

**Report of the Juvenile Committee of the
Commission on Indigent Defense Services**

May 2004

CONTENTS

Members of the Juvenile Committee of the Commission on Indigent Defense Services..... ii

Executive Summary 1

Report..... 2

 Introduction & Summary of ABA Report 2

 Meetings of the Juvenile Committee 4

 The Juvenile Committee’s Findings & Conclusions 4

 The Juvenile Committee’s Recommendations..... 6

Conclusion 11

**MEMBERS OF THE JUVENILE COMMITTEE OF THE
COMMISSION ON INDIGENT DEFENSE SERVICES**

IDS Commission Members Who Served On The Juvenile Committee

Ms. Claire J. Rauscher, Chair, Attorney at Law, Charlotte

Ms. Sue Genrich Berry, Attorney at Law, Wilmington

The Honorable Rhoda Billings, Former Chief Justice of the Supreme Court of North Carolina and Retired Professor at Wake Forest University School of Law, Winston-Salem

The Honorable Gary L. Locklear, District 16B Resident Superior Court Judge, Lumberton

Non-Commission Members Who Served On The Juvenile Committee

Mr. David D. Amsbary, Legal Aid of North Carolina, Project HEAL, Winston-Salem

Ms. M. Victoria Jayne, Attorney at Law, Hickory

Mr. Brett A. Loftis, Council for Children, Charlotte

Professor Janet Mason, School of Government, Chapel Hill

Professor Natalie J. McKinney, Juvenile Law Clinic, North Carolina Central School of Law, Durham

Mr. Philip J. Penn, Children's Law Center, Charlotte

Mr. Lewis Pitts, Legal Aid of North Carolina, Advocates for Children's Services, Raleigh

Professor John Rubin, School of Government, Chapel Hill

Ms. Christine O'Connor Trottier, Carolina Legal Assistance, Special Education Juvenile Justice Project, Raleigh

Mr. Bill Underwood, Children's Law Center, Charlotte

Professor Page Vernon, Criminal Clinic, University of North Carolina School of Law, Chapel Hill

Professor Deborah Weissman, Clinical Programs, University of North Carolina School of Law, Chapel Hill

Mr. Eric J. Zogry, Office of the Public Defender, Greensboro

EXECUTIVE SUMMARY

In October 2003, the American Bar Association (“ABA”) Juvenile Justice Center released a report on the access to and quality of defense counsel in delinquency proceedings in North Carolina. That report identified a number of deficiencies in this State’s current system, and made a series of recommendations for improving the legal services provided to our children.

In response to the ABA’s report, the North Carolina Commission on Indigent Defense Services (“IDS Commission”) formed a Juvenile Committee composed of Commission members and outside experts. The Juvenile Committee held a series of meetings between December 2003 and April 2004, discussed the ABA’s findings and recommendations, and identified a number of potential reform initiatives. The Juvenile Committee agreed with all of the ABA’s key findings, and particularly concurred with the following:

- The quality of juvenile defense in many areas of the State is deficient.
- The absence of training opportunities, qualification standards, and performance guidelines for juvenile defense attorneys contributes to the deficient quality of representation.
- The status of juvenile court practice needs to be elevated.
- There are often insufficient community-based programs and resources for youth with special needs.
- Delinquency petitions are often filed in cases that should and could be better addressed outside of the court system.

The Juvenile Committee concluded that improved legal representation of youth is essential to match kids with services and treatment at the earliest possible stage. Moreover, defense attorneys who have the training, experience, and resources to identify kids’ needs and obtain proper services help prevent recidivism, thereby saving the State money, reducing crime, and improving public safety in the long term.

The Juvenile Committee recognizes that a number of the deficiencies identified in the ABA’s report will require long-term work and systemic reform. However, the Committee has 2 primary recommendations that it believes will be a positive first step toward improving the services afforded to North Carolina’s children:

1. *The General Assembly should authorize the Office of Indigent Defense Services to create two new State employee positions—a statewide Juvenile Defender and Administrative Assistant.* The addition of central full-time staff is essential to begin remedying many of the deficiencies identified in the ABA report, and implementing needed improvements. As the ABA recommended, the North Carolina General Assembly should create a new statewide Juvenile Defender under the oversight of the IDS Commission and housed in the IDS Office. The General Assembly should also create a new Administrative Assistant position to support the Juvenile Defender.

