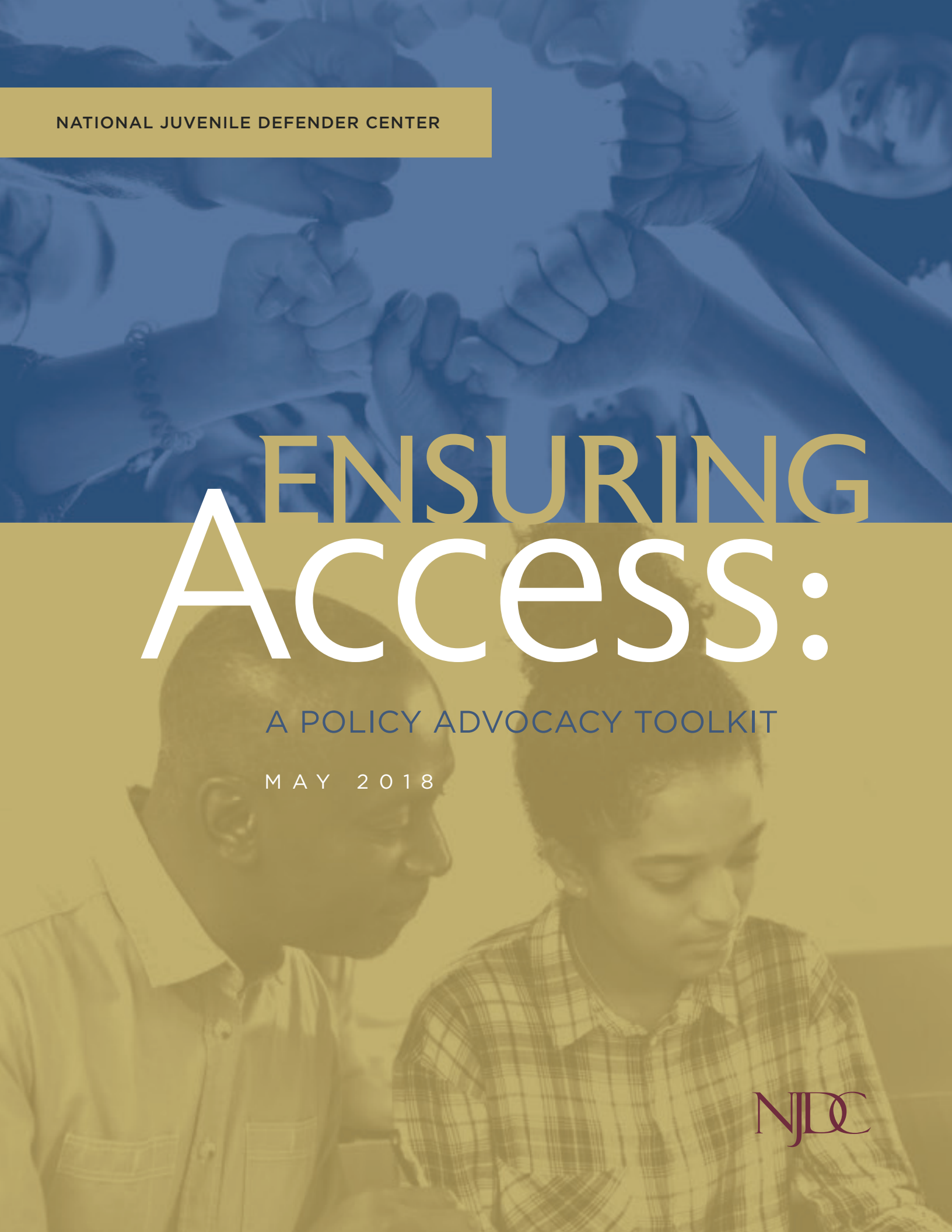

NATIONAL JUVENILE DEFENDER CENTER

ENSURING Access:

A POLICY ADVOCACY TOOLKIT

MAY 2018

NJDC

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Report design by Tanya Pereira

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About the National Juvenile Defender Center

The National Juvenile Defender Center (NJDC) is a nonprofit, nonpartisan organization dedicated to promoting justice for all children by ensuring excellence in juvenile defense. Through community building, training, and policy reform, NJDC provides national leadership on juvenile defense issues with a particular focus on remedying the deprivation of children's rights in the justice system. NJDC's reach extends to urban, suburban, rural, and tribal areas, where we elevate the voices of youth, families, and juvenile defense attorneys to encourage positive outcomes and meaningful opportunities for children caught in the juvenile court system.

Established in 1997, NJDC has worked in every state to document, challenge, or reform policies and practices that disrupt children's constitutional right to counsel. NJDC identifies needs and gaps in juvenile court systems and develops strategies to strengthen the juvenile defense bar and uphold children's legal protections. We continually build on and expand our services to the juvenile defense and broader justice communities, including providing specialized training and technical assistance; assessing and evaluating juvenile defense systems; promulgating national juvenile defense standards and tailoring them for states and localities; developing strategies to end racial and ethnic disparities in the juvenile justice system; and enhancing recognition of juvenile defense as a distinct and specialized practice of law nationwide.

NJDC is committed to providing juvenile defense attorneys with the resources and opportunities necessary to grow their legal, advocacy, and leadership skills. NJDC also advocates for juvenile court systems that are equitable and responsive to the needs of children, and it seeks to ensure that any reforms of the juvenile justice system include the protection of children's rights — most notably, the right to counsel.

Because juvenile defense systems are diverse in size and structure across the states and territories, NJDC established nine regional centers to stay continually engaged with front line juvenile defense attorneys and changing policies and practices. Our team in Washington, D.C. partners with the volunteer directors of NJDC's regional centers to prioritize projects, develop and strengthen juvenile defense communities, and share information. Together, the national office and regional centers are powerful allies in ensuring children's access to high-quality, specialized juvenile defenders.

There Ought to be a Law

In May 2017, to commemorate the 50th anniversary of the landmark United States Supreme Court decision *In re Gault*, the National Juvenile Defender Center (NJDC) published *Access Denied: A National Snapshot of States' Failure to Protect Children's Right to Counsel*. The report found that, "though every state has a basic structure to provide attorneys for children, few states or territories adequately satisfy access to counsel for young people."[1]

FIVE KEY FINDINGS FROM *ACCESS DENIED*

I. CHILDREN IN THE UNITED STATES ARE NOT GUARANTEED LAWYERS

- Only 11 states provide every child accused of an offense with a lawyer, regardless of financial status.[2]

II. CHILDREN DO NOT GET ATTORNEYS UNTIL IT IS TOO LATE

- No state guarantees lawyers for every child during interrogation, and only [two] state[s] requires it under limited circumstances.[3]

III. CHILDREN MUST PAY FOR THEIR CONSTITUTIONAL RIGHT TO COUNSEL

- Thirty-six states allow children to be charged fees for a "free" lawyer.[4]

IV. CHILDREN'S RIGHTS ARE NOT SAFEGUARDED BY THE STATES

- Forty-three states allow children to waive their right to a lawyer without first consulting with a lawyer.[5]

V. CHILDREN'S ACCESS TO COUNSEL ENDS TOO EARLY

- Only 11 states provide meaningful access to a lawyer after sentencing, while every state keeps children under its authority during this time.[6]

[1] Nat'l Juvenile Defender Ctr., Access Denied: A National Snapshot of States' Failure to Protect Children's Right to Counsel 4 (2017) [hereinafter Access Denied].
[2] *Id.* at 9.
[3] *Id.* at 15. Since *Access Denied* was published, a second state changed its law to require that children of a certain age consult with legal counsel prior to custodial interrogation or waiver of *Miranda* rights. *See* Cal. Welf. & Inst. Code § 625.6 (West 2018).
[4] Access Denied, *supra* note 1, at 21.
[5] *Id.* at 25.
[6] *Id.* at 31.

RECOMMENDATIONS FOR REFORM FROM *ACCESS DENIED*

I. ELIGIBILITY FOR A "FREE" ATTORNEY

- Automatically deem youth eligible for a publicly funded juvenile defender by virtue of their status of children, regardless of financial circumstances.

II. EARLY APPOINTMENT OF COUNSEL

- Appoint children a qualified juvenile defender before any interrogation.
- Appoint children a qualified juvenile defender well in advance of the first hearing or court appearance.
- Require data collection and monitoring of early appointment of counsel.

III. COSTS OF COUNSEL

- Abolish all costs and fees associated with a child's access to a publicly funded juvenile defender.

IV. WAIVER OF COUNSEL

- Prohibit waiver of counsel unless and until a child has the opportunity to consult with a qualified juvenile defender about the implications of waiving their right.
- Require data collection and monitoring of any waiver of counsel.

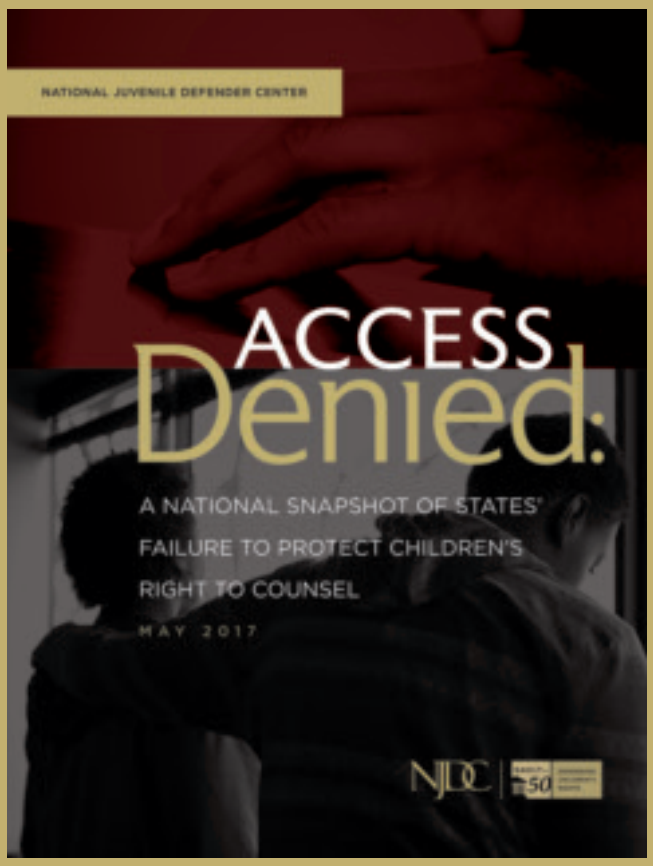
V. POST-DISPOSITION REPRESENTATION

- Establish an explicit right to counsel for all post-disposition matters.
- Ensure continuous appointment of counsel until a child's case is closed and the child is no longer under any type of juvenile court or state supervision in the matter.
- Require data collection and monitoring of post-disposition access to counsel.

ABOUT *ACCESS DENIED*

NJDC analyzed state statutes and conducted interviews with juvenile defenders in all 50 states, the District of Columbia, and Puerto Rico.

Access Denied found that "[n]o jurisdiction in the United States wholly fulfills the constitutional promise of justice for children."[7] So, no matter where you live and practice, your jurisdiction can improve.



As juvenile defense advocates, we have a responsibility to identify and work to correct systemic deficiencies and to honor our clients' dignity and well-being. "[C]ounsel should strive to ensure that the system in which [they] represent young clients provides a fair and formal tribunal that abides by constitutional, statutory, and ethical mandates."[8]

Defenders are best situated to expose the shortcomings of the defense system, the overreach of the justice system, and the impact these have on our clients, their families, and communities. We need to make defender and youth voices heard at policymakers' tables.

[7] *Id.* at 37.
[8] National Juvenile Defense Standards, Part X, (Nat'l Juvenile Defender Ctr. 2012).

This toolkit is designed to help you engage in policymaking efforts to improve children's access to counsel in your jurisdiction.

STEP 1.
GETTING STARTED

Taking on policy reform can be intimidating and overwhelming, particularly if you have not done it before. But if you learn the basics, you can use your experience and expertise to impact policymakers and help not just your own clients, but also children across your state.

Closely review all applicable state laws, state and local court rules, and case law. In our often county-based juvenile justice systems, state laws and rules are sometimes altered to fit the practice norms and culture of local jurisdictions. Take the time to closely review all relevant laws, rules, and case law. You may find that a shortcoming where you practice is due to a misapplication of a law or rule that actually guarantees a child's access to counsel, if it were applied properly.

Talk to other juvenile defenders in your state. The variation in how state laws and rules are applied locally might also mean children in other counties are being denied their right to counsel in ways that are not problems where you practice. Along with your fellow defenders and other youth justice advocates, identify where and how children's access to counsel is obstructed throughout your state.

Gather local stories and data. As you are talking with your colleagues, collect stories about children who have been harmed by a lack of access to counsel, and make note of which jurisdictions collect relevant data, such as waiver of counsel rates. Personal stories and data will help you make the case for reform to policymakers and their constituents.

Compare your state's laws and practices to the recommendations in *Access Denied*. Where does your state fall short in guaranteeing children's access to counsel? There are likely several recommendations that could be implemented to improve access in your state.

Analyze how each recommendation could be implemented in your state. In many jurisdictions, children's access to counsel is governed by more than one branch of government, through state laws, court rules and cases, and executive or administrative policy. Therefore, the recommendations from *Access Denied* might be implemented in more than one way: through a new or amended law, an updated court rule, litigation, or changing policies and practices within your office or at a state-level public defender entity.

Learn how the policymaking process works. If this is your first time working on policy reform, research how the legislative, budget, court rule, and administrative policy processes work in your state. Basic information like legislative calendars, lawmaker schedules, and memberships can often be found on the policymaker's website, but also consult with people who have experience navigating these processes. Your state bar association, American Civil Liberties Union (ACLU) or National Association for the Advancement of Colored People (NAACP) affiliate, or other similar nonprofit or governmental organizations likely have experience and expertise to share. Pay close attention to hearing schedules and requirements for testimony and other support. Policymaking processes often have strict rules for submitting testimony, including deadlines, length of documents or testimony, and format.

STEP 2.
STOCK YOUR POLICY TOOLBOX

At this point, you know what your state's laws and rules are, you know where and how children's access to counsel is being impeded, you have identified which recommendations from *Access Denied* could improve access to counsel in your state, and you know how those recommendations could be implemented. How do you take that information and build an effort to change policy and improve children's access to counsel?

Assess your resources and limitations. Take what you have learned about how the policymaking process works and assess what time, personnel, and other resources you and/or your office can devote to policy reform efforts. If your state legislature conducts an intense, time-limited session, can you or another point person be at the state capitol throughout the time the legislature is in session? If the process to implement court or administrative rules stretches over a year or two, can you devote the time needed to see a new rule or amendment through the process? Are there any state or federal restrictions on the type of policy advocacy or lobbying you can take part in, due to your role as a lawyer, as a government employee, or as an employee of a nonprofit?

Identify your allies, opponents, and constituents. Make lists of specific groups and individuals that are likely to support your efforts, those likely to oppose them, and those who will benefit from the changes you seek. Many of these will be obvious or likely, such as other defenders, your local ACLU affiliate, and other youth justice and advocacy organizations as potential allies; organizations that have historically opposed defense reforms as potential opponents; and children and families as constituents. But also identify unlikely allies and opponents: perhaps court clerks will support your efforts to abolish costs and fees, which they are responsible for collecting; you could find yourself facing surprising resistance from other defender organizations, which feel overworked and under-resourced, and are unwilling to take on additional duties; and detention center administrators might view themselves as beneficiaries of an effort to appoint lawyers at a child's first appearance, because doing so could lower the detention center's population.

Consider building a coalition. If you are taking on a policy reform effort that will require more resources and expertise than you can devote, or if your proposal is likely to face strong opposition, you may want to assemble a coalition of like-minded partners to take on the effort with you. A policy coalition can take a fairly small amount of effort, if all you need is a list of signatories on a support letter. Or, forming and managing a coalition can take as much time and effort as the policy change itself, if you need active partners to help develop a policy platform, devise a strategy, and negotiate and approve changes throughout the process. The size and type of coalition you need will depend on the scope of the change you are pursuing, the number and strength of opponents, and the resources and expertise you bring to the process on your own.

