

Mid-Atlantic Juvenile Defender Center & JustChildren Program Press Release

Press Contacts:

Ilona Picou, Executive Director
Mid-Atlantic Juvenile Defender Center
410.295.5950
MAJDCemail@aol.com

Andrew Block, Legal Director
JustChildren Program
434.977.0553
ANDYB@justice4all.org

VIRGINIA'S INDIGENT JUVENILE DEFENSE SYSTEM: TOO LITTLE, TOO LATE

A. New Report Finds Juvenile Justice System in Virginia Lacking

Charlottesville, VA-October 2, 2002-According to a new report released today, Virginia's method for providing constitutionally-required defense services for children in the delinquency system is seriously flawed. The study, conducted by the American Bar Association Juvenile Justice Center and the Mid-Atlantic Juvenile Defender Center, found that the late appointment of counsel, lack of resources, and multiple systemic barriers hit hardest those children and youth suffering from mental illnesses and disproportionately affected children and youth of color.

"While localities being served by Public Defender Offices fared better overall than those localities being served by appointed counsel, we found that Virginia's system for providing representation for children has not kept pace with the science of adolescent development, recent legislative changes resulting in harsher treatment for children found delinquent, and the unavailability of mental health treatment and social services," said Ilona P. Picou, Director of the Mid-Atlantic Juvenile Defender Center and co-author of the report.

"At a time when juvenile crime is declining," Picou noted, "we found that large numbers of children of color and those suffering with mental illness are being rushed through a justice system ill-equipped to represent their needs or provide them with viable options for treatment and rehabilitation." "An adequately resourced and monitored juvenile defender system would go a long way to improving the lives of all citizens of the Commonwealth." Robert E. Shepherd, Jr., of the Virginia Bar Association's Commission on the Needs of Children and a nationally recognized expert on juvenile law, characterized the findings of the report as "very troubling"; In May, 1979, the Virginia Crime Commission issued "Children and Youth in Trouble in Virginia, Phase II" a report on the concept of family courts and a review of the key stakeholders in the juvenile justice system. Twenty-three years ago the Virginia Crime Commission conducted a study on at risk youth and the juvenile courts with similar findings. "I am shocked and disappointed to learn that the quality of representation for Virginia's youth has improved so little over the years," Shepherd said.

The latest ABA report found that the appointment of counsel for the young comes too late in many cases, after crucial decisions have been made that seriously affect the outcome of cases, and that many counsel, once appointed, have inadequate resources, crushing workloads, and little financial incentive to adequately represent children facing conviction and confinement.

“Virginia’s children are less likely than adults in this state to understand their due process rights and request the legal counsel to which they are entitled. Without competent, committed advocates many children are shuffled through the system without real opportunities for treatment and rehabilitation,” said Andrew Block, Director of the JustChildren Program in Charlottesville. “Children in Virginia must navigate the complexities of the juvenile justice system, quite literally, alone.”

Liz Murtagh, an attorney in the juvenile division of the Charlottesville Public Defender Office, noted “many children going unrepresented in this state do not comprehend the enormous consequences of a delinquency adjudication.” Children interviewed during the preparation of the report expressed confusion over the delinquency process and appeared unaware of the long-term consequences of their decisions to waive counsel or plead guilty. “Additionally, too many represented children do not meet their lawyers until minutes before the hearing and plead guilty with little understanding of the consequences of their decisions,” Murtagh said.

Report investigators were deeply troubled by the level of representation provided in localities with a court appointed system. In part because of excessive caseloads, lack of resources, and the low rate of compensation, appointed counsel are often forced to process cases quickly, typically through hurried plea agreements. “This report underscores our need to mandate appointment of counsel sooner in the process and to insure that counsel is in a position to effectively advocate on behalf of these children,” said Block.

