



**JUVENILE DEFENDERS ASSOCIATION
OF PENNSYLVANIA, INC.**

Testimony of Barbara Lee Krier for the
Interbranch Commission on Juvenile Justice on
February 1, 2010

Thank you for the opportunity to appear and testify before the Commission. My name is Barbara Lee Krier. I am a Senior Assistant Public Defender and the supervisor of the Juvenile Unit for the York County Public Defender's Office. I have been a public defender for more than 23 years. I have represented both juveniles and adults as a public defender.

I am a founding member and Treasurer of the Juvenile Defenders Association of Pennsylvania (JDAP). JDAP is a statewide nonprofit corporation organized in 2006 for the purpose of improving access to counsel and the quality of representation for indigent children across the Commonwealth. JDAP has over 100 members who practice in most of the counties of the Commonwealth..

I am actively involved with several statewide initiatives in the area of juvenile justice in Pennsylvania including the John D. and Catherine T. MacArthur Foundation's Models for Change Systems Reform Initiative (Models for Change). They include the Models for Change workgroups for Aftercare and Mental Health as well as the Pennsylvania Juvenile Indigent Defense Action Network (Pa-JIDAN). Pa-JIDAN is part of an eight-state network sponsored by the MacArthur Foundation to improve the quality of indigent juvenile defense and to create models that can be replicated across the nation. Pa-JIDAN is coordinated by the National Juvenile Defender Center (NJDC), which is based in Washington, D.C.

Today I am speaking to you as a representative of JDAP and Pa-JIDAN to explain the concerns of juvenile defenders in Pennsylvania and our recommendations to ensure that the serious problems that have been uncovered in Luzerne County are not repeated. We believe that these changes will benefit children and families throughout the Commonwealth.

JDAP and Pa-JIDAN respectfully make the following recommendations:

1. Pa-JIDAN and JDAP are in the process of developing performance and ethical standards, caseload standards and compensation standards for juvenile defenders and court appointed counsel representing juveniles in delinquency proceedings throughout the Commonwealth. We encourage the Interbranch Commission to recommend the adoption of these standards by the Supreme Court of Pennsylvania. We will submit the final drafts of the standards to the Interbranch Commission by March 15, 2010.
2. We recommend the development of the Pennsylvania Center for Juvenile Defense Excellence (the Center) for the purpose of improving access to counsel and the quality of delinquency counsel for children throughout the Commonwealth. The Center will include a statewide appellate division, a training division, a policy division, a model juvenile unit division, a technical assistance division and a clinical program division that will encourage law schools to develop programs that engage in training the next generation of attorneys who will represent children in delinquency proceedings. A brief description of the Center is included in the materials.
3. We recommend a fast track for juvenile appeals with a requirement that the appellate courts decide cases quickly. In addition, there should be juvenile and appellate rules that allow for stays of dispositions under specified circumstances.
4. The legislature should create a post-disposition avenue of relief for juveniles thereby guaranteeing the same rights currently enjoyed by adults.
5. Juvenile court judges should be required to state on the record how their disposition orders further the goals of the balanced and restorative justice as required by the Juvenile Act while advancing the goals of treatment, supervision and rehabilitation, thereby permitting meaningful appellate review.

6. We recommend that children in the juvenile justice system be deemed indigent and entitled to a court appointed lawyer. A child's right to court-appointed counsel should not depend upon the income of the parent. Children and their families should be free to retain the counsel of their choosing, but children should not have to rely upon their parents in order to obtain counsel.
7. We recommend that the Pennsylvania Juvenile Act and the Pennsylvania Rules of Juvenile Court Procedure be amended to permit waiver of counsel in the juvenile justice system in only the most extreme circumstances. Children should have a meaningful opportunity to consult with and be represented by counsel at all stages of a juvenile proceeding consistent with the Pennsylvania Rules of Juvenile Court Procedure, Rule 151. If waiver is permitted, the child must have an opportunity to consult with counsel before waiving the right to attorney at any stage of a proceeding. In the rare case that counsel is waived, standby counsel must be appointed to assist the child.
8. We recommend that Juvenile Court Judges' Commission (JCJC) be given sufficient resources to collect, analyze and publish data that would reveal problems similar to those that have been exposed in Luzerne County. In addition, the Pennsylvania Department of Public Welfare (DPW) should have sufficient resources to collect, analyze and publish data about placement rates. JCJC should have resources that will allow it to analyze DPW data regarding placement together with the data collected by JCJC. Issues related to disproportionate minority contact (DMC) should be a factor in evaluating and addressing the needs of the juvenile justice system. Consistent data collection regarding the rates of arrest, detention and placement for children of color should be pursued and examined to determine whether ethnic and racial disparities exist in local juvenile justice systems.
9. We recommend that the Interbranch Commission encourage the Pennsylvania Supreme Court to require mandatory annual training for all attorneys who represent children in delinquency proceedings.
10. We recommend that the Interbranch Commission encourage the Pennsylvania Supreme Court to adopt mandatory training requirements for judges, masters and hearing officers who preside over delinquency proceedings.

