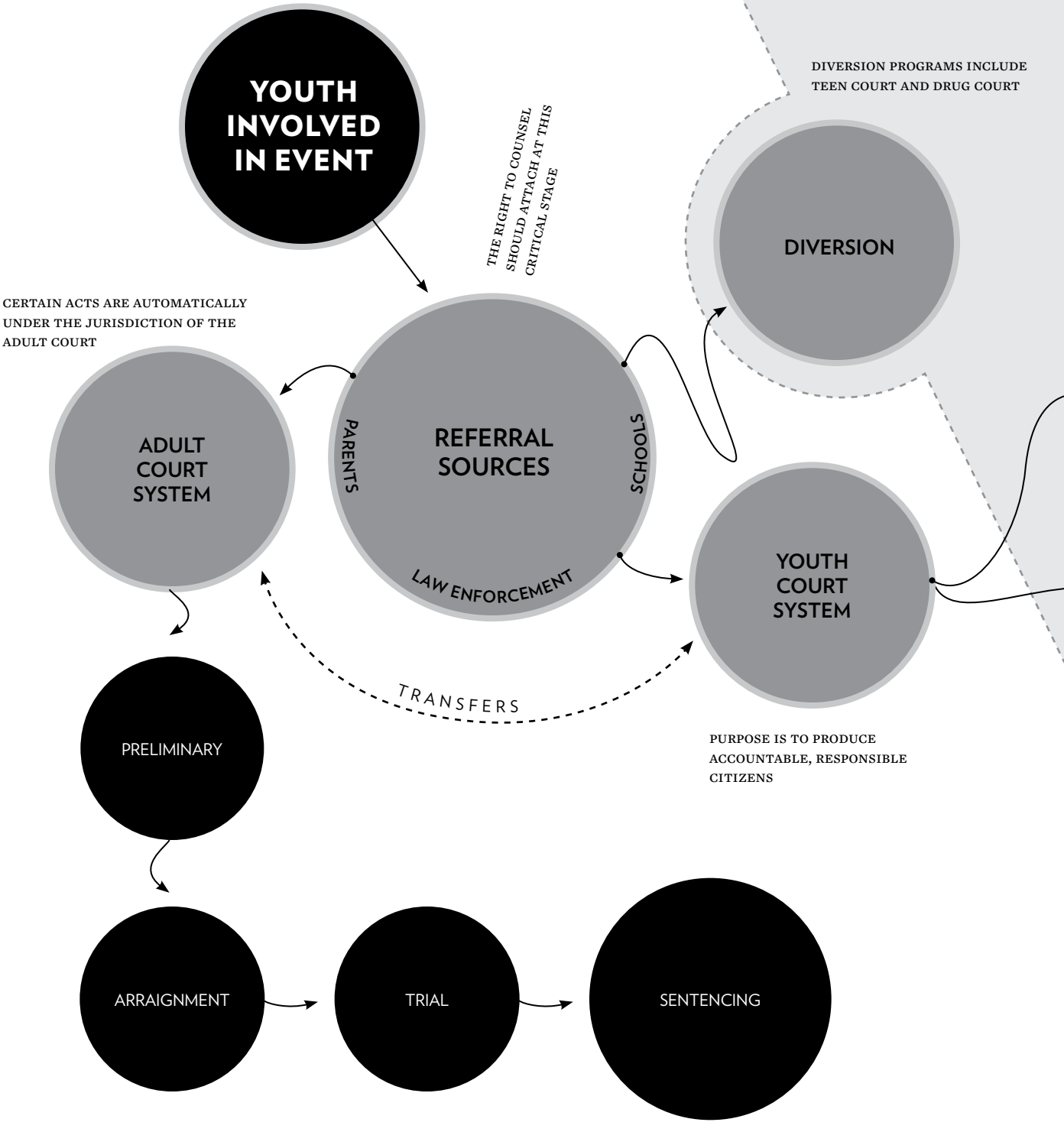
XI. MOTIONS FOR REHEARING, MOTIONS TO MODIFY DISPOSITIONS, AND APPEALS

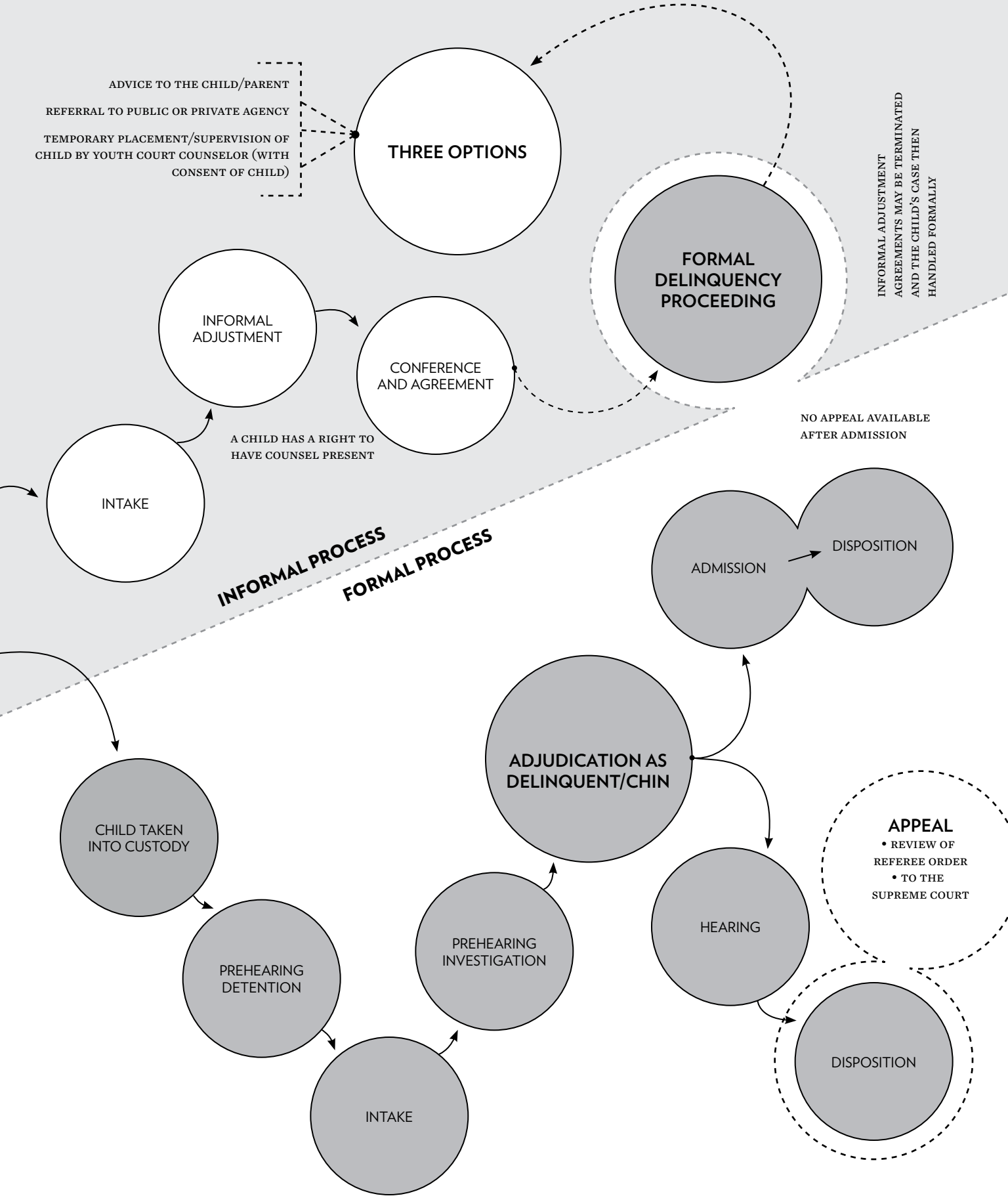
An order issued by a youth court referee may be reheard by a judge if any party files a written motion within three days after notice of the referee's order.[171]

On motion by a child or by the child's parent or guardian, the youth court has discretion to conduct an informal hearing to review the disposition order.[172] If the court finds a material change of circumstances, the youth court may modify the disposition order.[173] Unless the youth court's jurisdiction has been terminated, disposition orders are reviewed by the youth court judge or referee at least annually to determine if continued placement, probation, or supervision is in the best interest of the child and the public.[174] In practice, the annual reviews are simple file reviews conducted by the judge, the youth court counselor, and the clerk without notice to the parties.

Appeals from final orders in youth court may be taken directly to the Supreme Court of Mississippi.[175] A notice of appeal must be filed with the youth court clerk within 10 days after the final order is issued.[176] Appeals from the youth court are considered "preference cases" in the Supreme Court.[177] The appeals from youth court are tracked on the same calendar as other appeals and are not expedited. While these cases are appealed directly to the Supreme Court, the Court has discretion to refer specific cases to the Mississippi Court of Appeals.[178]

THE JUVENILE COURT PROCESS




ADVICE TO THE CHILD/PARENT
REFERRAL TO PUBLIC OR PRIVATE AGENCY
TEMPORARY PLACEMENT/SUPERVISION OF CHILD BY YOUTH COURT COUNSELOR (WITH CONSENT OF CHILD)
THREE OPTIONS
FORMAL DELINQUENCY PROCEEDING
INFORMAL ADJUSTMENT AGREEMENTS MAY BE TERMINATED AND THE CHILD'S CASE THEN HANDLED FORMALLY
INFORMAL ADJUSTMENT
CONFERENCE AND AGREEMENT
A CHILD HAS A RIGHT TO HAVE COUNSEL PRESENT
NO APPEAL AVAILABLE AFTER ADMISSION
INTAKE
INFORMAL PROCESS
FORMAL PROCESS
ADMISSION
DISPOSITION
CHILD TAKEN INTO CUSTODY
ADJUDICATION AS DELINQUENT/CHIN
APPEAL
• REVIEW OF REFEREE ORDER
• TO THE SUPREME COURT
PREHEARING DETENTION
PREHEARING INVESTIGATION
HEARING
INTAKE
DISPOSITION

ASSESSMENT FINDINGS

Because each county is charged with funding its own juvenile indigent defense delivery system, youth court practice varies widely from county to county in Mississippi. In some counties, assessment team investigators encountered many devoted and talented lawyers who provided exemplary legal services to children despite serious challenges. Other counties had juvenile defenders who were dedicated advocates with the best of intentions, but, as the Supreme Court held in *In re Winship*, their "good intentions"[179] are simply not enough. This assessment reveals gaps in the juvenile indigent defense system that need to be addressed. Juvenile defenders in Mississippi simply do not have the resources or training to protect their young clients. As a result, instances of vigorous representation in Mississippi's juvenile indigent defense system are few and far between. As presently structured, the system is at best uneven; at worst, inherently unfair. For too many Mississippi youth, the promise of *Gault* remains empty.

I. ACCESS TO COUNSEL

As the gatekeepers for the administration of fair and equal justice for juveniles, defense counsel must be present at all stages of the youth court process. But the mere presence of an attorney does not satisfy constitutional and statutory mandates. Juveniles are entitled to meaningful access to counsel — access that breathes life into the presumption of innocence, the right to confront adverse witnesses, the right to hold the government to its burden of proof beyond a reasonable doubt, and all other protections that the Supreme Court has extended to juveniles. In order to provide their clients with these protections, juvenile defenders must have the resources and systemic assistance to be able to spend time investigating their clients' cases, researching their clients' legal issues, and identifying their clients' special needs.

A. DETERMINATION OF INDIGENCE

Across Mississippi, indigence determinations and legal fees were not observed to be a barrier to access to counsel. Assessment team investigators reported that, in almost every county, the youth court assigns counsel based upon the child's lack of income, regardless of the parent's income. There is no defender fee recoupment, and there are no other orders for parents to pay for their children's attorneys. As one youth court referee explained, "We treat kids as indigent and no one checks their ability to pay." This is a commendable practice because most children lack the means to hire lawyers. And parents, who may have conflicting interests with their children inside the court process, cannot be required to pay for their children's defense.

In a minority of jurisdictions, the intake officer screens the child for indigence based on household income. If a child or parent cannot afford to hire an attorney, the court will appoint counsel for the child. This screening, however, is conducted at the same time the intake officer "counsels" the child. During this counseling session, the child might be

forced to provide information about the alleged delinquent act. A court official will also determine what procedural track (diversion, informal adjustment, or formal proceeding) is appropriate for the child. Because the court is making decisions and gathering information that will affect the child's liberty interest, this counseling session is a critical stage at which the child should at least be administered Miranda warnings.

The effect of Mississippi's generally expansive definition of indigence is a mixed blessing. On the one hand, Mississippi youth facing the "awesome prospect of incarceration" are literally not standing alone at counsel table. As one assessment team investigator observed, "All indigent youth who come before the court are represented by an attorney — usually a public defender." The virtue of this liberal assignation of counsel is its potential: Mississippi has in place a system that truly intersects across all of its communities, whether the child client is in a rural county or an urban center.

On the other hand, because the quality of the child's representation depends on the vagaries of the resources and training of each particular defender, some children are still left figuratively standing alone. Assessment team investigators observed hearings of all types in which defenders were either passive participants, or worse, active opponents to their clients' interests. When asked how he views his role in the juvenile justice process, one youth court public defender's reply was, "I have to be there. I don't really have an effect." An assessment team investigator in another county noted, "Based upon our observations, it is clear that this defense attorney essentially does no preparation before a hearing and in virtually every case provides no meaningful representation." When a defender simply rubber stamps the government's bureaucracy instead of truly testing the state's case, the defender is complicit in serious violations of his clients' constitutional rights.

B. WAIVER OF COUNSEL

Almost all the counties investigated in this assessment prohibit the waiver of counsel at adjudication and disposition. As one youth court referee explained, juvenile respondents "never waive counsel. We don't give them the option." In addition, parents are not permitted to waive the child's right to an attorney. With only one exception among the counties investigated, Mississippi youth courts ensure that children are appointed counsel to represent them at adjudication and disposition hearings. In the single county visited that allows waiver of counsel, assessment investigators documented a formal waiver process that allowed youth in detention to waive counsel after a brief meeting with a court-appointed defender at the child's initial court appearance. And, even in that county, a juvenile charged with contempt of court or held on multiple charges cannot waive the services of a defense attorney under any circumstances.

C. SYSTEMIC BARRIERS TO ACCESS TO COUNSEL

Timing of Appointment of Counsel

Because of the importance of case investigation and preparation, when counsel is appointed is almost as important as whether counsel is appointed at all. Although the right to be represented "at all critical stages" is codified in Mississippi's Youth Court Act,[180] the meaning of the phrase "critical stages" depends entirely on the court. There is no mechanism to provide counsel before the child's court appearance. Rarely — if ever — is counsel present for police interrogation or meetings with a youth court intake officer. Often irreversible decisions concerning the right to remain silent are made at this early stage of the process — decisions that should be made only with the guiding hand of counsel. And, in one county, although children are advised of their right to counsel during intake with a youth court counselor before the initial hearing, one youth court counselor stated that she has observed only a very small number of children request an attorney at intake — perhaps one or two in the four years of her tenure.

Mississippi's system is so fractured, there is no consensus on even the basic point of whether the detention hearing is a critical stage of the process at which defense counsel should be present. Several counties appoint counsel at detention hearings, while other jurisdictions wait until a petition is filed. In one county, the referee and the youth court counselor make the detention decision without either the prosecutor or a defense attorney present. In a stark

In county after county, youth reported that they met their attorneys for the first time in the hallways of the courthouse or in the courtroom "five minutes before court" and that attorneys spent no more than five minutes with them.

violation of the U.S. Supreme Court's holding in *Gault*, this practice fails to consider the child's expressed interests. The referee in this county did not see the detention hearing as a critical juncture of the proceedings, and told investigators that children are not regularly advised of their right to counsel at detention hearings. The importance of the detention decision cannot be overstated. Detaining a child adversely affects the child's ability to participate in his or her own defense, and often increases the child's chances of recidivism.

In several counties, youth court administrators provide defenders with a list of cases just moments before the beginning of the day's hearings. This list is the first time defenders become aware of whom they will be representing that day. Defenders receiving this kind of last-minute list cannot possibly confer with these clients before court. This practice makes it nearly impossible for court-appointed defenders to obtain the discovery evidence against their clients, subpoena relevant information, and prepare an adequate defense.

Physical Configuration of the Courtroom

In some counties, the physical layout of the courtroom impeded access to counsel. For example, in one county, while court was in session, the defense attorney, youth court counselor, and prosecutor sat side by side at two tables that were pushed together. The child and the child's parent sat in chairs lined up against the wall, a short distance from counsel table. During the proceedings, the accused child could not interact — not by speaking and not by writing — with the defense attorney. By contrast, assessment team investigators observed a police officer seated in the jury box actively assisting the prosecutor during the cross-examination of a defense witness. In another county, the set up of the courtroom was typical — that is, with the prosecutor's table on one side and defender's on the other side, facing each other — except for the position of the child, who was seated alone in the center of the courtroom, facing the judge, out of earshot and out of the reach of his attorney. In still another county, defense counsel sat through his hearings across from the respondents, while the prosecutor sat next to the child and his mother. The physical arrangement of the courtroom must reinforce the roles and relationships of the parties, so that children are seated next to and can consult freely with their attorneys.

II. QUALITY OF REPRESENTATION

Assessment findings show that many court-appointed defenders in Mississippi are unable to provide adequate representation because the juvenile indigent defense system lacks statewide uniformity and necessary resources. Court-appointed defenders struggle with high caseloads and do not receive adequate compensation for their critically important work.

A. CASE PREPARATION AND CLIENT CONTACT

Consultation to Prepare for Court

Explaining the youth court process to youth and their families is a critical defender function. A child must assist in his or her own defense and lawyers must "abide by a client's decisions concerning the objectives of representation … and shall consult with the client as to the means by which they are to be pursued."[181] Children facing "the awesome prospect of incarceration"[182]

cannot be active participants in a process they find foreign and overwhelming. One parent explained: "It was [our] first time in court and it was scary. I didn't know what was going on and it felt like my child had no rights."

Although Mississippi youth are generally represented at adjudication and disposition, most court-appointed defenders are assigned their cases just minutes before they appear in court for initial hearings, where the detention decision is made. Given that serious limitation, case preparation and client contact before initial hearings are minimal. In county after county, youth reported that they met their attorneys for the first time in the hallways of the courthouse or in the courtroom "five minutes before court" and that attorneys spent no more than five minutes with them. Defenders admit that they rarely, if ever, meet their clients before the initial hearing. One defender stated that she has hardly any contact at all with her clients prior to the initial hearing. An assessment team investigator in another county observed that the youth court public defender did not meet with clients until minutes before the actual detention hearing. Often, these meetings were rushed and public, in the middle of busy hallways, or in courtrooms while the prosecutor and youth court counselor were still present.

Unfortunately, in many counties, this triage type of minimal case preparation and client contact was not limited to initial hearings. In some instances, defenders did not pick up or review files that were available to them before the adjudicatory hearing. In one county, the youth court counselor reported that "the public defender rarely comes to get files before the court hearing, although she could get them if she wanted them." In another county, the defense attorney admitted that she usually meets her client for the first time the day of the adjudicatory hearing, without having appeared at the detention hearing, without having discussed the case or an investigative or legal strategy with her client, and without having prepared for adjudication. In another county, an assessment team investigator observed that "defense counsel does little investigation to prepare for adjudicatory hearings." That investigator observed that defender in other types of hearings as well, noting, "There is no detention hearing representation. He does not contest disposition recommendations." In another county, assessment team investigators observed that "[t]he public defender did not seem to have any files, books, or other materials in court for the delinquency cases." Regarding client contact and case preparation as optional has a devastating impact on the legal representation provided to Mississippi's children. If an attorney does not devote adequate time to building a trusting relationship with the client or investigating the charges at issue, it is impossible to provide adequate representation.

Some counties attempt to mitigate the harsh consequences of defenders failing to meet regularly with their clients. In a few jurisdictions, judges respond to this situation by generously granting continuances, essentially allowing the defender to use court dates as client meetings. In one county, a defender stated that she has hardly any contact at all with clients prior to court, but that she knows that she will be granted a continuance if she requests one. In another county, a public defender who admitted to meeting her client for the first time the day of the adjudicatory hearing, stated that if the client says that he or she has witnesses, the defender will ask for, and was certain that she would get, a continuance to interview the witnesses. Acknowledging that this public defender generally did not meet with her clients or interview any witnesses before the first court date, the referee confirmed that he was often lenient in granting her continuances. The referee said that he "doesn't think she has time before the fact" to prepare, and that he "sympathizes with her."

Other counties have institutionalized processes to ensure that youth and their guardians meet with the court-appointed defender before adjudication. In one county, the court schedules "plea hearings" after the initial hearing. A plea hearing is not really a hearing; it is a time when the youth and parents are subpoenaed to court to meet with the defense attorney and discuss the case. Of course, the meeting is not before the judge, though the youth can be arrested if he or she does not attend. Usually, if the youth does not attend, the youth is just re-served. Attorneys are expected to review all of the youth's rights

during that meeting, and decide case investigation and legal strategy with the client.

Another county has institutionalized a process called "first call." During first call, defense counsel meets with the client, discusses the facts of the case, and explains the youth court process. Only after this meeting does the attorney docket the matter for an admission and disposition or for a formal adjudicatory hearing. First call ensures that court-appointed counsel spends time with clients before appearing before the judge. Still, assessment team investigators found that defenders in this county were no more likely to review a social study or conduct an independent investigation than those defenders practicing in counties that do not conduct first call.

Some court-appointed defenders inform their clients about the youth court process through a form letter. This letter notifies the client and his or her parents of counsel's appointment and encourages them to set a time to meet with the attorney before adjudication. One defender explained that sending a letter is more effective than making phone calls because many of her clients do not have telephones. Although an initial letter may be an important part of establishing the attorney-client relationship, a letter is no substitute for a face to face meeting. Another risk of form letters is the possibility that defenders may inadvertently shift attorney functions to their clients. For example, one attorney's letter instructs juvenile clients to "bring their witnesses" with them to court. But without the advice of counsel, it is impossible for any client, adult or juvenile, to determine what witnesses are necessary. Witnesses help prove factual or legal defenses — defenses that should be identified by counsel with the child, not the child alone.