The juvenile justice system, the report found, is burdened down with inappropriate referrals, particularly mental health and school-related cases. The study found that anywhere from 50 to 85% of the children held in detention are in need of mental health services. “Given its lack of resources and services, the use of the justice system as a dumping ground for children with mental health needs should concern all Virginians,” said Margaret Crowe, Senior Program and Policy Director of Action Alliance for Virginia’s Children and Youth. Better outcomes for children and our communities “cannot be assured through a delinquency system lacking necessary resources,” Crowe added.

“This report underscores the inappropriateness of the juvenile justice system being used as the disciplinary systems of our schools,” said Pierre Ames of the Parental Educational Advocacy Training Center. “While some referrals to the justice system are necessary,” Ames pointed out, “the number of referrals we are seeing is unconscionable and the inability of the defense system to provide advocacy unacceptable.”

Additional highlights from the report include:

- “*Cheap Lawyering*”. One of the lowest in the country, the maximum of \$112 paid to appointed counsel to see a child’s case through the delinquency system places a premium on high volume and typically creates a hurried plea process. Judges, Commonwealth’s

Attorneys and juvenile court personnel interviewed agreed that low fees are a disincentive to zealous advocacy. They believed the fees dissuade lawyers from “doing a good job” including filing motions, preparing for trial, investigating dispositional alternatives and appealing cases to Circuit Court.

- *Children go through the system alone.* A related outcome of absence of counsel at preliminary hearings is the high incidence of children giving up their right to counsel without prior consultation with a lawyer or trained advocate. Children and youth make critical decisions with lasting consequences without the guiding hand of counsel.
- *Too many children of color.* Despite demographic differences there was agreement in every jurisdiction that children and youth of color are overrepresented in Virginia’s juvenile justice system. Studies by national advocacy groups and the Virginia Department of Criminal Justice Services show that minorities are overrepresented at every stage of the process. Across disciplines, there was an overarching sentiment and perception that children and youth of color are disparately treated, that race matters. No one could say for sure why minorities in their jurisdiction were treated differently. Interviewees proffered many reasons for the disparate treatment including biased police patrol, parental involvement and limited access to resources.
- *Untrained and Inexperienced Advocates.* The Commonwealth of Virginia does not require juvenile defense counsel to acquire juvenile specific training and experience. Investigators found numerous deficiencies in basic defense practices that training could correct. Additionally, public defender offices experience high rates of turnover and a pervasive view that juvenile court is a training ground for new attorneys; appointed counsel reported a greater number of years in practice but a juvenile practice as a small portion of a larger practice.
- *Second Rate Status of Juvenile Practice.* Many people view juvenile court as “kiddy court” and the overall practice of delinquency law as unimportant. This lack of professionalism pervades the system.
- *Over Reliance on Court Services Units.* The Department of Juvenile Justice’s case management division bears enormous responsibility in the delinquency system. The lack of counsel afforded to children, however, has led to an over reliance on the court services unit and exacerbates the confusion youth expressed about the roles of court personnel and the system overall.

Recent legislation has made it possible for the appointed counsel system in Norfolk to be replaced by a Public Defender Office, where delinquency defense is garnering particular attention. “This assessment is a valuable tool in our ongoing efforts to improve the juvenile defense system,” said Richard Goemann of the Public Defender Commission. “All branches of our government, members of the bar, and citizens of Virginia should be aware of the findings in this report,” said Goemann. “It is time to give these children and these issues the priority they deserve.”

“We hope this report will contribute to further discussion and analysis of indigent defense services for children in Virginia,” said Patricia Puritz, Director of the American Bar Association Juvenile Justice Center.

The report, *Virginia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, is the product of a yearlong study of the Commonwealth's delinquency system. The study was conducted by a team of national and state experts who reviewed available data, studies, and research as well as conducting in-depth analysis of nine Virginia counties. The representative sample provides a cross-section of the state's population-urban, suburban and rural areas-and diversity of juvenile and indigent defense programs. The full report is available by calling (202) 662-1506.