

*Juvenile Justice GPS (Geography, Policy, Practice & Statistics) is an online repository providing state policy makers and system stakeholders with a clear understanding of the juvenile justice landscape in the states. The site layers the most relevant national and state-level statistics with information on state laws and practice and charts juvenile justice system change. In a landscape that is highly decentralized and ever-shifting, JJGPS provides an invaluable resource for those wanting to improve the juvenile justice system.*

## Indefensible: The Lack of Juvenile Defense Data

Given the risks they face in juvenile court, the importance of having qualified counsel cannot be overstated for youth involved in the juvenile justice system. Youth often have a lot to lose, including their freedom, during juvenile court proceedings and are subject to many negative effects of a juvenile court record if found delinquent. Attorneys provide a “voice” to these youth, advocating for their expressed interests while exercising their due process rights. Attorneys are also necessary to help explain the often complicated juvenile court process to youth; filled with difficult to understand terminology and numerous agency representatives. More importantly, representation balances the legal playing field, ensuring that youth are treated fairly during delinquency proceedings.

In a landmark 1967 ruling, the U.S. Supreme Court affirmed in *In Re Gault* (387 U.S. 1. 1967) that youth are entitled to most of the same due process rights afforded adults, including the right to counsel in delinquency proceedings, among others. To provide counsel for youth that could not afford to retain private counsel, many states responded by creating juvenile indigent defense systems. Indigent defense systems use various methods, including public defender and assigned counsel programs, as well as contract attorneys, to provide counsel for youth in conflict with the law.

While the knowledge that youth have a right to an attorney is fairly common, the application of this right is rather complex and varies across the country. Youth referred to juvenile courts for delinquency matters typically have three options regarding representation: 1) youth may retain an attorney at their own expense, 2) they may have various types of counsel (public defender, appointed counsel, or contract counsel) through a publicly funded indigent defense system, or 3) youth can waive their right to an attorney and proceed without representation.

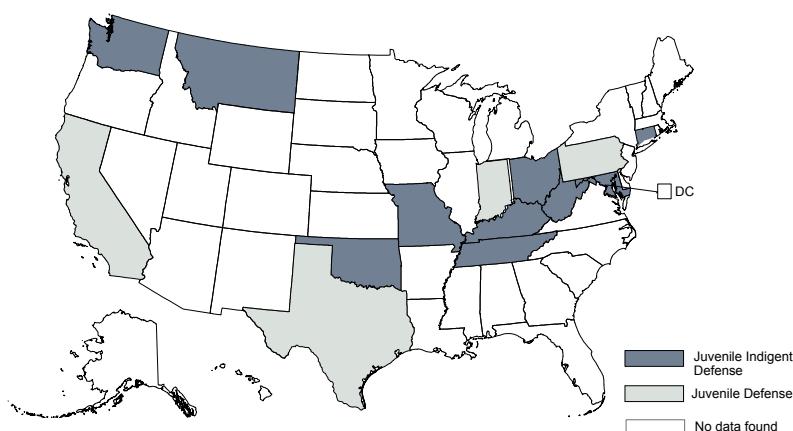
National data to illustrate how often each of these options is used is not publicly available. In 2013, over 582,000 juvenile cases were petitioned to juvenile courts (Sickmund, Sladky, &

Kang, 2015) but little is known about how many of these cases were represented by an attorney. However, a small number of state-level data sources exist that shed some light on the topic.

To further the understanding of the application of juvenile defense in delinquency proceedings, NCJJ conducted an online search for publicly available state-level data to investigate how often each of these options is used. This research highlights the availability of data that describes two types of defense:

- Juvenile Indigent Defense: includes data on public defense options such as public defender, appointed counsel, and contract counsel.