Consultation after Court

Regardless of the demands of the courtroom machinery, attorneys should speak with their clients after their court hearings, to ensure each client has understood what happened in his or her hearing, to answer any questions the client might have, to review any court-ordered conditions with which the client must comply, and to discuss with the client the next steps in the case. Assessment team investigators did not observe any post-hearing debriefings between juvenile defenders and their clients. This lapse was likely due to the frequent combination of a single defender on duty and a busy, multiple-case court calendar. For example, in one county, assessment investigators saw that when each hearing finished, the defense attorney would rush to locate the child whose hearing was next on the docket, speak hurriedly with that child and the child's parent, and then rush back into the courtroom. Defenders must ensure that their clients understand the particulars of their court hearings, especially release conditions, no matter how fast-paced the youth court's schedule might be. For example, one young man, a 14 year old, told an assessment investigator before his hearing that he had no idea why he was in court, as he had not spoken to his attorney, the juvenile defender, since he was sentenced to probation at his last court date. The young man ended up admitting to a probation violation. In another instance, when asked after his hearing what the defense attorney could do better, one 15 year old client replied, "Everything!" and then added "He could spend more time with the children."

Consultation with Detained Clients

The Mississippi youth court statute requires that all detention centers prominently post the rights of children in custody — including the right to contact and meet with a lawyer.[183] But unless a child has contact information for an attorney who will respond to the child's request for a meeting, this right is meaningless. At one detention center, juvenile residents were informed, on their "Juvenile Responsibilities Form," that "You have the responsibility to let staff know if you want to contact your lawyer." However, in that same detention center, the local juvenile defender's number was not posted, and no literature was displayed or even available to help a detained youth learn about the juvenile court process.

Detention center staff in several sites indicated that court-appointed defenders rarely visit or otherwise communicate with their detained clients. One county's juvenile detention center administrator told assessment team investigators that she has never heard of a lawyer, public or private, visiting a detained juvenile client. She noted "It's very different from what I've seen on the [adult side]. The lawyers for accused youth in [this

county] don't seem to be interested in proving that their clients are innocent." Detention facility administrators in another county estimated that, based on their observations, a defense attorney may visit a client at the detention center once every two or three months at most.

The problem of defense attorneys' not visiting their detained clients has several serious dimensions. First, like children who are released into the community, detained children need to be informed of the progress of their cases, consulted concerning investigation strategies and witnesses, and prepared for testimony. Second, the difficulties that children face in detention centers cannot be overstated.[184] Detention for juveniles is at least as frightening, disorienting, and potentially damaging as incarceration is for adults, if not more so. Juvenile defenders have an ethical obligation to investigate and prepare their cases and to zealously represent their clients. Juvenile defenders' failure to meet with detained clients, who are literally a captive audience, underscores that common defender practice in Mississippi youth court does not include even minimal consultation with the client.

B. DETENTION HEARINGS

At a detention hearing, a child faces incarceration for up to 21 days. If a child is detained, he or she will be removed from his home, and often denied access to education and mental health services. Given these severe consequences, Mississippi law allows detention only when "there is probable cause to believe that ... the child is within the jurisdiction of the court and custody is necessary." [185] Custody is deemed necessary when: i) the child is a danger to self or others; ii) to ensure the child's attendance at court; or iii) when a parent or guardian is unavailable to care for the child.[186] The statute presumes release, and explicitly states that youth have the right to present evidence and cross-examine witnesses at detention hearings.

Despite the well-documented fact that detaining a juvenile has dire consequences, many Mississippi youth courts clearly do not consider the detention hearing a critical stage in the youth court process.[187] With respect to the child's case, a detained client cannot assist as well in preparing for adjudication as a released client.[188] With respect to the child's development, simply put, detention can change a child. Studies show that time spent in detention increases the likelihood that the child will recidivate,[189] in part because the client is likely to make negative peer connections, and because positive, community-based relationships (in particular, with the child's family) are interrupted.[190] In fact, as a predictor of future criminality, detention is more reliable than gang affiliation, weapons possession, or family dysfunction.[191] As one juvenile court administrator stated, "A child in detention is not the same as the child across the desk. In detention a normally mild-mannered child becomes like a rat in a corner." To the children whose liberty is at stake, the role of defense counsel at detention hearings is crucial.

Lax Application of the Detention Statute

Investigators observed that judges applied a lax interpretation of Mississippi's detention statute. Children were often detained for reasons outside the law's clearly-delineated conditions. For example, in one county, if a detained child was release-eligible, but reported poor grades, the judge would allow the child to be released only after the child had read, written a report, and passed a quiz on a book chosen by the judge. According to the public defender in that county, most young people completed the assignment by the end of the work day, and their parents could pick them up by 5 p.m. However, assessment team investigators learned that, in some instances, youth were confined for days because they failed to complete this assignment. The public defender stated that she regularly objected to this practice, but stopped objecting when the judge continued to hold youth for this illegal reason. In another county, a prosecutor admitted that detention is often used as a deterrent, even though "that's not [its] purpose." He continued, recognizing the "need to be strict in the [application of the] detention standard," but acknowledging, "we're not."

No Presentation of Evidence

Across the state, defense advocacy at detention hearings fell far short of the advocacy necessary to protect the rights of youth. For example,

although the law allows defenders to present evidence and cross-examine witnesses in detention hearings, assessment team investigators did not observe a single detention hearing during which evidence was presented on behalf of a child. Detention decisions were frequently made based on a cursory evaluation of the prongs of the statute, without a meaningful measure of the child or the child's circumstances. One assessment team investigator observed 13 cases on a single docket, all handled by the same public defender. The first ten cases were set for detention hearings on the morning docket. Those ten cases took less than an hour to complete, or fewer than six minutes per child. In eight of the ten cases, the defender did not argue at all. In the two cases in which the defender spoke — both cases in which the youth counselor was already recommending release — the defender merely commented that the state did not have probable cause for the charge. One defender in another county admitted he "does nothing" at detention hearings. He said the substance of the hearing is that "[t]he referee asks the parents if they want to take the kid home and if they don't the referee sends them back to the detention center." In another county, a 16 year old was charged with shoplifting, and had already spent 6 days in detention at the time of the hearing. Instead of making an argument on the young man's behalf, the defender publicly scolded the youth, admonishing him that if the incident had occurred just a month later, the youth would have been in adult court.

No Probable Cause Arguments

Probable cause should be a critical component in a court's decision to detain a youth, but Mississippi defenders frequently do not challenge the prosecution's assertion of probable cause. In one county, the public defender reported that there is a probable cause portion of the hearing, but he often waives it. In another county, in a case in which a 13 year old was charged with automobile burglary, and the court found probable cause based on the sheriff's report, not only did the public defender not challenge the probable cause finding, the defender went so far as to state that he was "satisfied" with the probable cause determination. In a third county, assessment team investigators did observe a defender note on the record that there was no probable cause in two detention hearings; however, the youth court counselor was recommending release in both those cases, so the probable cause determination was practically moot. Waiving probable cause has a number of disadvantages. First and most obviously, the probable cause determination is a hurdle — albeit, one often easily cleared because of the low evidentiary threshold — between the child and detention. Assuming that the child's expressed interest is to be released, defenders have an ethical obligation to mount an argument against probable cause unless there is a compelling tactical reason to concede. Equally important, arguing probable cause builds the relationship between the defender and the client. Especially since most cases are resolved with admissions, the probable cause hearing may be the child's only opportunity to see the defender fight for the child's interests, and feel that someone in the courtroom is on the child's side. Waiving probable cause forfeits this critical rapport-building opportunity.

Pre-hearing Consultation

Mississippi defenders consulted very little with youth, their parents, and the youth court counselor to prepare for detention hearings. In one county, the public defender typically met with all her assigned detained clients in a group on the morning of their detention hearings. As a result, her cursory defense amounted to nothing more than general statements that she either agreed with the recommendations of youth counselors (if the recommendation was for release) or disagreed (if the recommendation was detention). Another defender in a different county reported that, though he could receive discovery for the cases of detained children a day before their hearings, he usually got the list and police reports 15-30 minutes before court, when he did not have much time to look at the information. In another county, assessment team investigators observed that the public defender did not meet with clients until moments before the detention hearing, and then did not appear at the hearing.

Role of the Youth Court Counselor

In too many counties, the court, the government, and even the defense gave great deference to the

youth court counselor's detention recommendation. One public defender reported that — as opposed to requesting discovery — he relied on the youth court counselor to contact him and let him know whether he should expect anything unusual in the next day's detention hearings. In that defender's county, the prosecutor does not participate in detention hearings — the state is represented by the youth court counselor, so the youth counselor's position, in many cases, was at loggerheads with the position of the defender's client. In another county, the youth court referee called the youth court counselor "the system gatekeeper" who "works closely with the referee on difficult cases." At the detention hearing, the referee and the youth court counselor decide whether and where a child will be detained prior to adjudication. In this county, no attorneys are present at detention hearings. In many other counties, of all the courtroom actors, only defenders are not present at detention hearings. In stark contrast, there were no counties in which the youth court counselor was absent from detention hearings.

C. INVESTIGATION AND DISCOVERY

Prompt and thorough investigation and diligent pursuit of discovery materials in the custody of the government are crucial to any case, whether the case goes to adjudication or the child admits to the offense. If the case goes to adjudication, the advantage of speaking to adverse witnesses, preparing defense witnesses, and subpoenaing relevant documents is obvious. Less obvious but just as important is the client's understanding of the strengths and weaknesses of his case relative to the government's — including a full review of the evidence expected to presented at adjudication — is integral to the client's making an informed decision about whether to admit. Also, investigation provides an important opportunity to allow the child to take charge of his case, as the attorney consults the child about witnesses and investigation tactics. Indeed, conducting a prompt and thorough investigation is one of the defense attorney's most important duties.[192]

Unfortunately, defense investigation and discovery litigation are not part of the culture of Mississippi's youth court practice. No court-appointed defender interviewed by assessment investigators requested educational evaluations, mental health evaluations, or social histories as a matter of practice. One defender indicated that he "goes in cold" to hearings because he believes only 5% of the cases he handles "really require mental gymnastics." Youth and their parents understandably find this frustrating. According to one mother, "the public defender could have just listened and done some investigation. He wouldn't even look at the materials I collected for him."

This failure to conduct regular, prompt and thorough investigations stems, in part, from an utter lack of resources. For juvenile defenders, the Mississippi youth court county-based system provides no investigators, or funds for investigations. So, while prosecutors in many counties enjoy a good relationship with local law enforcement and can request investigation into a matter, defense attorneys must either do their own investigation, enlist the client to do the investigation, or forego investigation altogether. In one county, the prosecutor acknowledged that defense attorneys in his jurisdiction do not regularly conduct investigations.

Allowing the client to do the investigation has several notable drawbacks. In one county, a defender instructs the child and the parent to "bring their witnesses" with them to the adjudication in an introductory letter inviting the family to meet with him prior to the day of adjudication. Of course, the child is not an attorney. So, it is highly unlikely that a child can: discern a theory of defense, assess which witnesses support the child's defense, or access the search tools necessary to locate potential witnesses. In short, the child cannot do the attorney's job. Assessment team observations support this conclusion: in response to this attorney's request, with only one exception during the period that the team observed court, no child or family actually brought witnesses with them on the day of the adjudication.[193] A defender in another county uses a similar stopgap when she meets her client for the first time, usually the day of the adjudication. If the client says that the client has witnesses, the defender will ask for, and, in her experience, usually get, a continuance to go out to interview the witnesses. This tactic places a detained child at a distinct disadvantage, since a detained child is not as easily able to communicate with and con-

vince witnesses to come to court and testify on his or her behalf. This tactic also elongates the youth court process for the child, so that the child lives for a longer time both with the anxiety of the prospect of incarceration, and under the court's pre-adjudication conditions.

No doubt many Mississippi defenders rely on their counties' open file policies, a fourth possible solution to the dearth of defense investigation resources. In county after county, attorneys expressed that the parties adhere to an open file policy, where all youth court personnel share access to and work from the same file. In one county, the prosecutor told assessment team investigators that there is no discovery motion practice because "the public defender can have anything she wants." In another jurisdiction, assessment investigators observed the defense attorney reviewing the court file with the youth and the parents. Open file policies do not relieve defenders of their independent ethical obligation to conduct a prompt and thorough investigation into their clients' cases.[194] At the most, such open discovery policies help to give the defender a full and fair picture of the government's case. Until the 2007 Legislation, defenders were only allowed to inspect the records. The legislature amended the statute, now giving defenders authority to copy the entire file.[195] Investigation remains central to the defense attorney's duty to test the government's evidence.

Even in jurisdictions with open file policies, defenders often do not receive discovery materials in time to make meaningful use of them. For example, in one county, petitions are not given to defense counsel until within 7-10 days prior to the adjudicatory hearing. In another county, the public defender told assessment team investigators that the defense attorney "normally receives the petition the day of [adjudication]." In another county, the defense attorney revealed that she normally receives the police reports, statements, and other discovery material a few days before the adjudicatory hearing, and the petition the day of the adjudicatory hearing. Defense counsel should receive materials in time to pursue leads revealed in the government's discovery and to prepare for adjudication, despite open file policies.

D. MOTIONS PRACTICE

Motions for discovery, to suppress inadmissible evidence, and to request continuances are often critical components of an adequate defense. Unfortunately, motions practice is very limited across Mississippi. Most defenders reported that they do not routinely file any sort of motions, whether oral or written. Motions practice, when it is undertaken, largely takes the form of oral motions made in open court on the day of the adjudicatory hearing. Written motions are even more infrequent.

Defenders' reasons for the uniformly non-existent motions practice across the state varied. One defender offered that, because of her large caseload, she does not have the time to file written evidentiary or other pre-adjudication motions, and that, even if she did have the time, she does not receive discovery paperwork in enough time to file them. Some defenders expressed the opinion that it is futile to file motions in youth court because there is little recourse if the youth court judge does not want to engage in motions practice. For example, one defender commented that he had, in the past, made oral motions to suppress evidence. He ceased this practice when the judge consistently ruled against him. Another defender explained that since the judge he appeared before did not observe strict evidentiary rules, and allows everything in, it would be a "waste of time" to argue motions.

Other defenders believed that, given the informal nature of youth court practice, most motions are unnecessary. The juvenile defender in one county reported that he had never seen a written motion filed in youth court. He asked, "What would be the need?" In most counties, defenders reported that motions for discovery were of little use because either the court administrator would provide counsel with a copy of the file or there was an open file system.

One dedicated and effective court-appointed defender reported that she filed a motion for discovery in each case after she met with her client, the prosecutor, and youth court counselors. According to this defender, this practice prevented prosecutors from introduc-

ing evidence during the hearing that was not previously identified. In one county, the youth court judge reported that "it's not a rarity" for her to handle written motions, that she received perhaps one written motion per week, and that she heard oral motions "all the time." However, the prosecutor in that same jurisdiction estimated that there had been three or four written motions to suppress in the previous three years, and, during the assessment observation period, the defense attorney did not litigate any pre-adjudication motions, written or oral.

E. ADJUDICATION

The youth court statute specifies that the child has the right to subpoena and cross-examine witnesses. However, the vast majority of cases are disposed of with admissions; juvenile justice professionals across the state reported that adjudications after a full evidentiary hearing happened very rarely in Mississippi youth court. Or, as one prosecutor summed it up, "Adjudications [hearings] don't happen often." One defender, who reported carrying a caseload of approximately 500 cases, estimated that he tries 1-2 cases in youth court each month. He attributed the low number to the prosecutor's willingness to dismiss charges if they are not well-founded. The few adjudicatory hearings that were observed were so brief that they were almost perfunctory. One youth court referee reported that "Most cases last 30 minutes; some are much shorter. There are no juries and rarely more than 1 or 2 witnesses for each side."

Several juvenile justice professionals expressed the opinion that youth court adjudications simply are not difficult. As one prosecutor explained, "Most cases have uncomplicated facts, allowing for quick resolution." A defender in a different county explained that only a few cases each week "really require mental gymnastics." This feeling was further demonstrated by some defenders' practices. For example, the defender in one county, where detention facility administrators told investigators that the defense attorney comes to the detention center at most once every two or three months, demonstrates conclusively that the defense attorney does not prioritize preparation for the adjudication. This defender, instead, meets with his clients approximately five to fifteen minutes before the adjudication hearing begins.

Despite the common perception, Mississippi's youth court adjudications are no less complex than adult criminal proceedings. Children and adults are often charged with the same offenses. The elements of the crimes are the same, the evidentiary burden the government bears is the same, and the government is similiarly motivated for a conviction. The only real difference between juvenile delinquency adjudications and adult criminal proceedings are the length of sentences. Put another way, practitioners may believe that youth court cases are not as difficult because there seems to be less at stake — juvenile clients face at most several months in a state operated training school. However, as countless studies show, the effects of detention and involvement in the juvenile justice system have long-lasting collateral consequences.[196]

Even in the face of the serious consequences of juvenile incarceration, investigators noted a lack of defense advocacy during the few adjudication proceedings observed. Assessment investigators noted only one adjudicatory hearing during which the youth presented defense witnesses other than the client. Some youth took the stand in their own defense — often to their own detriment. In one county, a young man was charged with resisting arrest after he called police because his father was physically abusive. When the police arrived at the young man's home, they were physically aggressive with him. The child resisted and the police attempted to arrest him. The child resisted further. When the child recounted these events in court, his testimony proved the prosecution's case and he was adjudicated delinquent. In a different adjudication in which the respondent was accused of causing a disturbance in a public library, on cross examination of the librarian, the defense attorney asked mostly open-ended questions, and elicited testimony that either reinforced the librarian's direct examination testimony, or that elicited additional bad behavior that the prosecutor highlighted on redirect examination. Most shockingly, the defense attorney did not have the petition or any paperwork in front of her during any of her examinations.

F. ADMISSIONS

Even though the Mississippi youth court statute bars plea bargaining,[197] the vast majority

Public safety suffers when lawyers are not equipped to ensure their clients receive appropriate sanctions, in which discipline and accountability are supplemented by educational, vocational, and mental health programs designed to help youth become responsible and productive adults.

of adjudicatory hearings are resolved through admissions. The judge may accept a child's admission if the judge finds that 1) the child making the admission fully understands his or her rights and the consequences of the admission; 2) the child making the admission is doing so voluntarily, intelligently, and knowingly.[198] By statute, at the beginning of the adjudication hearing, the youth court must explain to the child that he or she has the right to counsel, the right to remain silent, the rights to subpoena and cross examine witnesses, and the right to appeal.

Though a small number of judges were careful to advise youth of their rights, many judges failed to make sure that admissions were made knowingly and voluntarily. In one county, the youth court judge accepted a child's admission without any colloquy concerning the child's understanding of his rights. According to an assessment team observer, instead, the judge asked the child "a few sarcastic questions" about the details of the offense and the child's educational background, accepted the child's admission, and advised the child to return for disposition. The observer noted that, considering the impact of an admission and the long-range consequences of an admission on the child's life, the entire proceeding was completed "fairly quickly." In another county, the court took a plea in a case involving two 14 year olds accused of fighting in school. The entire admission, allocution, and disposition were resolved in six minutes; they were both placed on six months probation with conditions. There was no discussion of rights or long-range consequences. The defender let the boys' parents explain the details. In another county, the defense attorney, not the judge, assumes the task of advising the youth of the rights he is relinquishing by admitting. The defense attorney meets privately with the youth, and then announces in the hearing room that the youth wants to make an admission. There is no colloquy in court.

A youth in another county revealed to assessment team investigators that instead of testing the prosecutor's ability to establish elements of the offense, the defense attorney encouraged him to admit every time he was charged with an offense. That same defender was observed counseling clients moments before adjudication. In a rushed conversation squeezed between cases on what is usually a busy docket, this defender asks the child to tell him what happened during the incident that led to the charges or to the revocation action. According to assessment team investigators, "the defense attorney spen[t] little or no time exploring the facts and asking follow-up questions geared toward developing defense theories." Instead, after the child presents "what happened," the defense attorney zeroes in on the bottom-line question of whether the child is going to admit the charge (or admit the violation of release conditions) or whether, in the alternative, the child wants a hearing.

Several investigators documented youth confessing the details of the delinquent act upon the encouragement of their defender, in spite of the child's expressed interests and with-

The right sanction can help a youth turn away from a life of involvement in the juvenile and criminal justice systems; but the wrong placement can actually increase the chance that a youth will re-offend.

out a full discussion of the consequences. In another example, assessment team investigators watched as a defender pushed his client to admit at her initial hearing, even though she repeatedly asserted her innocence. The girl was arrested for public disorder and underage drunkenness when she called the police to get drunk young people out of her mother's yard and house and was allegedly found drunk herself. The conversation between the defender, the young woman, and her mother is disquieting considering the defender's insistence that the young woman admit:

> **Defender:** *Why don't you just admit to the claims, they did find you drunk.*
> **Girl:** *But I was the one who called the police to ask them to get the kids out of the yard.*
> **Defender:** *But you were drunk, too.*
> **Girl:** *Not really, I was not. I just feel like no one is fighting for me.*
> **Defender:** *Well then you should admit to the charge.*
> **Girl's Mother:** *Why? She is telling you she called the police for help and she got arrested. It just don't seem fair to take it out on her. ... I don't want this on her record. Why is she the only kid being held accountable?*
> **Defender:** *That's not my call, but I think you need to tell me if you want to admit to the charges. It'll be sealed once she turns 18. ...*
> **Girl's Mother:** *This doesn't seem fair. The court is not giving us what they promised.*
> **Girl:** *I don't get it, why am I the one in trouble?*
> **Defender:** *(Silent.)*
> **Girl's Mother:** *I guess we'll admit since being on probation has helped her. Is there any other way we could do this?*
> **Defender:** *No ma'am.*

G. DISPOSITION

Disposition is perhaps the most important stage of the youth court process, the "heart of the juvenile justice system."[199] The Mississippi youth court statute requires that, during a disposition hearing, the court consider a host of factors — including the child's family and home environment, as well as the child's educational, medical, and social history[200] to fashion an individualized dispositional plan. Public safety suffers when lawyers are not equipped to ensure their clients receive appropriate sanctions, in which discipline and accountability are supplemented by educational, vocational, and mental health programs designed to help youth become responsible and productive adults. The right sanction can help a youth turn away from a life of involvement in the juvenile and criminal justice systems; but the wrong placement can actually increase the chance that a youth will re-offend. In Mississippi, the placement can range from no action to probation to commitment to a detention center or training school.

Unfortunately, assessment team investigators found dispositional advocacy in Mississippi to be routinely inadequate. For example, the statute allows youth to present evidence and call witnesses during a disposition hearing. Ideally, defenders should call witnesses at a disposition hearing, including teachers, family members, and mental health experts, who could testify regarding an appropriate sanction for the youth. In the absence of live witnesses, defenders should offer into evidence school and mental health records to prove the existence of specific needs. However, although one defender told assessment observers that he would "occasionally put witnesses on to

contest a recommendation," not a single court-appointed defender was observed presenting evidence during a disposition hearing.

