Illinois: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings (2007)

Recommendations Summary

Prepared for the October 2-3, 2008
Juvenile Indigent Defense Action Network Inaugural Meeting

I. TIMING AND APPOINTMENT OF COUNSEL

When a lawyer is appointed can have as much of an impact on a case as whether an attorney is appointed at all. For this reason, the *IJA/ABA Juvenile Justice Standards* emphasize prompt appointment of counsel, prescribing systemic methods for assigning counsel from the outset, as well as ensuring continuity of counsel through the various stages of the juvenile court process. Unfortunately, many jurisdictions do not meet this standard. In juvenile courts across the country, defense counsel is appointed after the initial hearing, and defense attorneys do not participate at all in the detention decision, or defenders are appointed at the initial hearing, but court rules, common practice, or other systemic barriers circumscribe their roles so much that their participation is not meaningful.

It is axiomatic that the detention decision is critical, not just to the outcome of the case, but to a child's development. The detention decision is integral to the client's ability to prepare for trial. A detained client cannot assist as well in preparing for trial, and does not make as good an impression on the court, as a client who has been released. In addition, detention halls are often crowded, dangerous, and unhygienic. Studies show that time spent in detention increases the likelihood that a child will recidivate, in part because the child is likely to make negative peer connections, and because positive, community-based relationships (in particular, with the child's family) are interrupted. In fact, detention, as a predictor of future criminality, is more reliable than gang affiliation, weapons possession, or family dysfunction. Indeed, detention is a demonstrable gateway into the system.

Aggressive defense advocacy at the detention hearing, in addition to affecting the outcome of the case and the development of the client, also serves the attorney-client relationship. In many detention hearings, the defender's relationship with the client is new. There is no better way to bring voice and meaning to the attorney/client relationship than by taking the time to understand and fight for the client's expressed legitimate interest.

Issue Statement	Proposed Solution
Attorneys for children are usually appointed at the moment of the child's first appearance (as the child stands before the judge at the first court appearance) or at the conclusion of the first appearance. p. 2 [I]n almost one-third of the counties visited, minors who were not in custody were not appointed an attorney until the conclusion of the first appearance. p. 33	The quality of representation and a child's meaningful opportunity to be heard in delinquency proceedings, can be dramatically enhanced through the early and timely appointment of counsel. Appointment of counsel should occur as far as possible in advance of the first court appearance in order to allow meaningful consultation between counsel, the child, and the child's family. p. 71 A child cannot be given a meaningful opportunity to be heard without the opportunity to develop a full-fledged attorney/client relationship and without having a clear understanding of the proceedings. Defenders must institute procedures that allow the lawyer and the child to establish rapport and common understanding. No client — child or adult —will share crucial information outside of the context of a trusting relationship. It is difficult, if not impossible, to establish trusting relationships in a series of brief meetings just before the case is called before the judge. p. 72 The Judiciary should establish procedures that enable attorneys to be appointed prior to the child's first hearing and to obtain comprehensive information about the youth before their first appearance in court. p. 76

	Juvenile defense attorneys should consult with clients (detained and non-detained) as far in advance of court hearings as possible in order to ensure that the child has a full understanding of the juvenile court process so he can make informed decisions about his case. These meetings should occur in private settings, not just in juvenile court hallways or in the courtroom. p. 78

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II. WAIVER OF COUNSEL

In some jurisdictions, more than half of youths in court appear without any representation. Assessments of the states' juvenile indigent defense delivery systems by the ABA and by NJDC provide the main sources of quantification of the incidence of waiver of counsel in juvenile delinquency court. These assessments reveal that across the country, children not yet old enough to drive, vote, drink, or, in many cases, sign a binding contract, waive their constitutional right to counsel and proceed in their delinquency matters unrepresented. For example, in 2005, the Florida Supreme Court reported that half of the youth in Florida's Sixth Circuit waive their right to a lawyer and 75% of youth in the Twelfth Circuit do so. In Indiana in 2004, it is estimated that almost 40% of youth went unrepresented, not including a very limited number who may have hired private counsel. For 2003, the percentage was even higher, with 49% of cases not receiving pauper counsel. According to a 2007 fact sheet by the ACLU, the Children's Law Center and the Office of the Ohio State Public Defender, in 73 of Ohio's 88 counties, 60% of juveniles or more lacked legal representation, or there was no claim for reimbursement by the attorney; in 24 of those counties, 90% or more went without counsel or there was no claim for reimbursement by the attorney. Pennsylvania, an anomaly, reported a rate of 11%.

