

Juvenile Defense Attorneys: A Critical Protection Against Injustice

The Importance of Skilled Juvenile Defenders to Upholding the Due Process Rights of Youth

By the National Juvenile Defender Center, a member of the Models for
Change Resource Center Partnership



NATIONAL JUVENILE DEFENDER CENTER



Juvenile Court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure...Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness.ⁱ

In America, we recycle our trash and throw away our children.ⁱⁱ

Youth, even more than adults, need access to competent counsel when they come before the power of the court. When a child's liberty and freedom are at risk, meaningful access to legal advice and the counsel of a juvenile defense attorney is absolutely essential for the defense systems established for youth to operate fairly and humanely.

Over the years, political and philosophical shifts toward punishment have weakened the rehabilitative ideals of the juvenile court. The stakes today are higher for youth in the system. Even though court records for juveniles are supposed to be protected, it is difficult and sometimes impossible to ensure court records are sealed and expunged.

Judges rarely have the inherent authority to expunge records that are outside the court's jurisdiction. In many states a youth's right to seal his or her arrest record depends on the case's outcome. As a result, harsh, long-term consequences often follow juvenile adjudications. A youth's record can negatively impact his or her access to housing, employment, immigration status, voting rights, education, financial independence, and many other areas that impact the likelihood of future success. This is why the role of juvenile defenders is so important.

The defender's unique challenge is to be the advocate—the voice—of the child. To meet this challenge, and to be able to offer the court the expressed interests of the child, the juvenile defender must master a diverse set of skills to uphold core ethical obligations and to help clients navigate the complexities of the justice system. The juvenile defender trained in the growing body of developmental research and juvenile jurisprudence is well equipped to enforce the client's due process rights; present the legal case with specific juvenile justice elements; promote accuracy in decision making; provide alternative dispositions for decision makers; and monitor institutional treatment, aftercare, and re-entry.

Every youth accused of a delinquency offense or who is otherwise at risk of losing his or her liberty has a constitutional right to meaningful access to counsel throughout the court process.ⁱⁱⁱ Juvenile defenders play a critical role in fulfilling that right. Despite the role's importance, the obstacles juvenile defenders face and the best practices they follow are often not fully understood. The rest of this paper explores the challenges and offers insights into how juvenile justice systems can improve the ways they uphold the due process rights of youth.

What is Unique about the Role and Knowledge of a Juvenile Defender?

The juvenile defender is the only person in the court process that is singularly devoted to understanding, articulating, and defending the express legal interests of the child. When deprived of access to the effective assistance of a juvenile defender, these rights and protections are rendered meaningless. And without a juvenile defender to protect, guide, and inform them, youth are subject to the lifelong consequences of a juvenile adjudication.

A youth's juvenile defender must specialize in two unique areas: 1) adolescent development and communication; and 2) the intricacies of the juvenile court process.

Proficiency in adolescent development and age-appropriate communication skills

Advances in neuroscience and research in adolescent development illustrate why a juvenile defender's role is so crucial to protecting the rights of young people. We know from everyday experience that youth and adults are different. Youth are more likely to act more impulsively, and succumb to peer pressure. What we see in every day youth behavior is borne out by the latest neuroscience and developmental science studies. Even the Supreme Court has taken note that, "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds"—for example, in "parts of the brain involved in behavior control."^{iv}

Developmental research confirms that youth are less likely than adults to understand and anticipate the future consequences of their decisions and actions. Recent progress in brain imaging provides physical evidence to show that regions of the brain controlling decision-making and impulse regulation are the last to mature. The effects of this decision-making calculus are amplified in times of stress and anxiety.^v Experts find that youth are able to make much better decisions when informed and unhurried than when they are under stress or the influence of peers or authority.^{vi}

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Understanding these developmental considerations is essential to the juvenile defender's analysis of youth behavior at the time of the alleged offense and in the attorney-client relationship. Without appropriate guidance, youth are unlikely to understand rights they are regularly asked to waive, let alone the consequences of waiving them.^{vii} Even when youth have had prior experience with the juvenile court system, such experience does not necessarily translate into a better understanding of legal rights.^{viii}

Proficiency in the intricacies of juvenile court procedure

In addition to being fluent in developmental considerations, juvenile defenders must also have special training in juvenile court procedure. When representing clients in the juvenile justice system, the rules, hearings, players (youth, parents, probation, prosecutors and welfare officers), available options,

challenges, and outcomes are likely to be quite different than what public defenders experience in the adult criminal justice system.