When seeking coalition partners, look to national legal organizations with local affiliates or chapters, such as the ACLU, Children's Defense Fund, National Juvenile Justice Network, Coalition for Juvenile Justice, National Association of Criminal Defense Lawyers, National Legal Aid and Defender Association, National Association for Public Defense, and National Council of Juvenile and Family Court Judges; racial justice organizations like the NAACP and Black Lives Matter; your state and local bar associations; law schools, local Innocence Project chapters, and participatory defense programs; youth and families; and child welfare, civil legal aid, and religious organizations.

Identify your target(s). Now that you know what needs to be changed, the various policymaking processes, your resources, and your allies and opponents, you can decide which type(s) of policy change to pursue. If you have sufficient resources and are pushing for significant changes, you may

want to pursue more than one avenue of reform. For example, you might pursue both a statutory change granting children the right to counsel at interrogation and a court rule instructing factfinders how to consider information from interrogations at which a child was not represented by counsel.

Remember the power of litigation. Remember that litigation can be a force for policy change. By pursuing access to counsel issues on behalf of your clients, your daily practice can help shape policy reforms. Object to the costs and fees levied on your clients, and appeal an adverse ruling. Partner with members of your coalition who can pursue systemic litigation or Freedom of Information Act/state public record requests. Pushing these issues in the courts can convince judges that policy reform is necessary, or nudge policymakers into action in anticipation of or in response to a court ruling.

STEP 3.
BUILD A NEW NARRATIVE

Convincing policymakers to enact new laws or amend rules requires a different kind of advocacy than what defenders are used to in the courtroom.

Know your audience. In the courtroom, the audience is finite: the judge and sometimes a jury. Clearly delineated rules define what we can present to them, what they can consider, and what must drive their decision-making. In the policymaking realm, there are no rules of evidence or jury instructions, no reviewing court waiting to take a second look at an issue. Policies may be set by a few bureaucrats, a dozen members of a court rules committee, or a couple hundred legislators, each of whom is driven by their own priorities and constituencies.

Know who influences your audience. Understanding how a policymaker is likely to make a decision about your reform idea will help you hone in on how to influence them. A junior member of a legislative committee may largely defer to their committee chair; a more experienced member may instead consult with the state bar association or the judges in their district. Some policymakers are especially attentive to letters and phone calls from constituents, while others are swayed by what is printed in the local newspaper. The people and things that influence policymakers are secondary targets of your policy campaign: you will want to enlist them, directly or indirectly, with your messaging.

How Do I Decide Which Strategy Makes the Most Sense?

Deciding how to pursue policy reform is an art, not a science. Countless factors outside of your control impact the success or failure of a reform effort: the personalities and politics of the policymakers, the state of the economy, the outcome of elections, media coverage of the reform effort and related events, etc. There is never a perfect time or a perfect strategy; there is always a lot of hard work and uncertainty.

Do as much homework as you can about the political climate in your state. Talk to advocates who have both failed and succeeded in reform efforts, and pinpoint with them the factors that led to their success or failure. Especially if this is your first time pursuing policy reform, seek advice from advocates who have done policy work in your state, and ask for their input about which strategy or strategies you should pursue.

And reach out to NJDC for help identifying the right strategy. Our staff has worked with policy advocates in every state, and we can help you sort through your options and connect you with other seasoned policy advocates.

Sell what your audience wants to buy. While the lack of clear rules may be frustrating to lawyers accustomed to presenting cases in courtrooms, it also allows greater freedom to pitch reform ideas in ways most likely to engage policymakers. Each of the reforms recommended in *Access Denied* can be framed in multiple ways: protecting children, fundamental fairness, racial and economic justice, creating a constitutional system, investing funding in one area of the system in order to save money elsewhere, promoting public safety, reducing recidivism, enhancing rehabilitation, etc.

All of the potential benefits of a policy change should be offered to every policymaker. But be strategic in how you present them. A member of a court rules committee may be most interested in fundamental fairness and warding off potential litigation, while a legislator on a finance committee wants to hear first about the downstream savings. One policymaker might find data most compelling, while another is persuaded by personal stories of children and families impacted by the shortcomings of the system.

Unless you are talking to a lawyer, do not talk like a lawyer. Policymakers may or may not be lawyers, and even those who are lawyers may have little or no knowledge of the juvenile justice system. Meet your audience where they are. Take time to explain the basics of the juvenile justice system and how it differs from the adult criminal justice system. Avoid rattling off case citations or code sections, or using legal jargon or acronyms. Remember that compelling personal stories or descriptive data will likely have more influence than a legal argument you would present in court.

STEP 4.
ASSEMBLE A REFORM PACKAGE

Since many of the recommendations from *Access Denied* are closely related, you may want to package two or more reforms together, especially if you can accomplish multiple reforms in one policymaking process. For example, if you can go through the administrative rulemaking process with your state public defense agency to both eliminate any consideration of financial status for eligibility for a public defense attorney and to ensure children get lawyers prior to their first court appearance, try to accomplish both reforms at once.

Mind Your Language

The language we use is an important part of our role as advocates, and it sets the stage for how policymakers view our clients. Too often, our clients are dehumanized and "othered" when they are involved in the court system. This starts with something as simple as the language used to describe them.

You will notice that throughout this document, we do not refer to children involved in the court system as "juveniles"; rather, we use words like youth or child. The word juvenile has been co-opted, and listeners automatically associate it with court and delinquency. This diminishes our clients' youthfulness, innocence, and individuality.

Being mindful of the language we use can help policymakers recognize that children in the court system have many of the same youthful traits as children in their own lives. This is essential when we are working to reform a system that has too often criminalized adolescence, targeted youth of color, and demonized children who make youthful mistakes.

Draft the statutes or rules you would like to see implemented. Bring proposed language to policymakers to inform them of exactly what you are trying to accomplish, and so the reform effort starts off with language you like. Use the recommendations from *Access Denied* and the statutes and rules from other states provided in the following sections, and draft language that would work in your state. Start with expansive language, knowing that some aspects of your reform will be subject to negotiation throughout the policymaking process.

Plan how you will pitch the reform. Each section of this toolkit includes research, data, and other information supporting reform. Gather the background information that you think will be most influential to the policymakers you are trying to persuade. Understand that policymakers likely will not have time to read entire studies or papers, so include relevant snippets in short one- or two-page briefs that you provide as background. Whenever possible, include data and personal stories from your state.

Incorporate the youth voice. Give your clients and their families an opportunity to be involved in your policy reform effort. This can take many forms: including a family's story in your written materials, helping a client submit a letter to the editor in support of your policy reform, encouraging a client's family to contact their state legislators, even bringing youth and their families to the state legislature to meet with legislators or provide testimony. Policymakers need to hear directly from their constituents, who can put human faces behind the policy discussions.

Get out there and start selling reform! With your draft reform language and supporting background information in hand, you can start selling your reform proposal. Reach out to legislators, legislative and court staff, allies, justice-system partners, community groups, media, and anyone else you have identified throughout the process of putting together your policy reform package. If this is your first legislative reform effort, start by reaching out to your own elected officials, as their constituent, and ask them who you should talk to next.

For assistance at any time throughout the policy reform process, reach out to NJDC. We are here to support and assist you however we can and to improve children's access to counsel.

Ensuring Access Issues

USING THE ISSUE-SPECIFIC SECTIONS

On the following pages, you will find an issue-specific section for each access to counsel issue area addressed in *Access Denied*. Each section includes:

- ***Access Denied* Findings**
- ***Access Denied* Recommendations**
- **Example Statutes and Rules**
- **Messaging**
  - Narrative
  - Themes
  - Talking Points and Support
- **Sample Coalition Documents**
  - Invitation to Join a Coalition
  - Coalition Meeting Agenda
  - Coalition Sign-on Letter
- **Sample Legislative Testimony**
- **Sample Letter to the Editor**
- **Sample Social Media Posts**

NOTE: All of these sample documents will need to be tailored to your state.

The **findings and recommendations** from *Access Denied* identify access to counsel issues and accompanying solutions. The examples of relevant **statutes and court and administrative rules** show you how other states have addressed these issues and implemented the recommendations, and might be a good starting point for drafting legislation or rules for your state.

The **messaging** section can help you frame your argument in favor of policy reform in your state. The **narratives** are short summaries of why each reform is important. Think of them as your 30-second speech when you are only able to grab a policymaker for a quick chat in the hallway, or when you find yourself in an elevator with a potential ally. The themes are principles behind the reforms that you will likely want to highlight in your messaging. And the **talking points and support** are suggested starting places for you to build the case for reform in your state. These talking points and references are not exhaustive, so amend, supplement, and tailor them however you see fit, to make your argument as persuasive as possible in your state.

The **sample coalition documents, legislative testimony, letters to the editor**, and **social media posts** are starting points that you can use as templates for your policy advocacy work. **All of these sample documents will need to be tailored to your state**. They include sample stories, statistics, and other information that will need to be amended to be accurate for your use. Please use them freely as templates, but be careful to edit them for accuracy in your state.

I. GUARANTEE AUTOMATIC ELIGIBILITY

FINDING:

CHILDREN IN THE UNITED STATES ARE NOT GUARANTEED LAWYERS

- Only 11 states provide every child accused of an offense with a lawyer, regardless of financial status.

RECOMMENDATION:

ELIGIBILITY FOR A "FREE" ATTORNEY

- Automatically deem youth eligible for a publicly funded juvenile defender by virtue of their status as children, regardless of financial circumstances.

Example Statutes and Rules

STATUTES

Delaware: "Any person under the age of 18 arrested or charged with a crime or act of delinquency shall be automatically eligible for representation by the Office of Defense Services." 17 Del. Code Ann. tit. 29, § 4602(c) (West 2016).

Indiana: The court "shall appoint counsel for the child at the detention hearing" if not earlier, and "may appoint counsel to represent any child in any other proceeding."[9] Ind. Code. Ann. § 31-32-4-2 (West 2017).

Louisiana: "For purposes of the appointment of counsel, children are presumed to be indigent." La. Child. Code Ann. art. 320(A) (2010).

Montana: Every youth charged in delinquency proceedings "is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel." Mont. Code Ann. § 47-1-104(4)(b)(ii)-(iii) (West 2013).

North Carolina: "All juveniles shall be conclusively presumed to be indigent, and it shall not be necessary for the court to receive from any juvenile an affidavit of indigency." N.C. Gen. Stat. Ann. § 7b-2000(b) (West 2001).

Pennsylvania: "In delinquency cases, all children shall be presumed indigent." 42 Pa. Stat. and Cons. Stat. Ann. § 6337.1(b)(1) (West 2012).[10]

Vermont: "A juvenile shall not be ordered to pay any part of the cost of representation." Vt. Stat. Ann. tit. 13, § 5238(g) (West 2016).

Washington: While a youth's family's ability to pay will be assessed, "[t]he ability to pay part of the cost of counsel does not preclude assignment [and] [i]n no case may a juvenile be deprived of counsel because of a parent, guardian, or custodian refusing to pay." Wash. Rev. Code Ann. § 13.40.140(2) (West 2014).

Wisconsin: Youth charged with delinquency "shall be represented by counsel at all stages of the proceedings" and "[i]f a [child] has a right to be represented by counsel or is provided counsel at the discretion of the court … and counsel is not knowingly and voluntarily waived, the court shall refer the [child] to the state public defender and counsel shall be appointed by the state public defender … without a determination of indigency." Wis. Stat. Ann. 938.23(1m)(a), (4) (West 2016).

[9] *But see* Ind. Code. Ann. § 33-40-3-6(a) (West 2018) (providing that a guardian may be charged for the representation if it is later determined the guardian is financially able).
[10] *See also* Pa. R. Juv. Ct. Proc. 151 (2011).

COURT RULES

Massachusetts: Defines as indigent "a juvenile, a child who is in the care or custody of the Department of Children and Families, or a young adult." Mass. S.J.C. Rule 3:10(h)(iv) (2016).

Pennsylvania: "All juveniles are presumed indigent. If a juvenile appears at any hearing without counsel, the court shall appoint counsel for the juvenile prior to the commencement of the hearing." Pa. R. Juv. Ct. Proc. 151 (2011).[11]

ADMINISTRATIVE CODE

Ohio: "An applicant is presumed indigent and thus entitled to the appointment of counsel at state expense [when] … [t]he applicant is a child…. In determining the eligibility of a child for appointed counsel, the income of the child's parent, guardian, or custodian shall not be considered." Ohio Admin. Code 120-1-03(B)(4) (2017).[12]

Messaging

NARRATIVE

Automatically deeming children eligible for a publicly funded juvenile defender will improve the justice system, ensure the constitutional rights of children, and protect families living in or on the brink of poverty. This will ultimately save our state money, as children who do not need to be held in detention will have juvenile defenders by their side who will identify more effective, cost-efficient, community-based alternatives. And it will improve public safety: the more children are supported in their schools and communities, the more likely they are to succeed and have lower rates of re-offending.

THEMES

Fundamental fairness, constitutionality, fairness to poor/working class families, public safety, avoiding conflicts of interest, investing in public defense in order to save money elsewhere and achieve better results

TALKING POINTS AND SUPPORT

Tying a child's access to counsel to their family's financial status imbues the system with inequitable access to justice.

- "There is an inherent risk that the legal protections afforded [youth] could be eroded by making legal representation dependent upon the limited financial resources of their guardians, particularly where guardians have an income just above the poverty guidelines. Additionally, the unwillingness of guardians to expend their resources should not determine the [youth's] opportunity to have counsel."[13]

The vast majority of court-involved youth come from families with limited incomes.

- In Memphis and Shelby County, Tennessee, where the court tracks the income levels of youth's families, "[n]early sixty percent [of court-involved youth's families] were either on public assistance or had annual incomes of less than twenty thousand dollars. Another twenty percent had incomes of less than thirty thousand dollars."[14]

People who can afford to opt out of publicly funded representation do so.

- Public defense is a system people tend to opt out of, in favor of hiring private counsel, whenever they are financially able to.[15]

[11] *See also* 42 Pa. Stat. And Cons. Stat. Ann. § 6337.1(b)(1) (West 2012).
[12] *But see* Ohio Admin. Code 120-1-05 (2017) (providing that a child whose parents' gross income exceeds 125% of the federal poverty level can be assessed for a portion of the expense of appointed counsel).
[13] Pa. R. Juv. Ct. Proc. 151 cmt. (2011).
[14] Tamar R. Birckhead, *Delinquent by Reason of Poverty*, 38 Wash. U. J.L. & Pol'y 53, 58-59 (2012) (footnotes omitted).

The right to counsel belongs to the child, not to the parents.

- "There is … a risk that the attorneys hired by guardians might rely upon the guardians for decision making in a case rather than upon the [youth] as the law requires. The [youth] is the client."[16]

Parents hiring counsel can lead to conflicts of interest.

- Due process requires that "counsel … can only be provided by an attorney whose singular loyalty is to the defense of the [child]."[17]
- Evidence suggests that "when the family bears the cost of representation, an attorney is more likely to defer to the [youth's] parents with respect to the direction of the litigation, creating a potential conflict of interest."[18]
- "Where a constitutional right to counsel exists, our Sixth Amendment cases hold that there is a correlative right to representation that is free from conflicts of interest."[19]

Investing in access to counsel saves money.

- "Effective juvenile defenders save money by keeping youth in the community." It costs, on average, $112,555 to incarcerate one youth for one year, versus only $23,725 to provide intensive, individualized, community-based services to one youth for one year.[20]
- A study of juvenile court dispositions from 2004-2007 found that Los Angeles County could have saved approximately $30 million, had children received adequate representation and been placed in appropriate, lower-level alternative dispositions.[21]
- The administrative process of assessing eligibility is a financial and time burden on courts and other public agencies.[22]

The eligibility process can impair a defender's ability to represent their client, leave children in detention without access to a lawyer, and stigmatize families.