Assessment team investigators found that, perhaps because defenders' resources for dispositional investigation and preparation are scarce, defenders rely heavily on the youth court counselor's recommendations at disposition. In one representative county, assessment team investigators noted that, during the entire observation period, the defender did not contest the youth court counselor's disposition recommendations even once. In another county, the youth court public defender flat out admitted that he does not try to persuade the court regarding any dispositional alternatives, nor does he feel it is his duty to try to propose another alternative. He explained, "That's the counselor's job — I am not aware of anything else, she keeps up with that." Juvenile defenders have an obligation "to consult with clients and, independent from court or probation staff, to actively seek out and advocate for treatment and placement alternatives that best serve the unique needs and dispositional requests of each child,"[201] even if they have a sense that the youth court counselor is doing an adequate job. The youth court counselor's ethical obligation, to serve the child's best interest, of course, is not necessarily congruous with the defender's obligation, to serve the child's expressed interest. The divergence of these interests is often most stark at disposition.

It is no surprise then that, in the absence of contrary representations, most judges defer to the recommendations of the youth court counselor. In many courtrooms, the judge relies on the youth court counselors to gather personal histories of children and issue dispositional recommendations, instead of the defender. In two counties, the prosecution does not even participate in the disposition hearings; the youth court counselor effectively represents the government's interests. One youth court counselor explained that "the judge will follow [her] recommended dispositional plan about 99% of the time." She stated the defense lawyers will sometimes ask her what she will be recommending, but that is the extent of their input.

Unfortunately, the nuanced and responsive disposition hearings contemplated in the youth court statute remain aspirational. The reality is that disposition hearings in most counties were observed to be brief and perfunctory, held immediately after adjudication, without pause for consideration or even investigation. Across the state, assessment team investigators observed that disposition hearings — perhaps the most complex stage of the youth court process — rarely lasted longer than ten minutes. In addition, although the Mississippi youth court statute charges the youth court counselor with providing the court with a social summary that investigates the youth's court history, behavior and performance at home and at school, as well as key family relationships, in many counties, Mississippi defenders are in the practice of waiving the pre-disposition report. And, in many counties, in cases where the social summary was prepared, it was not provided to defense counsel until minutes before the disposition hearing, so counsel could not make effective use of the information in the summary.

H. POST-DISPOSITION

Representation does not end at disposition. Juveniles may need the assistance of counsel after disposition for direct appeals of issues arising during the pre-trial process or adjudication hearings, periodic reviews of dispositions, collateral reviews of adjudications, obtaining particular services such as drug or mental health treatment, or challenging dangerous or unlawful conditions of confinement. The youth court statute provides an opportunity to modify a disposition order, review the decision of a referee, and appeal any youth court order directly to the Mississippi Supreme Court.

It is clear that instances of appellate advocacy are few and far between. Of all the defenders interviewed across the state, only one defender recalled filing an appeal or motion to modify. One prosecutor recalled that, in the last eight years, only three or four appeals had been filed. Court-appointed defenders revealed several reasons for not filing post-disposition motions or appeals, including lack of appellate expertise, belief that the time and process of filing an appeal would render the case moot prior to

being heard, and lack of compensation to file an appeal. Many attorneys incorrectly believe that their contract with the county explicitly prohibits post-disposition representation. Not surprisingly, most have never visited either of the two state-run training schools or even the local detention center. This lack of post-dispositional representation not only deprives Mississippi's court-involved youth of their right to appeal, it also inhibits Mississippi's higher courts from interpreting and applying Mississippi's Youth Court Act.

Attorneys should treat appellate practice as an important part of juvenile defense. Felony adjudications have long-term consequences, especially for such crimes as sex offenses, and may have important implications for plea bargaining or sentencing if the youth gets in trouble in the future, either in juvenile court or adult criminal court. In addition, as states move to longer terms of commitment, there is more time to perfect appeals, and there are also more compelling reasons to challenge adjudications and dispositions. The *IJA/ABA Standards* provide that counsel should file appropriate notices of appeal and represent clients, or arrange for representation on appeals.[202] Attorneys must explain potential appellate issues to juvenile clients, as well as the factors the client should consider in deciding whether to appeal and should file legally sound appeals whenever their clients want them to do so.

III. SYSTEMIC BARRIERS TO EFFECTIVE REPRESENTATION

A. ETHICAL AND ROLE CONFUSION

Juvenile defenders are a critical counterweight in an adversarial system that can lead to harmful outcomes for young clients. The *IJA/ABA Standards* are clear that defenders have an ethical obligation to zealously advocate for the expressed legitimate interests of each juvenile client, even when the child's expressed legitimate interest conflicts with the defender's sound legal advice or with the defender's own personal judgment about what might be in the child's best interests.[203] These standards apply regardless of the child's age, education level, and perceived or measured intelligence level, so long as the child is "capable of considered judgment on his or her own behalf."[204] Unless the defender assumes this adversarial role, the defender becomes, as one team investigator reported, "a gatekeeper, someone necessary to move the docket, not to safeguard the rights of youth and families."

Many juvenile defenders believe, however, that their role is to protect the "best interests" of the child, not to assume an adversarial role in which they protect the legal interests of their clients. For example, one contract public defender explained that she plays three roles: attorney, counselor, and social worker. She stated that as the juvenile defender, you "can't just deal with the child, [but] … everything concerning the child." She "believe[s] that the disposition phase is the most important stage of [her] representation of clients because the focus is on what is in the best interest of the child," even though the *IJA/ABA Standards* are unequivocal that the defender must zealously represent the child's expressed interests. Another defender explained that "I don't always listen to what [the clients] say." She further explained, "Mine is not the role of the typical defense attorney; I must consider what is best for the child, and I do not take the position that I must 'get the child off at all costs.'" In one county, the court-appointed defender informed the court in a post-adjudication hearing that detention would be in her client's best interest — despite the fact that her client asked the court to explore other placement options.

Not surprisingly, other courtroom actors share defenders' erroneous perception of their role. A youth counselor in one county complained that, though she is supposed to work on behalf of the child's best interest, "juvenile defense attorneys do not do the same," and she has had to work with some public defenders "who just want to get the child off." She believes that it is not always "good to have a child to walk out on the street and get in trouble again." One juvenile court administrator stated that he knows that "the defense attorney is the child's attorney, not the parent's attorney," but "children don't know what's in their best interest, and the attorney should base the defense on the client's ability to make decisions." He concluded, "Strict protection of rights can lead to a bad message to children, and potentially to recidivism."

Prosecutors were similarly confused about defense counsel's role. One prosecutor explained that he has a good relationship with the newest juvenile defender because "she understands that the main question is how do we help the child, and she knows that the only way the child can get help is through adjudication." In another county, a prosecutor requested a meeting with the chancery court judge, the defense attorney, and the referee to talk about the defender's adversarial advocacy. As that prosecutor explained, "I don't think it should be adversarial, we're all here for the youth." A prosecutor in a third county conflated the best interest and expressed interest standards when he described that "defense counsel's role is to defend the client," and defense counsel must do what the client says, but "the biggest role is to explain to the child and the child's parents or guardians what's going on — is to be an information liaison. Attorneys should counsel their clients as well as defend them; it should not always be 'fight, fight, fight.'" He added that defense counsel should consult with the juvenile client with the parent present.

Most dismaying, judges do not seem to understand defense counsel's role. One representative youth court judge complained "Some attorneys fight too hard to get their clients off; they don't realize [youth court] is the best place for the child." This judge understood that public defenders in youth court should be strong advocates for their clients "while not losing sight of youth court's overall philosophy."

Parents also often expect defenders to act in their child's best interest. This tension can create complicated situations, particularly with respect to the decision whether to plead, which is the child's alone, but which is, more often than not, made by the parents. One defender told assessment team investigators: "I get here early, check files to see if the kid has been served, review petitions, advise kids, and invite them to admit or deny. I throw it into their laps and usually the parents make the decision." In another instance, the defender let his clients' parents explain, as part of the plea allocution, the details of a fistfight which was the basis of the assault charges that the boys, not their parents, were admitting. In another jurisdiction, during the two-day period that the assessment team investigators were observing, the defense attorney's brief pre-trial conversations always included both the child and the parent.

The expectation to serve the child's best interest, instead of the child's expressed interest, creates an enormous amount of pressure on defenders to be team players, at the expense of safeguarding their client's interests. For example, one prosecutor stated that the public defender told him that she knew her client was guilty, but the client wanted to go to adjudication. Telling the prosecutor her own opinion that her client was guilty undermined her and her client's position on several occasions. Defenders have a duty to ensure that children are not in youth court simply because other institutional players think particular children need services.

B. IMPACT OF ATTORNEY COMPENSATION AND EXCESSIVE CASELOADS

Compensation rates for lawyers serving as youth court defenders range from an hourly rate of $65.00, which does not include expenses such as transportation costs, postage, phone calls, and other support expenses, to as low as a flat fee of $500.00 per month regardless of the number of cases the attorney handles. One attorney stated that his compensation of $750.00 per month was for his dual role as both defender and the guardian *ad litem*.

Because court-appointed defenders are paid so little, almost all must practice outside of youth court and cannot afford to specialize in delinquency representation. One attorney, who is one of two contract juvenile defenders in his county, is paid $26,000 per year without benefits, and spends only 15-20% of his time on youth court cases. When asked what percentage of her time she spends on her youth court cases, one attorney who receives a flat rate each month to represent youth in delinquency and protective proceedings replied, "Not enough." Judges, attorneys, and youth court personnel all agree that low fees prevent court-appointed defenders from investing the necessary time on youth court cases.

The problem of poverty is intrinsically woven into all aspects of Mississippi's juvenile justice system: Mississippi is a resource-starved state struggling for funds to protect the rights of poor children.

Despite limited funding, court-appointed defenders have virtually unlimited caseloads. *The American Bar Association Standards for Criminal Justice* recommend that full-time public defenders be assigned no more than 250 juvenile cases per year.[205] Although Mississippi fails to track the number of cases assigned to each court-appointed defender, defenders confirm that they carry exceedingly high case loads. One attorney currently has 150-200 active juvenile delinquency cases, meaning cases that have not yet gone to disposition; post-disposition cases, like probation revocations or contempt cases, are not included in this number. One defender estimated that he has between 500-600 open cases. Other attorneys noted that they do not keep statistics on the number of cases they handle because they "just handle whatever is on the docket today. It does not matter if it is one or twenty." The failure to track the number of cases handled by each court-appointed defender deprives judges and policy makers of an important measure of indigent defense systems — because court-appointed defenders with limitless caseloads cannot provide adequate representation.

C. LACK OF JUVENILE TRAINING AND STANDARDS

Even though national standards recognize that juvenile defense is a specialty that requires ongoing training and support,[206] until the passage of the Mississippi Delinquency Prevention Act of 2006, Mississippi youth court law required training for youth court judges, prosecutors, and guardians *ad litem*, but not for court-appointed defenders.

Lawyers interviewed for the assessment agreed that they need training specific to juvenile defense. They reported that there is no annual juvenile court training available in the state except the guardian *ad litem* training and the Juvenile Justice Symposium. Neither of these seminars provides training on delinquency matters. Court-appointed defenders throughout the state suggested replicating the guardian *ad litem* training model for court-appointed defenders. As one attorney said, "It would be helpful to have a statewide conference for defense counsel to meet and exchange ideas." Fifty-seven percent of youth court personnel — including defenders — strongly support legislation that would require public defenders to receive the equivalent training and continuing legal education that youth court prosecutors must receive.[207]

D. DEFICIENT RESOURCES

General

The problem of poverty is intrinsically woven into all aspects of Mississippi's juvenile justice system: Mississippi is a resource-starved state struggling for funds to protect the rights of poor children. Assessment contributors offered the reality of scarce resources as an explanation for the state of Mississippi's juvenile indigent defense services. A judge in one county explained that "Healthy counties have money to support the court system; poor counties don't." A former juvenile defender in another county put it succinctly, "The biggest problem is we have nothing and nobody to put up money to help kids." A judge in another county described the poverty of the children who come before him by telling a story of taking a group of children from the local school to a pizza restaurant

to teach them how to order from a menu. He related another incident in which he brought popsicles to a class, and some of the students, so impacted by that small act, were still thanking him a year later. Hurricane Katrina exacerbated an already dire situation: The Center for Budget and Policy Priorities points out that, before the hurricane, Mississippi was the poorest state in the nation, and "of the 5.8 million individuals in these states who lived in the areas struck hardest by the hurricane, more than one million lived in poverty prior to the hurricane's onset."[208]

Despite the importance of a strong juvenile indigent defense delivery system, juveniles often get short shrift in the division of resources between the defense of adults and the defense of juveniles. One judge summed it up: "Legislators think that youth court is the foster child of the system." Indeed, the legislature did amend the public defender system to resemble the district attorney system, but never funded it. The only state-funded defender offices handle capital trial and post-conviction proceedings, and felony appeals for the indigent. The adult system gets the lion's share of resources, from salaries to training. Attorneys who represent criminal defendants are better-compensated. One defender who represents both juveniles and adults related that the pay for representing adult criminal defenders is so much better that she would take more adult criminal cases if the criminal preliminary hearing days did not conflict with the days she has to be present in youth court. Attorneys in the criminal system are also better-trained. Another defender went so far as to state that she is often happy when cases are transferred to adult court because the cases have a better chance of getting thrown out because the adult court prosecutors know the law better. As one prosecutor stated, "Juvenile justice in this state is the red-headed stepchild of the system."

Inadequate Facilities and Meeting Space

Representation by juvenile defenders across the state is hampered by a serious lack of facilities, both in personal offices, and at court. Though one defender reported that the youth court in her county provides the public defender with an amply-furnished office, most defenders had to obtain their own office space and supplies. In one county, the defender stated that he and the prosecutor share the same telephone line and voicemail. The defender claimed that this is not a problem because the prosecutor doesn't know how to use the voicemail, but it is not difficult to imagine problematic instances in which, for example, a defense witness calls to speak with the defender, the prosecutor answers the call, and so the witness has revealed his or her existence to the prosecutor.

Though one county's courthouse had several locations where the public defender could meet privately with clients, in most youth courts, defenders have no designated office or private space to confer with their young clients. In these counties, the juvenile defender meets with clients in the hallway or in the courtroom for a few minutes prior to a hearing, often while the prosecutor and youth court counselor are in the courtroom and in earshot. The lack of facilities designated for use by the defender severely limits the youth's contact with defense counsel. In contrast, youth court prosecutors almost always have an office in the court building where they can prepare witnesses in private.

Non-legal Support Staff

Mississippi juvenile defenders are especially under-resourced in an indigent defense delivery system that is already under-funded and overburdened. Almost uniformly, youth court defenders lack the tools needed to adequately represent young clients — including access to support staff, investigators, experts, and training. Many defenders do not have administrative assistants or other support staff to assist with appointments, phone calls, and research. Not one juvenile defender interviewed for the assessment reported hiring independent social workers, investigators, experts or law clerks to assist them in preparing for juvenile cases. In addition, most youth courts lack the resources to pay for defense experts. One youth court referee related that in theory, a defense attorney could apply to the chancery court judge to obtain money for investigators or expert witnesses, but no defense attorney has ever actually applied. He noted that the chancery court could order the county to pay, but doubted that the chancery court judge would issue such

an order because she is an elected official. In another county, the judge indicated that she would be willing to pay for experts and investigators if lawyers would be more assertive and file motions requesting access to these resources.

IV. SYSTEMIC BARRIERS TO JUST AND BALANCED OUTCOMES

A. YOUTH COURT CULTURE

Many counties used informal facilities as their actual courtrooms. For example, in one county, where the youth court referee admits that a "more formal setting might work better," the courtroom is used as a waiting area on youth court days, while the actual hearings are held in a back conference room off to the right of the judge's bench. Unlike the actual courtroom, which contains a traditional configuration of furniture for the judge's bench and tables for defense counsel and the government, that room contains only a long conference table and multiple chairs. In another county, some juvenile proceedings are held in the courtroom, which is a room with an elevated platform where the judge sits, and some proceedings are held in the referee's chambers, an office next door to the courtroom. An assessment team investigator described the referee's chambers as an "airless vault" about 16 x 18 feet in size and "cramped." There are filing cabinets around the room and one desk behind which the referee sits with someone else's name plate displayed. The defender, sheriff's deputy, and youth court counselor stand; the stenographer, parents, and youth can sit. The informality of these settings is problematic because the physical appearance of a delinquency court makes a statement to youth, families, and participants about the significance of the proceedings. Even if the respondents are children, juvenile court must still be court — especially since the dangers of juvenile detention are so real and so far-ranging. As the National Council of Juvenile and Family Court Judges has advised, delinquency judges should "explain and maintain strict courtroom decorum and behavioral expectations for all participants ... [and] ensure that the juvenile delinquency court is a place where all ... participants are treated with respect, dignity, and courtesy."[209]

Delinquency judges should "explain and maintain strict courtroom decorum and behavioral expectations for all participants ... [and] ensure that the juvenile delinquency court is a place where all ... participants are treated with respect, dignity, and courtesy."

The pall of informality also creeps into the tone of youth court proceedings. In county after county, defenders and prosecutors talked favorably about how juvenile court is not adversarial. In one county, the prosecutor was of the belief that "[youth court] should not be adversarial," since "we're all here for the youth." In another county, the juvenile defender told assessment team investigators that he and the prosecutor "try not to make it adversarial." A prosecutor in another county compared the pace of youth court and adult criminal adjudications, stating, "Youth court is not as adversarial as Circuit Court." A youth court counselor remarked that "youth court is a real informal kind of thing." However, the addition of juvenile defense attorneys to the youth court process was meant to infuse youth court with more of the adversarial nature that attends criminal proceedings.

The most dangerous symptom of youth court's laxity is frequent violations of respondents' due process rights. For example, in one county, the public defender asked for drug screens for a young man whose case was done for the day after a subsequent youth stated on the record that the first young man had given the second young man marijuana that the two young men smoked together. The earlier young man had long since left the courtroom, and was there-

fore unable to mount a defense against these new, unforeseen allegations, when the defender requested this increase in his release conditions. In another county, a youth court public defender went on to explain that "there are no strict evidentiary rules in youth court," and "the judge allows everything in," so "it would be a waste of time to make objections or argue motions."

B. OVERDEPENDENCE ON YOUTH COURT COUNSELORS

In many counties, youth court counselors dominated the proceedings. As one representative youth court judge described, "The youth court counselors are the most reliable source of information about the child and the child's family." In another county, the youth court counselor told team investigators that she insists on a policy of sending a child to detention if the child is alleged to have violated his probation with a new arrest or with a suspension from school, and the referee goes along, even though the referee's inclination is to adjudicate the new allegations before sending the child to detention. The youth court counselor in another county literally runs the courtroom, scheduling matters, ensuring parties are present, making detention recommendations, and preparing and presenting disposition recommendations. The pay scale in another county offers the most conclusive proof of who has the most sway in the courtroom: the defender is paid a flat fee of $500 per month, the prosecutor is paid a flat fee of $750 per month, and the youth court counselor receives $25,000 — over $2,000 per month — for starting pay and mileage. Arguably, more than anything else, this overdependence on youth court counselors rigs the system in favor of a "best interest" system, instead of a system in which the due process rights of children who face the "awesome prospect of incarceration" are zealously protected.

C. SCHOOL DISCIPLINE

Professionals across the state complained that the juvenile justice system is being overrun with school referrals to youth court. These school referrals clog the courts, and position the juvenile justice system as the schools' disciplinarian. As one juvenile court administrator stated, "We get too many referrals from the school system." One intake officer said, "Schools are killing us with their referrals." The problem is so severe that in some counties, if a child is suspended from school while they are under the youth court's jurisdiction, they serve their suspension in the county's detention center. School police bring the child directly to detention as a result of the violation.

Based on assessment team observations, the number of school referrals comprises a significant percentage of the juvenile justice docket. In one county, assessment team investigators observed 25 cases on the delinquency docket in a single day. Of those 25 cases, at least half stemmed, in some part, from the school system: one case involved a girl who was expelled from school for an incident involving a box cutter; another case involved nine respondents alleged to have assaulted a young man during some type of field day at a local high school; another case involved a boy who was already on probation for a previous assault at school who was accused of causing a disturbance in the public library. In another county, two of the five cases heard on a single day involved school-related incidents. In the first, an eighth grader with no prior record was charged with fighting in school. In the second, two 14-year-olds were alleged to have been involved in a school fight.

The school incidents that become juvenile court cases range in seriousness, but can be described as mostly minor offenses. One school referred a student for not wearing her school uniform properly. One defender in another county stated that the most common type of case she has is children accused of fighting at school. The admissions sheet at one county's detention center showed that the majority of admissions were for school-based thefts and simple assaults. One youth court referee in a different county also remarked on the number of school fights he sees in his courtroom, as well as "a large number of kids charged with disobeying their teachers." Another defender stated that the most common charges he encounters involve children alleged to have weapons at school; the catch, though, is that "the judge [in that county] thinks everything is a weapon." A former juvenile defender commented on the weapons charges as well, stating, "There is a lot of hysteria in the schools about violence, [but] the schools don't see a lot of weapons — mostly nail files."

"Schools are using fist fights to get rid of 'bad egg' kids. The goal of the schools is to get rid of the kids before the testing and they send them to an alternative school which is basically a detention center. [The schools] do no discipline, just send the police to arrest the kids. The whole thing is a joke." Once children who are struggling in class are removed, they can no longer drag down the school's standardized test scores.

Since these cases are a measurable percentage of the juvenile justice docket, they place a noticeable strain on system resources. One youth court referee stated that youth court days during the school year can be quite heavy, and sometimes do not end until 9:00 at night. He said, in contrast, the summer docket is much easier to manage because school is out. A judge in another county stated that there is an influx of school matters at the beginning of the year, but the referrals stabilize by second semester. The judge added that "every principal wants the child locked up," but "we are not intended to take up [the schools'] role." Similarly, a juvenile detention center administrator reported that detention center admissions decrease dramatically when school is not in session.

This increased reliance by schools on the court system was attributed to several factors. One defender believed that a state law that requires the school to report all fights to the police was causing the increased number of referrals. A juvenile court administrator in another county opined that the schools are afraid of litigation. A former juvenile defender offered the more insidious reason that "Schools are using fist fights to get rid of 'bad egg' kids. The goal of the schools is to get rid of the kids before the testing and they send them to an alternative school which is basically a detention center." Once children who are struggling in class are removed, they can no longer drag down the school's standardized test scores. The defender added with disgust, "[The schools] do no discipline, just send the police to arrest the kids. The whole thing is a joke."