2. *The IDS Commission and IDS Office should develop and offer comprehensive training programs for juvenile defense attorneys.* This recommendation does not require legislative action, and the IDS Commission and IDS Office intend to implement it as soon as possible.

INTRODUCTION & SUMMARY OF ABA REPORT

During the Spring of 2003, the American Bar Association (“ABA”) Juvenile Justice Center, National Juvenile Defender Center, Southern Juvenile Defender Center, and North Carolina Office of Indigent Defense Services (“IDS Office”) collaborated to conduct a study of the legal services afforded to juveniles facing delinquency proceedings in North Carolina. The goal of this project was to assess the existing legal services available for North Carolina’s youth, both in terms of the accessibility of defense counsel and the quality of representation, and to develop recommendations for improving those services where needed. The ABA Juvenile Justice Center has completed similar assessments in a number of other states, including Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maine, Maryland, Montana, Ohio, Pennsylvania, Texas, Virginia, and Washington.

Eleven North Carolina counties were selected for intensive assessment based on a variety of factors, including service delivery methods, the number and types of juvenile cases, and population and economic demographics. During February and March of 2003, teams of state and national experts visited those counties, observed juvenile court, and interviewed judges, defense attorneys, prosecutors, juvenile clerks, court counselors, and youth. To gather information about the remaining 88 North Carolina counties, as well as additional perspectives in the counties visited, surveys were mailed to 246 district court judges, all 39 chief court counselors, all public defender offices handling juvenile cases, and more than 200 private juvenile defense attorneys throughout the state. Completed questionnaires were received from 30 judges, 16 chief court counselors, and 26 public and private defense attorneys.

In October 2003, the ABA released its report, which identified a number of deficiencies in North Carolina’s current system. Some of the key findings in the report include:

- Juveniles consistently have representation, but not at sufficiently early stages of their cases, so they are interrogated and often held in custody without seeing a lawyer.
- The quality of juvenile defense is very uneven across the State, with some juveniles receiving excellent representation and others receiving seriously deficient representation.
- There are no statewide accountability or practice standards, and insufficient training opportunities for juvenile defense attorneys.
- Juvenile defense attorneys inadequately prepare their cases, in large part because they have little or no access to investigators and other support services.
- Too many attorneys have insufficient contact with their young clients. 89% of attorneys surveyed reported meeting their clients for the first time at the courthouse on the day of a hearing.
- Juvenile defense attorneys rarely file pre-adjudication motions, including competency motions.

- North Carolina overuses and misuses pre-adjudicatory detention. Some youth are held in secure detention for extended periods of time awaiting placement in treatment programs.
- Case disposal rates vary widely across the State, but in some counties 90% of juvenile cases end in plea bargains. Such a high rate of pleas raises concern about whether these cases are being adequately investigated and evaluated.
- Defenders rarely advocate for particular dispositional alternatives to detention, and instead simply accept the recommendations of court counselors.
- Post-disposition representation of adjudicated youth is virtually non-existent.
- Various impediments—including the informality of juvenile court, the scant record of initial proceedings, and the lack of representation after disposition—make juvenile appeals rare.
- Indigent parents are too often required to pay for their children’s counsel without inquiry into their financial resources.
- Minority children are over-represented in the justice system, in part because they are more likely to be referred to juvenile court by schools.
- Defenders have little training in mental health issues, and community-based mental health programs are inadequate.

