



**Pennsylvania: An Assessment of Access to Counsel and Quality of Representation
in Delinquency Proceedings (2003)**

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
<p>Pennsylvania does not have a uniform system for assigning counsel to accused youth. Too frequently, assessment investigators encountered instances where youth were not provided with attorneys in time to provide meaningful representation. Although the Supreme Court of Pennsylvania has held that the right to counsel attaches at arrest, assessment investigators reported that detained youth typically were appointed counsel at the detention hearing, after the youth's intake interview with juvenile probation. Consequently, counsel in such situations rely heavily on the information provided by probation or the prosecutor; and such information is often incomplete or weighted in favor of the prosecution, since it will be comprised of arrest reports that led to detention in the first place. There is no time to receive even the most basic facts from clients, let alone develop information that would be persuasive in arguing for dismissal, diversion, or release from custody. p. 45</p>	<p>Juvenile courts should ensure that no juvenile goes unrepresented at any stage of the juvenile court process, and presume indigence of children for the purposes of appointment of counsel. p. 71</p>

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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
<p>In 2001, children were unrepresented at hundreds of adjudicatory hearings on delinquency allegations at which they were placed on consent decree probation (486 proceedings), regular probation (1,284 proceedings), or sent to residential placements (351 proceedings). In 2001, legal representation was waived in 11% of all delinquency dispositions involving hearings, including some of the most critical proceedings affecting liberty interests. p. 44</p>	<p>Juvenile courts should ensure that no juvenile goes unrepresented at any stage of the juvenile court process, and presume indigence of children for the purposes of appointment of counsel. p. 71</p>

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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
<p>Contested trials are a rarity in the juvenile courts in Pennsylvania. The far more common practice is for cases to be resolved by pleas. Overall, as with motions, there is a general sense of resignation among defense attorneys about the outcome of contested adjudications, because some courts are less interested in inquiring into the guilt or innocence of a child, and more intent on dispensing treatment or punishment. p. 51</p>	<p>Courts and state/county bar associations should use their authority to adopt, or urge the adoption of the <i>IJA/ABA Juvenile Justice Standards</i> for representation of delinquent youth in juvenile court. p. 70</p> <p>Caseloads should be low enough to permit every attorney to offer prompt, full and effective counseling and representation to each client. Caseloads must be fixed at levels which will not compel lawyers to forego investigations in both contested and uncontested cases, to be less than diligent in preparation for trial, or to cease representation at disposition. p. 70</p>

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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
<p>Juvenile defense attorneys across Pennsylvania report a wide range of caseloads, from a low of one to a high of slightly more than 620. It is difficult to ascertain precise caseload statistics because none of the juvenile defenders in public defender offices track that information; they have neither the time nor the means to account for these figures themselves. p. 41.</p> <p>However, the Bias Commission concluded, “Lawyers representing indigent defendants in Pennsylvania often have unmanageable caseloads far exceeding professional guidelines.” In Pennsylvania there are no mandatory caseload limits for public defenders and court-appointed counsel. p. 43</p>	<p>Caseloads should be low enough to permit every attorney to offer prompt, full and effective counseling and representation to each client. Caseloads must be fixed at levels which will not compel lawyers to forgo investigations required in both contested and uncontested cases, to be less than diligent in preparation for trial, or to cease representation at disposition. p. 69</p> <p>The Supreme Court of Pennsylvania should adopt standards for defense attorneys representing children in delinquency proceedings that establish guidelines for maximum caseloads and minimum compensation levels, allowing counsel to perform in a competent manner. p. 71</p> <p>Public defender offices should negotiate contracts with county commissioners and/or judicial districts that permit them to refuse to accept cases that rise above their capacity to provide prompt, full and effective counseling to each client. p. 71</p> <p>The Commonwealth, judicial districts and counties should ensure that sufficient resources are available to increase the number of attorneys representing juveniles in delinquency proceedings[.] p. 69</p>

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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
<p>Sixty-six percent of juvenile defenders described themselves as having worse resources than local prosecutors. Investigators confirmed a tremendous difference between the resources available to the prosecution and to indigent defense attorneys in terms of investigators, collateral support, technology, and other critical resources. Juvenile defenders identified the lack of support services as the leading factor that hinders effective representation. p. 38</p> <p>Lack of technology plagues public defender offices in nearly all counties. At the most fundamental level, 15% of juvenile defenders lack adequate telephone services. A third of juvenile attorneys cannot access the internet to receive e-mail or research statutes or case law. Few public defender offices had computers; offices in the remaining counties often had out-of-date computers that in some cases had been donated by district attorneys' offices. p. 39</p>	<p>The Commonwealth, judicial districts and counties should increase the availability of non-lawyer support—including, paralegals, social workers, investigators and experts. p. 69</p> <p>Public defender offices should ensure that juvenile defenders have the resources available to investigate and prepare cases properly from commencement through appeal, including access to needed social workers, investigators, experts and interpreters. p. 71</p>