Properly trained juvenile defenders are prepared to grapple with the myriad situations and hearings where they will have to advocate for their clients' rights and expressed interests. At the detention hearing alone, defenders must be able, among other things, to:

- know and critique the jurisdiction's detention statute(s) and detention screening tools,
- be familiar with juvenile court procedure,
- know the detention facilities and community-based alternatives to make the case for their client's release rather than detention,
- effectively engage their client in developing a client driven release plan, as well as
- learn about the individuals, including parents/guardians, juvenile court probation officers, teachers, coaches, and mentors who can speak at the hearing in favor of the youth's release.

Crucially, the juvenile defender is the only participant in the juvenile court setting tasked with advocating for the expressed interests of the youth.

What Unique Challenges Do Juvenile Defenders Face in Fulfilling their Responsibilities to their Young Clients?

Challenge #1: Facilitating Meaningful Engagement of the Client in the Court Process

Effective communication with a client is the lynchpin of meaningful advocacy for any attorney. Yet, adolescence is precisely when youth begin to develop personal autonomy, resist authority figures, and establish a coherent, stable identity.^{ix} As a result, adolescents "try on" various identities. These completely appropriate developmental features may make youth reluctant to tell their attorneys certain information if they believe the attorney will condemn their actions. They also may be unwilling to provide their attorney with information about friends who are co-respondents or participants in the alleged criminal conduct. Youth also may assume that judgments are being made about them.^x Creating an effective attorney-client relationship takes deliberate and intentional focus on the developmental status of each juvenile client.

Communication challenges for youth also commonly manifest in the courtroom. For example, during a juvenile court proceeding a judge often tells the youth about his or her rights and asks some simple questions about whether the youth understands. At a more basic level, youth are given a series of conditions they must comply with before being released from court. One study in Washington State found that youth understood fewer than one-third of the court-ordered release conditions.^{xi} That lack of comprehension led to low rates of recall and compliance, and often resulted in additional sanctions, including detention.

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The scene and roles in a courtroom can be equally confusing for youth. When youth in the same Washington State study were asked to identify the prosecutor in their case, one-quarter were either not sure or believed that no prosecutor was present even when both prosecutors and court-appointed juvenile defenders were present in every single case.^{xii}

To reduce this confusion, juvenile defenders must both supplement what the judge says to their clients in court, and advocate for developmentally-appropriate language across the juvenile court. Skilled juvenile defenders ensure their clients' can meaningfully engage in their defense, understand their Constitutional rights, and participate in the court process.

Challenge #2: Ensuring Early and Timely Appointment of Counsel

Late appointment of counsel harms the attorney-client relationship and the preparation of the case. An attorney cannot work effectively without developing a relationship of trust with a client – juvenile or adult. This trust is built up over time. It cannot exist if defense attorneys and their clients are meeting for the first time in the courtroom without an opportunity to discuss the process for the hearing, ask and answer questions, and gain each other's perspective on the matter at hand.

It is also too seldom that a juvenile defender has sufficient time to prepare for a juvenile hearing. In numerous jurisdictions juvenile defenders have less than five minutes to prepare their juvenile clients for their initial court hearing.^{xiii} It is impossible to build trust with a client or a case for the client in such a short time-span. Juvenile defenders need to meet with their clients as early and as often as possible to develop a relationship of trust and to ensure effective investigation on their clients' behalf, to prepare motions, develop legal arguments, and mount an adequate defense.

Late appointment of counsel also greatly impacts the trajectory of a case. Without the guidance of a skilled juvenile defender early in the case, a young person can be inclined to take the advice of an adult, however well-meaning, who does not fully understand the consequences of a juvenile adjudication.

Before the youth ever appears in court, arresting officers may leverage detention as a way to encourage a youth to make incriminating statements, without counsel present. ("Just tell us what happened – if you cooperate with us, we might be able to let you go.") Youth, generally focused on short-term consequences rather than long-term outcomes, can be easily coerced by this kind of pressure from authority figures. This is true even for youth who may not have done anything wrong.^{xiv}

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To fully uphold a youth's due process rights, juvenile defenders must be appointed as early in the process as possible. Once a defender is involved, he or she can establish a relationship of trust, prepare the case, and assist juvenile clients in making informed decisions as they make their way through juvenile court.

