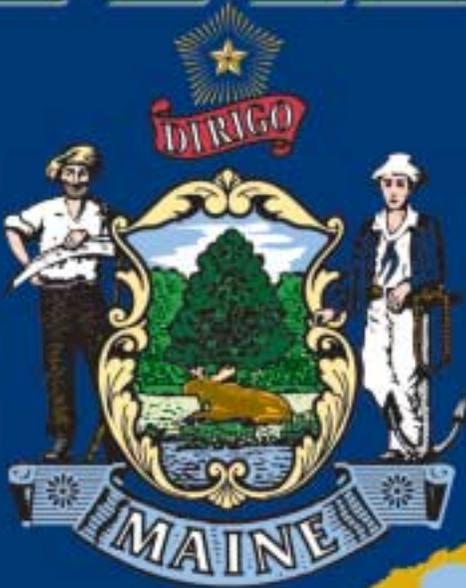


# MAINE



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

**American Bar Association Juvenile Justice Center**

*and the*

**New England Juvenile Defender Center**

*in collaboration with*

**Bridgeport Juvenile Defenders Office**

**Chester & Vestal**

**Children's Law Center**

**Juvenile Justice Center**

**Suffolk University Law School**

**Moulton, Forte & Northrop**

**National Juvenile Defender Center**

**Youth Law Center**

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The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

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**Moulton, Forte & Northrop**

**National Juvenile Defender Center**

**Youth Law Center**

American Bar Association  
Criminal Justice Section  
Juvenile Justice Center



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# EXECUTIVE SUMMARY

## Fulfilling the Promise of Justice

In 1995, a national assessment of the legal representation of children in delinquency proceedings was conducted by the American Bar Association (ABA) Juvenile Justice Center, Juvenile Law Center, and Youth Law Center in *A Call for Justice: An Assessment of Access to Counsel and Quality Representation in Delinquency Proceedings*.<sup>1</sup> The findings and recommendations of the report laid the foundation for closer examination of the juvenile indigent defense systems in individual states.

This assessment of access to counsel and quality of representation of children in Maine's juvenile justice system is part of a nationwide effort to identify strengths and address deficiencies in juvenile indigent defense practices. The assessment explores how Maine's juvenile justice system works and its barriers to effective representation. This report attempts to provide a deeper understanding by juxtaposing in Chapter II how the juvenile justice system *should* work with the team of experts' observations of how it actually works, in Chapter III. This report aims at providing a better understanding of juvenile defenders' individual and systemic challenges to meeting the goals of Maine's juvenile codes, which are to "secure for each juvenile subject to these provisions such care and guidance, preferably in the juvenile's own home, as will best serve the juvenile's welfare and the interests of society."<sup>2</sup>

In the course of conducting this assessment, the investigative team encountered many devoted and talented lawyers who provide remarkable legal services to children in spite of the numerous obstacles they face. Unfortunately, this type of representation is not widespread. This assessment reveals inconsistencies in the quality of Maine's indigent juvenile defense practice resulting from a significant lack of institutional support and systemic barriers to ensuring high quality juvenile defense.

Juvenile defenders are hampered by a lack of training and the absence of a statewide support system that would increase the professional caliber of juvenile defenders in Maine. The quality of juvenile defense in the state of Maine is

*This assessment reveals inconsistencies in the quality of Maine's indigent juvenile defense practice resulting from a significant lack of institutional support and systemic barriers to ensuring high quality juvenile defense.*

undermined by a failure of the state to support a quality juvenile defense bar through training, certification and direct support, as well as by serious deficiencies in the availability of services and resources for juveniles. These shortages limit defenders' abilities to creatively and aggressively advocate for the rehabilitative goals of the juvenile court. These shortages also limit judges' abilities to consider alternatives to incarceration and to ensure that children and youth receive the services they need. The state makes no obvious, accessible effort to advertise the services available to youth, which shifts the burden of locating them onto defenders who are ill equipped to first locate a program and then to assess which programs are best for their clients.<sup>3</sup>

This study reveals that Maine's juvenile justice system depends upon the perseverance of dedicated, but under-resourced advocates who rely on luck in locating and providing necessary services for the youth they represent. Maine cannot meet the promise of rehabilitation set forth in its juvenile code, nor can Maine guarantee the highest quality juvenile defense system without the state committing the necessary resources to truly partner with defenders to provide youth these necessary social, educational and mental health services.

The editors of this report hope that it will spark further dialogue about needed improvements in the juvenile defender delivery system in the state of Maine and be used as a roadmap for fulfilling the promise of justice for all children and youth of this state.

# INTRODUCTION

## A Study of Maine's Juvenile Defender System

In Maine, there is increasing recognition by members of the judiciary, policymakers, the press and the public at large that the juvenile court is often poorly equipped to address the particular challenges and vulnerabilities children present. Abuse and neglect proceedings have received a great deal of attention as a result of the tragic death in 2002 of a foster child in the care of a state-approved foster care placement. In regard to family disputes, the publication by the Muskie School of Public Service of a *"Voice for Low Income Children"* recognized problems faced by low income families in obtaining the services of a guardian *ad litem* to effectively represent children's interests.<sup>4</sup> The rights of children and families in abuse and neglect and child custody cases continue to generate interest and responses. Receiving less attention, however, are the needs, rights and treatment of children and youth involved in the juvenile justice system.

In 1998, Amnesty International called for an independent inquiry into the conditions at the Long Creek Youth Development Center, what was then known as the Maine Youth Center. Amnesty International had received reports about the poor living conditions and excessive use of force against youth held there. Public outcry and legislative inquiry led the Board of Visitors of the Maine Youth Center and the Department of Corrections to contract with an outside, independent investigator to evaluate conditions at the Youth Center. The final report, released in 1999, was scathing.<sup>5</sup> While the report led to changes in the detention center—which has been rebuilt, renamed and reopened in July 2002—a parallel commitment to addressing problems in the community-based programs has not developed.

In August 2002, a comprehensive special series in the *Portland Press Herald* rekindled interest in the experience of children and youth caught in the juvenile justice system. This series highlighted the increasing numbers of juvenile offenders with serious mental health issues. The series also made clear that the likelihood of youth obtaining the services they need is dependent on the quality of their advocates.<sup>6</sup>

*Juvenile defenders have a continuing obligation to assess the quality of their work as well as the quality of justice they can obtain for the children they represent in Maine's juvenile justice system.*

Working with juveniles requires a special understanding of the principles of child and adolescent development. Ensuring that youth and their families fully understand and participate in the justice system requires a patient and dignified system. Comprehending the special legal issues of the extraordinarily high number of children in the justice system with mental health and/or learning problems demonstrates that defenders need specialized training and skill development. The series demonstrated that all too often adults throughout the juvenile justice system charged with helping these children lacked such basic prerequisites.

Juvenile defenders have a continuing obligation to assess the quality of their work as well as the quality of justice they can obtain for the children they represent in Maine's juvenile justice system. The New England Juvenile Defender Center (NEJDC), in association with an investigative team of experts from throughout the United States,<sup>7</sup> undertook this assessment to evaluate the quality of juvenile defense in Maine, identify systemic barriers to providing quality juvenile representation and describe the consequences of these barriers. Based on this assessment, the NEJDC makes recommendations for improving the current system of indigent defense for children and youth. Since part of the purpose of this report is to highlight barriers to effective representation, none of the counties or individuals interviewed for this assessment is identified by name, nor is any attempt made to evaluate specific courts or individual actors in the system.

### **The Legal Rights of Juveniles**

In a series of cases beginning in 1966, the U.S. Supreme Court extended due process protections to juvenile delinquency proceedings. In the seminal case, *In re Gault*, the Court focused attention on the treatment of youth in the juvenile justice system and established a child's constitutional right to counsel among other due process protections.<sup>8</sup> This case prompted the states, in varying degrees, to begin addressing the concerns identified in the Court's decision. At the national level, the United States Congress enacted the Juvenile Justice and Delinquency Prevention Act in 1974 that created the National Advisory Committee for Juvenile Justice and Delinquency Prevention. The Committee was charged with developing national juvenile justice standards and guidelines. These standards, published in 1974, require that children be represented by counsel in all proceedings arising from a delinquency action from the earliest stage of the process.<sup>9</sup>

During this same period, the Institute for Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, promulgated twenty-three volumes of comprehensive juvenile justice standards, including the *IJA/ABA Juvenile Justice Standards Relating to Counsel for Private Parties* (1996). The structure of the project was as intricate as the volumes of standards it produced.<sup>10</sup> Adopting twenty volumes in full between 1979 and 1981, these standards were designed to establish the best possible juvenile justice system for our society, a system specifically designed to be insulated from response to transitory headlines or politics or individual controversies.

In 1995, the American Bar Association Juvenile Justice Center released a national assessment of current practices of juvenile defense that identified pro-

found, systemic problems regarding the quality and consistency of representation of youth throughout the nation. The report, entitled *A Call for Justice: An Assessment of Access to Counsel and Quality Representation in Delinquency Proceedings*, examined the gaps in accessibility and quality of legal representation for children across the country.<sup>11</sup> Since that time, juvenile defender assessments have been conducted in Georgia, Kentucky (an assessment and a re-assessment one year later), Louisiana, Maryland, Montana, North Carolina, Ohio, Pennsylvania, Texas, Virginia and Washington to analyze state-specific policies and practices. Several other states are in the preliminary stages of the assessment process.

## Methodology

The American Bar Association Juvenile Justice Center, in collaboration with the New England Juvenile Defender Center, convened a team of national experts who partnered with local juvenile defenders to conduct an assessment of access to counsel and the quality of representation in Maine's juvenile justice system. The investigative team consisted of juvenile defenders, academics, public defenders and advocates from all over the country.

The study was conducted to examine the particular characteristics and challenges of representing juveniles in delinquency proceedings in the state of Maine. Members of the team visited six counties in Maine. The counties sampled were selected to represent a cross-section of metropolitan and rural areas.

In each county, team members observed court proceedings, conducted interviews with judges, juvenile defenders, prosecutors and juvenile community corrections officers. In addition, team members interviewed representatives of the Department of Human Services (DHS), the Department of Corrections (DOC), and the Department of Behavioral and Developmental Services (DBDS). Team members visited the state's two juvenile detention facilities, where they toured the facilities, interviewed staff and spoke with detained youth.

In addition to in-person interviews and observations across the state of Maine, the investigative team and editors reviewed statistical data from DOC, DBDS, DHS, the Department of Education and the Maine District Courts.

*The study was conducted to examine the particular characteristics and challenges of representing juveniles in delinquency proceedings in the state of Maine.*



# CHAPTER ONE

## Risk Factors for Maine's Children and Youth

Maine's children are the 18th poorest in the nation.<sup>12</sup> The poverty rate in Maine for 2000–2001 was 10.2%, with some counties as high as 19%, compared with a rate of 11.5% nationwide. Almost a quarter of the population of Maine are children under the age of eighteen.<sup>13</sup> Of the 301,238 children in Maine,<sup>14</sup> 147,490 are between the ages of 10 and 17 (MFS). Of those, 40,000 are living below the poverty line.

While Maine has made great strides increasing services for children and working on root causes of poverty, the efforts remain inadequate to meet the need. This assessment found that because of a lack of alternatives, children with mental health and family problems in Maine's juvenile justice system are placed in detention and correctional facilities.<sup>15</sup> In a given year, almost 2,250 children and youth are placed in juvenile or adult correctional facilities,<sup>16</sup> where Maine spends 4.5 times more per detainee than it spends per public school pupil.<sup>17</sup>

Between 2001 and 2002, eighteen of Maine's 31 district courts experienced an average 40% increase in the number of charges filed against juveniles.<sup>18</sup> Eleven of Maine's district courts experienced a decrease averaging 21%, ranging from 11.1% to 37%. It is possible that the lack of community-based services, the zero tolerance policies employed by some Maine public school districts, and the lack of a strong, well-trained defender presence has led to the increased number of charges filed against youth, even as the actual number of Maine youth arrested follows the national decline.

Together, these facts highlight the importance of both assessing the quality of juvenile defense in the state and working to ensure defenders are given the resources and training to provide effective and zealous advocacy. According to the State of Maine Administrative Office of the Courts, of the 18 district courts where juvenile charges increased, courts in Livermore Falls and Lincoln, saw increases of 101% and 238% respectively in the number of charges brought against youth. Those two district courts are located in Androscoggin and

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Penobscot Counties, which have high youth risk factors: extreme poverty rates, school policies favoring expulsion, substance abuse, and inadequate services for treating mental health issues in children and youth. They also do not appear to have an organized juvenile defense bar.

### The Juvenile Justice and Correctional Systems

In 2002, according to the Maine Department of Safety, 9,287 Maine children were arrested<sup>19</sup>; of those, 5,107 youth were charged and passed through the juvenile court system. Over 30% of the 9,287 youth arrested in Maine were girls, compared with 18.8% in 1990.<sup>20</sup> By 2000, an average of 2,204—or 1.5% of all Maine children—were under the supervision of the Maine Department of Corrections Division of Juvenile Services, including an average of 236 children committed to its two juvenile correctional facilities.<sup>21</sup>

Arrest Rate (per 100,000 youth)	Violent Crime Index**	Property Crime Index***	Weapons
NATIONAL	330	1,686	116
MAINE	121	1,907	28

**Source:** Office of Juvenile Justice Statistical Briefing Book, [ojjdp.ncjrs.org/ojstatbb/html/qa252.html](http://ojjdp.ncjrs.org/ojstatbb/html/qa252.html).

\*\* This index includes the offenses of murder and non negligent manslaughter, forcible rape, robbery and aggravated assault.

\*\*\* This index includes the offenses of burglary, larceny-theft, motor vehicle theft and arson.

The Department of Corrections reports that the youth under supervision of the Division of Juvenile Services “struggle with mental health and substance abuse issues, have no place to live, lag behind their peers in educational achievement, and have suffered physical or sexual abuse and many losses.”<sup>22</sup> However, those who deal regularly with Maine youth in the juvenile justice system—district court judges, prosecutors, defense attorneys and juvenile community corrections officers—reported that the resources they considered viable alternatives to detention, including foster care placement, adolescent psychiatric units, substance abuse units and youth shelters, were scarcely available throughout the state, and, in many places, were not available at all.<sup>23</sup> Over 25% reported no foster care placements, over 47% reported no adolescent psychiatric units, and over 57% reported no substance abuse units in the area they served.<sup>24</sup> Over 18% reported no youth shelters and no group homes for youth in the area they served.<sup>25</sup>

When the Department of Corrections evaluated its own programs, it found a 32% recidivism rate among Maine youth, that is, 32% of first time juvenile offenders re-offended while under supervision of the Department or within one year of release from supervision; the rate varied by region and, in some parts of the state, was as high as 38%.<sup>26</sup>

## Indicia of Poverty

Every four hours, a child in Maine is born into poverty.<sup>27</sup> One in seven children in Maine, or over 40,000 children, lives below the poverty line.<sup>28</sup> In 2000, almost 14% of Maine's children statewide lived below the poverty line; in some counties the rate was as high as 23%.<sup>29</sup> Thirty-five per cent of Maine's children live in low-income (200% of the federal poverty line) households.<sup>30</sup> In some Maine counties, the rate is as high as 53.7%.<sup>31</sup> Almost twenty four per cent of Maine's children live in single-parent households.<sup>32</sup> In 2002, 481 Maine children spent at least some time in homeless or emergency shelters.<sup>33</sup> Temporary Assistance for Needy Families (TANF) provides \$485 per month for a family of three.