The ABA report also made 15 recommendations about what North Carolina can do to improve the representation of its children. Some of the recommendations were:

- Ensure that juveniles are advised of their rights and have the assistance of counsel at the earliest possible stage in the juvenile delinquency process.
- Consistently allocate sufficient resources to support the meaningful representation of juveniles in delinquency proceedings.
- Designate a statewide Juvenile Defender under the oversight of IDS to bring together resources and expertise from across the State, continue the evaluation process, and implement specific policies and programs as needed.
- Develop specialized qualification and performance guidelines for juvenile representation.
- Create and support activities and programs that would elevate the status of indigent juvenile defense practice.
- Conduct an examination of existing juvenile caseloads, and ensure that those caseloads are consistent with expectations for quality representation.
- Develop and offer comprehensive training programs for attorneys representing youth in delinquency proceedings.
- Evaluate detention statutes, policies and practices, and work to stop the misuse and overuse of secure detention at all stages in the delinquency process.
- Develop appropriate strategies and services to reduce the disproportionate minority representation in the State’s juvenile justice system.
- Support pilot projects in more counties to increase the availability of diversion opportunities and community-based treatment alternatives.
- Develop procedures for expediting appeals in juvenile delinquency cases.

After the ABA released its report, the North Carolina Commission on Indigent Defense Services (“IDS Commission”) formed a Juvenile Committee to review the ABA’s findings and recommendations, discuss potential reform initiatives, and develop specific proposals to improve the quality of services provided to our State’s youth. Because the IDS Commission and IDS Office staff have less expertise with juvenile representation than adult representation, the Commission recruited a number of outside experts to serve on the Committee. In addition to 4 members of the IDS Commission, the Juvenile Committee was composed of 13 public and private attorneys with extensive experience representing juveniles, special education and mental health advocates, and academics and law school clinical faculty. The members of the Committee are listed at the beginning of this report. Attorneys at the Southern Juvenile Defender Center in Atlanta served as consultants, and the Assistant Director of the IDS Office served as staff to the Committee. This report presents the findings and recommendations of the Juvenile Committee.

MEETINGS OF THE JUVENILE COMMITTEE

The Juvenile Committee met five times between December 2003 and April 2004. In its meetings, the Committee members discussed the ABA’s findings and recommendations, and brainstormed potential reform initiatives. The Committee then identified some main categories of needed reform—institutionalizing and elevating juvenile defense work, developing training and standards for juvenile defense attorneys, and improving relations with other groups in the juvenile justice system. Within each category, the Committee reviewed and discussed additional materials, such as manuals and training materials used in local, state, and national legal education programs; national juvenile justice performance standards; the current juvenile defense qualification standards in various North Carolina districts; and data available through the IDS Office, the Administrative Office of the Courts (“AOC”), the Department of Juvenile Justice and Delinquency Prevention (“DJJDP”), and other sources. The Committee kept detailed minutes of its meetings, copies of which are available from the IDS Office.

THE JUVENILE COMMITTEE’S FINDINGS & CONCLUSIONS

The Juvenile Committee agreed with all of the ABA’s key findings, which are summarized above and set forth in detail in the ABA’s report. That report is available on the IDS website, at www.ncids.org.

In particular, the Juvenile Committee strongly concurred with and expanded upon the following findings:

- The quality of juvenile defense in many areas of the State is deficient. Many attorneys fail to investigate and prepare cases adequately, or have insufficient and untimely contact with their clients.
- Proper representation of juveniles is complicated and multi-faceted, and requires well-trained and experienced counsel. However, there are very few training opportunities for juvenile defense attorneys in North Carolina. Moreover, the absence of qualification standards for juvenile defense attorneys in most district appointment plans means that

young attorneys with little or no experience or supervision often represent juveniles in delinquency proceedings.

- The absence of performance guidelines for juvenile defense counsel, and confusion about the proper role of defense attorneys in juvenile court, contributes to the deficient quality of representation.
- Juvenile court practice is viewed as having an inferior status, and the importance of juvenile defense needs to be elevated.
- There are often insufficient community-based programs and resources for youth with substance abuse, mental health, or other special needs, which can make it extremely difficult for attorneys and courts to identify appropriate dispositional alternatives to detention.
- Zero tolerance policies in schools often result in inappropriate delinquency petitions in cases that should and could be better addressed outside of the court system. Increased funding for community resources would enable court counselors and the court system to make more appropriate use of pre-petition and pre-adjudication diversion.

The Juvenile Committee concluded that improved legal representation of youth facing delinquency proceedings is essential to match kids with appropriate and needed services and treatment at the earliest possible stage. The Committee further concluded that defense attorneys who have the training, experience, and resources to identify kids' needs and obtain proper services help prevent recidivism, thereby saving the State money, reducing crime, and improving public safety in the long term. Finally, the Committee concluded that poor defense representation has severe short and long-term consequences for children, such as unnecessary or inappropriate detention, and unmet educational or mental health needs.

