

Innovation Brief

Special Counsel: Enhancing Juvenile Indigent Defense in Washington State

When addressing the issue of indigent defense for juvenile respondents in Washington State, an initial reaction was that the cost for needed improvements would be formidable. Reducing caseloads and improving training alone came with large price tags. However, with a relatively modest investment from the MacArthur Foundation, the leadership of TeamChild and the collaboration of multiple partners, Washington *Models for Change* has significantly improved the quality of juvenile indigent representation in Washington State.

The Issue

In October 2003, the American Bar Association published the report: *Washington – An Assessment of Access to Counsel and the Quality of Representation in Juvenile Offender Matters*¹. This assessment found:

- Most counties had not adopted public defense standards.
- High caseloads reduced the quality of representation.
- Most jurisdictions lacked comprehensive and regular training or supervision of attorneys.
- Under Washington law, children were permitted to waive their right to counsel.

When the *Models for Change* initiative launched in Washington State in 2007, little had changed with regard to this assessment. Statewide adoption of public defense standards had yet to occur. Uniform training and access to supervision and mentoring from experienced practitioners was a luxury for most juvenile public defenders, especially those practicing outside of Washington's largest urban areas. Approximately 15

percent of juvenile respondents waived their right to legal representation.

Additionally, despite defense and advocacy agencies' efforts and the wealth of knowledge and experience within the state, attempts to improve juvenile defense policy and practice lacked coordination and a plan for sustainability and statewide impact. Similarly, the lack of a strong, visible and coordinated voice for juvenile indigent defense left juvenile public defenders in Washington State ill-equipped to work collectively on system reform issues. It was also difficult to ensure that reform efforts did not inadvertently erode the constitutionally protected rights afforded to youth.

Innovations

To address the shortcomings of juvenile indigent representation in Washington State, with the support of the MacArthur Foundation, TeamChild created the position of *Special Counsel for Enhancing Juvenile Indigent Defense*. In collaboration with the juvenile indigent

defense community in Washington State, the Special Counsel was charged with: improving indigent juvenile defenders' access to training, mentoring and technical assistance; coordinating and building models of high-quality holistic defense practices; and increasing indigent juvenile defenders' leadership and meaningful participation in system reform efforts.

To fill this position, TeamChild hired a leader in the public defense community with more than 20 years of experience in matters relating to juvenile indigent defense. This person has worked as a front line public defender, a unit supervisor, a clinical law professor and the leader of a model juvenile defense project in a small, rural eastern Washington State county.

To improve representation for indigent juvenile respondents, the Special Counsel conducted the following activities:

- Coordinated state and national partners to deliver continuing legal education programs for juvenile defense attorneys throughout the state.
- Developed an outline for a comprehensive training curriculum and skill assessment tool, created supplemental Washington State training modules and provided state-based material to enhance the National Juvenile Defender Center's Juvenile Training Immersion Program.
- Provided a high-quality, accessible, centralized resource for short-term, case-related technical assistance.
- Convened a series of Juvenile Defense Leadership Summits, which developed into a permanent Washington Juvenile Defender Leadership Network. This strong network of defenders works to advance defense-initiated solutions to systemic problems in the juvenile justice system.
- Advocated for the Washington Supreme Court's adoption of revisions to:
 - Juvenile Court Rule (JuCR) 7.15, *Waiver of Right to Counsel*;
 - JuCR 9.2, *Additional Right to Representation by a Lawyer*, and the corresponding indigent representation standards; and
 - JuCR 1.6, *Use of Physical Restraints in the Courtroom*, which limited the circumstances under which a juvenile respondent may be shackled in a courtroom.

Since the enactment of JuCR 7.15, in juvenile court, the entry of guilty pleas without consultation with counsel has been all but eliminated.

Results and Lessons:

Over the six years of the project:

- The number of free training hours relevant to juvenile defense practice more than tripled.
- The Special Counsel fielded three or four requests per week for case-specific assistance. Some of this workload is now addressed through the list-serve hosted by the Washington Defender Association. With the confidence gained by those defenders who participated in the Washington Juvenile Defender Leadership Network, this list-serve has become more robust with increasing numbers of questions being answered and more materials being shared.
- The Washington Juvenile Defender Leadership Network developed a coordinated approach for addressing system reform, bringing together multiple partners (e.g., Columbia Legal Services, ACLU of Washington, UW Legislative Clinic, TeamChild) and establishing workgroups targeting specific areas such as automatic transfer, collateral consequences, gang intervention and use of restraints.
- Since the enactment of JuCR 7.15, the entry of guilty pleas in juvenile court without prior consultation with counsel has been all but eliminated.
- With the adoption of JuCR 1.6, the practice of presumptive shackling of juveniles in Washington's courtrooms has been eliminated.

With the support and leadership of Washington *Models for Change*, juvenile defenders now have access to more and better training, and the Washington Juvenile Defender Leadership Network is taking more responsibility for supporting defenders, providing technical assistance where needed and advancing system reform. The enactment of revised court rules ensure that all juvenile respondents have legal consultation at the beginning of a case and that juvenile defenders meet certain qualification standards before they can be appointed to cases.

“It was one of the few conferences or meetings that I have participated in that facilitated meaningful discussions between advocates representing individuals and advocates working on ‘systemic change’. I think it helped in forming connections that will facilitate ‘bottom up, top down and horizontal’ collaborations.” —LEADERSHIP SUMMIT PARTICIPANT

Looking Forward

In 2013, the Special Counsel position was added to the workforce of the Washington State Office of Public Defense. The position is now embedded in a state agency and supported with public funding. The Special Counsel continues to serve as a technical assistance resource responding to case-specific inquiries, assisting with defender trainings and participating on various system reform workgroups. Among these efforts is the implementation and refinement of the indigent defense standards and corresponding training.

Resources

Comprehensive Training Curriculum for Juvenile Court Practitioners (Washington State)

JuCR 7.15 – Waiver of Right to Counsel

http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=sup&set=JuCR

JuCR 9.2 – Additional Rights to Representation by a Lawyer

http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=JuCR&ruleid=supJuCR09.2

Indigent Defense Standards

http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=sup&set=JuCR

JuCR 1.9 – Physical Restraints in the Courtroom

http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=348

1. Elizabeth M. Calvin, Esq. et al. Washington – An Assessment of Access to Counsel and Quality of Representation in Juvenile Offender Matters, October 2003, American Bar Association, Criminal Justice Section, Juvenile Justice Center, Washington DC.

For more information contact Justice Bobbe J. Bridge, Founding President and CEO, Center for Children & Youth Justice, bjbridge@ccyj.org.
Editor: George Yeannakis, Special Counsel, Washington State Office of Public Defense at george.yeannakis@teamchild.org

This brief is one in a series describing new knowledge and innovations emerging from *Models for Change*, a multi-state juvenile justice reform initiative. *Models for Change* is accelerating movement toward a more effective, fair, and developmentally sound juvenile justice system by creating replicable models that protect community safety, use resources wisely, and improve outcomes for youths. The briefs are intended to inform professionals in juvenile justice and related fields, and to contribute to a new national wave of juvenile justice reform.