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Representation lacking for kids in juvenile court

By Jan Pudlow

Senior Editor

Shackled together in chains, children arrive in juvenile court only to routinely waive their right to an attorney. They plead guilty, just to get their cases over with, not really understanding the ramifications.

Those kids who do talk to a lawyer often meet harried, inexperienced juvenile defenders for the first and only time in crowded courtrooms and chaotic hallways.

Some judges, assigned to juvenile court on a short-term rotation, don't really know the rules of juvenile procedure and their attitudes don't foster zealous advocacy. One juvenile court judge called pretrial motions "a waste of judicial and attorney resources."

Those were among the troubling findings of 22 Florida and national observers who last year visited juvenile courts in 15 Florida urban, suburban, and rural counties in half of the state's 20 judicial circuits. They watched court in action and interviewed judges, defense counsel, probation officers, prosecutors, and other juvenile court personnel.

It was all part of a National Juvenile Defender Center project requested by the Florida Supreme Court, The Florida Bar, and the Florida Public Defender Association.

Details of Florida's flawed juvenile justice system and recommendations to repair the damage to children's lives are chronicled in a new report: *Florida: An Assessment of Access to Counsel & Quality of Representation in Delinquency Proceedings*. (The full report is available on the Web at www.njdc.info or by calling (202) 452-0010.)

"Youth in Florida's courts, even very young children, were observed routinely waiving the constitutional right to counsel. This often occurs with a wink and a nod — or even encouragement — from judges. Judges were sometimes observed implying that waiving counsel and making an admission was a way to resolve the case quickly, get out of the courtroom, and not have to set another date so the child's parent or guardian would not need to miss work and return to court again.

"Other players in the delinquency system would echo this approach. All this was done without counsel being present or any meaningful discussion of the potential long-term disadvantages of waiving counsel

taking place, while the advantages were dangled in front of the children like candy," according to the report written by Patricia Puritz, executive director of the NJDC, and Cathryn Crawford of the Children and Family Justice Center at Northwestern University School of Law.

Carlos Martinez, chief assistant public defender of the 11th Judicial Circuit, vice president of the Florida Public Defender Association, and vice chair of the Bar's Legal Needs of Children Committee, was part of the observation team for the project.

"What really surprised me was the extent to which kids were pleading guilty to crimes they did not commit, either by waiving counsel or the counsel they had did not do an adequate job," Martinez said. "In many cases, confessions were taken from kids who are not competent to consent. They are not competent to drive a car, and yet judges are accepting waiver of their Miranda rights. That is incredible to me. . . .

"It is very depressing to read the report, but it does point to what a huge mountain we have to climb to get Florida to a level so we can be proud of the justice system we have."

In Martinez' opinion, "The bottom line is funding is the No. 1 issue. Without the money, we are wasting our time thinking we will make a difference. We have all known for a very long time public defenders are under-funded. What this report has done is focus it like a laser beam on juvenile court."

With adequate funding, Martinez said, public defenders could do post-disposition advocacy to try to get kids in the right schools and treatment programs and additional services, rather than back home and expelled from their old schools.

Also, Martinez said the formula for funding judges is flawed, because it is based on bad practices of little advocacy in court for the children. He believes if the system was working properly, there should be eight juvenile judges in Miami-Dade, instead of the current four.

"If kids are waiving counsel left and right, there are no hearings and motions. Whatever advocacy takes place, the attorneys catch hell," Martinez said.

Another Florida observer for the research project was Paolo Annino, a clinical professor and co-director of the Children's Advocacy Center at Florida State University College of Law. He has two suggestions that won't cost money, but require changes in attitudes.

"The assessment reveals widespread shackling, handcuffing, and chaining of children together in court. Our court system is based on the belief that every person is to be treated with dignity. This widespread

scaring these children and is creating a generation of children who do not believe that our courts respect the dignity of the individual," Annino said.

The other glaring need, Annino said, is for better training for juvenile attorneys in a specialized area of the law.