- Determining whether a child's family is financially eligible can take several days, robbing attorneys of their already limited time to build relationships with their clients and start case preparation, and delaying hearings, which can be particularly harmful for youth who are detained.
- The financial eligibility determination process can stigmatize families, forcing them to provide personal documentation, including proof of receipt of government benefits from other agencies.[23]

[15] *See* Caroline Wolf Harlow, Bureau of Justice Statistics, U.S. Dept. of Justice, Special Report: Defense Counsel in Criminal Cases (2000), https://www.bjs.gov/content/pub/ascii/dccc.txt.
[16] Pa. R. Juv. Ct. Proc. 151 cmt. (2011).
[17] People v. Austin M., 975 N.E.2d 22, 40 (Ill. 2012).
[18] Birckhead, *supra* note 14, at 86.
[19] Wood v. Georgia, 450 U.S. 261, 271 (1981).
[20] Nat'l Juvenile Defender Ctr., Why Juvenile Defense Matters (2016), http://njdc.info/wp-content/uploads/2018/04/Why-Juvenile-Defense-Matters.pdf (footnotes omitted).
[21] Cyn Yamashiro et al., *Kids, Counsel and Costs: an Empirical Study of Indigent Defense Services in the Los Angeles Juvenile Delinquency Courts*, 49 No. 6 Crim. Law Bulletin Art. 3, 30 (2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2222376.
[22] *See* Access Denied, *supra* note 1, at 11.
[23] *See id.*

SAMPLE
COALITION INVITATION LETTER

May 15, 2018

Dear Colleagues:

When children face delinquency charges and the daunting prospect of appearing in juvenile court, our state does not automatically deem them financially eligible for a publicly funded defense lawyer. Instead, the child's parent or guardian must first complete a detailed financial disclosure form, which is evaluated by the court to determine whether the child qualifies for appointed counsel, based on the parent or guardian's financial situation.

This causes numerous problems, including:

- Children often sit in expensive, crowded detention facilities for a week or longer, while financial paperwork is completed and evaluated.
- A child's ability to be protected by their constitutional right to counsel depends on how much money their parent or guardian makes.
- Many children and families in the juvenile justice system are living in poverty, so processing financial paperwork is an unnecessary burden on court staff.
- When parents are forced to hire counsel for their children, a conflict of interest can arise between the parents and children, and the lawyer may view the parents as the client, rather than the child.

We would like our state to join the 11 other states across the nation that provide a defense attorney to every child, regardless of their family's financial status.

We invite you to join us and other concerned community members and organizations to discuss this important issue and ways to improve children's access to counsel in our state. Please join us at 2:00 P.M. on Tuesday, May 15, at the Local Bar Association Office for the first meeting of the Access to Counsel Coalition.

Please RSVP by May 11 to first.last@email.com.

We look forward to seeing you on May 15!

Sincerely,

Advocate

COALITION MEETING AGENDA
May 15, 2018

2:00 - 2:15: **Brief Overview of a Child's Right to Counsel**
Chief Counsel of the Public Defender Juvenile Division

- Counsel will provide background to coalition members about where a child's right to counsel comes from and what it entails

2:15 - 2:30: **What Happens When a Child's Rights Depend on Family Finances**
Local Mom and Son

- Mom and Son will tell us about their experiences with the Court and Son's right to counsel

2:30 - 3:15: **How Can We Improve Access to Counsel in Our State?**
Local Bar Association Legislative Officer

- Legislative Officer will provide a brief overview of the various ways we can address this issue in our state, and lead a group discussion of the pros and cons of each option, as well as strategies for each

3:15 - 3:55: **Choosing a Path for Policy Reform and Next Steps**
Coalition Members

- Coalition members will decide which avenue for policy reform we will pursue, in order to make automatic eligibility a reality in our state
- Coalition members will discuss and assign next steps in our pursuit of policy reform

3:55 - 4:00: **Wrap-Up**
Coalition Members

- Coalition members will schedule a time and location for our next meeting or conference call

SAMPLE
COALITION SIGN-ON LETTER

May 15, 2018

Dear Chief Justice:

We are a coalition of parents, children, lawyers, and other concerned community members and organizations who would like to see children's access to counsel strengthened in our state. We are asking that the Juvenile Court Rules be amended to provide that every child facing delinquency charges be provided with a publicly funded defense lawyer, regardless of the financial status of the child's family.

As you know, more than 50 years ago, the United States Supreme Court issued *In re Gault*, a landmark decision declaring that children require "the guiding hand of counsel at every step in the proceedings." This vital constitutional right to counsel belongs to the child. But in our state, a child's access to counsel depends upon the finances of their parents or guardian.

When children face a delinquency charge in our state, they will not receive a public defender until their parent or guardian submits a financial disclosure form and the court determines that they meet the state's financial qualifications for publicly funded counsel. Linking a child's right to counsel to their family's income imbues the justice system with inequitable access to justice and puts the child, parent, and attorney at risk for conflicts of interest.

Families who live in poverty may encourage their children to waive their right to counsel, rather than go through what they perceive as a stigmatizing financial review, while families who live just above the poverty threshold cannot truly afford to hire qualified counsel for their children. And when an attorney is hired by a parent or guardian, conflicts can arise when the child's stated interest is different from the parent or guardian's.

Our state must ensure that we are properly protecting children's constitutional right to counsel. We ask you to take an important step toward doing so, by amending the Juvenile Court Rules to automatically deem every child eligible for a publicly funded defense lawyer, regardless of the child's financial status.

Sincerely,

[Individual signatures of coalition members]

SAMPLE
LEGISLATIVE TESTIMONY

Thank you for the opportunity to testify in favor of House Bill 387, which would automatically deem children eligible for a defense lawyer, regardless of their family's financial situation.

I am here today to offer testimony about the financial impact of HB 387, and about an objection we have heard raised about this bill: that under the bill, the children of middle-class and wealthy families would be considered eligible for public defenders. This is true, but HB 387 will still save money and make the juvenile justice system more efficient, in addition to increasing fairness and public safety.

Many children involved with the juvenile court system come from families that are financially unable to pay for a public defender. HB 387 will eliminate all financial eligibility paperwork the courts currently process for youth, thereby relieving courts of a time-intensive burden and increasing administrative efficiency.

And while middle class or wealthy children would be considered eligible for a public defender under this bill, that does not mean they will be represented by a public defender throughout the duration of their case. Most people who can afford to hire an attorney do so. The most likely outcome of HB 387 is that a small number of children from middle class or wealthy families will be represented by a public defender at the child's initial hearing, and the family will then hire a private lawyer to take over the case.

HB 387 will result in more children being represented by public defenders, but this will ultimately save the justice system money. The most immediate savings will be seen in county detention centers. Currently, children often sit in detention for a week or longer while financial eligibility paperwork is completed and processed.

Take, for example, 14-year-old Dominique, who was picked up with a group of her friends, for drinking alcohol and vandalism. Because Dominique's father worked overtime to support the family, the judge ruled that his income was slightly above the financial threshold to qualify for a public defender. But Dominique's father was barely getting by financially and could not afford to hire a private attorney. Dominique stayed in detention for a full week, even though she faced only misdemeanors, and had to navigate the system without an attorney.

Even children whose families can afford to hire counsel sometimes wait in detention for a day or two while the family finds a lawyer. Under HB 387, public defenders will automatically be available to represent all children at their first hearing, so the hearings can be held as soon as possible after the child is detained.

Under current law, children often waive counsel rather than wait in detention for an attorney to be appointed, or to save their families from the work and perceived stigma of a financial review process. With HB 387, those children will be represented by public defenders who, from early on, will advocate for appropriate remedies; help children stay in their home, schools, and communities; and allow them to stay connected to their families, all of which lead to greater success and lower rates of re-offending.

HB 387 will improve the fairness of the justice system by giving all children automatic access to a public defender experienced in representing youth. Our public defender offices will need additional resources to meet this increase in demand, but by investing in public defenders, we will create a juvenile justice system that realizes more financial savings for the state, increases public safety, and promotes positive opportunities for youth success.

Again, I thank you for the opportunity to testify on behalf of this important legislation. I respectfully urge the Committee to pass HB 387.

SAMPLE
LETTER TO THE EDITOR

May 15, 2018

To the Editor:

The House Criminal Justice Committee is considering House Bill 387, which would automatically deem children eligible for a public defender. This is important legislation that should become law in our state.

Children often must wait in detention until their parents complete financial paperwork and court personnel determine whether the child qualifies financially for a public defender. Children can sometimes wait a week or more while parents dig up financial records, or while courts process the paperwork.

The county detention center is overcrowded, and it is expensive and unsafe to hold children there. And the longer a child stays in detention, the more our county pays, the more school the child misses, and the more disconnected from their family and community the child becomes.

Being held in detention is harmful to children and to our communities. Children held in detention are more likely to return to the system, more likely to drop out of school, and more likely to face depression and other mental illness. HB 387 will automatically give children access to public defenders, who will advocate for their safe release and access to community-based resources.

Our state should automatically deem children eligible for a public defender because it is the right thing to do for children and their families, for the integrity of the justice system, and ultimately, for the success of children and the safety of our communities. The state legislature should pass HB 387.

Sincerely,

Advocate

555-555-5555

(237 words)

SAMPLE
SOCIAL MEDIA POSTS

HASHTAGS

#DefendChildren
#AccessToCounsel

FACEBOOK

Ensuring access to counsel for young people saves money, improves public safety, and helps children stay in school. Support HB 387 and give all youth defense lawyers! #DefendChildren

The financial status of families shouldn't impact their child's ability to access their constitutional right to counsel. Instead, courts should automatically deem all children eligible for a public defender. It's time for our state to provide true #AccessToCounsel.

TWITTER

Did you know that children in [state] are not automatically eligible for a public defender? Support HB 387 and ensure we #DefendChildren!

Children have a constitutional right to counsel — regardless of their family's financial status. Join the fight to ensure our state provides #AccessToCounsel

Children should be eligible for a defender by virtue of their status as children. #AccesstoCounsel

II. ENSURE EARLY APPOINTMENT

FINDING:

CHILDREN DO NOT GET ATTORNEYS UNTIL IT IS TOO LATE

- No state guarantees lawyers for every child during interrogation, and only [two] states require it under limited circumstances.

RECOMMENDATIONS:

EARLY APPOINTMENT OF COUNSEL

- Appoint children a qualified juvenile defender before any interrogation.
- Appoint children a qualified juvenile defender well in advance of the first hearing or court appearance.
- Require data collection and monitoring of early appointment of counsel.

Example Statutes and Rules

Counsel at interrogation

Illinois: "[A] minor who was under 15 years of age at the time of the commission of [certain enumerated offenses] must be represented by counsel throughout the entire custodial interrogation of the minor." 705 Ill. Comp. Stat. Ann. § 405/5-170(a) (West 2017).

California: "Prior to a custodial interrogation, and before the waiver of any Miranda rights, a youth 15 years of age or younger shall consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived." Cal. Welf. & Inst. Code § 625.6(a) (West 2018).

Counsel appointed in advance of first hearing or court appearance

STATUTE

Arkansas: "Appointment of counsel shall be made at a time sufficiently in advance of the court appearance to allow adequate preparation by appointed counsel and adequate consultation between the appointed counsel and the client." Ark. Code Ann. § 9-27-316(e) (West 2017).

COURT RULE

Georgia: "Prior to the commencement of the detention hearing the court shall inform the parties of their right to counsel and their right to have counsel appointed by the court if they are indigent." Ga. Uniform Juv. Ct. R. 8.3 (2001).

Iowa: Providing for a right to assistance of counsel, "[f]rom the time the child is taken into custody for any alleged delinquent act that constitutes a serious or aggravated misdemeanor or felony under the Iowa criminal code, and during any questioning thereafter by a peace officer or probation officer." Iowa Code § 232.11(1)(a) (2016).

Messaging

NARRATIVES

Appointing counsel to children before interrogation is the best and only way to ensure children's constitutional rights are upheld, and to ensure the integrity of any investigation involving the interrogation of a child. Studies have found that more than 90 percent of children waive their *Miranda* rights, but only 20 percent of children fully understand these rights.[24] After waiving rights they do not understand, children are more likely to be coerced into giving false information and false confessions during questioning, which leads to wrongful convictions.

Juvenile defenders must be appointed early enough to allow the defender to meet with their client in advance of any court hearing. Children need more time with their lawyers in order to understand complex legal issues, their constitutional rights, and the long-term consequences of decisions they may face. Having a defender who is not fully prepared to represent their client at an initial court hearing is a *de facto* denial of counsel.

Courts must collect data that records when a juvenile defender is appointed. It is only through the collection and monitoring of objective data that we can know the true impact of actions taken by the courts. Data allows us to identify best practices and areas for improvement, and helps ensure limited public resources are being appropriately used to help youth succeed.

THEMES

False confessions, reliability of investigations, impact of adolescent development on interrogations, effective representation, time in detention, procedural justice, importance of collecting data

TALKING POINTS AND SUPPORT

Counsel at interrogation

A lawyer is needed to counteract the imbalance of power.

- As long ago as 1948, the United States Supreme Court recognized the inherent imbalance of power when children are interrogated, and held that the confession of a 15-year-old was obtained in violation of the youth's due process rights, in part because the youth was without counsel.[25]
  - "That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens."[26]
  - "He needs counsel and support if he is not to become the victim first of fear, then of panic. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, may not crush him.... No lawyer stood guard to make sure that the police went so far and not farther, to see to it that they stopped short of the point where he became the victim of coercion."[27]
- "The vulnerable [child] client faces processes overwhelming to most adults.... Every child who faces the loss of liberty must be represented from the time of arrest...."[28]
- The right for a child to speak to an attorney prior to or during interrogation is a constitutional right, not restricted by age or offense.[29]

[24] Barry Feld, *Real Interrogation: What Actually Happens When Cops Question Kids*, 47 L. & Soc'y Rev. 1, 12 (2013) (finding in a study of 307 interrogations of 16- and 17-year-olds charged with felony offenses that 92.8 percent of these youth waived their *Miranda* rights); Thomas Grisso, *Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 Cal. L. Rev. 1134 (1980) (finding that only 20.9% of the 431 youth studied had an adequate understanding of all four *Miranda* warnings).
[25] Haley v. Ohio, 332 U.S. 596, 599–600 (1948).
[26] *Id.* at 599.
[27] *Id.* at 600.
[28] Statement of Interest of the United States at 12-13, N.P. et al. vs. Georgia, No. 2014-CV-241025 (Ga. Super. Ct. 2014), https://www.justice.gov/sites/default/files/crt/legacy/2015/03/13/np_soi_3-13-15.pdf.
[29] *See In re* Gault, 387 U.S. 1, 34-43 (1967).

Children are particularly susceptible to coercive interrogation techniques.

- "Research has shown that because [children] are especially vulnerable to pressure from authority figures, they are more easily manipulated by leading questions, suggestion, repetition, and other commonly-used interrogation tactics than adults."[30]
- Adolescent development research demonstrates that children have great difficulty understanding complex legal issues and abstract ideas, and have difficulty weighing the long-term consequences of their decisions in the face of short-term desires or immediate resolutions.[31]
- Recent United States Supreme Court decisions have recognized that, because of their developmental and legal status, young people are particularly susceptible to coercion, and are thus uniquely in need of representation by effective counsel.
  - Youth "are more vulnerable or susceptible to negative influences and outside pressures."[32]
  - The parts of the brain that govern planning and impulse control are not fully developed in youth.[33]
  - A teenager is particularly vulnerable to the "inherently coercive nature" of interrogation because of their youth.[34]

Children value compliance and are especially likely to give false information.

- Compared to young adults, adolescents tend to make choices that reflect compliance with authority.[35]
- Numerous studies have demonstrated that youth are particularly likely to succumb to giving false information—and even falsely confess—when questioned by law enforcement.[36]
- Research shows that children may be particularly susceptible to interrogation-induced false confessions and resultant wrongful convictions.[37]

Access to parents during interrogation is not sufficient.

- "[T]o place parents in an advisory capacity forces them to choose between teaching their child a moral lesson (e.g., to respect authority or to tell the truth) and exercising the best legal option (to remain silent)."[38]
- "[R]esearch reported that parents did not provide children with useful legal advice, increased pressure to waive their rights, and urged them to make a statement."[39]
- When parents are involved, children "may not have the legal freedom, nor perceive the psychological freedom, to choose.... [C]hildren respond to adult influence most frequently with compliance."[40]

Many children do not understand what they are waiving when they waive their *Miranda* rights.