### Fourteen States Make Juvenile Defense Data Available Online



**Table 1: States with Publicly Available Juvenile Defense Data**

	Data Source		Key Measures Reported		
	Juvenile Court	Public Defender	Indigent Defense	Privately Retained	Attorney Waived
<b>Juvenile Indigent Defense</b>					
Connecticut		■	■		
Kentucky		■	■		
Maryland		■	■		
Missouri		■	■		
Montana		■	■		
Ohio		■	■		
Oklahoma		■	■		
Tennessee	■		■		
Washington		■	■		
West Virginia		■	■		
<b>Juvenile Defense</b>					
California	■		■	■	■
Indiana	■		■		■
Pennsylvania	■		■	■	■
Texas	■		■	■	

- Juvenile Defense: includes data on Juvenile Indigent Defense plus one or both of the following: data on youth who privately retain an attorney or waive representation.

Considering how important the provision of juvenile defense is, there remains very little data to objectively describe its application.

### Juvenile Indigent Defense Data Has Limitations

Most of the available state-level data on the topic of Juvenile Indigent Defense is located in annual reports of statewide public defender agencies. Nine state public defender agencies include data on the provision of Juvenile Indigent Defense in their annual report. In many of these states, indigent defense is organized or overseen by a centralized state agency, which facilitates statewide data collection. One additional state, Tennessee, reports Juvenile Indigent Defense data in an annual financial report to the legislature designed to track fees associated with public defense.

While state public defender annual reports are the most frequent source of publicly available data on Juvenile Indigent Defense, various limitations exist on the use of this data. The data available in these reports only highlight the caseload activity of the public defense agency and does not include data on youth who retain private counsel or waive representation. Furthermore, these reports provide very little detail on what types of cases (delinquency, dependency, or status offense) are included in the data or how to interpret them.

More importantly, the data contained in these reports are not collected and reported to advance knowledge about juvenile defense. Data reported in these annual reports serve to describe a work product of the public defender agency, rather than as a performance measure to monitor and evaluate the field of juvenile indigent defense. Most of these reports simply include raw counts of cases or youth that the agency served without an indication of what proportion of total cases it represents. These limitations are expected because these agencies are only reporting data that are within their scope and aligned

with their stated purpose and goals. Regardless of the limitations, the data are certainly useful to inform discussions on the topic of available juvenile defense data.

### Comprehensive Juvenile Defense Data Are Rare

A few states (CA, IN, PA, and TX) report comprehensively on the topic of Juvenile Defense, overcoming many of the limitations of those that simply report on Juvenile Indigent Defense. Juvenile Defense data are available in three state court annual statistical reports and one State Statistical Analysis Center report. These four states collect and report data on juvenile defense using juvenile court processing data rather than state public defender data allowing for a more in-depth analysis. While all four states use juvenile court data, they do not all report on the same measures.

Across the entire country, only two states (CA and PA) publish data annually on three important measures that reflect Juvenile Defense activity: 1) the number of cases represented by private attorneys, 2) the number of cases represented by an indigent defense model, and 3) the number of cases where counsel was waived. Furthermore, these two state reports include ratios to highlight the percentage of cases handled in each of these three manners, allowing for a more in-depth analysis. These two states provide excellent examples of simple measures that can be used to monitor and evaluate how youth are being represented in delinquency proceedings.

Indiana and Texas also use juvenile court processing data, however they do not report on all three key measures. Indiana does not include the number of cases represented by privately retained attorneys while Texas does not report the number of cases where counsel was waived. Furthermore, these two states only include raw counts in the reports, requiring the reader to calculate ratios using other data included in the report.

Collecting Juvenile Defense data from the juvenile court perspective provides a more comprehensive view of the process for a variety of reasons. Foremost is that the application of juvenile defense takes place in full view of the court. Collecting data on court processes, such as if an attorney was present and what kind, from within the juvenile court provides a more complete picture because the full array of defense options can be documented within this setting. In addition, juvenile court data include counts to describe the universe of juvenile cases handled in court, which allows ratios to be created as described in the California and Pennsylvania examples. Furthermore, collecting these data from a single juvenile court agency is simpler and streamlines the process compared with compiling data from multiple agencies including juvenile courts and indigent defense systems.

