

## 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.

## 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.<sup>94</sup>
- "The complex issues facing youth during post-disposition require the guiding hand of counsel to protect due process rights and promote positive outcomes."<sup>95</sup>
- "These well-established duties include ... providing representation following disposition and on appeal."<sup>96</sup>
- "[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."<sup>97</sup>

**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 patriae* 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."<sup>98</sup>

<sup>94</sup> NAT'L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, JUVENILE DELINQUENCY GUIDELINES: IMPROVING COURT PRACTICE IN JUVENILE DELINQUENCY CASES 25 (2005).

<sup>95</sup> 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>.

<sup>96</sup> Statement of Interest of the United States, *supra* note 28, at 12.

<sup>97</sup> 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)).

<sup>98</sup> 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.”<sup>99</sup>
- “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.”<sup>100</sup>
- “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.”<sup>101</sup>
- “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.”<sup>102</sup>

### **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.”<sup>103</sup>
- “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.”<sup>104</sup>
- “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.”<sup>105</sup>
- “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.”<sup>106</sup>
- “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.”<sup>107</sup>

### **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.<sup>108</sup>

<sup>99</sup> *Id.* at 209.

<sup>100</sup> PROTECTING RIGHTS, PROMOTING POSITIVE OUTCOMES, *supra* note 95, at 1.

<sup>101</sup> John L. v. Adams, 750 F. Supp. 288, 292 (M.D. Tenn. 1990).

<sup>102</sup> Joy Radice, *The Juvenile Record Myth*, 106 GEORGETOWN L. J. 365, 408, 417 (2018).

<sup>103</sup> NATIONAL JUVENILE DEFENSE STANDARDS, STANDARD 7.1 (NAT’L JUVENILE DEFENDER CTR. 2012).

<sup>104</sup> 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>

<sup>105</sup> 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).

<sup>106</sup> *NACC Policy Agenda*, NAT’L ASS’N OF COUNSEL FOR CHILDREN (2015), <http://www.naccchildlaw.org/?page=PolicyAgenda>.

<sup>107</sup> 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)).

<sup>108</sup> *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.”<sup>109</sup>
- “[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.”<sup>110</sup>
- “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.”<sup>111</sup>
- “In order to make this right meaningful, the State must provide the [children] with access to an attorney.”<sup>112</sup>

### **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.”<sup>113</sup>
- “[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.”<sup>114</sup>

### **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.”<sup>115</sup>
- “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.”<sup>116</sup>
- “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.”<sup>117</sup>
- 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.”<sup>118</sup>

### **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.”<sup>119</sup>
- “By making sure kids get the necessary services, postdispositional advocacy can prevent probation violations and decrease recommitments to secure programs.”<sup>120</sup>
- “[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.”<sup>121</sup>

<sup>109</sup> *Vance*, 868 F.2d at 16.

<sup>110</sup> *Adams*, 969 F.2d at 233.

<sup>111</sup> *John L. v. Adams*, 750 F.Supp. 288, 295 (M.D. Tenn. 1990).

<sup>112</sup> *Id.* at 228, 230.

<sup>113</sup> Simkins, *supra* note 98, at 216.

<sup>114</sup> 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)).

<sup>115</sup> Simkins, *supra* note 98, at 217.

<sup>116</sup> *Id.* at 218.

<sup>117</sup> Simkins & Cohen, *supra* note 97, at 356.

<sup>118</sup> 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>.

<sup>119</sup> Simkins, *supra* note 98, at 220.

<sup>120</sup> *Id.* at 221.

<sup>121</sup> 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.”<sup>122</sup>
- “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.”<sup>123</sup>
- “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.”<sup>124</sup>

### Data can ensure limited resources are used most efficiently.

- “Data can describe a court’s overall functioning, replacing anecdotes with objective answers.”<sup>125</sup>
- “By using data to identify opportunities for improvement, judges can be sure that their often limited resources are leveraged wisely.”<sup>126</sup>
- “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.”<sup>127</sup>
- “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.”<sup>128</sup>

<sup>122</sup> INDEFENSIBLE, *supra* note 56, at 2.

<sup>123</sup> 5 WAYS JUVENILE COURT JUDGES CAN USE DATA, *supra* note 57, at 1.

<sup>124</sup> INDEFENSIBLE, *supra* note 56, at 4.

<sup>125</sup> 5 WAYS JUVENILE COURT JUDGES CAN USE DATA, *supra* note 57, at 1.

<sup>126</sup> *Id.*

<sup>127</sup> INDEFENSIBLE, *supra* note 56, at 3.

<sup>128</sup> 5 WAYS JUVENILE COURT JUDGES CAN USE DATA, *supra* note 57, at 2.