- The language used in *Miranda* warnings varies, with some requiring a college-level reading ability to understand. There are similar comprehension problems with the language used in *Miranda* waivers.[42]

[30] Brief of Amici Curiae at 55, In the Interest of P.M.P., 200 N.J. 166 (2009) (Docket No. 63,589), http://njdc.info/wp-content/uploads/2014/04/FINAL-Brief.pdf.
[31] *See, e.g.*, Brief for the American Psychiatric Association as Amici Curiae Supporting Respondent, Roper v. Simmons, 543 U.S. 551 (2004) (No. 03-633).
[32] Roper v. Simmons, 543 U.S. 551, 569 (2005).
[33] *See, e.g.*, Miller v. Alabama, 567 U.S. 460, 472 n.5 (2012).
[34] J.D.B. v. North Carolina, 564 U.S. 261, 268-276 (2011).
[35] Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 L. & Hum. Behav. 333 (2003).
[36] International Ass'n of Chiefs of Police, Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation 4-6 (2012), http://www.theiacp.org/portals/0/pdfs/reducingriskssanexecutiveguidetoeffectivejuvenileinterviewandinterrogation.pdf.
[37] *See, e.g.*, Nashiba F. Boyd, Boyd, *Comment: "I Didn't Do It, I was Forced to Say that I Did": The Problem of Coerced Juvenile Confessions, and Proposed Federal Legislation to Prevent Them*, 47 How. L.J. 395 (2004); Saul M. Kassin et al., *Police-Induced Confessions, Risk Factors, and Recommendations: Looking Ahead*, 34 L. Hum. Behav. 49, 3–38 (2010); Laurel LaMontagne, *Children Under Pressure: The Problem of Juvenile False Confessions and Potential Solutions*, 41 W. St. U. L. Rev. 29 (2013); Jessica R. Meyer & N. Dickon Reppucci, *Police Practices and Perceptions Regarding Juvenile Interrogation and Interrogative Suggestibility*, 25 Behav. Sci. & L. 757 (2007); C.S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 L. & Psychol. Rev. 53 (2007).
[38] Barry C. Feld, Kids, Cops, and Confessions: Inside the Interrogation Room 187 (2012).
[39] *Id.* at 188 (footnotes omitted).
[40] Brief of Amici Curiae Juvenile Law Center, et al., on Behalf of Petitioner Ybanez at 21, Ybanez v. Colorado, 2015 WL 929996 (2015) (Case No. 2014SC190), https://jlc.org/sites/default/files/case_files/2015.06.27%20Ybanez%20Amicus%20Brief%20-%20FILE%20STAMPED.pdf (citing David G. Scherer & N. Dickon Reppucci, *Adolescents' Capacities to Provide Voluntary Informed Consent: The Effects of Parental Influence and Medical Dilemmas*, 12 L. & Hum. Behav. 123, 126 (1988).
[41] Richard Rogers et al., *Juvenile Miranda Warnings: Perfunctory Rituals or Procedural Safeguards?*, 39 Crim. Just. & Behav. 229, 237 (2012).
[42] Alan Goldstein & Naomi E. Sevin Goldstein, Evaluating Capacity to Waive Miranda 57-58 (2010).

- The cognitive and socio-emotional differences between children and adults make it more difficult for youth to understand the substance of their rights, as well as the ramifications of waiving those rights.[43]
- "Prior research indicates [children] are significantly more likely to waive their *Miranda* rights than are adults. In a recent study, almost 93% of [children] waived their *Miranda* rights. This eagerness to waive their rights may be due to a greater susceptibility to coercion or a greater deficit in understanding the importance of these rights to defendants."[44]
- A study of adolescents' comprehension of *Miranda* warnings found that only 20.9 percent of youth demonstrated an adequate understanding of all components of *Miranda* warnings.[45]

Counsel appointed in advance of first appearance

Defense counsel have a duty to begin representation before any court hearings.

- "[I]t is the responsibility of counsel for youth to begin active representation of the client before the detention or initial hearing."[46]
- "Many important rights of [the accused] can be protected and preserved only by prompt legal action. Defense counsel should … take necessary actions to vindicate such rights."[47]
- "Perhaps more than anything else, the timing and extent of counsel's early involvement in the case can affect the final outcome…. Early involvement in the representation of [children] is particularly important because of the impact it can have on decisions made in cases involving [children], as well as the significance of decisions made early in the process."[48]

Counsel need more time with young clients in order to effectively represent them.

- "Because the client in juvenile court is a minor, counsel's representation is more expansive than that of a criminal defense lawyer for an adult. Lawyers for children must be aware of their clients' individual and family histories, their schooling, developmental disabilities, mental and physical health, and the clients' status in their communities in order to assess their capacities to proceed and to assist in their representation."[49]

Unprepared counsel is a denial of counsel.

- "[I]f [defense counsel] do not have the time or resources to engage in effective advocacy … then they will inevitably fail to meet the minimum requirements of their clients' right to counsel. These conditions lead to *de facto* nonrepresentation."[50]

Counsel can help relieve unsafe, overcrowded detention facilities.

- "The prompt provision of counsel for detained [youth] will relieve pressures on overcrowded detention facilities by speeding the release of [youth] whose continued incarceration there is unnecessary."[51]

[43] *See, e.g.*, Grisso, *supra* note 24; Barry Feld, *Real Interrogation: What Actually Happens When Cops Question Kids*, 47 L. & Soc'y Rev. 1 (2013); Jodi L. Viljoen & Ronald Roesch, *Competence to Waive Interrogation Rights and Adjudicative Competence in Adolescent Defendants: Cognitive Development, Attorney Contact, and Psychological Symptoms*, 29 L. & Hum. Behav. 723 (2005).
[44] M. Dyan McGuire et al., *Do Juveniles Understand What an Attorney is Supposed to Do Well Enough to Make Knowing and Intelligent Decisions About Waiving Their Right to Counsel?* J. Applied Juv. Just. SerV. 8 (2015), http://npjs.org/jajjs/wp-content/uploads/2015/02/JAJJS-Article-McGuire.pdf.
[45] Grisso, *supra* note 24, at 1152-53.
[46] Nat'l Council of Juvenile and Family Court Judges, Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases 30 (2005).
[47] Criminal Justice Standards for the Defense Function § 4-3.7(a) (Am. Bar Ass'n, 4th ed.).
[48] National Juvenile Defense Standards , Standard 3.1 (Nat'l Juvenile Defender Ctr. 2012).
[49] Wallace J. Mlyniec, In re Gault *at 40: The Right to Counsel in Juvenile Court – A Promise Unfulfilled*, 44 Crim. L. Bulletin 371 (2010).
[50] Statement of Interest of the United States, *supra* note 28, at 14.
[51] Juvenile Justice Standards: Standards Relating to Pretrial Court Proceedings, Standard 5.1(B) cmt. (Inst. of Judicial Admin. & Am. Bar Ass'n 1979).

Increased time in detention harms children and public safety.

- One-third of children diagnosed with depression during confinement developed that depression during their confinement.[52]
- Children detained pretrial are twice as likely to reoffend than non-detained youth.[53]
- "Placing children in detention disrupts education, family cohesion, and the provision of services. It exposes young people to the risk of physical and sexual assault as well as to psychological stress. Further, detention has been found to exacerbate the conditions of those with pre-existing behavioral or mental health problems...."[54]
- "[T]here is credible and significant research that suggests that the experience of detention may make it more likely that youth will continue to engage in delinquent behavior, and that the detention experience may increase the odds that youth will recidivate, further compromising public safety."[55]

Data collection

Collecting data can improve the juvenile justice system.

- "Considering how important the provision of juvenile defense is, there remains very little data to objectively describe its application."[56]
- "Data empowers court staff and stakeholders to suggest opportunities for new policies or practices that may be more efficient, lead to better outcomes, or ensure fairness."[57]
- "Collecting, reporting, and monitoring data ... would help states ensure that the legal needs of youth are being met and support the continued specialization of the juvenile defense field."[58]

Data can ensure limited resources are used most efficiently.

- "Data can describe a court's overall functioning, replacing anecdotes with objective answers."[59]
- "By using data to identify opportunities for improvement, judges can be sure that their often limited resources are leveraged wisely."[60]
- "Objectively monitoring practice changes not only assures they are implemented as intended, but clearly demonstrates related court activity to stakeholders, including funders, policymakers, and the public."[61]
- "Collecting data on court processes, such as if an attorney was present and what kind ... provides a more complete picture because the full array of defense options can be documented...."[62]
- "Using comprehensive data to answer questions, such as 'how many youth had an attorney' or 'what are the outcomes for youth with a public defender compared with a private attorney?' can help monitor and strengthen the performance of juvenile defense systems."[63]

[52] Barry Holman & Jason Ziedenberg, Justice Pol'y Inst., The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities 8 (2006), [hereinafter The Dangers of Detention, http://www.justicepolicy.org/uploads/justicepolicy/documents/dangers_of_detention.pdf.
[53] *Id.* at 6.
[54] Birckhead, *supra* note 14, at 96-97 (internal citations omitted), http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1015&context=law_journal_law_policy.
[55] The Dangers of Detention, *supra* note 52, at 2-3.
[56] Andrew Wachter, Juvenile Justice Geography, Policy, Practice & Statistics, Indefensible: The Lack of Juvenile Defense Data 2 (2015) [hereinafter Indefensible], http://njdc.info/wp-content/uploads/2015/09/Indefensible-The-Lack-of-Juvenile-Defense-Data.pdf.
[57] Office of Juvenile Justice and Delinquency Prevention et al., 5 Ways Juvenile Court Judges Can Use Data at 1 (2017) [hereinafter 5 Ways Juvenile Court Judges Can Use Data], http://www.ncjfcj.org/sites/default/files/NCJFCJ_5_Ways_Data_Final.pdf.
[58] Indefensible, *supra* note 56, at 4.
[59] 5 Ways Juvenile Court Judges Can Use Data, *supra* note 57, at 1.
[60] *Id.*
[61] *Id.* at 2.
[62] Indefensible, *supra* note 56, at 3.
[63] *Id.*

SAMPLE
COALITION INVITATION LETTER
(Counsel at Interrogation)

May 15, 2018

Dear Colleagues:

We invite you to join us and other concerned community members and organizations at 2:00 P.M. on Tuesday, May 15, at the State ACLU Office, to discuss ways to better protect children who are interrogated by police in our state.

Currently, children who are questioned by police are treated no differently than adults. They are read their *Miranda* rights, asked whether they want to waive those rights, and when they do so, they are interrogated by police — with the same coercive techniques police use when questioning adults.

A study by M. Dyan McGuire et al. found that while 93 percent of children waive their *Miranda* rights, only about 20 percent of young people understand them. This means that the vast majority of children who are questioned by police give up their constitutional rights without truly knowing what those rights are.

Add to this the fact that children are naturally inclined to comply with authority figures and particularly susceptible to coercion, and it is understandable why children are so likely to be tricked into giving false information during interrogations.

We believe the best, and only, way to fully protect children during interrogation is to appoint a qualified juvenile defender to every child before interrogation. We are convening this coalition to pool resources and discuss pursuing this important reform effort. We hope you can join us.

Sincerely,

Advocate

SAMPLE
COALITION MEETING AGENDA
(Counsel at Interrogation)

COALITION MEETING AGENDA
May 15, 2018

2:00 - 2:30: **Adolescent Development and the Law**
Local Law Professor

- Law Professor will review the latest in adolescent development and explain how court decisions have been influenced by that research, and will discuss how adolescents' development impacts their ability to understand complex ideas like constitutional rights

2:30 - 3:00: **Interrogations and False Confessions**
Director of Local Innocence Project

- Director will talk about what police interrogations are like and why children are particularly susceptible to giving false information and false confessions

3:00 - 3:30: **Litigation and/or Legislation?**
State ACLU Advocate

- Advocate will lead the group in a discussion about how to better protect children who are interrogated in our state, and whether we should pursue legislation, litigation, or both

3:30 - 3:55: **Next Steps**
Coalition Members

- Having decided the question of legislation and/or litigation, coalition members will discuss and assign next steps

3:55 - 4:00: **Wrap-Up**
Coalition Members

- Coalition members will schedule a time and location for our next meeting or conference call

SAMPLE
COALITION SIGN-ON LETTER
(Counsel Prior to First Appearance & Data)

May 15, 2018

Dear Chief Justice:

We are a coalition of parents, children, lawyers, local organizations, and other concerned community members who are working to improve children's access to counsel in our state. We would like to work with you to ensure that children are appointed attorneys well enough in advance of their first court appearance to allow the attorney to properly represent the child, and to require courts to collect data about when attorneys are appointed.

Too often in courts across our state, a defender does not meet their client until the client is brought to the courthouse for the first appearance. If they are lucky, the defender and child might have five to ten minutes to discuss the case and the upcoming hearing. If they are not so lucky, the defender might get only a few whispered comments to their new client while standing at counsel table just before the hearing begins. This falls far short of what the Constitution and our state laws require of the right to counsel.

As you may know, the National Council of Juvenile and Family Court Judges stated in its Juvenile Delinquency Guidelines that, "it is the responsibility of counsel for youth to begin active representation of the client before the detention or initial hearing." And the United States Department of Justice has asserted that unprepared counsel is *de facto* denial of counsel. In the Statement of Interest for *N.P. et al. v. Georgia*, the Department of Justice stated, "If [defense counsel] do not have the time or resources to engage in effective advocacy … then they will inevitably fail to meet the minimum requirements of their clients' right to counsel. These conditions lead to *de facto* nonrepresentation."

We would like to see our state's courts improve their practices when appointing counsel to represent children to ensure the child and attorney have time for a proper consultation before any court hearing. We also believe courts should collect data about when attorneys are appointed to represent children to monitor the impact the timing of appointment has on a case, and on the rest of the court process.

We would like to arrange a time to meet with you to further discuss this issue and how we can ensure children in our state are fully and fairly represented in court.

Sincerely,

[Individual signatures of coalition members]

SAMPLE
LEGISLATIVE TESTIMONY
(Counsel at Interrogation)

Thank you for the opportunity to testify in favor of House Bill 387, which would appoint defense attorneys to represent children who are being interrogated by police. This extremely important legislation would put our state at the forefront of protecting children's constitutional rights and ensuring the integrity of law enforcement questioning.

Seventy years ago in *Haley v. Ohio*, the United States Supreme Court recognized that a child being interrogated by the police is subject to an overwhelming imbalance of power. The Court declared that a child needs to be represented by counsel during an interrogation "if he is not to become the victim first of fear, then of panic," and "to make sure that the police [go] so far and not farther, to see to it that they stop[] short of the point where [the child becomes] the victim of coercion."

Since that ruling, adolescent development research has bolstered what common sense told the Court in 1948. We know now that because adolescents' brains are still developing, they are especially vulnerable to pressure from authority figures and more likely to make choices that reflect compliance with authority. They are also more susceptible to coercive questioning techniques and less likely to understand abstract legal concepts.

We also know that children do not fully understand their *Miranda* rights. A study by M. Dyan McGuire et al. found that more than 90 percent of children waive their *Miranda* rights, but only about 20 percent of children fully understand everything *Miranda* rights entail. This means that the vast majority of children are waiving their constitutional rights without understanding them, and then being questioned by law enforcement. Not only is this damaging to the children, it also calls into question the integrity of the investigation.

Numerous studies have found that, because of their ongoing development and the vast imbalance of power in an interrogation, children are especially susceptible to falsely confessing during police questioning, which leads to wrongful convictions. The International Association of Chiefs of Police teaches its members that children are particularly likely to provide false information.

Last year, Anthony, a 17-year-old boy with an IQ of 60 and the cognitive abilities of a 10-year-old child, was arrested for armed robbery and interrogated for over two hours. The police knew about Anthony's cognitive challenges, but persuaded him to sign a form waiving his rights. Throughout his interrogation, Anthony asserted his innocence 35 times. Forty-two times, police told Anthony they had evidence of his guilt. They had no such evidence. Scared, crying, asking for his mother, and desperate to go home, Anthony finally broke down and confessed. Anthony was charged as an adult and held in jail for nine months, until a judge reviewed the videotape of his interrogation and dropped the charges. Anthony's traumatic interrogation and nine months of incarceration could have been avoided, if only a lawyer had been appointed from the start.

The only way to fully and properly protect children and ensure their constitutional rights are upheld is to appoint qualified juvenile defenders to represent them when they are subject to police interrogation. In fact, in its Statement of Interest in *N.P. et al. v. Georgia*, the United States Department of Justice recognized that children face "processes overwhelming to most adults" and that "every child who faces the loss of liberty must be represented from the time of arrest."

And it must be legal counsel; providing children access to their parents during an interrogation not only is not sufficient to protect their legal rights, it may also further encourage children to waive their rights

without fully understanding them. Putting parents in an advisory role when their child is being interrogated forces parents to choose between teaching their child a lesson—to respect authority—and encouraging their child to exercise their best legal option—to remain silent. Research has found that parents are not able to offer their children useful legal advice, have misperceptions about interrogation techniques and legal protections for children, and increase the pressure on children to waive their rights and make a statement.