Consider the following actual case:

10-year-old "Sam" spent 6 weeks in detention awaiting placement in a residential care facility with mental health professionals on staff. Sam's case manager at mental health had not been able to find an appropriate placement, and the appointed defense attorney was not assisting her in locating a placement. Project HEAL, a special Legal Aid program that focuses on health and educational services for children, was contacted about the situation. Within 24 hours of that contact, Sam was placed in an appropriate group home.

In this case, poor defense representation resulted in 6 weeks in secure custody without any treatment for Sam's underlying mental health problems. In contrast, informed and vigorous representation resulted in placement in an appropriate facility where Sam obtained needed treatment.

Consider the following actual case:

At the age of 10, "Joe" was diagnosed with a developmental disorder called Asperger's Syndrome. While Joe has an above-average IQ, he also

has sensory, neurological, and communication problems that cause him frustration at school. Because of these problems, Joe was placed in a special education class with a specific individualized education plan. At age 11, Joe was adjudicated delinquent for pushing his special education teacher. Joe subsequently pushed his middle school principal, and the school filed another petition in juvenile court. Joe's juvenile court probation officer found him in violation of his probation, and Joe spent 5 days in detention. Despite the fact that the school personnel believed Joe's impulsive behavior was a manifestation of his disability, the school did not inform the Court of Joe's disorder. At the adjudication hearing, Joe followed his lawyer's advice and confessed, and was again adjudicated delinquent. It was not until after Joe had been adjudicated delinquent that his mother informed the Court of his disability.

In this case, an experienced, well-trained, and properly supported defense attorney ("Attorney A") would have conducted a thorough investigation, identified Joe's special education status and needs, realized that Joe's disruptive behavior was caused by his disorder, and informed the Court of those facts at an early stage. However, "Attorney F" did not ask Joe's parents about his educational disability or inform the Court of that disability. It was not until Joe's mother insisted on addressing the Court after adjudication that this information was relayed to the Court. If the Court had been informed of Joe's problems at an earlier stage, Joe likely would have been sent for mental health care or returned to his parents. Instead, Joe served 5 discretionary days in secure detention. If Joe had been served by Attorney A, he would have received appropriate and needed services. Instead, Joe's time in detention has exacerbated his behavioral symptoms and made him fearful of returning to school.

THE JUVENILE COMMITTEE'S RECOMMENDATIONS

The Juvenile Committee's recommendations were presented to and approved by the full IDS Commission in March 2004. The Juvenile Committee and IDS Commission recognize that these recommendations will not address all of the deficiencies identified in the ABA's report, and that a number of the problems will require long-term work and systemic reform. However, the Committee and Commission believe that implementing the following recommendations will be a positive first step toward improving the representation afforded to North Carolina's children.

- 1. The General Assembly should authorize the Office of Indigent Defense Services to create two new State employee positions—a statewide Juvenile Defender and Administrative Assistant.**

Proposal:

The Juvenile Committee concluded that it will not be possible to remedy many of the deficiencies identified in the ABA's report, or to implement needed improvements, without central full-time staff devoted to working on these issues. Thus, the Committee specifically endorsed the ABA's recommendation that North Carolina create a new statewide Juvenile Defender under the oversight of the IDS Commission and housed in the IDS Office. The

Committee further concluded that, in order to accomplish meaningful reform, a new Juvenile Defender will require support from an Administrative Assistant.

