

# WASHINGTON

## An Assessment of the Right to Counsel and Quality of Representation in Juvenile Offender Matters

### Statutory Right to Counsel

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- Washington law grants juveniles the right to be represented by counsel at all “critical stages” of juvenile court proceedings regardless of juveniles’ or their families’ financial ability to secure an attorney
- The law states that counsel must be provided “in any proceeding where the juvenile may be subject to transfer for criminal prosecution or in any proceeding where the juvenile may be in danger of confinement” (RCW 13.40.140)

### Structure of Juvenile Indigent Defense System

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- Counties fund public defense systems and independently choose their methods of providing counsel for indigent defendants
- Methods of appointment include: county-based public defenders, non-profit corporations, individual private defenders/private firms, and appointed attorneys (assigned counsel panels)

### Key Findings

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#### *The Attorney/Client Relationship*

- There is confusion and disagreement about the role of juvenile defenders. As a result, important opportunities to effectively counsel and represent the interests of the child are lost
- Defenders often do not have the time or training to effectively ensure that their juvenile clients understand or are informed about their cases

#### *Participation of Counsel in Juvenile Court Proceedings*

- In direct conflict with national standards, Washington law permits children to waive their right to counsel
- In some Washington counties, juveniles regularly proceed without the assistance of counsel in important hearings

#### *Inadequate Assistance of Counsel*

- Defenders often do not meet with juveniles before their first appearance at court, so they miss important opportunities to advocate for their clients
- Although in some counties defenders are perceived by judges and others as well-prepared for court, in many counties motions and trials are rarely brought, independent investigation of cases is rare and only takes place in more serious cases, and defenders are not fully prepared for sentencing (disposition) hearings
- Defense counsel assume no post-sentencing role, losing the chance to help clients with whom they have built relationships obtain treatment or other services that would address the root causes of the criminal behavior

#### *Caseloads and Assignment*

- Defenders working full-time reported an average of close to 400 cases annually, roughly 62% more cases than the standards endorsed by the Washington State Bar Association
- Juvenile justice professionals across the spectrum consistently perceive defense attorneys as “overwhelmed” by their caseloads
- Because caseloads are too big, many defenders are unable to spend sufficient time with their clients and are not properly prepared for court

#### *Insufficient standards and oversight for defenders*

- Most counties provide juvenile defenders with little or no training on court procedure or in dealing with troubled youth
- Many counties have no qualification standards for juvenile defenders, no system of personnel review, and no supervision of legal work performed by defenders

#### *The Juvenile System as a Dumping Ground*

- Children with mental health problems, learning disabilities, behavioral problems and addiction issues are not getting the help they need in their communities, so they often end up in the juvenile court system
- Juveniles with mental health problems often receive punishment instead of treatment; a February 2003 study found that 58% of youth incarcerated in Washington’s juvenile facilities met the criteria for having a “serious mental health disorder”

#### *Racial Disproportionality*

- Minorities are overrepresented in juvenile court offense referrals and incarceration at both the local and state levels; further study should be undertaken on what role defenders can play in reducing disproportionality