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Study: System fails accused youth in Ohio

Legal aid lacking; courts are 'dumping grounds'

By Sharon Turco

Ohio's system for making sure poor children have legal representation in court is seriously flawed, and black children are pushed into the juvenile justice system in disproportionate numbers, says an American Bar Association study released today.

Ohio children are frequently denied their basic right to meaningful legal representation and are often discouraged from getting an attorney at all, according to the study, "Justice Cut Short."

It suggests that juvenile courts in Ohio have become "dumping grounds" for scores of children with mental health problems, minor school-related misconduct and other adolescent problems.

Ohio had 4,531 juvenile offenders locked up in state treatment centers in 1999 - the latest figures available nationwide - the fifth highest number in the nation, U.S. Justice Department statistics show. Ohio is the seventh most populous state.

But tens of thousands more Ohio children were detained in county and other facilities during the same year, study directors said.

"In comparison to other states, Ohio doesn't fare very well," said Jelpi Picou, regional coordinator for the American Bar Association's Juvenile Defender Center. Its juvenile system is "more organized than, say, Texas, which has no structure, but it is not fulfilling kids' needs for appointed counsel."

Picou has coordinated similar studies in other states, including Kentucky, Maine and Georgia. "It's disturbing how many kids are being locked up," he said.

Hamilton County Juvenile Court Judge Sylvia Hendon, who is also president of the Ohio Juvenile and Family Court Judges Association, said she couldn't comment on the study because she had not seen it, but that she does not think Ohio has as many problems as presented in the study.

But Yvette McGee Brown, until recently a Juvenile Court judge in Columbus' Franklin County, said she thinks the findings are dead right.

"The juvenile justice system often is a dumping ground" for society's problems, such as abuse and family dysfunction, said Brown, now president of the Center for Child and Family Advocacy in Columbus. And the lawyers assigned to poor kids in trouble are often right out of law school and must handle several cases a day, she said.

Hamilton County in particular fared poorly in the study. Among the five urban Ohio counties studied, it had the highest number of children in its juvenile justice system, some as young as 8. It also detained the highest percentage of black children. And, it sent the most juveniles into the adult prison system.

The study was conducted by the American Bar Association's Juvenile Justice Center in Washington, in partnership with the Children's Law Center in Covington and Juvenile Justice Coalition of Ohio. A team of national and state experts surveyed judges and public defenders statewide; visited 12 Ohio counties to observe courtroom proceedings and to interview parents, lawyers and staff; and interviewed 538 children detained in state facilities.

A disparity in treatment

Ohio is a bellwether for the nation, said Eileen Cooper Reed, director of the Ohio Children's Defense Fund and a former Hamilton County Juvenile Court referee.

The problem, she said, is that Ohio hasn't taken the time to examine the needs of the juvenile justice system.

"We've lowered the bind-over age (to adult court at age 14) and criminalized every behavior young people can do," Reed said.

She gave her own foster son as an example. He brought firecrackers to a public high school and was arrested on a charge of having a concealed weapon, a charge that didn't even apply. A friend, who attended a Catholic high school, did the same thing and got a slap on the wrist, Reed said.

"The juvenile justice system depends on who you are and where you live," Reed said. "Seems to me a young person can't turn their head without a crime being made of it."

A mid-'90s Ohio initiative called Reclaim gave substantial responsibility for juveniles back to the state's 88 counties by returning money - which otherwise would have been spent by the Department of Youth Services - so counties could devise community deterrence programs. Those included substance abuse treatment, family counseling and electronic monitoring, as well as county detention facilities, such as Hamilton County's Hillcrest Training School for Boys.

But in 2002, Ohio also toughened laws for serious youthful offenders and lowered the age to 10 that juveniles could be detained in state and county treatment facilities. It was the first new law addressing juvenile offender issues in nearly three decades.

This year, the Ohio House formed a Juvenile and Family Law Committee after recognizing a need to look at the state's juvenile system, says committee Chairman Rep. Mike Gilb, R-Findlay.

All these initiatives point to change coming for the state, says Kevin Miller, chief of staff for DYS, the juvenile corrections system.

“Are we where we want to be? No,” Miller said. “There’s always going to be room for improvement.”

Do kids understand rights?

The American Bar Association study found that when Ohio children are arrested or cited on a charge, kids waive their right to counsel without even the most basic understanding of what they are giving up having been explained.

“Our investigators found that in case after case, the circumstances encouraged youth to waive their rights in hopes that nothing serious would happen,” said Kim Brooks, director of the Children’s Law Center in Covington. “In Ohio, unfortunately, serious consequences do result for scores of young people.”

In some courts, the defense attorneys do not play a significant enough role, the study found.

Vigorous representation for children also varied county to county, but investigators found meaningful representation lacking at the arrest or detention hearing stage, little pretrial or trial advocacy, and limited or nonexistent appeals in many jurisdictions.

A comprehensive new study on juveniles’ competence to stand trial, to be published in the journal *Law and Human Behavior*, found many U.S. children age 15 and younger are unable to understand criminal proceedings, hindering their ability to be competent defendants.

Change is needed, Reed said.

“We need to offer parents help before children get in the court system,” Reed said. “A court only gets what is brought to it.”

Also, those doing the study found overrepresentation of black children in the juvenile justice system. That’s a problem that plagues many states, according to the Building Blocks for Youth, a national alliance of children’s advocates, researchers and law enforcement professionals.

In Ohio, 38 percent of children convicted of juvenile felonies are African-American, though only 14.3 percent of children younger than 18 are black.

“I am a bit shocked to see the number of minority kids going through the system,” Picou said. “It’s not about racism. It’s how the system is set up.”

He was referring to fewer resources for youthful crime deterrence in urban areas, and more resources and alternative programs in predominantly white suburbs.

To make any changes, people must first realize “the system is not just the court,” Reed said. “It is the police, the community, how we view young people and whether they are valued or not. There is impact every step of the way.”

Study: Insist kids get lawyers

The report includes a series of recommendations for the governor and legislature; as well as for counties and public defenders, to make that change happen.

Specifically, the study recommended the governor and legislature implement an unwaivable right to counsel for all children at every stage of the juvenile process. It also must provide adequate funding for the juvenile justice system.

Courts and counties should make sure counsel is appointed at the earliest possible time and should do a thorough review of its detention process. Public defender offices should also make sure everyone gets representation at the earliest possible time, and should address the overuse and abuse of detention.

Reed said she knows it's not realistic to expect change immediately.

"These recommendations were made because they are reasonable," Reed said. "Right now with the state budget crunch, I doubt much attention will be paid to it, but to me they are good, solid recommendations based on the study's findings."

Annie-Laurie Blair and Ken Alltucker contributed.