Appointing defense counsel to represent children during interrogation is the right thing to do for children's rights and for the integrity of law enforcement investigations. I applaud the Legislature for considering HB 387, and I encourage this Committee to pass it.

SAMPLE
LETTER TO THE EDITOR
(Data Collection)

May 15, 2018

To the Editor:

After hearing countless reports of children in our state's courts not meeting their defense attorney until they walked into the courthouse door, a group of concerned community members and activists formed a coalition to look into the issue. What we found is a disconcerting lack of objective information about what happens to youth in courts across the state.

When our coalition first met, we decided to track down any data that might support the anecdotal evidence we had been hearing about children and their appointed lawyers not having nearly enough time before court hearings. It proved to be a nearly impossible task.

There is no comprehensive, consistent data from our state's courts that shows when attorneys are appointed to represent children, and whether they are appointed early enough in the process to allow the child and their attorney enough time to talk about the case, the upcoming court hearing, and where the child might go instead of being held in detention.

Data is the building block for strong public policy. We first have to know what is happening in courts so that we can identify good practices and areas in need of improvement. Only by collecting, reporting, and monitoring data and outcomes can we know what is working to keep our state and children safe, and what we can do to improve.

Our coalition is working with the Chief Justice to increase the amount and quality of data collected by courts. It is imperative that the justice system use objective data to monitor the results of its work and to ensure taxpayers that it is using resources wisely.

Sincerely,

Advocate

555-555-5555

(268 words)

SAMPLE
SOCIAL MEDIA POSTS

HASHTAGS

#DefendChildren
#EarlyAccess

FACEBOOK

Sometimes, children can waive their Miranda rights without fully understanding them, which can lead to coercive questioning. Let's #DefendChildren and provide lawyers at the stationhouse. Get involved today: [link to your website]

Too many children in [state] meet their lawyer when they walk into the courtroom for their first hearing. Children and defenders need more time together before court hearings—otherwise, representation is hollow. It's time for our state to fulfill the right to counsel and provide youth with #EarlyAccess to lawyers in juvenile court.

TWITTER

93% of children waive their Miranda rights, but only 20% fully understand what they mean. Join us and #DefendChildren at interrogations!

"It's not only unfair but grossly naïve to expect children to navigate this system alone." Read more: njdc.info/snapshot #AccessDenied

FINDING:

CHILDREN MUST PAY FOR THEIR CONSTITUTIONAL RIGHT TO COUNSEL

- Thirty-six states allow children to be charged fees for a "free" lawyer.

RECOMMENDATION:

COSTS OF COUNSEL

- Abolish all costs and fees associated with a child's access to a publicly funded juvenile defender.

Example Statutes and Rules

STATUTES

California: "[T]he parent or guardian or the adult relative … shall not be liable for the cost of counsel or legal assistance furnished by the court for purposes of representing the minor." Cal. Welf. & Instit. Code § 659(e) (West 2018).

Washington: In 2015, Washington enacted Senate Bill 5564, the Year Act, which eliminated most non-restitution fees and fines in juvenile court, including public defense costs. SB 5564, 64th Legislature, Reg. Sess. (Wa. 2015) (enacted).

ADMINISTRATIVE CODE

Alameda County, California: "The Public Defender schedule of fees … is amended to repeal the $300 fee for representation of juveniles…." Alameda County Resolution 2011-142 (Ca. 2011).

Messaging

NARRATIVE

Charging fees to children from families living in poverty in order to access their constitutional right to counsel encourages children to waive their rights and quickly plead guilty to charges without knowing their rights, options, or the long-term consequences. This practice also lengthens the child's involvement in the juvenile justice system, creates a sense that the system is unfair and biased, undermines the purposes of the juvenile court system, and burdens families. All this, for a "free" lawyer. These harms far outweigh any minimal financial gain the system may realize.

THEMES

Waiver of counsel, burden on families, incentive to plead, procedural justice, unequal access to justice for children from families living in poverty

TALKING POINTS AND SUPPORT

Charging fees for a public defender encourages children from low-income families to waive their right to counsel.

- "Statutory provisions requiring parents to pay fees to apply for and then access lawyers deter youth from exercising the right to counsel…. [F]amilies are forced to choose between incurring costs that they cannot afford and acquiring representation for their children."[64]

[64] Nat'l Juvenile Defender Ctr., Florida: An Assessment of Access to Counsel & Quality of Representation in Delinquency Proceedings 33 (2006), http://njdc.info/wp-content/uploads/2013/11/Florida-Assessment1.pdf.

- "Numerous obstacles exist for Ohio's poor children to obtain lawyers in the juvenile justice system. It has become a tolerated if not accepted practice that large numbers of poor youth waive their right to an attorney in Ohio, even during the most critical stages of proceedings...."[65]
- "Defenders surveyed believe that in 43% of cases where a child proceeds without counsel, it is because parents insist on it. This is likely due to parents' concerns over cost, since many counties charge a fee for public defense services."[66]

Charging families for a defense attorney pressures children to admit to the charges.

- "The requirement that poor parents pay legal fees may put undue pressure on a child to enter an early admission in a case and compromise his attorney's ability to fully explore a defense and/or dispositional alternatives."[67]

The assessment of fees can extend and deepen a child's involvement with the juvenile court.

- "It is not uncommon for youth on probation to complete all of their conditions except for the payment of fees, leading to an extension of probation and the assessment of additional fees, and so 'the vicious cycle continues.'"[68]
- "The failure to pay fees while on probation can also lead to its revocation, resulting in commitment of the [child] to a detention center or training school."[69]
- "[S]ince youth need to have money to last on probation, poor children are more likely to end up committed and in detention."[70]

Fees undermine the purpose of juvenile court to promote positive youth development.

- "Many families already have challenging relationships due to the involvement of their child in the juvenile system, and adding a financial burden only amplifies feelings of anger or resentment. This is contrary to the goal of the juvenile system in fostering family stability and the reintegration of a youth back into a household."[71]
- "The juvenile system is supposed to provide for the protection and safety of youth, preserve family ties and foster family reunification and enable young people to become law-abiding and productive members of their families and communities. Instead, Alameda County's fee scheme imposes economic hardship, creates family strain and erects significant reentry barriers for youth."[72]

Fees for a public defender exacerbate poverty.

- "Individuals may confront escalating debt; face repeated, unnecessary incarceration for nonpayment despite posing no danger to the community; lose their jobs; and become trapped in cycles of poverty that can be nearly impossible to escape."[73]
- "Even seemingly minimal payments may require families to choose between buying basic necessities, such as groceries, and paying fees."[74]

[65] Nat'l Juvenile Defender Ctr. et al., Justice Cut Short: An Assessment of Access to Counsel and Quality of Representationin Delinquency Proceedings in Ohio at I (2003), http://njdc.info/wp-content/uploads/2013/11/Final-Ohio-Assessment-Report.pdf.
[66] Nat'l Juvenile Defender Ctr. et al., Washington: An Assessment of Access to Counsel and Quality of Representationin Juvenile Offender Matters 28 (2003), http://njdc.info/wp-content/uploads/2013/11/Final-Washington-State-Assessment-Report.pdf.
[67] Nat'l Juvenile Defender Ctr. et al., Illinois: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings 35 (2007), http://njdc.info/wp-content/uploads/2013/11/Illinois_Juvenile_Defense_Assessmen-t_Report_FINAL.pdf.
[68] Birckhead, *supra* note 14, at 91.
[69] *Id.* (footnote omitted).
[70] Nat'l Juvenile Defender Ctr., Juvenile Legal Defense: A Report on Access to Counsel and Quality of Representation for Children in Nebraska 68 (2009), http://njdc.info/wp-content/uploads/2013/11/FINAL-Nebraska-Assessment-Report.pdf.
[71] Pol'y Advocacy Clinic, Berkeley Law, High Pain, No Gain: How Juvenile Administrative Fees Harm Low-Income Families in Alameda County, California 11 (2016), http://njdc.info/wp-content/uploads/2016/04/201603_BerkeleyLaw_High-Pain-No-Gain.pdf.
[72] *Id.* at 18 (footnote omitted).
[73] U.S. Dep't of Justice, *Dear Colleague Letter Regarding Law Enforcement of Fines and Fees* 2 (Mar. 14, 2016), https://www.courts.wa.gov/subsite/mjc/docs/DOJDearColleague.pdf (footnotes omitted).
[74] Jessica Feierman et al., Juvenile Law Ctr., Debtors' Prison For Kids? The High Cost of Fines and Fees in the Juvenile Justice System 6 (2016), http://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf.

SAMPLE
COALITION INVITATION LETTER

May 15, 2018

Dear Colleagues:

Did you know that a child who qualifies for a public defender—an attorney who is supposed to be provided free of charge to people who cannot afford to hire one—can be charged hundreds of dollars for exercising their right to counsel? Our state charges a child $50 just to apply for a public defender, and the court can add more in additional fees and costs throughout the case for the public defender and related services.

Charging children from low-income families fees to access their constitutional rights is damaging to the child, to the child's family, and to the child's court case. Too often, children waive their right to counsel, rather than burden their families with the $50 application fee. And while $50 may not seem like much, it can force families with limited resources to choose between paying court fees and buying groceries.

We want to work together to develop legislation that would eliminate all court costs and fees associated with a child's right to counsel. A young person should never have to waive counsel or admit to charges merely to avoid placing a financial burden on their family.

We invite you to join us to discuss the impact public defense-related fees and costs have on children, families, and communities, and ways to move forward with promising legislation. Please join us at 2:00 P.M. on Tuesday, May 15, at the State Public Defense Office.

Please RSVP by May 11 to first.last@email.com.

We look forward to seeing you on May 15!

Sincerely,

Advocate

COALITION MEETING AGENDA
May 15, 2018

2:00 - 2:15: **Brief Overview of the Costs and Fees Charged to Children**
State Public Defender

- Public Defender will review the various costs and fees related to public defense that a child can be charged throughout the course of their case

2:15 - 2:30: **Financial Impact of Costs and Fees to the System**
Public Defense Fiscal Officer

- Fiscal Officer will explain how much is collected in public defense-related costs and fees, and what that money is used for

2:30 - 3:00: **Financial Impact of Costs and Fees to Children and Families**
Former Court-Involved Youth and Parents

- Youth and Parents will talk about the fees charged to them when Youth requested a public defender, and how those fees impacted their family's financial health, Youth's court case, and how they view the justice system

3:00 - 3:50: **Legislative Strategies for Eliminating Costs and Fees**
Group Discussion, Facilitated by Public Defender Legislative Counsel

- Legislative Counsel will lead coalition members in a strategic discussion of legislative options for eliminating costs and fees related to public defense services, with the goal of identifying a strategy the coalition can agree upon and commit to supporting
- Coalition members will decide and assign next steps to further the selected legislative effort

3:50 - 4:00: **Wrap-Up**
Coalition Members

- Coalition members will schedule a time and location for our next meeting or conference call

SAMPLE
COALITION SIGN-ON LETTER

May 15, 2018

Dear Chief Justice:

We hope that you and our state's judges can join us in support of legislation eliminating costs and fees associated with providing public defenders to children facing delinquency charges.

These fees can accumulate to hundreds of dollars per case, a significant amount of money for a family whose financial status qualifies them for state-provided defense services. The hardship this creates for families undermines the very purpose of the juvenile court system: to promote youth success.

Having a child facing delinquency charges can be extraordinarily stressful for a family, and imposing fees for a publicly funded attorney only adds to that stress and hampers efforts to foster family stability and support for the child.

Alameda County, California conducted a thorough study of the fees charged to children and families involved in its juvenile court system, and found that its fee scheme "imposes economic hardship, creates family strain and erects significant reentry barriers for youth." The county chose to eliminate its fees.

We are pursuing legislation to eliminate all costs and fees associated with providing public defenders to children facing delinquency charges in our state's courts, and we hope you and judges from across the state will support our efforts. We believe that eliminating fees will help children and families have a voice in the court process, increase the success of children returning to their homes and communities, and further the goals of our juvenile justice system.

Sincerely,

[Individual signatures of coalition members]

SAMPLE
LEGISLATIVE TESTIMONY

Thank you for the opportunity to testify in favor of House Bill 387, which would eliminate all statutory costs and fees related to the services of public defenders in juvenile court.

Contrary to the very spirit of constitutional rights, current law allows children to be charged for applying for and being represented by a public defender. These fees range from $50 to several hundreds of dollars, for legal services our state is constitutionally mandated to provide to youth who cannot afford to hire counsel. The harm these fees do to children, families, and the integrity of our justice system far outweigh any minimal financial benefit they bring.

Far too often, children waive counsel rather than subjecting their families to the $50 fee our state charges just to apply for a public defender. And when courts choose to charge families escalating fees for public defense services based on the length of the case, children may feel pressured to plead guilty and end the case, rather than allowing their attorney enough time to fully explore all their defense options.

Perhaps most distressingly, these fees can actually lengthen and deepen a child's involvement with the court system. It is not uncommon for a child who has completed all conditions of probation, except for the payment of fees, to have their probation extended, which can lead to the assessment of more fees and to revocation of probation, sometimes leading to incarceration.

Charging fees to children living in poverty in order to access their constitutional right to counsel encourages those children to waive their right to counsel and to quickly plead guilty to charges without knowing their options. And fees cause financial stress for the child's family, which can harm the family's relationship with the child at a time when family support is especially important.

Fees lengthen a young person's involvement in the juvenile justice system, undermine the purposes of the juvenile court system, and harm families.

HB 387 seeks to address these harms by eliminating all costs and fees associated with children accessing their right to counsel. It is important legislation and the time has come to ensure young people are guaranteed such protections. I ask the Committee to approve HB 387 and stand up for the futures of our children.

SAMPLE
LETTER TO THE EDITOR

May 15, 2018

To the Editor:

When I was 13 years old, I was arrested and charged with truancy. My father refused to pay the required fee for a public defender, and I was forced to face the charge without a lawyer. When my case was heard, I felt I had no choice but to waive my right to counsel and plead guilty.

The court put me on probation and sent me home. What the court did not know was that my father was hardly ever there because he was working two jobs to support us. I was usually left to get to school on my own, as well as feed and otherwise take care of myself. The court thought I was being unruly, but really I was an overwhelmed child.

Because of the uncertainty at home, I repeatedly violated the terms of my probation. Eventually, the judge got frustrated and wanted to lock me up. Because the court wanted to detain me, it was required to appoint a lawyer to represent me, even though my father would not pay the fee.

My public defender told the court about my home life and the struggles I faced to manage everything. Knowing this, the judge dismissed my case and got me the help and support I needed.

I am glad the state legislature is considering House Bill 387, which would eliminate the fees and costs associated with appointing counsel to children in juvenile court. If this law had been in effect when I was arrested, I could have gotten the support I needed much sooner.

Sincerely,

Advocate

555-555-5555

(258 words)

SAMPLE
SOCIAL MEDIA POSTS

HASHTAGS

#NoMoreFees
#AccessToCounsel

FACEBOOK

Too many children waive their right to counsel rather than burden their family with the cost of a public defender. We can't afford to let costs and fees interfere with children's constitutional rights. #NoMoreFees

Charging fees for public defenders interferes with a child's right to counsel and undermines the rehabilitative purposes of the juvenile court system. It's time for our state to eliminate all costs and fees, and provide #AccessToCounsel for children.

TWITTER

Families shouldn't have to choose between affording a public defender for their child or dinner on the table. #NoMoreFees for public defenders in juvenile court.

"[The courts] are leaching the poor left and right" – Juvenile Defender in @NatJuvDefend's report, #AccessDenied njdc.info/snapshot

IV. ADDRESS WAIVER OF COUNSEL

FINDING:

CHILDREN'S RIGHTS ARE NOT SAFEGUARDED BY THE STATES

- Forty-three states allow children to waive their right to a lawyer without first consulting with a lawyer.

RECOMMENDATIONS:

WAIVER OF COUNSEL

- Prohibit waiver of counsel unless and until a child has the opportunity to consult with a qualified juvenile defender about the implications of waiving their right.
- Require data collection and monitoring of any waiver of counsel.