11. We recommend that counties adopt appropriate detention screening instruments to ensure that important decisions about whether a child is placed in pretrial detention are made in a transparent and evenhanded way. A screening instrument that works well in one community may not meet the needs of a different county. Detention screening instruments must be validated and modified for each county to ensure that children are not unnecessarily held in pretrial detention.
12. We recommend that every juvenile defender and court appointed delinquency attorney be provided access to investigators, experts, social workers and clerical support staff. These support personnel are vital to ensure that attorneys representing children in the delinquency system are prepared to handle the complex legal, factual and dispositional issues that arise in delinquency defense practice.
13. We recommend that the Interbranch Commission endorse the development of ethical and practice standards by the Juvenile prosecutors Network of the Pennsylvania District Attorneys' Association for eventual adoption by that association. These standards should be developed with input and review from other stakeholders in the juvenile justice system.
14. We recommend that the Interbranch Commission support the development of legal fellowship programs to support juvenile indigent defense in Pennsylvania with the assistance and cooperation of Equal Justice Works.

In 2004, the American Bar Association Juvenile Justice Center and the Juvenile Law Center in collaboration with the National Juvenile Defense Center published Pennsylvania: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings. The report's findings are based on an 18-month assessment, including responses to a 70-question written survey and site visits to juvenile courts across the state. Pennsylvania practices were measured against those required by the IJA/ABA Juvenile Justice Standards. The Assessment concluded that delinquency representation in Pennsylvania was best described as "justice by geography." This problem persists today - the quality of juvenile indigent defense services varies widely county to county. Pennsylvania is the only state that does not provide any state funding to support indigent defense services contributing to the problem. The adoption of the recommendations in this testimony

will be an important step in creating uniform access to the juvenile justice system for children across the Commonwealth.

We support the recommendations of Dr. Ronald Sharp, Chair of the Juvenile Justice and Delinquency Prevention Committee of the Pennsylvania Commission of Crime and Delinquency, James Anderson, Executive Director of the Juvenile Court Judges' Commission, Robert Swartz, Executive Director of the Juvenile Law Center and Robert Stanzione, President of Pennsylvania Council of Chief Juvenile Probation Officers that state funding be provided for juvenile indigent defense, that all children be deemed indigent for the appointment of counsel and that waiver of counsel by juveniles be severely restricted.

The challenges facing the juvenile justice system in Pennsylvania have been experienced in other states. We have invited experts from across the nation to address this Commission to discuss how other jurisdictions have addressed problems similar to those in Pennsylvania. With the permission of the Commission, I would like to introduce the witnesses and allow them to testify before answering questions about the specific recommendations that we have made.

Mary Ann Scali is the Deputy Director of the National Juvenile Defender Center in Washington, D.C. A former juvenile defender, Ms. Scali is a national expert on systems reform who has participated in juvenile justice reform efforts in jurisdictions across the nation. Ms Scali has visited Pennsylvania on many occasions and is familiar with many of the challenges faced by juvenile indigent defense here. She has participated in reform efforts similar to the ones we have recommended.

Joseph Ehmann, First Assistant State Public Defender, and Eileen Hirsh, Assistant State Public Defender, from the Madison Appellate Office of Wisconsin State Public Defender are nationally recognized experts on the subject of juvenile appellate practice. In Wisconsin, they led the transition from county-based juvenile appellate practice to a state-based system. Ms. Hirsh regularly conducts training for juvenile appellate attorneys from across the country. Mr. Ehmann and Mr. Hirsh will provide insights on the recommendations that we have advanced concerning juvenile appellate practice.

Cait Clarke is the Director of Public Interest Law Opportunities for Equal Justice Works, in Washington, DC. Ms. Clarke is a national expert on the training of attorneys and is supervising the development of fellowship programs that can be used to assist juvenile indigent defense. Ms. Clarke can offer some practical suggestions for support of the reform efforts in Pennsylvania.

After the witnesses have concluded their testimony and answered the Commission's questions, I would be pleased to answer any additional questions of the Commission.