Although Maine has a statewide unemployment rate of under 5%, that rate is as high as 8% in some counties.<sup>34</sup> In 2002, Maine lost 6,000 manufacturing jobs. One third of jobs in the state pay less than a livable annual wage (\$21,402 for a family of three where the median annual income for a family of 3 was \$48,330 in 2001).<sup>35</sup> Maine salaries are only 78% of the average salary in the rest of the country.

## Physical and Mental Health

Maine children begin life at an advantage. Maine ranks ninth best among states in percent of children with health insurance. Maine ranks second from the top in the United States for low infant mortality, and fourth for healthy birth weight babies.<sup>36</sup> Maine's teen birth rate is 28.7 per 1,000 girls ages 15–19 well below the national rate of 45.<sup>37</sup>

The impact of poverty on Maine's children becomes more visible as they grow. Approximately one-third of the state's children are eligible for the school lunch program. Over 44,000 of Maine's children receive food stamps.<sup>38</sup> Of all hospitalizations of children under 17 in Maine, almost one in four was for a mental health or substance abuse reason.<sup>39</sup> Five of the ten top diagnoses of children age 13–17 admitted to a hospital in Maine are based on a mental health diagnosis.<sup>40</sup>

Suicide is the second leading cause of death among Maine's children ages 10 to 19, accounting for one in four deaths of teens between the ages of 15 and 19.<sup>41</sup> The suicide rate for 15–19 year olds in Maine has been as much as 20% higher than the national rate; the rate of 10–14 year olds committing suicide has doubled since 1980. Four out of every five Maine teens committing suicide is male, and Maine children make twenty suicide attempts for every completed suicide.<sup>42</sup> Over 8% of high school students report attempting suicide in the past year.<sup>43</sup>

The leading diagnosis for a child aged 6–17 admitted to a Maine hospital in 2001 was Affective Psychosis, a term which includes major depressive disorders, manic disorders and bipolar disorders.<sup>44</sup> However, in spite of this need, 47% of judges, prosecutors, defense attorneys and juvenile community corrections officers working in the juvenile justice system reported no adolescent psychiatric units existed in the region of the state where they served, although 90% said such units were needed.<sup>45</sup> In areas where adolescent psychiatric units were available, 77% of judges, prosecutors, defense attorneys and juvenile corrections officers said the number of units did not meet the need.<sup>46</sup>

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*Suicide is the second leading cause of death among Maine's children ages 10 to 19, accounting for one in four deaths of teens between the ages of 15 and 19.*

According to the *Portland Press Herald*, there are fewer than 50 psychiatrists in the state who practice child psychiatry.<sup>47</sup>

### Substance Abuse

Although tobacco possession is illegal in Maine for youth under 18 years old,<sup>48</sup> almost 40% of young people in Maine report smoking cigarettes.<sup>49</sup> Tobacco possession and use accounted for 72.3% of long-term suspensions and 26.1% of expulsions from Maine schools.<sup>50</sup>

Over 30% of young people in Maine in grades 6–12 reported using alcohol and marijuana.<sup>51</sup> Both rates are higher than the national average.<sup>52</sup> According to a survey of 12th graders:

55% used marijuana;<sup>53</sup>  
8% used cocaine;  
13% used ecstasy;  
9% used oxycontin;<sup>54</sup> and,  
15% reported selling illegal drugs.<sup>55</sup>

Fifteen per cent of eighth graders reported using inhalants.<sup>56</sup> When asked if they had used alcohol in the last thirty days, 30% of all students grades 6–12, and 50% of 12th graders said yes.<sup>57</sup> Almost 30% of the 12th graders reported engaging in binge drinking in the previous two weeks, and almost one quarter of them reported coming to school drunk in the past year.<sup>58</sup>

Alcohol and drug use accounted for 34% of suspensions and 21% of expulsions from Maine schools.<sup>59</sup> The Department of Corrections estimates that 85% of the young people in Maine Juvenile Facilities need substance abuse services.<sup>60</sup>

Nonetheless, almost 60% of Maine judges, prosecutors, defense attorneys and juvenile community corrections officers reported that no juvenile substance abuse units existed in the region they served, although 91% said such units were needed.<sup>61</sup> Of those that reported substance abuse units available in their region, 80% said there were not enough units to meet the demand.<sup>62</sup>

### Education

During the 2002–2003 school year, 204,332 students were enrolled in Maine schools.<sup>63</sup> Maine ranks 14th among states in per pupil expenditures.<sup>64</sup> Seven per cent of Maine's teenagers age 16–19 are high school dropouts.<sup>65</sup> Eight per cent are neither attending school nor working.<sup>66</sup> Over 17% of all students in Maine schools (36,139 children in 2002), needed special education services,<sup>67</sup> with 67% of those being boys.<sup>68</sup> Their needs were characterized as follows:

34.36% were diagnosed with learning disabilities;<sup>69</sup>  
9.41% had emotional disabilities; and,  
9.0% had multiple disabilities.<sup>70</sup>

A 2002 report by the Muskie School of Public Service conducted for the Juvenile Justice Advocacy Group found that special education students were 13

times more likely to be expelled than non-special education students.<sup>71</sup>

Almost 80% of students expelled from Maine schools overall were boys.<sup>72</sup> The most frequent offenses leading to long-term suspension from school were:

- 90.0% for alcohol use;
- 66.7% harassment of others;
- 62.5% tobacco use and fighting; and,
- 38.1% fighting.<sup>73</sup>

Offenses leading to expulsion were:

- 53.8% bomb threats;
- 18.6% tobacco use; and,
- 16.4% disorderly conduct.<sup>74</sup>

One study of a sample of students who were expelled or suspended from Maine schools found many had low grades, a disciplinary history and numerous excused and unexcused absences from school.<sup>75</sup>

### **Child Abuse and Neglect**

A child in Maine is abused or neglected every 2 hours.<sup>76</sup> By the end of 2002, 2,888 children in Maine were under the care or custody of the Department of Human Services; another 3,191 were in foster care.<sup>77</sup> In 2001, of 15,794 reports of child abuse and neglect received, 9,900 warranted intervention by Child Protective Services.<sup>78</sup> Of 4,279 substantiated cases of child abuse and neglect in 2001, almost 40% involved victims between the ages of 9 and 17.<sup>79</sup> In 2002, the number of substantiated abuse and neglect cases rose to 4,779.<sup>80</sup>

*A child in Maine is abused or neglected every 2 hours.*

### **Violence**

The rate of domestic abuse is high in Maine, with a domestic assault taking place every hour and 46 minutes.<sup>81</sup> Maine's county-by-county rate of domestic assaults ranges from 163 assaults per year to a high of 616,<sup>82</sup> and has steadily increased since 1998. Children are both the victims and the perpetrators of domestic abuse. Youth in the juvenile justice system are frequently charged with assault on a family member.

Almost half of Maine's children live in communities where drugs and handguns are readily available.<sup>83</sup> Almost 40% of middle school students report carrying a weapon at some time.<sup>84</sup> A child or teen is killed by gunfire every month.<sup>85</sup> Over half the children and teens killed by firearms are suicides,<sup>86</sup> with six out of every ten teen suicides in Maine committed by using a gun.<sup>87</sup>



# CHAPTER TWO

## The Role of Defense Counsel in Delinquency Proceedings

### Development of Maine's Juvenile Code

In 1963, the United States Supreme Court held in *Gideon v. Wainwright* that the federal constitutional right to counsel requires the appointment of an attorney to represent a poor person accused of a felony offense.<sup>88</sup> The Court emphasized that “in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.”<sup>89</sup>

Five years later, in *In re Gault*, the Supreme Court explicitly extended federal constitutional protections to children in juvenile delinquency proceedings.<sup>90</sup> The Court held that juveniles facing “the awesome prospect of incarceration” have the right to counsel under the Due Process Clause of the United States Constitution.<sup>91</sup> The Court recognized that “a juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense to prepare and submit it.”<sup>92</sup>

Noting that the “absence of the substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment,” the Court determined that a child’s interests in delinquency proceedings are not adequately protected without the adherence to due process principles.<sup>93</sup> The Court reaffirmed this view in *In re Winship* in 1970, stating: “We made clear in [*Gault*] that civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile court.”<sup>94</sup> This decision established that juveniles are constitutionally entitled to proof “beyond a reasonable doubt” during the adjudication for delinquency charges.<sup>95</sup>

Following these precedent-setting cases and the issuance of the juvenile

*The Court held that juveniles facing “the awesome prospect of incarceration” have the right to counsel under the Due Process Clause of the United States Constitution.*

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justice standards in 1974 by the National Advisory Committee for Juvenile Justice and Delinquency Prevention, on July 1, 1975 the Maine Legislature established a Commission to Revise Statutes Relating to Juveniles.<sup>96</sup> The Commission was charged with the responsibility of preparing a proposed juvenile code for the state of Maine. The Commission authored a number of reports that formed the basis for the Maine Juvenile Code which took effect in 1978. Central to the Commission's findings was the unique experience of a child caught in the corrections system. The Commission explained:

*A child in jail is very much alone. His physical surroundings are strange and may be fearsome; his trust in his family and other adults is undermined; and his own stability is shaken. In addition to, and dependence on, potentially hostile strangers and the sadness that accompanies the loss of trust in adults experienced by most jailed children, they also feel stigmatized. Their self-image is altered.<sup>97</sup>*

The Commission adopted a farsighted approach to juvenile justice. It focused on prevention, rehabilitation and the critical role in the provision of social services to youth. As the Commission explained:

Our recommendations are based on the following philosophical principles:<sup>98</sup>

1. Children and youth at risk should be provided with whatever supportive and rehabilitative services are necessary to ensure their healthy development.
2. Children and youth services must be provided in a way that recognizes the individual differences among people and the essential differences between young people and adults.
3. The liberty of individual children and youth is no less important than that of adults and is therefore to be protected so long as it is consistent with the liberties of others.
4. Children and youth who are accused of criminal behavior should be treated by the justice system in a manner that clearly acknowledges the seriousness of the crime and adequately protects the rights of the accused.
5. The state is obligated to observe strict parsimony in intervening in the lives of children and youth. The state has the burden of justifying why any given intrusion—and not a lesser one—is called for.

The Commission also recommended that a "single state agency...be charged with responsibility for ensuring the provision of all services necessary to prevent children and youth from coming into contact with the juvenile court system and support and rehabilitate those children and youth who do come into contact with the juvenile court..."<sup>99</sup>

In following the recommendations of the Commission, the 108th Legislature, in 1977, enacted the Maine Juvenile Code. The code's primary purpose is rehabilitation.<sup>100</sup> Based on the findings of the Commission, the Juvenile Code

continued the sentiment echoed in prior Maine case law that the “basic and primary idea [of the Juvenile Code] is salvation, not punishment.”<sup>101</sup> The purposes clause of the Code articulated the continued aim of “continu[ing] the goals of the rehabilitation and treatment which have historically characterized the juvenile justice system in Maine.”<sup>102</sup> The Court made the rehabilitative goals of the code pre-eminent: “It would be inconsistent with the beneficent purposes of the new Juvenile Code to infer that incarceration in a state prison is authorized as a dispositional alternative.”<sup>103</sup>

Furthermore, the Code and Maine State Supreme Court rulings which followed the enactment of the code made clear that “the restraints on a juvenile’s liberty imposed pursuant to the Maine Juvenile Code require a proceeding governed by the fundamental fairness which is constitutionally mandated.”<sup>104</sup>

Although the Code has been amended over time, it has remained true to the philosophical principles of the Commission’s recommendations—it remains focused on the rehabilitation and care of minors:

The Purposes of the [Juvenile Code] are set forth in M.R.S.A. § 302:

- A. To secure for each juvenile subject to these provisions such care and guidance, preferably in the juvenile’s own home, as will best serve the juvenile’s welfare and the interests of society;
- B. To preserve and strengthen family ties whenever possible, including improvement of home environment;
- C. To remove a juvenile from the custody of the juvenile’s parents only when the juvenile’s welfare and safety or the protection of the public would otherwise be endangered or when necessary to punish a child adjudicated pursuant to chapter 507 as having committed a juvenile crime;
- D. To secure for any juvenile removed from the custody of the juvenile’s parents the necessary treatment, care, guidance, and discipline to assist that juvenile in becoming a responsible and productive member of society; and,
- E. To provide procedures through which the provisions of the law are executed and enforced and that ensure that the parties receive fair hearings at which their rights as citizens are recognized and protected.

In 1997, the Maine State Legislature made its first departure from the rehabilitative model and added Section F,<sup>105</sup> which states: “To provide consequences, which may include those of a punitive nature, for repeated serious criminal behavior or repeated violation of probation conditions.”<sup>106</sup>

## **Due Process and the Juvenile Justice System**

The Maine District Court has jurisdiction over all juvenile matters. When it exercises such jurisdiction, it is referred to as juvenile court. Juvenile court has jurisdiction over any individual who has not yet attained 18 years of age, who is alleged to have committed a juvenile offense, or an adult who is alleged to have committed a juvenile offense before attaining his 18th birthday.<sup>107</sup> Under Maine

case law and statutory provisions of the Maine Juvenile Code, all children are entitled to counsel at every stage of the delinquency proceedings. The statute requires that indigent children be given court appointed counsel.<sup>108</sup>

Unlike many states, Maine has no state office coordinating or supporting juvenile defenders. Maine's system of juvenile representation for indigent children relies exclusively on court appointments. Private attorneys submit their names to District Court clerks and ask to be assigned juvenile cases. The clerk of the court or the District Court judge herself controls appointment of counsel; there is no standardized, statewide method for appointment. There are no uniform criteria or qualifications for an attorney to be added to the roster of eligible attorneys.

### **Juvenile Defenders' Role in Ensuring Due Process Protections of Juveniles**

In this section we set forth what excellent juvenile defense would look like at each of the crucial junctures of representing a youth in juvenile court. Contrary to claims and perceptions that "juvie court" is more lax or less legal, a review of good representation practices manifests that juvenile defense is demanding and requires legal and problem-solving rigor of considerable proportions.

Juvenile defense attorneys bear enormous responsibility in representing their youthful clients. In addition to the responsibilities of preparing and presenting the criminal case, defenders must understand and apply principles of adolescent growth and development, including at least a general familiarity with issues of adolescent mental health, to ascertain their young clients' abilities and needs. Defenders must prepare social history backgrounds in order to advocate in the more complicated cases. They must be familiar with the strengths and needs of youth's families and assess what interventions are likely to be supported or undermined by their clients' families. Defenders must be aware of the child's educational status and keep abreast of the ever changing availability of community resources. The fact that most juvenile defendants come from poor families—and thus have very limited resources to assist the defender—significantly increases the burden placed on the defender to provide adequate representation.

Children who come into the juvenile justice system are frequently mistrustful of adults, and often for good reasons. An attorney must have regular contact with her client, and must take the time to build a relationship which will allow the client to share deeply personal and sometimes painful information. An attorney must instill in the client a sense that at least this one adult is entirely committed to his well-being both in and out of the courtroom. Only through the development of that relationship will the child be willing to share the type of information which will allow the lawyer to fully represent his interests. In addition, the potential for rehabilitation of the client is increased significantly if the client feels that the system has treated him fairly.

Equally important, defenders must take the time to keep clients informed before and after court appearances and other important events relating to their cases. Children in detention centers constantly need to know and be reassured about the status of their case, when and if they can go home, the effect their

*Juvenile defense attorneys bear enormous responsibility in representing their youthful clients.*

behavior in the institution may have on the court process, and the range of alternatives which will be available to the Court at the next hearing. Clients and families need to be told exactly how to get in touch with counsel and when their counsel will next contact them. A good defender uses comprehensible language in a timely way to advise clients and their families of the court process and the family's responsibilities between court appearances.