The Committee has identified a number a responsibilities that should be assigned to a new Juvenile Defender, and has prioritized those responsibilities. The Committee recommends that a new Juvenile Defender be assigned the following immediate job duties:

- Serve as a central resource and contact person for individual juvenile defenders statewide, as well as existing statewide and local juvenile defense committees and associations. Field questions from practitioners and perform case consultations as needed. Begin building liaisons with other juvenile justice groups.
- Identify the attorneys who are representing juveniles in delinquency proceedings throughout the State, and develop ways to connect and support those attorneys through listservs and other means.
- Evaluate the existing systems and practices, and the current quality of representation, in various areas of the State through site visits, courtroom observations, and other means. Identify best practices and programs that provide effective quality representation for juveniles. Consult with other jurisdictions as needed.
- Assess the existing data infrastructure for juvenile delinquency cases and identify ways to enhance data collection. In conjunction with other groups, such as DJJDP and the General Assembly, explore ways to make more data and resources available to juvenile defense practitioners.
- Identify training needs and existing groups that might meet those needs. In conjunction with other groups like the School of Government, formulate a long-term training plan.
- Evaluate the need for expert assistance in juvenile cases and consider developing procedures to govern the appointment of experts in those cases.
- Develop and maintain a clearinghouse of materials on North Carolina juvenile law and practice.
- Report regularly on findings and initiatives to the IDS Commission. Prepare materials and reports about juvenile defense issues as needed for the General Assembly.

The Committee further recommends that a new Juvenile Defender undertake the following additional responsibilities within the first two years of hire:

- In conjunction with the IDS Commission, develop and implement uniform qualification standards for juvenile defense attorneys.
- In conjunction with other groups like the School of Government, coordinate, implement, and oversee training programs for juvenile defense attorneys across the State.
- Recruit additional dedicated juvenile defense advocates as needed.
- Work with other system actors to implement more effective practices and procedures—*e.g.*, better docketing practices—where needed.

Finally, the Committee recommends the following additional long-term job responsibilities for a statewide Juvenile Defender:

- Work with other groups such as the School of Government to develop a handbook or manual that, among other things, includes materials on the nuts and bolts of juvenile defense, checklists, and sample forms and motions. Work with IDS to publish the manual in hard copy and by posting on the IDS website.
- In conjunction with the IDS Commission, develop and implement specialized performance guidelines for juvenile defense attorneys that address, among other things, the proper role for juvenile defense attorneys at each stage in the delinquency process.
- In conjunction with the IDS Commission, develop caseload standards for juvenile defense attorneys that are appropriate to North Carolina.
- Assess the desirability, feasibility, and cost-effectiveness of forming specialized juvenile units in existing public defender offices, as well as creating regional juvenile defender resource centers, and prepare recommendations for the IDS Commission and General Assembly.
- Establish in each judicial district a network of experienced juvenile defense attorneys who can serve as mentors for new attorneys handling delinquency cases.
- Develop and maintain lists of referral and diversion programs in each district. Develop contacts with dispositional resources around the State.
- Evaluate the existing policies and procedures governing the use of interpreters in juvenile cases and work with other groups to make changes as needed.
- Identify feasible ways to promote cultural change in juvenile court, and work with other groups to develop and conduct cross-training programs with other actors in the juvenile justice system.

The Juvenile Committee recommends that a Juvenile Defender be supervised by and accountable to the IDS Commission. The Committee further recommends that the IDS Commission appoint a number of non-Commission members with expertise in juvenile defense to serve on a special advisory board that would support and consult with the Juvenile Defender.

Budgetary Needs:

The Juvenile Committee recommends establishing an annual salary range for a new Juvenile Defender of between \$70,000 and \$101,220, the current statutory salary of a chief public defender, as well as the statewide Appellate Defender and Capital Defender. The Committee believes that the salary of a statewide Juvenile Defender should be comparable to that of the other chief defenders, so that juvenile defense is placed on par with adult defense. However, the Committee recognizes that the IDS Commission may identify and hire an excellent candidate who has less experience than the heads of those other offices. Thus, the Committee recommends a range that will enable the IDS Commission to set a salary comparable to the other chief defenders only if it is justified based on the successful candidate's experience and qualifications.