Example Statutes and Rules

STATUTES

Maryland: "[T]he court may not accept [a] waiver unless … [t]he child is in the presence of counsel and has consulted with counsel…." Md. Code Ann., Cts. & Jud. Proc. § 3-8A-20(b)(3)(i) (West 2008).

New Jersey: A child "may not waive any rights except in the presence of and after consultation with counsel…." N.J. Stat. Ann. § 2A:4A-39(b)(1) (West 2013).

New York: A child "shall be presumed to lack the requisite knowledge and maturity to waive the appointment of an attorney … [which] may be rebutted only after an attorney has been appointed" and there is a hearing on the record in which the attorney participates and in which the consequences of waiver of counsel are addressed. N.Y. Fam. Ct. Act § 249-a (2011).

Texas: Requires that "the child and the attorney … are informed of and understand the right and the possible consequences of waiving [counsel]." Tex. Fam. Code § 51.09(1)-(2) (West 2015).

COURT RULES

Florida: "Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel." Fla. R. Juv. Proc. R. 8.165(a) (2016).

Minnesota: "The child must be fully and effectively informed of the child's right to counsel and the disadvantages of self-representation by an in-person consultation with an attorney, and counsel shall appear with the child in court and inform the court that such consultation has occurred." Minn. Juv. Del. R. Proc. 3.04(1) (2015).

Vermont: Requires "that the attorney … has investigated the relevant facts and law and consulted with the [client] and guardian ad litem" before a child waives a constitutional right. Vt. Fam. Proc. R. 6.1(d)(3)(B) (1995).

Washington: Does not allow waiver unless the youth "has been advised regarding the right to counsel by a lawyer who has been appointed by the court or retained…." Wash. Juv. Ct. R. 7.15(a)(1) (2008).

Messaging

NARRATIVE

Youth require the guiding hand of counsel at every step in the proceedings against them to effectively navigate the complex court process. Youth should automatically be appointed counsel and must have a meaningful opportunity to consult with counsel prior to any determination about whether they waive this critical constitutional right.

THEMES

Adolescent development, critical right to counsel, learned understanding of long-term consequences of decisions, pressures to waive the right to counsel

TALKING POINTS AND SUPPORT

A child must consult with an attorney prior to validly waiving their right to counsel.

- "A [youth]'s waiver of counsel cannot be knowing, intelligent, and voluntary without first consulting counsel."[75]
- "In order to properly fulfill this 'serious and weighty responsibility' without abandoning its own judicial role in juvenile delinquency proceedings where a child faces a loss of liberty, a court should appoint an attorney who will explain the importance of counsel before the court accepts a waiver."[76]
- "The problem with [youth] waiver of counsel is clear: children require the advice and assistance of counsel to make decisions with lifelong consequences in the highly charged venue of a juvenile court proceeding. As a result of immaturity, anxiety, and overt pressure from judges, parents, or prosecutors, unrepresented children feel pressure to resolve their cases quickly and may precipitously enter admissions without obtaining advice from counsel about possible defenses or mitigation. In order to ensure the client's due process rights are protected, the client must have meaningful consultation with counsel prior to waiving the right to counsel."[77]

Children require consultation to understand the role of a defense lawyer.

- "If [children] do not understand that defense attorneys are on their side and can be trusted with their secrets, they are unlikely to properly value an attorney or appreciate why having one might be in their best interest."[78]
- "[Children] who think their lawyers will simply function as another agent for the state trying to punish them cannot possibly make an informed choice about whether or not to invoke their right to counsel."[79]
- "[Children] who do not comprehend that a lawyer is their advocate, and that the lawyer will act in their interest and not as an informant for a third party can be expected to throw away the right to a lawyer without proper consideration. Such a waiver can hardly be considered knowing, voluntary, and intelligent."[80]

Children must receive comprehensive information about the long-term consequences of juvenile court decisions.

- "The decision to waive one's right to counsel … must be well thought-out, with an understanding of present and future ramifications."[81]

[75] Statement of Interest of the United States, *supra* note 28, at 16.
[76] *Id.* at 18 (footnote omitted).
[77] National Juvenile Defense Standards, Standard 10.4 cmt. (Nat'l Juvenile Defender Ctr. 2012).
[78] McGuire, *supra* note 44, at 20.
[79] *Id.* at 22-23.
[80] *Id.* at 20.
[81] Statement of Interest of the United States, *supra* note 28, at 17.

- "A child's lack of appreciation for long term consequences impairs [their] ability to make sound decisions regarding legal strategy, perhaps most significant is the waiver of one's right to counsel."[82]
- Time spent with an attorney positively impacts children's understanding of their rights: "[C]ontact with attorneys … was a strong predictor of [children's] legal capacities relevant to police interrogation and adjudication. This was true even for [youth] with poor cognitive abilities and young adolescents."[83]

Data collection

Collecting data on waiver of counsel rates and occurrences can improve the juvenile justice system.

- "In 2013, over 582,000 juvenile cases were petitioned to juvenile courts but little is known about how many of these cases were represented by an attorney."[84]
- "The Pennsylvania Juvenile Delinquency Data Analysis Tool … was developed … in the wake of the 'Kids for Cash' scandal in Luzerne County, PA, where a large number of youth were routinely waiving their rights to an attorney and placed out-of-home for minor offenses.... Drilling into Luzerne County reveals that representation was waived in 50% of formal cases in 2006.... By 2011, there were none."[85]
- "Across the entire country, only two states (CA and PA) publish data annually on three important measures that reflect Juvenile Defense activity: 1) the number of cases represented by private attorneys, 2) the number of cases represented by an indigent defense model, and 3) the number of cases where counsel was waived."[86]
- "Data empowers court staff and stakeholders to suggest opportunities for new policies or practices that may be more efficient, lead to better outcomes, or ensure fairness."[87]
- "Collecting, reporting, and monitoring data on the three basic measures … (number of cases with indigent defense, private attorneys, and waived representation) would help states ensure that the legal needs of youth are being met and support the continued specialization of the juvenile defense field."[88]

Data can ensure limited resources are used most efficiently.

- "Collecting data on court processes, such as if an attorney was present and what kind, from within the juvenile court provides a more complete picture because the full array of defense options can be documented within this setting."[89]
- "Data can describe a court's overall functioning, replacing anecdotes with objective answers."[90]
- "By using data to identify opportunities for improvement, judges can be sure that their often limited resources are leveraged wisely."[91]
- "Objectively monitoring practice changes not only assures they are implemented as intended, but clearly demonstrates related court activity to stakeholders, including funders, policymakers, and the public."[92]

[82] Hillary B. Farber, *J.D.B. v. North Carolina: Ushering in a New "Age" of Custody Analysis under Miranda*, 20 J.L. & Pol'y 117, 140 (2011).
[83] Viljoen & Roesch, *supra* note 43, at 737.
[84] Indefensible, *supra* note 56, at 1 (citations omitted).
[85] *Id.* at 3.
[86] *Id.* at 2.
[87] 5 Ways Juvenile Court Judges Can Use Data, *supra* note 57, at 1.
[88] Indefensible, *supra* note 56, at 4.
[89] *Id.* at 3.
[90] 5 Ways Juvenile Court Judges Can Use Data, *supra* note 57, at 1.
[91] *Id.*
[92] *Id.* at 2.

SAMPLE
COALITION INVITATION LETTER

May 15, 2018

Dear Colleagues:

You may have seen our recent report about how many children in our state waive their right to counsel. Unfortunately, courts do not keep data about youth waiver rates, but through court visits and extrapolating other available data, we found that approximately one-third of children facing delinquency charges waive their right to counsel.

This means that at least one out of every three children who face charges, incarceration, and the lifelong consequences of court involvement, navigates the complex maze of juvenile court without the assistance of counsel. This is unacceptable.

We want to see our state join seven others, which do not allow children to waive their right to counsel without first consulting with a qualified juvenile defender. We want to ensure that children have a chance to fully understand their right to counsel, before they ever consider waiving it.

We are bringing together individuals and organizations like yours, that support strengthening children's constitutional rights, to work on this important issue. Please join us at 2:00 P.M. on Tuesday, May 15, at the NJDC Regional Office for our first meeting.

Please RSVP by May 11 to first.last@email.com.

We look forward to seeing you on May 15!

Sincerely,

Advocate

COALITION MEETING AGENDA
May 15, 2018

2:00 - 2:25: **Explanation of Data Analysis and Report Findings**
NJDC Regional Director

- Director will explain the process behind the group's recent report, which found that approximately one-third of children waive their right to counsel

2:25 - 2:40: **Overview of National Recommendations and Best Practices**
NJDC Regional Office Counsel

- Counsel will review national groups' recommendations for handling youth waiver of counsel, and how other states have addressed high waiver rates

2:40 - 3:40: **Decreasing Waiver of Counsel in Our State**
Juvenile Defender

- Public Defender will facilitate a group discussion about how best to implement best practices and decrease the waiver rate in our state

3:40 - 3:55: **Next Steps**
Coalition Members

- Coalition members will decide and assign next steps for our chosen path toward policy reform

3:55 - 4:00: **Wrap-Up**
Coalition Members

- Coalition members will schedule a time and location for our next meeting or conference call

SAMPLE
COALITION SIGN-ON LETTER

May 15, 2018

Dear Chief Justice:

We are a coalition of parents, children, lawyers, local organizations, and other concerned members of the community who are troubled by the number of children who waive their right to counsel in courts across our state. We are submitting a proposal to amend the Juvenile Court Rules to prohibit waiver of counsel unless and until a child has an opportunity to consult with a qualified juvenile defender about their rights, and to require that courts collect and maintain data about youth waiver of counsel.

As you know, more than 50 years ago, the United States Supreme Court issued *In re Gault*, a landmark decision finding that children require "the guiding hand of counsel at every step in the proceedings." But in our state, an estimated one-third of children navigate the juvenile court system without counsel.

Numerous studies have found that most children, even older teenagers and those with prior court experience, do not fully understand their right to counsel, the role a defense attorney plays, or the long-term consequences of waiving their rights. Before a court can accept a child's waiver of their right to counsel as knowing, intelligent, and voluntary, the court must ensure the child fully understands that right and the consequences of waiving it.

To address this concern, the United States Department of Justice echoed the recommendation of the National Juvenile Defender Center by asserting in their Statement of Interest in *N.P. v. Georgia* that no child be allowed to waive counsel without first consulting with a qualified juvenile defender about the child's rights. The juvenile defender can ensure the child understands their rights, knows what a defense attorney can do for their case, and what the consequences might be if they decide to waive their right. We would like to see our state join seven others and adopt this reasonable national standard.

For the past year, members of our coalition have been working to identify how many children in our state waive their right to counsel. Unfortunately, our courts do not collect this data. By conducting courtroom visits and extrapolating from other available data, we are able to estimate that approximately one-third of children facing delinquency charges in our state waive their right to counsel. But this is far too important an issue to leave to anecdote and generalizations.

We have included in our proposal a requirement that courts collect and maintain data about youth waiver of counsel. Collecting this data from the courts is the only way we will know exactly how many children are navigating the court process without the assistance of counsel. Tracking waiver rates and the outcomes of cases in which children waive their right will allow our state to ensure children's rights are being protected, and to better focus resources and future policy efforts to improve practices and outcomes for children.

Far too many young people in our state are waiving their right to counsel without ever fully understanding the role of the juvenile defender or the consequences of juvenile court. By amending the Juvenile Court Rules to require consultation with a juvenile defender prior to allowing waiver, and to require the collection of data about waiver, our state will take very important steps forward in protecting children and their constitutional rights.

We look forward to working with you on this very important issue.

Sincerely,

[Individual signatures of coalition members]

Thank you for the opportunity to testify in favor of House Bill 387, which would not allow a child to waive their right to counsel in court unless and until the child has consulted with a qualified juvenile defender about their right to counsel and the implications of waiving that right. The bill also requires courts to collect data about youth waiver of counsel.

Last year, my organization endeavored to find out how many children in our state waive their right to counsel when they are in court. To our chagrin, we discovered that the state does not track this important information. Through court observations and other data sources, we estimated that approximately one-third of children facing delinquency charges waive their right to counsel. By comparison, a federal study found that less than one percent of adult defendants facing felony charges were not represented by counsel during their court cases.

The high rate at which children waive their right to counsel is not surprising when you consider the many pressures they face to waive counsel and the absence of information they receive about the right to and role of counsel. Many court personnel, and at times even families, want to catapult youth through the court system to "be done," and fail to consider the long-term consequences of court involvement on the lives of youth.

HB 387 addresses these concerns by adopting a nationally recommended standard: requiring a child to first consult with a qualified juvenile defender about the right to counsel and the implications of waiving that right, before the child will be allowed to waive their right to counsel in court. This national standard, proffered by the National Juvenile Defender Center, is supported by the United States Department of Justice in their Statement of Interest in *N.P. v. Georgia*: "A juvenile's waiver of counsel cannot be knowing, intelligent, and voluntary without first consulting counsel."

Importantly, HB 387 also requires courts to collect data about youth waiver of counsel. As I mentioned at the beginning of my testimony, courts do not currently collect this data, so we can only estimate how many children waive counsel. The number of children who navigate the court system without the benefit of counsel is far too important an issue to leave to conjecture. Data will allow us to objectively identify areas that are in need of additional resources or reforms, and to measure the outcomes of policy changes, such as HB 387.

The right to counsel is a cornerstone of our justice system, and it is gravely concerning that one-third of the children in our courts are waiving that right. HB 387 offers an effective remedy by requiring a meaningful opportunity to consult with a qualified juvenile defense attorney prior to waiving counsel.

Again, I thank you for the opportunity to testify on behalf of this important legislation. I respectfully urge the Committee to pass HB 387.

SAMPLE
LETTER TO THE EDITOR

May 15, 2018

To the Editor:

Approximately one-third of children in this state give up their right to counsel when they appear in court. Compare that to less than one percent of adults who waive their right to counsel when they face felony criminal charges. It is clear that adults understand the importance of counsel in ways children do not.

The high rate of youth waiver of counsel is especially distressing when you consider that many children in the justice system face numerous pressures to waive counsel and are not fully informed of the right to and role of counsel before being asked to waive. And few youth or families are informed that the consequences of juvenile court cases can follow youth long into adulthood.

A proposed court rule will ensure that youth are appropriately informed of their right to counsel by mandating that they consult with a qualified juvenile defense lawyer, before they are allowed to consider waiving their right to counsel. This consultation will allow the child an opportunity to talk with a qualified juvenile defender about the role of the defense lawyer, their right to counsel, and what it means to waive that right.

I commend the Supreme Court for considering this rule amendment, and I urge them to adopt it. Our state's youth deserve access to a fair and effective system of justice, and public confidence in the juvenile court system will increase, as the system commits itself to recognizing that children need and deserve improved access to their constitutional rights.

Sincerely,

Advocate

555-555-5555

(249 words)

SAMPLE
SOCIAL MEDIA POSTS

HASHTAGS

#AccessToCounsel
#DefendChildren

FACEBOOK

One-third of children give up their right to counsel without first having the chance to talk to an attorney about how having a lawyer can help. Support HB 387 to empower young people with tools to make informed decisions about their futures.

#DefendChildren and support HB 387 to ensure youth understand their constitutional rights and have the tools to navigate the complex juvenile court system. Contact your state legislator and tell them you support HB 387!

TWITTER

Empower youth to make informed decisions about their right to a lawyer in juvenile court. Support HB 387 and contact your state legislator today! #DefendChildren

33% of children give up their right to counsel, often without fully understanding how a lawyer can help them in juvenile court. Support HB 387 and ensure #AccessToCounsel for young people.

V. ENSURE POST-DISPOSITION REPRESENTATION

FINDING:

CHILDREN'S ACCESS TO COUNSEL ENDS TOO EARLY

- Only 11 states provide meaningful access to a lawyer after sentencing, while every state keeps children under its authority during this time.[93]

RECOMMENDATIONS:

POST-DISPOSITION REPRESENTATION

- Establish an explicit right to counsel until the case is closed and the child is no longer under any type of court or state supervision in the matter.
- Ensure continuous appointment of counsel until a child's case is closed and the child is no longer under any type of juvenile court or state supervision in the matter.
- Require data collection and monitoring of post-disposition access to counsel.

Example Statutes and Rules

STATUTES

Colorado: Guarantees a right to counsel until the "court's jurisdiction is terminated." Colo. Rev. Stat. Ann. § 19-2-706(2)(d)(I) (West 2014).