Challenge #3: Eliminating the Pressure Youth Face to Waive Critical Rights

Youth are frequently steered toward waiving their rights. From their first encounter with law enforcement where they may be asked to consent to a search, to the interrogation room where they are asked to waive their *Miranda* rights, to their initial hearing where they may be asked to waive their right to counsel, to their plea where they are asked whether they wish to waive their trial rights, the pressure is constant. In many jurisdictions these waivers of rights happen prior to the appointment of counsel and without any assistance or advice of counsel.

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In fact, youth in the juvenile justice system are often persuaded by various actors to avoid the costs of a court-appointed juvenile defender. Some stakeholders believe that juvenile defenders and their insistence on due process simply “slow down” the juvenile court system and get in the way of providing needed services. But no system needs to prioritize services over due process; the two can coexist. Indeed, the United States Constitution and Supreme Court holdings require as much.

Yet, the Supreme Court’s finding and insistence upon due process protections for youth has not taken hold in many juvenile courts. Youth are told, “you’ll be treated more harshly if you have a lawyer.” Even parents may be afraid to request a juvenile defender for their child because of the costs that may be imposed. Some parents encourage their children to forego counsel entirely, especially when they are led to believe the same misguided myths that are told to their children.

Access to counsel is essential to upholding due process rights for youth and for ensuring accountability in the juvenile justice system. The number of youth charged with crimes who waive their right to counsel without understanding the serious consequences of that decision is troubling. Youth in juvenile courts should have the opportunity to have meaningful consultation with a skilled juvenile defense attorney before they can waive their right to counsel.

About the National Juvenile Defender Center

The Constitution requires that the “guiding hand of counsel” be available to all juveniles in delinquency proceedings.^{xv} Despite this, a system for affording effective juvenile defense has yet to be fully established and implemented in the United States.

The **National Juvenile Defender Center (NJDC)** promotes justice for all children by ensuring excellence in juvenile defense. NJDC helps juvenile defenders fulfill their ethical obligations to their clients, uphold the Constitution, and serves as a resource center on topics related to adolescent development, age-appropriate communication, and juvenile court rules and procedures for legislators, judges, probation officers, and other stakeholders in the juvenile justice process who are concerned about the fundamental fairness of the system and improving outcomes for youth.

NJDC developed the **National Juvenile Defense Standards** to inform and guide the ethical and professional performance of juvenile defense attorneys. The *Standards* set forth a framework for representation that is client-centered and anchored in the law, science, and professional codes of responsibility, providing a roadmap for counsel to navigate every stage of juvenile delinquency practice from detention through post-disposition. In addition, the *Standards* provide support for supervisors and discuss the role of the juvenile defender in addressing systemic deficiencies. The *Standards* present a national approach to systematizing competent and diligent juvenile defense practice, and reflect a core commitment to the unique role of the juvenile defender. The *Standards* fully embrace juvenile defense as a highly specialized area of practice, consistent with a young person’s fundamental right to counsel. They are intended to elevate juvenile defense practice and policy and ultimately improve and heighten the delivery of legal service to indigent youth.

Through the **Juvenile Training Immersion Program (JTIP)**, NJDC offers specialized and comprehensive juvenile defense training to help defenders develop a specialization in juvenile defense. Developed by NJDC and experts from across the country, JTIP covers topics ranging from the specialized role of juvenile defense counsel to advocacy at every stage of a case. JTIP is designed to help juvenile defense attorneys across the country meet their obligations to young clients at every stage of delinquency proceedings in their mission to provide high-quality, meaningful representation for youth. The lessons contain interactive exercises, hypothetical case scenarios, facilitated discussions, and guides for developing legal arguments, and other training tools.

Please contact NJDC for more guidance on upholding the due process rights of youth in the juvenile justice system:

National Juvenile Defender Center

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About the Models for Change Resource Center Partnership

The Resource Center Partnership works to advance juvenile justice systems reform across the country by providing state and local leaders, practitioners, and policymakers with technical assistance, training, and the proven tools, resources, and lessons developed through the John D. and Catherine T. MacArthur Foundation's Models for Change: Systems Reform in Juvenile Justice Initiative.