D. CRIMINALIZATION OF MENTALLY ILL YOUTH AS DELINQUENTS

A study commissioned by the Mississippi Department of Public Safety and the Mississippi Department of Mental Health found that 66% to 85% of incarcerated juveniles in Mississippi suffer from at least one diagnosable mental disorder, compared to only 14% to 20% of youth in the general population.[210] One intake coordinator reported that she often sees youth with significant mental health issues in the juvenile system. One defender estimated that 30% of her clients have mental health issues. One detention center administrator put the number of children in his facility with mental health issues as high as 50%. These numbers are consistent with national research estimating that a majority of children in detention have mental health issues.[211]

There is a dire need for more emergency placements and treatment programs to address the needs of children with mental health diagnoses. Unfortunately, the way the system is presently structured, a child almost must be involved in the juvenile justice system to receive mental health treatment. For example, a prosecutor reported that, in the entire state, there are only two facilities that take youth who are both delinquent and are mentally ill or mentally retarded, and both facilities have a significant waiting list. He also indicated that he has often dismissed cases regarding youth with these

issues, because there is a civil commitment process that can be initiated. A defender in another county complained that, even though there is a paucity of mental health facilities and programs in the state, the court will generally not send a youth out of state for mental health treatment because of the costs. It is also noted that there is a severe lack of treatment programs for girls.

E. CONFLICTS OF INTEREST

Many counties reported a potential conflict of interest in the local court's hiring and firing policies. In one county, the judge technically hires and fires the public defenders: the judge delegates the hiring and firing to the court administrator, but the judge is also the court administrator's supervisor. Similarly, in another county, the public defenders are hired and fired directly by the youth court judge, because the youth court judge is also the administrative judge and thus oversees the management of service contracts between the youth court and public defenders. Of course, lawyers may be hesitant to challenge these judges for fear of losing their contracts. This contractual relationship has the potential of compromising the legal representation provided to youth by their attorneys.

Several counties also place juvenile defenders in roles where various potential conflicts of interest can arise. For example, in one county, defense counsel is also the guardian *ad litem*. This dual role creates the possibility that defense counsel might represent a single child in two completely different kinds of hearings — delinquency and dependency — that demand different ethical obligations — advocating for the child's expressed interests, versus advocating for the child's best interests. During the 2007 Legislative session, the Mississippi Legislature amended the law to ensure that no one attorney will perform the role of both guardian *ad litem* and defender. Even if defense counsel does not represent a single child in both a dependency and a delinquency case, she might represent the child's sibling, and in that way be bound to act in a way that is contrary to her delinquency client's interests. In another county, the defender serves as a judge in a different county, and as a prosecutor in an adjacent county. All these positions at some point will probably conflict with his role as the youth court public defender. In fact, this attorney described a case on the youth court docket that day, and explained that he sat as judge in a related matter the day before.

F. RACE AND CLASS

Assessment team investigators noted that that the overwhelming majority of children in the delinquency system are African American and poor. In one county, of the 11 children presented in court, ten were African American, and one was Caucasian. Nine were male and two were female. Another defender described the situation in his county with "the racism is pronounced." The assessment team investigators saw no evidence suggesting that any incarcerated children in the county come from middle income or wealthy families.

Juvenile justice professionals offered several reasons for the disproportionate minority contact in the state. The prosecutor in one county explained that, although the youth court also has jurisdiction of cases from surrounding cities which have predominantly white populations, he very rarely prosecutes white youth. That prosecutor blamed law enforcement, stating that the low number of prosecutions of white youth exists because sheriff's deputies are sending white youthful offenders home, but arresting African American youth. One youth court counselor blamed the school system: "We have one of the worst school systems in the state. It is the poorest run school system I have ever seen." Defense counsel in another county attributed the disproportionality to over-patrolling of the black neighborhoods, which are very clearly defined, on the part of law enforcement.

Youth court professionals discerned a difference between the way private defense counsel and public defense counsel were treated. In one county, the judge often discusses cases in an informal meeting in chambers. The private defense and prosecution attorney attend the private meetings, but the public defense attorney never gets these types of hearing. The youth court counselor reported that she has a problem with this practice, and that "all of us recognize the noticeable difference." However, no one has made their feelings known to the judge. When asked why, the counselor gave a knowing look, which seemed to signal fear of retaliation.

THE IMPACT OF HURRICANE KATRINA ON YOUTH JUSTICE IN MISSISSIPPI

A. THE FUNCTIONING OF YOUTH COURT

Hurricane Katrina generated a profound loss and instability on the Mississippi Gulf Coast. Conversations with youth court stakeholders, including judges, prosecutors, public defenders, detention center administrators, and youth court support staff from Mississippi's coastal counties revealed a tremendous amount of concern about the storm's affect on already vulnerable children and families. Youth court workers collectively described an extremely fragile youth court system that is severely under-resourced. Youth courts in the affected counties have barely enough staff to keep the courts functioning. Important positions, such as youth court judge, prosecutor, and public defender are maintained as part-time, while they often demand a full-time commitment. An absence of basic clerical staff requires youth court workers to double up on responsibilities. And two counties do not even have a public defender — they must scramble to find one for every child that is brought into court.

B. SCARCITY OF COMMUNITY-BASED SERVICES

Youth court workers spoke about the profound need for community-based options for adjudicated children. A paucity of resources has made already spare options for community-based and other rehabilitative services extremely scarce. When deciding upon a disposition for a child, judges usually have only three unpromising choices: detention, probation, or one of the state's training schools. One county used to have access to ankle bracelet monitoring, a program that allowed more children to stay at home rather than in detention. However, after the hurricane, that county could no longer afford to pay for the service. Consequently, children whose parents cannot afford to pay for the monitoring service are forced to stay in detention, while wealthier children have the privilege of returning home.

In particular, substance abuse treatment and mental health services, two things that everyone agrees the youth of Mississippi desperately need, are scarcely available to the children affected by Katrina. It is nearly impossible to obtain in-patient mental health care for adolescents. One county's mental health clinic does not have a single licensed worker, and it usually takes three months to get an appointment. Parents are often forced to pay for mental health evaluations and counseling on their own in private clinics because there are no public resources.

Unfortunately, the need for support services became dire exactly when funding for support services was most unavailable. As the trauma of the hurricane began to set in on children and families, the need for support services rose dramatically. But the destruction caused by the hurricane caused youth court support services to be reshuffled to the bottom of community funding priorities. Augmenting funding woes, the hurricane destroyed much of the tourism tax base for the coastal counties. The lack of


STOP

tourism dollars presents a major obstacle to the rebuilding phase for these counties.

C. DISPLACEMENT OF DETAINED CHILDREN

The storm had a uniquely wrenching effect on detained children and their families. Many detention centers had to evacuate as the hurricane was approaching. Though detention center staff tried to locate parents to come and get their children, they were unsuccessful in their efforts for many of them. The massive displacement that followed the hurricane traumatized children held in these detention centers.

D. FEMA COMMUNITIES

Youth court workers also expressed concern about the profound sense of loss experienced by children and families along the coast. Those who lost their homes to the hurricane have been cramped into FEMA trailers, where they must bear tense, over-crowded conditions that inevitably place a great strain on entire communities. The FEMA trailer parks are also known for attracting high levels of crime, drug use and violence.

The youth court system along the coast is beginning to see the consequences of these living arrangements. One coastal county has noticed a 50% increase in the number of children brought into youth court; and every public defender who was interviewed commented on an expansion of their already excessive case loads. Heightened stress levels in that county have led to an increase in domestic abuse cases and reports of child abuse and neglect. Another county noticed a 50% increase in domestic violence cases, along with an increase in property crimes. Truancy has also risen dramatically, and one public defender attributed this change to children's feeling pressure to find work to support their families during such a difficult time. There has been such an increase in truancy that some counties have instituted informal procedures to deal with these cases. There has also been a noticeable increase in drug offenses, as people turn to drugs and alcohol to cope with the stress of the hurricane.

Studies conducted by the National Child Traumatic Stress Network suggest that an alarming number of children are likely to suffer post-traumatic stress disorder as a result of Katrina; and a report from the Children's Health Fund noted a significant increase in anxiety and behavior problems among children.[212] Youth court workers from the coast have noticed a definite increase in mental health symptoms and behavioral problems with youth involved in the system. A youth court worker in one county noted that judges have been ordering more psychological evaluations than before; and the youth court counselors have observed increased behavioral problems with children housed at the detention center. Schools are also reporting more fights. Children need mental health services to deal with the stress and loss caused by Katrina.[213] Unfortunately, since the hurricane, the mental health providers along the coast have fewer staff, and fewer services to offer.

E. NEED FOR PREVENTIVE SERVICES

Nearly everyone interviewed agreed that their county needs more community-based preventive and rehabilitative services. They need options that would hold children accountable — something between probation and the training schools — in order to divert at-risk youth from further involvement with the youth court, and future involvement with the criminal justice system. All of the coastal counties desperately need mentoring programs, recreation centers, and after-school programs — just something to keep kids safe and occupied. Schools also need more resources in order to address disruptive behavior problems without contacting law enforcement for relatively minor incidents. Many youth court workers agreed that this practice unnecessarily drags children into the youth court system.

The counties along the coast also need basic preventive mental health services, especially now that so many children need help working through the stress and trauma of the hurricane. One youth court worker recommended funding for mental health outreach programs for children and families, and making mental health services available through the schools. One individual commented that most simple assaults are against parents and teachers, demonstrating an important need for prevention and treatment services.

CONCLUSION & RECOMMENDATIONS

In county after county, assessment team investigators encountered juvenile justice professionals who share the goal of improving the juvenile indigent defense system, so that Mississippi's system-involved youth have a chance to lead law-abiding, fulfilling, successful lives without regard to race or class. The youth court system is made better each day by the efforts of these dedicated and caring professionals.

Among these professionals, ensuring effective assistance of juvenile defense counsel is critically important. Mississippi is constitutionally and statutorily obligated to ensure that every child who sets foot in a courtroom has meaningful access to effective assistance of counsel at all stages of the juvenile justice process. Without well-trained, well-resourced defenders, due process remains out of these children's reach, and youths in the juvenile justice system are bystanders instead of participants. However, youths are not the only ones who benefit from a strong juvenile defense bar; all of Mississippi's citizens have an interest in ensuring just and balanced outcomes for its children. Not only must public defense-oriented organizations rededicate themselves to the fair administration of justice for Mississippi's youth, but all branches of government, at the state and local level, should take up this cause.

I. CORE RECOMMENDATIONS

1. Access to counsel: Although most Mississippi youth courts prohibit waiver of counsel, many courts do not appoint counsel early enough in the youth court process. Some children go unrepresented at important stages of the proceedings, including interrogation, intake, and detention hearings. A defender should be appointed as soon as a child is found indigent — ideally before interrogation, and always before any procedural determinations are reached.

2. Attorney compensation and caseloads: The quality of youth court representation should be improved through reduced defender caseloads, additional attorney training, and adequate supervision and monitoring of cases in youth court. Court-appointed defenders struggle with high caseloads and do not receive adequate compensation for their critically important work. Judges, attorneys, and youth court personnel all agree that low fees prevent court-appointed defenders from investing the necessary time on youth court cases. The failure to track the number of cases handled by each court-appointed defender deprives judges and policy makers of an important measure of indigent defense systems — because court-appointed defenders with limitless caseloads cannot provide adequate representation.

3. Lack of juvenile defender training: Juvenile defenders should have regular access to comprehensive, on-going trainings on juvenile-specific issues, including special education, competency, and adolescent development.

4. Deficient youth court resources: State legislators and local policymakers should increase the resources that are available to improve delin-

quency representation in juvenile court. Even when compared to the uniformly underfunded and overburdened adult indigent defense system, the juvenile indigent defense system stands out as particularly starved for resources. These resources should provide for legal and non-legal support, including investigators, experts, and social workers.

5. Lack of youth court uniformity: State and local policymakers should reconsider establishment of a state-funded indigent defense system that can ensure caseloads within national and state standards, adequate support and technology systems, and ongoing support and training for juvenile defenders. The lack of uniformity in Mississippi's youth court system erects an additional barrier to effective representation by court-appointed defenders for youth.

6. Informed admissions: Judges should ensure that colloquies with youth who admit are thorough, comprehensive, and administered in age-appropriate language. Judges should take special care to ascertain a youth's understanding of the immediate and long-term consequences of an admission.

7. Overflow of school referrals: State and local policymakers should work with local school districts to refine school policies concerning referrals of children with discipline issues to the youth court system so that only the most serious cases reach the courthouse, while the rest of the cases remain in the schoolhouse.

II. IMPLEMENTATION STRATEGIES

The State Legislature should:

• Establish and fund an indigent defense system that can ensure caseloads within national standards, adequate support systems, and ongoing training for juvenile defenders.
• Increase the resources available to the youth court defenders — including access to independent experts, social workers, and investigators.
• Fund a continuum of community-based dispositions, so judges have meaningful alternatives to secure care.
• Prohibit secure detention for children who are detained only because their parents/guardians are unable or unwilling to care for them.

Bar associations should:

• Create standards for juvenile defenders who represent children in youth court proceedings.

Mississippi Youth Court Judges should:

• Appoint attorneys at the earliest possible stage in all juvenile cases — ideally as soon as a child is determined indigent, but always prior to initial hearings.
• Ensure that counsel has a meaningful opportunity to meet with the client and prepare for the hearings.
• Ensure all youth fully understand their rights, including their right to appeal, before all proceedings.
• Provide private facilities at the courthouse to defense counsel for client consultation, and ensure that the physical arrangement of the courtroom reinforces the roles and relationships of the parties, so that children are seated next to and can consult freely with their attorneys.
• Ensure attorneys are compensated for all reasonable work including client meetings, investigations, legal research, motions practice, dispositional planning, and appeals.
• Provide attorneys with meaningful access to independent investigators, experts, and other support when necessary.
• Provide leadership in working with school officials and mental health providers to ensure that youth court is not the dumping ground for those systems.

Juvenile defenders should:

• Always represent the expressed legitimate interests of their clients.
• Regularly meet with clients before the day of court, investigate cases, actively represent youth at initial and detention hearings, and have regular post-hearing debriefings to ensure that clients understand the proceedings and their right to appeal.
• Ensure that effective representation happens at the earliest possible stage in juvenile court proceedings and remains zealous throughout the process.
• Develop expertise through ongoing training on juvenile justice related issues.

Mississippi law schools should:

• Provide increased opportunities for law stu-

dents' involvement in youth court through internships, clinics, and fellowships.
• Offer continuing legal education courses to improve the quality of representation in youth court.

Law enforcement should:
• Mandate training on developmental differences between youth and adults to help officers understand adolescents' decision-making abilities.
• Track juvenile arrest data according to race to develop a baseline concerning the overrepresentation of African Americans in the juvenile justice system.

Public schools should:
• Reduce the number of school-based referrals to the juvenile justice system by entering into agreements with law enforcement, youth courts, and mental health providers to specify objective criteria for school-based youth court referrals and ensuring that school discipline policies are evidenced-based best practices.

ENDNOTES

1 Miss. Code Ann. § 43-21-201(1).

2 National Juvenile Defender Center, *Legal Strategies to Reduce the Unnecessary Detention of Children* (2004), 3.

3 Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, 4 (November 2006); *see also* Coalition for Juvenile Justice, *Unlocking the Future: Detention Reform in the Juvenile Justice System*, Annual Report, 25 (2003).

4 Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, 5 (November 2006).

5 U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention, *Juvenile Offenders and Victims: 2006 National Report*, 94, 95 (2006).

6 *Id.*; *see also In re Gault*, 387 U.S. 1, 15 (1967).

7 U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention, *Juvenile Offenders and Victims: 2006 National Report*, 95 (2006).

8 *Id.* at 95-96.

9 *Id.* at 94.

10 *Note, Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 Harv. L.Rev. 775, 794-95 (1966), cited in *In re Gault*, 387 U.S. 1, 11 (1967).

11 *In re Gault*, 387 U.S. 1, 17 (1967).

12 *Id.* at 15 fn. 14.

13 372 U.S. 335 (1963).

14 *Gideon*, 372 U.S. at 344.

15 387 U.S. 1 (1967).

16 Gault, 387 U.S. at 19 n.23 (internal quotations and citation omitted).

17 *Gault*, 387 U.S. at 36.

18 *In re* Gault, 387 U.S. 1, 36 (1967).

19 *Gault*, 387 U.S. at 18.

20 *Gault*, 387 U.S. at 55.

21 *Gault*, 387 U.S. at 56-7.

22 *In re Winship*, 397 U.S. 358 (1970).

23 *Breed v. Jones*, 421 U.S. 519 (1975).

24 *Kent v. United States*, 383 U.S. 541 (1966).

25 *In re Winship*, 397 U.S. 358, 365-66 (1970)

26 The President's Commission of Law Enforcement and the Administration of Justice: "The Challenge of Crime on a Free Society," p. 87 (1967), cited in *Gault* at footnote 6.

27 *In re* Gault, 387 U.S. 1, 36 (1967).

28 Kristin Henning, *Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of Child's Counsel in Delinquency Cases*, 81 Notre Dame L. Rev. 245, 255-56 (2005).

29 *Id.*

30 Pub. L. 93-415 (1974).

31 National Advisory Committee for Juvenile Justice and Delinquency Prevention, *Standards for the Administration of Juvenile Justice* §3.132 Representation by Counsel — For the Juvenile (1980).

32 For a description of the project, *see IJA/ABA Juvenile Justice Standards Annotated: A Balanced Approach* xvi-xviii (Robert E. Shepherd, ed., 1996).

33 ABA Juvenile Justice Center, Juvenile Law Center & Youth Law Center, *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (1995), available at www.njdc.info/pdf/cfjfull.pdf.

34 NAACP Legal and Educational Defense Fund, *Assembly Line Justice: Mississippi's Indigent Defense Crisis* at 6 (February 2003); *see also* The Spangenberg Group, *Indigent Defense in Mississippi*, prepared for the Mississippi Bar Association, Subcommittee on Indigent Defense (January 1995). This publication has been updated twice. *Update: The State of Indigent Defense Services in*

Mississippi in Fiscal Year 1998, prepared for the Mississippi State Public Defender Commission on behalf of the American Bar Association Bar information Program (December 1998) and *Update: The State of Indigent Defense Services in Mississippi*, prepared for the Mississippi Indigent Defense Committee on behalf of the American Bar Association, Bar Information Program (January 1997).

35 Mississippi Administrative Office of the Courts Survey, August 2000, on file with the authors, and available upon request from the Supreme Court of Mississippi's Administrative Office of Courts.

36 NAACP LDF Press Release, "Indigent Defense Crisis in Mississippi," March 11, 2003.

37 *Id*.

38 Annie E. Casey Foundation, *KIDS COUNT Data Book*, 105 (2006), available at www.aecf.org/kidscount/sld/databook.jsp.

39 *Id*.

40 According to the 2000 census, 55% of Mississippi's total youth population is white, while 45% is African American. However, of 11, 916 total juvenile delinquency arrests in that same year, 4,445, or 37%, or youth arrested were white, while 7,471, or 63%, were African American. *See* W. Haywood Burns Institute, Mississippi State Disproportionate Minority Confinement Data, available at www.burnsinstitute.org/dmc/ms/MS_Stats_Graphs.pdf.

41 *Mississippi Juvenile Justice: Hearing before the House Juvenile Justice Committee* 175th Legis. Reg. Sess. (March 2004)(Statement of Jane Boykin and Kate McMillan, from the Mississippi Forum on Children and Families)(stating that abused and neglected children are disproportionately represented in the juvenile justice system); Angela Robertson & Jonelle Husain, Miss. State Univ., *Prevalence of Mental Illness & Substance Abuse Disorders Among Incarcerated Juveniles* at 2 & 27 (July 2001) (stating that 66% to 85% of incarcerated juveniles in Mississippi suffer from at least one diagnosable mental disorder, compared to only 14% to 20% of youth in the general population).

42 2005 Annual Report, Mississippi Department of Human Services, Division of Youth Services. P. 6-7. Joint Committee on Performance, Evaluation and Expenditure Review ("PEER Committee"), Memorandum to Representative George Flaggs, Jr. (Oct. 25, 2005). David M. Osher; Mary Magee Quinn, Jeffery M. Poirier, Robert B. Rutherford. *Deconstructing the pipeline: using efficacy, effectiveness and cost-benefit data to reduce minority youth incarceration.*, New Directions for Youth Development, No. 99. Fall 2003. (["Youth of color] are disproportionately removed from family, school and community through a variety of unproven, ineffective or harmful interventions.")

43 U. S. Census Bureau, 2000 Census of Population and Housing.

44 Miss Code Ann § 43-21-151.

45 Miss. Code Ann. § 43-21-159 (4).

46 2005 Annual Report, Mississippi Department of Human Services, Division of Youth Services, p. 10 (stating that 3,798 children were referred to youth court for disorderly conduct; 2,113 for malicious mischief).

47 Richard A. Mendel, *Less Cost, More Safety: Guiding Lights for Reform in Juvenile Justice*. American Youth Policy Forum, p. 15-20. (Non-residential treatment and/or youth development services — aggressive intervention programs to resolve behavior problem in young peoples natural environment . . .cost far less than training schools with better results").

48 Richard A. Mendel, *Small is Beautiful: The Missouri Division of Youth Services,* 5 Advocacy 1, 29-38 (Spring 2003) ("Training school confinement is often justified as a necessary step to protect the public. Yet only 27% of incarcerated youth nationwide have been found guilty of a violent felony. Most have committed only property or drug crimes or disorderly conduct, sometimes only misdemeanors. . . ")

49 In December 2003, the U.S. Department of Justice (DOJ) filed a lawsuit against the state of Mississippi on the grounds that the conditions in its two juvenile training schools, Oakley Training School in Raymond and Columbia Training School in Columbia, violated the civil rights of the children housed there. According to a DOJ report, youths at state training schools were chained to poles, hogtied, and forced to eat their vomit. The findings were based on interviews of students and employees in 2002. Mississippi has also defended several lawsuits filed by children committed to the training schools: Morgan v. Sproat, 432 F. Supp 1130 (S.D. Miss. 1977); K.L.W. v. James, No. 2:04-CV-149 (S.D. Miss. April 13, 2004); J.A. v. Barbour, No: 3:07-CV-394 (S.D. Miss. July 11, 20070. In 2005, 2006 and 2007, Juvenile Justice and Appropriations Committees in both chambers of the state legislature undertook significant system improvement: The Mississippi Juvenile Justice Reform Act of 2005 (Senate Bill 2894); The Mississippi Juvenile Delinquency Prevention Act of 2006 (House Bill 199); A Bill to Fund Youth Court Support Services; (Senate Bill 2477—2007 session) .

50 Gary Tuchman, Transcript of "Anderson Cooper 360 Degrees" (August 29, 2006) 19:00 ET, *CNN*, CNN.com, available on the web at CNN-ACooper082906.