Idaho: A juvenile who is entitled to be represented by an attorney . . . is entitled . . . [t]o be counseled and defended at all stages of the matter beginning with the earliest time and including revocation of probation or recommitment . . . and at "any other post-adjudication or review proceeding that the attorney or the juvenile considers appropriate...." and which the court deems is not frivolous. Idaho Code Ann. § 20-514(2)(c) (West 2013).

Kansas: Provides a right to counsel at "every stage of the proceedings" and requires that "[a]n attorney appointed for a juvenile shall continue to represent the juvenile at all subsequent court hearings...." Kan. Stat. Ann. § 38-2306(a)-(b) (West 2017).

Kentucky: Provides a right "[t]o be represented in any ... post-disposition proceeding...." Ky. Rev. Stat. Ann. § 31.110(2)(c) (West 2014).

Mississippi: Provides a right to counsel at "at all critical stages [of the proceedings, including]: detention, adjudicatory and disposition hearings; and parole or probation revocation proceedings; and post-disposition matters." Miss. Code Ann. § 43-21-201(1) (West 2016).

New Mexico: "[T]he child shall be represented by counsel at all stages of the proceedings on a delinquency petition, including all post-dispositional court proceedings." N.M. Stat. Ann. §32A-2-14(H) (West 2009).

[93] Deciphering when and how well a statute provides for access to counsel after disposition can be complicated. For purposes of *Access Denied*, a statute was deemed to provide "meaningful" access to counsel post-disposition if it either explicitly provided for the right to counsel after disposition or if the breadth of the right could have been read to allow for significant post-disposition representation. The calculation of states where children are provided meaningful post-disposition access to counsel includes some states where the statute simply grants children the general right to counsel "in all proceedings" or "at all stages of proceedings" For example, in Maryland and Georgia, defenders regularly provide meaningful post-disposition representation, though their statutes do not specifically require that post-disposition be included in a child's right to counsel.

COURT RULES

California: "A child is entitled to have the child's interests represented by counsel at every stage of the proceedings, including postdispositional hearings. Counsel must continue to represent the child unless relieved by the court on the substitution of other counsel or for cause." Cal. Rules Ct. R. 5.663(c) (2007).

Pennsylvania: "Once an appearance is entered or the court assigns counsel, counsel shall represent the juvenile until final judgment, including any proceeding upon direct appeal and dispositional review, unless permitted to withdraw . . . ." Pa. R. Juv. Ct. Proc. 150 (2014).

Messaging

NARRATIVE

Guaranteeing qualified defense counsel to every child charged with a delinquency offense, for as long as that child is under the court's jurisdiction, provides the legal protection that children deserve and the Constitution demands. It supports the mission of the juvenile court system by ensuring the court's orders are properly carried out and that the disposition provides meaningful opportunities for young people to succeed. Having counsel can decrease barriers to successful reentry, allowing children to safely and successfully reintegrate into their homes, schools, and communities.

THEMES

Access to counsel, right to counsel, effectiveness of court requirements, preventing abuse, lowering recidivism, increasing public safety, improving reentry success

TALKING POINTS AND SUPPORT

Children must have access to counsel at every stage of the court proceeding and until the child is no longer under supervision of the court or other justice agency.

- Juvenile court judges must ensure that counsel is available to every youth at every hearing, including post-disposition reviews and reentry hearings.[94]
- "The complex issues facing youth during post-disposition require the guiding hand of counsel to protect due process rights and promote positive outcomes."[95]
- "These well-established duties include … providing representation following disposition and on appeal."[96]
- "[F]undamental distinctions between juvenile and adult court sentencing schemes and practices, together with the young people's developmental immaturity, render the post-dispositional phase of juvenile delinquency proceedings a 'critical stage,' triggering Sixth Amendment protections."[97]

Post-dispositional representation furthers the goals of the juvenile justice system.

- "Despite the juvenile system's supposed goal of 'rehabilitation,' after the court steps in as *parens patria* and doles out indeterminate sentences to children, there is no structure in place to ensure that what the court intended for the child actually occurs."[98]

[94] Nat'l Council of Juvenile and Family Court Judges, Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases 25 (2005).
[95] Nat'l Juvenile Defender Ctr., Protecting Rights, Promoting Positive Outcomes: Post-Disposition Access To Counsel (2014) [hereinafter Protecting Rights, Promoting Positive Outcomes], http://njdc.info/wp-content/uploads/2014/10/Post-Disposition-HR-10.13.14.pdf.
[96] Statement of Interest of the United States, *supra* note 28, at 12.
[97] Sandra Simkins & Laura Cohen, *The Critical Role of Post-Disposition Representation in Addressing the Needs of Incarcerated Youth*, 8 J. Marshall L. J. 311, 351 (2015) (citing Marsha Levick & Neha Desai, *Still Waiting: The Elusive Quest to Ensure Juveniles a Constitutional Right to Counsel at All Stages of the Juvenile Court Process*, 60 Rutgers L. Rev. 175, 188-90 (2007)).
[98] Sandra Simkins, *Out of Sight, Out of Mind: How the Lack of Postdispositional Advocacy in Juvenile Court Increases the Risk of Recidivism and Institutional Abuse*, 60 Rutgers L. Rev. 207, 208 (2007).

- "Review hearings and postdispositional advocacy, which are often the lowest priority for delinquency attorneys and the court system, have the power to reduce recidivism, decrease juvenile justice expenditures, and prevent institutional abuse."[99]
- "Without the aid of competent counsel to represent youths' rights and provide oversight throughout the juvenile delinquency process, youth have great difficulty advocating for court-ordered services and bringing gaps in services to the court's attention. This is true whether the child is securely detained or living in the community. As a result, adjudicated youth are often denied access to meaningful education, mental health, and social services they desperately need and are often required as part of their court-ordered rehabilitation plan."[100]
- "A [child's] need for access to the courts may even be greater than an adult's in that access to the courts assists the rehabilitative process."[101]
- "Sealing and expunging juvenile records also acts to rehabilitate the child—a goal repeatedly included in state purpose statutes." The process required to get one's juvenile record cleared "often creates an onerous burden for the [youth] to petition to expunge or seal their records without affording them the right to counsel to do so."[102]

National standards call for post-dispositional representation.

- "Counsel should stay in contact with the client and continue representing [them] while under court or agency jurisdiction. Counsel must reassure the client that counsel will continue to advocate on the client's behalf regarding post-disposition hearings, conditions of confinement, and other legal issues."[103]
- "Key Principle 7: Youth Charged in a Formal Juvenile Delinquency Court Must Have Qualified and Adequately Compensated Legal Representation, not only states that all youth must be represented by counsel in formal juvenile delinquency court but that counsel should be involved in every juvenile delinquency court hearing. A juvenile delinquency court that has incorporated this *Key Principle* ensures that counsel stays assigned to a case when a progress report due date, progress conference, or progress hearing is set at disposition."[104]
- "Standards of representation should … guarantee[] that every [youth] has counsel, that the right to counsel is not waived, and that the [youth] is represented from the earliest stages of the proceeding through postdisposition stages."[105]
- "Children [ ] should be appointed well-trained, well-resourced, independent and competent legal counsel in all court proceedings, including appeals, affecting their rights, in any judicial forum that is making decisions about their lives."[106]
- "The public defense delivery system recognizes that the delinquency process is adversarial and provides children with continuous legal representation throughout the proceedings including, but not limited to, detention, pre-trial motions or hearings, adjudication, disposition, post-disposition, probation, appeal, expungement and sealing of records."[107]

Courts recognize children's right to post-dispositional representation.

- The United States Courts of Appeals for the First and Sixth Circuits have held that the constitutional right of meaningful access to the courts for adult prisoners articulated by the United States Supreme Court in *Bounds v. Smith* extends to adjudicated youth.[108]

[99] *Id.* at 209.
[100] Protecting Rights, Promoting Positive Outcomes, *supra* note 95, at 1.
[101] John L. v. Adams, 750 F. Supp. 288, 292 (M.D. Tenn. 1990).
[102] Joy Radice, *The Juvenile Record Myth*, 106 Georgetown L. J. 365, 408, 417 (2018).
[103] National Juvenile Defense Standards, Standard 7.1 (Nat'l Juvenile Defender Ctr. 2012).
[104] Nat'l Council of Juvenile and Family Court Judges, Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases 169 (2005). http://www.ncjfcj.org/sites/default/files/juveniledelinquencyguidelinescompressed%5B1%5D.pdf
[105] Am. Bar Ass'n Juvenile Justice Ctr. et al., A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings 69 (1995).
[106] *NACC Policy Agenda*, Nat'l Ass'n of Counsel for Children (2015), http://www.naccchildlaw.org/?page=PolicyAgenda.
[107] Nat. Juvenile Defender Ctr. & Nat'l Legal Aid & Defender Assn., Ten Core Principles for Providing Quality Delinquency Representation Through Public Defense Delivery Systems 2 (2008) (quoting Principle 1(C)).
[108] Bounds v. Smith, 430 U.S. 817, 828 (1977); John L. v. Adams, 969 F.2d 228, 233 (6th Cir. 1992); Germany v. Vance, 868 F.2d 9, 16 (1st Cir. 1989).

- "[P]laintiff's status as a [child] offers no excuse.... We reject any implication that the constitutional right of access to the courts does not apply to [children] in [Department of Youth Services] custody."[109]
- "[W]e see no logical reason why the right of access should not be applied to incarcerated [youth]. We therefore hold that plaintiffs, as incarcerated [youth], have a constitutional right of access to the courts."[110]
- "The determination of whether or not an inmate is provided with meaningful access to the courts requires taking into account the experience and intelligence of the inmate.... [C]ourts recognize that an adequate law library does not provide meaningful access to the courts for inmates unable to comprehend legal materials."[111]
- "In order to make this right meaningful, the State must provide the [children] with access to an attorney."[112]

Post-dispositional representation can help states save money.

- "In the recent Texas Youth Commission scandal, it was discovered that 553 [children] were due or overdue for release from custody. If each of these children spent an additional ten days in custody, at the cost of $100 per day, over $500,000 taxpayer dollars would have been wasted."[113]
- "[T]hirty three states spend $100,000 or more annually to incarcerate a young person, and this incarceration leads to outcomes that result in even greater costs." A "critical function of defense counsel" is "assisting a child with release from [a] facility."[114]

Post-dispositional representation can help prevent abuse.

- "Every year, all over the country, children are committed by juvenile courts to placements where they are abused."[115]
- "If lawyers are not visiting children in placement, and if there are no review hearings or systemic mechanism to ensure the children's safety in placement, abuse can continue unchecked. The less access children have to lawyers while they are institutionalized, the greater the potential for abuse."[116]
- "The First Amendment's guarantee of access to courts offers what is perhaps the strongest foundation for a right to post-dispositional representation that would permit youth to challenge such unlawful conditions of confinement."[117]
- In Pennsylvania, the "Defender Association has successfully filed habeas petitions challenging dangerous conditions on behalf of classes of juvenile clients in placements inside and outside of Pennsylvania."[118]

Post-dispositional representation can help lower recidivism.

- "High recidivism is in part a result of the many barriers children encounter when trying to reenter the community after they have been in placement."[119]
- "By making sure kids get the necessary services, postdispositional advocacy can prevent probation violations and decrease recommitments to secure programs."[120]
- "[J]uvenile defenders are necessary to help youth gain access to services in the community and aid with administrative and legal processes that may hinder successful reentry."[121]

[109] *Vance*, 868 F.2d at 16.
[110] *Adams*, 969 F.2d at 233.
[111] John L. v. Adams, 750 F.Supp. 288, 295 (M.D. Tenn. 1990).
[112] *Id.* at 228, 230.
[113] Simkins, *supra* note 98, at 216.
[114] Simkins & Cohen, *supra* note 97, at 373 (citing Justice Pol'y Inst., The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense 1 (2009)).
[115] Simkins, *supra* note 98, at 217.
[116] *Id.* at 218.
[117] Simkins & Cohen, *supra* note 97, at 356.
[118] Nat'l Juvenile Defender Ctr., Pennsylvania: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings 65 (2003), http://njdc.info/wp-content/uploads/2013/11/Final-Pennsylvania-Assessment-Report.pdf.
[119] Simkins, *supra* note 98, at 220.
[120] *Id.* at 221.
[121] Protecting Rights, Promoting Positive Outcomes, *supra* note 94, at 1.

Data collection

Collecting data can improve the juvenile justice system.

- "Considering how important the provision of juvenile defense is, there remains very little data to objectively describe its application."[122]
- "Data empowers court staff and stakeholders to suggest opportunities for new policies or practices that may be more efficient, lead to better outcomes, or ensure fairness."[123]
- "Collecting, reporting, and monitoring data … would help states ensure that the legal needs of youth are being met and support the continued specialization of the juvenile defense field."[124]

Data can ensure limited resources are used most efficiently.

- "Data can describe a court's overall functioning, replacing anecdotes with objective answers."[125]
- "By using data to identify opportunities for improvement, judges can be sure that their often limited resources are leveraged wisely."[126]
- "Using comprehensive data to answer questions, such as 'how many youth had an attorney' … can help monitor and strengthen the performance of juvenile defense systems."[127]
- "Objectively monitoring practice changes not only assures they are implemented as intended, but clearly demonstrates related court activity to stakeholders, including funders, policymakers, and the public."[128]

[122] Indefensible, *supra* note 56, at 2.
[123] 5 Ways Juvenile Court Judges Can Use Data, *supra* note 57, at 1.
[124] Indefensible, *supra* note 56, at 4.
[125] 5 Ways Juvenile Court Judges Can Use Data, *supra* note 57, at 1.
[126] *Id.*
[127] Indefensible, *supra* note 56, at 3.
[128] 5 Ways Juvenile Court Judges Can Use Data, *supra* note 57, at 2.

SAMPLE
COALITION INVITATION LETTER

May 15, 2018

Dear Colleagues:

We invite you to join us and other concerned community members and organizations for a discussion about how our state can ensure children have access to defense counsel throughout the entirety of their cases.

As you may know, children's court cases often extend until they are 18 or 21 years of age, with some aspects of the case continuing to linger well into adulthood. But our state laws and court rules do not guarantee that a child will have access to a juvenile defender after the initial court proceeding in the case. This can mean children do not have legal representation for any appeals they may wish to pursue, to challenge court fines and fees, to ensure their safety and access to proper educational and medical services while they are in confinement, or for any of the many other legal issues that can arise out of court involvement.

We believe it is time for our state to guarantee qualified defense counsel to every child charged with a delinquency offense, for as long as that child is under the court's jurisdiction. Doing so will offer the legal protection that children deserve and the Constitution demands. Continued representation by defense counsel can help ensure the court's disposition orders are being properly carried out and that young people are connected to meaningful opportunities.

Please join us at 2:00 P.M. on Tuesday, May 15, at the Local Bar Association Office for a discussion and strategy session about how we can improve children's access to counsel after their initial juvenile court involvement.

Please RSVP by May 11 to first.last@email.com.

We look forward to seeing you on May 15!

Sincerely,

Advocate

SAMPLE
COALITION MEETING AGENDA

COALITION MEETING AGENDA
May 15, 2018

2:00 - 2:20: **Overview of Post-Disposition Legal Needs**
Juvenile Defense Attorney

- Attorney will briefly review the multitude of areas in which a child might need legal counsel after a court disposition

2:20 - 2:45: **What Happens When Children Do Not Have Lawyers Post-Disposition**
NJDC Regional Director

- Director will discuss post-dispositional legal issues that have come to their office's attention, including allegations of abuse in treatment facilities, inadequate access to educational services and medical treatment, and children's records misreported in background checks

2:45 - 3:55: **Guaranteeing Access to Counsel Post-Disposition**
Local Bar Association Committee Chair

- Chair will facilitate a group discussion about strategies for improving children's access to counsel post-disposition, including litigation, legislation, and court rule amendment, with the goal of coming to a consensus about the best way for the coalition to move forward

3:55 - 4:00: **Wrap-Up**
Coalition Members

- Coalition members will schedule a time and location for our next meeting or conference call

SAMPLE
COALITION SIGN-ON LETTER

May 15, 2018

Dear Chief Justice:

We are a coalition of parents, children, lawyers, local organizations, and other concerned community members who would like to see children's access to counsel strengthened in our state. We are asking that the Juvenile Court Rules be amended to establish an explicit right to counsel for children in all post-disposition matters, to ensure all children are represented by counsel throughout the duration of their case and until they are no longer under court or state supervision, and to require courts to collect data about post-disposition access to counsel.