The problem with juvenile waiver of counsel is clear: juveniles lack the knowledge and decision-making capabilities of adults. They simply do not have the legal knowledge to understand the long- and short-term immediate and collateral consequences of waiving their constitutional right to counsel. As a result of immaturity or anxiety, unrepresented youth may feel pressure to resolve their cases and may precipitously enter admissions without obtaining advice from counsel about possible defenses or mitigation. Youth without counsel may be influenced by prosecutors or judges, who are sometimes pressured to clear cases from their calendars. One study showed that nearly 80% of juveniles do not fully understand the concepts necessary to comprehending *Miranda* rights, which deal only with compelled self-incrimination, particularly the right to consult with an attorney. The rights to counsel, to receive a fair trial, and to appeal are far more complex.

However, states can take steps to protect children's right to counsel. Iowa does not allow youths of any age to waive counsel at any delinquency-related court proceeding. Illinois and Texas also do not allow juveniles to waive their right to counsel under any circumstance. Other states, including Louisiana, offer weaker protection of juveniles' right to counsel by creating specific requirements for waiver. Several states, like New Jersey, and, if the advocacy efforts of the Washington Bar Association's subcommittee on juvenile defense are successful, Washington, require that youths discuss the waiver decision with an attorney before they waive their right to counsel.

Issue Statement	Proposed Solutions
In Illinois, a child is not permitted to waive the right to counsel [by statute]. With limited exception, judges in Illinois strictly adhered to the requirements of this statute and did not allow minors to waive counsel. p. 34 However, in one small county, a judge estimated that children are unrepresented in approximately one third of the cases, typically for first-time alcohol offenses. In this county, the State's Attorney routinely approaches the minor's family immediately prior to the child's first appearance and secures a guilty plea in exchange for an order continuing the case under supervisions. When the site investigator reviewed case files, she found that minors waived counsel at the first appearance in seven of 15 cases (ranging from unlawful consumption of alcohol to theft). Four of these cases resulted in admissions for sentences of probation, while two resulted in orders continuing the case under supervision. In	Children lack the capacity to pay attorneys' fees. The Illinois Legislature should establish a presumption of indigency for children in juvenile court proceedings. This presumption should be rebuttable upon a showing that a child has the financial resources to retain an attorney. In the majority of cases, such a showing will focus on the financial status of the child's parents. Judges should be sensitive to the fact that in many cases, the child and his parents may be at odds concerning the retention of counsel. Therefore, the financial resources of the parents should not always be the determining factor in a decision as to whether to appoint counsel. In making indigency determinations, standardized forms should be developed utilizing federal poverty guidelines. Juvenile defense attorneys should play a significant role in opposing inappropriate assessment of attorneys' fees by judges who do not make sufficient allowance for the parties' inability to pay. p. 72

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five of these cases, including the ones that resulted in supervision, the prosecutor subsequently filed petitions to revoke probation, subjecting the unrepresented minor to more serious sanctions. p. 34 The requirement that poor parents pay legal fees may put undue pressure on a child to enter an early admission in a case and compromise his attorney's ability to fully explore a defense and/or dispositional alternatives. p. 35	The Illinois legislature should clarify and standardize the eligibility for defense services, noting that all children should be presumed to be indigent for purposes of appointment of counsel. p. 76 The Judiciary should not allow any child to waive her right to counsel or proceed at any hearing (even the first appearance) without the presence of an attorney; ensure the use of developmentally appropriate language when issuing admonitionsand colloquies to youth; insist that no judge impose a "trial tax" as a means of pressuring children to enter an admission; and refuse to accept un-counseled admissions, as required by Illinois law. p. 76

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III. PLEA BARGAINS

The vast majority of juvenile delinquency cases are resolved with plea agreements between the child and the government, often at the initial hearing. In some instances, a plea agreement can produce a just outcome for both the child and the government. In most instances, and especially in cases that are resolved at the initial hearing, pleas are made with little or no effort on the part of the defender to assess the facts of the case; children are simply presumed guilty, and pleas function as a caseload reduction tool.

