

CHAPTER FOUR

Promising Approaches and Innovative Practices

The ABA Juvenile Justice Center's national assessment of access to counsel and quality of representation in delinquency proceedings identified at least six characteristics of high quality defender programs:

- Limited caseloads;
- Support for entering the case early, and the flexibility to represent the client in related collateral matters (such as dependency and special education);
- Comprehensive initial and ongoing training and available resource materials;
- Adequate non-lawyer support and resources;
- Hands-on supervision of attorneys; and
- A work environment that values and encourages juvenile court practice.

While the report reveals substantial deficiencies in access to counsel and the quality of representation in juvenile court, effective representation of young people can and does exist. In several parts of the state investigators observed individual defenders who were articulate and well prepared in delinquency court, representing children and youth who were engaged in the process and demonstrated an understanding of the system. These attorneys developed creative strategies for trial and disposition. Several, but not all, practices are described below to suggest possibilities for excellent defense work.

Defender Association of Philadelphia (Organization, Resources & Post-Disposition)

At the outset, the Defender Association is structured differently from public defender offices elsewhere in the Commonwealth, all of which are county agencies overseen by county commissioners. The Defender Association is an independent non-profit corporation whose services are purchased by Philadelphia. Therefore, the Defender Association has much greater control over its budget than other public defender offices. Moreover, the chief defender is appointed and retained by a board of directors, rather than by county commissioners. This governing structure insulates the office from political pressures. The board is composed of representatives from city government, the organized bar and the community.

Philadelphia County has the single largest volume of juvenile court cases in the Commonwealth. It provides an excellent example of strong advocacy at each stage of juvenile court involvement. The Juvenile Unit, directed by Robert Listenbee and Sandra Simkins, is a team of 19 full-time and two part-time defense attorneys. They handle a docket of 6,000–6,500 cases per year. The Juvenile Unit also employs three full-time and two part-time investigators (used exclusively for juvenile matters), and nine full-time administrative staff (e.g., paralegals, secretaries, clerks).

The Defender Association stands out among defender offices for its juvenile social services—a division within the Juvenile Unit, directed by Christina Bradley, employing nine social workers to assist juveniles with significant mental or physical health needs, drug and alcohol addictions, and education barriers. Social workers manage 1,000–1,200 cases per year, providing support to both attorneys and juvenile clients. Social workers team with attorneys to review the individual needs of their clients, services that would meet those needs, and whether those needs can be met by the disposition proposed by juvenile probation. When necessary, social workers prepare reports that challenge the recommendations of juvenile probation and testify about more appropriate, and less restrictive, treatment options.

The Defender Association also stands out among defender offices by providing a far higher level of attorney training and practice resources. A separate training unit provides new attorneys with a year-long training program, including an intensive three-week session on advocacy. Only attorneys who have practiced at the Defender Association for at least six months are assigned to the Juvenile Unit. There, they receive an additional week of training. New attorneys also receive in-court supervision and partner with juvenile social service workers to prepare for disposition hearings for clients with significant treatment needs.

Motions practice in the Juvenile Unit is routine and thoughtfully aggressive and generates significant appellate work, although appeals are not typically handled by the Juvenile Unit.

Also impressive is the Defender Association's post-disposition advocacy for youth in placement. Despite vast geographical separation from their clients, the Defender Association investigates and monitors the treatment of clients placed in out-of-home facilities. The Philadelphia Department of Human Services, the county's children and youth agency, pays the Defender Association \$50,000 per year for Juvenile Unit attorneys and social workers to visit and counsel clients

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in secure private and public placements four to six times a year throughout Pennsylvania—and in Virginia and Texas. Defenders use disposition review hearings as opportunities to bring numerous matters to the attention of juvenile court, including: grounds for release from confinement; evidence that clients are not receiving services such as drug treatment or special education; information that clients are in jeopardy due to lack of security or other dangerous conditions in placements; changes in home conditions; and, openings in community-based programs.

On several occasions the Defender Association has successfully filed *habeas* petitions challenging dangerous conditions on behalf of classes of juvenile clients in placements inside and outside of Pennsylvania.

Another high priority, post-disposition project for the Juvenile Unit involves the expungement of juvenile records. Many juveniles and their parents erroneously believe that juvenile records are automatically sealed or destroyed once they reach the age of 18 or 21. This is not true in Pennsylvania.¹³³ Unfortunately, juvenile records prevent children from obtaining jobs in law enforcement organizations, such as police and sheriff departments, the FBI and correctional institutions. Children also are prevented from entering the military, obtaining certain types for financial assistance for college and working in certain health care organizations, such as nursing homes for the elderly. The law of Pennsylvania gives children the option of having their records expunged under certain circumstances.¹³⁴ For the last four years, the Juvenile Unit has filed hundreds of motions each year. Many clients whose records have been expunged have since entered the military or obtained jobs that would not have otherwise been available to them.

