

INDIANA

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

Statutory Right to Counsel

- Juveniles charged with committing a delinquent act have the right to counsel at every stage of juvenile proceedings, including disposition.

Structure of Juvenile Indigent Defense System

- Indigent defense in Indiana is administered at the county level, and representation is delivered in three ways: public defender programs, contracts between courts and attorneys or law firms, or assigned counsel systems through which judges appoint private attorneys on a case by case basis.
- The Indiana Public Defender Commission is a statewide organization that sets standards for indigent defense, including delinquency representation.
- The Public Defender of Indiana is a state-funded judicial agency that provides post-conviction representation in adult and juvenile cases.
- The Indiana Public Defender Council is a resource center for attorneys, established by the state to improve the quality of indigent defense representation through research, training, and practice materials.

Key Findings

Children waive their right to counsel at alarming rates.

- Significant numbers of youth are waiving their right to counsel. In 2004, almost 40% of youth went unrepresented. In 2003, 49% of youth waived their right to counsel.
- Youth's waivers were uninformed, as they often waived their right to counsel without first talking with an attorney to understand what waiver might mean for their cases.
- Waiver colloquies were often incomplete, with judges skipping discussion of important concepts like the rights to appointed counsel, to a fair trial, and to present and confront witnesses.
- Waiver colloquies were also often inadequate, with judges advising groups of children using age-inappropriate language or videotaped recordings.

The appointment process is inconsistently applied and ineffective.

- In many jurisdictions, counsel is appointed at the detention hearing, too late in the process to make a meaningful difference in the pretrial detention decision, which is crucial both to the outcome of the child's case, and to the child's life.
- Access to representation is determined by geography because the indigency eligibility criteria are inconsistently interpreted and applied.

The system suffers from a lack of zealous advocacy.

- The overwhelming majority of cases result in pleas, usually at the initial hearing. There are very few pretrial motions, trials, or appeals.
- Disposition advocacy varies widely across the state, with some defenders using creative arguments, and others rubber stamping disposition reports without comment.
- More than half the juveniles interviewed reported that they felt they had not spent enough time with their attorneys during their cases.

Quality of representation is hurt by excessive caseloads and inadequate resources.

- Particularly in larger urban areas, excessive caseloads were directly linked to high rates of waiver and poor quality of representation.
- Defenders do not have resources for investigators, social workers, or experts.

Juvenile court culture undermines the protection of youth's due process rights.

- Juvenile court is seen as a training ground for defenders, instead of a specialized area of practice.
- Many court personnel, including many defenders, perceive defense counsel's role as an advocate for the child's best interests, instead of for the child's expressed interests.

Other systemic barriers affect just outcomes.

- The school system relies on the court system to solve problems related to truancy, fighting, and other discipline issues.
- The court's over-reliance on probation officers, who handle everything from intake to disposition recommendations, tips the scales toward a best interest system in delinquency cases.
- The high fees for court costs and for indigent defense services, often imposed as a condition of probation, trap families and children unable to afford these costs in the juvenile system.
- The juvenile court has become a dumping ground for youth with mental illness and other disabilities who cannot find services elsewhere.