The role of the defense attorney in negotiating a resolution via a guilty plea is critical to maintaining the integrity of the system. If prosecutors overcharge a case, either in the number of crimes or the seriousness of crimes, a defender can negotiate reductions. Through negotiation, a defender can raise issues that might not constitute a legal defense to the crime, but are relevant to the level of culpability. A good negotiation can also result in a recommendation for a sentence that addresses problems underlying the criminal behavior.

Unfortunately, while plea negotiation may be a key to the process, negotiations are often done at the last minute, severely limiting the amount of time left to discuss the process and the details of plea agreements with clients. In addition, particularly in sex offense cases, prosecutors often condition plea offers on the defense attorney's agreement to forego crucial investigation, like interviewing the complaining witness.

The *IJA/ABA Juvenile Justice Standards* state that "ordinarily the lawyer should not make or agree to a specific dispositional recommendation without the client's consent." Particularly where plea deals are made at the last minute, it is likely that clients are not giving informed consent for binding agreements. The result is that in many cases, children are not fully advised and do not have a good understanding of what they are doing by pleading guilty. In particular, children plead without knowing that a juvenile adjudication can lead to expulsion from school and eviction from public housing, can render a juvenile ineligible for federal student loans, can present significant hurdles to getting a driver's license, and can disqualify a juvenile from military service.

In addition, judicial plea colloquies are often inadequate, glossing over or skipping altogether key concepts such as the nature of the allegations, the rights to go to trial, to confront witnesses, to call witnesses, to testify, and to appeal, and the minimum and maximum penalties, including fees and restitution. Even when these concepts are covered, they are often discussed in age-inappropriate legalese that neither the children nor their parents understand.

Issue Statement	Proposed Solutions
The majority of delinquency cases are resolved by an admission or plea. Reported estimates of cases resolved by pleas range from 70-100%. p. 43 While most judges stated that they did not accept pleas at detention hearings, 10-30% of youth entered admissions at their detention hearings in at least two counties visited. Typically, this occurred when the prosecutor filed a supplemental petition and the youth wanted to "get things going." Similarly, in at least four counties, the plea is usually accepted at the first appearance, immediately after the appointment of the public defender. P. 43 In many instances, investigators observed children entering admissions without a full understanding of the rights they were waiving or the long term consequences of such a decision. Many children looked bewildered or disengaged during the plea colloquy.	Judicial admonitions and colloquies must be delivered in developmentally appropriate, clear and easily understandable language. Judges must test children's understanding before the child waives any rights or enters into a plea agreement. Judges must also ensure that the child and the child's family have had an adequate opportunity to confer with counsel before entering an admission. Juvenile defense attorneys must discuss the meaning and effect of entering an admission with their clients to make sure the child understands that they are entering an admission and the consequences of entering the admission. p. 72

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Interviews with children and parents revealed that many did not understand what had occurred. Some youth were unaware that they had entered an admission while others did not know the conditions of their probation. As one child explained, "My PD kept mentioning S.W.A.P. and I had no idea what it was . . . next thing I know, I am cleaning highways for eight hours." pp. 43-44 It appeared that in many counties children felt pressure to plead guilty. This pressure usually came from the attorneys or parents and, in some instances, the judge. In a number of counties, youth and probation officers reported that defenders frequently pressure kids to plead guilty; they attributed this to the lack of time the attorney spent with the child, the attorney's failure to explore or understand the child's wishes, and the absence of an investigation into the child's case. Pressure to plead also comes from parents who do not want to come back to court and do not fully understand the consequences of the plea or the state's burden. Judges sometimes also pressure children to plead guilty through the imposition of a "trial tax." A judge in one large county explained that some of her colleagues impose a harsher sentence if a child takes his case to trial rather than plead guilty. pp. 44 and 45 Judges across the state were inconsistent in delivering admonitions to the child. While several of the judges asked youth if they understood the rights they were waiving, few actually made and effort to explore the youths' comprehension. In one county, the judge did not issue any admonitions, but merely read the charges out loud and confirmed that the minor was entering an admission. Many other judges were observed using form admonitions that often were not in "child friendly" language or, in some cases, were inaccurate. p. 46	