### Why So Little Data?

With so few states publishing Juvenile Indigent Defense data, and even fewer states reporting on the broader topic of Juvenile Defense, the question “why?” is certainly warranted. During the course of this research, several states indicated they collected this type of data but do not currently report it publicly. While this research focused solely on data that is publicly available, the confirmation that some states collect but do not report was an important finding. Perhaps very little data is available because the demand for the information has been low historically. However, as the field of juvenile defense becomes more specialized and reports surface that question the effectiveness of counsel, the demand for supporting data has increased. Perhaps data is scarce because there is an assumption, given the constitutional requirement in *In Re Gault*, that every juvenile defendant is provided counsel if they cannot afford it and therefore every youth is represented in some way during the court process. The need for data to confirm a premise that is believed to be a common practice may seem unnecessary. Most likely, the lack of data is a result of prioritizing data collection and reporting resources.

Data on the application of juvenile defense is surpassed by the need to collect and report data on basic juvenile case processing metrics such as referrals, filings, and dispositions. It is important to consider these and other explanations while looking for solutions to address the lack of data.

### Monitoring Data Can Answer Important Questions

While collecting and reporting comprehensive juvenile defense data is important for the field, using the data is even more beneficial. Using comprehensive data to answer questions, such as “how many youth had an attorney” or “what are the outcomes for youth with a public defender compared with a private attorney?” can help monitor and strengthen the performance of juvenile defense systems.

In Pennsylvania, these questions and many others can easily be answered because juvenile court processing data, including data on type of representation, are available via an interactive online tool.

The [Pennsylvania Juvenile Delinquency Data Analysis Tool](#) (PA Date Tool) was developed by the National Center for Juvenile Justice (NCJJ) in 2008 in the wake of the “Kids for Cash” scandal in Luzerne County, Pa, where a large number of youth were routinely waiving their rights to an attorney and placed out-of-home for minor offenses (Pennsylvania Interbranch Commission

on Juvenile Justice, 2010). In an effort to avoid similar occurrences, and in accordance with state policy recommendations from the Interbranch Committee on Juvenile Justice, Pennsylvania created the PA Data Tool to make juvenile court data more accessible to the public.

The PA Data Tool allows users to perform unique analyses on allegations, dispositions, and disposition reviews reported each year by counties within the state. Users can select characteristics such as age, gender, and race of the youth involved in court cases as well as the alleged and substantiated offense, legal representation, the use of detention, adjudication, case disposition, and placement type. Specific to juvenile defense, users can quickly see the number or percent of juvenile cases with a court appointed attorney, public defender, or privately retained attorney, as well as those that waived counsel or had no attorney present.

Examples of output from the PA Data Tool are displayed on page 4 (Table 2) with data that illuminates the “kids for cash” scandal and the reforms put in place in its wake. In 2006, over 5% of formal cases statewide waived representation. This figure decreased significantly after the scandal was made public in 2008, to a low of .2% in 2011. Drilling into Luzerne County reveals that representation was waived in 50% of formal cases in 2006, accounting for a large proportion of the state-wide total. By 2011, there were none.

### Resources Available to the Juvenile Defense Field

The [National Juvenile Defender Center](#) (NJDC) was created in the late '90s to respond to the critical need to build the capacity of the juvenile defense bar and to improve access to counsel and quality of representation for children in the justice system. NJDC gives juvenile defense attorneys a permanent and enhanced capacity to address practice issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile crime.

A cornerstone of the NJDC's work is to understand how juvenile indigent defense is delivered around the country and to support excellence in the provision of those services. As part of that work, NJDC conducts [state-specific assessments](#) of youth access to, and the quality of, juvenile defense counsel when they come in contact with the delinquency system.