Juvenile defenders must be particularly sensitive to the developmental needs and limitations of children and youth. Preparation of a case, and the defense in particular, must be informed by an understanding of child development and current research profiling the unique sensibilities of youth.

### **Compensation**

In view of these demands, the compensation of juvenile defenders suggests one structural barrier to excellent defense. The hourly rate for Maine's juvenile defenders, set at \$50.00, is high comparatively speaking; for instance, in Massachusetts juvenile defenders are paid \$30 an hour.<sup>109</sup> But the cap of \$315 per case for all proceedings poses an insidious limitation on even minimally competent defense for more complicated cases—for example, those cases which need investigation, or which involve violent or felony level offenses that may permanently affect the juvenile's public record, or where the client's needs may be hard to ascertain and who may be especially hard to place.

In a maximum of six hours paid for by the state, defenders must gain the trust of a scared and confused client, assess the strength and value of the child's family and other support structures in the child's life, identify and access needed services, attend a long series of mandatory court appearances, interview witnesses, and vigorously advocate for the child's rights every step of the way. Notably, attorneys in child protective cases who must do similar work are given a cap of \$625.<sup>110</sup>

*The cap of \$315 per case for all proceedings poses an insidious limitation on even minimally competent defense for more complicated cases.*

### **Arrest and Detention**

Under Maine law, a youth may be arrested with or without a warrant.<sup>111</sup> When a juvenile is arrested, the police must notify the child's legal guardian within 12 hours and without unnecessary delay. The police must also notify a juvenile community corrections officer.<sup>112</sup> During the arrest process, youth in Maine do not have the right to counsel unless they invoke that right while they are in the custody of the police and are being interrogated.

Upon arrest, the juvenile community corrections officer is statutorily authorized to place youth on conditional release in their home or in an alternative facility such as a group home, an emergency shelter, or foster placement subject to specific conditions.<sup>113</sup> Detention must be in the least restrictive residential setting and may not be ordered if unconditional or conditional release is appropriate.<sup>114</sup>

A detention hearing must be held within 48 hours from the time the child is detained.<sup>115</sup> Continued detention may only be ordered if the Court determines that there is probable cause to believe that the juvenile has committed a juvenile offense and it finds by a preponderance of the evidence that continued detention is necessary to meet one of the purposes of detention as set forth by

statute.<sup>116</sup>

Involvement of the juvenile defender is critical at this detention hearing. Ideally, and in keeping with 15 M.R.S.A. § 3002(1)(c), at this juncture, defenders argue that detention is only appropriate as a last resort for children who are a danger to the community or unlikely to appear in court. At this juncture of the proceedings, the juvenile defender may propose community programs that serve as alternatives to detention. The juvenile defender presents information about the child's family and community ties and support in an effort to illustrate the child's situation and render as comprehensive and sympathetic a picture of the youth as possible.

The structural arrangement at this critical phase of the process is problematic. Defenders have little time to prepare for an argument that affects the youth's liberty and demands on the state's resources, i.e. custody. Defenders rarely receive more than a day's notice of a detention hearing and rarely have much more information than the name of the juvenile, her age, and the name of the probation officer. It is extremely unlikely that the defender will have been able to meet with the child until she arrives at the courthouse, and often the defender has had no contact with the family. It is rare that a defender can be even modestly prepared for a detention hearing—unless the youth is a former or present client. In many cases, this may not matter because the state does not seek to extend the detention past the initial hearing. In cases where there is a request for extended detention, the defender attempting to make the most persuasive argument is put in a position of asking to continue the case for a brief period of time to obtain the information necessary to present a defense, thus extending the child's period of detention.

### *First Appearance*

Pursuant to 15 M.R.S.A. § 3306(1)(A), at first appearance before the court, the youth and parents or guardians are advised of their constitutional and legal rights, including the right to counsel at every juncture of the proceedings. Because many conditions of release are imposed upon youth at the initial appearance, it is important for juvenile defenders to fully explain the juvenile court process and the short and long-term consequences of any agreements or pleas entered into.

The state often recommends, and the court often imposes, conditions of release at the time of the first appearance. Those conditions often require the child to live in a specific place and subject her to random searches and drug testing. The court may also impose a curfew, prohibit contact with friends, and require participation in counseling, psychological evaluations and community programs. These conditions have the same effect as conditions of probation, as violation of them may lead to arrest and detention. There are clear benefits to the imposition of these conditions: they serve as an incentive to behave during this critical period of the case; they may provide counsel with a track record of good behavior, and hopefully, information that can be used in the juvenile's defense; and, they may serve to show the Court that the juvenile is a good candidate for probation and need not be incarcerated. The defender's role is to argue for reasonable conditions under the particular circumstances and to ascertain whether the juvenile and her family have the capacity to support the

youth in complying with the conditions. For these conditions to function effectively as incentives to good behavior, juvenile defenders must spend enough time with youth to ensure they understand the conditions and the importance of abiding by them, and counsel must be comfortable at some minimal level, that the youth has the capacity to comply with the conditions and that there are no obvious barriers to his compliance. The lack of time allocated to defenders to prepare makes this phase of the proceedings more difficult.

### ***Pre-Trial Advocacy and Preparation***

The pretrial stage of the proceedings sets the stage for strategies at trial, negotiations with prosecution, and for adjudication and disposition hearings.<sup>117</sup> During this critical period juvenile defenders must investigate the facts, obtain discovery from prosecutors, and acquire additional information about a client's personal history through school authorities, juvenile community corrections officers and any other person with pertinent personal information. At this juncture, pretrial motions and preparation of any defenses to the charge are submitted to the court. Juvenile defenders ideally should be able to identify any mental health issues or learning disabilities particular to this client, and determine whether or not those issues have played a part in the alleged misconduct of the juvenile.

It is at this stage that the attorney needs to determine whether the child has developmental or mental health issues which would impact the *mens rea* elements of the case against the child. Counsel should gather school, counseling, mental health, and treatment records. Counsel should also obtain releases from parents so that she can review documents and speak to treatment providers and evaluators. Counsel needs to interview the child and his family at some length to assess roughly the strengths and weaknesses of the family system. Counsel must determine whether or not an evaluation will be necessary and, if so, how to fund it. The ability to negotiate the resolution of the charge and to provide the most appropriate rehabilitation program will likely depend in large part on the investigation work done during this period.

Children eligible for or receiving special education are afforded the protections of federal statutes such as the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1415, Section 501 of the Vocational Rehabilitation Act, 29 U.S.C. 794, and the American with Disabilities Act, 42 U.S.C. §12132. These congressional statutes protect children from being subjected to school disciplinary actions without due process or discriminatory actions by the school and often mandate that schools continue to educate even those students who have been expelled. In addition, acquiring an understanding of a client's educational needs may help the juvenile defender in raising issues of competence and requisite intent, negotiating with prosecutors, developing appropriate dispositional plans and the funding to implement them. This is crucial in view of the frequency with which educational difficulties are harbingers or early symptoms of children's other adjustment and development issues.<sup>118</sup> Defenders, to fully represent young clients, must increasingly be aware of these educational rights under state and federal law.

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### *Plea Negotiation and Adjudication*

*Plea negotiations need to be fully considered with a complete understanding of the short and long-term consequences of different scenarios.*

There are very few bench trials in juvenile court in Maine. Most cases end with a plea agreement. This is not necessarily a bad outcome and should not necessarily be read as a failure of advocacy. Juvenile prosecutors often make good offers that attorneys would be foolish *not* to recommend to clients. Prosecutors often seem to be taking into account not only any weakness in their case, but also the need to honor the purposes of the juvenile code.

But pleas are not an appropriate option in those cases where defenders, for the sake of expediency, recommend a quick resolution of a case because the consequences are relatively few. Too many defenders and prosecutors are under the mistaken impression that all juvenile convictions are sealed from public view, or are automatically expunged at age 18. They are not, and the consequences of the distribution of juveniles' records can be serious and long term.<sup>119</sup> In fact, adjudications for felony-type offenses have begun to appear on credit reports and employment investigation reports in the southern part of the state.

Excellent juvenile defense practice in plea negotiations is critical. A plea negotiation is an opportunity for defense counsel to obtain positive outcomes for youth and might be squandered by lack of preparation. Juvenile defenders must be versed in the "Three P's of Plea Negotiation": Preparation, Planning and Presentation. Plea negotiations need to be fully considered with a complete understanding of the short and long-term consequences of different scenarios. The juvenile defender must be proactive, e.g. submitting a proposal prior to the state's offer, for example, and not simply reacting to the state's offer.

A juvenile defender must also be fully informed about how an adjudication of guilt could affect the youth's adult life. For example, a defender needs to be aware of which crimes become matters of public record, how an adjudication will affect credit ratings, or the ability to apply for financial aid. A complete understanding of the collateral effects of an adjudication is necessary for juvenile defenders to effectively and accurately represent a youth in a plea negotiation and properly advise their clients as to the risks of going to trial.

A juvenile's guilt or innocence is determined at the adjudicatory hearing, or trial, where the state has the burden to prove beyond a reasonable doubt that the youth has committed a juvenile offense. These adjudications are presided over by a judge, not a jury. Even when an adjudication ends in a delinquency finding, the mitigating evidence that counsel presents at the adjudication stage is critical to the judge in making an individualized, fair and reliable determination at disposition.

### *Bind-over Hearings*

The bind-over of a juvenile to the Superior Court is the most serious proceeding that takes place under the Juvenile Code. The transfer of a juvenile into the adult system effectively removes any real possibility of providing treatment or rehabilitation services to the juvenile. In addition, any conviction in the adult system is a public matter and is likely to affect the child's life for years after the charge is resolved. Fortunately, bind-over petitions are rare in Maine. In 1997, the last time the state was surveyed, the data indicated that, since 1992, there had been only 12 bind-over's per year, or about one per month, state-wide.

Maine's bind-over statute is unlike most transfer statutes in that it imposes no age limits and essentially gives the judge near absolute discretion to bind-over or not. In 1995, the Maine Supreme Judicial Court interpreted the bind-over statute to require the juvenile court to consider three factors for binding over a juvenile—the seriousness of the crime, the characteristics of the juvenile, and the dispositional alternatives—but did not dictate the weight to be given each factor. The Court also held that the statute does require that each factor be shown affirmatively before a juvenile may be bound over. *State v. Williams*, 653 A.2d 902 (1995). The court must consider criteria related to the child: his age, background, psychosocial history and juvenile record. The court must also consider the issues of public safety: the nature of the offense, whether violent or premeditated; whether future criminal conduct will be deterred by keeping the child in a juvenile system; and, whether failure to bind the child over would diminish the gravity of the offense.<sup>120</sup> The statute was amended in 1997 to place the burden of proof on the child in those cases that involve serious violent crimes, 15 M.R.S.A. Section 3101(4).

Because the filing of a bind-over motion is rare and because of the serious nature of the proceeding, no defender should negotiate or try a bind-over motion without the assistance of an attorney with significant prior experience in the defense of bind-over motions. The juvenile's argument must be based upon his amenability to treatment, which requires an analysis of the juvenile and of the treatment programs to which he might be sent.

The focus on the juvenile's readiness for treatment must begin with a thorough analysis of his history, character and personality, and should be conducted with the assistance of an experienced psychological evaluator. Often, the court will order a psychological evaluation at court expense to address these issues. Counsel for the juvenile should not be limited to relying on the court's expert, however. Counsel should request that the court award funds to hire independent psychological experts to review the court's evaluation, to confer with and advise counsel, to administer any additional testing, to obtain additional background and collateral source material, and to testify at the hearing, if necessary. Although some courts willingly grant counsel's motion for these services, other courts resist the added expense and the probability of a battle of experts if the matter were to go to hearing.

Amenability to treatment also requires a showing that there is an appropriate treatment program available. Again, assessing the issues involved in identifying an appropriate treatment program requires the assistance of experienced counsel. The evaluator(s) should make specific recommendations to address the needs they have identified in the child or youth. Finding the treatment program required, either as a substitute for transfer to an adult prison or as an aftercare program for one of the youth centers, and arranging for payment, are complicated problems which require a fairly sophisticated understanding of the treatment programs available within and outside the state, familiarity with the various child-serving departments within the state, and funding sources within and outside of those various departments.

A key element in representing a juvenile at a bind-over proceeding is the development of a relationship with the juvenile and his family. Often, counsel will be faced with a juvenile, and even parents, who have become committed to simply agreeing to the binding over of the child and letting the child "do his

*Because the filing of a bind-over motion is rare and because of the serious nature of the proceeding, no defender should negotiate or try a bind-over motion without the assistance of an attorney with significant prior experience in the defense of bind-over motions.*

time." Assessors were told by defenders that they had observed Juvenile Community Corrections Officers, the police, and staff at the juvenile detention facility to have "advised" a child of the futility of any defense and commenting that the child would be "better off" just getting on with his life. For a juvenile who has not been successful in the community, the option of "doing time" in an adult facility, where little will be asked of him and his family and his girlfriend can visit him, is, on its face, often perceived to be more attractive than spending time in a facility which will require some level of treatment and the psychological and emotional discomfort that often entails. Often, however, the child has simply lost hope and has no confidence that he can change, or that the "system" can provide any real support for him. Counsel's first duty is to give the child and his family, a sense of hope that it is worth spending time assessing options and developing a credible defense rather than simply moving the juvenile into the adult system. As the case develops, more often than not, counsel will be able to earn the trust of the juvenile and, at the very least, convince prosecutors to improve their offers as an alternative to going through a contested hearing.

### *Disposition*

Following an order of adjudication, the court considers evidence on disposition that best serves the interests of the juvenile and the public. There is a broad range of dispositional alternatives, including fines, participation in treatment services, community service, restitution, commitment to the custody of human services and long-term or short-term commitment to the juvenile correctional facility. The most common disposition is a suspended commitment to one of the youth development centers and a period of probation with a list of standard and special conditions.

A disposition hearing may be continued to provide for the completion of reports or other evidence, to allow service to be completed on the parties, or to make a referral to place the child in an alternative work, restitution or drug treatment court program.

In many regions, the disposition phase of the process is the most important part of that process. Skillful defenders can often obtain a better result in the negotiation of the adjudication portion if they can craft a disposition that meets the state's needs for retribution, rehabilitation and protection of the public. The most effective defenders begin to address the issues of disposition as soon as they gather data on the child and the allegations. A practical and well-thought-out disposition plan can dramatically affect the negotiations with regard to the underlying offense. The disposition is an opportunity for defenders to address the child's needs in a creative fashion in accord with the Code's mandate that treatment and rehabilitation are the most important goals. When defenders have obtained sufficient information about the needs of the child, they are typically able (with the assistance of the youth, his parents, treatment providers and evaluators) to develop a plan which will best meet the youth's needs while assuring the prosecutor and the court that issues of deterrence and public safety are addressed. The prosecutor, and ultimately the Court, may be willing to significantly reduce the nature of the charged offense if the disposition plan credibly reduces the likelihood of recidivism.

If the case proceeds to a full dispositional hearing, that is a critical time for the juvenile defender to present all relevant evidence of the child's specific needs, limitations and any other facts that would assist the court in making an individualized determination of disposition. The disposition is the last stage in the formal proceedings in which defense counsel can fight to ensure the rehabilitative purposes of the code are met by advocating for a dispositional plan that meets the child's and the community's needs.