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IV. CASELOADS

Juvenile defender caseloads have grown so large as to be an almost unmanageable impediment to vigorous representation. In 2004 courts with juvenile jurisdiction disposed of more than 1.66 million delinquency cases. On any given day in 2004, juvenile courts handled 4,500 delinquency cases. In comparison, in 1960, approximately 1,100 delinquency cases were processed daily. The number of defense attorneys and support staff needed to handle these cases has not kept pace with the increase in the large volume of cases. In its national survey, *A Call to Justice*, the ABA found that excessive caseloads are "the single most important barrier to effective representation."

The *IJA/ABA Juvenile Justice Standards* state that "[i]t is the responsibility of every defender office to ensure that its personnel can offer prompt, full and effective counseling and representation to each client. A defender office should not accept more assignment than its staff can adequately discharge." The American Council of Chief Defenders recommends that full-time public defender and assigned counsel caseloads not exceed 200 juvenile cases each year. National and state studies indicate that caseloads are, in reality, well above the number of cases that juvenile defenders can reasonably handle.

The problem of high caseloads impacts every facet of representation. The juvenile defender's job should include time spent on: pre-detention hearing interviews of the client and the client's parents, as well as other pre-detention hearing preparations, all subsequent court hearings including status and other discovery hearings, investigation of the allegations, negotiations with the prosecutor, motions practice, taking witness statements, client counseling, legal research, witness preparation, trial preparation, and investigation of disposition options. It would also have to include the handling of any collateral legal matters, like, for example, a school disciplinary hearing arising from the allegations. The sheer number of cases that juvenile defenders handle means they cannot meaningfully represent each client.

States must create some release for this problem. Caseload limits consistent with the recommendation of the *IJA/ABA Juvenile Justice Standards* should be established. There should be regular data collection and caseload monitoring, so that overburdened attorneys are allowed to refuse appointments.

Issue Statement	Proposed Solutions
In a slight majority of counties, attorneys reported that their client contact is limited to court appearances and phone calls. Reasons given for this limited amount of contact included: placing the burden on their clients and their client's families to schedule a meeting; attorneys' feeling it was not feasible to have meetings with their clients outside of court; attorneys' belief that out of court meetings were unnecessary; and high caseloads. P. 50 One lawyer [who relies solely on her investigators to conduct the client interviews] remarked that she wished her caseload was lower so that she could conduct the interview with the client and the investigation. p. 50 Although several Public Defenders agreed that face-to-face meetings with clients were necessary and important to effective representation, many reported that their caseloads prevent them from having an appropriate amount of client contact. p. 51 One chief Public Defender asked her attorneys to visit their detained clients once a week, but meeting that goal has proven difficult, in part due to caseloads and detention center policies that	A child cannot be given a meaningful opportunity to be heard without the opportunity to develop a full-fledged attorney/client relationship and without having a clear understanding of the proceedings. Defenders must institute procedures that allow the lawyer and the child to establish rapport and common understanding. No client — child or adult —will share crucial information outside of the context of a trusting relationship. It is difficult, if not impossible, to establish trusting relationships in a series of brief meetings just before the case is called before the judge. p. 72 Law schools and universities should collaborate with public defender offices and other indigent defense delivery systems to provide law clerks, interns, investigators, education specialists, and the like. p. 79

make visitation difficult and cumbersome. p. 51	

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V. INADEQUATE RESOURCES

Support services are essential to quality representation. Investigators are necessary because investigation can literally make or break a case; creative, thorough, and persistent investigation can mean the difference between a chance at an acquittal or acceptance of a guilty plea. Social workers help to devise individualized disposition plans that can provide an alternative to detention and set a child on a path to staying out of the juvenile delinquency system. Investigators and social workers should be available for every case, without exception. Expert witnesses, on the other hand, are needed only when specific issues arise. However, when they are required, the need is critical: expert witnesses can illuminate the factfinder on a range of important issues, from competency, to adolescent development, to the effect of police interrogation on children, to the reliability of cross-racial eyewitness testimony, to the understanding of the science and statistics behind DNA evidence that either implicates or exonerates the client.