51 Anne Rochell Konigsmark, "New Orleans ' Recovery Slow and Slippery Process; Rebuild-

ing underway but in the same flood-prone places," *USA Today*, August 23, 2006.

52 Associated Press, "Around the State," *Memphis Commercial Appeal*, December 13, 2005.

53 Editorial, "Ya gotta have a plan to get from here to there," *Sun Herald*, September 24, 2006.

54 Amy Liu, *A Review of the Federal Response to Rebuilding Mississippi: One Year After Hurricane Katrina*, part of The Initiative for Regional and Community Transformation, *A Report of the Mississippi State Conference of the National Association for the Advancement of Colored People, Envisioning a Better Mississippi: Hurricane Katrina and Mississippi — One Year Later* (2006), available at www.naacp.org/news/press/Mississippi.pdf.

55 *Id.*

56 Website of Speaker of the House Nancy Pelosi, *Six Months After Katrina: An Overview, Tens of Thousands of Katrina Survivors Are Still Suffering And the Future of the Gulf Coast Remains Unclear*, available at www.speaker.gov/30something/docs/katrinasix.doc.

57 *Id.*

58 Emily Wagster Pettus, "NAACP: Low-Income People Disproportionately Hurt in Katrina Aftermath," *Sun Herald*, Aug 23, 2006.

59 Mississippi has a various levels of courts exercising jurisdiction over delinquency proceedings. There are two municipal youth courts, 19 County courts, and sixty two Chancery Courts (most of which utilize referees as judges) exercising jurisdiction over delinquency proceedings.

60 Miss. Code Ann. § 99-18-3 (2000) (creating the Office of Capital Defense Counsel).

61 Miss. Code Ann. § 99-39-103 (2000) (creating the Office of Capital Post Conviction Counsel).

62 Miss. Code Ann. § 99-40-1 (2000) (creating the Office of Indigent Appeals).

63 During the 2007 Legislative Session, the legislature created and funded a training division in the Office of Indigent Appeals that will provide training to all indigent defenders—including youth court defenders. (House Bill 1498).

64 NAACP Legal and Educational Defense Fund, *Assembly Line Justice: Mississippi's Indigent Defense Crisis*, 6 (February 2003).

65 *Id.*

66 *Id.*

67 *Id.* at 14.

68 *Id.* at 6; *see also J.B. Van Slyke v. State of Mississippi*, No. 00-0013-GN-D (Chancery Court, Forrest County 1999)(voluntarily withdrawn by plaintiff when he resigned his position as public defender); *In re Jones County Public Defender*, No. 93-CA-1273 (Jones County Circuit Court 1996).

69 *Assembly Line Justice*, *supra* at n. 57 at 6; *see also* The Spangenberg Group, *Indigent Defense in Mississippi*, prepared for the Mississippi Bar Association, Subcommittee on Indigent Defense (January 1995). This publication has been updated twice. *Update: The State of Indigent Defense Services in Mississippi in Fiscal Year 1998*, prepared for the Mississippi State Public Defender Commission on behalf of the American Bar Association Bar information Program (December 1998) and *Update: The State of Indigent Defense Services in Mississippi*, prepared for the Mississippi Indigent Defense Committee on behalf of the American Bar Association, Bar Information Program (January 1997).

70 Miss. Code Ann. § 99-15-15.

71 *Quitman County v. State of Mississippi*, No. 99-0126 (Chancery Court, Quitman County 1999); *Noxubee County v. State of Mississippi*, No. 99-0136 (Circuit Court, Noxubee County 1999); *Jefferson County v. State of Mississippi*, No. 99-0169 (Circuit Court, Jefferson County 1999).

72 *Assembly Line Justice*, *supra* at 7.

73 *Id.*

74 *Id.* at n. 13-14.

75 Miss. Code Ann. § 43-21-103.

76 Miss. Code § 43-21-103.

77 A "child" is defined as a person who has not yet reached his or her eighteenth birthday, is not on active duty for the armed services, and is not married. Miss. Code Ann. § 43-21-105 (d). A "delinquent child" is defined as a child over the age of 10, who has committed a delinquent act. Miss. Code Ann. § 43-21-105(i). A "delinquent act" is any act that, if committed by an adult, would be considered a crime under local, state or federal law, except for offenses punishable by life imprisonment or death. Miss. Code Ann. § 43-21-105(j).

78 Miss. Code Ann. § 43-21-103.

79 Miss. Code Ann. § 43-21-151(1).

80 Miss. Code Ann. § 43-21-151(2).

81 *Id.*
82 Miss. Code Ann. § 43-21-151(3).
83 Miss. Code. Ann. § 43-21-105(i)
84 Miss. Code Ann. § 43-21-153(1).
85 Miss. Code Ann. § 43-21-153(2).
86 Miss. Code Ann. § 43-21-155(1).
87 Miss. Code Ann. § 43-21-111 (1).
88 Miss. Code Ann. § 43-21-111 (4).
89 Miss. Code Ann. § 43-21-157 (1).
90 Miss. Code Ann. § 43-21-157(8).
91 Miss. Code Ann. § 43-21-157(1).
92 Miss. Code Ann. § 43-21-157(4).
93 Miss. Code Ann. § 43-21-157(3).
94 Miss. Code Ann. § 43-21-157(5) states:

The factors which shall be considered by the youth court in determining the reasonable prospects of rehabilitation within the juvenile justice system are:
a) Whether or not the alleged offense constituted a substantial danger to the public;
b) The seriousness of the alleged offense;
c) Whether or not the transfer is required to protect the community;
d) Whether or not the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
e) Whether the alleged offense was against persons or against property, greater weight being given to the offense against persons, especially if personal injury resulted;
f) The sophistication, maturity and educational background of the child;
g) The child's home situation, emotional condition and life-style;
h) The history of the child, including experience with the juvenile justice system, other courts, probation, commitments to juvenile institutions or other placements;
i) Whether or not the child can be retained in the juvenile justice system long enough for effective treatment or rehabilitation;
j) The dispositional resources available to the juvenile justice system;
k) Dispositional resources available to the adult correctional system for the child if treated as an adult;
l) Whether the alleged offense was committed on school property, public or private, or at any school-sponsored event, and constituted a substantial danger to other students;
m) Any other factors deemed relevant by the youth court....
n) Nothing in this subsection shall prohibit the transfer of jurisdiction of an alleged offense and a child if that child, at the time of the transfer hearing, previously has not been placed in a juvenile institution.

95 Miss. Code Ann. § 43-21-157(1).
96 Miss. Code Ann. § 43-21-157(8).
97 *Id.*
98 *Id.*
99 Miss. Code Ann. § 43-21-159(4).
100 *Id.*
101 Miss. Code Ann.§ 43-21-157(8).
102 Miss. Code Ann. § 43-21-159(4).
103 Miss. Code Ann. § 43-21-159(4).
104 Miss. Code Ann. § 43-21-201(1) (This Mississippi Delinquency Prevention Act of 2006 inserted this language into the Mississippi code).
105 Miss. Code Ann. § 43-21-157 (1).
106 Miss. Code Ann. § 43-21-201(1)
107 Miss. Code Ann. § 43-21-201(2).
108 Miss. Code Ann. § 43-21-311(1).
109 Miss. Code Ann. § 43-21-311(2).

110 Miss. Code Ann. § 43-21-557(1), (2).
111 Miss. Code Ann. § 43-21-557(2).
112 Miss. Code Ann. § 43-21-203(5).
113 Miss. Code Ann. § 43-21-203 (6).
114 Miss. Code Ann § 43-21-255(1).
115 Miss. Code Ann § 43-21-255(5); Miss. Code Ann § 43-21-261(8); Miss. Code Ann § 43-21-261(9)
116 Miss. Code Ann. § 43-21-203(3).
117 Miss. Code Ann. § 43-21-203(7).
118 Miss. Code Ann. § 43-21-203 (7), (9).
119 Miss. Code Ann. § 43-21-559(1).
120 *Id.*
121 Miss. Code Ann. § 43-21-559(2).
122 Miss. Code Ann. § 43-21-301(1), (2), (3)(a) — (3)(c).
123 Miss. Code Ann. §§ 43-21-307; 43-21-309.
124 Miss. Code Ann §§ 43-21-309; 43-21-301(3)(b).
125 Miss. Code Ann. § 43-21-309(4)(a).
126 Miss. Code Ann. § 43-21-311(1)-(4).
127 Miss. Code Ann. § 43-21-321 (1).
128 Miss. Code Ann. § 43-21-321(2).
129 Miss. Code Ann. § 43-21-321(5).
130 Miss. Code Ann. § 43-21-451.
131 *Id.*
132 *Id.*
133 *Id.*
134 *Id.*
135 Miss. Code Ann. § 43-21-455(4).
136 Miss. Code Ann. § 43-21-455(1)(d).
137 Miss. Code Ann. § 43-21-501.
138 Miss. Code Ann. § 43-21-503.
139 Miss. Code Ann. § 43-21-505(1).
140 Miss. Code Ann. § 43-21-505(2).
141 Miss. Code Ann. § 43-21-507.
142 Miss. Code Ann. § 43-21-405(3)(c).
143 Miss. Code Ann. § 43-21-401, 405, and 407 all discuss informal adjustment.
144 Miss. Code Ann. § 43-21-401, 405 and 407.
145 Miss. Code Ann. § 43-21-551(1).
146 Miss. Code Ann. § 43-21-551(2)(a)-(c).
147 Miss. Code Ann. § 43-21-551(2)(c).
148 Miss. Code Ann. § 43-21-555.
149 Miss. Code Ann. § 43-21-553.
150 Miss. Code Ann. § 43-21-553(a)-(d).
151 Miss. Code Ann. § 43-21-557(1)(e)(i)-(v).
152 Miss. Code Ann. § 43-21-557(1), (2).
153 Miss. Code Ann. § 43-21-561(1).
154 Miss. Code Ann. § 43-21-601(1).
155 *Id.*
156 Miss. Code Ann. § 43-21-601(2).
157 Miss. Code Ann. § 43-21-603(3).
158 Miss. Code Ann. § 43-21-603 (8).
159 *Id.* at (a)-(e).

160 Miss. Code Ann. § 43-21-603(9).

161 Miss. Code Ann. § 43-21-605 contains a complete list of the court's disposition options.

162 Miss. Code Ann. § 43-21-605(g)(iii). The Oakley and Columbia Training Schools are state-supported juvenile facilities that run "paramilitary style" programs. Oakley is for boys; Columbia is for girls. Girls at Columbia are housed in "cottages." Cottages have the capacity to house 24-32 youth each in open rooms that resemble military barracks. At Oakley, youth who have been to training school 1-2 times live in "cottages." Youth who have already been to training school twice or more live in jail cells. The superintendent of a state training school may parole a child at any time he deems it in the best interest and welfare of the child.

163 Miss. Code Ann. § 43-21-605(k). Although detention is generally defined as a temporary holding facility for youth who have not yet been adjudicated, Mississippi's youth court judges can also use detention as a post-adjudication disposition for up to 90 days. Any detention exceeding 45 days must be reviewed by the court no later than 45 days after entry of the order.

164 Miss. Code Ann. § 43-21-605(1)(k) (iii)(1).

165 Miss. Code Ann. §§ 43-14-1; 43-21-605.

166 Miss. Code Ann. § 43-27-201(4). At the moment, only 37 of Mississippi's 82 counties have AOPs. By the year 2010, all 82 counties will have access to an AOP.

167 Miss. Code Ann. § 43-21-605(g)(iii).

168 Miss. Code Ann. § 43-21-605(1)(k)(iii).

169 Miss. Code Ann. § 43-21-605(1)(k).

170 Miss. Code Ann. § 43-21-605(1)0(k).

171 Miss. Code Ann. § 43-21-111(5).

172 Miss. Code Ann. § 43-21-613(2).

173 *Id.*

174 Miss. Code Ann. § 43-21-613(3)(a).

175 Miss. Code Ann. § 43-21-651(1).

176 *Id.*

177 Miss. Code Ann. § 43-21-651(3).

178 Mississippi Rules of Appellate Procedure, Rule 16(b)

179 *In re Winship*, 397 U.S. 358, 365-66 (1970)

180 Miss. Code Ann. § 43-21-201 ("the child shall be represented by counsel at *all critical stages*.") (emphasis added).

181 Mississippi Rules of Professional Conduct 1.2

182 *In re* Gault, 387 U.S. 1, 36 (1967).

183 Miss. Code Ann. § 43-21-311.

184 See fn. 185, *infra*.

185 Miss. Code Ann. 43-21-301 (3).

186 *Id.*

187 *See generally* Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, p. 4 (November 2006).

188 National Juvenile Defender Center, *Legal Strategies to Reduce the Unnecessary Detention of Children* (2004), p. 3.

189 Coalition for Juvenile Justice, *Unlocking the Future: Detention Reform in the Juvenile Justice System*, Annual Report, 25 (2003).

190 *Id.*

191 Bart Lubow, 11 Juvenile Justice Update 1, 2, *Reducing Inappropriate Detention: A Focus on the Role of Defense Attorneys* (Aug/Sep 2005).

192 *IJA/ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 4.3.

193 In that case, the parties and witnesses had participated in a previous adjudication, in a different court, concerning the same incident. The respondents, therefore, were prepared to bring those witnesses with them to the subsequent proceeding in the juvenile court.

194 *IJA/ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 4.3.

195 Miss. Code Ann. § 43-21-261(4).

196 *See generally* Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, 4 (November 2006). This is particularly true in Mississippi, where state operated training schools have continually failed to meet the needs of youth in state custody. See FN 49 supra.

197 Miss. Code Ann. § 43-21-555

198 Miss. Code Ann. § 43-21-553(a)-(d).

199 National Council of Juvenile and Family Court Judges, *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases* 135 (2005).

200 Miss Code Ann. 43-21-603.

201 American Council of Chief Defenders & National Juvenile Defender Center, *Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems* (2005), Principle 8A, *available at* www.njdc.info/pdf/10_Principles.pdf.

202 *Id*. at 10.3(b).

203 See footnote 3, *supra*.

204 Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards*, Standard 3.1 (1996).

205 ABA Standards for Criminal Justice, Providing Defense Services (3rd ed. 1993).

206 American Council of Chief Defenders & National Juvenile Defender Center, Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems (2005), Principle 7.

207 Survey of Mississippi Youth Court and Department of Youth Services Personnel conducted during the Juvenile Justice Symposium August 2005 at the Isle of Capri.

208 Center for Budget and Policy Priorities, *Essential Facts about the Victims of Hurricane Katrina*, available at www.cbpp.org/9-19-05pov.htm.

209 National Council of Juvenile and Family Court Judges, *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases* 123 (2005).

210 Angela Robertson & Jonelle Husain, Mississippi State University, *Prevalence of Mental Illness & Substance Abuse Disorders Among Incarcerated Juveniles* (July 2001).

211 Ravindra Gupta, Kelly J. Kelleher, et al., Delinquency Youth in Corrections: Medicaid and Reentry into the Community, Vol. 115 PEDIATRICS No. 4, pp. 1077-1083 (April 2005) (stating that "It is reported that as many as 60% of youth in detention meet the criteria for conduct disorder, 20% for a major depressive disorder, and 18% for attention-deficit/hyperactivity disorder. This compares with 37% of youth in the community reported to have at least 1 psychiatric disorder").

212 Press Release, The Children's Health Fund & Columbia Univ. Mailman Sch. of Pub. Health, Miss. Families Displaced by Hurricane Katrina Still Face Dire Health and Economic Woes, as Help Barely Reaches Those in Most Need (February 7, 2007), http://www.childrenshealthfund.org/media/MediaArticlesPDFs/MCAFHReleaseFinal.pdf (last visited October 16, 2007).

213 Press Release, The Nat'l Child Traumatic Stress Network, Hurricane Katrina Still Leaves a Wake in Schools: Children's Traumatic Stress Impairs Academic Performance (August 31, 2006), http://www.nctsnet.org/nctsn_assets/pdfs/press_releases/New_Orleans_Schools_8-31-06.pdf (last visited October 16, 2007).

APPENDIX ONE

LETTER OF SUPPORT FROM THE CHIEF JUSTICE

SUPREME COURT OF MISSISSIPPI
POST OFFICE BOX 117
JACKSON, MISSISSIPPI 39205
TELEPHONE (601) 359-3697
FAX (601) 359-2443

JAMES W. SMITH, JR.
CHIEF JUSTICE

WILLIAM L. WALLER, JR.
KAY B. COBB
PRESIDING JUSTICES

OLIVER E. DIAZ, JR.
CHUCK EASLEY
GEORGE C. CARLSON, JR.
JAMES E. GRAVES, JR.
JESS H. DICKINSON
MICHAEL K. RANDOLPH
JUSTICES

STEPHEN J. KIRCHMAYR
COURT ADMINISTRATOR

May 23, 2005

Patti Puritz
Executive Director
National Juvenile Defender Center
1350 Connecticut Avenue, NW Suite 304
Washington, DC 20036

Dear Ms. Puritz:

I am writing this letter in support of the Mississippi Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings. I am honored to support a nationwide effort that seeks to improve the access to counsel and quality of legal representation that children receive in the juvenile justice system.

I recently met with Jennifer Riley-Collins, Juvenile Justice Fellow at the Mississippi Center for Justice and in-state coordinator for the Assessment, and Gee Ogletree, a member of the Mississippi Bar's Delivery of Legal Services Committee and the Mississippi Volunteer Lawyers Project board of directors. They briefed me on plans for the Mississippi component of this national effort to improve access to counsel and quality of legal representation for children in the indigent defense system. I offered them my enthusiastic support for a comprehensive examination.

This Assessment is important because it is a comprehensive examination of the systemic issues and institutional barriers that may prevent lawyers from providing effective legal services to indigent children. The Assessment will gather data and information on critical qualitative and quantitative issues pertaining to our children in Mississippi. I greatly hope that your final report with recommendations will provide us with the information we need to improve our ability to ensure that children's rights are adequately protected.

I encourage all of us involved in the assessment to make the most of this opportunity to be part of a national effort to improve our juvenile defense system. I look forward to the Assessment results and please let me know if I can be of any further assistance.

Thank you,

James W. Smith, Jr
Chief Justice

APPENDIX TWO

American Council of Chief Defenders
National Juvenile Defender Center

JANUARY 2005

TEN CORE PRINCIPLES

FOR PROVIDING QUALITY DELINQUENCY REPRESENTATION
THROUGH INDIGENT DEFENSE DELIVERY SYSTEMS

The American Council of Chief Defenders (ACCD), a section of the National Legal Aid & Defender Association, is dedicated to promoting fair justice systems by advocating sound public policies and ensuring quality legal representation to people who are facing a loss of liberty or accused of a crime who cannot afford an attorney. For more information, see www.nlada.org or call (202) 452-0620.

The National Juvenile Defender Center (NJDC) is committed to ensuring excellence in juvenile defense and promoting justice for all children. For more information, see www.njdc.info or call (202) 452-0010.

PREAMBLE [1]

A. GOAL OF THESE PRINCIPLES

The Ten Core Principles for Providing Quality Delinquency Representation through Indigent Defense Delivery Systems are developed to provide criteria by which an indigent defense system may fully implement the holding of In Re: Gault.[2] Counsel's paramount responsibilities to children charged with delinquency offenses are to zealously defend them from the charges leveled against them and to protect their due process rights. The Principles also serve to offer greater guidance to the leadership of indigent defense providers as to the role of public defenders, contract attorneys or assigned counsel in delivering zealous, comprehensive and quality legal representation on behalf of children in delinquency proceedings as well as those prosecuted in adult court.[3]

While the goal of the juvenile court has shifted in the past decade toward a more punitive model of client accountability and public safety, juvenile defender organizations should reaffirm the fundamental purposes of juvenile court: (1) to provide a fair and reliable forum for adjudication; and (2) to provide appropriate support, resources, opportunities and treatment to assure the rehabilitation and development of competencies of children found delinquent. Delinquency cases are complex, and their consequences have significant implications for children and their families. Therefore, it is of paramount importance that children have ready access to highly qualified, well-resourced defense counsel.

Defender organizations should further reject attempts by courts or by state legislatures to criminalize juvenile behavior in order to obtain necessary services for children. Indigent defense counsel should play a strong role in determining this and other juvenile justice related policies.

In 1995, the American Bar Association's Juvenile Justice Center published A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings, a national study that revealed major failings in juvenile defense across the nation. The report spurred the creation of the National Juvenile Defender Center and nine regional defender centers around the country. The National Juvenile Defender Center conducts state and county assessments of juvenile indigent defense systems that focus on access to counsel and measure the quality of representation.[4]

B. THE REPRESENTATION OF CHILDREN AND ADOLESCENTS IS A SPECIALTY

The Indigent Defense Delivery System must recognize that children and adolescents are at a crucial stage of development and that skilled juvenile delinquency defense advocacy will positively impact the course of clients' lives through holistic and zealous representation.

The Indigent Defense Delivery System must provide training regarding the stages of child and adolescent development and the advances in brain research that confirm that children and young adults do not possess the same cognitive, emotional, decision-making or behavioral capacities as adults. Expectations, at any stage of the court process, of children accused of crimes must be individually defined according to scientific, evidence-based practice.

The Indigent Defense Delivery System must emphasize that it is the obligation of juvenile defense counsel to maximize each client's participation in his or her own case in order to ensure that the client understands the court process and to facilitate the most informed decision making by the client. The client's minority status does not negate counsel's obligation to appropriately litigate factual and legal issues that require judicial determination and to obtain the necessary trial skills to present these issues in the courtroom.

C. INDIGENT DEFENSE DELIVERY SYSTEMS MUST PAY PARTICULAR ATTENTION TO THE MOST VULNERABLE AND OVER-REPRESENTED GROUPS OF CHILDREN IN THE DELINQUENCY SYSTEM

Nationally, children of color are severely over-represented at every stage of the juvenile justice process. Research has demonstrated that involvement in the juvenile court system increases the likelihood that a child will subsequently be convicted and incarcerated as an adult. Defenders must work to increase awareness of issues such as disparities in race and class, and they must zealously advocate for the elimination of the disproportionate representation of minority youth in juvenile courts and detention facilities.

Children with mental health and developmental disabilities are also overrepresented in the juvenile justice system. Defenders must recognize mental illness and developmental impairments, legally address these needs and secure appropriate assistance for these clients as an essential component of quality legal representation.

Drug- and alcohol-dependent juveniles and those dually diagnosed with addiction and mental health disorders are more likely to become involved with the juvenile justice system. Defenders must recognize, understand and advocate for appropriate treatment services for these clients.

Research shows that the population of girls in the delinquency system is increasing, and juvenile justice system personnel are now beginning to acknowledge that girls' issues are distinct from boys'. Gender-based interventions and the programmatic needs of girls, who have frequently suffered from abuse and neglect, must be assessed and appropriate genderbased services developed and funded.

