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American Bar Association reports explore juvenile defense systems

By Staff

The American Bar Association has released a series of reports identifying institutional problems that prevent six states' juvenile defense systems from providing indigent children with adequate defense representation.

The reports, which reviewed access to counsel and quality of legal representation for indigent juveniles in Maine, Maryland, Montana, North Carolina, Pennsylvania, and Washington, were prepared at the invitation of and in cooperation with local indigent juvenile defense organizations.

“The conditions in each state are unique, but these reports paint a disturbing picture,” said ABA President Dennis W. Archer. “Too many children, particularly children of color, fall victim to conveyor belt justice with kids rushed through a system riddled with institutional flaws without regard for their individual cases or needs. The net result is a massive misdirection of resources that fails children, and undermines public safety.”

While based on ABA standards, the conclusions contained in the reports have not been considered or approved by the ABA House of Delegates, and do not reflect the official positions or policies of the Association.

“Many of my colleagues on the bench and I are concerned that the children rushed through the system and into juvenile detention centers today are the same people we'll see later in adult courts,” said Louisiana juvenile court judge Ernestine Gray. “Once the system gets hold of these kids, unless they receive an adequate and zealous defense, they're too often lost forever.”

The studies are part of a nationwide effort to evaluate state juvenile defense systems to determine whether those systems are working to protect children's constitutional and statutory rights. The new studies bring the number of states evaluated to 12. The six reports follow previous assessments conducted in Georgia (2001), Kentucky (2002), Louisiana (2001 and 2002), Ohio (2003), Texas (2000), and Virginia (2002).

The successes and failures reported in each state varied, but the six new studies - along with the earlier studies - identified several common problems. Among the key findings common in the new reports are:

- * Juvenile court lawyers have excessive caseloads, preventing many from having meaningful contact with their clients, and receive inordinately low compensation, preventing them from being able to provide effective representation to those clients;
- * Many youths do not have counsel at critical stages of the juvenile justice process, despite the law's clear mandate and the harmful consequences of not having a lawyer;
- * Because most juvenile defense lawyers are not provided training to help identify treatment options that could serve as effective alternatives to detention, lawyers are incapable of effectively protecting their clients' rights and advocating for their treatment needs;

- * Because more appropriate alternatives to detention are rarely explored, juvenile justice systems tend to rely too heavily on detention and probation;
- * Juvenile detention systems are becoming dumping grounds for mentally ill children and school-related referrals;
- * Postdisposition representation of adjudicated youth is virtually non-existent, with lawyers rarely having the time or resources to visit their clients in placement or follow up to ensure that court-ordered treatment has been delivered or effective;
- * Defense attorneys typically have access to fewer resources, such as investigators and technology, than the prosecutors they face in court;
- * Although it is common knowledge that teenage clients pose particular challenges for lawyers, most receive no training in adolescent development; and
- * The failings of the juvenile justice system have a disproportionate impact on children of color and indigent youth.

In addition to identifying overlapping problems in the six states evaluated, the reports also shared similar recommendations for correcting those deficiencies. All three branches of government can play a role in remedying the problems highlighted in the assessments. The reports recommended, for example:

- * Greater state oversight and attention and the creation of independent commissions and task forces to further study juvenile defense issues;
- * Oversight hearings by Congress and state legislatures;
- * Increased efforts by juvenile court judges to ensure that youth are aware of their right to counsel and do not go unrepresented at crucial court proceedings;
- * Greater interest and involvement of state bar associations to provide support and training to juvenile defenders;
- * Ongoing collection of data on appointment of defense counsel, frequency of juvenile waiver of counsel, caseloads, spending on juvenile defense, and training and resources needs; and
- * Increased parental involvement and understanding of the juvenile indigent defense system.

“Effective defense representation can make all the difference,” said Archer. “Lawyers who are trained to handle issues unique to juvenile defense and capable of finding appropriate alternatives to detention can help keep kids from getting trapped in the system and decrease their likelihood of becoming adult offenders later in life.”