Support services also include more basic needs, such as office space, telephone and internet access, and access to online or library research. For many contract juvenile defenders, the obligation to obtain and maintain these resources falls on the defender alone. Consequently, many contract juvenile defenders negotiate part-time contracts, so that they can have a private practice that subsidizes their juvenile court practice. This arrangement rarely inures to the benefit of the client, since with high caseloads, even a part-time practice involves a large volume of cases.

Issue Statement	Proposed Solutions
Juvenile defenders did not appear to have the same amount of, or access to, resources as the prosecutors in their counties. Although defenders in some of the larger counties reported that they are provided with computers, on-line research accounts, and regular trainings, public defenders in most of the counties visited had limited or no access to these resources. For example, in one mid-sized county, while the state's attorneys and probation officers receive yearly training, the public defenders do not have a training budget. Nor do they have access to on-line research. Instead, public defenders in that county share a juvenile court bench book that usually sits on the judge's bench. p. 64-65 While some public defender offices have investigators on staff, they generally have fewer investigators than the prosecutors in the same county. Moreover, juvenile defenders share the investigators with lawyers from other divisions in their office, with preference given to adult cases. Attorneys in the four largest counties in the study reported that they had access to investigators, whereas attorneys in mid-sized and smaller counties had little or no access to investigators. p. 66 As with investigators, lawyers in larger counties appeared to have much greater access to experts than those in small to mid-size counties. Lawyers in the two largest counties visited stated that they routinely have internal requests for experts granted. However, in the overwhelming majority of the counties, defenders reported that they had never used an expert in a juvenile case, nor had they ever requested that the court appoint one. As in the case of investigators, experts are	Law schools and universities should collaborate with public defender offices and other indigent defense delivery systems to provide law clerks, interns, investigators, education specialists, and the like. p. 79 The Illinois state legislature should establish and fund a Juvenile Defender Resource Center. p. 76 The Executive Branch should take a leadership role in providing sufficient budgets for juvenile defender services in Illinois including funds for adequate numbers of lawyers, sufficient staff to support the lawyers, funds for investigative services and expert witnesses, funding for social workers, and adequate provision for the funding of juvenile defenders. p. 77

generally reserved for adult cases. p. 68 None of the public defenders have a full time social worker on staff and many defenders stated that they and their clients would benefit from one. One commented, "I feel like I am doing a lot of social work but I do not really know what I am doing…it would be great to have a social worker in the office even if it was just part time." p. 68	

VI. INADEQUATE TRAINING AND SUPERVISION

Juvenile indigent defense is a specialty. Training and mentoring are critical ingredients for increasing the knowledge and developing the skills of juvenile defense attorneys. Juvenile defenders must hone their courtroom advocacy, trial, and writing skills, exactly as criminal defense attorneys do. But, juvenile defenders also need training in non-legal areas that are central to working with high-risk youth: as a population, young people accused of crimes have high rates of mental illness, learning disabilities, addiction and other problems. Juvenile defenders need access to regular, low-cost trainings on the rapidly evolving fields of child and adolescent development, as well as competency, special education, alternatives to detention, and additional juvenile-specific areas of research.