The NJDC also provides various forms of [technical assistance](#) and has produced a wide array of [publications](#) to enhance the field of juvenile defense.

This simple yet powerful tool provides the most customizable and comprehensive view of juvenile defense data found and can serve as an example of what is possible when juvenile defense data are collected.

## Conclusion

Having an attorney present during juvenile delinquency proceedings is not only a right protected by the 14th Amendment of the U.S. Constitution; it is a basic element of fairness that ensures the due process rights of youth. Given the importance of assuring that youth are effectively represented, it's alarming that such little data is publicly available to objectively describe the process.

Collecting, reporting, and monitoring data on the three basic measures presented in this analysis (number of cases with indigent defense, private attorneys, and waived representation) would help states ensure that the legal needs of youth are being met and support the continued specialization of the juvenile defense field.

## References:

In Re Gault 387 U.S. 1 (1967).

Pennsylvania Interbranch Commission on Juvenile Justice (2010). Interbranch Commission on Juvenile Justice Report. Online. Available: <http://www.pacourts.us/assets/files/setting-2032/file-730.pdf?cb=4beb87>.

Sickmund, M., Sladky, A., and Kang, W. (2015). "Easy Access to Juvenile Court Statistics: 1985-2013." Online. Available: <http://www.ojjdp.gov/ojstatbb/ezajcs/>.

**Table 2: Example Output from the PA Data Analysis Tool**

### PA. Legal Representation by Year of Disposition\*

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Court appointed	17.20%	18.20%	19.10%	18.20%	15.90%	13.10%
Public defender	63.60%	66.50%	68.00%	69.30%	72.60%	76.60%
Private	12.80%	11.00%	11.10%	11.40%	10.90%	10.00%
Waived	5.70%	4.10%	1.20%	0.70%	0.30%	0.20%
No attorney present	0	0	0.10%	0.20%	0.20%	0.10%
No entry	0.70%	0.10%	0.50%	0.10%	0.00%	0.00%
Total	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

### Luzerne Co. Legal Representation by Year of Disposition\*

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Court appointed	3.50%	8.10%	10.40%	2.10%	3.70%	14.00%
Public defender	21.60%	36.40%	60.70%	73.80%	76.40%	64.20%
Private	24.20%	18.60%	23.50%	24.10%	19.90%	21.90%
Waived	50.00%	37.00%	5.50%	0	0	0
No attorney present	0	0	0	0	0	0
No entry	0.70%	0	0	0	0	0
Total	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

\* Cases formally handled.

Citation: Pennsylvania Juvenile Delinquency Data Analysis Tool. Developed for the Pennsylvania Juvenile Court Judges' Commission by the National Center for Juvenile Justice, Pittsburgh, PA.

## Methodology

NCJJ conducted a search of various online resources, including websites of state public defender agencies, state courts, and juvenile justice agencies in April 2015 to locate statewide data on the application of juvenile defense. This analysis highlights those reports that were located and are produced on a regular (annualized) basis. Point-in-time studies were not included in this analysis. When necessary, the authors of each report were contacted by NCJJ to gather additional details on the data included within each report to accurately reflect the data specific to juvenile cases. Readers are encouraged to visit [www.jjgps.org/juvenile-defense](http://www.jjgps.org/juvenile-defense) for more details on each report located.

The National Center for Juvenile Justice is a non-profit organization that conducts research on a broad range of juvenile justice topics and provides technical assistance to the field. NCJJ is the research division of the National Council of Juvenile and Family Court Judges.

Andrew Wachter, Research Associate with the National Center for Juvenile Justice, prepared this document with support from the John D. and Catherine T. MacArthur Foundation. Points of view or opinions expressed are those of the author and not necessarily those of the Foundation.

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Suggested Citation: Wachter, Andrew. (2015). Indefensible: The Lack of Juvenile Defense Data. *JJGPS StateScan*. Pittsburgh, PA: National Center for Juvenile Justice.