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Report: Young suspects slighted

Poor juveniles are not adequately served by public defenders, a review charges

By MOLLY HENNESSY-FISKE

You are under 16, charged with a crime, and whether or not you end up in detention depends on your attorney. Unfortunately, the first time you meet is in court.

“A juvenile may be charged, meet them, walk into the courtroom and plead to a felony,” said Durham District Court Judge Marcia Morey.

North Carolina lawyers are failing poor juvenile clients by not pursuing their cases aggressively enough, according to a report released last week by the American Bar Association and Southern Juvenile Defender Center in Atlanta.

The director of the state office that oversees public defenders called the report fair and said its recommendations, including establishment of a statewide juvenile public defender, were realistic.

“I don’t think we as a state have provided adequate training for the lawyers who are doing juvenile delinquency defense,” said Tye Hunter, executive director of the Office of Indigent Defense Services, which has coordinated public defenders statewide for the past three years. “We need to do a better job.”

Hunter’s office assisted report investigators, who visited 11 counties to conduct interviews and also surveyed judges, court counselors, public defenders and private lawyers.

Most youths in state courts rely on public defenders, three-quarters of them private attorneys drafted in counties without public defender’s offices, such as Wake, Hunter said. Investigators found several dedicated defenders and quality defense programs but more lawyers confused about their mission.

Juvenile courts are designed to rehabilitate, not punish. But they are still courts where, by law, attorneys are supposed to look out for a client’s rights, not his welfare. They should review police reports, meet a client before he is interrogated, attend interrogations and file motions. Yet they rarely do.

Instead, investigators found attorneys reliant on the investigation and recommendations of court counselors and state juvenile justice employees. Parents have started to confuse court counselors with defenders. Youths languish in temporary detention, and once a judge rules, with few motions in their case files, they rarely file appeals.

Durham Assistant Public Defender Lori Mahmoud agreed with the report's findings in part and faults lawyers who see their time in juvenile court as "community service." Clients can be confused, but it is up to lawyers to make sure they understand their rights and to file motions -- she filed at least seven for incompetent children during the past year.

"I've actually gone up to children and asked, 'Do you know who I am?' and they say, 'Um, my probation officer?'" she said. "You have to sit down with them and explain."

Complaints were brought against 39,983 youths last year, about 42 percent landing in juvenile court, according to the state Department of Juvenile Justice and Delinquency Prevention. About half that number ended up in detention, with Wake's detention center seeing the second-highest number of admissions after Charlotte -- 795. More than half of those in detention were black, just as the report points out: More black than white youths are referred to juvenile courts.

Judge Morey, who participated in the review, said she tries to counteract the "culture of juvenile court" described in the report that so often lands minority youths in detention. All youths should be assigned an attorney at their first appearance, she said, and attend a hearing no more than two to four weeks later. She tries to resist plea bargains -- they teach kids to plead their way through life, she said. She teaches juvenile court procedure to lawyers and judges and, since Mahmoud recently transferred to civil court, has been bringing her replacement up to speed.

"It's an education process, over and over again," she said.

Some defenders disagreed with the report's premise and insisted they are looking out for clients' best interests. Pleas are necessary to avoid felony records, and avoiding motions gets clients out of detention and into treatment, said Al Singer, who has represented youths in Durham for more than a decade.

"If we had a Johnnie Cochrane for each of these kids and got them off on a technicality in juvenile court, where would we be?" said Singer, who also serves as executive director of N.C. Child Advocacy Institute in Durham. "... We would just be chasing our tail. We have to stop the deviant behavior."

The report's 15 recommendations to improve juvenile representation include added options to detention, re-examination of detention policies, faster appeals and more lawyer training. Investigators also advocate creating a statewide public defender's office to coordinate juvenile defense policy and appeals, much like the Office of the Capital Defender and the Office of the Appellate Defender.

"I think both of those offices have raised the quality of representation in their areas and been cost effective," Hunter said. "I don't see why a statewide juvenile public defender couldn't."

Hunter works with a \$72 million budget, only \$4 million of which pays most juvenile public defenders. He said proposed changes would require more money and support from legislators, schools, district attorneys and juvenile justice leaders.