Issue Statement	Proposed Solution
[I]n one mid-sized county, while the state's attorneys and probation officers receive yearly training, the public defenders do not have a training budget. Nor do they have access to on-line research. Instead, public defenders in that county share a juvenile court bench book that usually sits on the judge's bench. p. 65 Many public defenders reported that they had received no training prior to representing children in delinquency court. One defender, who had no prior juvenile experience, reported that she had not received any training, but instead "showed up one day and started representing children." A public defender reported that she had not received juvenile specific training in over six years. Another public defender stated that she last attended a juvenile seminar 15 years earlier, when she was a prosecutor. p. 65 Several prosecutors, defenders and judges in small and mid-sized counties believe that trainings should be more geographically based both in terms of content and location. In three counties, public defenders reported that they did not have access to trainings, although one lawyer speculated that this may change because Illinois recently instituted a mandatory Continuing Legal Education requirement for all licensed attorneys. In three other counties, public defenders stated that while there was a limited training budget (ranging from $800 - $1000 for five to six attorneys), they rarely get to access the funds. In stark contrast, a public defender office in a large county reported that the attorneys in her office have frequent access to juvenile specific trainings. The chief of the juvenile unit instituted a weekly brown bag lunch in which lawyers bring cases or issues to brainstorm. These lunches are mandatory for supervisors and attorneys assigned to the detention calendar and open to "any other defenders who are available that day." These lunches also help to identify larger training needs for the office. p. 65	Juvenile defense attorneys must receive appropriate periodic training on a variety of topics on juvenile law, including detention advocacy, adolescent development, trial and litigation skills, dispositional planning, and post-dispositional advocacy, including appellate advocacy. Additionally, juvenile defense attorneys should receive training in various other substantive issues that affect their clients, including but not limited to police interrogation of children, special education, competency, health and mental health, youth gangs, the special needs of girls, conditions of confinement, immigration and asylum law, and children's human rights. p. 75 The training of juvenile defenders in Illinois is haphazard at best. Few defenders have access to state-of-the-art training on recent legal developments or in advocacy technique. Lawyers for the children who appear in juvenile court also lack familiarity with the latest research on adolescent development. This body of research is critical to the provision of effective representation from the detention stage through disposition. Lawyers representing children should have the basic knowledge to know when to make a referral for expert advice concerning a client's mental or emotional status. The State Legislature should establish and appropriate sufficient funds to support the creation of an Illinois Juvenile Defender Resource Center to provide legal training, skills training, education in adolescent development, and other specialized resources to support juvenile defense attorneys throughout Illinois. p. 75 Law schools and universities should allow juvenile defense attorneys to utilize their schools for conducting trainings. p. 79

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VII. INADEQUATE OVERSIGHT/MONITORING

The juvenile indigent defense system needs to have adequate oversight and monitoring for several reasons, the most obvious being quality control: there should be an ongoing mechanism in place to ensure adequate access to counsel and quality of representation. In addition, oversight has the benefit of normalizing practice across a state, so that a child's chance at a just outcome does not depend on where the child lives or whether the child can afford an attorney. Also, juvenile defenders should be able to evaluate how effective their services are, so that they can be responsive to their client population and protect not just individual clients, but also the client community (for example, if there is an inordinately large number of shoplifting cases involving youths coming from one particular department store, a defender might talk with that store's proprietor to determine other ways to address the issue without involving the juvenile court).

Issue Statement	Proposed Solutions
There are no standardized written procedures or consistent practices for making indigency determinations for children involved with the juvenile justice system. The majority of counties visited engaged in some sort of indigency assessment of the child's family to determine whether appointment of counsel was warranted. [S]ignificant differences existed between counties in terms of which children received a court-appointed lawyer and under what circumstances. p. 34	The Illinois state legislature should enact legislation clarifying the obligation of juvenile defenders to provide representation to children in post-dispositional matters including, where necessary, advocacy within the school setting, advocacy with government and private agencies for services, and the provision of services to the client's family. p. 76 The Judiciary Branch should promulgate an adopt standards for defense attorneys representing children in delinquency proceedings that establish guidelines for maximum caseloads. p. 77 Juvenile defense attorneys should work with public defenders throughout the state to establish rules of professional conduct that will set standards for the representation of children in Illinois. p. 77