Estimated Annual Office of the Juvenile Defender Costs				
	Minimum Cost \$70,000 Salary		Maximum Cost \$101,220 Salary	
	Recurring	Non-Recurring	Recurring	Non-Recurring
<i>Position Costs</i>				
Juvenile Defender*	\$ 122,175	\$ 14,496	\$ 161,184	\$ 14,496
Administrative Assistant II	\$ 52,296	\$ 3,431	\$ 52,296	\$ 3,431
<i>Additional Office Costs</i>				
Rent	\$ 6,000	\$ -	\$ 6,000	\$ -
Office Start-up (includes networking, cabling, server, furniture, etc.)	included in position costs above	\$ 25,000	included in position costs above	\$ 25,000
Total	\$ 180,471	\$ 42,927	\$ 219,480	\$ 42,927
First Year Costs	\$ 223,398		\$ 262,407	
* Minimum costs are estimated with a \$70,000 Juvenile Defender salary and maximum costs are estimated with a \$101,220 salary, which is the equivalent of a Chief Public Defender. Recurring costs include travel, phones, supplies, etc. Source: AOC position costs, 3/8/04.				

All other current expenditures on juvenile defense are already paid from IDS' budget. Based on spending and obligations during the first half of fiscal year 2003-04, representation of juveniles in delinquency proceedings will cost the State approximately \$3.35 million this fiscal year:

Projected Private Counsel Fees:	\$2,556,812
Projected Public Defender Costs:	\$326,562
Projected Contract Costs:	\$469,088
Projected Total:	\$3,352,462

There are additional costs associated with representing juveniles who are transferred to Superior Court for trial as an adult. According to DJJDP data, during fiscal year 2002-03, there were 48 cases transferred statewide (including 10 mandatory transfers in homicide cases and 38 discretionary transfers in non-homicide cases). However, those costs are captured by AOC in the "adult" spending category and cannot be quantified.

2. The IDS Commission and IDS Office should develop and offer comprehensive training programs for juvenile defense attorneys.

Proposal:

The Juvenile Committee recommends that the IDS Office work with other existing groups to develop comprehensive training programs for juvenile defense attorneys. Currently, there are very few training opportunities available to juvenile defense attorneys, and the Committee believes that the lack of training is a large reason for the quality concerns noted in the ABA's report. While a statewide Juvenile Defender would be extremely helpful with developing and running appropriate training programs, the Committee recommends that IDS develop additional training even if the General Assembly does not authorize that new position.

The Committee has identified the following specific areas in which training is needed:

- The proper role of juvenile defenders at each stage in the delinquency process.
- The nuts and bolts of juvenile delinquency defense, and practical skills for juvenile trial lawyers.
- Juvenile court procedures.
- Client interviewing and counseling techniques.
- Child and adolescent development, including mental health and educational disabilities.
- Juvenile addiction, mental retardation, and mental illness.
- Juvenile competency, culpability, and maturity.
- Investigative techniques and resources.
- Preparing effective social history and mitigation materials.
- Effective negotiations.
- The appropriate use of community resources and diversion programs.
- Cultural competency, including cultural diversity and barriers to effective representation.
- Ways to encourage appropriate parental involvement in the delinquency process.
- Disproportionate minority representation in the juvenile justice system.
- The significance of protections under *Miranda* and G.S. 7B-2101, and the admissibility of out-of-court statements and confessions.
- Effective motions practice.
- Effective representation at transfer hearings.
- Special education law and advocacy.
- North Carolina's statutory graduated sentencing scheme.
- Effective dispositional, post-dispositional, and appellate advocacy.
- Creating a record for appeal and preserving appellate issues.
- Ways to challenge inappropriate uses of secure detention.
- Potential collateral consequences of a delinquency adjudication.
- Ethical considerations in delinquency proceedings.
- Drafting court orders.

Budgetary Needs:

This recommendation does not require legislative action or additional funding. The IDS Commission and IDS Office staff recognize the importance of adequate training, and intend to implement this recommendation out of IDS' existing funds. In doing so, IDS plans to utilize and collaborate with existing local, state, regional, and national training resources to develop quality programs for juvenile defense attorneys.

CONCLUSION

The ABA's recent report on the access to and quality of defense counsel in juvenile delinquency proceedings in North Carolina identified serious deficiencies in the legal services currently being provided to our youth. As a result of those deficiencies, the immediate needs of this State's children are not being met, recidivism rates are high, and the State is spending unnecessary money in the long-term. The Juvenile Committee and IDS Commission believe that by implementing the proposals set forth above, North Carolina will take real strides toward remedying some of the failings identified by the ABA, and initiating needed reform in the State's juvenile justice system.