In addition, awareness and unique advocacy are needed for the special issues presented by lesbian, gay, bisexual and transgender youth.

1. The indigent defense delivery system upholds juveniles' right to counsel throughout the delinquency process and recognizes the need for zealous representation to protect children.

A. The indigent defense delivery system should ensure that children do not waive appointment of counsel. The indigent defense delivery system should ensure that defense counsel are assigned at the earliest possible stage of the delinquency proceedings.[5]

B. The indigent defense delivery system recognizes that the delinquency process is adversarial and should provide children with continuous legal representation throughout the delinquency process including, but not limited to, detention, pre-trial motions or hearings, adjudication, disposition, post-disposition, probation, appeal, expungement and sealing of records.

C. The indigent defense delivery system should include the active participation of the private bar or conflict office whenever a conflict of interest arises for the primary defender service provider.[6]

2. The indigent defense delivery system recognizes that legal representation of children is a specialized area of the law.

A. The indigent defense delivery system recognizes that representing children in delinquency proceedings is a complex specialty in the law and that it is different from, but equally as important as, the legal representation of adults. The indigent defense delivery system further acknowledges the specialized nature of representing juveniles processed as adults in transfer/waiver proceedings.[7]

B. The indigent defense delivery system leadership demonstrates that it respects its juvenile defense team members and that it values the provision of quality, zealous and comprehensive delinquency representation services.

C. The indigent defense delivery system leadership recognizes that delinquency representation is not a training assignment for new attorneys or future adult court advocates, and it encourages experienced attorneys to provide delinquency representation.

3. The indigent defense delivery system supports quality juvenile delinquency representation through personnel and resource parity. [8]

A. The indigent defense delivery system encourages juvenile representation specialization without limiting attorney and support staff's access to promotional progression, financial advancement or personnel benefits.

B. The indigent defense delivery system provides a professional work environment and adequate operational resources such as office space, furnishings, technology, confidential client interview areas[9] and current legal research tools. The system includes juvenile representation resources in budgetary planning to ensure parity in the allocation of equipment and resources.

4. The indigent defense delivery system utilizes expert and ancillary services to provide quality juvenile defense services.

A. The indigent defense delivery system supports requests for essential expert services throughout the delinquency process and whenever individual juvenile case representation requires these services for effective and quality representation. These services include, but are not limited to, evaluation by and testimony of mental health professionals, education specialists, forensic evidence examiners, DNA experts, ballistics analysis and accident reconstruction experts.

B. The indigent defense delivery system ensures the provision of all litigation support services necessary for the delivery of quality services, including, but not limited to, interpreters, court reporters, social workers, investigators, paralegals and other support staff.

5. The indigent defense delivery system supervises attorneys and staff and monitors work and caseloads.

A. The leadership of the indigent defense delivery system monitors defense counsel's caseload to permit the rendering of quality representation. The workload of indigent defenders, including appointed and other work, should never be so large as to interfere with the rendering of zealous advocacy or continuing client contact nor should it lead to the breach of ethical obligations.[10] The concept of workload may be adjusted by factors such as case complexity and available support services.

B. Whenever it is deemed appropriate, the leadership of the indigent defense delivery system, in consultation with staff, may adjust attorney case assignments and resources to guarantee the continued delivery of quality juvenile defense services.

6. The indigent defense delivery system supervises and systematically reviews juvenile defense team staff for quality according to national, state and/or local performance guidelines or standards.

A. The indigent defense delivery system provides supervision and management direction for attorneys and all team members who provide defense representation services to children.[11]

B. The leadership of the indigent defense delivery system adopts guidelines and clearly defines the organization's vision as well as expectations for the delivery of quality legal representation. These guidelines should be consistent with national, state and/or local performance standards, measures or rules.[12]

C. The indigent defense delivery system provides administrative monitoring, coaching and systematic reviews for all attorneys and staff representing juveniles, whether contract defenders, assigned counsel or employees of defender offices.

7. The indigent defense system provides and supports comprehensive, ongoing training and education for all attorneys and support staff involved in the representation of children.

A. The indigent defense delivery system supports and encourages juvenile defense team members through internal and external comprehensive training[13] on topics including, but not limited to, detention advocacy, litigation and trial skills, dispositional planning, post-dispositional practice, educational rights, appellate advocacy and administrative hearing representation.

B. The indigent defense delivery system recognizes juvenile delinquency defense as a specialty that requires continuous training in unique areas of the law.[14] In addition to understanding the juvenile court process and systems, juvenile team members should be competent in juvenile law, the collateral consequences of adjudication and conviction, and other disciplines that uniquely impact juvenile cases, such as, but not limited to:

1. Administrative appeals
2. Child welfare and entitlements
3. Child and adolescent development
4. Communicating and building attorney-client relationships with children and adolescents
5. Community-based treatment resources and programs
6. Competency and capacity
7. Counsel's role in treatment and problem solving courts[15]
8. Dependency court/abuse and neglect court process
9. Diversionary programs
10. Drug addiction and substance abuse
11. Ethical issues and considerations
12. Gender-specific programming
13. Immigration
14. Mental health, physical health and treatment
15. Racial, ethnic and cultural understanding
16. Role of parents/guardians
17. Sexual orientation and gender identity awareness
18. Special education
19. Transfer to adult court and waiver hearings
20. Zero tolerance, school suspension and expulsion policies

8. The indigent defense delivery system has an obligation to present independent treatment and disposition alternatives to the court.

A. Indigent defense delivery system counsel have an obligation to consult with clients and, independent from court or probation staff, to actively seek out and advocate for treatment and placement alternatives that best serve the unique needs and dispositional requests of each child.

B. The leadership and staff of the indigent defense delivery system work in partnership with other juvenile justice agencies and community leaders to minimize custodial detention and the incarceration of children and to support the creation of a continuum of community-based, culturally sensitive and gender-specific treatment alternatives.

C. The indigent defense delivery system provides independent postconviction monitoring of each child's treatment, placement or program to ensure that rehabilitative needs are met. If clients' expressed needs are not effectively addressed, attorneys are responsible for intervention and advocacy before the appropriate authority.

9. The indigent defense delivery system advocates for the educational needs of clients.

A. The indigent defense delivery system recognizes that access to education and to an appropriate educational curriculum is of paramount importance to juveniles facing delinquency adjudication and disposition.

B. The indigent defense delivery system advocates, either through direct representation or through collaborations with community-based partners, for the appropriate provision of the individualized educational needs of clients.

C. The leadership and staff of the indigent defense delivery system work with community leaders and relevant agencies to advocate for and support an educational system that recognizes the behavioral manifestations and unique needs of special education students.

D. The leadership and staff of the indigent defense delivery system work with juvenile court personnel, school officials and others to find alternatives to prosecutions based on zero tolerance or school-related incidents.

10. The indigent defense delivery system must promote fairness and equity for children.

A. The indigent defense delivery system should demonstrate strong support for the right to counsel and due process in delinquency courts to safeguard a juvenile justice system that is fair, non-discriminatory and rehabilitative.

B. The leadership of the indigent defense delivery system should advocate for positive change through legal advocacy, legislative improvements and systems reform on behalf of the children whom they serve.

C. The leadership and staff of the indigent defense delivery system are active participants in the community to improve school, mental health and other treatment services and opportunities available to children and families involved in the juvenile justice system.

NOTES FOR THE TEN CORE PRINCIPLES

1 These principles were developed over a one-year period through a joint collaboration between the National Juvenile Defender Center and the American Council of Chief Defenders, a section of the National Legal Aid and Defender Association (NLADA), which officially adopted them on December 4, 2004.

2 387 U.S. 1 (1967). According to the IJA/ABA Juvenile Justice Standard Relating to Counsel for Private Parties 3.1 (1996), "the lawyer's principal duty is the representation of the client's legitimate interests" as distinct and different from the best interest standard applied in neglect and abuse cases. The Commentary goes on to state that "counsel's principal responsibility lies in full and conscientious representation" and that "no lesser obligation exists when youthful clients or juvenile court proceedings are involved."

3 For purposes of these Principles, the term "delinquency proceeding" denotes all proceedings in juvenile court as well as any proceeding lodged against an alleged status offender, such as for truancy, running away, incorrigibility, etc.

4 Common findings among these assessments include, among other barriers to adequate representation, a lack of access to competent counsel, inadequate time and resources for defenders to prepare for hearings or trials, a juvenile court culture that encourages pleas to move cases quickly, a lack of pretrial and dispositional advocacy and an over-reliance on probation. For more information, see *Selling Justice Short: Juvenile Indigent Defense in Texas* (2000); *The Children Left Behind: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Louisiana* (2001); *Georgia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2001); *Virginia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2002); *An Assessment of Counsel and Quality of Representation in Delinquency Proceedings in Ohio* (2003); *Maine: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *Maryland: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *Montana: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *North Carolina: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *Pennsylvania: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *Washington: An Assessment of Access to Counsel and Quality of Representation in Juvenile Offender Matters* (2003).

5 *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 3.

6 A conflict of interest includes both codefendants and intra-family conflicts, among other potential conflicts that may arise. See also American Bar Association *Ten Principles of a Public Defense Delivery System* (2002), Principle 2.

7 For purposes of this Principle, the term "transfer/waiver proceedings" refers to any proceedings related to prosecuting youth in adult court, including those known in some jurisdictions as certification, bind-over, decline, remand, direct file, or youthful offenders.

8 *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 8.

9 *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 4.

10 See National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976), 5.1, 5.3; American Bar Association, *Standards for Criminal Justice, Providing Defense Services* (3rd ed., 1992), 5-5.3; American Bar Association, *Standards for Criminal Justice: Prosecution Function and Defense Function* (3rd ed., 1993), 4-1.3(e); National Advisory Commission on Criminal Justice Standards and Goals, *Report of the Task Force on Courts, Chapter 13,* "The Defense" (1973), 13.12; National Legal Aid and Defender Association and American Bar Association, *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services* (NLADA, 1984; ABA, 1985), III-6, III-12; National Legal Aid and Defender Association, *Standards for the Administration of Assigned Counsel Systems* (1989), 4.1,4.1.2; *ABA Model Code of Professional Responsibility DR 6-101; American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 5.

11 American Bar Association *Ten Principles of a Public Defense Delivery System* (2002), Principles 6 and 10.

12 For example, Institute of Judicial Administration-American Bar Association, *Juvenile Justice Standards* (1979); National Advisory Commission on Criminal Justice Standards and Goals, *Report of the Task Force on Courts, Chapter 13,* "The Defense" (1973); National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976); American Bar Association, *Standards for Criminal Justice, Providing Defense Services* (3rd ed., 1992); *American Bar Association, Standards for Criminal Justice: Prosecution Function and Defense Function* (3rd ed., 1993); *Standards and Evaluation Design for Appellate Defender Offices* (NLADA, 1980); *Performance Guidelines for Criminal Defense Representation* (NLADA, 1995).

13 *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 9; National Legal Aid and Defender Association, *Training and Development Standards* (1997), Standards 1 to 9.

14 National Legal Aid and Defender Association, *Training and Development Standards* (1997), Standard 7.2, footnote 2.

15 American Council of Chief Defenders, *Ten Tenets of Fair and Effective Problem Solving Courts* (2002).

APPENDIX THREE

IJA-ABA JUVENILE JUSTICE STANDARDS

RELATING TO COUNSEL FOR PRIVATE PARTIES

PART ONE • GENERAL STANDARDS

STANDARD 1.1. COUNSEL IN JUVENILE PROCEEDINGS, GENERALLY.
The participation of counsel on behalf of all parties subject to juvenile and family court proceedings is essential to the administration of justice and to the fair and accurate resolution of issues at all stages of those proceedings.

STANDARD 1.2. STANDARDS IN JUVENILE PROCEEDINGS, GENERALLY.
a) As a member of the bar, a lawyer involved in juvenile court matters is bound to know and is subject to standards of professional conduct set forth in statutes, rules, decisions of courts, and codes, canons or other standards of professional conduct. Counsel has no duty to exercise any directive of the client that is . inconsistent with law or these standards. Counsel may, however, challenge standards that he or she believes limit unconstitutionally or otherwise improperly representation of clients subject to juvenile court proceedings.

b) As used in these standards, the term "unprofessional conduct" denotes conduct which is now or should be subject to disciplinary sanction. Where other terms are used, the standard is intended as a guide to honorable and competent professional conduct or as a model for institutional organization.

STANDARD 1.3. MISREPRESENTATION OF FACTUAL PROPOSITIONS OR LEGAL AUTHORITY.
It is unprofessional conduct for counsel intentionally to misrepresent factual propositions or legal authority to the court or to opposing counsel and probation personnel in the course of discussions concerning entrance of a plea, early disposition or any other matter related to the juvenile court proceeding. Entrance of a plea concerning the client's responsibility in law for alleged misconduct or concerning the existence in law of an alleged status offense is a statement of the party's posture with respect to the proceeding and is not a representation of fact or of legal authority.

STANDARD 1.4. RELATIONS WITH PROBATION AND SOCIAL WORK PERSONNEL.
A lawyer engaged in juvenile court practice typically deals with social work and probation department personnel throughout the course of handling a case. In general, the lawyer should coopera;:e with these agencies and should instruct the client to do so, except to the extent such cooperation is or will likely become inconsistent with protection of the client's legitimate interests in the proceed-

ing or of any other rights of the client under the law.

STANDARD 1.5. PUNCTUALITY.
A lawyer should be prompt in all dealings with the court, including attendance, submissions of motions, briefs and other papers, and in dealings with clients and other interested persons. It is unprofessional conduct for counsel intentionally to use procedural devices for which there is no legitimate basis, to misrepresent facts to the court or to accept conflicting responsibilities for the purpose of delaying court proceedings. The lawyer should also emphasize the importance of punctuality in attendance in court to the client and to witnesses to be called, and, to the extent feasible, facilitate their prompt attendance.

STANDARD 1.6. PUBLIC STATEMENTS.
a) The lawyer representing a client before the juvenile court should avoid personal publicity connected with the case, both during trial and thereafter.

b) Counsel should comply with statutory and court rules governing dissemination of information concerning juvenile and family court matters and, to the extent consistent with those rules, with the ABA Standards, Relating to Fair Trial and Free Press.

STANDARD 1.7. IMPROVEMENT IN THE JUVENILE JUSTICE SYSTEM.
In each jurisdiction, lawyers practicing before the juvenile court should actively seek improvement in the administration of juvenile justice and the provision of resources for the treatment of persons subject to the jurisdiction of the juvenile court.

PART TWO • PROVISIONS AND ORGANIZATION OF LEGAL SERVICES

STANDARD 2.1. GENERAL PRINCIPLES.
a) Responsibility for provision of legal services.
Provision of satisfactory legal representation in juvenile and family court cases is the proper concern of all segments of the legal community. It is, accordingly, the responsibility of courts, defender agencies, legal professional groups, individual practitioners and educational institutions to ensure that competent counsel and adequate supporting services are available for representation of all persons with business before juvenile and family courts.

i) Lawyers active in practice should be encouraged to qualify themselves for participation in juvenile and family court cases through formal training, association with experienced juvenile counsel or by other means. To this end, law firms should encourage members to represent parties involved in such matters.

ii) Suitable undergraduate and postgraduate educational curricula concerning legal and nonlegal subjects relevant to representation in juvenile and family courts should regularly be available.

iii) Careful and candid evaluation of representation in cases involving children should be undertaken by judicial and professional groups, including the organized bar, particularly but not solely where assigned counsel-whether public or private-appears.

b) Compensation for services.

i) Lawyers participating in juvenile court matters, whether retained or appointed, are entitled to reasonable compensation for time-and-services performed according to prevailing professional standards. In determining fees for their services, lawyers should take into account the time and labor actually required, the skill required to perform the legal service properly, the likelihood that acceptance of the case will preclude other employment for the lawyer, the fee

customarily charged in the locality for similar legal services, the possible consequences of the proceedings, and the experience, reputation and ability of the lawyer or lawyers performing the services. In setting fees lawyers should also consider the performance of services incident to full representation in cases involving juveniles, including counseling and activities related to locating or evaluating appropriate community services for a client or a client's family.
ii) Lawyers should also take into account in determining fees the capacity of a client to pay the fee. The resources of parents who agree to pay for representation of their children in juvenile court proceedings may be considered if there is no adversity of interest as defined in Standard 3.2, infra, and if the parents understand that a lawyer's entire loyalty is to the child and that the parents have no control over the case. Where adversity of interests or desires between parent and child becomes apparent during the course of representation, a lawyer should be ready to reconsider the fee taking into account the child's resources alone.
iii) As in all other cases of representation, it is unprofessional conduct for a lawyer to overreach the client or the client's parents in setting a fee, to imply that compensation is for anything other than professional services rendered by the lawyer or by others for him or her, to divide the fee with a layman, or to undertake representation in cases where no financial award may result on the understanding that payment of the fee is contingent in any way on the outcome of the case.
iv) Lawyers employed in a legal aid or public defender office should be compensated on a basis equivalent to that paid other government attorneys of similar qualification, experience and responsibility.

c) Supporting services.
Competent representation cannot be assured unless adequate supporting services are available.

Representation in cases involving juveniles typically requires investigatory, expert and other nonlegal services. These should be available to lawyers and to their clients at all stages of juvenile and family court proceedings.

i) Where lawyers are assigned, they should have regular access to all reasonably necessary supporting services.
ii) Where a defender system is involved, adequate supporting services should be available within the organization itself.

d) Independence.
Any plan for providing counsel to private parties in juvenile court proceedings must be designed to guarantee the professional independence of counsel and the integrity of the lawyer-client relationship.

STANDARD 2.2. ORGANIZATION OF SERVICES.
a) In general.
Counsel should be provided in a systematic manner and in accordance with a widely publicized plan. Where possible, a coordinated plan for representation which combines defender and assigned counsel systems should be adopted.

b) Defender systems.
i) Application of general defender standards.
A defender system responsible for representation in some or all juvenile court proceedings generally should apply to staff and offices engaged in juvenile court matters its usual standards for selection, supervision, assignment and tenure of lawyers, restrictions on private practice, provision of facilities and other organizational procedures.
ii) Facilities.
If local circumstances require, the defender system should maintain a separate office for juvenile

court legal and supporting staff, located in a place convenient to the courts and equipped with adequate library, interviewing and other facilities. A supervising attorney experienced in juvenile court representation should be assigned to and responsible for the operation of that office.

iii) Specialization.

While rotation of defender staff from one duty to another is an appropriate training device, there should be opportunity for staff to specialize in juvenile court representation to the extent local circumstances permit.

iv) Caseload.

It is the responsibility of every defender office to ensure that its personnel can offer prompt, full and effective counseling and representation to each client. A defender office should not accept more assignments than its staff can adequately discharge.

c) Assigned counsel systems.

i) An assigned counsel plan should have available to it an adequate pool of competent attorneys experienced in juvenile court matters and an adequate plan for all necessary legal and supporting services.

ii) Appointments through an assigned counsel system should be made, as nearly as possible, according to some rational and systematic sequence. Where the nature of the action or other circumstances require, a lawyer may be selected because of his or her special qualifications to serve in the case, without regard to the established sequence.

STANDARD 2.3. TYPES OF PROCEEDINGS.

a) Delinquency and in need of supervision proceedings.

i) Counsel should be provided for any juvenile subject to delinquency or in need of supervision proceedings.

ii) Legal representation should also be provided the juvenile in all proceedings arising from or related to a delinquency or in need of supervision action, including mental competency, transfer, postdisposition, probation revocation, and classification, institutional transfer, disciplinary or other administrative proceedings related to the treatment process which may substantially affect the juvenile's custody, status or course of treatment. The nature of the forum and the formal classification of the proceeding is irrelevant for this purpose.

b) Child protective, custody and adoption proceedings.

Counsel should be available to the respondent parents, including the father of an illegitimate child, or other guardian or legal custodian in a neglect or dependency proceeding. Independent counsel should also be provided for the juvenile who is the subject of proceedings affecting his or her status or custody. Counsel should be available at all stages of such proceedings and in all proceedings collateral to neglect and dependency matters, except where temporary emergency action is involved and immediate participation of counsel is not practicable.

STANDARD 2.4. STAGES OF PROCEEDINGS.

a) Initial provision of counsel.

i) When a juvenile is taken into custody, placed in detention or made subject to an intake process, the authorities taking such action have the responsibility promptly to notify the juvenile's lawyer, if there is one, 'or advise the juvenile with respect to the availability of legal counsel:

ii) In administrative or judicial postdispositional proceedings which may affect the juvenile's custody, status or course of treatment, counsel should be available at the earliest stage of the decisional process, whether the respondent is present or not. Notification of counsel and, where necessary, provision of counsel in such proceedings is the responsibility of the judicial or administrative agency.

b) Duration of representation and withdrawal of counsel.

i) Lawyers initially retained or appointed should continue their representation through all stages of the proceeding, unless geographical or other compelling factors make continued participation impracticable.

ii) Once appointed or retained, counsel should not request leave to withdraw unless compelled by serious illness or other incapacity, or unless contemporaneous or announced future conduct of the client is such as seriously to compromise the lawyer's professional integrity. Counsel should not seek to withdraw on the belief that the contentions of the client lack merit, but should present for consideration such points as the client desires to be raised provided counsel can do so without violating standards of professional ethics.

iii) If leave to withdraw is granted, or if the client justifiably asks that counsel be replaced, successor counsel should be available.

PART THREE • THE LAWYER CLIENT RELATIONSHIP

STANDARD 3.1. THE NATURE OF THE RELATIONSHIP.

a) Client's interests paramount.

However engaged, the lawyer's principal duty is the representation of the client's legitimate interests. Considerations of personal and professional advantage or convenience should not influence counsel's advice or performance.

b) Determination of client's interests.

i) Generally.

In general, determination of the client's interests in the proceedings, and hence the plea to be entered, is ultimately the responsibility of the client after full consultation with the attorney.

ii) Counsel for the juvenile.

a] Counsel for the respondent in a delinquency or in need of supervision proceeding should ordinarily be bound by the client's definition of his or her interests with respect to admission or denial of the facts or conditions alleged. It is appropriate and desirable for counsel to advise the client concerning the probable success and consequences of adopting any posture with respect to those proceedings.

b] Where counsel is appointed to represent a juvenile subject to child protective proceedings, and the juvenile is capable of considered judgment on his or her own behalf, determination of the client's interest in the proceeding should ultimately remain the client's responsibility, after full consultation with counsel.

c] In delinquency and in need of supervision proceedings, where it is locally permissible to so adjudicate very young persons, and in child protective proceedings, the respondent may be incapable of considered judgment in his or her own behalf.