### ***Post-Disposition Proceedings***

The structure of Maine's juvenile justice system offers an extremely limited role for juvenile defenders once their client is in the custody of Department Human Services after a short or long-term commitment to a youth facility. If a youth is committed to a juvenile detention facility, the Court is required to review that commitment not less than once every 12 months.

The statute notes, however, that that review does not affect the actual commitment to the correctional facility.<sup>121</sup> The statute does not require that counsel be assigned to represent the juvenile at any such hearing; in practice the attorney who previously represented the juvenile is rarely present at the time of the review. In fact, although statistics were not available in most courts, it does not appear that courts interpret the statute as requiring them to routinely order such reviews. In any case, the statute does not provide the court with any power to intervene in the juvenile's situation, and the review's only value is to refocus attention on the juvenile and, at some level, impose a moral duty on the detention facility administrators to account for the treatment of the juvenile.

If a child is committed to the custody of the Department of Human Services (DHS), follow-up court reviews of the child's commitment are required at regular intervals. The court must receive reports regarding the child's welfare and be apprised of progress every six months.

If a youth remains in the custody of his parents or guardians and is committed to a juvenile detention facility, the Department of Corrections (DOC) is responsible for reviewing whether the goals of dispositional order are being met. Unlike the DHS review, a DOC review is required only every 12 months until the juvenile is discharged.

These post-dispositional reviews are statutorily required<sup>122</sup> and must include a description of services provided to the child, an individualized plan for services for the next year and a certification that the recommended services are available and will be provided to the juvenile. The reviews must also contain a statement that the plan imposes the least restrictive alternative consistent with care for the juvenile and community protection. This report must be provided to the juvenile's legal guardian.

In practice, these Department of Corrections and Juvenile Court reviews are rarely held. The statute does not provide the Court with any authority to do anything to intervene on the juvenile's behalf as a result of these reviews. Consequently, in practice, the bench and bar routinely ignore the requirement. Juvenile defense counsel should always schedule and try to take advantage of the review system to monitor a child's progress at Long Creek or Mountain View Youth Development Centers and be in a position to exert pressure to change treatment plans when necessary.



# CHAPTER THREE

## Assessment Findings

### Overview

This assessment of juvenile defenders found significant structural and institutional barriers to juvenile counsel's ability to provide effective representation of children and youth:

- Juvenile defenders are not offered training opportunities or a statewide system of support that would ensure they provide the best quality of legal defense to juveniles. The caliber, education and support of juvenile defenders in Maine needs immediate attention, resources and support.
- The quality of juvenile defense in the state of Maine is circumscribed by a shortage of resources and services targeted to addressing mental health needs for juvenile defenders to propose at the dispositional stage.
- The state makes no effort to partner with defenders to promote the best use of existing state resources. The shortages, in conjunction with the state's failure to responsibly make accessible youth services, severely limit juvenile defenders' abilities to creatively and aggressively advocate for the rehabilitative goals of the Maine juvenile code.

The discussion that follows explores these barriers to effective representation and the consequent marginalization of juvenile defense practice. The goal of this aspect of the assessment is to provide a deeper understanding of the challenges defenders face in serving their clients in the hopes of identifying critical junctures at which defenders' practice can be improved and systemic policies and practices can be changed.

## Barriers to Just Outcomes

### *Defender Training*

There are no judicial or legislative requirements for training or experience prior to representing children in juvenile matters in Maine. Even if a juvenile defender is interested in professional development and training, there are virtually no resources in the state of Maine. One judge noted, “[j]uvenile defenders need more education—juvenile bar and bar associations do not do enough and are not designing programs targeted to juvenile defenders.”

Until 2002, juvenile defenders had to leave Maine to receive continuing legal education. For juvenile defenders in remote areas of the state, the nearest Continuing Legal Education opportunities are routinely an eight to ten hour drive away. In 2002, at the initiative of a juvenile defender,<sup>123</sup> the Maine Association of Criminal Defense Lawyers offered a two-hour segment of its larger program to the discussion of juvenile justice issues. In June 2003, another one-hour segment was offered for training on juvenile competence issues. Although an improvement, this level of training does not provide the level of training needed in a complex and ever changing area of law.

In the last two years, the New England Juvenile Defender Center has launched a comprehensive website related to juvenile justice issues in New England. Currently, it provides important background statistical information and a motion/brief bank, but does not yet offer juvenile defenders comprehensive training opportunities nor specific case support on emerging legal issues in juvenile matters. These are needed additions.

The need for training is not merely academic. District court judges were clear that there are significant areas for improvement. As one district court judge stated, “[a]ttorneys would benefit from trainings—they need inspiration, they need roundtables of teens telling them what it is like to be ignored by their attorney.” Particularly in rural areas, the quality of representation suffers without a vibrant community of juvenile defenders joining together for inspiration and education.

Another district court judge said juvenile defenders need to be trained in:

- Speaking to and interviewing clients;
- Identifying and locating treatment and program options;
- Assessing client needs;
- Ascertaining mental health and special education issues earlier in the process; and
- Developing attorney mentoring programs to promote best practices.

Most juvenile defenders interviewed for the assessment were willing and interested in mentoring, additional training and general support. Currently, there are no statewide resources, pooled information for, or motion banks available to, juvenile defenders. This lack of training and access to resources and information severely impacts the quality of representation, especially in less populated jurisdictions which lack attorneys steeped in juvenile defense.

### *The Culture of Juvenile Court*

In Maine there is no specialized court dealing solely with juvenile matters. The district court retains jurisdiction of all juvenile matters, and the juvenile docket is assigned to different district court judges. In populous areas, this results in the rotation of judges handling delinquency cases. While continuity and consistency in handling juvenile cases may be ideal, it is not uniformly available in Maine's district courts. In addition, there are no "juvenile judges" with specific expertise in the area of the juvenile code, adolescent development, or research in best practices for handling youthful offenders, except to the extent that some judges have had years of experience with hundreds or even thousands of juvenile offenders.

In more rural areas, the same judge regularly sitting in court hears all cases, including juvenile matters. These rural areas may benefit from the consistent oversight of one judge who often has significant time to devote to each juvenile. This can assist the juvenile defender in her advocacy as the court may be more invested in each case, i.e., the juvenile is more than a docket number.

There are dangers, however. When there is only one judge, and that judge is the one who decides whether a juvenile defender gets assigned cases and then paid for her work, the defender may unconsciously represent a juvenile in the manner consistent with the perceived attitude of the resident judge. For example, if the court makes clear that it does not think zealous advocacy is the best course in juvenile proceedings, there may be pressure to conform practice to that standard. Similarly, if one judge in the county is poorly trained or hostile to juvenile matters, there is no relief. Although all the judges interviewed for this report received strong marks for quality and consistency with juvenile matters, the potential for such problems exists elsewhere in the state.

### *The Culture of "Camaraderie"*

In general, the practice of law in the state of Maine appears to have a strong ethic of professional courtesy. It is a small bar and many attorneys work together every day. Although older members of the bar report a decrease in professionalism, the assessment team found that, in particular, members of the juvenile bar work cooperatively as they represent their respective clients. Juvenile defenders foster relationships with probation officers, the Assistant District Attorneys, and the judges.

There are obvious advantages to this compatibility. If defenders practice with the assistant prosecutors, judges and probation officers regularly, positive, personal relationships should increase job satisfaction. In juvenile court, where trials are theoretically more harmonious than in adult court, personal relationships can help defenders negotiate better outcomes for their clients.

There are disadvantages to this manner of practice, however. Juveniles themselves report that they do not know whom to trust because everyone is "huddled together" in court. "The attorney is the buddy of the probation officer. I feel like I don't have anyone to defend me," one youth told an investigator, to murmurs of assent from other youth at the Long Creek Development Center. Another young boy explained how he understood it: "They all eat lunch together—the attorney, the PO, the judge."

*"The attorney is the buddy of the probation officer. I feel like I don't have anyone to defend me," one youth told an investigator.*

Juvenile defenders in Maine need to find a way to maintain collegial relationships with their colleagues while being sensitive to the appearance of such relationships to their young clients. Defenders must make great efforts to communicate with youth about the structure of the system and explain their role in the process and why they must speak with the prosecutors and Juvenile Community Corrections Officers.

This relates to the lack of time spent with clients, lack of understanding of adolescent psychology, and children's particular mistrust of adults, which is endemic in this population. Juvenile defenders, along with all the other participants in the system, must work harder and longer to earn the trust of their clients.

A similar concern identified in this study is the systemic pressure for juvenile defenders to act in the "best interest of the child," sometimes in opposition to their role as zealous advocates. None of Maine's rules of professional conduct speaks of zeal—only competency.<sup>124</sup> ABA Model Rule 1.3, which has not been incorporated into Maine's Bar Rules, requires dedication and commitment in the vindication of the client's cause. Prosecutors reported a better working relationship with less adversarial juvenile defenders. According to prosecutors, these juvenile defenders were appropriately focused on best outcomes and availability of services for children.

Across Maine, judges also sent a clear message that mediation, conflict resolution and rehabilitation are the goals of juvenile court. More specifically, there was the strong implication made by various judges that juvenile defenders' first duty is to consider the best interests of the child; zealous advocacy on legal grounds is not favored. As one judge put it:

*A good juvenile defender is: Committed to kids, has a passion for justice for kids, does his homework, meets the kid and knows them well enough to give the judge a view of the kid and the kid's family. They know what resources exist and are realistic about freedom for the kids. They try to work for best interest of the kids and create a solution that will avoid the return of the kid to court.*

*A similar concern identified in this study is the systemic pressure for juvenile defenders to act in the "best interest of the child," sometimes in opposition to their role as zealous advocates.*

This conflict in approach, however, damages the credibility of certain aspects of the system which reflect ongoing conflicts nationwide in what exactly is the role of a juvenile defender: zealous advocate or attorney working in the [adult's perception] of what is in the best interest of a young client. A symptom of this culture of the juvenile justice system is the pervasive absence of juvenile defenders' motion practice in juvenile court. Rarely do defenders file such routine motions as motions to suppress; motions to dismiss are almost unheard of. Judges and defenders across the state attributed this to the "less adversarial nature" of juvenile law in Maine.

Consequently, juvenile defenders are caught between a legal system that may appear to require legal advocacy to ensure due process, but in reality puts a *parens patriae* slant on juvenile defenders that may sometimes coincide with the interests of prosecutors. As one juvenile defender assessed it: "Sometimes we sell 'em down the river. I get confused as to whether to be an advocate or act in the best interest of the child."

The pressure to act in the best interest of the child creates special problems.

Every interviewed group focused on the need for juvenile defenders to become more knowledgeable about available programming for youth. The arms of the state, the court and the prosecutor—those which have historically been charged with finding appropriate treatment programs for youth—have shifted the burden of providing a “plan for resources” onto juvenile defenders. As one judge said,

*Defenders who come to court with a plan have made a tremendous investment in the case. When an attorney can't come with this level of preparation, they are less effective. Some attorneys don't understand that finding alternative services is part of the job. They can't realize that in juvenile court the legal model alone is not sufficient. Those who reject that part of the job as too "social worky" don't get it and are only good on limited kinds of cases.*

The responsibility for finding resources for at-risk youth has been placed entirely on the shoulders of juvenile defenders who are the least supported actors in the system. Juvenile defenders work independently, without the support of state trainings, state manuals from DHS or BDS or contract agencies regarding available services, and without the benefit of a formal association of juvenile defenders or access to social work support. They are not associated as a trade organization, by which technical support can be provided or resources shared. Defenders with no training in defense or social service systems are left on their own to navigate multiple bureaucratic systems with changing rules and regulations. Defenders do not adequately challenge claims of state agencies regarding service availability. These agencies presume little or no obligation to make public, much less easily accessible, listings of services or actual resources.

Further compounding this imbalance in the division of labor are the structural disincentives to defender remuneration. Although the practice varies considerably from region to region, defenders often receive little or no compensation for spending time to secure services for children. When they do, the funds typically are rationed and inadequate. Thus, in Maine, juvenile practice can mean abdicating zealous legal advocacy and adhering to a “social worky,” “best interest” approach to ensure harmonious relations in court, in a system which offers little support for locating and providing the services that would most meet a child’s best interests. Whether it is appropriate for the system to expect a juvenile defender to function as a “case manager” is an academic question, for the services juvenile defenders are expected to locate are scarce.

This combination of factors makes for a system that reduces and minimizes the quality of juvenile defense on behalf of children and youth in the state of Maine.

### ***Practice Standards and Compensation***

Maine requires no special expertise or skills to qualify for appointment as a juvenile defender. Attorneys are not required to show particular interest in juvenile defense; they are not required to meet certification requirements or take special continuing legal education courses. The Court presently requires specific training and ongoing legal education for guardian *ad litem*s (GAL’s) who possess a law degree and those with a graduate education level degree in social work or licensed as a psychologist or psychiatrist.<sup>125</sup>

*Juvenile defenders work independently, without the support of state trainings, state manuals from DHS or BDS or contract agencies regarding available services, and without the benefit of a formal association of juvenile defenders or access to social work support.*

Juvenile defenders in the state of Maine are private attorneys who, in most cases, are court-appointed in individual cases. In the majority of cases where indigent youth require an attorney, the court clerk controls which attorney is assigned from the roster of eligible attorneys in the area. There are no statewide training requirements or standards that act as gatekeepers to the roster of attorneys eligible for appointment to juvenile cases. Several judges remarked that there is effectively no or a low threshold for appointment to juvenile cases. Although the court clerk typically makes these assignments, district court judges interviewed for the assessment acknowledged taking an active interest in some appointments and selectively appointing skilled counsel for particular cases.

*Juvenile defenders in the state of Maine are private attorneys who, in most cases, are court-appointed in individual cases.*

Unlike a public defender system that, in theory at least, pools resources and provides training and oversight, the private attorney model relies upon the individual initiative of the defender to provide quality representation and aggressively represent their clients both in providing zealous defense, and in actively seeking out appropriate treatment and resources. However, many juvenile defenders interviewed reported that juvenile defense is at best a part-time practice. These attorneys reported that they cannot support themselves on juvenile defense practice alone and find little incentive to commit their time or funds to increase their legal skills and understanding of child development.

As noted in Chapter II, juvenile defenders are compensated at \$50 an hour with a \$315 maximum fee for each case.<sup>126</sup> The judges review and accept or reject all requests for payment. There is no uniform practice on fee payment; some judges routinely cut juvenile defender's bills while others will authorize payment significantly above the \$315 cap. This approach to compensation leads to mixed messages and results that are more judge-based (e.g. guessing which judge will approve work conducted above the cap) than it does to systemic compensation for work conducted on a case. The current system of compensation appears to serve as a disincentive to vigorous investigation and representation as the costs of zealous advocacy are not covered by the state and therefore come out of juvenile defenders' pockets.

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While no data was available for juvenile defense attorneys specifically, it appears that the average cost per attorney voucher in Maine district courts for non-child-protective cases is less than \$200 for less than 4 hours spent with the majority of youth represented. While this may be an appropriate amount of time given the fact that most cases involve youth charged with minor offenses, this allocation of time may also explain youths' feelings of being ignored and inadequately dealt with by their defenders.

YEAR	Average Voucher Payments for All Attorneys	Hours Spent/Case at rate of \$50/hour
2000	\$192	3.84 hours
2001	\$227	4.54 hours
2002	\$232	4.64 hours
	18% increase	18% increase

**Source:** State of Maine Administrative Office of the Courts

As the court reimbursement rate is low, few experienced practitioners continue with a juvenile defense practice once they find more financially rewarding work. Where practitioners have been able to develop a practice that relies largely on defending juveniles, their ability to specialize has enabled them to provide some leadership in the development of resources to the defense bar. It is clear that within the juvenile defense bar, there is interest and commitment to improving the quality of representation. What is lacking is the support and structure to tap that commitment.