**JUVENILE DEFENDERS ASSOCIATION
OF PENNSYLVANIA, INC.**

MEMORANDUM

TO: Interbranch Commission on Juvenile Justice
**FROM: Juvenile Defender Association of Pennsylvania (JDAP)
and Pennsylvania Juvenile Indigent Action Network
(PA-JIDAN)**
**RE: Proposal: Pennsylvania Center for Juvenile Defense
Excellence**
DATE: February 1, 2010

Purpose and Organizational Structure:

The purpose of the Pennsylvania Center for Juvenile Defense Excellence (“the Center”) will be to enhance the quality of representation provided to children who appear in delinquency proceedings across the Commonwealth of Pennsylvania and to provide direct appellate representation for all juveniles who appear in delinquency proceedings with the exception of children represented by public defender offices in counties of the first class. The organization and structure of the Center will be developed to ensure the Center’s independence, to maintain high quality appellate representation and to enhance the quality of representation provided by all attorneys representing juveniles in the Commonwealth.

The structure of the Center, the procedure for selecting the board and the location of the Center within state government will be determined after further discussions with major juvenile justice policy makers in Pennsylvania.

The activities of the Center will be directed by an executive director appointed by the board.

Major duties and responsibilities:

1. Appellate Division – This division will be developed on the basis of national standards and best practices and provide representation to all children who appear in delinquency proceedings in the Commonwealth with the exception of children represented by public defender offices in counties of the first class.
2. Training Division – This division will be developed on the basis of national standards and best practices and provide regional and statewide training programs for all attorneys that represent juveniles in delinquency proceedings. The Center will deliver trainings to delinquency defense attorneys consistent with mandatory training requirements for juvenile attorneys practicing in delinquency court.

3. Juvenile Justice Policy Division – This division will be developed on the basis of national standards and best practices and provide policy analysis and recommendations to juvenile justice practitioners and policy makers throughout the Commonwealth.
4. Model Juvenile Unit Division – This division will be developed on the basis of national standards and best practices. The purpose of this initiative is to begin the development of five Model Juvenile Units in five counties of different sizes in geographically diverse areas of the Commonwealth during the first year. Luzerne County will be selected as the county of the third class and one county each will be selected from the list of counties of the second or two-A class, and of the fourth, fifth and sixth classes. (See attached description for further details.)
5. Law School Clinical Program Division – This division will be developed on the basis of national standards and best practices. The purpose of this initiative will be to develop a number of clinical programs in law schools in different parts of the Commonwealth. These clinical programs will provide professional training for a new generation of attorneys who will represent children in delinquency court.
6. Technical Assistance Division – This division will be developed on the basis of national standards and best practices for all counties except for public defender offices in counties of the first class. Technical assistance will be provided in the following areas:
 - a. Immigration
 - b. Mental Health
 - c. Special Education
 - d. Disproportionate Minority Contact (DMC)
 - e. Sex Assault Cases, including Act 21, The Adam Walsh Act and SORNA
 - f. Post Disposition and Aftercare Practice
 - g. Obtaining Investigative, Social Service, Expert and Clerical Support
7. The Center will provide an annual report to the Governor, the Legislature and the Pennsylvania Supreme Court.



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MEMORANDUM

TO: Interbranch Commission on Juvenile Justice
**FROM: Juvenile Defender Association of Pennsylvania (JDAP)
and Pennsylvania Juvenile Indigent Action Network
(PA-JIDAN)**
**RE: Proposal for the Development of Five Model Juvenile
Units in the Commonwealth of Pennsylvania**
DATE: February 1, 2010

Contact: Barbara Lee Krier, Treasurer, Juvenile Defenders Association of Pennsylvania

Name of Applicant Agency: Juvenile Defenders Association of Pennsylvania (JDAP)

Brief Summary of Project: The purpose of this initiative is to develop five Model Juvenile Units in five counties of different sizes in geographically diverse areas of the Commonwealth during the first year. Luzerne County will be selected as the county of the third class and one county each will be selected from the list of counties of the second or two-A class, and of the fourth, fifth and sixth classes.

The goal of the project is to dramatically improve the access to counsel and the quality of representation for children charged with delinquent offenses. Over the next five years, it is our desire to expand this initiative to all of the counties that want to participate and to eliminate justice by geography in Pennsylvania by developing Model Juvenile Units that work effectively in large urban and suburban counties as well as small rural counties. Once the models have been developed, evaluated and proven to work effectively, it is the goal of this initiative to share the models with other states that have similar demographics.

Project Narrative

In 1967, the United States Supreme Court established the right to counsel for children in delinquency proceedings in its landmark decision, *In Re Gault*. The Supreme Court found juveniles facing placement need counsel for the same reasons as adults facing criminal charges and possible incarceration need legal counsel. Since *Gault*, the United States Congress and many diverse professional organizations have acknowledged the importance and necessity of the right of counsel and due process of law for youth in delinquency proceedings. The Institute of Judicial Administration and the American Bar Association researched and developed twenty-three volumes of comprehensive juvenile justice standards and guidelines, designed to establish the best possible juvenile justice system for our nation. These standards provide that the participation of counsel on behalf of juveniles is essential to the administration of justice and the fair and accurate resolution of issues at all stages of the proceedings.