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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
<p>Lack of training on effective representation of juveniles at all stages of the proceedings was reported as a contributing factor to inadequate representation at all the sites visited and surveyed. Only 21% of public defender offices reported the availability of a criminal law training program for all new attorneys. Training resources specific to juvenile defense practice were virtually non-existent. pp. 39-40</p> <p>An extraordinarily high number of children in the juvenile justice system have mental health or learning needs that affect their ability to assist defense counsel. However, training about adolescent development is relatively non-existent in Pennsylvania for juvenile defenders. Eight out of ten lawyers in public defender offices receive no training about adolescent development, despite common knowledge that having teens as clients poses particular challenges. p. 55</p>	<p>Attorneys representing youth in delinquency proceedings should receive training in trial advocacy skills, as well as comprehensive and on-going training on: adolescent development; communicating with adolescent clients, witnesses and victims; elements of effective treatment programs, especially for youth with special needs; evaluating youth competence; and representation in collateral legal matters including child welfare, education and mental health. p. 69</p> <p>Juvenile courts, as well as public defender offices, should take leadership to ensure that counsel representing juveniles are appropriately trained and supervised. p. 71</p> <p>Juvenile courts should sponsor cross-discipline trainings for the county's juvenile justice professionals—including judges, prosecutors, defenders and probation staff—that apply the findings of adolescent development research to practice issues confronted by these juvenile court practitioners. p. 71</p>

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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
<p>The lack of uniform standards and oversight of the appointment process give judges unfettered discretion in the selection of contract attorneys and the appointment of attorneys in specific cases. Appointed counsel might tailor their representation by dampening their zeal to advocate for their clients to avoid displeasing the judge, thereby preserving their chances for future appointments. Aside from the conflicts created by the appointment process itself, the lack of standards and oversight mean that there are no established and uniform procedures or mechanisms for holding attorneys accountable for the quality of representation. p. 41</p>	<p>The Executive Branch should adopt the recommendation in the 2003 Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System to establish an independent, state-level Indigent Defense Commission to oversee the delivery of defense services, including juvenile defense, and promulgate uniform, effective minimum standards. p. 70</p> <p>Courts and state/county bar associations should use their authority to adopt, or urge the adoption of the <i>IJA/ABA Juvenile Justice Standards</i> for representation of delinquent youth in juvenile court. p. 70</p>

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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
<p>A number of defense attorneys complained that masters were not giving proper attention to defense motions (e.g., a motion to suppress evidence) because doing so would result in dismissal of a petition or an acquittal for the respondent. Defense attorneys also believed that judges and masters sometimes permitted the admission of evidence that was not competent, relevant, and material and that this undermined the juvenile’s ability to receive a fair trial. Perhaps most significantly, several defense attorneys, but fewer probation officers, maintained that judges adjudicated juveniles delinquent even when there was not proof beyond a reasonable doubt of their guilt. Most individuals who believed judges reduced the conviction standard in juvenile court explained that this occurred because judges desired to help children. p. 59</p> <p>The system’s overdependence on probation officers and their expansive role has tipped the scales toward a “best interest” system in delinquency cases in lieu of a system that demands the Commonwealth prove its case. Several chief juvenile probation officers interviewed acknowledged their undue influence with judges, prosecutors, youths and families. p. 59</p>	<p>Courts and state/county bar associations should use their authority to adopt, or urge the adoption of the <i>IJA/ABA Juvenile Justice Standards</i> for representation of delinquent youth in juvenile court. p. 70</p> <p>Juvenile probation officers should be responsive to the inquiries of juvenile defenders and engage juvenile defenders in regular, on-going communication throughout the delinquency process – from intake to post-disposition review. p. 71</p> <p>Public defender offices should encourage attorneys to specialize in juvenile defender work and eliminate any promotional or other office policies that act as barriers to remaining in such work.</p>

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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
<p>Salaries for public defenders in Pennsylvania are much lower than prosecutors' salaries. In Centre County, for example, the district attorney's salary is \$116,000 and the chief public defender's is \$57,000. Even in counties where starting attorneys in the two offices begin at the same salary, severe salary disparities are evident as district attorneys and public defenders move into more senior ranks. p. 40</p>	<p>The juvenile defense system should receive sufficient funds to adequately compensate court-appointed counsel. It is in children's interests that their attorneys be paid enough to do their jobs. p. 69</p> <p>The Supreme Court of Pennsylvania should adopt standards for defense attorneys representing children in delinquency proceedings that establish guidelines for maximum caseloads and minimum compensation levels, allowing counsel to perform in a competent manner. p. 71</p> <p>Juvenile courts should take leadership to ensure that counsel representing juveniles are appropriately trained and adequately compensated and that minimum standards are met. p. 71</p>

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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
<p>Whether counsels for indigent persons are public defenders or assigned counsel, they are often subject to political pressures. Chief public defenders in all counties except Philadelphia are appointed and retained by local county commissioners. In addition, dependence on county funding allows county commissioners to control the public defenders' budget and sometimes to interfere in the operations of their offices. p. 41</p>	<p>The Executive Branch should, through the Pennsylvania Commission on Crime and Delinquency, continue and expand the availability of juvenile defense capacity building grants. p. 70</p> <p>The Executive Branch should, through the Juvenile Court Judges' Commission (JCJC), continue to encourage juvenile court judges to provide community leadership by participating in the county budget process to advocate for sufficient funding for indigent juvenile defense. PA p. 70</p> <p>The Supreme Court of Pennsylvania should adopt the recommendations of the Juvenile Court Procedural Rules Committee for statewide rules of practice and procedure for juvenile court practice to the extent they are consistent with the findings of the assessment. PA p. 71</p>