In fact, much of the juvenile defense bar throughout the state is composed of new, inexperienced attorneys. These attorneys may bring new enthusiasm to their practice and perform well if they have an experienced mentor. Many, however, have no mentor and lack training, experience and knowledge of the services necessary to competently represent juvenile defendants. Perhaps most problematic for young attorneys is their lack of familiarity with the state's social services system, which provides alternatives to detention. The state often compounds this problem: most agencies are uninterested in disseminating information about their services to the juvenile defense bar. No state agency reported to the team of investigators that they perceived such an affirmative step to be their obligation.

As one district attorney commented about the court appointment system: "Through the appointment process you get the youngest, least experienced [attorneys]." And this is the main process by which youth are assigned counsel.

*Unlike a public defender system that, in theory at least, pools resources and provides training and oversight, the private attorney model relies upon the individual initiative of the defender to provide quality representation and aggressively represent their clients.*

## Access Issues

### *Timing of Appointment of Counsel*

As noted in Chapter II, when a child is arrested in Maine, the police or juvenile community corrections officers must contact the child's legal guardian within 12 hours and "without unnecessary delay."<sup>127</sup> There is no requirement however that they contact a juvenile defender. If the child is subject to a custodial interrogation, the child is entitled to *Miranda* warnings and therefore entitled to counsel if requested.

Juvenile defenders interviewed for this assessment did not know whether police were giving youth their *Miranda* warnings. What they did report, however, was that the overwhelming majority of children are making statements against their interests to the police. Often, statements to the police become the foundation of the prosecution's entire case against the juvenile. Some defenders proffer that as many as 80% of their clients make statements to the police. There is widespread concern among defenders that, due to the enormous pressures of the situation, the particular vulnerability of youth, and the unavailability of defenders in these situations, many young clients are making false confessions or inaccurate statements, in the absence of a parent, consenting adult, or attorney with the child operating under the belief that he must make statements to avoid other sanctions.<sup>128</sup>

### *Arraignment and Access to Counsel*

In Maine, juvenile defenders reported that all youth are provided with an attorney for a detention hearing. If the child does not already have a court-

appointed attorney, court-appointed counsel for the day (termed “Lawyer of the Day”), serve as counsel for a youth at the detention hearing.

Although the Lawyer of the Day system allows for the child to have legal representation at the hearing, juvenile defenders across the state report that the use of Lawyer of the Day system for detention hearings fails to provide adequate legal protection for youth. The statute requires that the detention hearing be held within 48 hours of the arrest.<sup>129</sup> Lawyers of the Day—for obvious logistical reasons—cannot be, and are rarely, prepared for these hearings; they have not met the client prior to moments before the hearing, nor have they been to the detention facility to interview the child and fully appreciate the nature of the case. This lack of preparation impacts the lawyers’ ability to provide competent representation at the detention hearing.

Attorneys are rarely willing to reschedule a child’s hearing to ensure that they have adequately investigated the case and can provide the most comprehensive defense possible. Several investigators suggested that attorneys should be encouraged to postpone hearings until they are better prepared to defend their young clients, especially when charges may lead to long term pre-trial detention.

In addition, the Lawyer of the Day may not see it as her obligation to guarantee that the child applies for court appointed counsel *after* this initial hearing is completed and prior to leaving the courtroom. This omission has significant consequences if the child is detained and sent to a juvenile correctional facility. If the child does not have a court-appointed attorney when he is sent to detention, no single entity appears to have the responsibility for ensuring that an attorney is appointed in anticipation of the youth’s next court date. That means critical time is wasted when no attorney is investigating and preparing the case. The lack of legal representation means no legal advocate can require that the court review the detention order on a regular basis. Given the enormous importance of counsel once a child has been held in custody, it is imperative that the justice system guarantee that an attorney is appointed to every detained child, and that the child is visited by counsel within seven days of their hearing.

### *Waiver of Counsel*

Almost all investigators noted the personal and solicitous nature of the involvement of the district court judges in the hearing and adjudication process. As one district court observer noted, “prior to coming to Maine, I had never seen a judge actually talk to a kid—ask him what was going on, why he had stopped going to school. It was really amazing.” Many district court judges spend time explaining to children what their rights are and guaranteeing that they have an attorney. District court judges regularly reported refusing to accept pleas from juveniles before they had spoken to an attorney. Other interviews confirmed that waiver of counsel is not an issue in Maine.

Although some courts are more willing to allow pleas to minor offenses without counsel, the team of investigators universally confirmed that judges considered it imperative that juveniles be represented in all stages of the proceedings. Indeed, many judges reported that if a parent or guardian refused to pay the fee for a private attorney, the judges made a referral for court-appointed

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representation regardless of income. This practice was confirmed by defenders interviewed for the assessment.

Juvenile defenders are equally committed to ensuring that juveniles are represented in all proceedings. In Maine, it is the common practice of juvenile defenders to “step in” for each other when scheduling conflicts arise. The defenders appear to watch vigilantly to ensure that no child proceeds in juvenile court without some legal advice or representation.

## Defense Practices in Court

There seemed to be consensus among all interviewed as to what makes a good juvenile defender. As one Department of Corrections official explained, echoing many other comments: “You know a good defender when you see one. It’s an art form. They are compassionate, willing to do their homework to get all the information they need to represent client, instead of skating into court by the seat of their pants.”

The assessment revealed a stark dichotomy in the quality of juvenile defense across the state. In every jurisdiction there is a core group of dedicated defenders who provide quality representation. They are experienced, engaged in their work and passionate about providing a high level of representation to indigent juveniles. The investigators also perceived a clear dichotomy between that caliber of defenders, many of whom are self taught and take the initiative to increase their abilities in representing youth, and the defenders who find the work to be of little financial value, social, personal or legal interest.

This second group reportedly fails to engage with their clients or zealously advocate for them. As another official explained:

*There are two categories of attorneys: some are very engaged, especially three or four from York and Cumberland counties, who are specialized in working with kids and spend a lot of time at Long Creek. Other attorneys say, “I will see you in court,” and then talk to the kids in the courtroom hallways. It’s rare to see a middle ground between these two groups.*

What also became clear during this study is the significant difference in quality of juvenile defense in the least populous areas. District court judges report that in such areas the availability and consistency of representation by juvenile defenders is lower, and frequently their level of experience and knowledge is poor.

## “Lawyer of the Day” System

Although Maine’s children and youth are receiving legal advice prior to entering a plea, the representation is not always of the caliber or duration required for quality representation of youth who need special attention to comprehend the ramifications of this stage of the pleading. Most youth meet a defender through the district courts’ use of the “Lawyer of the Day” system where a private attorney is retained by the court to be available for juveniles at their first appearance. Judges send unrepresented youth to speak with the

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*The entire approach of the Lawyer of the Day practice is problematic in that it appears to be based on an adult model of representation—where it is presumed that a child or youth is capable of fully comprehending jargon, choices, and consequences in rapid fire succession in a highly charged and anxious context.*

Lawyer of the Day before they will accept a plea from the youth. The court, however, typically cautions youth that the Lawyer of the Day is only able to give brief legal advice given the number of kids seeking assistance.

The original purposes of the Lawyer of the Day program are unclear. Some of the persistent purposes cited include:

- Assuring that juveniles and families understand the process, their rights and options;
- Assessing, however briefly, the nature and strengths of the state’s case;
- Assessing the status of juveniles, however briefly, with respect to their family systems, school status, mental health and treatment needs prior to any consideration of resolving the case; and,
- Resolving only those cases in which the legal issues are straight forward, the impact of a plea is clear to the juvenile and the family, and the juvenile and the family clearly understand the nature of the proceedings and their rights and options.

In the course of this study, it became clear that the program’s function and practice vary in Maine’s district courts. To different degrees, judges are worried about due process, statutory requirements, and child and guardian comprehension of rights.

The Lawyer of the Day approach provides children and youth with inconsistent quality of representation. One assessor observed that “the Lawyer of the Day was the least effective lawyer I had ever seen!” Another assessment team observer in a different courthouse concluded that the Lawyer of the Day far surpassed other retained counsel appearing that day. This wide variation in the quality of the lawyers used in the Lawyer of the Day program seems consistent with the assessment’s findings related to the quality of juvenile defenders generally.

The entire approach of the Lawyer of the Day practice is problematic in that it appears to be based on an adult model of representation—where it is presumed that a child or youth is capable of fully comprehending jargon, choices, and consequences in rapid fire succession in a highly charged and anxious context. Child development experts find these conditions do not lead to high comprehension, much less informed-decision making by youth in the best of circumstances. To add the factors of a rushed attorney with no specialized training in dealing with youth, means Maine provides access to counsel but under conditions that vitiate children’s capacity to capitalize on their due process protections. And as noted previously, the absence of any system to ensure follow up on the cases means that the ball is for all intents and purposes dropped for too many youth at the initial stage of the proceedings. It also means that a juvenile’s first exposure to the juvenile justice system is often brusque, harried and uncommitted.

Although the Lawyer of the Day program is an important effort to guarantee that children proceed with some legal counsel at a detention hearing or first appearance, the consistency, quality, and inadequate duration and depth of the representation is at best a missed opportunity to work productively with children and their families, and at worst a miscarriage of justice due to the mediocrity of representation provided.

### *“In the Hallway, No One is Listening, No One Cares”*

Interviews with youth in the Long Creek Detention Center and Mountain View Treatment Facility found that many youth feel they are poorly represented. More than half of the 25 youth interviewed at Long Creek did not know their lawyer’s name. When asked whether they trusted their attorneys, there was a general consensus that it was not wise to be too trusting. One boy explained that he felt the juvenile defender was “working against me...they want you to take a plea, but they don’t ask for the pleas you want.” A boy at Mountain View noted, “Judges just listen to what the DA has to say. My attorney didn’t do much anyway. He really just spent the whole time trying to get me to agree with what [the DA] said.”

Another common complaint was how little time juvenile defenders spend with their clients. “They talk to me for three minutes looking the other way. I didn’t understand what happened in court. I was in court for five minutes and I am just another name on the list,” said one of the boys at Long Creek. There was a concern among the boys that the juvenile defenders failed to conduct any independent investigation and instead relied exclusively on police reports. One boy recounted his attempts to identify witnesses and suggest other people from whom the attorney could obtain exonerating information. According to the boy, his attorney never followed up.

The overwhelming theme of the boys interviewed was that they did not understand the proceedings and their attorneys did not adequately explain or guide them through the process. One of the boys noted his confusion in court: “I can’t understand. The mumbling makes it hard. I don’t understand the words.” Another voiced the frustration of many boys who felt that their attorneys failed to advise them about the situation: “I had my court date continued seven times since April. Seven months in here and I am still not sentenced and I don’t know why.”

The staff at both Mountain View and Long Creek validated the boys’ statements. Many of the staff at Mountain View felt that explanations from defense attorneys was often inadequate. They noted that youth, even those being referred to secure care after adjudication, often did not know what had happened in court, were clueless about the actual process that got them there, and entered the facility in a state of anxiety and anger. Staff in both facilities in the secure and detention areas, sometimes call attorneys in an effort to have them return phone calls from youth or answer legal questions to allay their anxieties.

While some youth are provided quality legal representation, the majority interviewed did not know their lawyer’s name, understand the proceedings or fully grasp the nature of their dispositions. The consistency of these youths’ complaints is a vivid illustration of the serious and significant problems facing Maine’s juvenile justice system.

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### *Access to Experts*

One indication of the lack of zealous advocacy discerned in this study was the universal recognition by district court judges that many juvenile defenders were not petitioning for available court funds for expert assessments.

Given the extremely high rate of mental health problems exhibited in this population, the juvenile defense bar’s insistence on the use of court-ordered

and/or independent evaluations and expert testimony should be staples of court hearings: they are not.

### *Bind-Over Representation*

No member of the investigative team observed a bind-over proceeding during the assessment. This would appear to be in keeping with the fact that so few bind-over hearings are held and, according to attorneys interviewed, their number seems to be decreasing even further since 1997, when the last survey of bind-over proceedings was conducted.

Interviews with attorneys having extensive experience in defending bind-over cases suggested that the level of skill necessary to handle such an important proceeding is high. Attorneys cited extensive experience in juvenile and adult criminal court proceedings or the assistance of an experienced attorney who has previously represented youth in bind-over proceedings as prerequisites. No such prerequisites exist at present.

### *Dispositional Advocacy*

Throughout the state, there was serious confusion on the part of juvenile defenders, prosecutors, juvenile community corrections officers, and judges about the roles of the Departments of Corrections, Human Services and Behavior and Developmental Services and their legal responsibilities to children in the juvenile justice system. This confusion must be characterized as “serious” since these are the major youth serving agencies in Maine; it is critical that juvenile justice personnel understand these agencies’ jurisdictions and responsibilities to ensure that juvenile defenders can locate services for youth and that youth can benefit from them in a timely manner. Eligibility criteria to access services from each state agency appeared to be a mystery. “What must be frustrating for everyone in the court system is that DHS and DBDS are very different. It’s hard to know what people perceive we do,” said one DBDS representative. This confusion affects all stakeholders and decision makers in the juvenile justice system, including the agencies themselves.

Because services to Maine youth are contracted out to private agencies by state agencies, there is the increased likelihood that children will slip through the cracks. Private agencies can deny responsibility, can claim they have only so many available beds, and refuse access. Juvenile defenders and judges are not kept apprised of the criteria and obligations of these private agencies. In short, there is no system of public accountability for the state agencies and their contracted providers about the available services. This state approach to service distribution hampers defenders’ ability to link youth to alternatives to detention and to programs that can sufficiently address their clients’ needs.

A recent initiative by the Department of Corrections and the Department of Behavioral and Developmental Services offers some promise to provide a comprehensive approach to addressing the needs of youth brought into the system. At the request of the district attorney, the juvenile community corrections officer, or the juvenile’s attorney, a “wrap-around” meeting is convened, to which all interested parties are invited. Typically, the juvenile community corrections officer, a representative of DBDS, the parents of the child, the child, a represen-

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tative of DHS, and other interested parties are invited. A case manager or other trained facilitator typically conducts these meetings. After a discussion of strengths and needs of the juvenile, the parties divide up responsibility for addressing the juvenile's needs, and further meetings are scheduled to assess the progress of the plan. Where these meetings have been held, anecdotal information suggest this approach is an important step in the right direction in providing a collaborative approach to meeting juveniles' panoply of needs.

Again, however, the compensation of juvenile defenders clouds the potential benefits of this form of therapy. It is unclear whether this form of therapy, which routinely takes 2 to 3 hours a meeting and requires a committed defender to attend two or three meetings, will be reimbursed by the courts. This may mean that 4 to 9 hours of time spent ensuring proper services are delivered to the youth—and for preventative purposes, to the youth's family—come out of the pocket of the juvenile defender.

### *Post-Disposition Advocacy*

This assessment found that juvenile defenders play no role in post-dispositional advocacy. The prevailing belief among juvenile defenders is that they will not be compensated for representation of juveniles following the disposition phase of the case. Unfortunately, youth's needs do not disappear in post-disposition. Often issues of medication, rehabilitation, conditions inside the facilities, and education are critical to youth's success in meeting the goals of their disposition plans, and successfully reintegrating into their communities. Post-dispositional advocacy in Maine does not exist for all intents and purposes. This is a significant gap in defender services going toward addressing the needs of youth in the juvenile justice system.