The Partnership is anchored by four complementary, connected Resource Centers that address four important issues in juvenile justice:

- Mental health: The Mental Health and Juvenile Justice Collaborative for Change, led by the National Center for Mental Health and Juvenile Justice. For more information, visit: cfc.ncmhjj.com
- Stronger legal defense for indigent youth: National Juvenile Defender Center. For more information, visit: njdc.info/resourcecenterpartnership.php
- Appropriate interventions for youth charged with non-delinquent—or status—offenses: The Status Offense Reform Center, led by the Vera Institute of Justice. For more information, visit: www.statusoffensereform.org
- Coordinated systems of care for young people involved in both the juvenile justice and child protective systems: The Robert F. Kennedy National Resource Center for Juvenile Justice, led by the RFK Children's Action Corps. For more information, visit: www.rfknrcjj.org

The Partnership also includes a strategic alliance of national experts and organizations representing state leaders, mayors, judges, law enforcement, prosecutors, corrections professionals, court personnel, and justice reform advocates. These partners further enrich the tools, best practices, and training offered by the Centers and provide direct connections to professionals working in juvenile justice.

For more information about the Models for Change Resource Center Partnership, visit: Modelsforchange.net/resourcecenters

ⁱ *In re Gault*, 387 U.S. 1, 18-19 (1967).

ⁱⁱ Anonymous mother of an incarcerated youth, undated.

ⁱⁱⁱ *Gault*, 387 U.S. at 37.

^{iv} *Miller v. Alabama*, 132 S.Ct. 2455, 2464 (2012) (quoting *Graham v. Florida*, 130 S. Ct. 2011, 2026 (2010)).

^v See Brief of the Am. Med. Ass'n., et al. as Amici Curiae Supporting Respondent, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633) 7-8 (citing L.P. Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 NEUROSCIENCE & BIOBEHAVIORAL REVS. 417, 421 (2000) and Lita Furby & Ruth Beyth-Marom, *Risk Taking in Adolescence: A Decision-Making Perspective*, 12 DEVELOPMENTAL REV. 1, 9-11 (1992)).

^{vi} Lawrence Steinberg et al., *Are Adolescents More Mature than Adults?: Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip-Flop"*, 64 AM. PSYCHOLOGIST 583 (2009).

^{vii} Mary Berkheiser, *The Fiction of Juvenile Right to Counsel: Waiver in the Juvenile Court*, 54 FLA. L. REV. 577 (2002) (citing THOMAS GRISIO, JUVENILES' WAIVER OF RIGHTS: LEGAL AND PSYCHOLOGICAL COMPETENCE 193-194 (1981)) [hereinafter GRISIO]; see generally Norman Lefstein et al., *In Search of Juvenile Justice: Gault and Its Implementation*, 3 LAW & SOC'Y REV. 491 (1969) (discussing an empirical study demonstrating the difficulty of obtaining juvenile waivers with confidence that they are knowing and voluntary).

^{viii} *Id.*

^{ix} Marty Beyer & Elizabeth Calvin, *Communicating with Youth: Interviews and Colloquies-Module 5*, in TOWARD DEVELOPMENTALLY APPROPRIATE PRACTICE: A JUVENILE COURT TRAINING CURRICULUM 4 (Nat'l Juv. Def. Ctr. et al., eds. 2009).

^x *Id.* at 3-4.

^{xi} TEAMCHILD & JUVENILE INDIGENT DEFENSE ACTION NETWORK, WASHINGTON JUDICIAL COLLOQUIES PROJECT: A GUIDE FOR IMPROVING COMMUNICATION & UNDERSTANDING IN JUVENILE COURT 9, http://www.teamchild.org/docs/uploads/JIDAN_Judicial_Colloquies_FINAL.pdf (2012).

^{xii} *Id.*

^{xiii} *See, e.g.*, NATIONAL JUVENILE DEFENDER CENTER, MISSOURI: JUSTICE RATIONED; AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF JUVENILE DEFENSE REPRESENTATION IN DELINQUENCY PROCEEDINGS 44 (2013), available at http://www.njdc.info/pdf/Missouri_Assessment.pdf.

^{xiv} Stephen Drizin & Richard Leo, *The Problem of Confessions in a Post-DNA World*, 82 N.C. L. REV. 891, 969 (2004).

^{xv} *In re Gault*, 387 U.S. 1, 37 (1967).