VIII. JUVENILE COURT CULTURE

There is a prevailing attitude in juvenile courts around the country that juvenile court is not serious – that it is "kiddie" court, the junior varsity to the adult criminal court's varsity league. This attitude stems from several sources. First, it may be attributed to the fact that *In re Gault*, the case that extended the right to counsel to children, did not bestow the full panoply of protections that are available to adult criminal defendants, in service to the ideal of the rehabilitative juvenile court offering individualized treatment without having to contend with the hurdles of certain constitutional protections. Second, the fact that children generally cannot be held longer than their 21st birthday, while adults can be held for the rest of their lives, makes juvenile court seem bush league. Unfortunately, this belief affects how states allocate already scarce indigent defense resources, with the lion's share going to adult criminal defense, and the scraps going to juvenile delinquency. This belief that juvenile court is not serious is often used by defenders as an excuse for serious lapses in advocacy.

In addition, inside the courtroom, defenders have to battle, in overt and subtle ways, against the "best interest" standard that allows the judge, the prosecutor, and the probation officer to substitute their judgment for that of the child. The juvenile defender alone represents the child's "expressed interest," often against the tide of the wishes of everyone else in the courtroom. Judges allow inadmissible evidence, deny suppression motions, refuse to dismiss cases, detain children who might not otherwise be detained, and give probation officers undue deference, all because they believe their actions are for the child's own good. Many defenders cave under the pressure, often because they work in a single courtroom with one prosecutor and one judge every day so that maintaining a friendly relationship is a priority, or because they are genuinely confused about their ethical mandate.

Issue Statement	Proposed Solutions
In another county, the public defender, prosecutor, and probation officer admitted that it was likely that most children do not understand the admonitions issued by the judge or the proceedings. Many opined that the fact that the minors do not understand the process or the admonitions was immaterial, because the charges are usually relatively minor and the lawyers are looking out for their clients' best interests. p. 47 Interviews and observations made clear that in a majority of the Illinois counties surveyed, juvenile defenders are operating under the "best interest" model, substituting their judgment for that of their client. Many attorneys interviewed as part of the assessment expressed confusion over their roles, which they attributed to the fact that they are often appointed as "Attorney-Guardians *Ad Litem*." p. 62 [J]uvenile court is often used as a training ground for attorneys who wish to work in felony courtrooms. p. 64 A number of juvenile defenders interviewed viewed juvenile court as a safe stepping stone to felony work. One defender commented that a lot of people like juvenile court because the youth have rights to protect but the consequences are not as severe as criminal court. Some attorneys stated a preference for juvenile court, but explained that the pay is better in felony courts, and therefore viewed juvenile court as a	This Assessment notes the ambiguity in Illinois law and practice concerning the role of defense counsel in a juvenile delinquency proceeding. This ambiguity centers on whether defense counsel must advocate for the expressed interest of her client or whether defense counsel may advocate for what she believes to be the "best interest" of the child even if that is contrary to the objective sought by the child client. National standards clearly require that lawyers for children must advocate for the expressed interest of their clients. While it is understandable to want to do what is in the best interest of the child, that is the responsibility of the court, not the juvenile defense attorney. If a lawyer concludes that a child is not capable of forming and maintaining a meaningful lawyer-client relationship, a guardian should be appointed to assist with decision making. This Assessment recognizes that the lawyer-client relationship in juvenile proceedings is complex and difficult. However, with proper attention and training, lawyers for children should allow the child to control the objectives of the representation. Minors prosecuted under the Juvenile Court Act face significant consequences, ranging from incarceration, broad dissemination of their juvenile court files, possible registration as sex offenders, and sentencing enhancements. Accordingly, they are entitled to zealous representation by a lawyer who will follow their directions. p. 74 State and local bar associations should promote best practices in juvenile court and recognize delinquency defense as a specialized practice of law. p. 79