# CHAPTER FOUR

## Systemic Barriers to Effective Representation

During the time span of this study of Maine’s juvenile justice system, Barbara Walsh, a reporter for the *Portland Press Herald* was investigating the plight of children and youth with unmet mental health needs caught in the juvenile justice system. In the reporter’s series, *Castaway Children: Maine’s Most Vulnerable Kids*, Ms. Walsh reported:<sup>130</sup>

*Most of the juveniles locked up in Maine—75 percent to 90 percent—are diagnosed with a mental or emotional illness. Few receive treatment before they break the law, and their illnesses are often the underlying reason they run into trouble. When many have sought help for their psychiatric problems, they’ve been placed on waiting lists because Maine has too few psychiatrists, community services and in-home mental health programs.*<sup>131</sup>

This assessment revealed the same troubling trend: the mental health needs of the children in the juvenile justice system are not being met due to inadequate resources. In all but one of the areas closely studied in this assessment, all experts agreed that there is severe lack of community-based services and mental health treatment facilities and/or programs that can serve as alternatives to incarceration. Integral to the provision of excellent defense for juveniles is the ability of defenders to help youth access services they need and propose alternatives to detention to the courts. In Maine, attempting to meet this aspect of defenders’ role puts a tremendous strain on defenders because of the state’s lack of services causing tremendous waiting periods, failure to make information about them accessible to defenders, and default reliance on incarceration as the solution for too many youth. Maine’s policies on children and youth and its allocation of resources play a significant role in determining the quality of justice youth receive in the juvenile justice system.

“Although community services have increased, they are nowhere what we need,” said one district court judge. Putting a youth in detention is often the

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*Putting a youth in detention is often the only option for the court.*

only option for the court. One observer was surprised to observe detention as the ruling for a girl who was six months pregnant who had been charged with assault on her parent.

Research conducted by the Muskie School of Public Service for the Juvenile Justice Advisory Group and published in February 2003, surveyed judges, prosecutors, defense attorneys and juvenile community corrections officers working with Maine youth. Only 47.1% said adolescent psychiatric units were available in their region of the state. In regions where no adolescent psychiatric units existed, 90.5% of those surveyed said such services were needed. Where adolescent psychiatric units were available, 77.1% of those same professionals stated the units were inadequate to meet demand. Almost 86% of this group of key stakeholders and decision makers in the juvenile justice system said they considered placement in such units a viable alternative to secure detention.<sup>132</sup>

The lack of alternative programming and public services for juveniles both in terms of structured residential type facilities and community-based outpatient treatment, private hospitals,<sup>133</sup> and recreational programs creates enormous pressure on the court system and the detention facilities, and limits the effectiveness of juvenile defenders.

Similarly the dearth of shelter beds often leads judges and juvenile defenders to inappropriately suggest detention simply because there is nowhere else to place these youth. The alleged crime and relevant circumstances may not warrant detention, but the court may have nowhere else to send a youth if family members are unable or unwilling to be responsible for the child. One judge explained that he “would send fewer kids away if there were more services.” The state has not developed an adequate spectrum of services beyond detention for easing a way into placement. Many stakeholders noted that DHS is not typically open to handling teens in the justice system. Most state resources therefore are in the child protective area, not delinquency diversion, prevention or treatment.

A particularly troublesome trend is the lack of services for girls. Currently there are only three shelters in the state which will accept girls; and the shelter program which serves the southern part of the state has reduced its capacity from 12 girls to 6 girls. Although court personnel reported a sharp increase in the number of girls entering the juvenile system, the state has not devoted resources or focused policy initiatives on appropriate and needed services for this especially vulnerable population.

### **The Unavailability of Mental Health Services**

Currently, court resources exist for psychological evaluations, although there are indications that the current state budget crisis may change this. Estimates are that in more than a quarter of the cases, district courts issue an order for an evaluation. The problem, however, is that if the findings suggest the need for intervention, current state resources are not adequate to meet the proposals set forth in the evaluation. “The state ignores the number of kids with sizeable mental health needs and does not create programs that both treat kids and provide substantial structure for them,” observed one District Court Judge.

According to one DBDS employee, “[w]hen you talk about the lack of mental health services, the problem is the number of referrals—the system can’t

handle them. There are insufficient Medicaid vendors and the state supplement [e.g. the difference between what it costs to provide the services and what Medicaid pays] provided to vendors is insufficient to bring more of them into the system."

Many of the people interviewed for this assessment estimated that half the juveniles in the system have unmet mental health needs. "Over 50% of kids could be dual diagnosed and courts and schools have become dumping grounds for them—with no or few resources to respond. The courts have no judicial resources, the DOC is operating in the red, and DHS always claims it has no money," said one juvenile defender. This number was echoed by a corrections official who estimated that 60% to 75% of the youth in Long Creek Youth Development Center have serious psychological issues which were not addressed prior to their placement. As mentioned, the *Portland Press Herald* puts the number of youth in need higher at 75 to 90%.<sup>134</sup> The *Portland Press Herald* followed several families where a child diagnosed with severe mental health problems was ultimately arrested because of uncontrollable behavior resulting from untreated illnesses. Long Creek officials estimate that 60% of the youth in its custody are on psychotropic drugs.

The *Portland Press Herald* went on to report that responsibility for these children is shifted back and forth between under-funded agencies. "I've been at meetings where everyone from the three departments [DHS, DBDS, DOC] is arguing over whose responsibility it is to pay for the kid's services."<sup>135</sup>

However, in interviews for this study, a representative of DHS denied there is a lack of services for youth. It is a "[m]isperception that services in Maine are not available to kids in Maine because they do not exist. That's wrong. Quantity and quality are not a problem. Over the last few years, 435 new beds have been developed. *We are over bedded.*"

Substantive portions of this statement are directly contradicted by the empirical data collected for this report and the thorough coverage of the *Portland Press Herald*. Juvenile defenders report that there are no in-state resources for children with serious mental illness who are also involved in criminal behavior. The question which remains is: *What beds are there and are they the beds youth in the state of Maine need?* Presently, an accountability mechanism to ascertain these answers from DHS and BDS does not exist for defenders, Department of Corrections' officials, contracted service providers and parents.

Compared to other New England states, Maine places a very high number of children in out-of-state residential programs. As one New Hampshire official explained, "we've got programs that identify kids before they end up in crisis....We try to track these kids through groups in the community."<sup>136</sup> Over the last decade both Vermont and Massachusetts have policies in place designed to reduce or prevent children being placed in out of state for services by investing in community programs to keep the children home. These states spend the majority of their mental health budgets for therapeutic interventions in the community instead of high-cost hospitalizations.

"My clients go out of state with regularity. I've got eight to nine kids out right now," noted one juvenile defender. As one prosecutor explained, "[w]e do a brisk business with Devereaux [a national treatment program with facilities in three states]."<sup>137</sup>

Although the state has made improvements to the system and increased the

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number of in-state treatment beds for children, it does not appear to be meeting the existing need. Over the past five years, 737 children and youth in Maine have been sent out of state; as of July, 2002, 89 children and youth remained out of state due to a lack of in-state resources.<sup>138</sup>

DHS representatives complained that judges and juvenile defenders are too quick to recommend a child for an out-of-state placement. "I want a month to find an in-state placement. During that month the kid could be held in a crisis unit or in a program like Sweetser's family focus short-term residential programs which requires intensive family commitment and training on how to deal with the child." According to DHS, these services are vastly underutilized. According to the *Portland Press Herald*, the waiting lists for these services are months long.

The budget numbers also contradict DHS' claims. As reported in the *Portland Press Herald*:

*Maine spends nearly \$20 million a year on out-of-state psychiatric hospitals and programs. Seventy two percent of the \$232 million in federal and state money spent on Maine's emotionally and mentally ill kids is used to place children in hospitals and treatment facilities, both in state and out of state. National mental health experts say states should spend at least 60 percent of their money on keeping mentally ill or emotionally troubled children healthy and stable in their homes. Maine spends less than half that—28% on community care.*<sup>139</sup>

Because there are limited services for juveniles with mental illness, lengthy waiting lists regularly forestall immediate placement for kids and may be perceived to create reasons for youths' being arrested as well as exacerbating mental illness among arrested youth. Youth often wait in juvenile detention for months at a time for available services. This practice, referred to as "hold for court," is often lost time in that the juvenile will rarely receive credit for any of the time spent in detention. Its name is also a reflection of the limbo youth are in due to the lack of other options. As one judge explained, she is confronted with a choice between "hold for court, bad homes, or shelters which stink." Another judge explained, "[w]e have no alternative but to hold them....They are kids who are being held because there is no place to put them. It's a last resort for kids with no help."<sup>140</sup>

According to the *Portland Press Herald* a third of the kids in "hold for court" situations are held for several months at a time. On average, juveniles waited 51 days before receiving help or otherwise having their case resolved. But 44% were locked up for 50 days or more and 14% were locked up for over 100 days. One of the statistics provided to the *Herald* by Long Creek Development Center indicated that while the average length of "hold for court" youth was 51 days in 2001; a census of youth in April and May 2001 showed the length of stay ranged from 2 to 233 days.<sup>141</sup>

During "hold for court," the juveniles receive no or few services. They are ineligible for treatment programs at the detention center.

The results are devastating. For some children, the mental illness progresses:

Maine Juveniles and the “Hold For Court” System<sup>142</sup>

Days Held in Detention	Percentage of Juveniles Held in Detention
50 days or more	44%
100 days or more	14%

*[T]he children grow more depressed. They slice their arms with paperclips, pens, and fingernails. They're schooled, fed and bunked with youths who assault, harass and teach them criminal behavior. These kids become really hopeless. They don't feel like they have anything to work toward.<sup>143</sup>*

Barry Stoodley, Associate Commissioner of Juvenile Corrections, in an interview with *Portland Press Herald*, stated that the lack of options for children who are mentally ill and break the law is “a major concern of mine.” Stoodley admits, however, that the state has “not been on the forefront of keeping records on individual cases but we know that some of these kids wait for a long time.”<sup>144</sup> Daniel Reardon, the former chair of the Board of Visitors for the Long Creek Youth Development Center, commented that the number of youth held for court had grown. “It’s not unusual to have 50 locked up now, compared with 30 in 2000....We’re seeing more of these kids being detained and their problems are more complex.”<sup>145</sup>

The shortage of services for juveniles in the state of Maine is deeply troubling to juvenile defenders who work hard to secure them. For those juvenile defenders who do not take this part of their job seriously, the shortage acts as a disincentive to making the least effort to locate such services. This clearly leads to greater amounts of time youth spend in detention and commitment.

It is now clear, 26 years after Maine’s Commission to Revise the Statutes Related to Juveniles issued its Preliminary Recommendations, that Maine has not been able to fulfill its promise for full supportive services for children and families.

### The Use of “C-5” Hearings

There is a section in the juvenile code that allows the court to commit a juvenile to the custody of the Department of Human Services when it would be “contrary to welfare of the juvenile” to continue living with his parents.<sup>146</sup> Among practitioners in juvenile court, these proceedings are referred to as “C-5” petitions.<sup>147</sup>

This section of the code is intended to protect children and youth who are in unsafe living conditions but who would not otherwise come to the attention of the Department of Human Services. This provision, however, has become a strategy employed by district court judges, juvenile defenders, and probation services to access funds for social services. As explained by a panel of district court judges, “the [Youth Center] was observed to be the only placement option via DOC. Residential treatment programs are accessed via DHS. This led to the more creative defense counsel resorting to [C-5] proceedings to obtain treat-

ment services for juvenile justice kids.” As one judge summed it up: “It’s a way for defenders to get services for kids whose parents can’t afford them—especially kids with severe mental health issues.”

According to one DHS employee, “[h]undreds of kids are entering the system through the C-5 method because DOC doesn’t have the dollars to pay for their care. Two hundred to three hundred kids of the caseload of 2,900 kids in DHS custody come from the C-5 process through the juvenile justice system.” DHS reportedly fights these proceedings claiming it is ill-equipped to handle teenagers and that it lacks the resources. Such hearings can be quite contentious.

Another major problem related to the use of C-5’s is that parents must abdicate custody of their child in order for the child to become a ward of the state and eligible for services paid by Medicaid. The layers of fictive legal theories in this process—that the parent voluntarily hands over custody and that a juvenile delinquency case is actually a human services case—reflects the ingenuity of defense attorneys and the failure of the state to more appropriately, proactively address the needs of Maine families with troubled children. Senator Susan Collins has initiated a federal review of this practice as a result of the *Portland Press Herald* articles.<sup>148</sup> It should be noted, however, that a protocol developed by the Department of Corrections, the Department of Human Services and the Department of Behavioral and Developmental Services to address this issue has been in operation for about six months. This protocol, used in conjunction with the “wrap-around” services process, has resulted in a significant reduction in the number of children placed in the custody of the Department of Human Services.

The findings of this study conclude that the ever-present shifting of responsibility among service agencies has a detrimental effect on the already compromised mental health of the children and youth who are subject to such proceedings ostensibly designed to determine their care and their future.

### **Zero Tolerance Policies in Schools**

There was a universal recognition of an increasing communication gap between the juvenile justice system and schools. Many juvenile defenders, probation officers, judges, DHS employees and DBDS employees, consider the schools to be abdicating their responsibility for educating children about acceptable behavior and choosing the courts as the outlet or “dumping ground” for troublesome youth. Many were critical of schools’ failure to help children with special education needs. As one juvenile community corrections officer put it, “[l]ots of kids have learning disabilities and the schools are not stepping up to the plate—everyone is at the table except the schools. Schools count on the public not knowing what schools’ responsibilities are.”

One juvenile community corrections officer noted that most kids assigned to him were not attending school. According to him, this pattern was all too common:

*A kid with a learning disability will get kicked out of school for truancy, and then suspended. The kid gets caught habitually with pot/beer, habitual fighting, gets labeled as a behavioral problem and zero tolerance kicks him out for*

*There was a universal recognition of an increasing communication gap between the juvenile justice system and schools.*

*good. Once out, the kid gets one hour of tutoring a week. The schools are taking a worse position than the courts.*

It is not just juvenile community corrections officers who identify the schools as a critical problem for these youth. According to DBDS representatives, schools fail to identify many youth who qualify for special education services. As one district court judge commented: "The school's fervent hope is that these kids will go away."

Various juvenile defenders recounted stories similar to this one: An eight-year-old child is diagnosed with attention deficit hyper-activity disorder. But he is small and school personnel deal with the disruptions by "sitting" on the child. The child shows up one fall in 8th, 9th or 10th grade and is suddenly too big to be physically controlled. The defiant behavior, which remained essentially unchanged and has been untreated since kindergarten, is now frightening and threatening to both teachers and the child's peers. The child lashes out (as he always has) and gets into a fight. He is expelled from school. The fight is referred to the police and the youth is now transferred to the juvenile justice system.

A recent law review article on zero tolerance school policies and the use of expulsion and suspension to deal with students by relegation to the juvenile justice system neatly summarizes the process as it was perceived by members of the court interviewed for this assessment:

*Zero tolerance regimes typically ignore the most basic of distinctions among offenses: how dangerous was it? Minor incidents that would have been handled quickly and informally by school officials are now the subject of disciplinary hearings and even reports to the district attorney for prosecution....Surveillance and security efforts have led to dramatic increases in the criminal punishment of high school students. So have new federal and state laws requiring school personnel to report certain categories of offenders to police or prosecutors.<sup>149</sup>*

Most interviewees felt that "if kids have a good GAL, a good educational and mental health advocate, especially a GAL who is an attorney and attends school meetings, the school will usually provide [special education] services." Unfortunately, very few juvenile defenders or GALs are familiar with special education entitlements. Many judges reported they felt that special education and related services were areas the defense bar could capitalize on, especially for locating funding for services. But defenders are largely unfamiliar with these complicated areas of law and the state provides no training in this area for attorneys. Juvenile defenders across the state reported an interest in pursuing educational entitlements for their clients, but felt totally unable to advocate in that arena because of lack of training. In addition, despite the benefits to a child or youth from increased services, many defenders were concerned the time they spent advocating for education services would not be reimbursed by the state.

