

## **Report Summary**

# **Justice Cut Short: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Ohio**

### **KEY FINDINGS**

#### **1) Children in Ohio are denied justice by a system that fails to ensure their rights**

*Large numbers of youth waive their right to counsel for various reasons:*

- They do not understand their rights and the potential consequences they face
- Inadequate colloquies are given by judges and magistrates in some jurisdictions
- A pervasive philosophy that courts act in the best interest of the child, and therefore defense attorneys are unnecessary
- The appointment process discourages access to an attorney in some jurisdictions
- They feel pressured by parents or others to get the proceedings over quickly
- They feel having no lawyer is better than one who is not helpful to them

#### **2) Children in Ohio are often denied effective representation**

*Zealous representation from well-trained lawyers is seriously lacking in many jurisdictions*

- Lawyers are often not appointed at the detention hearing stage until after critical decisions are already made about the child's incarceration
- Most cases end in plea agreements with little consultation with the client, and little or no investigation
- Pre-trial motion practice and trial skills are lacking in many jurisdictions
- There is little appellate work done in the state to challenge practices and establish case law in juvenile matters
- Juvenile defense attorneys in full time offices are often swamped with caseloads that prevent effective lawyering for children
- The rate of pay for many full time juvenile defenders is low, and rates for appointed counsel ranges only from \$30 - \$60 an hour and are often capped. Most defender offices have little or no access to support services, including social workers, paralegals, investigators and technology. Appointed counsel have even fewer resources.

#### **3) Ohio's juvenile justice system is overloaded with youth who could be served through less restrictive means**

*Many youth incarcerated in detention and state treatment facilities have mental health problems and could be better served in the community*

- As many as 40-70% of youth in juvenile correctional facilities suffer from mental health problems or mental retardation, with the percentage estimated even higher for females
- Juvenile courts have become "mental health gatekeepers," as noted by one juvenile court judge, and overwhelmingly judges and other juvenile justice stakeholders have agreed that these youth are not being effectively treated by existing resources and practices

*Ohio's detention centers are packed with large numbers of non-violent and minor offenders*

- While there is a lack of any consistent and accurate data on the number of youth detained in Ohio's thirty-five detention centers, data from some centers indicate as many as 70-80% of youth are held on allegations of non-felony conduct.
- The majority of youth, if they are appointed counsel, do not get a lawyer until after the detention hearing is over.
- African American youth are overrepresented in detention two to three times more than their white counterparts
- It is very easy to detain a child in Ohio's system at a cost on the average of \$90 - \$150 per day

*Female offenders in Ohio do not necessarily have the same access to community-based services as their male counterparts.*

- Most of Ohio's community corrections facilities, designed to keep youth who need residential treatment in less restrictive placements closer to their own communities, do not have beds for girls
- Female offenders have treatment needs that are often different than males; some current programs and services are inadequate to meet the unique mental health and developmental issues facing girls

*African American youth in Ohio's juvenile justice system are overrepresented in significant numbers from detention to commitment.*

- While race data do not exist for all counties, those with such data indicate that African American youth are overrepresented by 2 - 3 times greater in detention
- Of those youth committed to the Ohio Department of Youth Services for the 2000-2001 fiscal year, 46.7% were African American, representing four times the corresponding percentage of African American youth to the general population

#### RECOMMENDATIONS FOCUS ON:

- Development of a system whereby all children have counsel in critical proceedings that could result in a loss of liberty
- Appointment of counsel at the earliest stage and continuing through the appellate and post-disposition stages
- Adequate funding and resources of public defender programs, including support services and the use of technology
- Training and accountability of indigent defense counsel
- Developing leadership in the juvenile justice system that can:
  - Adequately address needed services for youth with mental illness and mental retardation
  - Reduce the disproportionate rate of minority youth in the system
  - Reduce the number of youth incarcerated unnecessarily and for minor offenses in detention and other facilities
  - Address the special needs that female offenders have for treatment
  - Reduce the over-reliance by school systems on juvenile courts
- Enhancement of opportunities for training and clinical experience for law students interested in children's advocacy work