training ground for felony work. p. 64 Many judges contribute to the muddled perception of the role of counsel in delinquency court. Judges often had differing perspectives on the appropriate role of attorneys. A judge in a large county complained that the public defenders who appear in his courtroom "focus too much on defense but not enough on best interests." However, another judge in that same county stated that while the court used to be principally best interest focused, judges now understand that minors' due process rights deserve protection. It was not uncommon to hear sentiments similar to ones expressed by a judge in a rural/small county, who noted, "we are lucky that the attorneys have not been defense zealots in juvenile cases," and "recognize that getting a kid off is not in the best interest" of the minor. He noted that defense counsel can be in a "difficult position" at times because parents want to "beat the rap" rather than do what is in the "best interest" of the child. p. 63 The confusion over the appropriate role of the attorney appears to have significant effect on the nature of the proceedings and the protections afforded a minor. Many public defenders and prosecutors commented that their roles were not adversarial, but instead required cooperation to do what is best for the minor. This may mean entering an admission to charges that the prosecutor cannot prove, or agreeing to continued detention, even though the minor has a basis for arguing for release. p. 63	

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IX. PAY PARITY

Research shows that compensation levels for attorneys who represent juveniles are inadequate in many jurisdictions and are generally not commensurate with compensation in other areas of legal practice. Many jurisdictions cap the number of hours a court-appointed attorney (i.e., not a public defender) can bill to a case or on overall spending per case.

In 2002, the average debt load nationwide for graduating lawyers was more than $80,000 (Chase and Gonnell, 2003; Equal Justice Works, National Association for Law Placement, and Partnership for Public Service, 2002). Given that debt load, It is understandable that new attorneys may be reluctant to enter public service, even if they have a strong interest in juvenile work. An ABA national survey found that 55% of juvenile defense attorneys remained in their positions less than 2 years, and state surveys found that low compensation contributed to high staff turnover.

Issue Statement	Proposed Solutions
Prosecutor expenditures are significantly higher than those of public defenders. In addition, there does appear to be disparity within both defender and prosecutors' offices - lawyers who are assigned to adult felony courtrooms typically received higher salaries than their counterparts in juvenile court. p. 64 [J]uvenile court is often used as a training ground for attorneys who wish to work in felony courtrooms. Some public defender and prosecutor offices have pay parity between juvenile and adult felony lawyers, which enables attorneys to develop juvenile law as their specialty and remain in juvenile courts, but that does not appear to be the norm. p. 64	Due to the fact that juvenile defenders have traditionally been paid less than prosecutors, the Illinois General Assembly passed legislation to equalize the pay of Chief Public Defenders and State's Attorneys. A new appropriations bill that went into effect in July 2006 required that Chief Public Defenders be paid at least 90% of the salary of the State's Attorney. This is a major step toward balancing pay. Prior to this legislation, the burden of these costs was entirely on the counties. p. 64

X. LACK OF LEADERSHIP/CAPACITY BUILDING

No advances in juvenile defense can be realized without committed leadership and capacity building. Juvenile defenders need the support of leaders who will listen to and advocate for their concerns, and protect any gains. Juvenile defense is still a very young area of practice – only four decades old – and, as such, needs champions to advance it as a legal specialization.

Leadership is multifaceted and can take all forms: a blue-ribbon commission; a defender resource office; finding and allocating resources for defender offices as well as innovative practices; creation of regular trainings on a range of topics; or promulgation of practice standards, or juvenile court rules. These leadership initiatives are valuable as long as they are grounded in the needs and issues confronting frontline defenders who work with children.

Issue Statement	Proposed Solutions
[J]uvenile court is often used as a training ground for attorneys who wish to work in felony courtrooms. Some public defender and prosecutor offices have pay parity between juvenile and adult felony lawyers, which enables attorneys to develop juvenile law as their specialty and remain in juvenile courts, but that does not appear to be the norm. p. 64	The Illinois state legislature should establish and fund a Juvenile Defender Resource Center. p. 76 The Executive Branch should take a leadership role in increasing public awareness of the importance of juvenile defender services. p. 77 Juvenile defense attorneys should participate with other leaders in the juvenile justice system, the legislature, and the executive branch to make sure that juvenile courts operate fairly and efficiently in the pursuit of justice for children. p. 77 County boards should promote best practices in the representation of children involved in juvenile delinquency proceedings. p. 78 State and local bar associations should promote best practices in juvenile court and recognize delinquency defense as a specialized practice of law. p. 79