### **Advocacy on Behalf of Committed Youth**

In Maine there are currently two juvenile detention facilities, Long Creek Development Center and Mountain View Development Center. Both detention

*Juvenile defenders agreed that continued advocacy in the detention facilities is critical to meeting the rehabilitative goals of the juvenile code but that the state's current system provides strong disincentives to any post-dispositional advocacy.*

centers have been rebuilt. Their physical conditions are much improved from those found in the Maine Youth Center as recently as 1999. Of concern, however, is whether the educational, physical and mental health needs of detained youth are being adequately addressed. As discussed in Chapter Two, once a child is committed to one of the detention centers, the Department of Corrections is responsible for reviewing the progress and treatment of the child. The court plays almost no role in the process, nor do juvenile defenders continue to represent these children. It is as if they are swallowed and lost.

The future success of committed youth is often dependent on the treatment they receive in the detention facilities. For example, whether they are receiving adequate education or mental health treatment will have an enormous impact on their ability to function in the community upon their release. Juvenile defenders agreed that continued advocacy in the detention facilities is critical to meeting the rehabilitative goals of the juvenile code but that the state's current system provides strong disincentives to any post-dispositional advocacy.

### **Advocacy in the Drug Courts**

In 2000, Maine initiated a statewide juvenile drug court system in Portland, Bangor, Biddeford, Bath-Wiscasset and Augusta-Waterville. According to the press release issued by the Court announcing its creation, drug courts "combine the close supervision of the judicial process with resources available through alcohol and drug treatment programs." At its initiation, the court noted that although "no program of this nature can expect 100% success...if the courts utilize, as they will, the full community resources and full social pressure of society with unrelenting persistence, they can turn many young lives around and greatly impact the future of individual youths and the future of Maine."

Interviews with juvenile defenders suggest that this program is not having the success originally envisioned. Attorneys who practice in one drug court all reported that the drug court there was an enormous investment of time and that the success rate (*i.e.* graduation rate from the year-long program) was low. Actual numbers from the court confirm that the graduation rate was well below 50%.

The juvenile drug court program is subject to independent evaluation. The most recent evaluation results became available in spring 2003. It is incumbent upon the juvenile defenders as integral players in the juvenile justice system to engage in a constructive critique of the program and assist in the evaluation process. Juvenile defenders are uniquely positioned to offer commentary on programs related to children and may offer invaluable insight into possible changes to increase the success of the program.

# CHAPTER FIVE

## Conclusions and Recommendations

The state of Maine has a tradition of recognizing the unique needs of children and youth caught in the juvenile justice system. Unfortunately, the lack of state support for juvenile defenders, the state's apparent failure to provide the full array of necessary resources for children in the juvenile justice system, and misguided educational and budget policies, means that too many children and youth in the juvenile justice system are not receiving quality justice.

These systemic obstacles together with the uneven quality of juvenile defense throughout the state result in the state's inability to make good on the purposes clause of the juvenile code which promotes rehabilitation and protection. There appears to be a clear divide between the "hard core" juvenile defenders who approach juvenile defense work as a calling, and those attorneys who appear to dip in and out of juvenile court and who do not possess the passion, zeal or expertise necessary to effectively represent youth in the justice system. The state's lack of systemic support of defenders—no training, no centralized resources, no opportunity to convene defenders—reflects the status of the juvenile indigent defense system in the state.

Maine's culture of collegial defense/prosecution relationships in juvenile sessions of the District Courts has advantages and disadvantages. Many of the interactions in Maine appear to exist as a function of personality and relationships and often to good effect; other times they may be to juveniles' disadvantage. In either case, it is clear that the children and youth being represented are not always comfortable with the level of collegiality their attorneys show others in the Court. This is exacerbated by many youths' experience with juvenile defenders through the Lawyer of the Day system, the structure of which means that defenders often spend little time with—and are frequently brusque and rushed with—new clients. It is obviously troubling to some youth that their counsel is warmer to prosecutors than to the youth they represent. The lack of motions practice in juvenile sessions also speaks to the issue of the less adversarial culture of the courts, but it may also reflect a lack of professionalism in

providing youth with the best quality defense. This is especially troubling in light of the fact that so many youth make statements against their own interest while in the custody of police.

Other policies, constraints and legal structures serve as formidable obstacles to ensuring quality defense in Maine. These include the inconsistent application of low (\$315) fee caps for juvenile defense work which may act as a disincentive to zealous advocacy; the uneven quality of attorneys participating in the Lawyer for a Day program; the expectation that youth will secure representation after being represented by the Lawyer of the Day at initial hearing which in may later result in the involuntary waiver of counsel; and, the nearly complete absence of a role for defenders post-disposition to monitor their clients' treatment and ensure that the proper care and necessary services are provided to children and youth in the justice system.

The absence of social services places insurmountable pressures on juvenile defenders and the court, and leads to the inappropriate use of punitive measures for youth in the absence of alternatives to detention. The refrain among judges, "I have nowhere else to put them," should be addressed in light of the Department of Human Services' assertion that the state currently maintains more beds than are used. The unavailability of social services is inextricably tied with this assessment's conclusion that the level of advocacy on behalf of children and youth in Maine's juvenile justice system is below acceptable standards of practice.

It is especially troubling that the culture of juvenile court emphasizes the importance of taking a less legal, less adversarial, more "best interests" approach to juvenile proceedings in those many cases when defenders are unable to locate appropriate and necessary services. Juvenile defenders who respond by increasing their level of advocacy may not be appreciated; but because the absence of social services increases the likelihood that a youth will end up in a correctional facility because judges have no where else to put them, the failure to act in a more adversarial manner may harm a client more. Thus the many hard working, committed juvenile defenders in Maine are caught among conflicting expectations, ethical obligations and a lack of available resources to ensure just outcomes.

## **Recommendations to Improve the Quality of Juvenile Defense in Maine**

### *Defender Leadership*

There is an absence of supported leadership in the juvenile defense community. Individual defenders attempting to galvanize the juvenile defense bar do so at their own expense. The lack of resources hampers these natural leaders from achieving the level of organization necessary to begin setting an agenda for improving juvenile defense and meeting the needs of defenders who want to provide quality, zealous defense. The absence of a state defender agency presents a significant challenge, and no other organizations—except recent initial efforts by the state bar association—have offered to meet defenders' needs.

*Recommendations:* The private sector, the state bar association, and the Juvenile Justice Advisory Group should consider the value of creating a nonprofit

organization to support the work of juvenile defenders and to take advantage of the energy and commitment of this segment of the bar. This statewide juvenile defender resource center would:

- Create a network of mentoring attorneys throughout the state;
- Develop a system of monitoring legislation and developing a defender presence at critical moments in the legislature;
- Create a motions bank and circulate information provided by national organizations critical to quality defense;
- Advocate for policy and institutional changes in the treatment of juveniles, (e.g. at state correctional facilities), in the courts, and in the realm of social service delivery;
- Examine and report on the related educational, policing, human services policies of the state which result in youth going into the juvenile justice system; and,
- Create special support teams or mentoring services for attorneys handling bind-over proceedings.

### *State Leadership*

The efforts of defenders to take leadership and organizational control of the juvenile defender system in Maine would be greatly assisted if statewide leaders—including those of the Executive and Judicial branches—support improvements in the quality of juvenile defense through the allocation of resources and the implementation of performance standards for the representation of juveniles. The State of Maine must improve the quality of representation for juveniles in delinquency proceedings in order to ensure effective assistance of counsel, engender respect for the system, and promote public safety.

*Recommendations:* State leaders in the Executive, Judicial and Legislative branches of government, along with leaders in the State and local Bar Associations, should:

- Create, empower and support a “Maine Commission on Juvenile Justice” to study, promote and ensure quality representation of children and youth in Maine’s justice system.
- Direct the “Maine Commission on Juvenile Justice” to address the following areas of concern and recommend systemic solutions for implementing positive changes for:
  - Provision of counsel from arrest through re-entry;
  - Compensation levels and fee caps for juvenile defense counsel;
  - Professionalism in motions practice and the understanding of competency among children and youth;
  - Post-dispositional advocacy;
  - Data collection on the juvenile justice system’s costs, effective-

ness, levels of representation, case processing, bind-over proceedings, recidivism and programming;

- ❑ The overuse and abuse of zero tolerance policies in schools;
  - ❑ The imbalance of resources among agencies charged with providing services for children and youth;
  - ❑ The creation and support of more community-based treatment services and as alternatives to detention and secure confinement;
  - ❑ The continued oversight and authority of the courts concerning all treatment and rehabilitation plans of children and youth in the justice system; and,
  - ❑ The creation, empowerment and support of a statewide resource center for juvenile defenders to provide basic and advanced legal support, case-specific assistance, a motions bank, mentoring and training programs, and legislative and agency-level support.
- Ensure that adequate funding is available for the provision of effective, competent representation of all children and youth in the justice system, including funding for training, support services, manageable caseloads and just compensation.
  - Ensure that adequate funding is available to maintain high quality juvenile courts and treatment programs serving youth in the justice system.
  - Participate in a program to shadow a juvenile defender for a day, observe the conditions of juvenile defense work and explore the reactions of juveniles to their counsel and the system.
  - Convene meetings with juvenile defenders and judges to develop a plan to improve professionalism in the juvenile justice system.
  - Visit similarly situated states in the country to study alternative approaches to the provision of juvenile defender services.<sup>150</sup>
  - Encourage the state's private sector—including bar associations, corporate law firms and industry—to support the work of the state in providing alternatives, either through in-kind donations or financial contributions.
  - Promote and highlight the work of the Juvenile Justice Advisory Group.
  - Provide meaningful, affordable in-state opportunities for comprehensive and ongoing training, professional development and supervision of juvenile defenders.
  - Develop and implement statewide guidelines detailing qualifications necessary for court appointment to juvenile cases and develop and implement performance standards for ensuring effective, competent juvenile defense.
  - Standardized all "Lawyer of the Day" programs, provide specialized training to attorneys involved in the programs, and develop

and implement a policy which will ensure an unbroken continuity of representation for each child and youth served by the programs.

- Develop and implement a mechanism to ensure that current, detailed and relevant information on all state, regional and community-based programs available to youth in the justice system is readily available to juvenile defense counsel, including agency criteria and standards for services of the Department of Corrections, the Department of Human Services, and the Department of Behavior and Development Services.
- Provide structural incentives to promote partnering with legal service organizations to provide educational and medical benefits advocacy for all qualifying children and youth in the justice system.
- Develop and implement programs designed to provide defense counsel to all children and youth in custody and subject to interrogation.



# APPENDIX

## IJA/ABA Juvenile Justice Standards Standards Relating to Counsel for Private Parties

### PART I. 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 cooperate 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 proceeding 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 II. 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 III. 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 [sic] 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 with-

drawal.

**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 by 3.3(d), below, an attorney 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 IV. 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 V. 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 VI. 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 VII. 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 VIII. 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 IX. 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (b) 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 evidence can be presented if to do so would serve the client's interests.
- (c) 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.
- (d) 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, obligations 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 X. 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.

- (b) 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.
- (c) 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.
- (d) 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 assignment 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 action. 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.



## ENDNOTES

- <sup>1</sup> Puritz, Burrell, Schwartz, Soler, Warboys. *A Call for Justice: An Assessment of Access to Counsel and Quality Representation in Delinquency Proceedings*. American Bar Association Juvenile Justice Center (December 1995).
- <sup>2</sup> 15 M.R.S.A. § 3002(A).
- <sup>3</sup> The only available reference source for services is published by Ingraham's, a private company. It costs \$50.00 for a hard copy (last updated in 2002) and \$115.00 annual fee for the online service—which is updated regularly. It is published in Portland, Maine.
- <sup>4</sup> Beyea and D'Alessandro, *A Voice for Low Income Children: Evaluating Guardian Ad Litem in Divorce and Parental Rights and Responsibilities Cases*. Available at: [http://muskie.usm.maine.edu/publications/cf/low\\_income.pdf](http://muskie.usm.maine.edu/publications/cf/low_income.pdf).
- <sup>5</sup> Loughran, *Final Report: Review of the Maine Youth Center*. Boston, MA (1991). The report is available for a fee through the Maine State Law and Legislative Reference Library, at [www.state.me.us/legis/lawlib/homepage.htm](http://www.state.me.us/legis/lawlib/homepage.htm). A brief summary of the report can be found at [www.ellsworthamerican.com/archive/edit1999/03-99/ea\\_edit1\\_03-04-99.html](http://www.ellsworthamerican.com/archive/edit1999/03-99/ea_edit1_03-04-99.html). Summary of the Amnesty International report available at [www.amnestyusa.org/news/1998/25107298.htm](http://www.amnestyusa.org/news/1998/25107298.htm).
- <sup>6</sup> The New England Juvenile Defender Center awarded the "Castaway Children" series author Barbara Walsh and the *Portland Press Herald* with the Center's First Media award in November 2002. The series also won the prestigious national Anna Quindlen Journalism award in 2003.
- <sup>7</sup> Kim Brooks, Executive Director of the Children's Law Center, Covington, Kentucky; George Oleyer, Director, Bridgeport Juvenile Defenders Office, Connecticut; Ken King, Deputy Director, Juvenile Justice Center of Suffolk University Law School, Massachusetts; Chris Northrop, juvenile defender; Ned Chester, juvenile defender; Marc Schindler, Youth Law Center, Washington, D.C.; and Jelpi Picou, Jr., National Juvenile Defender Center, Regional Coordinator, Washington D.C.
- <sup>8</sup> *In re Gault*, 387 U.S. 1 (1967).
- <sup>9</sup> National Advisory Committee for Juvenile Justice and Delinquency Prevention, July 1980, "3.312 Representation by Counsel- For the Juvenile," *Standards for the Administration of Juvenile Justice* (Washington, DC: Office of the Juvenile Justice and Delinquency Prevention, U.S. Dept. of Justice).
- <sup>10</sup> The Joint Commission consisted of twenty-nine members. Four committees supervised the work of thirty scholars who were assigned as reporters to draft individual volumes. The draft standards were circulated widely to individuals and organizations throughout the country for comments and suggestions before final revision and submission to the ABA House of Delegates.
- <sup>11</sup> Puritz, Burrell, Schwartz, Soler, Warboys. *A Call for Justice: An Assessment of Access to Counsel and Quality Representation in Delinquency Proceedings*. American Bar Association Juvenile Justice Center (December 1995).
- <sup>12</sup> Children's Defense Fund, "Children in Maine," January 2003.
- <sup>13</sup> *Id.*
- <sup>14</sup> Kids Count census data online: [www.aecf.org](http://www.aecf.org).
- <sup>15</sup> Detention Project Survey Results: February 2003, Muskie School of Public Service report for the Maine Juvenile Justice Advisory Group, at [www.muskie.usm.edu/justiceresearch/current/reports](http://www.muskie.usm.edu/justiceresearch/current/reports).
- <sup>16</sup> Department of Corrections documentation provided by Lars Olsen, Superintendent of Long Creek youth Development Center.
- <sup>17</sup> C.D.F., *supra*, note 12.

