

# MAINE

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

### Risk Factors

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- Every four hours, a child in Maine is born into poverty
- Every two hours, a child in Maine is abused or neglected
- More than 40,000 children in Maine, or approximately one in seven children in the state, live below the poverty line
- Maine spends 4.5 times more per juvenile in detention than it spends per public school pupil

### Statutory Right to Counsel

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- Under Maine case law and statutory provisions of the Maine Juvenile Code, all children are entitled to counsel at every stage of the delinquency proceedings, and indigent children must be given court-appointed counsel (15 M.R.S.A. § 3306)

### Structure of Juvenile Indigent Defense System

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- Maine, which has no state office to coordinate or support juvenile defenders, relies exclusively on court appointments
- Any private lawyer can submit his or her name to a District Court clerk and ask to be assigned juvenile cases

### Key Findings

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The Assessment found that the operation of the juvenile justice process varies widely from court to court. The following issues were identified in a number of regions:

#### *Barriers to Just Outcomes*

- No training is required for juvenile defense counsel, and virtually none is available
- There is no separate juvenile court with judges who have expertise in issues unique to juvenile cases
- Court culture is such that defenders are often friendly with judges, prosecutors and probation officers, which can hamper their willingness to zealously advocate for their clients and undermine clients' trust in their lawyers
- The compensation rate of \$50 per hour and remuneration cap of \$315 per case creates a structural disincentive to zealous representation; in effect, lawyers can spend just six hours defending each client

#### *Access To and Effectiveness of Counsel Issues*

- While the juvenile court retains private lawyers to ensure that juveniles have counsel at hearings through the "Lawyer of the Day" program, this representation is at best a missed opportunity to work productively with children and their families, and at worst a miscarriage of justice due to the lack of time lawyers have to prepare with youth, which results in mediocre representation
- The failure of the courts to ensure a defender is assigned to a youth held in detention means that youth often lack representation and are unaware of their status for weeks or months at a time. When they reappear in court, it is usually with a new lawyer who, like their previous representative, is unfamiliar with their case
- Juvenile defenders play no role in post-dispositional advocacy because, while state law (M.R.S.A. § 3315(3)) allows court review of committed youth at annual hearings, it does not permit courts to intervene or to assign youth counsel for the hearings
- When a child is arrested in Maine, there is no requirement that the police contact a juvenile defender, so a majority of children make statements against their interests
- There are no experience requirements for counsel who manage juvenile cases that have been transferred to adult court

#### *Systemic Barriers to Effective Representation*

- The dearth of shelter beds and other community-based services often leads judges to order detention simply because there is nowhere else to place youth
- Although the majority of juveniles in detention in Maine suffer from a mental or emotional illness, defenders rarely advocate for mental health treatment for their clients. Even when it becomes clear that a juvenile is in need of such treatment, services are largely unavailable
- Because defenders are largely unfamiliar with special education entitlements, and the state provides no training in this area, schools are able to shift responsibility for youth with learning and emotional issues to the justice system