More recently, organizations ranging from the National Juvenile Defender Center (NJDC) and the American Council of Chief Defenders (ACCD) to the National Council of Juvenile and Family Court Justice (NCJFCJ), the nation's leading professional organization of juvenile court judges and the National Legal Aid and Defender Association (NLADA) have also published guiding principles acknowledging the necessity of skilled juvenile defense advocacy to ensure justice for youth.

In July 2008, NJDC and NLADA released *Ten Core Principles for Providing Quality Delinquency Representation through Public Defense Delivery Systems*. The principles were developed to provide criteria whereby juvenile indigent defense systems may fully implement the Supreme Court's holding in *In Re Gault*. These principles provide guidance to public defense leaders and policy makers regarding the role of public defenders, contract attorneys and assigned counsel in delivering zealous, comprehensive and quality legal representation on behalf of children facing both delinquency and criminal proceedings.

The principles also recognize that delinquency cases are complex and have significant implications for children and their families. For this reason every child must have access to qualified and well resourced defense counsel. These resources should include the time and skill to adequately communicate with a client so that lawyer and client can build a trust-based attorney-client relationship and so that the lawyer is prepared to competently represent the client's interests.

Despite the widespread acknowledgement of the crucial role of counsel in ensuring due process rights for youth, forty-two years later the promise of *Gault* remains largely unfulfilled across the nation. There has been a national assessment and several state assessments of juvenile indigent defense services. These assessments include the 1995 report *A Call for Justice: An Assessment of Access to Counsel and Quality Representation in Delinquency Proceedings*. This report was the first systematic national assessment of the practices of juvenile defense attorneys and the quality of representation of youth in juvenile court. *A Call for Justice* has been followed by state assessments in Florida, Georgia, Indiana, Kentucky, Louisiana, Maine, Maryland, Montana, North Carolina, Ohio, Pennsylvania, Texas, Virginia and Washington.

Even where juvenile defenders and court appointed counsel are available, resource restraints and other systemic problems often make it impossible to provide effective representation. Frequently, the most significant barrier for defenders is the enormous caseloads for which they are responsible. The extremely limited time available for each case renders individualized justice and accurate fact-finding impossible. Because attorneys are often appointed late in the process, sometimes just minutes before or even after the detention hearing, they have missed critical advocacy and client-counseling opportunities. Furthermore, the lack of training and necessary resources (such as legal research materials, paralegals and translators and access to social workers, investigators and experts) also greatly restricts attorneys' advocacy abilities. Indeed, experts assessing these systems have consistently found that juvenile defenders:

- carry overwhelmingly high caseloads;
- are severely underpaid in relation to the prosecutor they face in court;
- rarely have time to meet with their clients before adjudicatory hearings;
- almost never file pre-trial motions;
- have no access to support staff, research or other resources to assist with investigations and case preparation;
- have no time to prepare for disposition;
- are not trained to understand adolescent development or help identify treatment options that could divert children from juvenile placements and prisons; and
- lack the capacity to represent children on appeals and while in placement.

The *Ten Core Principles* recognize that the primary responsibility of counsel is to zealously defend children from charges leveled against them and to protect their due process rights. In order to fulfill these requirements, the *Ten Core Principles* identify ten components that should underlie all juvenile indigent systems:

1. **Zealous Representation:** Juveniles have a right to zealous representation throughout the delinquency process.
2. **Specialized Skill:** Legal representation of children is a specialized area of the law and requires specialized training.
3. **Personnel and Resource Parity:** Juvenile defenders must have access to the same level of support as prosecutors and public defenders for adults, including parity of compensation.
4. **Expert and Ancillary Services:** Expert and ancillary services are necessary to provide quality juvenile defense services.
5. **Supervision and Workload:** New defenders must be supervised by experienced attorneys to ensure that legal work is high quality and that caseloads remain manageable.
6. **Professional Accountability:** Legal and non-legal staff are accountable to national, state and/or local performance standards.
7. **Continuous Training:** Comprehensive, ongoing training and education must be provided to all attorneys and other staff involved in the representation of children.
8. **Right to Treatment:** A juvenile defender has an obligation to explore and present independent treatment and disposition alternatives to the court.
9. **Educational Advocacy:** Juvenile defenders must advocate for the educational needs of their clients.
10. **Systemic Advocacy:** Juvenile defenders must promote fairness and equality for children in every phase of the juvenile justice system and in policy forums.