- <sup>18</sup> To be perfectly clear: the number of youth charged actually decreased between 2001 and 2002 by 130 youth from 5,237 to 5,107. The number of charges brought against youth increased in that period by 642, from 7,800 to 8,442.
- <sup>19</sup> Maine Department of Public Safety, 2002 Maine Crime Statistics at [www.state.me.us/dps](http://www.state.me.us/dps).
- <sup>20</sup> Maine Crime and Justice Date Book 2002, "Statistics for Juvenile Offenders," at [www.muskie.usm.maine.edu/justiceresearch/current/reports](http://www.muskie.usm.maine.edu/justiceresearch/current/reports).
- <sup>21</sup> Maine Department of Corrections, Division of Juvenile Services, Report for 2001–2002 at [www.maine.gov/corrections/juvenile](http://www.maine.gov/corrections/juvenile). In 1999, the reported custody rate was 242, according to the Office of Juvenile Justice and Delinquency Prevention Statistical Brief Book, at [ojjdp.ncjrs.org/ojstatbb/html/qal57.html](http://ojjdp.ncjrs.org/ojstatbb/html/qal57.html). That report suggests that Maine's custody rate is mid-range when viewed nationally, with other states ranging from 96 to 632 per 100,000 children in custody.
- <sup>22</sup> *Id.* at p. 3.
- <sup>23</sup> Detention Project, *supra* note 15.
- <sup>24</sup> *Id.*
- <sup>25</sup> *Id.*
- <sup>26</sup> Department of Corrections, Juvenile Recidivism Report, 1999.
- <sup>27</sup> C.D.F., *supra*, note 12.
- <sup>28</sup> *Id.*
- <sup>29</sup> Maine Children's Alliance: Maine KIDS COUNT 2003 Data Book, at [www.mekids.org](http://www.mekids.org).
- <sup>30</sup> *Id.*
- <sup>31</sup> *Id.*
- <sup>32</sup> *Id.*
- <sup>33</sup> *Id.*
- <sup>34</sup> Maine Department of Labor; Labor Market Information at [www.maine.gov/labor/lmis/index](http://www.maine.gov/labor/lmis/index).
- <sup>35</sup> Kids Count, *supra*, note 29.
- <sup>36</sup> C.D.F., *supra* note 12. .
- <sup>37</sup> *Id.*
- <sup>38</sup> *Id.*
- <sup>39</sup> Kids Count, *supra*, note 29.
- <sup>40</sup> *Id.*
- <sup>41</sup> *Id.*
- <sup>42</sup> Maine Department of Human Services, Bureau of Health, Office of Data, Research and Vital Statistics.
- <sup>43</sup> Maine Department of Education, 2001 Youth Risk Behavior Survey Results, available at [www.maineecshp.com/survey](http://www.maineecshp.com/survey).
- <sup>44</sup> Kids Count, *supra* note 29.
- <sup>45</sup> Detention Project, *supra*, note 15.
- <sup>46</sup> *Id.*
- <sup>47</sup> Barbara Walsh, "Locked up, waiting for help," Portland Press Herald, August 19, 2002, p.6A. The American Academy of Child and Adolescent Psychiatry currently has 47 providers listed for Maine.

- <sup>48</sup> Two years ago, the Maine Supreme Judicial Court held that cigarettes illegally in a minor's possession were "contraband" for purposes of the law, even though cigarettes were not so designated by the Legislature, and police therefore had probable cause to search the juvenile, finding an illegal knife. *State v. Michael M.*, 772 A.2d 1179 (2001).
- <sup>49</sup> Maine Office of Substance Abuse, Maine Youth Drug and Alcohol Use Survey, 2002, at [www.state.me.us/bds/osa/data](http://www.state.me.us/bds/osa/data).
- <sup>50</sup> School Suspension/Expulsion Project Briefing Paper: February 2003, Muskie School of Public Service report for the Maine Juvenile Justice Advisory Group, [www.muskie.usm.edu/justice\\_research/current/reports](http://www.muskie.usm.edu/justice_research/current/reports).
- <sup>51</sup> Youth Drug and Alcohol Use, *supra*, note 49.
- <sup>52</sup> Maine Marks, The Maine Children's Cabinet, at [www.mainemarks.org](http://www.mainemarks.org).
- <sup>53</sup> Youth Drug and Alcohol Use, *supra*, note 49.
- <sup>54</sup> *Id.*
- <sup>55</sup> *Id.*
- <sup>56</sup> *Id.*
- <sup>57</sup> *Id.*
- <sup>58</sup> *Id.*
- <sup>59</sup> Maine Office of Substance Abuse, Maine Youth Drug and Alcohol Use Survey, 2002, at [www.state.me.us/bds/osa/data](http://www.state.me.us/bds/osa/data).
- <sup>60</sup> DOC, *supra*, note 21.
- <sup>61</sup> Detention Project, *supra*, note 15.
- <sup>62</sup> *Id.*
- <sup>63</sup> Maine Department of Education at [www.state.me.us/education](http://www.state.me.us/education).
- <sup>64</sup> Children's Defense Fund, "Children in Maine 2003."
- <sup>65</sup> Kids Count, *supra*, note 29.
- <sup>66</sup> *Id.*
- <sup>67</sup> *Id.*
- <sup>68</sup> DOE, *supra*, note 63 at [www.state.me.us/education/specedddata](http://www.state.me.us/education/specedddata).
- <sup>69</sup> *Id.*
- <sup>70</sup> *Id.*
- <sup>71</sup> Suspension/Expulsion Project, *supra*, note 50.
- <sup>72</sup> *Id.*
- <sup>73</sup> *Id.*
- <sup>74</sup> *Id.*
- <sup>75</sup> *Id.*
- <sup>76</sup> C.D.F., *supra*, note 12.
- <sup>77</sup> *Id.*
- <sup>78</sup> Kids Count, *supra*, note 29.
- <sup>79</sup> *Id.*
- <sup>80</sup> C.D.F., *supra*, note 12.

- <sup>81</sup> Maine Department of Public Safety, Crime in Maine, at [www.state.me.us/dps/cim/crime\\_in\\_maine/cim](http://www.state.me.us/dps/cim/crime_in_maine/cim).
- <sup>82</sup> Kids Count, *supra*, note 29.
- <sup>83</sup> Maine Marks, *supra*, note 52.
- <sup>84</sup> Youth Risk Survey, *supra*, note 43.
- <sup>85</sup> C.D.F., *supra*, note 12.
- <sup>86</sup> *Id.*
- <sup>87</sup> DHS, *supra*, note 42.
- <sup>88</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).
- <sup>89</sup> *Id.* at 334.
- <sup>90</sup> *In re Gault*, 387 U.S. 1 (1967).
- <sup>91</sup> *Id.* at 20.
- <sup>92</sup> *Id.* at 36.
- <sup>93</sup> *Id.* at 18.
- <sup>94</sup> *In re Winship*, 397 U.S. 358, 365-66 (1970).
- <sup>95</sup> *Id.*
- <sup>96</sup> See LD 1752 (107th Legislature, 1975).
- <sup>97</sup> Maine Commission to Revise Statutes Relating to Juveniles, Summary of Preliminary Report of Recommendations and Analysis, 35-6 (October 1976).
- <sup>98</sup> Maine Commission to Revise Statutes Relating to Juveniles, Summary of Preliminary Report of Recommendations and Analysis, 4 (October 1976).
- <sup>99</sup> *Id.*
- <sup>100</sup> P.L. Chapter 520, ME 1977.
- <sup>101</sup> See *State v. Gleason*, citing *S\*\*\*\*S\*\*\*\* v. State*, 299 A. 2d 560, 568 (1973).
- <sup>102</sup> *Id.* at 581.
- <sup>103</sup> *Id.* At 573.
- <sup>104</sup> *Id.* at 580.
- <sup>105</sup> 15 M.R.S.A. Section 302. Section F was added in 1997 in Chapter 645 Section 1 of the 118th Legislature, "An Act to Amend the Laws Concerning Juvenile Petition, Adjudication, and Disposition." The statute which created the Maine Youth Center and its successors clearly indicates the purpose of those institutions is to provide rehabilitation; nowhere does the statute mention punishment. One interpretation of this amendment is that it was aimed at the situation in which a child is scheduled for a bind-over hearing. In the past, judges had struggled to find a basis to bind a juvenile over to the Superior Court for trial, and thus, potential punishment under the adult statutes, when the Juvenile Code only referred to rehabilitation.
- <sup>106</sup> See 15 M.R.S.A. § 3002(1)(F).
- <sup>107</sup> See 15 M.R.S.A. § 3003(14) and §3101(2)(A) & (D).
- <sup>108</sup> See 15 M.R.S.A. § 3306.
- <sup>109</sup> West's Maine Rules of Court: Administrative Orders of the Supreme Judicial Court. "Fee Schedule for Court-Appointed Counsel in All Courts," current with amendments received through 1/15/2003.
- <sup>110</sup> *Ibid.*

<sup>111</sup> See 15 M.R.S.A. §§ 3201-02.

<sup>112</sup> See 15 M.R.S.A. § 3203-A.

<sup>113</sup> *Id.* at § 3203-A(4).

<sup>114</sup> *Id.* at § 3203-A(4)(C).

<sup>115</sup> *Id.* at § 3202-A(D)(5).

<sup>116</sup> *Id.*

<sup>117</sup> Disposition is the term used to describe how a youth will be treated and where they will be placed by the court based on the court's adjudication of the child.

<sup>118</sup> The best source of cites and information on the connection between juvenile justice and disabilities is located at <http://www.abanet.org/crimjust/juvjus/linkdevelopment.html>. For research establishing the connection between disabilities and involvement in the juvenile justice system, refer to Leone, P.E., Zaremba, B.A., Chapin, M.S. and Iseli, C. *Understanding the Overrepresentation of Youth with Disabilities in Juvenile Detention*. 3 D.C.L.Rev. 389-401 (1995) and, Burrell, S. and Warboys, L. *Special Education and the Juvenile Justice System*, OJJDP Bullet July 2000; for a manual of representing youth with special needs and who may have disabilities see, Project of the Children's Law Center, *The Special Needs of Youth in the Juvenile Justice System: Implications for Effective Practice*. June 2001, Covington, Kentucky.

<sup>119</sup> Maine offers juveniles the option of sealing their juvenile records upon petition, under 15 M.R.S.A. Section 3308(8). Juveniles may petition to have their records sealed three years after the juvenile has been discharged from the disposition ordered and if the juvenile has not committed another juvenile offense or crimes and has no pending adjudications. The court can refuse to grant the petition if it feels the public's right to know substantially outweighs the juvenile's right of privacy. The records are never sealed for criminal justice purposes, including subsequent pleas and parole.

<sup>120</sup> The Maine Supreme Judicial Court ruled in 1995 that a preponderance of evidence standard was appropriate in bind-over cases and did not violate the Maine or U.S. Constitutions because the decision was jurisdictional in nature and not the final adjudication of juveniles' liberty interests. *State v. Rosado*, 669 A.2d 180 (Me. 1996). The U.S. Court of Appeals for the First Circuit supported this interpretation of the statute's required standards of evidence. *Rosado v. Corrections*, 109 F.3d 62 (1st Cir. 1997).

<sup>121</sup> 15 M.R.S.A. § 3315(3)

<sup>122</sup> 15 M.R.S.A. Section 3315.

<sup>123</sup> Chris Northrop, the first president of the New England Juvenile Defender Center, initiated this effort which was repeated in June 2003.

<sup>124</sup> The rule which comes most close to addressing these issues is Maine Bar Rule 3.6(a).

<sup>125</sup> To be placed on the roster of GAL's, the Rules of court list the following criteria: "1. A current valid license to practice law in the state of Maine, 2. A current valid license to practice as an LSW, LCSW, LPC, LMSW, LMFT, LPC, psychologist or psychiatrist in the state of Maine, 3. A Certification of Qualification by the Director of the CASA program, or, 4. Waiver of the licensure or qualification requirement by the Chief Judge." West's Maine Rules of Court: Rules for Guardians *Ad Litem*, Rule II, Guardians *Ad Litem*, at 23, Current with Amendments received through 1/15/2003.

<sup>126</sup> See Administrative Order, JB-00-01.

<sup>127</sup> See M.R.S.A. § 3203-A(2).

<sup>128</sup> This concern is all the more pressing in view of recent studies about juveniles' tendency to make false confessions. Redlich, A.D. and Goodman, G.S. just published a study titled, "Taking responsibility for an act not committed: The influence of age and suggestibility," in *Law and Human Behavior*, 27, 141-156, documenting that youth will often, without hesitation, take the

blame for acts they did not commit when an adult tells there is evidence that they are to blame, are told sign confessions, and informed of consequences of their alleged action.

<sup>129</sup> 15 M.R.S.A. § 3203-A(5).

<sup>130</sup> Barbara Walsh. Castaway Children: Maine's Most Vulnerable Kids. Portland Press Herald. August 18–20, 2002

<sup>131</sup> Barbara Walsh. "Locked Up, Waiting for Help." Portland Press Herald. August 19, 2002.

<sup>132</sup> Detention Project Survey Results: February 2003, Muskie School of Public Service report for the Maine Juvenile Justice Advisory Group, at [www.muskie.usm.edu/justiceresearch/current/reports](http://www.muskie.usm.edu/justiceresearch/current/reports), at 6-7.

<sup>133</sup> One corrections official opined that so few private hospitals offer forensic services to youth that Long Creek and Mount View youth development centers have become providers of such services by default.

<sup>134</sup> Barbara Walsh. "Locked Up, Waiting For Help." Portland Press Herald. August 19, 2002.

<sup>135</sup> *Id.*

<sup>136</sup> Barbara Walsh. "Out-of-state-care takes its toll." Portland Press Herald. August 20, 2002

<sup>137</sup> Barbara Walsh. " Locked up, waiting for help." Portland Press Herald. August 19, 2002.

<sup>138</sup> *Id.*

<sup>139</sup> Barbara Walsh. "Out-of-state-care takes its toll." Portland Press Herald. August 20, 2002.

<sup>140</sup> Barbara Walsh. "Out-of-state care takes its toll." Portland Press Herald. August 20, 2002.

<sup>141</sup> Barbara Walsh. "Locked up, waiting for help." Portland Press Herald. August 19, 2002. Page 4A. These statistics were provided by Long Creek Youth Development Center for year 2001.

<sup>142</sup> *Ibid.* These statistics were also provided to the *Herald* by Long Creek Youth Development Center for the year 2001.

<sup>143</sup> *Ibid.*

<sup>144</sup> *Id.*

<sup>145</sup> *Op. cit.*

<sup>146</sup> See 15 M.R.S.A. §3314(1)(C-1).

<sup>147</sup> The statutory section used to be 3314(1)(C-5) and practitioners continue to refer to the process according to its old citation.

<sup>148</sup> "Changing Assumptions Has Healthy Result for Maine's Children," *Child Advocates*, August 2002.

<sup>149</sup> Blumenson, E. and Nilsen, E. *One Strike and You're Out? Constitutional Constraints on Zero Tolerance in Public Education*. 81 WASH. U.L.Q. 65, 71 and 74 (2003). See also, Dohrn, B. and Ayers, W., editors, ZERO TOLERANCE: RESISTING THE DRIVE FOR PUNISHMENT IN OUR SCHOOLS (2001).

<sup>150</sup> In addition, or in the alternative, review of other juvenile defender assessments published by the National Juvenile Defender Center of the American Bar Association may provide useful bases of comparison.