"Many public defender offices treat juvenile law like the bottom rung of the ladder, where the felony division is the highest rung," Annino said. "This treats children as less important than adults. This change of priorities needs to come from within the public defenders offices and be supported by the Bar."

Another observer for the project was Gerard Glynn, a professor at Barry University School of Law who represents foster children in court and chairs the Bar's Legal Needs of Children Committee.

"It is disappointing that there is no shining star, and 40 years after *Gault*, we haven't addressed the key issue: meaningful opportunity to have quality representation," Glynn said, referring to the 1967 U.S. Supreme Court decision determining children are entitled to certain due process rights under the Constitution, most notably the right to counsel.

"It's not just about violating constitutional rights. Our whole juvenile system is based on the concept of rehabilitation. The court is only able to make sound decisions when children have effective advocates that can help the court understand the child. Without that, the system is falling apart," Glynn said.

Too many children waiving their right to an attorney and pleading out their cases is not a new revelation in Florida, but this report documents how widespread the problem is across the state.

That issue was a top priority of the Bar's Commission on the Legal Needs of Children, after three years of study. Fixing that problem was also recommended by both the Supreme Court's Steering Committee on Family and Children in the Courts and the Juvenile Court Rules Committee, approved by the Bar Board of Governors, and endorsed by the Florida Public Defender Association.

In a January 27, 2005, opinion in Case No. SC04-97, *Amendments to the Florida Rules of Juvenile Procedure*, then Chief Justice Barbara Pariente made it clear she supports amending rule 8.165, but deferred to the legislature to address the problem, citing funding concerns.

During the 2006 legislative session, the Senate passed a bill, but it failed in the House.

Therefore, Glynn said, he considers the case still pending before the

Supreme Court.

"My hope is that this report will motivate the public defenders, the legislators, and the judges to recognize the critical role that attorneys can play in improving the system and focus resources — existing as well as future — to make the system serve children better."

Now, Glynn said, he refers to Florida's juvenile courts as a "conveyor-belt system, and we process cases and thus children through. We are spending significant dollars on the Department of Juvenile Justice system. We need to recognize that we need to spend those dollars on the juvenile court system, as well."

The authors of the report noted that "observers saw examples of best practices and effective defense across the state," but there was "uniform agreement that ample room exists for upgrades and improvements to the juvenile indigent defense system."

Among the report's key findings:

- In an overwhelming majority of counties, an estimated 90 percent or greater of youth accused of a crime decided to waive their right to an adjudication hearing and plead guilty.
- In some circuits, it is routine for defenders to be entirely absent from a child's detention hearing.
- In many counties, more than half of youth appearing in delinquency court waived their fundamental right to counsel — many without consulting a lawyer beforehand.
- In one large county, judges routinely failed to apprise youth of their right to counsel and many times the word "lawyer" or "attorney" was not even uttered.
- Youth have almost no access to attorneys in secure detention centers.
- Juvenile court is often viewed as a training ground for new attorneys, who are reassigned even before they grasp the job. And in one county, public defenders get a \$5,000 annual raise when they leave juvenile court.
- Judges land in juvenile court on a short-term rotation, and some do not even know the rules of juvenile procedure. One newer judge frequently calls the children who appear before him, "stupid, dumb, and retarded."
- Wrist and leg shackles with belly chains appear the norm in many juvenile courtrooms across the state. Children were observed chained to each other or to fixed objects in the courtroom. Martinez said the

practice of shackling children in juvenile court has ceased in Broward County, is raised as objections on a case-by-case basis in Miami-Dade, is still a pending issue in Palm Beach County where an en banc hearing was held, and challenges are next expected in Tampa, St. Petersburg, and Orlando.

"Many times we focus on the negative. We have made great strides since *Gault*. But without greater strides, we are wasting resources," Glynn said.

"I know how I keep hopeful. My clients are what give me hope. These are still children who still have dreams and hopes for the future, and they have tremendous potential."

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