1] Where a guardian *ad litem* has been appointed, primary responsibility for determination of the posture of the case rests with the guardian and the juvenile.

2] Where a guardian *ad litem* has not been appointed, the attorney should ask that one be appointed.

3] Where a guardian *ad litem* has not been appointed and, for some reason, it appears that independent advice to the juvenile will not otherwise be available, counsel should inquire thoroughly into all circumstances that a careful and competent person in the juvenile's position should consider in determining the juvenile's interests with respect to the proceeding. After consultation with the juvenile, the parents (where their interests do not appear to conflict with the juvenile's), and any other family members or interested persons, the attorney may remain neutral concerning the proceeding, limiting participation to presentation and

examination of material evidence or, if necessary, the attorney may adopt the position requiring the least intrusive intervention justified by the juvenile's circumstances.

iii) Counsel for the parent.
It is appropriate and desirable for an attorney to consider all circumstances, including the apparent interests of the juvenile, when counseling and advising a parent who is charged in a child protective proceeding or who is seeking representation during a delinquency or in need of supervision proceeding. The posture to be adopted with respect to the facts and conditions alleged in the proceeding, however, remains ultimately the responsibility of the client.

STANDARD 3.2 ADVERSITY OF INTERESTS.
a) Adversity of interests defined.
For purposes of these standards, adversity of interests exists when a lawyer or lawyers associated in practice:
i) Formally represent more than one client in a proceeding and have a duty to contend in behalf of one client that which their duty to another requires them to oppose.
ii) Formally represent more than one client and it is their duty to contend in behalf of one client that which may prejudice the other client's interests at any point in the proceeding.
iii) Formally represent one client but are required by some third person or institution, including their employer, to accommodate their representation of that client to factors unrelated to the client's legitimate interests.

b) Resolution of adversity.
At the earliest feasible opportunity, counsel should disclose to the client any interest in or connection with the case or any other matter that might be relevant to the client's selection of a lawyer. Counsel should at the same time seek to determine whether adversity of interests potentially exists and, if so, should immediately seek to withdraw from representation of the client who will be least prejudiced by such withdrawal.

STANDARD 3.3. CONFIDENTIALITY.
a) Establishment of confidential relationship.
Counsel should seek from the outset to establish a relationship of trust and confidence with the client. The lawyer should explain that full disclosure to counsel of all facts known to the client is necessary for effective representation, and at the same time explain that the lawyer's obligation of confidentiality makes privileged the client's disclosures relating to the case.

b) Preservation of client's confidences and secrets.
i) Except as permitted by3.3(d), below, an attorrieIr Should not knowingly reveal a confidence or secret of a client to another, including the parent of a juvenile client.
ii) Except as permitted by 3.3(d), below, an attorney should not knowingly use a confidence or secret of a client to the disadvantage of the client or, unless the attorney has secured the consent of the client after full disclosure, for the attorney's own advantage or that of a third person.

c) Preservation of secrets of a juvenile client's parent or guardian.
The attorney should not reveal information gained from or concerning the parent or guardian of a juvenile client in the course of representation with respect to a delinquency or in need of supervision proceeding against the client, where 1) the parent or guardian has requested the information be held inviolate, or 2) disclosure of the information would likely be embarrassing or detrimental to the parent or guardian and 3) preservation would not conflict with the attorney's primary responsibility to the interests of the client.

i) The attorney should not encourage secret communications when it is apparent that the parent or guardian believes those communications to be confidential or privileged and disclosure may become necessary to full and effective representation of the client.
ii) Except as permitted by 3.3(d), below, an attorney should not knowingly reveal the parent's secret communication to others or use a secret communication to the parent's disadvantage or to the advantage of the attorney or of a third person, unless 1) the parent competently consents to such revelation or use after full disclosure or 2) such disclosure or use is necessary to the discharge of the attorney's primary responsibility to the client.

d) Disclosure of confidential communications.
In addition to circumstances specifically mentioned above, a lawyer may reveal:
i) Confidences or secrets with the informed and competent consent of the client or clients affected, but only after full disclosure of all relevant circumstances to them. If the client is a juvenile incapable of considered judgment with respect to disclosure of a secret or confidence, a lawyer may reveal such communications if such disclosure 1) will not disadvantage the juvenile and 2) will further rendition of counseling, advice or other service to the client.
ii) Confidences or secrets when permitted under disciplinary rules of the ABA Code of Professional Responsibility or as required by law or court order.
iii) The intention of a client to commit a crime or an act which if done by an adult would constitute a crime, or acts that constitute neglect or abuse of a child, together with any information necessary to prevent such conduct. A lawyer must reveal such intention if the conduct would seriously endanger the life or safety of any person or corrupt the processes of the courts and the lawyer believes disclosure is necessary to prevent the harm. If feasible, the lawyer should first inform the client of the duty to make such revelation and seek to persuade the client to abandon the plan.
iv) Confidences or secrets material to an action to collect a fee or to defend himself or herself or any employees or associates against an accusation of wrongful conduct.

STANDARD 3.4. ADVICE AND SERVICE WITH RESPECT TO ANTICIPATED UNLAWFUL CONDUCT.
It is unprofessional conduct for a lawyer to assist a client to engage in conduct the lawyer believes to be illegal or fraudulent, except as part of a bona fide effort to determine the validity, scope, meaning or application of a law.

STANDARD 3.5. DUTY TO KEEP CLIENT INFORMED.
The lawyer has a duty to keep the client informed of the developments in the case, and of the lawyer's efforts and progress with respect to all phases of representation. This duty may extend, in the case of a juvenile client, to a parent or guardian whose interests are not adverse to the juvenile's, subject to the requirements of confidentiality set forth in 3.3, above.

PART FOUR • INITIAL STAGES OF REPRESENTATION

STANDARD 4.1. PROMPT ACTION TO PROTECT THE CLIENT.
Many important rights of clients involved in juvenile court proceedings can be protected only by prompt advice and action. The lawyers should immediately inform clients of their rights and pursue any investigatory or procedural steps necessary to protection of their clients' interests.

STANDARD 4.2. INTERVIEWING THE CLIENT.
a) The lawyer should confer with a client without delay and as often as necessary to ascertain all relevant facts and matters of defense known to the client.
b) In interviewing a client, it is proper for the lawyer to question the credibility of the client's

statements or those of any other witness. The lawyer may not, however, suggest expressly or by implication that the client or any other witness prepare or give, on oath or to the lawyer, a version of the facts which is in any respect untruthful, nor may the lawyer intimate that the client should be less than candid in revealing material facts to the attorney.

STANDARD 4.3. INVESTIGATION AND PREPARATION.
a) It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts concerning responsibility for the acts or conditions alleged and social or legal dispositional alternatives. The investigation should always include efforts to secure information in the possession of prosecution, law enforcement, education, probation and social welfare authorities. The duty to investigate exists regardless of the client's admissions or statements of facts establishing responsibility for the alleged facts and conditions or of any stated desire by the client to admit responsibility for those acts and conditions.

b) Where circumstances appear to warrant it, the lawyer should also investigate resources and services available in the community and, if appropriate, recommend them to the client and the client's family. The lawyer's responsibility in this regard is independent of the posture taken with respect to any proceeding in which the client is involved.

c) It is unprofessional conduct for a lawyer to use illegal means to obtain evidence or information or to employ, instruct or encourage others to do so.

STANDARD 4.4. RELATIONS WITH PROSPECTIVE WITNESSES.
The ethical and legal rules concerning counsel's relations with lay and expert witnesses generally govern lawyers engaged in juvenile court representation.

PART FIVE • ADVISING AND COUNSELING THE CLIENT

STANDARD 5.1. ADVISING THE CLIENT CONCERNING THE CASE.
a) After counsel is fully informed on the facts and the law, he or she should with complete candor advise the client involved in juvenile court proceedings concerning all aspects of the case, including counsel's frank estimate of the probable outcome. It is unprofessional conduct for a lawyer intentionally to understate or overstate the risks, hazards or prospects of the case in order unduly or improperly to influence the client's determination of his or her posture in the matter.

b) The lawyer should caution the client to avoid communication about the case with witnesses where such communication would constitute, apparently or in reality, improper activity. Where the right to jury trial exists and has been exercised, the lawyer should further caution the client with regard to communication with prospective or selected jurors.

STANDARD 5.2. CONTROL AND DIRECTION OF THE CASE.
a) Certain decisions relating to the conduct of the case are in most cases ultimately for the client and others are ultimately for the lawyer. The client, after full consultation with counsel, is ordinarily responsible for determining:
i) the plea to be entered at adjudication;
ii) whether to cooperate in consent judgment or early disposition plans;
iii) whether to be tried as a juvenile or an adult, where the client has that choice;
iv) whether to waive jury trial;
v) whether to testify on his or her own behalf.

(b) Decisions concerning what witnesses to call, whether and how to conduct cross-examination, what jurors to accept and strike, what trial motions should be made, and any other strategic and tactical decisions not inconsistent with determinations ultimately the responsibility of and made by the client, are the exclusive province of the lawyer after full consultation with the client.

(c) If a disagreement on significant matters of tactics or strategy arises between the lawyer and the client, the -lawyer should make a record of the circumstances, his or her advice and reasons, and the conclusion reached-. - This record should be made in a manner which protects the confidentiality of the lawyer-client relationship.

STANDARD 5.3. COUNSELING.
A lawyer engaged in juvenile court representation often has occasion to counsel the client and, in some cases, the client's family with respect to nonlegal matters. This responsibility is generally appropriate to the lawyer's role and should be discharged, as any other, to the best of the lawyer's training and ability.

PART SIX • INTAKE, EARLY DISPOSITION AND DETENTION

STANDARD 6.1. INTAKE AND EARLY DISPOSITION GENERALLY.
Whenever the nature and circumstances of the case permit, counsel should explore the possibility of early diversion from the formal juvenile court process through subjudicial agencies and other community resources. Participation in pre- or nonjudicial stages of the juvenile court process may be critical to such diversion, as well as to protection of the client's rights.

STANDARD 6.2. INTAKE HEARINGS.
a) In jurisdictions where intake hearings are held prior to reference of a juvenile court matter for judicial proceedings, the lawyer should be familiar with and explain to the client and, if the client is a minor, to the client's parents, the nature of the hearing, the procedures to be followed, the several dispositions available and their probable consequences. The lawyer should further advise the client of his or her rights at the intake hearing, including the privilege against self-incrimination where appropriate, and of the use that may be made of the client's statements.

b) The lawyer should be prepared to make to the intake hearing officer arguments concerning the jurisdictional sufficiency of the allegations made and to present facts and circumstances relating to the occurrence of and the client's responsibility for the acts or conditions charged or to the necessity for official treatment of the matter.

STANDARD 6.3. EARLY DISPOSITION.
a) When the client admits the acts or conditions alleged in the juvenile court proceeding and, after investigation, the lawyer is satisfied that the admission is factually supported and that the court would have jurisdiction to act, the lawyer should, with the client's consent, consider developing or cooperating in the development of a plan for informal or voluntary adjustment of the case.

b) A lawyer should not participate in an admission of responsibility by the client for purposes of securing informal or early disposition when the client denies responsibility for the acts or conditions alleged.

STANDARD 6.4. DETENTION.
a) If the client is detained or the client's child is held in shelter care, the lawyer should immediately

consider all steps that may in good faith be taken to secure the child's release from custody.

b) Where the intake department has initial responsibility for custodial decisions, the lawyer should promptly seek to discover the grounds for removal from the home and may present facts and arguments for release at the intake hearing or earlier. If a judicial detention hearing will be held, the attorney should be prepared, where circumstances warrant, to present facts and arguments relating to the jurisdictional sufficiency of the allegations, the appropriateness of the place of and criteria used for detention, and any noncompliance with procedures for referral to court or for detention. The attorney should also be prepared to present evidence with regard to the necessity for detention and a plan for pretrial release of the juvenile.

c) The lawyer should not personally guarantee the attendance or behavior of the client or any other person, whether as surety on a bail bond or otherwise.

PART SEVEN • ADJUDICATION

STANDARD 7.1. ADJUDICATION WITHOUT TRIAL.
a) Counsel may conclude, after full investigation and preparation, that under the evidence and the law the charges involving the client will probably be sustained. Counsel should so advise the client and, if negotiated pleas are allowed under prevailing law, may seek the client's consent to engage in plea discussions with the prosecuting agency. Where the client denies guilt, the lawyer cannot properly participate in submitting a plea of involvement when the prevailing law requires that such a plea be supported by an admission of responsibility in fact.

b) The lawyer should keep the client advised of all developments during plea discussions with the prosecuting agency and should communicate to the client all proposals made by the prosecuting agency. Where it appears that the client's participation in a psychiatric, medical, social or other diagnostic or treatment regime would be significant in obtaining a desired result, the lawyer should so advise the client and, when circumstances warrant, seek the client's consent to participation in such a program.

STANDARD 7.2. FORMALITY, IN GENERAL.
While the traditional formality and procedure of criminal trials may not in every respect be necessary to the proper conduct of juvenile court proceedings, it is the lawyer's duty to make all motions, objections or requests necessary to protection of the client's rights in such form and at such time as will best serve the client's legitimate interests at trial or on appeal.

STANDARD 7.3. DISCOVERY AND MOTION PRACTICE.
a) Discovery.
i) Counsel should promptly seek disclosure of any documents, exhibits or other information potentially material to representation of clients in juvenile court proceedings. If such disclosure is not readily available through informal processes, counsel should diligently pursue formal methods of discovery including, where appropriate, the filing of motions for bills of particulars, for discovery and inspection of exhibits, documents and photographs, for production of statements by and evidence favorable to the respondent, for production of a list of witnesses, and for the taking of depositions.
ii) In seeking discovery, the lawyer may find that rules specifically applicable to juvenile court proceedings do not exist in a particular jurisdiction or that they improperly or unconstitutionally limit disclosure. In order to make possible adequate representation of the client, counsel should

in such cases investigate the appropriateness and feasibility of employing discovery techniques available in criminal or civil proceedings in the jurisdiction.

b) Other motions.
Where the circumstances warrant, counsel should promptly make any motions material to the protection and vindication of the client's rights, such as motions to dismiss the petition, to suppress evidence, for mental examination, or appointment of an investigator or expert witness, for severance, or to disqualify a judge. Such motions should ordinarily be made in writing when that would be required for similar motions in civil or criminal proceedings in the jurisdiction. If a hearing on the motion is required, it should be scheduled at some time prior to the adjudication hearing if there is any likelihood that consolidation will work to the client's disadvantage.

STANDARD 7.4. COMPLIANCE WITH ORDERS.
a) Control of proceedings is principally the responsibility of the court, and the lawyer should comply promptly with all rules, orders and decisions of the judge. Counsel has the right to make respectful requests for reconsideration of adverse rulings and has the duty to set forth on the record adverse rulings or judicial conduct which counsel considers prejudicial to the client's legitimate interests.

b) The lawyer should be prepared to object to the introduction of any evidence damaging to the client's interest if counsel has any legitimate doubt concerning its admissibility under constitutional or local rules of evidence.

STANDARD 7.5. RELATIONS WITH COURT AND PARTICIPANTS.
a) The lawyer should at all times support the authority of the court by preserving professional decorum and by manifesting an attitude of professional respect toward the judge, opposing counsel, witnesses and jurors.

i) When court is in session, the lawyer should address the court and not the prosecutor directly on any matter relating to the case unless the person acting as prosecutor is giving evidence in the proceeding.

ii) It is unprofessional conduct for a lawyer to engage in behavior or tactics purposely calculated to irritate or annoy the court, the prosecutor or probation department personnel.

b) When in the company of clients or clients' parents, the attorney should maintain a professional demeanor in all associations with opposing counsel and with court or probation personnel.

STANDARD 7.7. PRESENTATION OF EVIDENCE.
It is unprofessional conduct for a lawyer knowingly to offer false evidence or to bring inadmissible evidence to the attention of the trier of fact, to ask questions or display demonstrative evidence known to be improper or inadmissible, or intentionally to make impermissible comments or arguments in the presence of the trier of fact. When a jury is empaneled, if the lawyer has substantial doubt concerning the admissibility of evidence, he or she should tender it by an offer of proof and obtain a ruling on its admissibility prior to presentation.

STANDARD 7.8. EXAMINATION OF WITNESSES.
a) The lawyer in juvenile court proceedings should be prepared to examine fully any witness whose testimony is damaging to the client's interests. It is unprofessional conduct for counsel knowingly to forego or limit examination of a witness when it is obvious that failure to examine fully will prejudice the client's legitimate interests.

b) The lawyer's knowledge that a witness is telling the truth does not preclude cross-examination in

all circumstances, but may affect the method and scope of cross-examination. Counsel should not misuse the power of cross-examination or impeachment by employing it to discredit the honesty or general character of a witness known to be testifying truthfully.

c) The examination of all witnesses should be conducted fairly and with due regard for the dignity and, to the extent allowed by the circumstances of the case, the privacy of the witness. In general, and particularly when a youthful witness is testifying, the lawyer should avoid unnecessary intimidation or humiliation of the witness.

d) A lawyer should not knowingly call as a witness one who will claim a valid privilege not to testify for the sole purpose of impressing that claim on the fact-finder. In some instances, as defined in the ABA Code of Professional Responsibility, doing so will constitute unprofessional conduct.

e) It is unprofessional conduct to ask a question that implies the existence of a factual predicate which the examiner knows cannot be supported by evidence.

STANDARD 7.9. TESTIMONY BY-THE RESPONDENT.
a) It is the lawyer's duty to protect the client's privilege against self- incrimination in juvenile court proceedings. When the client has elected not to testify, the lawyer should be alert to invoke the privilege and should insist on its recognition unless the client competently decides that invocation should not be continued.

b) If the respondent has admitted to counsel facts which establish his or her responsibility for the acts or conditions alleged and if the lawyer, after independent investigation, is satisfied that those admissions are true, and the respondent insists on exercising the right to testify at the adjudication hearing, the lawyer must advise the client against taking the stand to testify falsely and, if necessary, take appropriate steps to avoid lending aid to perjury.

i) If, before adjudication, the respondent insists on taking the stand to testify falsely, the lawyer must withdraw from the case if that is feasible and should seek the leave of the court to do so if necessary.
ii) If withdrawal from the case is not feasible or is not permitted by the court, or if the situation arises during adjudication without notice, it is unprofessional conduct for the lawyer to lend aid to perjury or to use the perjured testimony. Before the respondent takes the stand in these circumstances the lawyer should, if possible, make a record of the fact that respondent is taking the stand against the advice of counsel without revealing that fact to the court. Counsel's examination should be confined to identifying the witness as the respondent and permitting the witness to make his or her statement to the trier of fact. Counsel may not engage in direct examination of the respondent in the conventional manner and may not recite or- rely on the false testimony in argument.

STANDARD 7.10. ARGUMENT.
The lawyer in juvenile court representation should comply with the rules generally governing argument in civil and criminal proceedings.

PART EIGHT • TRANSFER PROCEEDINGS

STANDARD 8.1. IN GENERAL.
A proceeding to transfer a respondent from the jurisdiction of the juvenile court to a criminal court

is a critical stage in both juvenile and criminal justice processes. Competent representation by counsel is essential to the protection of the juvenile's rights in such a proceeding.

STANDARD 8.2. INVESTIGATION AND PREPARATION.
a) In any case where transfer is likely, counsel should seek to discover at. the earliest opportunity whether transfer will be sought and, if so, the procedure and criteria according to which that determination will be made.

b) The lawyer should promptly investigate all circumstances of the case bearing on the appropriateness of transfer and should seek disclosure of any reports or other evidence that will be submitted to or may be considered by the court in the course of transfer proceedings. Where circumstances warrant, counsel should promptly move for appointment of an investigator or expert witness to aid in the preparation of the defense and for any other order necessary to protection of the client's rights.

STANDARD 8.3. ADVISING AND COUNSELING THE CLIENT CONCERNING TRANSFER.
Upon learning that transfer will be sought or may be elected, counsel should fully explain the nature of the proceeding and, the consequences of transfer to the client and the client's parents. In so doing, counsel may further advise the client concerning participation in diagnostic and treatment programs which may provide information material to the transfer decision.

STANDARD 8.4. TRANSFER HEARINGS.
If a transfer hearing is held, the rules set forth in Part VII of these standards shall generally apply to counsel's conduct of that hearing.

STANDARD 8.5. POST-HEARING REMEDIES.
If transfer for criminal prosecution is ordered, the lawyer should act promptly to preserve an appeal from that order and should be prepared to make any appropriate motions for post-transfer relief.

PART NINE • DISPOSITION

STANDARD 9.1. IN GENERAL.
The active participation of counsel at disposition is often essential to protection of clients' rights and to furtherance of their legitimate interests. In many cases the lawyer's most valuable service to clients will be rendered at this stage of the proceeding.

STANDARD 9.2. INVESTIGATION AND PREPARATION.
a) Counsel should be familiar with the dispositional alternatives available to the court, with its procedures and practices at the disposition stage, and with community services that might be useful in the formation of a dispositional plan appropriate to the client's circumstances.

b) The lawyer should promptly investigate all sources of evidence including any reports or other information that will be brought to the court's attention and interview all witnesses material to the disposition decision.

i) If access to social investigation, psychological, psychiatric or other reports or information is not provided voluntarily or promptly, counsel should be prepared to seek their disclosure and time to study them through formal measures.

ii) Whether or not social and other reports are readily available, the lawyer has a duty independently to investigate the client's circumstances, including such factors as previous history, family

relations, economic condition and any other information relevant to disposition.

c) The lawyer should seek to secure the assistance of psychiatric, psychological, medical or other expert personnel needed for purposes of evaluation, consultation or testimony with respect to formation of a dispositional plan.

STANDARD 9.3. COUNSELING PRIOR TO DISPOSITION.
a) The lawyer should explain to the client the nature of the disposition hearing, the issues involved and the alternatives open to the court. The lawyer should also explain fully and candidly the nature, obligations and consequences of any proposed dispositional plan, including the meaning of conditions of probation, the characteristics of any institution to which commitment is possible, and the probable duration of the client's responsibilities under the proposed dispositional plan. Ordinarily; the lawyer should not make or agree to a specific dispositional recommendation without the client's consent.

b) When psychological or psychiatric evaluations are ordered by the court or arranged by counsel prior to disposition, the lawyer should explain the nature of the procedure to the client and encourage the client's cooperation with the person or persons administering the diagnostic procedure.

c) The lawyer must exercise discretion in revealing or discussing the contents of psychiatric, psychological, medical and social reports, tests or evaluations bearing on the client's history or condition or, if the client is a juvenile, the history or condition of the client's parents. In general, the lawyer should not disclose data or conclusions contained in such reports to the extent that, in the lawyer's judgment based on knowledge of the client and the client's family, revelation would be likely to affect adversely the client's well-being or relationships within the family and disclosure is not necessary to protect the client's interests in the proceeding.

