

FLORIDA

An Assessment of the Right to Counsel and Quality of Representation in Delinquency Proceedings

Statutory Right to Counsel

- All juveniles involved in delinquency cases have the right to counsel, even where commitment is not a possible penalty. This right attaches after arrest.
- There is no statutory presumption of indigence for youth. A non-indigent parent or guardian must provide legal services for a child facing delinquency charges, or face civil contempt.
- The indigence determination requires a searching inquiry into the family's financial circumstances, and payment of a statutory \$40 fee. Often, indigent parents are erroneously determined to be non-indigent by the clerk of the court, and therefore legally bound to pay for their child's attorney.

Structure of Juvenile Indigent Defense System

- Public defenders elected in each of Florida's 20 judicial circuits provide trial-level representation for juveniles. Five of these offices also handle appeals.
- Most of Florida's indigent defense funding is supplied by the state. Counties may and do provide additional funds for salaries.

Key Findings

Lack of income effectively denies access to justice.

- Florida's indigence determination process effectively acts as a barrier to legal representation for children whose families cannot afford lawyers.

Children navigate the system without the assistance of counsel.

- In many places, youth waive their right to counsel without even the most basic understanding of what they risk by relinquishing their right to an attorney.
- Children are often induced to waive counsel by parents wishing to avoid potentially hefty legal fees and by judges trying to keep the court docket moving.
- Too many children detained in Florida's secure detention centers have limited access to their attorneys, because detention centers are far from court, and some detention centers do not allow telephone contact.
- The vast majority of cases are resolved by pleas without prior consultation with such counsel.

Juvenile defenders are not adequately resourced.

- Florida should increase the resources available to juvenile defenders, including access to investigators, social workers, and experts.
- Juvenile defenders need access to ongoing, comprehensive, specialized training and supervision resources.

Juvenile court culture has become increasingly punitive and hostile to due process.

- Youth are often shackled by hand, foot and belly chain for court appearances, even though they would not be similarly restrained for the same charge in adult criminal court.
- Florida has no minimum age for juvenile court jurisdiction. A seven-year-old was observed waiving the right to counsel.
- Defenders often feel pressure to limit zealous advocacy.
- Prosecutors sometimes use the threat of direct transfer to adult criminal court to extract plea bargains.

The system suffers from racial disproportionality.

- African-American youth are incarcerated in juvenile facilities at nearly three times the rate of white youth.
- Participants in Florida's juvenile justice system widely perceive that race and poverty affect youths' experiences or outcomes in delinquency court.

Serious systemic barriers impede vigorous advocacy.

- Juvenile defenders labor under staggering caseloads, preventing meaningful client contact, thorough pretrial investigation, pretrial motions, and creative disposition advocacy.
- Judges rely so heavily on the recommendations made by the Department of Juvenile Justice at detention hearings and at disposition that defenders are often stonewalled from presenting an alternate recommendation.
- Juvenile court is used as a training ground for new, inexperienced attorneys, as well as for new judges.
- Because of the high number of school referrals, often for minor offenses, and because of "sweeps" of youth with outstanding warrants, the court system has become the school system's dumping ground.