Allegheny County Office of the Public Defender (Increasing Its Commitment of Resources for Delinquency Representation)

The Allegheny County Office of the Public Defender (OPD) is the second largest indigent defense law firm in the Commonwealth and is situated in a county, which includes the city of Pittsburgh, with the second largest volume of juvenile court cases in the Commonwealth (3,000–4,000 cases per year). Under the leadership of M. Susan Ruffner, OPD has made a significant investment in its representation of children in the delinquency system over the past three years. OPD assigns one Supervisor, eleven Assistant Public Defenders (eight full-time/three part-time), three clerical workers and an Ombudsperson (social worker) to its Juvenile Unit.

The OPD stands out among Juvenile Units at defender offices by providing a high level of training and practice resources. Only attorneys who have practiced at the OPD for at least six months are assigned to the Juvenile Unit, and once there they receive an additional two weeks of training about policy and practice before representing clients. In addition, less-experienced attorneys are partnered with more experienced staff in individual courtrooms in order to enhance the training and effectiveness of less experienced attorneys.

Under the leadership of Supervisor Mark Waitlevertch, the Juvenile Unit has developed and implemented practice standards for effective juvenile representation and provided juvenile defenders access to paralegal and investigative services. OPD has also been active on various Allegheny County committees

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concerning juvenile court to address systemic issues with court administration and the juvenile probation office.

On a monthly basis the Juvenile Unit holds staff meetings to discuss administrative issues. The staff also gathers monthly to meet with various providers about treatment and rehabilitation programs. In addition, each attorney meets individually with the Division Supervisor for a file/case review meeting, to monitor attorney development and compliance with the practice standards as well as a scheduled opportunity for each attorney to discuss complex cases, resource needs, training needs, and case issues with their Supervisor.

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Full-Time Counsel Who Exclusively Represent Juveniles

Several counties make their juvenile defenders practice full-time in order to more effectively serve the needs of their juvenile clients.

Despite the negative consequences of high caseloads and conflicts that arise from part-time defense practices, most rural and suburban counties—especially the 50 counties in Classes 4 through 8—do not have full-time juvenile public defenders. Nevertheless, several counties make their juvenile defenders practice full-time in order to more effectively serve the needs of their juvenile clients. The counties that promoted this practice received partial funding from grants awarded by the Pennsylvania Commission on Crime and Delinquency (PCCD). PCCD’s Juvenile Defense Capacity Building Program supports counties that demonstrate the need for new or expanded juvenile defense delivery. The grant is for three years and demands an increasing county match. Through the spring of 2003, seventeen counties had received grants for juvenile defense.

Several of the chief public defenders and juvenile court judges in the counties visited, including Monroe, Cambria, Lackawanna and Montgomery, have arranged for county dollars to fund full-time juvenile defense work when PCCD grants lapse. Assessment investigators who visited these counties noted that, while challenges still exist, these counties had an especially active juvenile practice and the defenders expressed a high level of commitment to representing youth.

Counties that Presume Indigence and Prohibit Waiver of Counsel

Several counties presume that accused children are indigent. These counties view the child as the client. They have adopted a policy that the juvenile court

shall assign counsel for juveniles who are not represented by private counsel. These counties recognize that forcing parents of any socio-economic class to retain counsel for their children in a delinquency matter forces a conflict in the representation. Financial pressures may lead parents to encourage their children to ignore their right to counsel in an effort to seek a low cost resolution.

Some counties do not permit children and youth to waive their right to counsel. Others make waiver difficult. For example, Cambria County does not permit waiver of counsel as a matter of course and, at a minimum, requires that a juvenile defender consult with the youth prior to accepting any waiver. The juvenile court judge regularly advises youth of their right to counsel and makes a concerted effort, on the record, to ascertain whether children actually understand the consequences of waiving counsel. Several judges and masters in other counties reported similar practices because of concerns they have with children not being represented. These courts avoid many the problems that accompany waiver.

Professional Association & State Leadership

The Pennsylvania Association of Criminal Defense Lawyers (PACDL) established a Juvenile Justice Committee in 2002. While resources to develop and enhance professional association should be enhanced, the efforts and leadership of PACDL are a positive first step to ensuring that juvenile defenders exchange information about juvenile justice issues and trends. PACDL has developed a list-serve to increase information flow to juvenile defenders and provide a mechanism for problem solving, access to resources, and discussion on a variety of juvenile topics.

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