STANDARD 9.4. DISPOSITION HEARING.
a) It is the lawyer's duty to insist that proper procedure be followed throughout the disposition stage and that orders entered be based on adequate reliable evidence.

i) Where the dispositional hearing is not separate from adjudication or where the court does not have before it all evidence required by statute, rules of court or the circumstances of the case, the lawyer should seek a continuance until such'eviderite can be presented-if to do so would serve the client's interests.

(ii) The lawyer at disposition should be free to examine fully and to impeach any witness whose evidence is damaging to the client's interests and to challenge the accuracy, credibility and weight of any reports, written statements or other evidence before the court. The lawyer should not knowingly limit or forego examination or contradiction by proof of any witness, including a social worker or probation department officer, when failure to examine fully will prejudice the client's interests. Counsel may seek to compel the presence of witnesses whose statements of fact or opinion are before the court or the production of other evidence on which conclusions of fact presented at disposition are based.

b) The lawyer may, during disposition, ask that the client be excused during presentation of evidence when, in counsel's judgment, exposure to a particular item of evidence would adversely affect the well-being of the client or the client's relationship with his or her family, and the client's presence is not necessary to protecting his or her interests in the proceeding.

STANDARD 9.5. COUNSELING AFTER DISPOSITION.
When a dispositional decision has been reached, it is the lawyer's duty to explain the nature, obli-

gations and consequences of the disposition to the client and his or her family and to urge upon the client the need for accepting and cooperating with the dispositional order. If appeal from either the adjudicative or dispositional decree is contemplated, the client should be advised of that possibility, but the attorney must counsel compliance with the court's decision during the interim.

PART TEN • REPRESENTATION AFTER DISPOSITION

STANDARD 10.1. RELATIONS WITH THE CLIENT AFTER DISPOSITION.
a) The lawyer's responsibility to the client does not necessarily end with dismissal of the charges or entry of a final dispositional order. The attorney should be prepared to counsel and render or assist in securing appropriate legal services for the client in matters arising from the original proceeding.

i) If the client has been found to be within the juvenile court's jurisdiction, the lawyer should maintain contact with both the client and the agency or institution involved in the disposition plan in order to ensure that the client's rights are respected and, where necessary, to counsel the client and the client's family concerning the dispositional plan.

ii) Whether or not the charges against the client have been dismissed, where the lawyer is aware that the client or the client's family needs and desires community or other medical, psychiatric, psychological, social or legal services, he or she should render all possible assistance in arranging for such services.

b) The decision to pursue an available claim for postdispositional relief from judicial and correctional or other administrative determinations related to juvenile court proceedings, including appeal, habeas corpus or an action to protect the client's right to treatment, is ordinarily the client's responsibility after full consultation with counsel.

STANDARD 10.2. POST-DISPOSITIONAL HEARINGS BEFORE THE JUVENILE COURT.
a) The lawyer who represents a client during initial juvenile court proceedings should ordinarily be prepared to represent the client with respect to proceedings to review or modify adjudicative or dispositional orders made during earlier hearings or to pursue any affirmative remedies that may be available to the client under local juvenile court law.

b) The lawyer should advise the client of the pendency or availability of a postdispositional hearing or proceeding and of its nature, issues and potential consequences. Counsel should urge and, if necessary, seek to facilitate the prompt attendance at any such hearing of the client and of any material witnesses who may be called.

STANDARD 10.3. COUNSEL ON APPEAL.
a) Trial counsel, whether retained or appointed by the court, should conduct the appeal unless new counsel is substituted by the client or by the appropriate court. Where there exists an adequate pool of competent counsel available for assigmnent to appeals from juvenile court orders and substitution will not work substantial disadvantage to the client's interests, new counsel may be appointed in place of trial counsel.

b) Whether or not trial counsel expects to conduct the appeal, he or she should promptly inform the client, and where the client is a minor and the parents' interests are not adverse, the client's parents of the right to appeal and take all steps necessary to protect that right until appellate counsel is substituted or the client decides not to exercise this privilege.

c) Counsel on appeal, after reviewing the record below and undertaking any other appropriate investigation, should candidly inform the client as to whether there are meritorious grounds for appeal and the probable results of any such appeal, and should further explain the potential advantages and disadvantages associated with appeal. However, appellate counsel should not seek to withdraw from a case solely because his or her own analysis indicates that the appeal lacks merit.

STANDARD 10.4. CONDUCT OF THE APPEAL.
The rules generally governing conduct of appeals in criminal and civil cases govern conduct of appeals in juvenile court matters.

STANDARD 10.5. POST-DISPOSITIONAL REMEDIES: PROTECTION OF THE CLIENT'S RIGHT TO TREATMENT.
a) A lawyer who has represented a client through trial and/or appellate proceedings should be prepared to continue representation when post-dispositional action, whether affirmative or defensive, is sought, unless new counsel is appointed at the request of the client or continued representation would, because of geographical considerations or other factors, work unreasonable hardship.

b) Counsel representing a client in post-dispositional matters should promptly undertake any factual or legal investigation in order to determine whether grounds exist for relief from juvenile court or administrative actiort. If there is reasonable prospect of a favorable result, the lawyer should advise the client and, if their interests are not adverse, the client's parents of the nature, consequences, probable outcome and advantages or disadvantages associated with such proceedings.

c) The lawyer engaged in post-dispositional representation should conduct those proceedings according to the principles generally governing representation in juvenile court matters.

STANDARD 10.6. PROBATION REVOCATION; PAROLE REVOCATION.
a) Trial counsel should be prepared to continue representation if revocation of the client's probation or parole is sought, unless new counsel is appointed or continued representation would, because of geographical or other factors, work unreasonable hardship.

b) Where proceedings to revoke conditional liberty are conducted in substantially the same manner as original petitions alleging delinquency or need for supervision, the standards governing representation in juvenile court generally apply. Where special procedures are used in such matters, counsel should advise the client concerning those procedures and be prepared to participate in the revocation proceedings at the earliest stage.

STANDARD 10.7. CHALLENGES TO THE EFFECTIVENESS OF COUNSEL.
a) A lawyer appointed or retained to represent a client previously represented by other counsel has a good faith duty to examine prior counsel's actions and strategy." If, after investigation, the new attorney is satisfied that prior counsel did not provide effective assistance, the client should be so advised and any appropriate relief for the client on that ground should be vigorously pursued.

b) A lawyer whose conduct of a juvenile court case is drawn into question may testify in judicial, administrative or investigatory proceedings concerning the matters charged, even though in so doing the lawyer must reveal information which was given by the client in confidence.

APPENDIX FOUR

INDIGENT DEFENSE TASK FORCE LEGISLATION

AUTHORIZING A STUDY OF INDIGENT DEFENSE
IN MISSISSIPPI YOUTH COURTS

REPORT OF CONFERENCE COMMITTEE

MR. SPEAKER AND MADAM PRESIDENT:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

H. B. No. 1498: Criminal assessment; provide for funding of public defender training.

We, therefore, respectfully submit the following report and recommendation:
1. That the Senate recede from its Amendment No. 1.
2. That the House and Senate adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. Section 25-32-71, Mississippi Code of 1972, as amended by House Bill No. 770, 2007 Regular Session, is amended as follows:

25-32-71. (1) There is created the Mississippi Public Defender Task Force which shall be composed of <u>thirteen (13)</u> members as follows:

(a) The President of the Mississippi Public Defender Association, or his designee;

(b) The President of the Mississippi Prosecutors Association, or his designee;

(c) A representative of the Administrative Office of Courts;

(d) A representative of the Mississippi Supreme Court;

(e) A representative of the Conference of Circuit

Judges;
(f) A representative of the Mississippi Attorney General's Office;
(g) A representative of the Mississippi Association of Supervisors;
(h) A representative of The Mississippi Bar;
(i) A representative of the Magnolia Bar Association;
(j) The Chairman of the Senate Judiciary Committee, Division B, or his designee;
(k) The Chairman of the Senate Appropriations Committee, or his designee;
(l) The Chairman of the House Judiciary En Banc Committee, or his designee;
(m) The Chairman of the House Appropriations Committee, or his designee.
(2) At its first meeting, the task force shall elect a chairman and vice chairman from its membership and shall adopt rules for transacting its business and keeping records. Members of the task force shall receive a per diem in the amount provided in Section 25-3-69 for each day engaged in the business of the task force. Members of the task force other than the legislative members shall receive reimbursement for travel expenses incurred while engaged in official business of the task force in accordance with Section 25-3-41 and the legislative members of the task force shall receive the expense allowance provided for in Section 5-1-47.
(3) The duties of the task force shall be to:
(a) Make a comprehensive study of the needs by circuit court districts for state-supported indigent defense counsel to examine existing public defender programs, including indigent defense provided in the youth courts. Reports shall be provided to the Legislature each year at least one (1) month before the convening of the regular session.
(b) Examine and study approaches taken by other states in the implementation and costs of state-supported indigent criminal and delinquency cases.
(c) To study the relationship between presiding circuit and youth court judges and the appointment of criminal and delinquency indigent defense counsel.
(4) This section shall stand repealed on July 1, 2011.

SECTION 2. Section 99-40-1, Mississippi Code of 1972, is amended as follows:

99-40-1. (1) There is created the Mississippi Office of Indigent Appeals. This office shall consist of six (6) attorneys, two (2) secretaries/paralegals and one (1) financial assistant. One (1) of the attorneys shall serve as director of the office. The director shall be appointed by the Governor and shall serve for a term of four (4) years. The remaining attorneys and other staff shall be appointed by the director and shall serve at the will and pleasure of the director. The director and all other attorneys in the office shall either be active members of The

Mississippi Bar, or, if a member in good standing of the bar of another jurisdiction, must apply to and secure admission to The Mississippi Bar within twelve (12) months of the commencement of the person's employment by the office. The attorneys in the office shall practice law exclusively for the office and shall not engage in any other practice. The office shall not engage in any litigation other than that related to the office. The salary for the director shall be equivalent to the salary of district attorneys and the salary of the other attorneys in the office shall be equivalent to the salary of an assistant district attorney.

(2) The office shall provide representation on appeal for indigent persons convicted of felonies but not under sentences of death. Representation shall be provided by staff attorneys, or, in the case of conflict or excessive workload, by attorneys selected, employed and compensated by the office on a contract basis. All fees charged by contract counsel and expenses incurred by attorneys in the office and contract counsel must be approved by the court. At the sole discretion of the director, the office may also represent indigent juveniles adjudicated delinquent on appeals from a county court or chancery court to the Mississippi Supreme Court and/or the Mississippi Court of Appeals. The office shall provide advice, education and support to attorneys representing persons under felony charges in the trial courts.

(3) There is created in the State Treasury a special fund to be known as the Indigent Appeals Fund. The purpose of the fund shall be to provide funding for the Mississippi Office of Indigent Appeals. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the Mississippi Office of Indigent Appeals. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature for the purposes of funding the Office of Indigent Appeals;

(b) The interest accruing to the fund;

(c) Monies received under the provisions of Section 99-19-73;

(d) Monies received from the federal government;

(e) Donations; and

(f) Monies received from such other sources as may be provided by law.

(4) There is created in the Office of Indigent Appeals the Division of Public Defender Training. The division shall be staffed by any necessary personnel as determined and hired by the director. The mission of the division shall be to work closely with the Mississippi Public Defenders Association to provide training and services to public defenders practicing in all state, county and municipal courts. These services shall include, but not be limited to, continuing legal education, case updates and legal research. The division shall provide (a) education and training for public defenders practicing in all state, county,

municipal and youth courts; (b) technical assistance for public defenders practicing in all state, county, municipal and youth courts; and (c) current and accurate information for the Legislature pertaining to the needs of public defenders practicing in all state, county, municipal and youth courts.

(5) There is created in the State Treasury a special fund to be known as the Public Defenders Education Fund. The purpose of the fund shall be to provide funding for the training of public defenders. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the Office of Indigent Appeals. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature for the purposes of public defender training;

(b) The interest accruing to the fund;

(c) Monies received under the provisions of Section 99-19-73;

(d) Monies received from the federal government;

(e) Donations; and

(f) Monies received from such other sources as may be provided by law.

SECTION 3. Section 99-19-73, Mississippi Code of 1972, as amended by Senate Bill No. 2686, 2007 Regular Session, and House Bill No. 665, 2007 Regular Session, is amended as follows:

99-19-73. (1) **Traffic violations.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any violation in Title 63, Mississippi Code of 1972, except offenses relating to the Mississippi Implied Consent Law (Section 63-11-1 et seq.) and offenses relating to vehicular parking or registration:

FUND	AMOUNT
State Court Education Fund	$ 1.50
State Prosecutor Education Fund	1.00
Vulnerable Adults Training, Investigation and Prosecution Trust Fund	.50
Child Support Prosecution Trust Fund	.50
Driver Training Penalty Assessment Fund	7.00
Law Enforcement Officers Training Fund	5.00
Spinal Cord and Head Injury Trust Fund (for all moving violations)	6.00
Emergency Medical Services Operating Fund	15.00
Mississippi Leadership Council on Aging Fund	1.00
Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund	.50
Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund	1.00
State Prosecutor Compensation Fund for the purpose of providing additional compensation for legal	

assistants to district attorneys..... 1.50
Crisis Intervention Mental Health Fund..... 10.00
Drug Court Fund..... 10.00
Capital Defense Counsel Fund..... 2.89
Indigent Appeals Fund..... 2.29
Capital Post-Conviction Counsel Fund..... 2.33
Victims of Domestic Violence Fund..... .49
Public Defenders Education Fund..... 1.00
TOTAL STATE ASSESSMENT..... $ 69.50

(2) **Implied Consent Law violations.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or any other penalty for any violation of the Mississippi Implied Consent Law (Section 63-11-1 et seq.):

FUND..... AMOUNT
Crime Victims' Compensation Fund..... $ 10.00
State Court Education Fund..... 1.50
State Prosecutor Education Fund..... 1.00
Vulnerable Adults Training,
Investigation and Prosecution Trust Fund..... .50
Child Support Prosecution Trust Fund..... .50
Driver Training Penalty Assessment Fund..... 22.00
Law Enforcement Officers Training Fund..... 11.00
Emergency Medical Services Operating Fund..... 15.00
Mississippi Alcohol Safety Education Program Fund..... 5.00
Federal-State Alcohol Program Fund..... 10.00
Mississippi Crime Laboratory
Implied Consent Law Fund..... 25.00
Spinal Cord and Head Injury Trust Fund..... 25.00
Capital Defense Counsel Fund..... 2.89
Indigent Appeals Fund..... 2.29
Capital Post-Conviction Counsel Fund..... 2.33
Victims of Domestic Violence Fund..... .49
State General Fund..... 35.00
Law Enforcement Officers and Fire Fighters Death
Benefits Trust Fund..... .50
Law Enforcement Officers and Fire Fighters Disability
Benefits Trust Fund..... 1.00
State Prosecutor Compensation Fund for the purpose
of providing additional compensation for legal
assistants to district attorneys..... 1.50
Crisis Intervention Mental Health Fund..... 10.00
Drug Court Fund..... 10.00
Statewide Victims' Information and Notification
System Fund..... 6.00
Public Defenders Education Fund..... 1.00
TOTAL STATE ASSESSMENT..... $199.50

(3) **Game and Fish Law violations.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from

each person upon whom a court imposes a fine or other penalty for any violation of the game and fish statutes or regulations of this state:

FUND	AMOUNT
State Court Education Fund	$ 1.50
State Prosecutor Education Fund	1.00
Law Enforcement Officers Training Fund	5.00
Hunter Education and Training Program Fund	5.00
State General Fund	30.00
Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund	.50
Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund	1.00
State Prosecutor Compensation Fund for the purpose of providing additional compensation for legal assistants to district attorneys	1.00
Crisis Intervention Mental Health Fund	10.00
Drug Court Fund	10.00
Capital Defense Counsel Fund	2.89
Indigent Appeals Fund	2.29
Capital Post-Conviction Counsel Fund	2.33
Victims of Domestic Violence Fund	.49
Public Defenders Education Fund	1.00
TOTAL STATE ASSESSMENT	$ 74.00

(4) **Litter Law violations.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any violation of Section 97-15-29 or 97-15-30:

FUND	AMOUNT
Statewide Litter Prevention Fund	$ 25.00
TOTAL STATE ASSESSMENT	$ 25.00

(5) **Other misdemeanors.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any misdemeanor violation not specified in subsection (1), (2) or (3) of this section, except offenses relating to vehicular parking or registration:

FUND	AMOUNT
Crime Victims' Compensation Fund	$ 10.00
State Court Education Fund	1.50
State Prosecutor Education Fund	1.00
Vulnerable Adults Training, Investigation and Prosecution Trust Fund	.50
Child Support Prosecution Trust Fund	.50
Law Enforcement Officers Training Fund	5.00
Capital Defense Counsel Fund	2.89
Indigent Appeals Fund	2.29
Capital Post-Conviction Counsel Fund	2.33
Victims of Domestic Violence Fund	.49

State General Fund..... 30.00
State Crime Stoppers Fund..... 1.50
Law Enforcement Officers and Fire Fighters Death
Benefits Trust Fund..... .50
Law Enforcement Officers and Fire Fighters Disability
Benefits Trust Fund..... 1.00
State Prosecutor Compensation Fund for the purpose
of providing additional compensation for legal
assistants to district attorneys..... 1.50
Crisis Intervention Mental Health Fund..... 10.00
Drug Court Fund..... 8.00
Judicial Performance Fund..... 2.00
Statewide Victims' Information and Notification
System Fund..... 6.00
Public Defenders Education Fund..... 1.00
TOTAL STATE ASSESSMENT..... $ 88.00

(6) **Other felonies.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any felony violation not specified in subsection (1), (2) or (3) of this section:

FUND ..... AMOUNT
Crime Victims' Compensation Fund..... $ 10.00
State Court Education Fund..... 1.50
State Prosecutor Education Fund..... 1.00
Vulnerable Adults Training,
Investigation and Prosecution Trust Fund..... .50
Child Support Prosecution Trust Fund..... .50
Law Enforcement Officers Training Fund..... 5.00
Capital Defense Counsel Fund..... 2.89
Indigent Appeals Fund..... 2.29
Capital Post-Conviction Counsel Fund..... 2.33
Victims of Domestic Violence Fund..... .49
State General Fund..... 60.00
Criminal Justice Fund..... 50.00
Law Enforcement Officers and Fire Fighters Death
Benefits Trust Fund..... .50
Law Enforcement Officers and Fire Fighters Disability
Benefits Trust Fund..... 1.00
State Prosecutor Compensation Fund for the purpose
of providing additional compensation for legal
assistants to district attorneys..... 1.50
Crisis Intervention Mental Health Fund..... 10.00
Drug Court Fund..... 10.00
Statewide Victims' Information and Notification
System Fund..... 6.00
Public Defenders Education Fund..... 1.00
TOTAL STATE ASSESSMENT..... $166.50

(7) If a fine or other penalty imposed is suspended, in whole or in part, such suspension shall not affect the state

assessment under this section. No state assessment imposed under the provisions of this section may be suspended or reduced by the court.

(8) After a determination by the court of the amount due, it shall be the duty of the clerk of the court to promptly collect all state assessments imposed under the provisions of this section. The state assessments imposed under the provisions of this section may not be paid by personal check. It shall be the duty of the chancery clerk of each county to deposit all such state assessments collected in the circuit, county and justice courts in such county on a monthly basis with the State Treasurer pursuant to appropriate procedures established by the State Auditor. The chancery clerk shall make a monthly lump-sum deposit of the total state assessments collected in the circuit, county and justice courts in such county under this section, and shall report to the Department of Finance and Administration the total number of violations under each subsection for which state assessments were collected in the circuit, county and justice courts in such county during such month. It shall be the duty of the municipal clerk of each municipality to deposit all such state assessments collected in the municipal court in such municipality on a monthly basis with the State Treasurer pursuant to appropriate procedures established by the State Auditor. The municipal clerk shall make a monthly lump-sum deposit of the total state assessments collected in the municipal court in such municipality under this section, and shall report to the Department of Finance and Administration the total number of violations under each subsection for which state assessments were collected in the municipal court in such municipality during such month.

(9) It shall be the duty of the Department of Finance and Administration to deposit on a monthly basis all such state assessments into the proper special fund in the State Treasury. The monthly deposit shall be based upon the number of violations reported under each subsection and the pro rata amount of such assessment due to the appropriate special fund. The Department of Finance and Administration shall issue regulations providing for the proper allocation of these special funds.

(10) The State Auditor shall establish by regulation procedures for refunds of state assessments, including refunds associated with assessments imposed before July 1, 1990, and refunds after appeals in which the defendant's conviction is reversed. The Auditor shall provide in such regulations for certification of eligibility for refunds and may require the defendant seeking a refund to submit a verified copy of a court order or abstract by which such defendant is entitled to a refund. All refunds of state assessments shall be made in accordance with the procedures established by the Auditor.

SECTION 4. This act shall take effect and be in force from and after July 1, 2007.

Further, amend by striking the title in its entirety and inserting in lieu thereof the following:

AN ACT TO AMEND SECTION 25-32-71, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 770, 2007 REGULAR SESSION, TO DELETE THE REPEALER ON THE PUBLIC DEFENDERS TASK FORCE AND REVISE THE MEMBERSHIP AND MISSION OF THE TASK FORCE; TO AMEND SECTION 99-40-1, MISSISSIPPI CODE OF 1972, TO CREATE THE DIVISION OF PUBLIC DEFENDER TRAINING IN THE OFFICE OF INDIGENT APPEALS AND TO PROVIDE FOR THE MISSION AND DUTIES OF THE DIVISION; TO CREATE THE PUBLIC DEFENDERS EDUCATION FUND IN THE STATE TREASURY AND TO PROVIDE FOR THE ADMINISTRATION AND USE OF THE FUND; TO AMEND SECTION 99-19-73, MISSISSIPPI CODE OF 1972, AS AMENDED BY SENATE BILL NO. 2686, 2007 REGULAR SESSION, AND HOUSE BILL NO. 665, 2007 REGULAR SESSION, TO PROVIDE FOR A CRIMINAL ASSESSMENT ON CERTAIN CRIMES TO FUND THE PUBLIC DEFENDERS TRAINING FUND; AND FOR RELATED PURPOSES.

CONFEREES FOR THE HOUSE	CONFEREES FOR THE SENATE
X (SIGNED) Blackmon	X (SIGNED) Tollison
X (SIGNED) Simpson	X (SIGNED) Turner
X (SIGNED) Coleman (29th)	X (SIGNED) Gordon