As you know, more than 50 years ago, the United States Supreme Court issued *In re Gault*, a landmark decision finding that children require "the guiding hand of counsel at every step in the proceedings." But in our state, a child's access to counsel withers away once the court issues its disposition order. This is especially unfortunate, given the court's focus on ensuring positive youth development. Unlike the adult criminal justice system, where sentences focus on punishment, a juvenile court's disposition is intended to guide the child toward meaningful supports and opportunities. The court should ensure youth have access to an attorney who will represent their interests as they work toward success. Post disposition access to counsel will reduce recidivism, decrease juvenile justice costs, and inhibit institutional abuse.

The United States Department of Justice and leading national organizations, including the National Council of Juvenile and Family Court Judges and the National Juvenile Defender Center, assert that children's right to counsel includes access to counsel at post-disposition review hearings, reentry hearings, and on appeal. Similarly, national standards for defense counsel issued by the American Bar Association, the National Association of Counsel for Children, and the National Legal Aid and Defender Association require continuous legal representation for children throughout all post-disposition stages of their cases.

Two United States District Courts of Appeals have held that the Constitution demands that adjudicated children have meaningful access to the courts post-disposition. In fact, the Sixth District found in *John L. v. Adams* that children need more assistance than adults, for whom access to a law library is sufficient: "In order to make this right meaningful, the State must provide the juveniles with access to an attorney."

In order to properly protect children's constitutional right to counsel, uphold the principles of our court system, and ensure the success of court-involved children, our state must guarantee counsel to every child throughout the post-dispositional phase of the child's court case. We look forward to working with you to amend the Juvenile Court Rules to achieve these important goals.

Sincerely,

[Individual signatures of coalition members]

SAMPLE
LEGISLATIVE TESTIMONY

Thank you for the opportunity to testify in favor of House Bill 387, which would establish an explicit right to counsel for children for as long as they are under the jurisdiction of the juvenile court and require courts to collect data about post-disposition access to counsel.

Just over 50 years ago, the United States Supreme Court made clear in *In re Gault* that the Constitution provides the right to counsel to youth in delinquency cases. But while children in our state have legal representation when they are in the courtroom, they are too often on their own once the court has issued its disposition, or sentence, in a case. By failing to provide counsel to children as they complete their court-ordered disposition and transition back to their communities, we are failing to uphold the purpose of the juvenile court system, failing to prevent abuse, and failing to create opportunities to lower recidivism and keep our children and communities safe.

By failing to provide counsel to children as they complete their court-ordered disposition, we are missing an incredible opportunity to ensure the success of children during this critical time. Counsel could advocate for a child who does not receive the educational programming or counseling a court has ordered, or report back to the court about mistreatment of youth being held in facilities, allowing the court to monitor both the progress of the child and the effectiveness of a given disposition.

An unfortunate reality of the justice system is that children in court-ordered placements are vulnerable to abuse. Take, for example, Juan, a young Cuban-American who was held in one of our state's juvenile prisons for six months. When Juan arrived at the facility, staff were notified that he spoke only Spanish. The staff made no accommodations for him, which meant he was unable to complete his court-ordered programming, and they separated him from his Spanish-speaking peers, leaving him socially isolated. It was only after a nonprofit organization visited the facility and notified a defense lawyer about Juan that he received the attention and advocacy necessary for his success. The defense lawyer asked the court to review Juan's placement. The court released Juan to the community, where he was able receive competent community-based services to support his goals.

If children have lawyers who visit them at their placements and monitor their progress and the services they receive, mistreatment will be caught and corrected. This saves the child from any mistreatment and abuse and the state from allowing harm to children in their care.

Counsel can also help children transition back to their homes and communities after court involvement, which can increase the children's chances of success and decrease recidivism. Lawyers can help children understand conditions of probation and parole, decreasing violations and recommitments. They can also help children with any legal barriers that stand in the way of the child fully reintegrating with their family, school, and community, and help connect children to community-based services that will aid in their reentry.

By explicitly granting a right to counsel for children in post-dispositional matters, our state will be offering children the important constitutional protections they need and deserve, living up to the promise of the juvenile justice system, and investing in the success of children and the safety of our communities.

I ask the Committee to pass HB 387.

SAMPLE
LETTER TO THE EDITOR

May 15, 2018

To the Editor:

Tens of thousands of children pass through the court system each year. But once the children leave the courthouse, no advocate follows them to protect their rights and interests while they are under the jurisdiction of the court, to ensure they are not being harmed, to challenge legal barriers to education or employment, or to advocate for the supports and resources they need to successfully reenter their communities.

Fortunately, pending legislation addresses this shortcoming. House Bill 387 would create an explicit right to counsel for children throughout the entire time a child is under the juvenile court's jurisdiction or under state supervision.

The time after a child receives a disposition, or sentence, is arguably the most important part of their court involvement. It is then that they will receive the counseling, treatment, and programming to get on the right path. It is also the time they are most vulnerable to mistreatment and abuse.

Children need legal counsel to advocate for them during this critical time. Lawyers can help ensure children receive appropriate care and treatment, communicate with the court about the effectiveness of its orders, and assist the child with the countless legal issues that arise from a court case. Once a child is ready to rejoin their community, their lawyer can help them navigate reentry issues like school, housing, and employment and connect with community-based services that will increase the child's chance of success.

HB 387 is an investment in children that will strengthen our juvenile justice system and keep our communities safer.

Sincerely,

Advocate

555-555-5555

(253 words)

SAMPLE
SOCIAL MEDIA POSTS

HASHTAGS

#DefendChildren
#AccessToCounsel

FACEBOOK

Children in our state have lawyers in juvenile court, but are left to fend for themselves while they navigate placement, treatment, probation, and reentry. We must #DefendChildren throughout the entire time they are under juvenile court supervision.

We can meet the rehabilitative goal of juvenile courts, hold the system accountable, and ensure safety for young people by providing #AccessToCounsel for all children while they are serving their court-ordered sentence and transitioning back home.

TWITTER

Courts must offer the legal protection that children deserve and the Constitution demands. Support HB 387 to fulfill the right to counsel for young people—a right that must extend until their case is closed. #DefendChildren

"If public defenders were allowed to do regular post-dispo advocacy, injustices would come to light." Support HB 387 and learn more about why it's important at njdc.info/snapshot #AccessDenied

All Five Access Denied Issues

SAMPLE
LEGISLATIVE TESTIMONY

Thank you for the opportunity to testify in favor of House Bill 387, a comprehensive reform package that would strengthen children's access to counsel in juvenile court.

Last year, the National Juvenile Defender Center released a report called *Access Denied: A National Snapshot of States' Failure to Protect Children's Right to Counsel*. NJDC analyzed state statutes and conducted interviews with juvenile defenders in all 50 states and found that states are lacking in their protection of children in juvenile courts and falling short of their duty to provide access to counsel under the Constitution.

My office assembled a coalition of stakeholders and advocates from across the state to compare the findings and recommendations in *Access Denied* to our state's laws and practices. What we found is that we have room to improve in all five areas highlighted by the report.

HB 387 would address every finding in the national report and make our state a true leader in fulfilling the constitutional right to counsel for children.

First, HB 387 would make several changes to how and when attorneys are appointed to represent children. The bill would automatically deem children eligible for a public defender, regardless of the family's financial status. Currently, courts must process financial eligibility paperwork for every child who requests a public defender, even though most of the children in court come from families who receive public assistance or earn less than the federal poverty level per year. Too many children sit in detention while this paperwork is processed, or waive their right to counsel rather than continue to wait.

HB 387 would also eliminate the application fee and other costs associated with a child asserting their right to counsel. Our state's $50 application fee is an insurmountable hurdle to many families and has the unintended effect of encouraging children to waive their right to counsel, rather than add to their family's financial strain. Costs and fees related to counsel provide minimal financial gain to our state, but do great harm to children's rights and their families' financial wellbeing.

HB 387 ensures that children are appointed counsel much sooner in the process than happens currently. HB 387 would appoint counsel to children who are interrogated by law enforcement. A study by M. Dyan McGuire et al. found that more than 90 percent of children waive their *Miranda* rights, but only about 20 percent of children understand their rights. So children are waiving rights they do not understand and being subjected to the same interrogation techniques used on adults. It is no surprise to learn, then, that research has found children are especially likely to offer false information and false confessions during interrogations. These, of course, lead to wrongful convictions and other injustices.

HB 387 ensures that counsel is appointed to children well enough in advance of any court hearings to allow the child and their lawyer time to meet and discuss the child's case and rights. This also ensures the lawyer will have time to properly prepare for the child's initial court hearing and provide adequate representation.

HB 387 addresses waiver of counsel. Currently an estimated 30 percent of children in our state proceed in juvenile court without a lawyer. Under this legislation, a child would not be allowed to waive their right to counsel unless and until the child has met with a qualified juvenile defense attorney and discussed their rights and the implications of waiving those rights. Research has found that children simply do not understand the substance of their constitutional rights or comprehend the long-term consequences of waiving those rights. Children need to first consult with a qualified juvenile defender to discuss these important concepts, before they can ever consider waiving their right to counsel.

HB 387 also explicitly establishes a right to counsel throughout the entire time a child is under the jurisdiction of the juvenile court or under state supervision after disposition. Ensuring children are represented by counsel during this critical time is perhaps the best way to ensure the positive development of our youth and meet the goals of the juvenile court. Counsel can monitor their clients' progress and advocate for different or additional programming as needed. They can report back to the court about the effectiveness of the court's orders, and alert the court to any concerns. Counsel can also help their client transition back to their homes and communities by assisting with any legal barriers to re-entry.

Finally, HB 387 would establish data collection and reporting at several points throughout the court process: when counsel is appointed to represent a child in court, when a child waives their right to counsel, and when counsel is made available to children for post-disposition matters. Our coalition's review of the juvenile justice system found that consistent, readily available data is hard to come by in our state. Without data, it is difficult to know where and whether children's legal needs are being met, whether policies are having their intended effect, and whether state resources are being used efficiently and effectively.

This is an extraordinary, comprehensive bill. It makes several changes to the normal course of business for our courts, our public defenders, and others in the justice system. And it will provide extraordinary benefits to the children and families who interact with the justice system, as children are protected and their families are no longer forced to choose between constitutional rights and daily necessities.

These benefits will ultimately extend to all of us. The reforms in this bill will reduce the time children spend in detention facilities, improve the integrity of law enforcement investigations, uphold the mission of our juvenile justice system, and return children to their communities safer and healthier, and with the support they need to be successful.

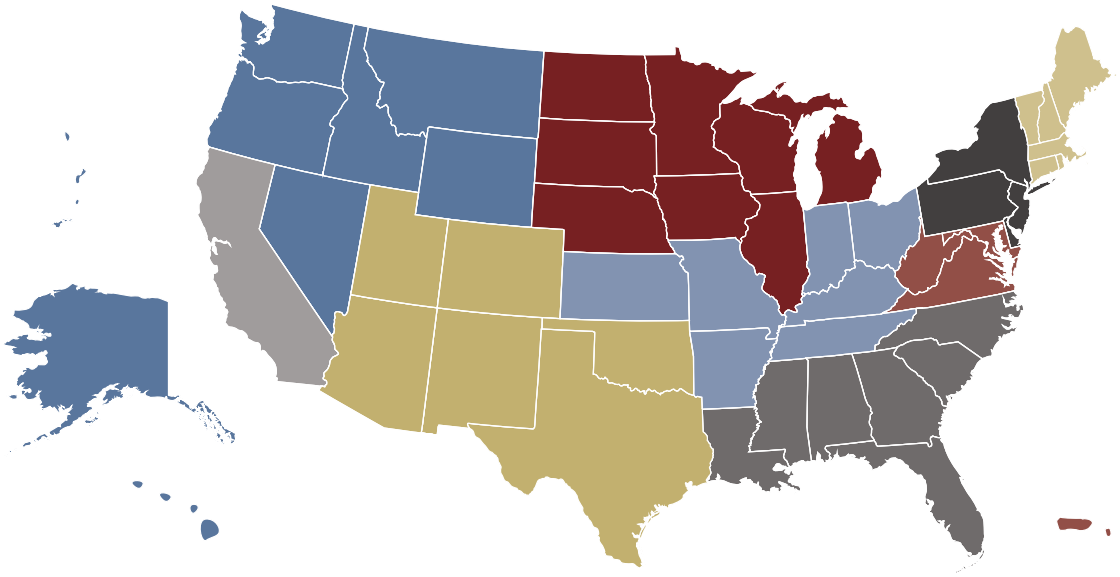
HB 387 will make our state a leader in upholding the right to counsel, protecting children, and improving public safety. I respectfully ask the Committee to pass this bill.

Call to Action

We hope this toolkit will serve as a resource for jurisdictions to improve and expand upon access to counsel for children across the country. No child should ever face the legal system without well-trained, equipped, and dedicated legal representation.

For assistance with implementing these policy recommendations, please reach out to the National Juvenile Defender Center and your jurisdiction's Regional Juvenile Defender Center.

NJDC REGIONAL JUVENILE DEFENDER CENTERS



CENTRAL REGION

Arkansas, Indiana, Kansas, Kentucky, Missouri, Ohio, Tennessee

Amanda Bear
Children's Law Center
Lexington, KY
abear@childrenslawky.org
(859) 253-3353

Chris Kleiser
Knox County Public Defender
Knoxville, TN
ckleiser@pdknox.org
(865) 215-6473

MID-ATLANTIC REGION

District of Columbia, Maryland, Puerto Rico, U.S. Virgin Islands, Virginia, West Virginia

Kristin Henning
Juvenile Justice Clinic
Georgetown University
Washington, DC
hennink@law.georgetown.edu
(202) 662-9592

Debbie St. Jean
Maryland Office of
the Public Defender
Baltimore, MD
dst.jean@opd.state.md.us
(410) 209-8684

MIDWEST REGION

Illinois, Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, Wisconsin

Betsy Clarke
Illinois Juvenile Justice Initiative
Evanston, IL
bcjuv@aol.com
(847) 894-4206

Diane Rondini-Harness
Wisconsin State Public Defender
Madison, WI
rondinid@opd.wi.gov
(608) 261-5417

NEW ENGLAND REGION

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Pamela Jones
New Hampshire Public Defender
Nashua, NH
pjones@nhpd.org
(339) 368-1220

Wendy Wolf
Youth Advocacy Division
Committee for Public
Counsel Services
Boston, MA
wwolf@publiccounsel.net
(617) 988-8451

NORTHEAST REGION

Delaware, New Jersey, New York, Pennsylvania

Lisa Minutola
Office of Defense Services
Wilmington, DE
lisa.minutola@state.de.us
(302) 577-5167

Tiffany Sizemore-Thompson
Duquesne University School of Law
Pittsburgh, PA
sizemoret@duq.edu
(412) 396-5694

PACIFIC REGION

California

Patricia Lee
San Francisco Public Defender
San Francisco, CA
patricia.lee@sfgov.org
(415) 753-7610

SOUTHERN REGION

Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina

Whitney Untiedt
Akerman LLP
Miami, FL
whitney.untiedt@akerman.com
(305) 982-5636

Randee Waldman
Barton Juvenile Defender Clinic
Emory Law School
Atlanta, GA
rwaldm2@emory.edu
(404) 727-6235

SOUTHWEST REGION

Arizona, Colorado, New Mexico, Oklahoma, Texas, Utah

Ellen Marrus
University of Houston Law Center
Houston, TX
emarrus@uh.edu
(713) 743-0894

Christina Phillis
Maricopa County
Office of Public Defense Services
Phoenix, AZ
phillis@mail.maricopa.gov
(602) 506-1977

WESTERN REGION

Alaska, American Samoa, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Wyoming

Susan Roske
Clark County Public Defender
Las Vegas, NV
roskesd@co.clark.nv.us
(702) 361-0229

George Yeannakis
TeamChild
Seattle, WA
george.yeannakis@teamchild.org
(206) 694-3728

NATIONAL JUVENILE DEFENDER CENTER

1350 Connecticut Avenue NW, Suite 304

Washington, DC 20036

202.452.0010 PHONE 202.452.1205 FAX

www.njdc.info

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